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# CHARTERED SECRETARY

THE JOURNAL FOR GOVERNANCE PROFESSIONALS



**Mediation and Arbitration :**  
Securing the future for the Profession



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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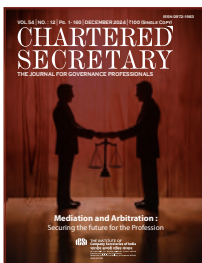


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## EDITORIAL

It gives me immense pleasure to share, that the ICSI successfully concluded its much awaited, 52<sup>nd</sup> National Convention of Company Secretaries from 8<sup>th</sup> to 10<sup>th</sup> November 2024, at Hotel Sahara Star Mumbai with engaging panel discussions and release of ICSI publications. I sincerely appreciate the participation by members who attended from various parts of the country and their sincere involvement in making this event a grand success.

The dispute resolution in India is primarily entrusted in the court system which has often been observed as an expensive and time-consuming process. Due to huge pendency of cases, the Alternate Dispute Resolution (ADR) in the form of Negotiation, Arbitration, Mediation, and Conciliation has emerged as a cost effective and speedy mechanism for resolving disputes both in domestic and international arena. With the enactment of the Arbitration and Conciliation Act, 1996, and the Mediation Act, 2023, and amendments / incorporation of ADR in various other legislations, parties in litigation are preferring to choose ADR mechanisms for resolving disputes.

The ICSI is continuously striving towards skill building of its members in the field of ADR. One of the remarkable steps taken in this direction is setting up of International ADR Centre which aims to expand professional opportunities for Company Secretaries in ADR. Impending on this objective of ICSI towards exuberating excellence in the field of ADR, the December issue of the journal has been thoughtfully designed with the theme on *"Mediation and Arbitration: Securing the future for the profession"*.

Emphasising on the risks associated with global disputes arising out of implementing corporate governance standards in corporates is the article titled, "The Evolving Role of ADR in India towards Corporate Governance and shaping global dispute resolution".

The article titled, "Mediation Act and Rules: Understanding Finer Nuances", elaborates on the key provisions of Mediation Act, 2023, Mediation Rules, and various case laws. Going forward the article titled, "Non-Adversarial Settlement of Commercial Disputes: Move towards Judicial Autonomy to Corporates", cites the scenarios where corporates can adopt ADR mechanisms and approaches to reduce cost of its administration. Highlighting the application of digitization in the article titled, "AI & Digitization in Arbitration," with focus on ethical concerns addressing Company Secretaries.

Further the article titled, "Mediation and Arbitration: Securing the Future for Company Secretaries Professionals", discusses ways in which mediation and arbitration is shaping the future of the Company Secretary profession in India with notable Indian case studies where these ADR processes have proven successful. The next article on, "Transforming Alternate Dispute Resolution: The Role of AI and Digitisation in Shaping the Future of Conflict Resolution", elucidates the AI driven tools in ADR.

The article titled, "Computation of Net Profit under Section 198 of the Companies Act, 2013 for the purposes of Managerial Remuneration and CSR", explicates the interpretation of Section 198 while calculating net profits for the purpose of Section 197 and 135 with the help of illustrations. Underpinning the evolution and development of legal framework of Mediation in India with focus on procedural and behavioral aspects is the research paper titled, "The Mediation Act, 2023: Pioneering a New Paradigm in Dispute Resolution".

Happy Reading!

**CS Asish Mohan**  
(Editor - Chartered Secretary)





1. ICSI delegation led by CS B Narasimhan, President, The ICSI met with Shri S.C.L Das, IAS, Secretary, Ministry of MSME.
2. ICSI delegation led by CS B Narasimhan President, The ICSI met with Shri Balamurugan D., Joint Secretary, MCA.
3. ICSI delegation led by CS B Narasimhan, President, The ICSI met with Shri Sadguru Madhusudhan Sai in Bengaluru.
4. Nagpur Chapter of ICSI organized a Workshop on Companies Act, 2013 on the theme "Decoding Companies Act: Empowering Compliance and Governance" at Nagpur Chapter of The ICSI. CS B Narasimhan, President, The ICSI graced the occasion.
5. ICSI inks MoU with Delhi Technological University, Delhi under the ICSI Academic Collaboration initiative.
- 6-7. The NIRC of ICSI organized a Seminar on the theme "Navigating Sustainability: ESG Framework, BRSR Reporting and Future-Ready CSR in India" on November 23, 2024. CS Ranjeet Pandey, Former President, The ICSI and CS Suresh Pandey, Central Council Member, The ICSI graced the occasion.





8. The NIRC of ICSI organized the Uttarakhand State Conference 2024 on the theme “Company Secretaries: Pioneers of Governance in a Developed India” on November 30, 2024. CS Atul H. Mehta, Former President, The ICSI and CS Suresh Pandey, Central Council Member, The ICSI graced the occasion.
- 9-11. The ICSI in association with the Cochin Shipyard Limited (CSL), a Central Public Sector Enterprise organized a training programme for its employees on the topic “Prohibition of Insider Trading” on November 20, 2024 at its Headquarters at Kochi. CS Savithri Parekh, Company Secretary and Compliance Officer, Reliance Industries Ltd. and CS Makarand M. Joshi, Practicing Company Secretary were the Guest Speakers. The programme witnessed presence of Shri Madhu S. Nair, Chairman & Managing Director, Cochin Shipyard Ltd., along with other Directors of CSL.
12. A delegation led by Joint Secretary (Senior Grade), Dr. Sanjay Pandey and Director, Sh. Bhuvananda Pradhan met to discuss various construction projects assigned to NBCC.
13. The ICSI joined as Associate Partner in the Residential Workshop on ‘Corporate Governance, Corporate Social Responsibility (CSR) and Insolvency & Bankruptcy Code (IBC)’ held at Goa from November 21-23, 2024 organized by National Academy of Human Resources Development (NAHRD). CS Venkata Ramana R., Central Council Member, The ICSI was the Guest Speaker at the event.



# Glimpses from ROs and CCGRTs



14. The 26<sup>th</sup> batch of the RCLDP was conducted at ICSI - CCGRT, Mumbai from November 13 - 28, 2024. CS B. Narasimhan, President, The ICSI graced the programme.
15. ICSI-SIRC conducted its 8<sup>th</sup> Batch of CLDP at SIRO from November 11 to 26, 2024. CS MohanKumar A, Central Council Member, The ICSI graced the occasion.
16. ICSI-WIRO conducted Member's Programme on the topic "Intricacies of Loans to Directors, Inter-Corporate Loans and Investments" on November 17, 2024 at Mumbai. CS Sudhakar Saraswatula, Former Vice President, Corporate & Secretarial, Reliance Industries Ltd. addressed the participants.
17. EIRC of the ICSI jointly with Bhawanipur Education Society College, Kolkata organised Principal Conclave on the theme "Changing Landscape in the Edu Sphere" on November 29-30, 2024 at Kolkata.
18. 5<sup>th</sup> batch of RCLDP organised from November 22 - December 07, 2024 at ICSI - CCGRT, Kolkata. CS Sandip Kejriwal, Central Council Member, The ICSI and Convenor, ICSI - CCGRT, Kolkata addressed the participants.
19. ICSI - CCGRT, Kolkata organised the first physical meeting of Debating Society on November 30, 2024.



# This Month That Year



**2019**

Glimpses from 47<sup>th</sup> National Convention of Company Secretaries (November 14-16, 2019) held at Jaipur, Rajasthan.



**2020**

ICSI delegation led by CS Ashish Garg, President, ICSI met Shri Anoop Kumar Mendiratta, Secretary Law, Department of legal affairs and apprised him about the various initiatives been taken by the Institute and the services being provided by the Company Secretaries.



**2021**

CS Nagendra D. Rao, President, ICSI welcoming Shri Manoj Pandey, IRS, Joint Secretary, Ministry of Corporate Affairs in 2<sup>nd</sup> National Conference of Corporate CS held on November 12-13, 2021 at New Delhi.



CS Asish Mohan, Secretary, ICSI, met Hon'ble Mr. Justice Ashok Bhushan, Chairperson, NCLAT, Former Judge Supreme Court to apprise him on the renewed role of CS in promoting good governance all across.



CS Devendra V Deshpande, President, The ICSI and CS Asish Mohan, Secretary, The ICSI met Mr. Sujit Ghosh, Deputy High Commissioner of India to London, United Kingdom and discussed opportunities for the Company Secretary Professionals there. They also explored the possibility for young Company Secretaries applying under the recently launched UK-India Young Professional Scheme.



**2022**

Jury Meeting of ICSI National Awards for excellence in Corporate Governance, 2022 held on November 29, 2022 at New Delhi. Hon'ble Mr. Justice P. Sathasivam, Former Chief Justice of India was the Chief Guest.



**2023**

CS Manish Gupta, President, The ICSI signed MOU on behalf of ICSI with the Institute of Management Accountants USA. Also present at the ceremony: CS B. Narasimhan, Vice President, The ICSI; Mr. Jaywardhan Semwal, CMA, Chair, IMA India Regional Advisory Committee Member & IMA Global Board Member, Mr. Guruprasad V, ACA, ACMA, ACS, IMA Regional Advisory Committee Member & Former President IMA Bangalore Chapter and CS Nagendra D Rao, Former President, The ICSI.



*"Wisdom comes with Winters."*

*~ Oscar Wilde*



**Dear Professional Colleagues,**

**T**he month of December – the world over is seen and celebrated as a season of joy, exuberance, exhilaration and tremendous happiness. The spirit of Christmas permeates across all activities and not just Greeting Cards - in the music shared as carols, in the bright hues of the season, in the picking up of choicest gifts to be shared as Secret Santa with our friends and in the traditions of baking cakes and sharing meals with extended families over tables filled with smiles and laughter.

While you may be witnessing a child like enthusiasm in an octogenarian for the changing season and the incoming festival, there is a much deeper satisfaction – for the times gone by, the accomplishments made and the variety of new launches and developments.

Even though, this isn't my last message as the President, the fact that this edition shall mark the end of a Calendar Year is a moment opportune enough to share the surge of emotions. Since, "December is the time for remembering the past and reaching towards the future", if I am to look back and reminisce the moments of the month gone by, there is plenty to share in terms of happenings and achievements:

#### **52<sup>nd</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES: DELIBERATING CORPORATE DYNAMISM**

It must have been two months prior to the main event that all of us had begun our activities to call upon you all for

joining us to partake in some of the most mind-raking and thought-provoking discussions and deliberations – all with the intent of chalking a plan for futuristic action. And it is indeed heartening to share how those effort bore fruit and the biggest national event of the ICSI witnessed a participation of members, professionals from other arenas, industrialists and academicians accounting to more than 1500 in-person and more than 3000 virtually. Even further, what added greater grandeur was the presence of Smt. Madhabi Puri Buch, Chairperson, Securities and Exchange Board of India (SEBI), as the Chief Guest to share her wonderful thoughts in the Inaugural Session. What truly amazed us was her candour and liveliness with which she shared both personal and professional experiences with all of us. Building a connect between the expectations from Governance Professionals with her years of knowledge and understanding is what lent a significantly greater personal touch to the session. Her discernment of the multifarious roles played by Company Secretaries was beyond heartwarming. As I once again extend our gratitude on behalf of the entire professional fraternity towards this magnanimous persona, I am equally privileged and humbled to thank all the esteemed prodigies and experts who gave us a peep into their opinions and thoughts during the course of discussions thus broadening our minds and mindsets towards the future of the profession and the nation.

*My heartfelt thanks to all of you !!!*

#### **MEETINGS, DIALOGUES AND REFLECTIONS**

If I am to recollect my visitations and meetings, the first in line falls to be the sharing of conversations with the



members hailing from Nagpur and around at the Workshop on Companies Act, 2013 organized by the Nagpur Chapter of ICSI. The Press Conference entailing accorded us with an amazing opportunity to share the activities, news and developments of the profession with the local media and create both awareness as well as branding advantage in a city which holds tremendous potential for both governance and Company Secretaries.

After Nagpur, the next landing was at Bengaluru to meet and greet, Shri Sadguru Madhusudan Sai, a pioneer and propagator of service and spirituality. A strong believer of the Indian belief of *vasudhaiva kutumbakam* — One World, One Family, he came across as the perfect choice to be the Guest of Honour at the 24<sup>th</sup> edition of the ICSI National Awards for Excellence in Corporate Governance scheduled on the 20<sup>th</sup> of December, 2024. It is a matter of great honour for us to receive his appreciations for the responsibilities undertaken as well as to have him acceding to our invite for the upcoming Award Ceremony.

Moving forward, having had an in-person meeting with Shri Balamurugan D., we once again welcome him as the newly appointed Joint Secretary with the Ministry of Corporate Affairs. His sensitized approach towards the day-in and day-out issues and challenges faced by corporates and professionals in exercising compliance and governance and an understanding of the workings of Company Secretaries along with the role played by ICSI in the national economic ecosystem has added greater vigour to our action.

## JURY MEETING : SELECTING THE BEST FROM THE BEST

Somewhere in the middle of the year, the Institute of Company Secretaries of India announces the year's National Awards for Excellence in Corporate Governance. We call upon the companies from across the nation to evaluate themselves on our set parameters, share their achievements, and participate in the various categories of Awards. The idea is not to breed competition but to share learnings from each other's experiences – to understand and realise that the same goal may be achieved through different routes and all of them be right. It is through these Awards that we have been both amazed and assured as to how forthcoming corporates can be towards their governance and social responsibilities. The portrayal of best governance practices by a few has in fact heightened the bars of good governance for the rest. The expansive and all-inclusive outlook depicted in pursuing CSR actions has in fact been an eye-opener as to how deep and broad based the concept can be. Once the evaluations had been conducted at Secretariat level, it was time for the Jury selections. It was indeed a tough call on each of the categories, and truth be told, as the Jury of Experts chaired by Hon'ble Justice P. Sathasivam, Former Chief Justice of

India; flipped through the evaluations and congratulated the Institute for their conviction and dedication towards governance, we silently patted our backs for a job well done... not just by us, but by all the participants across all segments of Awards.

As we gear up to declare the winners, at the Award Ceremony scheduled for the 20<sup>th</sup> of December in the Silicon Valley of India – Bengaluru, we know deep in our hearts that each of these participants is a winner, here and now, most significantly for trying to be a better governed corporation.

## MSMEs: FUELLING THE TRUE ENGINES OF VIKSIT BHARAT

*"Every person, every Institution, and every organisation should work with a single aim. And that should be, "Whatever I will do, I must do it for a Viksit Bharat @ 2047."*

~ Shri Narendra Modi, Hon'ble Prime Minister of India

Micro, Small and Medium Enterprises, while being the top priority on the Government's agenda have also been understood as the harbingers of both economic growth and social development, creating employment opportunities and enhancing export numbers at the same time. When a segment of business enterprises displays such immense potential and lays the foundations of budding opportunities, it becomes imperative that such enterprises are accorded with adequate handholding in matters they may not be attuned to tackle. It is with this thought and intent that the ICSI had stepped up in its governance roles and formed a Board of Experts to steer the way. Numerous events have been held and publications released since then in this area.

Very recently, we were heartened to be informed that one such publication of the ICSI laying dedicated focus on the MSMEs had caught the fancy of the MSME Ministry. The said publication laid the foundation of a long-drawn meeting with Shri S.C.L Das, IAS, Secretary, Ministry of MSME and the entire Team at the Ministry where a long list of activities was explored for joint collaboration. The fact that the ICSI has created a dedicated pool of professionals and refers them as the '*MSME and Startup Catalyst*' defined the commitment of the Institute in a far deeper manner.

It was both delightful and humbling to be acknowledged for our initiatives for the MSMEs from none other than the parent organisation – the Ministry of MSMEs.

I am sure that the times ahead hold marvellous opportunities for the Institute as well as the professionals in guiding the MSMEs and ultimately serving the nation in achieving its goal of Viksit Bharat 2047, thus fulfilling the aim of our Hon'ble Prime Minister.



## 2<sup>nd</sup> ICSI BOARD MENTORSHIP PROGRAMME : DEVELOPING SOUND DECISION MAKERS

*“A mentor empowers a person to see a possible future, and believe it can be obtained.”*

A few months ago, when the entire idea of Board Mentorship Programme was conceived, one thing that was crystal clear was its intended objective and targeted audience. While up until now, the focus of our majority of events had been upon building capacities and empowering our members a bit more with each initiative, the ICSI Board Mentorship Programme (IBMP) aimed to serve a different purpose.

Understanding and realizing the significance of good decision makers on Indian Boards, the IBMP set the tone for training and upskilling, both present and future directors. Touching upon, financial as well as non-financial subjects and topics, the Residential Programme created an avenue for coming together and delving into governance through shared and experiential learning.

Needless to say, the first edition held at Ooty in September 2024, garnered much appreciation, thus, leading the way for the second one in a short span of time.

I am delighted to share that 2<sup>nd</sup> ICSI Board Mentorship Programme scheduled to be held at Sri Vijaya Puram (Port Blair), Andaman and Nicobar Islands during January 06-09, 2025 will be the first event of the ICSI for the year 2025, and will definitely be setting the tone for many more thereafter.

As Company Secretaries vying for future directorial debuts as well as responsible Governance Professionals understanding the need for upskilling and mentoring of Directors, I would urge you all to join us and bring along directors from your companies for a 4-day event of attaining knowledge, wisdom and guidance at the hands of our Experts and becoming future-ready, opportunity-ready. For as the old saying goes,

*“The whole purpose of education is to turn mirrors into windows.”*

## DECEMBER EXAMINATIONS : DON'T SWEAT IT

Before I begin with my words of advice, there is a small quote that brought a smile to my face, and which I would like to put across. The Five words read, “Dear Exam, Please be nice”. I could not help but reminisce the days as a student, when each and every word of motivation and inspiration seemed to be wanting and at the end of the day, I would realize that I am my own inspiration. My hard work is my personal motivation.

Friends, at this juncture where you are trying to grasp the maximum of knowledge in the last days, hours and minutes,

I would want you to understand and deeply engrave in your minds that, “You are the master of your own destiny”. Your conviction towards your own self will be the anchor to your ships throughout the course of Examinations holding you strong and upright. Be motivated by others’ achievements, but at the end of the day, chalk your own way.

On that note, wishing all of you the very best for the upcoming Examinations for Executive and Professional Examinations...!!! May you all come out with flying colours !!!

And with that, I would also remind you of the soon-to-be celebration of the 162<sup>nd</sup> Birth Anniversary of Swami Vivekananda in the form of Annual National Convention of Student Company Secretaries – Yuvotsav 2025 in the historic city of Ahmedabad or what we all lovingly called ‘Amdavad’. Join us for a memorable and experiential time, showcase your talents and have loads of fun on the way....!!!

## TIMES AHEAD : EXPANDING PROFESSIONAL OPPORTUNITY

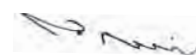
If on one hand we are proud of launching the event of one section 8 company of the ICSI (IGPI) in the form of the 2<sup>nd</sup> ICSI Board Mentorship Programme, we are equally excited as two of our other companies – the ICSI Institute of Insolvency Professionals and the ICSI Registered Valuers Organisation, come together for the 2<sup>nd</sup> National Convention of Insolvency Professionals & Registered Valuers to be held on January 11, 2025 at New Delhi on the theme “Insolvency and Valuation: Navigating Challenges and Future Pathways”. The day long event presents the perfect opportunity to Insolvency Professionals and Registered Valuers to build long-lasting connections, decipher emerging trends and have a peep into the latest updates as also the Industry Best Practices.

Another event I would urge all of you to join in to gain the right insight, knowledge and information...!

As the year ends, opening the doors for a new one, the moment seems perfect to not just celebrate the transition, but craft a plan for the time ahead and stick to it with discipline and dedication. It is only then that we would be able to achieve our individual, personal and professional goals while serving the nation.

Happy reading !!!

Yours Sincerely



**CS B. Narasimhan**  
President, ICSI

# Activity Highlights of November, 2024

## MEETINGS WITH DIGNITARIES

- *Shri Sadguru Madhusudhan Sai in Bengaluru*
- *Shri Balamurugan D., Joint Secretary, MCA*
- *Shri S.C.L Das, IAS, Secretary, Ministry of MSME*

## ICSI GLOBAL CONNECT

- *IoD London Global Convention 2024*

The ICSI partnered with the Institute of Directors for the IoD London Global Convention 2024, organized on the theme Board's Strategy for a Secure Future & Turning Disruptions into Opportunities, during November 13-16, 2024 in London, United Kingdom.

CS Dhananjay Shukla, Vice President, the ICSI represented the ICSI in the session on Board Leadership and Strategy: Harnessing Corporate Governance to Drive Transparency and Accountability. He gave an overview of how Strategic Leadership fosters a change in organizational structure, and how Company Secretaries have progressively become key communicators in influencing stakeholder engagement.

- *ICSI 4<sup>th</sup> International Conference – Block Your Diary*

The Institute is organizing the ICSI 4<sup>th</sup> International Conference on 3-4-5 September 2025, in Sydney, Australia. Set to explore new avenues for Company Secretary Professionals, the Conference will provide a platform for holding insightful discussions around governance and sustainability.

## 52<sup>nd</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES

Smt. Madhabi Puri Buch, Chairperson, Securities and Exchange Board of India (SEBI), Chief Guest, inaugurated

the 52<sup>nd</sup> National Convention of Company Secretaries on November 8, 2024 on the theme India@2047: Expanding Horizons for Professionals at Hotel Sahara Star, Mumbai. The Convention was attended by around 4,500 participants from Government, industry, academia and professional fraternity in both physical and virtual mode. Six Technical Sessions and One Special Session were organised during the Convention, which witnessed presence of eminent speakers comprising Regulators, corporate leaders, industry experts, etc. An Open House session was also organised for interaction of the members with the Council of the Institute.

## JURY MEETING OF ICSI NATIONAL AWARDS FOR EXCELLENCE IN CORPORATE GOVERNANCE, 2024

The Jury Meeting for the 24<sup>th</sup> ICSI National Awards for Excellence in Corporate Governance, the 24<sup>th</sup> ICSI Lifetime Achievement Award for translating Excellence in Corporate Governance into Reality, the 9<sup>th</sup> ICSI CSR Excellence Awards, the 6<sup>th</sup> ICSI Best Secretarial Audit Report Award, the 4<sup>th</sup> ICSI Best PCS Firm Award, and the 3<sup>rd</sup> ICSI Business Responsibility and Sustainability Awards was held on November 29, 2024, at Hotel The Lalit, New Delhi. The meeting, chaired by Hon'ble Mr. Justice P. Sathasivam, Former Chief Justice of India, brought together eminent personalities from diverse fields, including academia, former bureaucrats/government officials, regulatory bodies, proxy advisors, corporate consultants, and other professional domains. This distinguished gathering fostered a collaborative environment where legal expertise converged with cross-sectoral insights, fostering thoughtful deliberations and insightful decision-making.

## EEE4.0 – MASTER KNOWLEDGE SERIES

IN view of the overwhelming response received on the first 3 editions, the ICSI has launched the EEE 4.0- Master Knowledge Series on contemporary topics of professional interest. During the month following webinars were conducted under the Series:

Date	Topic	Speaker	YouTube Link
November 13, 2024	Digital Forensics and Fraud Investigation	Mr. Ivneet Singh Founding Partner, Ashwathh Partners Certified Fraud Examiner & Forensic Expert	<a href="https://youtube.com/watch?v=hhwYhq_tUp0">youtube.com/watch?v=hhwYhq_tUp0</a>
November 27, 2024	Registration and Listing on Social Stock Exchange	Ms. Sheena Gandhi AGM, Social Stock Exchange, BSE Dr. (CS) Ajay Garg Social Entrepreneur	<a href="https://youtube.com/watch?v=gqUYPKyUImI">youtube.com/watch?v=gqUYPKyUImI</a>

## REPRESENTATIONS SUBMITTED

Date	Purpose	Authority
November 06, 2024	Request for Extension of time period for filing of Annual Forms (AOC-4 CFS NBFC (Ind AS), AOC-4(XBRL), AOC-4, AOC-4(CFS), AOC-4 NBFC (Ind AS), MGT-7, MGT-7A for the Financial Year ended 31.03.2024 without levying additional fee- Reg.	Sh. Harsh Malhotra Hon'ble Minister of State, Ministry of Corporate Affairs
November 06, 2024	Practical difficulties faced while processing dematerialisation process by Private Companies	
November 09, 2024	Comments of ICSI on Income Tax Act, 1961	CBDT
November 11, 2024	Comments of ICSI on Consultation paper on review of provisions of LODR Regulations pertaining to corporate governance norms for High Value Debt Listed entities (HVDLEs)	SEBI
November 27, 2024	Proposed review of the definition of Unpublished Price Sensitive Information (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015 to bring regulatory clarity, certainty and uniformity of compliance in the ecosystem	SEBI

## BEST REGIONAL COUNCIL AND CHAPTER AWARDS FOR YEAR 2023

- Best Chapter Award in Gold Grade - Kochi Chapter of SIRC of ICSI
- Best Chapter Award in Platinum Grade - Hyderabad Chapter of SIRC of ICSI
- Best Chapter Award in Diamond Grade - Bengaluru Chapter of SIRC of ICSI
- National Best Chapter Award – Kochi Chapter of SIRC of ICSI
- Best Regional Council Award - Western India Regional Council of ICSI

## PUBLICATIONS RELEASED

On the momentous occasion of 52<sup>nd</sup> National Convention of Company Secretaries, the Institute unveiled the following:

- 52<sup>nd</sup> National Convention Souvenir
- Inspection, Inquiry & Investigation under the Companies Act, 2013
- Master Guide for Prevention of Oppression and Mismanagement
- 'Chartered Secretary – Collector Series' on ESG and Social Audit
- Setting up of Units in IFSC – A comprehensive Handbook
- NBFC - A Quick Referencer
- Handbook on Mediation
- FAQs on ICSI (Management and Development of Company Secretaries in Practice) Guidelines, 2023
- Supreme Court on IBC

- ICSI 4<sup>th</sup> International Conference at Australia
- 2<sup>nd</sup> National Convention on Insolvency & Valuation

## JOINT PROGRAMME

The ICSI joined as Associate Partner in the Residential Workshop on 'Corporate Governance, Corporate Social Responsibility (CSR) and Insolvency & Bankruptcy Code (IBC)' held at Goa from November 21-23, 2024 organized by National Academy of Human Resources Development (NAHRD). CS Venkata Ramana R., Council Member, The ICSI represented the Institute as a Guest Speaker in Workshop on 'Corporate Governance & Corporate Social Responsibility (CSR)'.

## TRAINING PROGRAMME FOR EMPLOYEES OF COCHIN SHIPYARD LIMITED (CSL)

The ICSI in association with the Cochin Shipyard Limited (CSL), a Central Public Sector Enterprise organized a training programme for its employees on the topic "Prohibition of Insider Trading" on November 20, 2024 at its Headquarters at Kochi. CS Savithri Parekh, Company Secretary and Compliance Officer, Reliance Industries Ltd. and CS Makarand M. Joshi, Practicing Company Secretary were the Guest Speakers. The programme witnessed presence of Shri Madhu S. Nair, Chairman & Managing Director, Cochin Shipyard Ltd., along with other Directors of CSL. The training programme was attended by 167 employees of CSL in two batches.

## ONLINE CLASSES OF PMQ, CERTIFICATE AND CRASH COURSES

Online Classes of following Courses were organized in the current month:

- PMQ Course on Corporate Governance- December 2024 session
- PMQ Course on Internal Audit- December 2024 session



- PMQ Course on Arbitration- December 2024 session
- Certificate Course on Forensic Audit- Batch 8
- Certificate Course on IFSCA- Batch 1
- Certificate Course on ESG- Batch 1
- Certificate Course on Independent Director- Batch 8
- Certificate Course on Mediation- Batch 1
- Certificate Course on CSR- Batch 11
- Certificate Course on POSH- Batch 8

## REGISTRATIONS OPEN FOR PMQ COURSES

The registrations for three Post Membership Qualification (PMQ) Courses in subjects like Internal Audit, Arbitration and Corporate Governance - June 2025 batch are open till 31<sup>st</sup> December 2024. Also, the online proctored MCQ based examination of PMQ Course December'2024 attempt is scheduled to be held on December 14, 2024.

## PEER REVIEW CERTIFICATES ISSUED

During the month November 2024, Peer Review of around 85 Practice Units was completed and accordingly Peer Review Certificate issued. The updated list of Peer Reviewed Units and can be accessed at [www.icsi.edu/media/webmodules/List\\_Peer\\_Reviewed\\_Practice\\_Units.pdf](http://www.icsi.edu/media/webmodules/List_Peer_Reviewed_Practice_Units.pdf)

## E-LEARNING FACILITY

The E-learning LMS offered with anytime anywhere flexibility through Learning Management System (LMS) to 210872 students and members. Pre-examination tests have been taken by approximately 3281 users. EDP training, PMQ, Certificate Courses, CRASH courses, KOD, PCS

Orientation training/assessment conducted on regular basis with 592 new registrations.

## MOU RENEWAL

ICSI has entered into a Memorandum of Understanding (MOU) with Insurance Institute of India (III) for holding Certification Course/s, Training Programs, undertaking joint Research, holding joint seminars / conferences / workshops etc. The said MOU has been renewed for further five years, i.e., till September 25, 2029 for the benefit of Members of the Institute.

## PLACEMENT OPPORTUNITIES FOR COMPANY SECRETARIES

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

(November 2024)

<b>No. of Corporates/ MCA and other Government Bodies/ PSUs/ PCS Firms that Posted Jobs on the ICSI Placement Portal</b>	<b>248</b>
<b>No. of Openings available on the ICSI Placement Portal</b>	<b>393</b>

For more details, kindly visit ICSI Placement Portal - [placement.icsi.edu](http://placement.icsi.edu)

## STATUS OF REGISTRATIONS AND POSTINGS AT THE PLACEMENT PORTAL

(As on November 30, 2024)

Registered Users			Total no. of Vacancies
Members	Students	Corporates	Jobs / Trainings
19,847	28,570	6,986	15,060

## ICSI-SECTION 8 COMPANIES

## ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

### WORKSHOPS

Date	Subject	Speaker(s)	YouTube link
November 16, 2024	Case Studies Insights into IBC and PRE-IBC Resolution	IP, CS and CA Divya Somani IP and CS Sucheta Gupta	<a href="https://youtube.com/watch?v=Jb7Uloa0xzI">youtube.com/watch?v=Jb7Uloa0xzI</a>

### Webinars

Date	Subject	Speaker(s)	YouTube link
November 12, 2024	Impact of CIRP on Personal Guarantors	IP and Advocate Devvart Rana	<a href="https://youtube.com/watch?v=SRsLl6Vqygk">youtube.com/watch?v=SRsLl6Vqygk</a>
November 23, 2024	Unique Features of Valuation under IBC	IP and CS Shravan Kumar Vishnoi	<a href="https://youtube.com/watch?v=zyup6wJv7Gs">youtube.com/watch?v=zyup6wJv7Gs</a>

### • Roundtable

Date	Subject	Speaker(s)	YouTube link
November 22, 2024	IBBI Discussion Paper dated 4 <sup>th</sup> November, 2024 and 7 <sup>th</sup> November, 2024	IP and CS Ashish Singh CS Barsha Dikshit	<a href="https://youtube.com/watch?v=YheJZ7xAPFo">youtube.com/watch?v=YheJZ7xAPFo</a>

### • Joint Programmes

- ICSI Kochi Chapter of SIRC in association with ICSI IIP organized ICSI NCLT Conclave'24 on "Corporate Dispute Resolution: Evolving a Way Forward" on November 02, 2024.
- ICSI Bengaluru Chapter in association with ICSI IIP organized ICSI NCLT Conclave'24 on "Corporate Dispute Resolution: Evolving a Way Forward" on November 16, 2024.

## ICSI REGISTERED VALUERS ORGANISATION

Date	Programme	Faculty
November 26, 2024 to December 02, 2024	50 Hours Online Educational Course on "Valuation of Securities or Financial Assets"	Dr. (CS) Ajay Garg Mr. Chaitanya jee Srivastava CS K. Chandra Sekhar CS Kanishk Arora CS Preeti Garg CS Rajesh Mittal CA Raveesh Chaudhary CS Sandeep Kothari CA Sumit Dhadda CA Divya Dhadda CMA Murali Raman

## ICSI-CCGRTS

### ICSI-CCGRT KOLKATA

- *5<sup>th</sup> Residential CLDP organized from November 22, 2024 to December 07, 2024:*

39 students from different states of the country joined the 5<sup>th</sup> batch of residential Corporate Leadership Development Programme (CLDP) at CCGRT Kolkata. The Inaugural Session of the training Programme was organized on November 22, 2024 where CS Sandip Kejriwal, Council Member, ICSI and Convenor, CCGRT Kolkata addressed the participants. CS Kejriwal advised the participants to develop networking skills as well as presentation skills for a better professional future. The Programme will end on December 07, 2024.

- *Meeting of Debating Society of CCGRT Kolkata:*

After successful inauguration of Debating Society in the month of October 2024, CCGRT Kolkata organized the first physical meeting of Debating Society on November 30, 2024. The mentors and mentee from Kolkata joined the physical meeting and set the tone for future meetings.

### ICSI-CCGRT MUMBAI

- *26<sup>th</sup> RCLDP organized from November 13-28, 2024*

The 26<sup>th</sup> batch of the RCLDP was conducted at CCGRT, Mumbai from 13<sup>th</sup> to 28<sup>th</sup> November 2024. The program gathered thirty-one participants from

different parts of the country, fostering a diverse learning atmosphere.

The inaugural ceremony on November 13, 2024, was honored by the presence of CS Sudhakar Saraswatula, former Vice President of Reliance Industries Ltd. The participants of the 26<sup>th</sup> batch of RCLDP were fortunate to have the opportunity to interact with CS B. Narasimhan, President of The ICSI and CS Ashish Karodia, Central Council Member & Convenor of ICSI-CCGRT, Mumbai. The valedictory session, held on November 28, 2024, was graced by CS Alka Dolasiya, Practicing Company Secretary from Navi Mumbai, as the Chief Guest. CS R. Venkata Ramana, Central Council Member & Convenor of ICSI-CCGRT, Hyderabad also addressed the participants during the valedictory session. These esteemed dignitaries shared their experiences during their professional journeys with the aspiring members and provided valuable insights for building a successful career. They highlighted the initiatives by ICSI for the benefit of its members for professional growth and development.

## ICSI-REGIONAL OFFICES

### ICSI-EIRO

- *ICSI Teachers Conference organized on November 16, 2024*

ICSI Teachers Conference on "Empowering Educators" was organized for Sr. Secondary School Teachers. Around 200 Teachers from various Schools of Kolkata and nearby cities have attended the conference

- *Joint seminar with BrainWare University, Kolkata organized on November 20, 2024*

Joint seminar with BrainWare University, Kolkata organized on the topic “Start Ups – Fund & Legal Compliance” on November 20, 2024. More than 200 MBA students of the University attended the seminar.

- *ICSI Teachers Conference organized on November 26, 2024*

ICSI Teachers Conference on “Empowering Educators” for College & University Teachers organized on November 26, 2024. Around 200 Teachers and Professors from various colleges and universities of Kolkata have attended the conference.

- *Mega Symposium नवचेतना - "New Vision, New Direction" organized jointly with Calcutta University Centenary Auditorium, Kolkata on November 30, 2024*

Prof. Santa Dutta (De), Hon'ble Vice Chancellor, University of Calcutta inaugurated the symposium. During the programme topics like “Fail Fast, Learn Faster: The Role of Failure in Entrepreneurial Success” and “Sustainable Business Practices in a Circular Economy” were deliberated by eminent speakers. Prof. Tanupa Chakraborty Prof & Head (Dept. of Commerce), Prof. Jadab Krishna Das Dean (Acting), University of Calcutta, CS (Dr.) Mohit Shaw Chairman, ICSI EIRC, Shri Ankur Yadav, JS (SG) & Head-EIRO attended and addressed during the programme. Around 1200 students of the University had attended the programme.

- *Joint Principal Conclave with Bhawanipur Education Society College, Kolkata organized during November 29-30, 2024*

EIRC of ICSI jointly with Bhawanipur Education Society College, Kolkata organised Principal Conclave on the theme “Changing Landscape in the Edu Sphere”. The two days conclave was deliberated on the topics like key aspects of the National Education Policy, Changing Attitude of students, some inputs for betterment, Enhancing Skills. Way Forward- Kal Aaj aur Kal and Panel Discussion on Best Practices- Globally. The two days conclave was attended to by than 70 participants from different parts of India including Vice Chancellors, Professors, Registrars, Dean of various heads of the department of University. Dr. Suman K. Mukerjee, Director General and Prof. Dilip Shah, Rector & Dean of Student Affairs of BESC, CS Rupanjana De, Council Member and CS (Dr.) Mohit Shaw, Chairman, EIRC of the ICSI had attended the two days conclave.

## ICSI-SIRO

- *8<sup>th</sup> Batch of Corporate Leadership Development Programme*

ICSI-SIRC conducted its 8<sup>th</sup> Batch of Corporate Leadership Development Programme at SIRO

during November 11-26, 2024. The program had 23 participants from across the country. Mr. Aeshala Vamsi Krishna, Deputy Registrar of Companies, Tamil Nadu graced the valedictory ceremony as the Chief Guest and addressed the participants in the presence of CS A Mohan Kumar, Central Council member, ICSI.

- *HR Conclave*

ICSI-SIRC organized HR Conclave for HR Managers and Executives working in HR Department on November 14, 2024 at “ICSI-SIRC House”, Chennai. CS A. Mohankumar, Council Member, ICSI gave an overview of the programme. CS Ashok Kumar Dixit, Joint Secretary (SG), ICSI-SIRO welcomed the participants and briefed that the Institute, through these programmes, is sensitizing HR professionals on the dynamic role in corporate world. CS Sridhar Muruganandam, Legal Counsel, Refex Group, Chennai spoke on “How Employer Employee Relationship Established in Fleet Operating Services (Drivers / Operators)”. CS Kani Premkumar, Company Secretary, Access Healthcare Services Pvt. Limited, Chennai made a presentation on “Overview of Employee Stock Option Plan”.

- *24<sup>th</sup> All India Company Law Quiz Competition -2024: Final round held at Coimbatore*

ICSI-SIRC conducted Final Round of 24<sup>th</sup> All India Company Law Quiz -2024 on November 16, 2024 at Coimbatore wherein 8 students from Executive Programme and 10 students from Professional Programme participated. Dr. K. Annamalai, Vice President, The Indian Chamber of Commerce and Industry, Coimbatore presided over as Chief Guest of the Programme, CS C.V. Madhusudhanan, Senior Partner, KSR & Co. LLP, Coimbatore was the Quiz Master.

- *Study Circle Meeting for the Students on the topic: "Income from House Property"*

SIRC of ICSI held a Study Circle Meeting for students on the topic “Income from House Property” on November 22, 2024, at ICSI-SIRC House in Chennai. CA Muthu Palaniappan, Chartered Accountant from Chennai, was the speaker.

- *ICSI Mega Placement Drive-II for Members*

ICSI Mega Placement Drive-II, 2024 was held on November 23, 2024, at “ICSI-SIRC House” in Chennai. The ICSI Mega Placement Drive witnessed participation of 17 recruiters and 16 members.

- *3<sup>rd</sup> Webinar CLDP of ICSI-SIRC*

3<sup>rd</sup> Webinar CLDP commenced at ICSI - SIRC from November 25, 2024. The program is being attended by 70 participants from different states across the country. CS Pradeep B Kulkarni, Chairman SIRC along with CS Mohan Kumar A, Central Council Member graced the inaugural session.



## ICSI WIRO

- *"Intricacies of Loans to Directors, Inter-Corporate Loans and Investments"*

ICSI-WIRO conducted Member's Programme on the topic "Intricacies of Loans to Directors, Inter-Corporate Loans and Investments" on Sunday, November 17, 2024 at Mayor Hall, Waterford Building All India Institute of Local Government Building-1, Waterford Building, 3037, CD Barfiwala Road, Zalawad Nagar, Juhu Lane, Yadav Nagar, Andheri West, Mumbai. CS Sudhakar Saraswatula, Former Vice President, Corporate & Secretarial, Reliance Industries Ltd has addressed the participants.

## ICSI-NIRO

- *From Local to Listed: Company Secretaries as Enablers of MSME & SME Growth*

ICSI-NIRC organized one day workshop "From Local to Listed: Company Secretaries as Enablers of MSME & SME Growth" for members on November 16, 2024. The Workshop aimed at developing a Comprehensive understanding of the MSMEs, SME listing and role of Company Secretary.

- *New Batches of 15 Days Non-Residential CLDP*
  - ♦ 24<sup>th</sup> Batch from 05<sup>th</sup> to 22<sup>nd</sup> November, 2024.
  - ♦ 25<sup>th</sup> Batch from 20<sup>th</sup> November, 2024 to 6<sup>th</sup> December, 2024.
  - ♦ 26<sup>th</sup> Batch from 29<sup>th</sup> November to 16<sup>th</sup> December, 2024.
- *48<sup>th</sup> Batch of 15 Days Classroom Executive Development Programme (EDP)* organized from November 05-22, 2024.
- *YUVOTSAV-2025 Competition*

NIRC of ICSI organized YUVOTSAV-2025 Competition (Delhi Selection Round) during November 18-20 2024, featuring various events conducted in accordance with the guidelines set by ICSI Headquarters.

- *One Day Orientation Programme (ODOP) Batch*

NIRC of ICSI organized One Day Orientation Programme (ODOP) which is applicable to all the newly registered students who have registered in Executive Programme on or after 1<sup>st</sup> June, 2019 on 13<sup>th</sup> and 27<sup>th</sup> November, 2024.

- *Championing CS- How to Prepare for Company Secretary Examination*

The NIRC of ICSI organized a session for the Students "Championing CS- How to Prepare for Company Secretary Examination" on November 22, 2024 and Key Takeaways was tips and tricks to crack the Company Secretaries examination.

- *Online Corporate Leadership Development Programme (CLDP) webinar mode*
  - ♦ 7<sup>th</sup> Batch during November 04-21, 2024.
  - ♦ 8<sup>th</sup> Batch from November 25 to December 11, 2024.
- *Seminar on Navigating Sustainability: ESG Framework, BRSR Reporting and Future-Ready CSR in India*

ICSI-NIRC organized a Seminar on Navigating Sustainability: ESG Framework, BRSR Reporting and Future-Ready CSR in India on November 23, 2024. The sessions were delivered by eminent speakers, offering valuable insights and expertise on relevant topics.

- *Uttarakhand State Conference 2024*

ICSI-NIRC organized the Uttarakhand State Conference 2024 on the theme "Company Secretaries: Pioneers of Governance in a Developed India" on November 30, 2024. The conference was hosted by the Dehradun Chapter.

## INITIATIVES FOR EMPLOYEES

- *3-Days Intensive Training Programme on Environmental, Social and Governance (ESG)*

3 Days Intensive Training Programme on 'Environmental, Social and Governance (ESG)' was conducted for members of senior management of Team ICSI during November 13-15, 2024 at ICSI HQ, Lodi Road, New Delhi.

- *3 days "Commonwealth Med-Arb Conference 2024" by The Commonwealth Lawyers Association and International Arbitration and Mediation Centre*

In line with its commitment towards employee development, ICSI nominated one of its employees to attend 3 days "Commonwealth Med-Arb Conference 2024" by The Commonwealth Lawyers Association and International Arbitration and Mediation Centre held during November 22-24, 2024, at Hyderabad.

- *Webinar on "Diabetes Management" by Dr. Reddy's Foundation*

A webinar was organized on November 21, 2024 on the topic "Diabetes Management" by Dr. Reddy's Foundation for the benefit of ICSI employees and pensioners. All employees/veterans participated in the webinar presented by Dr. S.K. Kasana, Diabetologist.

## INITIATIVES FOR STUDENTS

### EVENTS

- *All India Company Law Quiz 2024*

The Company Law is a core subject under the Company Secretaryship Course. All India Company Law Quiz

facilitates enhancing participation levels and the competitive spirit among the students. The objective of this competition is to upgrade the knowledge levels 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.

The Quarter Final Round of the Competition was held via Online Mode on October 07, 2024. The Semi-final round was also held via Online Mode on October 22, 2024. The Final Round was held in Physical Mode at Coimbatore Chapter of SIRC of the Institute on November 16, 2024. Winners of ALCLQ 2024 : Ms. Bhumi Vinod Mehta (Executive Programme); Ms. Khushi V. (Professional Programme).

- **Online Quiz on Current Affairs and General Knowledge 2024**

The Institute, through a novel initiative, for creating awareness about the profession is organising Online Quiz on Current Affairs & General Knowledge. There is no participation fee and the winners in each Category will be awarded with cash prizes.

Students pursuing 11<sup>th</sup> Class / Class 12<sup>th</sup> / Passed 12<sup>th</sup> Class/ pursuing Graduation of any stream/Students registered for CSEET (CS Executive Entrance Test) are eligible to participate. The three rounds of quiz were conducted - prelims, semi-final and final on different dates and the winners in each Category will be awarded with cash prizes.

- **Constitution day Online Quiz 2024**

To enhance the knowledge levels of students in Constitution of India and to generate interest among the students for in-depth study of the subject including greater conceptual clarity, the Institute organized Constitution Day Online Quiz -2024 on November 26, 2024 for below categories of students:

Category - I - Students pursuing class 11 /12 (commerce Stream)/ Registered for CSEET

Category - II - Pursuing Graduation (Commerce/Law/ Management) and

Category - III - Existing CS Students

Last date to register was November 15, 2024.

- **Yuvotsav-2025 scheduled for January 11-12, 2025**

Yuvotsav-2025, National Conference of Student Company Secretaries will be organised on January 11-12, 2025 in Ahmedabad. Students can participate in various competitions in Yuvotsav-2025 through their Regional/Chapter Offices. They also need to register online by remitting the requisite fee for the same. Around 23 competitions will be organised during Yuvotsav-2025. Legal Puzzle, Elocution Competition, Debate Competition, Fashion show are

some of the competitions which will be organised during Yuvotsav-2025. All interested students are requested to contact their respective regional/ Chapter office to participate. The link to register in Yuvotsav-2025 is: <https://stimulate.icsi.edu/RO/Home/delegateportal/37>

- **The ICSI Debating Society**

The Institute has introduced the concept of “ICSI Debating Society”, a platform designed to empower Executive and Professional students with essential skills for success in their professional journey from a student to being a member of ICSI.

The Debating Society would enhance students’ public speaking abilities through an expert guiding them through the process of debating, presentation and delivery skills. The Debating Society will provide a framework for formal communication, sharpening impromptu ‘think and speak’ skills which is vital for success in the corporate world and also in the practising sphere.

The ICSI Debating Society is now active at the Regional Offices (Kolkata, Delhi, Chennai, and Mumbai) and in the ICSI Chapters at Jaipur, Noida, Hyderabad, Ahmedabad, Bhopal, Indore, Nagpur, Thane, Gurugram, Bengaluru, Pune, and Kochi.

## FACILITATION AND RELAXATION

- **CS Mitr Scheme:**

ICSI has introduced CS Mitr incentive Scheme wherein any person who is above 18 years of age is eligible to become CS Mitr under the scheme. Incentive @ ₹500 will be paid per student to the CS Mitr for each student registered in Executive Programme (subject to applicable tax deduction). Further, the above incentive will only be valid for the registration categories wherein concession in fees is not applicable. Persons willing to become CS Mitr will be required to apply through online process. After their credentials are verified and they are registered with ICSI as CS Mitr, they will be allotted a code number. Students will be required to mention the code as a referral code, while registering themselves for the Executive Programme. All payments will be transferred by the Dte of Finance and Accounts to the bank account. of beneficiary through NEFT

The link to register for CS Mitr scheme is placed below: [https://smash.icsi.edu/Scripts/Registration/Mitr\\_Registration.aspx?rmode=1#](https://smash.icsi.edu/Scripts/Registration/Mitr_Registration.aspx?rmode=1#)

- **Golden Opportunity to become a Company Secretary-for Economically Backward Students Record and Academically Bright Students**

With a view to encourage and motivate Economically Backward Students with Good Academic Record and Academically Bright Students to pursue the Company Secretaryship Course, the Institute is providing

Financial assistance from Student Education Fund Trust (SEFT) to a registered student on fulfilling the criteria as laid down in SEFT Guidelines.

The details are available at: [icsi.edu/media/webmodules/student/SEFTGuidelines202201072024.pdf](https://www.icsi.edu/media/webmodules/student/SEFTGuidelines202201072024.pdf)

- **Centralized Free Online Classes for Executive and Professional Programme**

ICSI is conducting free online Centralized classes for the students of Executive Programme (New Syllabus) and Professional Programme (New Syllabus) from 16<sup>th</sup> December 2024 onwards. These Classes are being conducted free of cost for the students. The classes are being conducted for the students eligible to appear in June 2025 examination and the duration of the classes will be 4-5 months. Students registered for these classes will be eligible to get exemption from pre-exam test subject to clearing of tests of respective group/s. Further, students registered for these classes will also be given free access to online doubt clearing classes conducted by the Institute.

- **Allowing Executive & Professional Programme Students One More Attempt Under Old Syllabus: December 2024 & June 2025 Session of Examination Respectively**

The Institute has decided that the students of Executive & Professional Programme (2017 old syllabus) shall be allowed one more attempt during the December, 2024 & June 2025 session of examinations respectively. The detailed information is hosted at: [www.icsi.edu/media/webmodules/Announcement\\_One\\_More\\_Attempt\\_13062024.pdf](https://www.icsi.edu/media/webmodules/Announcement_One_More_Attempt_13062024.pdf)

CS Course	Last Session of Examination under Old Syllabus (2017)	Additional Attempt under Old Syllabus (2017)	All Examination (Executive under New Syllabus 2022)
Executive Programme	June 2024	December 2024	June 2025
Professional Programme	December 2024	June 2025	December 2025

All students of Executive & Professional Programme (Old Syllabus 2017) shall be compulsorily switched over to 2022 (New syllabus) from June, 2025 & December 2025 respectively.

- **Dedicated Helpline Number for Student Queries**

The ICSI has introduced a dedicated helpline number to handle queries related to Student Registration, Post Registration, Class Room Teaching and Enrolment. Students can contact at 0120-4082170 (From Monday to Friday 9.30 A.M. to 5.30 P.M.).

- **Encouraging Students to Complete CS Course After Passing Executive Programme**

Many students started their CS Course with enthusiasm and ambition, but due to some personal reasons, the students discontinued their studies after passing the Executive. However, completing CS Course can be one of the best decisions they will ever make for their future. Considering this we are regularly communicating with the students via bulk mail/bulk sms who have passed Executive but not registered for Professional to complete their CS Course. As a result, more than 6605 students registered in Professional Programme up to November 2024.

- **ICSI Waiver/ Concession Scheme For Indian Armed Forces, Paramilitary Forces, Agniveers And Families Of Martyrs**

The Institute in alignment with the various initiatives of Govt. of India has launched ICSI Waiver/ Concession scheme for Indian armed forces, paramilitary forces, Agniveers and families of Martyrs. Under the scheme, 100% concession will be given to the following categories in full Fee payable at the time of Registration in CS Executive programme. While all other fees, including those for trainings be applicable in full as per their respective category:

- ♦ *Wards and widows of martyrs (who have died during service; either during battle casualty or due to any other reason) of Indian Army, Indian Air Force, Indian Navy and all para-military forces.*
- ♦ *In Service/ Retired personnel of Indian Army, Indian Air Force, Indian Navy and all para military forces (including defence personnel who have taken retirement under short service commission).*
- ♦ *Wards of all personnel of Indian Army, Indian Air Force, Indian Navy and all para military forces (including wards of defence personnel who have taken retirement under short service commission).*
- ♦ *Candidates who are inducted as “Agniveer” under AGNIPATH Scheme of the Government of India after completing four years under the Scheme (upon submission of documentary evidence for the same).*

- **ICSI Samadhan Diwas**

ICSI successfully conducted the 49<sup>th</sup> Samadhan Diwas, on Wednesday, November 13, 2024. Samadhan Diwas is a unique initiative of the ICSI wherein “on-the-spot” resolution is provided on issues/grievances of trainees and trainers. 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.



- **Activation of Switchover Option Along With Pre-Examination Fee for Professional Programme Old Syllabus (2017) Students**

The Institute has notified that candidate who have registered under the CS Professional old syllabus (2017) can switch over to CS Professional new syllabus (2022) comprising 7 papers. Accordingly, the portal for switchover from old syllabus (2017) to New Syllabus (2022) along with Pre-Examination Fee has been activated for Professional Programme Students w.e.f., November 20, 2023.

- **Transcripts & Education Verification**

It has been observed that on completion of Course the professionals are also applying for Foreign Courses / degrees /or immigration based on CS Qualification. During the month, 21 Transcripts were issued.

Likewise, on request of the employer/PSU/government authorities and other Education verifier agencies, 07 Education Verification requests of CS students were processed.

- **Registration for Classes by Regional/Chapter Offices At The Time Of Executive Programme Registration**

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

- **Paper Wise Exemption on the Basis of Higher Qualifications**

The Institute has decided that the students enrolling into the Company Secretary Course under New Syllabus, 2022 shall be eligible for paper-wise exemption (s) based on the higher qualifications acquired by them. Accordingly, necessary announcement including process of claiming paper-wise exemption has been shared for information to all concerned: [www.icsi.edu/media/webmodules/ATTENTION\\_STUDENTS\\_RECIPROCAL\\_EXEMPTION\\_NEW\\_SYLLABUS\\_2022\\_Updated.pdf](http://www.icsi.edu/media/webmodules/ATTENTION_STUDENTS_RECIPROCAL_EXEMPTION_NEW_SYLLABUS_2022_Updated.pdf)

- **Professional Programme Pass Certificate of ICSI in Digilocker**

The Institute decided to issue Professional Programme Pass Certificate online via DIGILOCKER. The same initiative was Launched at 50<sup>th</sup> National Convention of ICSI at Kolkata with the support of the National e-Governance Division (NeGD), Ministry of Electronics and Information Technology (MeitY), Govt of India. The students who passed on or after June 2021 Session of Examination can download

Professional Pass Certificate from DIGI Locker. Announcement hosted and Communication via Bulk Mail has been sent to students for extracting their Professional Pass Certificate for June 2024 Session of Examinations.

- **Real Time Guidance For Students**

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

- *FAQ for Executive Switchover* [https://www.icsi.edu/media/webmodules/ExecutiveFAQ\\_SW\\_24082023.pdf](https://www.icsi.edu/media/webmodules/ExecutiveFAQ_SW_24082023.pdf)
- *FAQ for Professional Switchover to New Syllabus:* [www.icsi.edu/media/webmodules/Executive\\_FAQ\\_SW\\_23022023.pdf](http://www.icsi.edu/media/webmodules/Executive_FAQ_SW_23022023.pdf)

## TRAINING OPPORTUNITIES

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

<b>No. of Corporates/ MCA and other Government Bodies/ PSUs/ PCS Firms that Posted Training Opportunities on the ICSI Placement Portal</b>	<b>202</b>
<b>No. of Training Opportunities available on the ICSI Placement Portal</b>	<b>398</b>

For more details, kindly visit ICSI Placement Portal - [placement.icsi.edu/PlacementApp/](http://placement.icsi.edu/PlacementApp/)

## COMPANY SECRETARY EXECUTIVE ENTRANCE TEST (CSEET)

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

- **Centralized free online Classes of CSEET – January 2025 Session**

ICSI shall be conducting online Centralized classes for the students of CSEET registering for January 2025 Session of CSEET. Faculties with vast experience will be taking these classes.

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

CSEET students can register directly for CSEET classes conducted by 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 [smash.icsi.edu/Scripts/CSEET/Instructions\\_CSEET.aspx](http://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 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 [www.icsi.edu/media/webmodules/granting\\_exemption\\_230621.pdf](http://www.icsi.edu/media/webmodules/granting_exemption_230621.pdf)

- **CSEET Guide – I and CSEET Guide – II to be provided mandatorily to all students**

The Institute has decided that the **CSEET Guide – I** and **CSEET Guide – II** 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 ₹1500 (CSEET Registration fee).

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

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 ₹2000. The same is available at: [www.icsi.edu/reference-reading-material/](http://www.icsi.edu/reference-reading-material/)

## KNOWLEDGE UPGRADATION

- **Student Company Secretary and CSEET Communique**

The Student Company Secretary e-journal for Executive/ Professional Programme students of ICSI and CSEET Communique covering latest updates on CSEET subjects have been released for the month of **November, 2024**. The journals are available on the Academic corner of the Institute's website at the link: [www.icsi.edu/e-journals/](http://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. The Research Tab can be accessed at [www.icsi.edu/student-n/academic-portal/research-corner/](http://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 [elearning.icsi.in](http://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 [www.icsi.edu/infocapsule/](http://www.icsi.edu/infocapsule/)

## CAREER AWARENESS

- **Career Awareness Programmes in Army Public Schools across the country**

ICSI through the support of Ministry of Defence conducted extensive Career Awareness Programmes in more than 40 Army public Schools in the country to sensitize the students, parents and teachers about the CS Profession.

- **Career Awareness Programmes, Career Fairs being conducted across the country by ICSI-HQ, Regional and Chapter offices**

ICSI-HQ and Regional/Chapter offices are conducting Career awareness programmes and Career Fairs across the country on regular basis to create awareness regarding CS Profession amongst the prospective students.

ICSI-HQ organized and conducted following Career Fairs and Career Awareness Programmes in the month of November, 2024 in addition to the other programmes being conducted by RC/Chapter offices across the country.

CAREER AWARENESS PROGRAMMES				
S. No.	Region	Name of Institution	Date	Venue
1.	WIRC	Govt. CM Rise School, Jawad	05-11-2024	Neemuch
2.	WIRC	Govt Model Hr Sec. School, Jawad	05-11-2024	Neemuch
3.	WIRC	Samta Vidhya Peeth Hr Sec. School, Jawad	06-11-2024	Neemuch
4.	WIRC	Govt. Hr Sec. School, Athana, Jawad	06-11-2024	Neemuch
5.	WIRC	LBPM	22-11-2024	Solapur

## CAREER AWARENESS PROGRAMMES

S. No.	Region	Name of Institution	Date	Venue
6.	WIRC	Govt. Girls Hr Sec. School, Jawad	07-11-2024	Neemuch
7.	WIRC	EPES Govt. Hr Sec. School, Lalpura	07-11-2024	Neemuch
8.	WIRC	Govt. Hr Sec. School, Damiya	07-11-2024	Neemuch
9.	WIRC	CM Rise Govt. Boys Hr Sec. School, Singoli, Jawad	08-11-2024	Neemuch
10.	WIRC	Govt. Girls Hr Sec. School, Singoli, Jawad	08-11-2024	Neemuch
11.	WIRC	Govt. Boys Hr Sec. School, Ratangarh	08-11-2024	Neemuch
12.	WIRC	Govt. Girls Hr Sec. School, Ratangarh	09-11-2024	Neemuch
13.	NIRC	Atma Ram Sanatan Dharma College	18-11-2024	South Delhi
CAREER FAIRS				
1.	NIRC	Carmel Convent	27-11-2024	Jammu

- Academic Collaboration**

Region	Name of Institution	Venue	Date
NIRC	Delhi Technological University	Delhi	22.11.2024

- Career guidance sessions at (EMRS) schools under Ministry of Tribal Affairs for conducting CAPs across the country**

A Letter was issued by NESTS, Ministry of Tribal Affairs for conducting Career guidance sessions across their schools in the country. The Career guidance Programme involves providing comprehensive information about the admission criteria, application procedures, and the wide array of professional opportunities awaiting those who successfully complete the CS Course. The same helps the students, their families, teachers, and peer groups make informed decisions regarding their career paths. Based on the circular, ICSI is conducting Career Guidance sessions across their schools.

- Career guidance sessions at schools under Navodaya Vidyalaya Smiti across the country**

A Letter was issued by Navodaya Vidyalaya Smiti for conducting Career guidance sessions across their schools in the country. The Career guidance programme involves providing comprehensive information about the admission criteria, application procedures, and the wide array of professional opportunities awaiting those who successfully complete the CS Course. The same helps the students, their families, teachers, and peer groups make informed decisions regarding their career paths. Based on the circular, ICSI is conducting Career Guidance sessions across their schools.

- Career Guidance Invites Received**

Career guidance programme involves providing comprehensive information about the admission criteria, application procedures, and the wide array of professional opportunities awaiting those who successfully complete the CS Course. The same helps the students, their families, teachers, and peer groups

make informed decisions regarding their career paths. During the month invites were received from the following for conducting Career Guidance Sessions:

- ♦ Navodaya Vidyalaya Smiti for conducting Career guidance sessions across their schools
- ♦ Higher Education Directorates of various states viz: Directorate of School education, Mizoram, Indore, Thane, Vadodara

Based on the circular, ICSI is conducting Career Guidance sessions across their schools.

## DIGITAL ICSI

- Development and Implementation of :
  - ♦ CS Mitr Incentive Payment processing Module
  - ♦ New Recruitment Portal
  - ♦ Career Awareness Programs (CAP) Dashboard for HQ, ROs and Chapter Offices of ICSI
  - ♦ Real Time MIS System pertaining to Students and Members data
- Installation and configuration of wild card SSL certificates on all sub- domains of icsi.edu domain.
- Development and Seamless integration of Verification of Marks (VOM) process with exam RTI data.
- Creation of dedicated Child Portal for :
  - ♦ Institute of Governance Professionals of India (IGPI) – A Section 8 Company.
  - ♦ ICSI NCLT Practitioners Association – A Section 8 Company.
  - ♦ Gandhinagar (Gift City) Chapter of the ICSI. □

# 52<sup>nd</sup> National Convention of Company Secretaries held from November 8-10, 2024 at Mumbai

**Theme: India@2047: Expanding Horizons for Professionals**

**Chief Guest: Smt. Madhabi Puri Buch, Chairperson, Securities and Exchange Board of India (SEBI)**

## INAUGURAL SESSION







### FIRST TECHNICAL SESSION - EVOLVING SEBI REGULATIONS : STEP TOWARDS EoDB





**SECOND TECHNICAL SESSION - IFSCA : MAKING INDIA A GLOBAL FINANCIAL HUB**



**SPECIAL SESSION – CSR : ACCELERATING SOCIAL IMPACT**





**THIRD TECHNICAL SESSION -  
CS PROFESSION@2047 : ASPIRATIONS & EXPECTATIONS**



**FOURTH TECHNICAL SESSION -  
ADR MECHANISM : ROADMAP FOR FAST TRACK DISPUTE RESOLUTION**





## OPEN HOUSE SESSION



### FIFTH TECHNICAL SESSION - REIMAGINING GOVERNANCE : THE EVOLVING ROLE OF BOARDS IN 2047

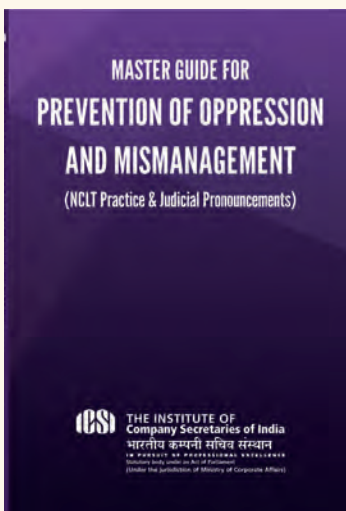


### SIXTH TECHNICAL SESSION - MANUFACTURING & SERVICES : KEY DRIVERS FOR VIKSIT BHARAT





RELEASES AT 52<sup>ND</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES

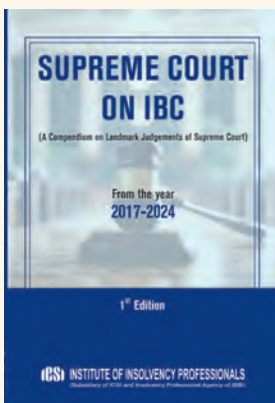
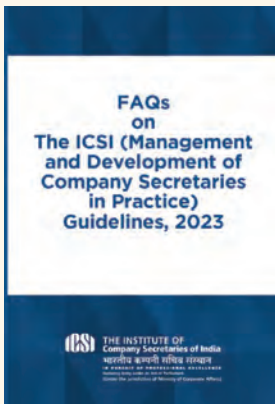
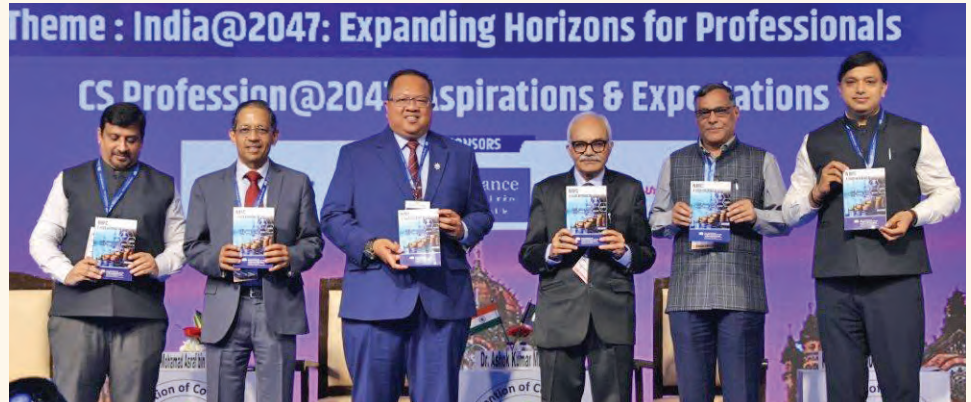
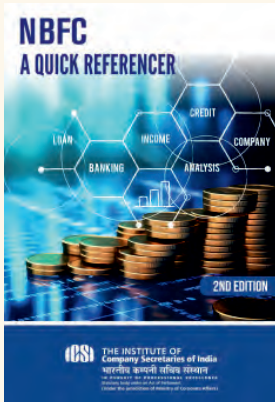








RELEASES AT 52<sup>ND</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES





# Best Regional Council and Chapter Awards 2023

## Best Regional Council - Western India Regional Council of ICSI



## National Best Chapter – Kochi Chapter of SIRC of ICSI



## Best Chapter in Platinum Grade - Hyderabad Chapter of SIRC of ICSI



## Best Chapter in Diamond Grade - Bengaluru Chapter of SIRC of ICSI



## Best Chapter in Gold Grade - Kochi Chapter of SIRC of ICSI





# Proceedings of the 52<sup>nd</sup> National Convention of Company Secretaries held from November 8-10, 2024 at Mumbai

## Theme: India@2047: Expanding Horizons for Professionals

The Institute organized the 52<sup>nd</sup> National Convention of Company Secretaries at Hotel Sahara Star, Mumbai during November 8-9-10, 2024, on the theme “India@2047: Expanding Horizons for Professionals” in hybrid mode, i.e., physical as well as virtual mode. The Convention witnessed the presence of around 4,500 delegates present in-person and connected virtually from different parts of the country and abroad. A galaxy of distinguished guests, invitees, speakers and professionals from India and abroad made the Convention a grand success.

### INAUGURAL SESSION

Smt. Madhabi Puri Buch, Chairperson, Securities and Exchange Board of India (SEBI), Chief Guest, inaugurated the 52<sup>nd</sup> National Convention of Company Secretaries. Her august presence and motivating address added yet another memorable day in the history of the Institute.

The inaugural session commenced with ICSI motto song & lighting of lamp and concluded with the National Anthem.

CS Mehul Ganesh Rajput, Chairman, WIRC, The ICSI welcomed everyone at the Convention and introduced the Chief Guest and other dignitaries on the dais.

CS Pawan G. Chandak, Programme Director & Council Member, The ICSI extended a warm welcome to all the attendees at the Convention and conveyed gratitude to Smt. Madhabi Puri Buch, Chairperson, SEBI for her esteemed presence as the Chief Guest. He introduced the theme of the Convention, i.e., *India@2047: Expanding Horizons for Professionals* and underscored its timely relevance as we look towards the ambitious vision of a developed nation by the centenary of India's independence. Appreciating the theme of the Convention he highlighted that professional like Company Secretaries must broaden their expertise and capabilities to meet evolving expectations.

CS Dhananjay Shukla, Vice-President, The ICSI in his address mentioned that the ambition to be among the top three global economies is within reach and that the path to India@2047 is not just focussed on economic growth, but also on fostering inclusivity and sustainability. In

discussing the vision of *Viksit Bharat*, he referred to a verse from the *Rigveda* “संगच्छध्वं संवदध्वं सं वो मनांसि जानतामब, देवा भागं यथा पूर्वे संजानाना उपासते” which translates to “*Let us move forward together, let us speak in harmony. Let our minds be united in understanding, just as the divine beings work in unison*”. He asserted that *Viksit Bharat* calls for every citizen to be a *Viksit Bharatiya*, drawing a direct connection to the Hon'ble Prime Minister's emphasis on *Sabka Saath, Sabka Vikas, Sabka Vishwas and Sabka Prayas* as essential principle for national progress.

CS B. Narasimhan, President, The ICSI expressed his heartfelt gratitude to the Chief Guest, Smt. Madhabi Puri Buch, Chairperson, SEBI for gracing the inaugural session of the 52<sup>nd</sup> National Convention of Company Secretaries. He expressed his delight on holding the 52<sup>nd</sup> National Convention at the economic hub & financial capital of India, i.e., Mumbai. He highlighted Maharashtra's rich cultural heritage, renowned for its vibrant traditions and festivals. He expressed his gratitude to SEBI for acceding to request of ICSI to specify ICSI Institute of Social Auditors (ICSI ISA) as a Self-Regulatory Organisation (SRO) for social impact assessment in the context of Social Stock Exchange. He also applauded the initiatives taken by SEBI and thanked SEBI for making ICSI a part of its various Standing Committees like PMAC and ACLOD. He highlighted the various initiatives taken by the Institute such as issuance of ICSI Guiding Principles on Stewardship, MoU with NISM to offer courses to support capacity building activities in the securities markets. He also announced the launch of Unique Membership Number, in line with the suggestion received from the Ministry of Corporate Affairs, where the Associate Membership Number of members will be retained as their unique number all throughout. He concluded his address by quoting the words of Tony Robbins, “It is in the moments of decision that your destiny is shaped”, i.e., when you decide to embrace the culture of continuous improvement, you should commit to it fully and then you will be unstoppable.

The following releases and Best Regional Council/ Chapter Awards for the year 2023 were facilitated at the august

hands of Smt. Madhabi Puri Buch, the Chief Guest along with other dignitaries present at the dais:

1. Souvenir of the 52<sup>nd</sup> National Convention of Company Secretaries;
2. Publication on Inspection, Inquiry & Investigation under the Companies Act, 2013;
3. Publication on Master Guide for Prevention of Oppression and Mismanagement;
4. Flyer release for ICSI 4<sup>th</sup> International Conference at Australia;
5. Flyer release for 2<sup>nd</sup> National Convention on Insolvency & Valuation.

## AWARDS

1. Best Chapter Award in Gold Grade - Kochi Chapter of SIRC of ICSI;
2. Best Chapter Award in Platinum Grade - Hyderabad Chapter of SIRC of ICSI;
3. Best Chapter Award in Diamond Grade - Bengaluru Chapter of SIRC of ICSI;
4. National Best Chapter Award – Kochi Chapter of SIRC of ICSI;
5. Best Regional Council Award - Western India Regional Council of ICSI

Smt. Madhabi Puri Buch, Chief Guest, in her opening remarks stated that markets thrive on trust, and the responsibility for upholding this trust rests with Company Secretaries, the governance professionals and mentioned that Company Secretaries gaining the position of a Key Managerial Personnel and Compliance Officer reflects the calibre, knowledge and spirit of good governance possessed by them. She highlighted that the three most important principles of trust are “Transparency”, “Disclosure” and “Ethical Decision Making” and guided the professionals to take extra care while taking important decisions. She emphasised upon the importance of complying with the Insider Trading Regulations, as corporates must disclose material information in a timely and accurate manner and ensure that insiders do not exploit confidential data to gain financial advantage. She also mentioned that SEBI has introduced “Industry Standards Forum” (ISF) as part of its commitment to facilitate industry standards, streamline regulatory compliances, simplify processes for businesses. She further emphasized the transformative impact of technology on compliance processes as it results in, fewer errors, enhanced oversight, and reduced

costs over time, allowing organizations to maintain high standards without incurring heavy compliance expenses. She urged professionals to adopt best practices and meet regulatory standards, emphasizing that this collaborative, tech-enabled approach to compliance aligns perfectly with India’s vision for 2047 - a vision of a thriving, transparent, and technology-driven economy.

CS Asish Mohan, Secretary, The ICSI proposed the Vote of Thanks and expressed his sincere gratitude to the Chief Guest, Smt. Madhabi Puri Buch, Chairperson, SEBI for gracing the 52<sup>nd</sup> National Convention of Company Secretaries. He expressed his deepest appreciation for the insightful and well-crafted presentation by her good self that added immense value and depth to the discussions. He expressed his deepest gratitude to one and all for their enthusiastic support to the Convention.

## FIRST TECHNICAL SESSION - EVOLVING SEBI REGULATIONS: STEP TOWARDS EoDB

**Session Co-ordinator:** CS Pawan G. Chandak, Council Member, The ICSI

**Chair & Moderator:** Shri V. S. Sundaresan, Executive Director, Securities and Exchange Board of India (SEBI).

**Panelists:** CS Savithri Parekh, Company Secretary & Compliance Officer, Reliance Industries Ltd.; CS Bharat Vasani, Senior Advisor, Cyril Amarchand Mangaldas & Chairperson, Legal Affairs & IPR Committee, Bombay Chamber of Commerce & Industry and Ms. Supriya Sapre, Chief Compliance Officer, HDFC Asset Management Co. Ltd.

CS Pawan G. Chandak welcomed the Session Chair along with all the learned panelists, briefed about the session theme, briefly introduced guest speakers and invited them for sharing their views with the delegates.

Shri V. S. Sundaresan in his opening remarks emphasized the role of SEBI’s regulatory reforms in enhancing Ease of Doing Business (EoDB) in India and shared that it is expectation of SEBI from Company Secretaries to meet higher standards of transparency, accountability and service to the public. He highlighted the impact of SEBI’s Consultation Papers over the past five years, stating that these led to introduction of new regulations designed to foster EoDB and align with the vision of Government for promoting investment. He shared that the evolving regulations are aimed at reducing the trust gap between market participants and the Regulator. He praised the harmonization between the SEBI (ICDR) and (LODR) Regulations, where changes in one lead to consequential adjustments in the other. He concluded by referring India’s growing potential, highlighting emerging investment



vehicles which showcase an investment-friendly environment and align with the vision of *Viksit Bharat*.

CS Bharat Vasani shared his insightful overview of the evolving regulatory landscape in India and highlighted complexity and volume of recent changes. He shared that India's Related Party Transactions regulations and disclosure regimes are among the best globally, positioning India favourably on the international stage. He challenged the myth that better compliance does not lead to better governance and underscored that while compliance has increased, governance improvements will follow with stronger regulatory enforcement. He discussed about the Industry Standards on verification of market rumors and appreciated SEBI for making changes in the right direction by introducing amendments that aim to enhance market transparency, accountability and investor protection. He concluded by appreciating the role of Proxy Advisory Firms and encouraged the Company Secretaries to foster relationships with them and actively participate in implementing improved governance practices within Companies.

CS Savithri Parekh appreciated SEBI's recent initiatives, including the introduction of optional T+0 and Instant Settlement cycles aimed at improving cost efficiency, transparency and risk management in the equity market. She appreciated recent changes to the SEBI (LODR) Regulations which streamline procedures and improve operational efficiency for companies and shared how they enhance the EoDB in India. She praised the inclusion of Mutual Fund Units under SEBI (PIT) Regulations, elevating them to the same level as other securities. She concluded by applauding SEBI's progressive steps in improving the regulatory framework, highlighting how these regulatory reforms are essential for improving the overall competitiveness of India's capital markets.

Ms. Supriya Sapre discussed the evolution of voting disclosures and stewardship responsibility in the Mutual Fund industry and highlighted the responsibility of asset management companies towards investors, particularly with the rise of passively managed schemes and ESG practices. She discussed the growth in new investors and SIPs, with India's Mutual Fund Industry's Average Assets Under Management (AAUM) reaching ₹68 lakh crore in September, 2024, driven by necessary regulatory changes for investor protection and market stability. She concluded by appreciating SEBI's role in creating a safer and resilient market, particularly by reducing volatility and improving secondary market performance through regular consultations and timely regulatory interventions.

Thereafter, the session was opened for panel discussion wherein speakers also answered suitably to various queries

raised by audience which made the deliberations fruitful and interactive.

A publication "Chartered Secretary – Collector Series on ESG and Social Audit" was released at the august hands of dignitaries present at the dais.

CS Pawan G. Chandak summed up the discussions and proposed the Vote of Thanks.

## SECOND TECHNICAL SESSION - IFSCA: MAKING INDIA A GLOBAL FINANCIAL HUB

**Session Co-ordinators:** CS Dwarakanath Chennur, Council Member, The ICSI and CS Rajesh C. Tarpara, Council Member, The ICSI

**Chair & Moderator:** CS Pradeep Ramakrishnan, Executive Director (Capital Market), IFSCA

**Panelists:** Shri Vijay Krishnamurthy, Chief Executive Officer, India International Exchange (IFSC) Limited (India INX) and Shri Sandip Shah, Head-IFSC Department, GIFT City, Gandhinagar.

CS Dwarakanath Chennur welcomed the Session Chair along with the learned panelists, briefed about the session theme, briefly introduced guest speakers and invited them for sharing their views with the delegates.

CS Pradeep Ramakrishnan in his opening remarks underscored the pivotal role of the GIFT IFSC in shaping the future of global finance and its transformative potential as a thriving financial ecosystem. He discussed how GIFT IFSC is emerging as a prominent hub for sustainable finance positioning itself as a key facilitator in mobilizing funds to meet India's climate goals. He highlighted the Fund Vertical at IFSC as a major success, with nearly 150 funds operating with a total promised corpus of USD 40 billion and apprised about launch of mutual funds in near future for providing retail investors with new opportunities to invest. He shared that Company Secretaries will find significant prospects within the fund management space, as each fund requires a Principal Officer and Compliance Officer. He also highlighted the growing role of Ancillary Service Providers facilitating businesses at IFSC and shared that many firms of Company Secretaries have already been set-up under the framework. He concluded by encouraging the gathering to explore the emerging opportunities as GIFT IFSC continues to expand and attract global capital and expertise.

Shri Vijay Krishnamurthy expressed confidence that India INX would be a key player in international finance, contributing to India's vision of becoming a developed nation. He highlighted the diverse array of financial

products offered by India INX, including equity derivatives, commodities, currency derivatives, and a rapidly expanding debt listing segment. He explained the unique INX Global Access model, shared the distinction between Indian and international markets, and apprised how IFSCA serves as a Unified Regulator offering a one-stop solution with regulatory framework designed specifically for the needs of international market. He concluded by expressing optimism that India INX will continue to drive India's integration into global financial markets in the future.

Shri Sandip Shah provided a detailed overview of the development and growth of GIFT IFSC, emphasizing the collaborative efforts made with various Regulators during its formative stages. He emphasized the critical need for specialized talent in the IFSC, particularly in areas such as global financial markets, Anti-Money Laundering and global compliances and shared the strategies planned to ensure a steady supply of skilled professionals at IFSC. He highlighted the opportunities available for Company Secretaries, particularly within the Ancillary Service Provider (ASP) framework at IFSC. He concluded by emphasizing the tremendous potential for Company Secretaries in the IFSC ecosystem, urging them to explore opportunities in service provision, compliance and talent development.

Thereafter, the session was opened for panel discussion wherein speakers also answered suitably to various queries raised by audience which made the deliberations fruitful and interactive.

A publication "Setting-up of Units in IFSC – A Comprehensive Handbook" was released at the august hands of dignitaries present at the dais.

CS Rajesh C. Tarpara summed up the discussions and proposed the Vote of Thanks.

### **SPECIAL SESSION – CSR - ACCELERATING SOCIAL IMPACT**

**Session Co-ordinator:** CS NPS Chawla, Council Member, The ICSI

**Speakers:** Dr. Niten Chandra, Secretary, Department of Ex-Servicemen Welfare, Ministry of Defence, Government of India; Maj. Gen. SBK Singh, Director General Resettlement, Department of Ex-Servicemen Welfare, Ministry of Defence, Government of India and Brig. Digvijay Singh Basera, Secretary, Kendriya Sainik Board (KSB), Department of Ex-Servicemen Welfare, Ministry of Defence, Government of India.

CS NPS Chawla, Council Member, The ICSI in his introductory remarks welcomed the guest speakers, briefly

introduced them and invited them for sharing their views and experiences with the delegates.

Maj. Gen. SBK Singh emphasized the unique skills which ex-servicemen from Armed Forces possess which are invaluable in the boardroom and called on the corporate leaders to offer Veterans an opportunity to contribute, ensuring their impactful contributions endures in the business sector.

Brig. Digvijay Singh Basera outlined the features of Armed Forces Flag Day Fund - a Fund which has been established with the objective of assisting Veterans, Widows, and their dependents as well as the institutions/organizations created for rehabilitation of paraplegic soldier. He also outlined the donation procedure for corporate contributions to the fund.

Dr. Niten Chandra emphasized that India's remarkable growth is not limited at national level, but is also gaining global attention, reflecting the nation's rapid progress. He shared that with its demographic dividend, India is set to experience a transformative economic and social revolution over the next 20 years. He highlighted that the country's recent economic boom, fuelled by technological advancements, holds the potential for even greater growth as we approach 2047. He stressed upon the critical role of professionalization in wealth creation, noting that the introduction of Section 135 of the Companies Act, 2013 has provided a structured framework for Corporate Social Responsibility (CSR). He also mentioned initiatives of Ministry of Defence undertaken by Kendriya Sainik Board and the Resettlement Schemes, emphasizing that a growing number of veterans are being absorbed by corporates as employees or are finding opportunities through self-employment programs. He urged the Company Secretaries to be the champions of CSR, particularly in supporting Armed Forces veterans.

CS NPS Chawla summed up the discussions and proposed the vote of thanks.

### **THIRD TECHNICAL SESSION - CS PROFESSION@2047: ASPIRATIONS & EXPECTATIONS**

**Session Co-ordinators:** CS Suresh Pandey, Council Member, The ICSI and CS Ashish Karodia, Council Member, The ICSI

**Chair & Moderator:** Dr. Ashok Kumar Mishra, Council Member (Govt. Nominee), The ICSI and Ex-Technical Member, NCLAT

**Panelists:** En. Mohamad Asraf bin Hamzah, Vice President, Malaysian Association of Company Secretaries



(MACS); Prof. Srikrishna Deva Rao, Vice Chancellor, NALSAR University of Law, Hyderabad and CS B. Murli, Former General Counsel & Company Secretary, Nestle India Limited.

CS Ashish Karodia welcomed the Session Chair along with the learned panelists, briefed about the session theme, briefly introduced guest speakers and invited them for sharing their views and experiences with the delegates.

Dr. Ashok Kumar Mishra shared that the growth of the nation is fostered by the corporates and that the Company Secretaries are instrumental for good corporate governance. He also spoke about the opportunities for professionals under the Competition Act, 2002, Income Tax Act, 1961 and similar acts where they can utilise their expertise and act as authorised representatives or provide consultation services. He encouraged the members to look for emerging avenues that can maximise their professional and financial growth. He motivated the audience to take up roles in mediation and arbitration and encouraged ICSI to leverage the opportunity of becoming a global corporate governance body in the times to come.

En. Mohamad Asraf bin Hamzah discussed the role of Company Secretaries in advisory and advocacy roles in Malaysia. He spoke about the expanding role of Company Secretaries with the introduction of KYC in Malaysia, to ensure that right clients are served. He mentioned that the ICSI and MACS have collaborated to establish governance system in Malaysia and strengthen anti money laundering laws. He deliberated that the future of the profession is increasingly intertwined with legislative and regulatory changes. He concluded by motivating members to stay at the cutting edge of global corporate governance through continuous professional education, advocacy, the sharing of ideas and collaborative efforts.

Prof. Srikrishna Deva Rao shared a comprehensive overview of the transformation in higher education over the past three decades, particularly within legal education. He emphasized the growing importance of interdisciplinary, inter-professional, and international approaches, where the boundaries of knowledge are increasingly integrated. He highlighted that global connections, skills, and the rise of technology, especially AI, are central to the future of transformation in law and governance. He underscored the growing importance of dispute resolution and the expectations from professionals to become resolution experts and entrepreneurs, particularly in the context of start-ups. He emphasised that the core values of excellence, professionalism, integrity, and hard work as essential for future success.

CS B. Murli emphasized that as governance professionals, Company Secretaries are responsible for preserving the

profession's esteemed recognition and striving to elevate it to even greater heights. He highlighted the expanding scope of the Company Secretary's role, particularly in Start-ups and MSMEs, noting the expected growth of India's corporate structure, with the economy projected to reach USD 30 trillion by 2047. He also pointed out the enhanced focus on self-regulation will continue to accelerate in the future and reminded the professionals that the *Laxman Rekha* for a Company Secretary is to never compromise on the quality of work, maintaining due diligence, ethics, and integrity at all times.

Thereafter, the session was opened for panel discussion wherein speakers also answered suitably to various queries raised by audience which made the deliberations fruitful and interactive.

A publication "NBFC - A Quick Referencer" was released at the august hands of dignitaries present at the dais.

CS Suresh Pandey summed up the discussions and proposed the Vote of Thanks.

#### FOURTH TECHNICAL SESSION - ADR MECHANISM: ROADMAP FOR FAST TRACK DISPUTE RESOLUTION

**Session Co-ordinator:** CS Venkata Ramana R., Council Member, The ICSI

**Chair:** Dr. Rajiv Mani, Secretary, Legislative Department and Department of Legal Affairs, Ministry of Law & Justice, Government of India.

**Panelists:** CS (Dr.) M. S. Sahoo, Former Chairperson, IBBI & Former Secretary, The ICSI; Dr. Saleena K. Basheer, Dean, Hamdard Institute of Legal Studies & Research (HILSR) and Mr. Tariq Khan, Registrar, International Arbitration and Mediation Centre (IAMC) also moderated the session.

CS Venkata Ramana R. welcomed the Session Chair along with the learned panelists, briefed about the session theme, briefly introduced guest speakers and invited them for sharing their views and experiences with the delegates.

Dr. Rajiv Mani in his opening remarks discussed about regulatory developments in ADR in India, expansion of Commercial Courts to address the growing volume of commercial cases in Indian courts and improve the ease of doing business in India by expediting dispute resolution. He mentioned about the *Samadhan Centre* at the Delhi High Court as a distinguished institution known for its significant contributions to ADR. He discussed about Arbitration through electronic means and Emergency Arbitration that provides urgent and interim relief to parties before a formal tribunal is constituted. He mentioned

about the enactment of the Mediation Act, 2023 and its relevance for ADR, amendments which are proposed by the Government to further strengthen ADR and the role played by the Company Secretaries as compliance officers and the conscience keepers of organizations and encouraged them to leverage their specialized skills and knowledge to make ADR a success and also promote Mediation as a first recourse to resolve disputes.

CS (Dr.) M. S. Sahoo in his address discussed that the professions act as central institution of the economy by not only providing specialized services but also enhancing overall productivity, creating jobs, ensuring regulation, and fostering trust—all of which are essential for economic growth and stability. He spoke on ADR as a lucrative area for Company Secretaries in the years to come as he mentioned ADR market is indeed expected to grow significantly and is projected to reach around USD 15 billion by the year 2030. He further discussed about how the Government of India is actively promoting GIFT IFSC and is exploring the potential for more such IFSCs and about setting-up an International Arbitration Centre at GIFT IFSC that can compete with well-established ADR hubs like Singapore, Dubai, and London. He concluded by highlighting that Company Secretaries have an extra advantage over other professionals in ADR and settlement of disputes due to their knowledge of business, finance, law and most importantly the interpretation of law.

Mr. Tariq Khan in his remarks stated that future of Arbitration is bright and described ADR as 'Affordable Dispute Resolution'. He mentioned that Arbitration & Mediation are not just tools to resolve disputes, but as enablers to businesses. He mentioned that Singapore and London have emerged as global hubs for Arbitration and thus, they are also considered as global hubs for investment. He mentioned that mandating all arbitration awards be issued within an 18-month timeframe is indeed groundbreaking as this commitment reflects India's focus on making arbitration both predictable and efficient, catering especially to businesses that prioritize swift dispute resolution. He also mentioned about the introduction of Arbitration Council of India to institutionalize arbitration in India. He further mentioned about various amendments to ADR after 2015 and stated that Company Secretaries have bright future as Mediator and Conciliator.

Dr. Saleena K. Basheer in her address briefed about Online Dispute Resolution (ODR) as an application of technology to help parties to resolve disputes outside the traditional court systems, often through digital platforms. She appreciated the efforts of the Government of India viz. launch of e-Samadhan Portal, an online grievance redressal mechanism & introduction of Section 12A of the Commercial Courts Act, 2015 as progressive steps towards

institutionalizing mediation as a primary method for resolving commercial disputes in India. She also discussed about the International best practices for ADR and mentioned that the British Legal System is widely regarded as one of the most influential legal systems globally and discussed about International Commercial Arbitration (ICA) as a widely recognized method of cross-border commercial disputes.

Thereafter, the session was opened for panel discussion wherein speakers also answered suitably to various queries raised by audience which made the deliberations fruitful and interactive.

A publication "Handbook on Mediation" was released at the august hands of dignitaries present at the dais.

CS Venkata Ramana R. summed up the discussions and proposed the Vote of Thanks.

### OPEN HOUSE SESSION

Third day of the 52<sup>nd</sup> National Convention of Company Secretaries commenced with an interactive Session of the Council with the members. CS B. Narasimhan, President, The ICSI, CS Dhananjay Shukla, Vice-President, The ICSI, CS Manish Gupta, CS Rupanjana De, CS Manoj Kumar Purbey, CS NPS Chawla, CS Suresh Pandey, CS Mohan Kumar A., CS Dwarakanath Chennur, CS Ashish Karodia, CS Venkata Ramana R., CS Pawan G. Chandak, CS Rajesh C. Tarpara, CS Praveen Soni, Council Members, The ICSI and CS Asish Mohan, Secretary, The ICSI were present on the dais.

CS B. Narasimhan, President, The ICSI apprised members about the various initiatives, recognitions and representations submitted by the Institute to various Regulators and replied suitably to the queries/suggestions raised/given by the members during the open house.

### FIFTH TECHNICAL SESSION - REIMAGINING GOVERNANCE: THE EVOLVING ROLE OF BOARDS IN 2047

**Session Co-ordinators:** CS Mohan Kumar A., Council Member, The ICSI and CS Praveen Soni, Council Member, The ICSI

**Chair & Moderator:** Shri M. Damodaran, IAS (Retd.), Former Chairman, SEBI and Founder & Chairperson, Excellence Enablers Pvt. Ltd.

**Panelists:** CS R. Krishnan, Former President, The ICSI; Mr. John Heaton, President, The Chartered Governance Institute (CGI) and Shri Keki M. Mistry, Former Vice Chairman and CEO, Housing Development Finance Corporation Ltd.



CS Praveen Soni welcomed the Session Chair along with the learned panelists, briefed about the session theme, briefly introduced guest speakers and invited them for sharing their views and experiences with the delegates.

Shri M. Damodaran shared his invaluable insights on the evolving role of corporate boards, drawing from his extensive experience. He pointed out the significant gap between the expectations placed on boards and their actual performance, stressing the urgent need for boards to reinvent themselves to remain relevant in 2047. Looking ahead, he suggested that future boards should prioritize diversity in terms of age and experience, rather than focusing solely on gender, given the changing nature of business operations. He urged the professionals to ensure that the boards they serve on are fulfilling their responsibilities without getting overly absorbed in technicalities, as governance and compliance are not the same. He cautioned that while AI will play a facilitative role in boardrooms, it should not be viewed as a replacement for human insight. His core message was that it is not just about what boards do, but how and why they do it, with a focus on identifying potential conflicts and implementing safeguards to preserve board cohesiveness, especially in the face of asymmetric information.

CS R. Krishnan highlighted the need for transformation rather than the introduction of new rules and regulations. He emphasized that the existing rules should be enforced effectively and impartially, as duplicity, overlapping, and multiplicity of regulations have hindered the growth of companies. He applauded the Company Secretaries for their hard work and dedication in navigating the complex compliance landscape and acknowledged their crucial role in the corporate world. He also referenced the historical contexts regarding the significant discussions in the Naresh Chandra Committee on Corporate Governance and Cadbury Committee. He concluded by emphasizing that the role of Company Secretaries is not just about ensuring compliance; their primary responsibility is to provide a holistic view of the company's operations.

Mr. John Heaton discussed about the polarized geopolitical landscape worldwide and the growing global focus on corporate governance, highlighting the increased interest in good governance practices and enhanced board performance. He spoke about the convergence of diverse global trends, such as the rising diversity on boards, with more women taking leadership roles and a greater emphasis on ethnic and cultural inclusivity. He highlighted the evolving role of Company Secretaries from being compliance officers to trusted advisors. He also raised concerns about the increasing use of sophisticated AI programs, emphasizing the need for boards to ensure good governance of such technologies. He touched upon

the growing importance of ESG reporting, particularly considering climate change and its devastating impacts. Finally, he spoke about the Memorandum of Understanding between the ICSI and CGI, which aims to promote good governance.

Shri Keki M. Mistry emphasized upon the importance of corporate governance as a critical measure of how companies are run, serving as an indicator of management quality and board effectiveness. He mentioned that sound corporate governance principles are essential tools for sustainability and growth, with value-driven governance increasing a company's worth and helping it stand out from competitors. He urged the companies to start preparing for an uncertain future by identifying new risks particularly in areas such as cybersecurity, AI, and data protection. He highlighted the importance of long-term strategic thinking by boards to help organizations navigate the challenges, with a focus on more transparent disclosures at the board level, ensuring robust risk management frameworks. He also stressed upon the critical role of independent directors as gatekeepers of compliance and governance, advocating for boards with appropriate competencies, an open approach, and a commitment to stakeholder satisfaction. Finally, he acknowledged that Indian boards have made strides in maintaining gender parity and emphasized the importance of long-term value creation through more insightful and meaningful evaluations of board performance.

Thereafter, the session was opened for panel discussion wherein speakers also answered suitably to various queries raised by audience which made the deliberations fruitful and interactive.

A publication "FAQs on ICSI (Management and Development of Company Secretaries in Practice) Guidelines, 2023" was released at the august hands of dignitaries present at the dais.

CS Mohan Kumar A. summed up the discussions and proposed the Vote of Thanks.

## SIXTH TECHNICAL SESSION - MANUFACTURING & SERVICES: KEY DRIVERS FOR VIKSIT BHARAT

**Session Co-ordinators:** CS Rupanjana De, Council Member, The ICSI and CS Manoj Kumar Purbey, Council Member, The ICSI

**Chair:** Shri Amod Kumar, IAS, Deputy Director General, Unique Identification Authority of India (UIDAI).

**Panelists:** Shri Gaurav Kishor Joshi, Deputy Secretary, Ministry of Heavy Industries, Government of India; CS Mahavir Lunawat, Group Founder and Managing

Director, Pantomath Advisory Service Group and Former Council Member, The ICSI and Dr. Rajeev Roy, Lead, 1on & Former Dean Academics, XLRI Delhi Campus also moderated the session.

CS Rupanjana De in her introductory remarks welcomed all Chair along with the learned panelists, briefed about the session theme, briefly introduced guest speakers and invited them for sharing their views and experiences with the delegates.

Shri Amod Kumar in his address covered aspects such as India's transformed and well-developed digital landscape driven by schemes like JAM Trinity which has streamlined direct benefit transfers nationwide, significance of Aadhar and the increasing relevance of Aadhar based digital signatures. He encouraged the professionals to harness technology to enhance efficiency in corporate governance and compliance, highlighting the growing importance of Aadhar-based digital signatures. He opined that the cost of non-compliance is many times greater than the cost of compliance. He said Professionals such as Company Secretaries, must continuously upgrade their skills to seize new opportunities, and in addition to ensuring compliance, they can advise organizations on potential risks and exposure to enhance their longevity and performance.

Shri Gaurav Kishor Joshi deliberated on Make in India initiative and discussed about India's integration into the global economy, with "Make in India" now evolving into "Make for the World." He highlighted that the manufacturing sector currently contributes 17% to GDP and Government's aim is to scale up this contribution to 25% by 2047. To reach this goal and adapt to the evolving landscape, it is essential to develop a robust ecosystem for the manufacturing sector while replacing imports with domestically produced goods that can be efficiently manufactured within India. Emphasizing the importance of manufacturing, he stressed that it involves much more than merely assembling products and our focus should be on advancing Indian manufacturing to deeper stages of production, going beyond the initial level. He also mentioned about the introduction of Production Linked Incentive (PLI) Scheme which is aimed at enhancing domestic manufacturing capability, accompanied by higher import substitution.

CS Mahavir Lunawat elaborated on the decadal growth of India's manufacturing sector, highlighting key opportunities for growth including Industry 4.0, EoDB, India's high youth literacy, etc. He highlighted that India ranks fifth in global manufacturing with Infrastructure & Logistics capital expenditure reaching record highs, contributing to at least 60% of the manufacturing sector's growth. He opined that in an era marked by geopolitical issues, India emerged as one of the fundamentally strong markets, poised to act as a catalyst for driving economic activities and capital formation within the economy. He

mentioned that Professionals like Company Secretaries are faced with an unprecedented opportunity to go beyond and contribute to nation's orderly growth of supporting businesses and ensuring high standard of governance.

Dr. Rajiv Roy emphasized that India has made significant progress by shifting from an agriculture-based economy to one driven by manufacturing and services. He mentioned that while 42% of the population still depends on agriculture for their primary income, a significant reduction from 69% in the past, it is crucial for the country to continue fostering expansion in its manufacturing and services sectors to sustain the economic transformation. He pointed out the importance of Company Secretaries, who not only guide organizations on regulatory matters but are also expanding their roles by venturing into entrepreneurship. He emphasized that Company Secretaries are increasingly crucial across various sectors, including healthcare, education, and AI-driven companies, where their expertise is vital for navigating complex legal and business landscape.

Thereafter, the session was opened for panel discussion wherein speakers also answered suitably to various queries raised by audience which made the deliberations fruitful and interactive.

A publication "Supreme Court on IBC" was released at the august hands of dignitaries present at the dais.

CS Manoj Kumar Purbey summed up the discussions and proposed the Vote of Thanks.

### VALEDICTORY VOTE OF THANKS

CS Asish Mohan, Secretary, The ICSI proposed the Vote of Thanks at the Conclusion of the 52<sup>nd</sup> National Convention of Company Secretaries. He expressed his gratitude to the Chief Guest, Smt. Madhabi Puri Buch, Chairperson, SEBI for her kind presence and words of wisdom at the inaugural session. He also thanked all the Session Chairs, Moderators, Co-ordinators and Panelists for fruitful deliberations, powerful and thought-provoking insights during the technical and special sessions. He also thanked President, The ICSI; Vice President, The ICSI, Programme Director, and Council Members, The ICSI for their support and guidance in organizing the event. He also thanked Past Presidents; Past and Sitting Regional Council Members; Chairman, WIRC; Past and sitting Western India Regional Council Members; Past and sitting members of the Chapter Managing Committees; esteemed members and team ICSI from Headquarters, WIRC and CCGRT for the grand success of the 52<sup>nd</sup> National Convention of Company Secretaries. He also conveyed his sincere thanks to the sponsors, advertisers, volunteers, media and hotel Sahara Star for their support. At the end he thanked one and all for the resounding success of the 52<sup>nd</sup> National Convention of Company Secretaries. □



# Jury Meeting of 24<sup>th</sup> ICSI National Awards for Excellence in Corporate Governance, 2024

**Dates & Venue:** November 29, 2024 at New Delhi

**Chairman:** Hon'ble Justice P. Sathasivam, Former Chief Justice of India



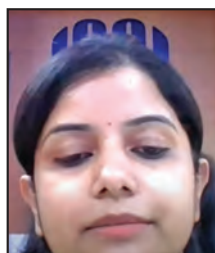
## EEE 4.0 - MASTER KNOWLEDGE SERIES

### WEBINAR ON

**Digital Forensics and Fraud Investigation**  
held on November 13, 2024



**Speaker:**  
**Mr. Ivneet Singh**  
Founding Partner, Ashwathh  
Partners Certified Fraud Examiner  
& Forensic Expert



**Moderator:**  
**CS Ankita Mathew**  
The ICSI

### WEBINAR ON

**Registration and Listing on Social Stock Exchange**  
held on November 27, 2024



**Speaker:**  
**Ms. Sheena Gandhi**  
AGM, Social Stock  
Exchange, BSE



**Speaker:**  
**CS (Dr.) Ajay Garg**  
Social Entrepreneur



**Moderator:**  
**Vishal Kumar Roy**  
The ICSI



# 2024 Annual London Global Convention

**Theme:** Board's Strategy for a Secure Future & Turning Disruptions into Opportunities

**Dates & Venue:** November 13 - 16, 2024 at London (UK)





THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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As the new age Governance Professional, it is imperative for Company Secretaries to enhance their knowledge and skills to effectively manage investor expectations and thrive in environment of disruption, uncertainty and change.

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It may please be noted that members are entitled to 4 CPE Credits under **clause 7.2 of Continuing Professional Education (CPE) Guidelines 2019**, if any of their article is published in the Chartered Secretary Journal or any UGC approved journal. Guidelines for Authors is placed at **Appendix-A**.

Should you require any further information, please feel free to connect with us.

We look forward to your significant contribution in building a global perspective for the Company Secretary Profession.

Sincerely,

Team ICSI



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5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
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(Signature)

# The Evolving Role of ADR in India towards Corporate Governance and Shaping Global Dispute Resolution

As trusted professionals in corporate governance, Company Secretaries navigate complex legal and regulatory environments, where ADR methods can significantly reduce risk, preserve relationships, and promote compliance.



**CS Jinal Jain, ACS**

Associate, Fox Mandal & Associates LLP  
Chennai

[csjinaljain93@gmail.com](mailto:csjinaljain93@gmail.com)

## INTRODUCTION

**A**lternative Dispute Resolution (ADR) mechanisms, specifically mediation and arbitration, are playing an increasingly important role in India, particularly in the context of corporate governance. The evolving landscape of ADR is reshaping how businesses, including those with the involvement of Company Secretaries (CS), manage legal disputes. These mechanisms offer an effective alternative to the traditional, often lengthy and costly, litigation process.

## MEDIATION AND ARBITRATION IN CORPORATE GOVERNANCE

### 1. Conflict Resolution Without Litigation

- **Mediation:** Mediation is a non-adversarial process where a neutral third-party mediator assists in resolving disputes between parties. Company Secretaries can use mediation to resolve conflicts between stakeholders, Directors, and shareholders in a way that preserves business relationships.
- **Arbitration:** In arbitration, a neutral arbitrator hears both sides of the dispute and renders a binding decision. For Company Secretaries, this option can help to resolve disputes involving contractual obligations, regulatory compliance issues, or governance matters in a more efficient and private manner than going through the courts.

### 2. Confidentiality

Both mediation and arbitration typically offer greater confidentiality than public court trials. This

is particularly important for Company Secretaries, who handle sensitive corporate information and wish to avoid disclosing private business matters in public forums. By resolving disputes through ADR, company secretaries ensure that any sensitive issues are kept within the professional and legal confines of the process.

### 3. Time and Cost Efficiency

- Legal battles can be costly and time-consuming. The legal fees associated with court trials can be burdensome for companies, especially smaller ones. Mediation and arbitration are generally faster and less expensive alternatives which can help save valuable resources.
- Company Secretaries are responsible for ensuring the company remains in compliance with its governance obligations and can use these ADR mechanisms to expedite resolutions, thereby keeping the company on track.

### 4. Preserving Business Relationships

Disputes within companies, between stakeholders, or between business partners can harm professional relationships and impact the company's reputation. Mediation, with its collaborative approach, helps preserve relationships, making it easier for Company Secretaries to manage and maintain harmony between parties involved. This is crucial when resolving shareholder or Board-level conflicts, which if mishandled, could damage the company's long-term prospects.

### 5. Enforcement of Compliance

In corporate governance, disputes often arise over compliance with laws and regulations. By using arbitration, Company Secretaries can ensure that binding decisions are made quickly in disputes related to non-compliance with corporate governance standards or legal requirements. This contributes to maintaining the company's regulatory standing and avoiding public legal battles.

### 6. Avoiding Reputation Damage

Litigation can harm a company's reputation, especially if it becomes public or involves high-profile disputes. Mediation and arbitration allow for more private resolution of disputes, helping Company Secretaries protect the reputation of both the company and their professional standing.

### 7. Enhancing Professional Expertise

Company Secretaries who are well-versed in mediation and arbitration processes increase their



professional value. They can offer alternative dispute resolution services, which enhances their role as not just corporate governance experts but also skilled negotiators and problem-solvers. This knowledge helps to secure their position within the organization and in the marketplace.

## 8. Legal and Regulatory Compliance

As legal and regulatory landscapes evolve, disputes concerning compliance with laws and regulations are inevitable. Mediation and arbitration provide Company Secretaries with tools to address regulatory conflicts efficiently. For example, in cases involving disputes between company stakeholders and regulatory authorities, arbitration provides a faster mechanism for resolving compliance disputes, safeguarding the company's and the CS's legal standing.

### Types of Alternative Dispute Resolution(ADR)



Source: Compass Rauias, Polity, Alternative Dispute Resolution Mechanism<sup>1</sup>

## PROMOTING ACCESS TO JUSTICE AND ADR THROUGH THE LEGAL SERVICES AUTHORITIES ACT, 1987

The Legal Services Authorities Act, 1987 stands as a foundational pillar for the promotion and development of Alternative Dispute Resolution (ADR) in India. The Act was a significant step in ensuring access to justice for all, particularly the marginalized sections of society and in promoting dispute resolution mechanisms outside the formal court system.

Under this Act a National Legal Services Authority (NALSA) is established at the national level along with State Legal Services Authorities and District Legal Services Authorities. These bodies are tasked with promoting legal awareness, providing free legal aid and facilitating ADR methods, ensuring that dispute resolution is accessible, especially to the underprivileged and marginalized groups. One of the core features of the Legal Services Authorities Act, 1987 is its promotion of Lok Adalats (People's Courts), which have become a key ADR mechanism in India. Lok Adalats are designed to resolve disputes through mediation and conciliation as they:

- operate outside the formal judicial system, providing a quicker, more informal method of resolving disputes.

- are typically used for civil cases, family disputes, and even certain criminal cases like compoundable offences.
- have a binding decision-making process, where the settlement reached in a Lok Adalat has the same enforceability as a court order.
- help decongest the formal court system by diverting matters that can be resolved amicably.

Additionally, it ensures that free legal aid is available to women, children, scheduled castes (SCs), scheduled tribes (STs), backward classes, and other groups and persons in rural or remote areas where access to courts and lawyers is limited. This focus on access to justice plays a significant role in encouraging the use of ADR methods, such as mediation and arbitration, for resolving disputes in a more affordable and accessible manner.

While the Arbitration and Conciliation Act, 1996 provides a comprehensive framework for arbitration, the Legal Services Authorities Act, 1987 supports its implementation by ensuring that low-income individuals and disadvantaged groups can access arbitration and conciliation services at minimal or no cost. These services are provided through the network of national legal services authorities.

## EXPANDING OPPORTUNITIES THROUGH ADR

- Global Business Environment:** Arbitration allows parties from different countries to resolve disputes outside national courts, offering a global platform for resolving international commercial and investment conflicts. This makes it highly attractive in sectors like international trade, finance and construction, where cross-border disputes are common.
- Enforceability of Awards:** One of the biggest advantages of arbitration is that its awards are internationally enforceable due to treaties like the New York Convention of 1958. This gives businesses more confidence that their contracts will be honored and disputes settled fairly, regardless of the country in which they arise.
- Access to Justice:** Mediation makes dispute resolution accessible to individuals and businesses who may not have the financial resources or time to pursue lengthy litigation. It is often used in cases like family disputes, labor disputes and small claims, where parties seek a more personal and less formal process.
- Expert Arbitrators:** In specialized areas like intellectual property, construction or maritime law, arbitration allows parties to select arbitrators with expertise in the relevant field, ensuring that the decision-maker understands the complexities of the case.
- Faster Dispute Resolution:** Unlike traditional court proceedings, which can be lengthy, arbitration is designed to be quicker. This provides a way to resolve disputes faster, allowing companies to focus on business operations without prolonged disruptions.
- Voluntary and Non-Binding:** The non-binding nature of mediation allows parties to walk away from the process if they feel that a satisfactory solution has

<sup>1</sup> <https://compass.rauias.com/polity/alternative-dispute-resolution-mechanism/>

not been reached. This creates an opportunity for flexibility and can often result in creative solutions that a court might not be able to offer.

- g. **Flexibility:** Arbitration is more flexible than litigation, as parties can agree on the rules governing the proceedings, including timelines, language, and location. This allows for customized procedures suited to specific disputes.
- h. **New Career Opportunities:** The expansion of ADR methods opens up new career paths for legal professionals, such as becoming certified mediators or arbitrators. With increasing demand for alternative dispute resolution, legal professionals have the opportunity to diversify their practice and gain expertise in ADR.
- i. **Fostering Collaboration:** ADR methods like mediation require legal professionals to collaborate with clients, mediators and other stakeholders to find mutually acceptable solutions. This fosters a more cooperative and client-focused approach to dispute resolution.
- j. **Decongestion of Courts:** By encouraging the use of ADR methods, both arbitration and mediation help reduce the case load in courts. This leads to faster processing of cases and reduces the judicial backlog, making the overall legal system more efficient and accessible. With simpler cases being resolved through ADR, courts can devote more time and resources to dealing with more complicated and critical legal matters.

## OVERVIEW OF THE MEDIATION ACT, 2023

The Mediation Act, 2023 was enacted to promote mediation as a formal, structured process for resolving disputes outside of the court system. The Act aims to make mediation more widely accessible and enforceable in India.

### KEY PROVISIONS OF THE MEDIATION ACT

- a. **Scope and Applicability:** The Act covers both court-annexed and pre-litigation mediation, ensuring that the process is voluntary, confidential, and designed to encourage mutually agreeable settlements.
- b. **Mediation Centers:** It requires the creation of Mediation Centers across India, providing necessary infrastructure, trained mediators, and administrative support for dispute resolution, particularly for court-referred cases.
- c. **Qualifications of Mediators:** Mediators must undergo proper training and certification to ensure they possess the necessary skills and knowledge to facilitate effective mediation.
- d. **Confidentiality:** Mediation is confidential and discussions cannot be used in future legal proceedings, promoting open and honest communication.

- e. **Voluntary Nature:** While mediation is voluntary, courts can refer certain disputes (e.g., family cases) for mediation. However, parties are free to withdraw if they choose not to settle.
- f. **Enforceability of Settlements:** Once an agreement is reached, it becomes legally binding and can be enforced in court, providing the same legal weight as a court judgment.
- g. **Timeframe for Mediation:** Mediation should be completed within 60 days with extensions possible, ensuring a swift resolution compared to traditional litigation.

### MEDIATION PROCESS

- a. **Initiation:** Mediation begins when a party files a request at a designated center and a mediator is assigned.
- b. **Sessions:** Mediation is flexible and informal with mediators guiding parties toward resolution within the set timeframe.
- c. **Mediator's Role:** Mediators facilitate discussions and offer guidance without imposing decisions, ensuring neutrality and confidentiality.

d. **Ethical Standards:** Mediators must avoid conflicts of interest, disclose any biases and refrain from providing legal advice.

e. **Settlement Agreement:** If the parties agree, the mediator records the settlement, making it legally binding and enforceable once filed with the court.

While the Mediation Act, 2023 and the accompanying Rules offer a comprehensive framework for the practice of mediation, there are several finer nuances that play an important role in the effectiveness of the

mediation process:

- a. Mediation is voluntary with courts able to refer cases, but parties can withdraw if they believe mediation will not resolve the dispute, requiring both parties' commitment.
- b. Legal advisors can assist in understanding the implications of a settlement but they cannot control the mediation process ensuring a collaborative approach.
- c. Mediation must be completed within 60 days, with an extension option, but the time constraint can pressure parties to settle quickly, which requires careful management by mediators.
- d. Once a settlement is signed and filed with the court, it becomes enforceable as a court order, though enforcement mechanisms are needed for cases of non-compliance.
- e. Confidentiality ensures candid discussions but can be challenged if settlements are not honored or there is a dispute over fairness, with mediation statements not usable in future litigation unless agreed.

*For Company Secretaries, ADR provides an efficient means to maintain governance and compliance while safeguarding their professional integrity and credibility.*



- f. The Act and Rules provide specific guidelines for resolving commercial disputes through mediation, offering businesses an alternative to lengthy litigation for contractual matters.

## TRENDS AND ROLE OF ADR CENTRES IN ARBITRATION IN INDIA: INFRASTRUCTURAL ADVANTAGE DECODED

- 1) **Growing Preference for Arbitration:** Arbitration is gaining popularity over traditional litigation in India due to its quicker resolution, cost-effectiveness, and privacy. It is increasingly being favored as an alternative dispute resolution method.
- 2) **Government Support for Arbitration:** The Indian government is actively encouraging arbitration, highlighted by legislative reforms like the Arbitration and Conciliation (Amendment) Act, 2019 and the establishment of more ADR centers across the country.
- 3) **Expansion of ADR Centers:** The number of well-established ADR centers is on the rise, providing the necessary infrastructure and resources for effective arbitration. These centers offer both physical and digital platforms to streamline arbitration procedures.
- 4) **Focus on Modern Infrastructure:** ADR centers are equipped with modern facilities, including advanced technology and comfortable hearing rooms, which contribute to a more efficient arbitration process.
- 5) **India as a Global Arbitration Hub:** Major cities like New Delhi, Mumbai and Bengaluru are emerging as key hubs for international arbitration, thanks to the presence of specialized ADR centers, positioning India as a global leader in arbitration.
- 6) **Role of Government and Private Institutions:** Both the Indian government and private institutions are working together to strengthen the ADR ecosystem. The establishment of bodies such as the Delhi International Arbitration Centre (DIAC) and Mumbai Centre for International Arbitration (MCIA) plays a key role.
- 7) **State-of-the-Art Facilities in ADR Centers:** ADR centers offer modern hearing rooms, conference facilities, and virtual platforms for online hearings, ensuring arbitration is efficient, accessible and globally connected.
- 8) **Expert Case Management and Administration:** ADR centers provide professional administrative support, including case management, scheduling and coordination, easing the burden on arbitrators and parties involved in the process.
- 9) **Cost Efficiency of ADR Centers:** ADR centers help to reduce the overall costs of arbitration through lower overheads compared to court proceedings. The use of technology and efficient case management also minimizes delays and associated costs.
- 10) **Neutral and Impartial Environment:** ADR centers offer a neutral and unbiased environment for dispute

resolution, ensuring fairness and reducing potential conflicts of interest, particularly in international arbitration cases.

**Chart: Growth of ADR Centers in India (2015-2024)**

Year	Number of ADR Centers	Arbitration Cases Handled	International Arbitration Cases
2015	10	200	30
2016	15	350	40
2017	18	500	60
2018	22	700	100
2019	30	900	150
2020	35	1,200	250
2021	40	1,500	350
2022	45	1,700	450
2023	50	2,000	500
2024 (est.)	55	2,200	600

**Source:** Data compiled from various ADR center reports and Indian government publications.

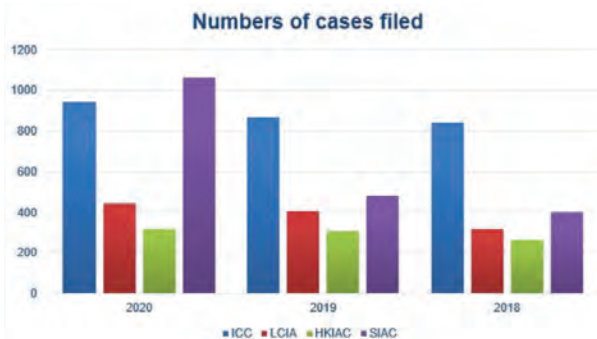
## ARBITRATION AND MEDIATION LAWS: GLOBAL OUTLOOK

While each country has its own laws governing arbitration and mediation, there are strong global trends aimed at harmonizing and standardizing these practices, especially in the context of international commerce and cross-border disputes. Here are some global trends on ADR:

1. The New York Convention (1958) is a pivotal treaty that ensures the recognition and enforcement of foreign arbitral awards in signatory countries, with limited grounds for refusal.
2. The UNCITRAL Model Law on International Commercial Arbitration (1985) establishes a harmonized legal framework for arbitration, addressing the formation of agreements, appointment of arbitrators, and enforcement of awards.
3. Prominent arbitration institutions such as the ICC, LCIA, and SIAC provide standardized rules and administrative support for fair and transparent arbitration proceedings worldwide.
4. The UNCITRAL Model Law on International Commercial Conciliation (2002) encourages the use of mediation, offering guidelines for the initiation, conduct, and enforcement of mediated settlement agreements.
5. The Singapore Convention on Mediation (2019) offers a global framework for enforcing mediation settlements, allowing parties to apply directly to national courts for enforcement.
6. The European Union supports alternative dispute resolution (ADR) through directives like the Directive on Mediation (2008), facilitating cross-border enforcement of both arbitral awards and mediated settlements.
7. In the United States, the Federal Arbitration Act (FAA) governs arbitration, while organizations such as

AAA and JAMS administer arbitration and mediation services both domestically and internationally.

8. Asian countries like Singapore and China have implemented robust legal frameworks for arbitration and mediation, aligning with global standards through institutions like SIAC and CIETAC.



Source: International Chamber of Commerce, Dispute Resolution Statistics for 2020<sup>2</sup>

**AI-Driven Case Management and Efficiency:** The integration of Artificial Intelligence (AI) in ADR processes has significantly improved case management. AI tools streamline administrative tasks such as document review, predictive analytics, and scheduling, which were traditionally time-consuming and prone to human error. By automating these tasks, AI enhances efficiency, allowing arbitrators and mediators to focus on core issues and reducing delays in dispute resolution. This transformation makes ADR faster and more cost-effective, benefiting both parties and institutions involved.

**AI and Online Dispute Resolution (ODR):** AI is also playing a key role in enhancing mediation and settlement processes, particularly through Online Dispute Resolution (ODR) platforms. These platforms allow parties to resolve disputes remotely, breaking down geographical barriers. AI-driven negotiation tools assist parties in reaching settlements by suggesting compromises based on historical data. Additionally, ODR systems are helping manage disputes in areas like e-commerce, consumer protection and small claims, offering an accessible, efficient and less adversarial alternative to traditional in-person proceedings.

**Blockchain and Digital Evidence in ADR:** The digitalisation of ADR has brought the inclusion of blockchain technology and digital evidence, which enhance the security and transparency of the process. Blockchain ensures that records related to arbitration agreements, evidence, and final awards remain immutable and tamper-proof, safeguarding the integrity of the ADR process. Additionally, the ability to submit and analyze digital evidence, including documents, images, and videos in real time, expedites the resolution of disputes, making the process more efficient and transparent. Smart contracts further streamline arbitration by automatically

enforcing agreements and triggering dispute resolution mechanisms when required.

**Challenges and Ethical Considerations:** While the impact of AI and digitisation on ADR has been largely positive, there are still several challenges and ethical considerations. Data privacy and cybersecurity risks remain significant concerns, particularly as sensitive personal and financial information is handled digitally. Furthermore, AI-driven decisions may lack the nuanced judgment human arbitrators bring to complex disputes, potentially raising questions about the quality of AI-generated outcomes. Access to the necessary technology and digital literacy also poses a challenge, as not all parties may be able to engage with AI-powered ADR platforms. Finally, ethical concerns such as the potential for AI bias in decision-making highlight the need for careful regulation and safeguards to ensure fairness and transparency in the evolving landscape of ADR.

## CONCLUSION

Mediation and arbitration are transforming the landscape of dispute resolution, offering streamlined, cost-effective and confidential alternatives to traditional litigation. These processes are invaluable for protecting a company's interests, preserving relationships and minimizing the risks associated with prolonged legal battles. For professionals, particularly Company Secretaries, ADR provides an efficient means to maintain governance and compliance, while safeguarding their professional integrity and credibility.

Moreover, they are now essential components of modern legal frameworks, increasingly recognized for their advantages over conventional court procedures and offer faster, more collaborative and cost-efficient resolutions, making them crucial tools in an interconnected, globalized world. As more individuals and businesses turn to ADR, these methods are not only benefiting legal professionals but are also enhancing the justice system by making it more inclusive, responsive, and accessible.

## REFERENCES:

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- ii. [https://www.researchgate.net/publication/381926291\\_AI-Driven\\_Justice\\_Evaluating\\_the\\_Impact\\_of\\_Artificial\\_Intelligence\\_on\\_Legal\\_Systems](https://www.researchgate.net/publication/381926291_AI-Driven_Justice_Evaluating_the_Impact_of_Artificial_Intelligence_on_Legal_Systems)
- iii. <https://www.ijrlm.com/post/navigating-corporate-disputes-the-crucial-role-of-alternate-dispute-resolution-adr>
- iv. [www.alliance.edu.in](http://www.alliance.edu.in)
- v. <https://viamediationcentre.org/readnews/MTUy/ADR-in-India-Development-and-Scope>
- vi. <https://compass.rauias.com/polity/alternative-dispute-resolution-mechanism/>
- vii. [www.lawreform.ie](http://www.lawreform.ie)
- viii. [www.icsi.edu](http://www.icsi.edu) (Arbitration & Alternative Dispute Resolution Mechanism) □

<sup>2</sup> <https://www.stewartslaw.com/news/international-chamber-of-commerce-dispute-resolution-statistics>





**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

**Vision**

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

**Motto**

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**Mission**

"To develop high calibre professionals facilitating good corporate governance"

# ICSI Global Footprints

## International Associations

### CGI CORPORATE GOVERNANCE INSTITUTE

ICSI has a Memorandum of Understanding with the Corporate Governance Institute, CGI (formerly known as ICSA), London, for providing reciprocal exemptions to subjects as well as training requirements to members of both organizations. The MoU has been extended to nine divisions of CGI namely Australia, New Zealand, Southern Africa, Zimbabwe, UKRIAT, Canada, Hong Kong/China, Malaysia, and Singapore.

ICSI members can study in the CGI division of their choice, subject to fulfilling residency requirements in some countries, and can later switch their CGI membership within any of the nine (9) divisions.

### CSIA CORPORATE SECRETARIES INTERNATIONAL ASSOCIATION LIMITED

ICSI is a founder member of the Corporate Secretaries International Association Limited (CSIA), an international federation of professional bodies, established in the year 2010 and headquartered in Hong Kong. CSIA represents more than 1,00,000 Corporate Secretaries and Governance Professionals in over 100 countries in the world.

ICSI has been drawing the expertise of its members and making noteworthy contributions, in all the initiatives of CSIA aimed at promoting a culture of Good Governance across the globe.

### CISI CHARTERED INSTITUTE FOR SECURITIES & INVESTMENT

ICSI has a MoU with the Chartered Institute for Securities & Investment (CISI), a leading Professional Body for securities, investment, wealth and financial planning professionals. The purpose of CISI is enhancing public trust and confidence in financial services through learning and knowledge sharing.

The CISI membership at ACIS and MCIS level is offered to ICSI members without any joining fee.

### ICGN INTERNATIONAL CORPORATE GOVERNANCE NETWORK

ICSI is a member of the International Corporate Governance Network (ICGN), a federation that advances the highest standards of corporate governance and investor stewardship worldwide in pursuit of long-term value creation, contributing to sustainable economies, societies, and the environment.



## INTERNATIONAL VALUATION STANDARDS COUNCIL

ICSI became a member of IVSC in October, 2018 marking its entry in the International Valuation landscape.

Headquartered in London, UK, IVSC is a not-for-profit organisation dedicated to establishing and promoting global valuation standards. It has a mission to enhance the quality and credibility of valuation practices worldwide by creating robust International Valuation Standards (IVS) that ensure consistency, transparency, and comparability in valuations, and fosters valuation professionalism through Valuation Professional Organisations (VPOs) across the globe. Presently, the ICSI Registered Valuers Organisation (RVO) is a member of IVSC.



## MALAYSIAN ASSOCIATION OF COMPANY SECRETARIES

Malaysian Association of Company Secretaries (MACS), with its main objectives of promoting, improving, upgrading and advancing the professional status of Company Secretaries in Malaysia has adopted the Secretarial Standards formulated by ICSI for the purpose of benchmarking its own Standards.

The ICSI is the only Institute in the world which has developed Secretarial Standards (SS) to bring about uniformity in the diverse secretarial practices followed across corporate boards. The Government of India under Section 118 (10) of the Companies Act, 2013 has mandated the observance of SS-1 or SS-2 with respect to Board & General Meetings respectively.



## BENCHMARKING OF COMPANY SECRETARYSHIP COURSE

To expand the opportunities for its members and students beyond National Boundaries, ICSI engaged UK ENIC (then known as UK NARIC), UK's National Agency responsible for providing informed advice and guidance on vocational, academic and professional qualifications from over 190 countries worldwide, to conduct an independent benchmarking study for evaluating ICSI's Course with UK and UAE's Educational Qualification.

After a detailed analysis, UK ENIC came up with a comparative recommendation giving ICSI an equivalent recognition of Bachelors and Masters, for its Executive & Professional Programs respectively, in UK & UAE. The details of the same are as follows:

STAGE	UK QUALIFICATION	UAE QUALIFICATION
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## Articles

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## Articles Part - I

**Mediation Act and Rules: Understanding Finer Nuances**

58

CS (Dr.) V. Balachandran, FCS

The enactment of Mediation Act, 2023 is aimed to promote and facilitate mediation in India, introduces several opportunities for professionals, including Company Secretaries to engage in mediation processes. An attempt is made in this article to give an overview of the Mediation Act, 2023 and Mediation Rules, relevant case laws, opportunities for Company Secretaries, and challenges highlighting its judicial recognition, and application in various types of disputes.

**Non Adversarial Settlement of Commercial Disputes: Move towards Judicial Autonomy to Corporates**

64

CS (Prof.) Subrata Kumar Ray, FCS

It is necessary for the corporates to understand and enumerate the issues where corporates do not want to settle disputes and also where they want to settle disputes. With over 5 crore cases pending, it is wiser for the corporates to go for ADR particularly when the law gives you autonomy to get justice with your own initiatives.

**AI & Digitization in Arbitration**

68

CS Raman Narasimhan, FCS,  
CS Parthasarathy, ACS

Innovations bring efficiency, they also introduce risks, including privacy concerns, cybersecurity threats, and ethical challenges, emphasizing the need for robust risk management frameworks. Addressing these concerns will ensure that ADR remains a secure, fair, and effective mechanism for dispute resolution in the digital age. Artificial Intelligence tools have transformed the approach of company secretaries and legal professionals in handling cases referred for Alternate Dispute Resolution.

**Mediation and Arbitration: Securing the Future for Company Secretaries Professionals**

72

CS Soniya Sethi, ACS

Company Secretaries, with their deep understanding of governance, law, and corporate affairs, are ideally positioned to facilitate and manage such disputes. This article discusses how the growing importance of mediation and arbitration is shaping the future of the

company secretary profession in India and highlights notable Indian case studies where these ADR processes have proven successful.

**Transforming Alternate Dispute Resolution: Role of AI and Digitisation in Shaping Future of Conflict Resolution**

78

CS Praveen Kumar, ACS,  
Sakshi Dubey

Through analysis of case studies and current examples, this paper demonstrates both the benefits and challenges of integrating AI into ADR systems. The findings suggest that while AI and digitization offer immense potential, their implementation must be carefully balanced with traditional practices to ensure fairness, security, and inclusivity. The study calls for further research into the integration of emerging technologies, aiming to create an ADR framework that is globally accessible, efficient, and ethically sound.

## Articles Part - II

**Computation of Net Profit under Section 198 of the Companies Act, 2013 for the purposes of Managerial Remuneration and CSR**

83

CS (Dr.) K R Chandratre, FCS,  
CA Pramod Jain

Section 198 of the Companies Act, 2013 provides for computation of net profits of a company for a financial year for the purpose of sections 197 and 135. Section 198 has limited applicability. An amount of net profit calculated in accordance with this section is relevant for the purpose of only two provisions of the Act, namely section 198 and section 135. Section 198 specifies the categories of sums which shall be credited and deducted while computing the net profit for any financial year.

## Research Corner

P-95

**The Mediation Act, 2023: Pioneering a New Paradigm in Dispute Resolution**

96

Ravi Prakash,  
CS Shivam Singhal, ACS,  
Siddhant Sekhri

Mediation offers a more collaborative process, where a neutral mediator facilitates negotiations between parties to reach a mutually acceptable solution. Unlike arbitration, mediation does not impose a binding decision but focuses on preserving relationships and encouraging compromise. However, private mediation has historically lacked structure and legal recognition, discouraging broader participation. Mediation training with focus on procedural and behavioral aspects can cover the process of conducting mediation under the Mediation Act, 2023.



## Legal World

P-113

- **LMJ 12:12:2024** By reason of mere change in the name of the company "Prasad Garments Pvt. Ltd." the erstwhile lessee also cannot be held to have transferred its leasehold interest in favour of the Appellant herein. [SC]
- **LW 87:12:2024** We hold that action of the Appellant to sub-lease to M/s Maa Yashoda Food Grains, without specific permission of the Respondent No. 1 was incorrect and illegal as correctly held by the Adjudicating Authority in the Impugned Order. [NCLAT]
- **LW 88:12:2024** When there are other materials on record to prove the disbursement and default, non-stamping of promissory note is inconsequential and could not be a reason to reject Section 7 application. [NCLAT]
- **LW 89:12:2024** The amount given as share application money did not constitute a financial debt under Section 5(8) of the IBC. [NCLAT]
- **LW 90:12:2024** Considering the overall facts and the allegations made in the matter, the Commission is of the view that the issues agitated before the Commission do not raise any competition concern in terms of the provisions of the Act and the Informants are at liberty to raise such issues before an appropriate forum. [CCI]
- **LW 91:12:2024** The Commission is also of the view that setting tender terms and conditions is largely within the domain of the procurer and generally does not call for any interference within the provisions of the Act. [CCI]
- **LW 92:12:2024** The primary objective in rendering an arbitral award is to resolve disputes through the agreed dispute resolution mechanism as contracted by the parties. Therefore, 'sufficient cause' should be interpreted in the context of facilitating effective dispute resolution. [SC]
- **LW 93:12:2024** Having held that the tower and prefabricated buildings (PFBs) are "goods" and not immovable property and since these goods are used for providing mobile telecommunication services, the inescapable conclusion is that they would also qualify as "inputs" under Rule 2(k) for the purpose of credit benefits under the CENVAT Rules. [SC]
- **LW 94:12:2024** No disciplinary proceeding can be initiated after the delinquent employee or officer retires from service on attaining the age of superannuation or after the extended period of service. [SC]

## From The Government P-123

- Valuation Of Repurchase (Repo) Transactions By Mutual Funds
- Guidelines To Stock Exchanges, Clearing Corporations And Depositories
- Withdrawal Of Master Circular On Issuance Of No Objection Certificate (Noc) For Release Of 1% Of Issue Amount
- Amendment To Para 15 Of Master Circular For Credit Rating Agencies (Cras) Dated May 16, 2024 ("Master Circular")
- Relaxation From Certain Provisions For Units Allotted To An Employee Benefit Trust For The Purpose Of A Unit Based Employee Benefit Scheme, Alignment Of Timelines For Making Distribution By Invits And Format Of Quarterly Report And Compliance Certificate – Infrastructure Investment Trusts (Invits)
- Relaxation From Certain Provisions For Units Allotted To An Employee Benefit Trust For The Purpose Of A Unit Based Employee Benefit Scheme, Alignment Of Timelines For Making Distribution By Reits And Format Of Quarterly Report And Compliance Certificate - Real Estate Investment Trusts (Reits)
- Simplified Registration For Foreign Portfolio Investors (Fpis)
- Trading Supported By Blocked Amount In Secondary Market
- Procedure For Reclassification Of Fpi Investment To Fdi
- Disclosure Of Expenses, Half Yearly Returns, Yield And Risk-O-Meter Of Schemes Of Mutual Funds
- Investments In Overseas Mutual Funds/ Unit Trusts By Indian Mutual Funds
- Operational Framework For Reclassification Of Foreign Portfolio Investment To Foreign Direct Investment (Fdi)
- Reporting Of Foreign Exchange Transactions To Trade Repository
- 'Fully Accessible Route' For Investment By Non-Residents In Government Securities – Inclusion Of Sovereign Green Bonds
- Amendment To The Master Direction - Know Your Customer (Kyc) Direction, 2016

## Other Highlights

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

## Call For ARTICLES

## Call For Articles in CS Journal – January 2025 Issue



### Start-ups and Unicorns : The road to Viksit Bharat

The Indian government's Vision 2047 envisages a Viksit Bharat by the centenary of our Independence with a GDP of USD 30 trillion and a per-capita income of USD 18,000-20,000. A critical element for India to realise its ambitions is creating jobs. However, the capital-intensive model of development is not inherently labour intensive particularly in a post AI economy where robotic process automation is taking root. This is where the role of government's Start-up support programs that aim to spawn a million entrepreneurs in our entrepreneurial ecosystem comes in.

As of June 2024, there were over 1,40,803 Start-ups in India. And the Institute of Company Secretaries of India intends to serve them all. In its attempt to strengthen the compliance and governance scenarios in these enterprises while create more opportunities for the professionals, the ICSI launched the MSME & Start-up Catalyst initiative to create a pool of Company Secretaries who take the baton forward and provide guidance and handholding to such enterprises.

As we celebrate the 4<sup>th</sup> Start-up Day on the 16<sup>th</sup> of January, 2025, we are pleased to inform you that the **January 2025** issue of Chartered Secretary Journal will be devoted to the theme **Start-ups and Unicorns : The road to Viksit Bharat** covering *inter alia* the following aspects:

- ❖ Role & Significance of Start-ups for “Viksit Bharat @2047”
- ❖ Government Schemes fostering Start-up Growth in India
- ❖ Indian Start-ups navigating Global Markets: Success Stories and Strategies
- ❖ Green Start-ups and SDGs : Striving growth with sustainability
- ❖ Venture Capital/ Angel Capital: Trends and changing Landscape for Start-ups
- ❖ Expanding e-Commerce spaces and their Role in fostering new India
- ❖ FinTech Start-ups : Innovation and Growth Catalysts
- ❖ Start-ups in Tier 2 Cities: Opportunities and Challenges
- ❖ Quantum Start-ups and National Quantum Mission
- ❖ From Ideation to Execution: Challenges of Scaling a Start-up in India

**And many more...**

**Members and other readers desirous of contributing articles may send the same latest by Wednesday, December 25, 2024 at [cs.journal@icsi.edu](mailto:cs.journal@icsi.edu) for January 2025 issue of Chartered Secretary Journal.**

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

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

Regards,  
Team ICSI



# Articles in Chartered Secretary Guidelines for Authors

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

1. I, Shri/Ms./Dr./Professor..... declare that I have read and understood the Guidelines for Authors.
2. I affirm that:
  - a. the article titled"....." is my original contribution and no portion of it has been adopted from any other source;
  - b. this article is an exclusive contribution for Chartered Secretary and has not been/nor would be sent elsewhere for publication; and
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3. I undertake that I:
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Signature

# 1

# ARTICLES



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## Articles Part - I

- MEDIATION ACT AND RULES: UNDERSTANDING FINER NUANCES
- NON ADVERSARIAL SETTLEMENT OF COMMERCIAL DISPUTES: MOVE TOWARDS JUDICIAL AUTONOMY TO CORPORATES
- AI & DIGITIZATION IN ARBITRATION
- MEDIATION AND ARBITRATION: SECURING THE FUTURE FOR COMPANY SECRETARIES PROFESSIONALS
- TRANSFORMING ALTERNATE DISPUTE RESOLUTION: ROLE OF AI AND DIGITISATION IN SHAPING FUTURE OF CONFLICT RESOLUTION

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## Articles Part - II

- COMPUTATION OF NET PROFIT UNDER SECTION 198 OF THE COMPANIES ACT, 2013 FOR THE PURPOSES OF MANAGERIAL REMUNERATION AND CSR
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# Mediation Act and Rules: Understanding Finer Nuances

Mediation Act, 2023 is an important piece of legislation that has substantially reformed the mediation landscape by making it a more formal, efficient and harmonious mode to resolve disputes out of court. The Act has amended/incorporated the Indian Contract Act, 1872, the Civil Procedure Code, 1908, the Legal Services Authorities Act, 1987, the Arbitration & Conciliation Act, 1996, the Micro Small and Medium Enterprises Act, 2006, the Companies Act, 2013, the Commercial Courts Act, 2015 and the Consumer Protection Act, 2019 to align it with the mediation framework. The provisions of this Act shall have an overriding effect for conduct of mediation or conciliation irrespective of anything inconsistent contained in any other law for the time being in force and any instrument having force of law.



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## INTRODUCTION

The most notable advancement in legal environment is the enactment of the Mediation Act, 2023, hereinafter referred to as 'The Act' which received presidential assent on September 14, 2023. The Act aims to promote and facilitate mediation, particularly institutional mediation for the resolution of civil and commercial disputes. The Act marks a significant milestone in India's dispute resolution landscape, emphasizing the promotion of mediation as an effective alternative to litigation. The Act aims to promote mediation as a primary dispute resolution mechanism. It aligns with India's policy to reduce the burden on courts and foster a culture of negotiation and dialogue. The Act governs both domestic and international mediation, ensuring a uniform legal framework.

## MEANING OF MEDIATION

It is a form of Alternate Dispute Resolution system to resolve disputes between two or more parties by settlement. It is a structured and interactive process evolved through the negotiation skills and techniques of a mediator. The mediator acts as a neutral party who facilitates the process of mediation and enables the parties to come to an agreement. Through Mediator, it is possible to resolve consumer issues more quickly. If the commission believes that there is a prospect of resolving the issue between the

parties, the case might be referred to the Mediation Cell or either party may submit a formal request to the District, State, or National Commission.

## RATIONALE BEHIND THE ENACTMENT OF THE MEDIATION ACT, 2023 AND ITS RULES

The Act and its accompanying rules were enacted to institutionalize mediation as an effective, structured, and legally recognized dispute resolution mechanism in India. The rationale stems from addressing systemic issues in the traditional litigation framework and fostering a culture of amicable dispute resolution.

**Reducing the Burden on Courts:** Indian courts face a significant backlog of cases, with millions pending at various levels of the judiciary. Mediation provides an alternative, reducing the reliance on conventional litigation and expediting dispute resolution.

**Promoting Access to Justice:** The Act aims to provide cost-effective and time-efficient mechanisms for resolving disputes, making justice more accessible to the general population.

**Encouraging Pre-Litigation Mediation:** Mandating mediation before litigation in certain cases prevents disputes from escalating into prolonged legal battles. It helps in early resolution, saving time, costs, and relationships.

**Uniformity in Mediation Practices:** The need for a comprehensive legal framework previously led to inconsistencies. The Act and Rules provide standardized procedures for domestic and international mediation.

## OBJECTIVES OF MEDIATION ACT, 2023

The Act, aims to transform dispute resolution in India, fostering a culture of negotiation and peaceful settlement while reducing dependence on traditional litigation. The key objectives are briefed below:

1. To establish a legal framework for formalising mediation practices across India.
2. To promote the use of mediation as a cost-effective, time-saving, and amicable dispute resolution process.

3. To provide legal recognition and enforcement to mediated settlement agreements (MSAs).
4. To mandate pre-litigation mediation in certain cases for reducing the burden on courts.
5. To alleviate the overburdened judicial system by resolving disputes outside the courtroom.
6. To encourage parties to attempt resolution through mediation before pursuing litigation.
7. To encourage the establishment of mediation service providers for ensuring professional and standardized mediation services.
8. To encourage dispute resolution without hostility, preserving relationships and goodwill.
9. To establish a Mediation Council of India for regulating and promoting institutional mediation and make mediation accessible to people from all strata of the society.

### IMPORTANCE OF THE MEDIATION ACT, 2023

The Act provides a statutory framework for mediation, which was previously governed by fragmented rules under the Arbitration and Conciliation Act, 1996, and court guidelines. It establishes a uniform and robust legal structure for mediation in India.

It aligns with India's efforts to reduce the pendency of cases in courts. It recognizes mediation as a cost-effective, time-saving, and amicable means of dispute resolution. It encourages parties to resolve disputes without adversarial processes.

It promotes the growth of institutional mediation, which is more structured and efficient compared to ad hoc mediation. It strengthens confidence in mediation as a credible alternative to litigation. The Act, contains 65 sections divided into XI chapters.

### KEY PROVISIONS OF THE MEDIATION ACT, 2023

**Pre-Litigation Mediation:** It mandates mediation before approaching courts in specified disputes, barring urgent matters or criminal cases.

**Appointment of Mediators:** Mediators must meet qualification criteria and can be chosen by parties or appointed by institutions.

**Institutional Mediation:** Mediation institutions are required to register with a regulatory body to ensure quality.

**Confidentiality Clause:** It ensures that information shared during mediation cannot be used as evidence in subsequent proceedings.

*By providing a standardized, enforceable, and efficient alternative to litigation, the Act seeks to transform how disputes are resolved, benefiting individuals, businesses, and the judicial system as a whole.*

**Recognition of Settlement Agreements:** Agreements reached through mediation are enforceable in the same manner as court judgments.

**Establishment of Mediation Council:** The Central Government established a Mediation Council to oversee mediators' conduct and institutional functioning.

### IMPLICATIONS OF THE MEDIATION ACT, 2023

- 1 **Impact on Judiciary:** The Act started reducing the burden on courts by diverting cases to mediation thus improving judicial efficiency. Helps address the issue of case backlog in Indian courts.
- 2 **Boost to Business and Investment:** The Act, encourages foreign investors and businesses by offering a predictable and effective dispute resolution mechanism thereby improving India's ranking in the Ease of Doing Business Index.
- 3 **Empowerment of Dispute Resolution:** Empowers individuals and businesses to resolve disputes amicably, fostering better relationships and encourages the development of a mediation culture in India.
- 4 **Accessibility and Inclusivity:** Makes dispute resolution more accessible, particularly for individuals and small businesses. The Act, provides an alternative for parties who might find court proceedings intimidating or expensive.
- 5 **Institutional Development:** The Act, stimulates establishment and growth of mediation centers and organizations. It enhances the professionalisation of mediation practice in India.

### MEDIATION RULES

#### Key aspects related to Mediation Rules

The Mediation Rules, under the Act, outlines the procedural framework for conducting mediation proceedings in India. These rules ensure consistency, fairness, and efficiency in mediation while promoting the values of confidentiality and impartiality. The Mediation Rules operationalise the Act, providing clarity and consistency in how mediation is conducted. This ensures fairness, build trust in mediation processes, and promotes India as a hub for efficient and amicable dispute resolution. The rules encourage the development and use of institutional mediation centers. Institutions can design their procedural frameworks, provided they align with the Mediation Rules.

1. **Applicability of the Rules:** The rules apply to domestic mediation, international mediation with Indian connections and institutional mediation



conducted under the Act. They govern both pre-litigation mediation and mediation during the pendency of legal proceedings.

2. **Pre-Litigation Mediation:** Certain categories of disputes require mandatory mediation before initiating formal litigation. Parties must make reasonable efforts to resolve disputes amicably. Pre-litigation mediation is to be completed within 90 days, extendable by mutual consent for an additional 60 days.
3. **Appointment of Mediators:** Mediators are chosen from accredited panels maintained by mediation service providers or recognized institutions. Mediators need to meet prescribed qualifications, including training and accreditation.
4. **Impartiality and Disclosure:** Mediators are required to disclose any potential conflicts of interest at the outset.
5. **Process of Mediation:** Participation in mediation is voluntary, except where pre-litigation mediation is mandatory. Parties have autonomy to agree on the mediation process, subject to the rules. Discussions, statements and documents exchanged during mediation cannot be used in subsequent legal proceedings. The mediator facilitates communication between parties but does not impose a solution.
6. **Mediation Settlement Agreement:** A mediated settlement agreement, signed by all parties and the mediator, is enforceable as a decree of a court. Agreements can be challenged on grounds such as fraud, coercion, or illegality. The settlement is binding on parties and cannot be reopened except under limited conditions.
7. **International Mediation:** Rules incorporate provisions consistent with the UNCITRAL Model Law on International Commercial Mediation. Settlement agreements from international mediations are enforceable under the Singapore Convention on Mediation, to which India is a signatory.
8. **Exclusions from Mediation:** Certain types of disputes are excluded from mediation under the rules such as criminal offenses involving moral turpitude, matters concerning public policy or government policies, family disputes (except those involving property) and matters requiring adjudication by a statutory authority.
9. **Confidentiality and Privacy:** All information exchanged during mediation is confidential, except when disclosure is required by law or agreed upon by parties. Mediation proceedings are private with only authorized participants allowed.
10. **Time Frame:** Mediation should be completed within 90 days, extendable by mutual agreement for another 60 days. Expedited timelines for certain categories of cases.
11. **Mediator's Role:** The mediator does not impose decisions but facilitates discussions to help parties reach a consensus. Mediators must adhere to ethical guidelines to ensure fairness and transparency.
12. **Cost of Mediation:** Costs are shared equally by the parties unless otherwise agreed.
13. **Fee Structure:** The mediator's fees are determined based on the nature and complexity of the dispute.
14. **Training and Accreditation:** Rules outline the requirements for training, accreditation and continuous professional development of mediators.
15. **Monitoring and Reporting:** Mediators are required to report the outcome of mediation to the referring court or authority. Institutions and courts maintain records to evaluate the success and efficiency of mediation.

## DECIDED CASE LAWS

The case laws discussed below collectively highlight the evolution of mediation in India, its judicial recognition, and its application in various types of disputes. The principles established in these cases align with and reinforce the objectives and provisions of the Act. As the Act gets implemented, new case laws interpreting its specific provisions will emerge. While specific case laws post-2020 focusing solely on mediation are limited, the judiciary has



consistently endorsed mediation as an effective alternative dispute resolution mechanism. Courts have emphasized the importance of mediation in reducing the backlog of cases and facilitating amicable settlements.

**1. Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Pvt. Ltd. (2010)**

Facts: A dispute arose between two construction companies over contractual obligations. The case was referred to ADR under Section 89 of the CPC.

Issue: Whether Section 89 of the CPC mandates mediation for all types of disputes.

Decision: The Supreme Court clarified that certain disputes (like those involving contracts and consumer issues) are more suited for mediation. The court highlighted the need to encourage ADR mechanisms like mediation to reduce court burdens.

**2. Ruby Sales v. Bharat Petroleum Corporation Ltd. (2010)**

Facts: A contractual dispute arose between Ruby Sales and Bharat Petroleum Corporation Limited, leading to litigation.

Issue: Should mediation be promoted in disputes involving public sector undertakings?

Decision: The court directed the parties to explore mediation and urged public sector entities to adopt ADR mechanisms to resolve disputes efficiently.

**3. B.S. Krishnamurthy v. B.S. Nagaraj (2010)**

Facts: A long-standing family dispute over matrimonial issues particularly divorce matters, property was brought before the court.

Issue: Whether mediation could be an effective alternative to prolonged litigation in family disputes.

Decision: The Supreme Court encouraged the parties to resolve their issues through mediation, emphasizing its potential to preserve relationships and save time.

**4. K. Srinivas Rao v. D.A. Deepa (2013)**

Facts: A husband and wife were embroiled in a bitter divorce involving allegations of cruelty under Section 498A of the IPC.

Issue: Whether mediation could resolve matrimonial disputes and reduce litigation stress.

Decision: The Supreme Court emphasized mediation as an effective tool for resolving matrimonial disputes. It directed courts to encourage mediation in family matters.

**5. Shailesh Dhairyawan v. Mohan Balkrishna Lulla (2016)**

Facts: A dispute arose between family members over property, and they reached a settlement through mediation. One party later challenged the settlement's

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validity.

Issue: Are mediated settlement agreements legally binding and enforceable?

Decision: The Supreme Court held that mediated settlement agreements are enforceable as contracts, reinforcing the validity of mediation as a dispute resolution tool. The Supreme Court ultimately upheld the High Court's decision, affirming that substitute arbitrators can be appointed under Section 15(2) of ACA 1996 unless the arbitration agreement explicitly prohibits such substitution.

**6. Vikram Bakshi v. Connaught Plaza Restaurants Ltd. (2019)**

Facts: A shareholder dispute between Vikram Bakshi and McDonald's India arose, leading to multiple litigations.

Issue: Could mediation resolve high-profile corporate disputes efficiently?

Decision: The court referred the matter to mediation, and the dispute was successfully resolved, showcasing the efficacy of mediation in complex commercial matters.

**7. In a Landmark case *M.R. Krishna Murthi v. New India Assurance Co. Ltd. (2020)*, the Supreme Court highlighted the need for a robust mediation framework to alleviate the burden on courts and promote efficient dispute resolution.**

## FACTS OF THE CASE

The petitioner, M.R. Krishna Murthi, filed a writ petition under Article 32 of the Constitution of India. The petitioner sought a writ of mandamus directing insurance companies to establish a system for grievance redressal and to adopt mediation as an alternative dispute resolution mechanism. The case arose in the context of motor vehicle insurance disputes, where delays in claim settlement caused hardship to policyholders. This case is a landmark in promoting mediation as an essential component of the dispute resolution system in India, particularly in consumer-centric sectors like insurance.

## ISSUES INVOLVED IN THE CASE

There was a lack of an effective grievance redressal mechanism within the insurance industry. Policyholders faced significant delays and costs in resolving disputes through the formal judicial system. The respondents included New India Assurance Co. Ltd. and other insurance companies. The Insurance Regulatory and Development Authority of India (IRDAI) was also a key stakeholder.

The question that arose in the given case was (i) whether insurance companies should establish a system for grievance redressal.

(ii) Whether mediation should be mandated as an



alternative dispute resolution mechanism for motor insurance disputes.

## DECISION OF THE SUPREME COURT

The Supreme Court emphasized the importance of mediation as an alternative dispute resolution mechanism. The Court observed that mediation could significantly reduce the pendency of cases in courts and provide quicker resolution for policyholders. Further, the Court directed the IRDAI to explore the feasibility of institutionalizing mediation for resolving insurance disputes. The Court stressed the need for a robust grievance redressal framework within the insurance industry. It directed IRDAI to evaluate and strengthen existing mechanisms to ensure policyholders' grievances are addressed effectively. The Court encouraged insurance companies and stakeholders to adopt institutional mediation and pre-litigation mediation. It pointed out the need for public awareness campaigns to educate policyholders about alternative dispute resolution options.

**Implications of judgment given in M.R. Krishna Murthi v. New India Assurance Co. Ltd** The judgment was a significant move towards integrating mediation into the dispute resolution process for the insurance sector. It reinforced the need for alternative dispute resolution mechanisms to alleviate the burden on courts.

1. Following the judgment, the IRDAI and insurance companies were prompted to explore frameworks for mediation and grievance redressal.
2. The judgment paved the way for legislative reforms, such as the Mediation Act, 2023, which institutionalized mediation in civil and commercial disputes.
3. For the Judiciary, it helped reduce the backlog of cases by promoting mediation as a viable alternative to litigation.
4. For Policyholders, it provided a roadmap for faster and cost-effective resolution of disputes with insurance companies. It enhanced the accessibility and efficiency of grievance redressal mechanisms.
5. For the Insurance Industry, it provided a way for the adoption of best practices for grievance redressal and dispute resolution.

## OPPORTUNITIES FOR COMPANY SECRETARIES UNDER THE MEDIATION ACT, 2023

The Act, has been enacted to promote and facilitate mediation in India and it has provided for several opportunities for professionals, including Company Secretaries, to engage in mediation processes. The enactment of the Act, underscores the importance of mediation in India's legal framework, creating diverse career paths for legal professionals in this field. The Act, has provided several opportunities to Company Secretaries who play a crucial role in corporate governance and dispute resolution. Some of the key areas of opportunities are as enumerated below:

1. **Accredited Mediators:** CS professionals can obtain certifications to serve as mediators, leveraging their knowledge of corporate and legal frameworks.
2. **Advisory Roles:** Company Secretaries can assist companies in understanding the benefits of mediation and integrating ADR clauses into contracts.
3. **Pre-Litigation Mediation Specialists:** As specialists, CS professionals can facilitate resolve shareholder disputes, contractual disagreements, and compliance issues before litigation.
4. **Drafting and Reviewing Clauses:** CS professionals can assist in drafting and reviewing mediation agreements. Further, they can very well assist in incorporating effective mediation clauses in agreements and contracts. They can advise clients on the mediation process, draft mediation agreements and ensure compliance with the Act.
5. **Capacity Building and Training:** CS Members can organize training programs for corporate clients and employees on mediation practices.
6. **Policy Advocacy:** CS professionals are capable of representing views of industry and corporates in formulating mediation-related regulations and practices.
7. **Compliance with Mediation Agreements:** They have opportunities by ensuring that organizations adhere to mediation outcomes and integrate them into corporate policies.

## CHALLENGES AND WAY FORWARD

1. **Lack of awareness and acceptance:** CS Professionals have to participate in propagating awareness about the benefits of mediation which are crucial for its success. However measures should be undertaken to build trust and confidence in the process among litigants, lawyers, and other stakeholders.
2. **Non- availability of skilled professionals:** There is an imperative necessity to train and develop skilled and accredited mediators to ensure the efficacy and effectiveness of the Act.
3. **Absence of adequate mechanisms:** To monitor the implementation and outcomes of the Act to ensure continuous improvement.
4. **Need for integration of the Act with allied Acts:** Measures are required to ensure smooth integration of the Act, with other laws, such as Arbitration and Conciliation Act, 1996 and other procedural laws.

## CONCLUSION

The Mediation Act, 2023, is a progressive step toward enhancing India's ADR framework and fostering a mediation-centric approach to resolving disputes. Its successful implementation will require cooperation between the judiciary, legal professionals, businesses, and the public. If executed effectively, it could transform India's dispute resolution system, making it more efficient, inclusive, and aligned with global best practices. No doubt, the Act, is a revolutionary development in the realm of alternate dispute resolution as it establishes parameters for practice, elevates confidentiality and ensures enforceability. The Act and Rules were enacted to address the aforesaid challenges and institutionalize mediation as a cornerstone of India's dispute resolution framework. By providing a standardized, enforceable, and efficient alternative to litigation, the Act seeks to transform how disputes are resolved, benefiting individuals, businesses, and the judicial system as a whole.

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# Non Adversarial Settlement of Commercial Disputes: Move towards Judicial Autonomy to Corporates

Disputes are as old as human society. People have rights and liabilities, claims and counter claims and therefore, dispute. In earlier days, there were disputes which were settled by elders of the group, thereafter by the priest, then the ruler and in course of time, judiciary was established. However, the concept of group judgement is traditional and still continues as it is natural for an individual to make error of judgement.



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## INTRODUCTION

Disputes are as old as human society. People have rights and liabilities, claims and counter claims and therefore, dispute. In earlier days, there were disputes which were settled by elders of the group, thereafter by the priest, then the ruler and in course of time, judiciary was established. However, the concept of group judgement is traditional and still continues as it is natural for an individual to make error of judgement. It is necessary for the corporates to understand and enumerate the issues where corporates do not want to settle disputes and also where they want to settle disputes. With over 5 crore cases pending, it is wiser for the corporates to go for ADR particularly when the law gives you autonomy to get justice with your own initiatives.

## WHY COMMERCIAL DISPUTE TAKES PLACE

Based on knowledge, experience and peer interaction of the author, the following grass root reasons emerge for origin of commercial disputes.

- (i) *Improper drafting of commercial and legal documents:* In few cases, the documents are not properly drafted; the commercial acumen, language, legal relevance are missing; this leads to misunderstanding, misinterpretation when some unforeseen event takes place and dispute occurs.

- (ii) *Immediate financial gain:* Sometimes, one party is only interested in sudden financial gain and neglects obligations under the contract.
- (iii) *Inadequate domain knowledge:* Dealing executives do not have adequate knowledge in the domain where the contract is made.
- (iv) *Lack of legal knowledge:* Contract and its execution is made by the dealing officers or lawyers having inadequate legal knowledge. It is worth mentioning here that law is a vast area and in today's world, there is need for lawyers in specialised areas.
- (v) *Due diligence:* Lack of cross due diligence about each party on other, which surfaces later and parties blame each other for suppression of material facts. Such due diligence is absolutely necessary. There are cases, where large companies have been charged of suppression of material facts. Hence evaluating your own capability vis-a-vis the other party is necessary.
- (vi) *Going too fast:* Concluding deals in haste or making target dates without going into details are commercially wrong practices.
- (vii) *CEO to CEO affair:* In many small and mid cap companies, deals are finalised between two CEOs, without much involvement of others. The execution becomes confusing and hence disputes.
- (viii) *Deal not to execute:* Sometimes there exists mala fide intention ab initio (since the beginning). One party makes contract with some other intention and cheats the other party.
- (ix) *Inadequate long term business/ corporate vision :* In case of long term agreement, i.e. joint venture etc. the parties should have long term vision and should be able to anticipate situations which may emerge. Disputes occur when both parties face such situation and blame each other.

## WHY CORPORATES DON'T SOLVE DISPUTES

While conducting further study on the issue, the author listed out, out of his experience and observation of practices in many companies, and reasons for corporates not solving disputes. They are:

- (i) *Intentional*: Party liable avoids/ defers liability coming out of non- performance or otherwise. This is different from a situation when the party has intention to cheat before entering into the deal.
- (ii) *Loss of time*: Few corporates feel that settling disputes and litigation is time consuming, so they let things remain as it is.
- (iii) *Cost factor*: Some corporates feel that settling disputes and litigation is not cost effective; so they do not spend money, which may be a problem for the company.
- (iv) *Business revenue loss*: Attention of the Business will be diverted due to legal issues.
- (v) *Manpower resources*: Efficient people of the organisation are required to be engaged to settle litigation, which at many times is not acceptable by the company.
- (vi) *Not happened in tenure of present CEO*: The CEO lacks emotional and professional commitment to settle the issue.
- (vii) *Casual approach in dispute settlement*: good employees, good lawyers, adequate time etc. are not allocated for the dispute resolution.
- (viii) *Current year's financial figures*: The CEO/CFO may be more concerned about the bottom-line. Settling a dispute may require cash outflow - so let things remain as it is.
- (vi) Smooth sailing for mergers/amalgamation/JVs/IPOs or other kind of business alliances and collaboration.
- (vii) Takeover by new management, may be family business or otherwise, will be seamless as new management can focus on strategic areas.
- (viii) Enhancing the corporate personality, status of the company before the stakeholders; will also give emotional boost, apart from reputation of the company.

## WHAT IS DISPUTE RESOLUTION COST

Dispute can be resolved by resolution or by litigation or by ADR mechanism which have a cost. Hence coming out of dispute without cost is not possible. The cost would include cost of initiating and maintaining disputes with employees, operational creditors, financial creditors, business associates and Govt. However following cost shall not be part of litigation cost, unless directly attributable.

- (i) Consultancy/ opinion from legal experts.
- (ii) Compliance of law directly or through agents/consultants.
- (iii) Appearance fees of lawyers.
- (iv) Govt. revenue/ duty on legal documentation.
- (v) Filing fees to Govt.

However, there are few cost the litigant company has to pay, which may not have been accounted for at face value since

they remain latent.

- (i) *Opportunity cost*: Time and money spent on litigation would have been better utilised.
- (ii) *Reputational loss*: Name of the company appearing frequently at courts affects the reputation of the company.
- (iii) *Time lost by non-legal team*: Commercial Executives involved with the legal team are unable to put time and efforts in their core business.

## FEW SUGGESTIONS TO REDUCE LITIGATION COST

A company cannot continue litigation unless it has robust and regular earning through revenue. However, they cannot discontinue cases also and surrender their rights. Few actions which may be taken by the company to reduce legal cost in the long run are as given under:

- (i) Updating legal knowledge of the commercial executives.
- (ii) Vetting by legal department of documents or transactions which may lead to legal complication.

*With ADR, capturing a larger space in dispute settlement mechanism, parties are not dependent on judiciary, which is already bogged down with huge ending litigations.*

## WHY CORPORATES SETTLE DISPUTES

In spite of the factors listed above, it is seen that there is need for settlement of disputes. People want short dates in court or are going for ADR mechanisms. These are the companies, entities who have learnt with experience and feel that there are multiple benefits in getting the disputes settled. These benefits of reducing litigation disputes are discussed below. It may be that even for a layman, a company having less litigation will always be better placed and preferred than a company entangled with litigations.

- (i) Reducing disputes would enable the company to focus on business integration, diversification and growth.
- (ii) True financial position will emerge as you pay the payables and receive the receivables.
- (iii) Avoid blockage to other projects, if they are stuck up due to litigation.
- (iv) Litigation costs shall reduce in the long run as number of disputes will be lesser, thereby increasing profit, in the long run.
- (v) In the long run, if number of disputes reduce, requirement of manpower resources dedicated to such jobs shall also come down.



- (iii) Explain legal implications to operational executives.
- (iv) Independent Legal Audit.
- (v) Withdraw cases which have no material significance.
- (vi) Go for one-time settlement (OTS).
- (vii) Go for Alternate Dispute Resolution (ADR).

## FORMS OF ADR

The methods of ADR which may be chosen are as follows.

Negotiation	Mutual discussion within the parties to dispute.	Most suitable and popular mechanism worldwide.
Mediation	Mutual discussion in presence of a third person with a very limited involvement.	Not much popular; personality of the mediator is important.
Conciliation	Mutual discussion in presence of a third person with a limited involvement but more involvement than mediator.	Not much popular; personality and domain knowledge of the conciliator is important. Popular mechanism in labour disputes.
Arbitration	Choosing an Arbitrator by each party and acceptable to both.	Gaining popularity in business.

### Legal mandate for ADR

A question may arise between the disputing parties as to whether solving a dispute through ADR process will be

recognised by law. In fact, settlement between the parties do not require any legal force provided that any settlement is not against any law or public policy. However, when a third party is involved and more so when an arbitrator is appointed, it should be clear as to what extent the law agrees, consents or forces the parties to implement such decision arrived at through mediation, conciliation or arbitration.

Mandate for arbitration is specifically mentioned in the following Acts. However, the provisos are not restrictive and entities can go for ADR in any commercial dispute or even other disputes not specifically barred by law for arbitration.

- Section 89** of Civil Procedure Code provides that where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for arbitration, conciliation, judicial settlement including settlement through Lok Adalat; or mediation.
- Section 442** Companies Act, 2013, where parties to the proceedings under Tribunal may apply for reference to mediation/ conciliation to Central Govt. to appoint. CG has so much power to refer.
- Section 12A** of Commercial Courts Act, provides that a suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre institution mediation.
- Section 32(g) (2)** of RERA provides measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations;
- Consumer Protection Act:** *Afcons International vs Varkey Construction* (2010) Hon'ble Supreme Court ruled that consumer dispute can also be mediated
- Section 18 MSME Act:** The section provides that any party to a dispute may, make a reference to the Micro and Small Enterprises Facilitation Council, where the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation. Where the conciliation initiated is not successful and stands terminated



without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution.

## ADVANTAGES OF ADR

1. **Continuity of the role of the Mediator/ Conciliator or Arbitrator**, till disposal of the case. This may not be possible in court as Judges may change or their allocation of cases may change.
2. **Flexibility of date, time and venue**: Here parties can fix. However, the arbitrator can overrule. Normally, arbitrator fixes time with the consent of disputing parties. This is absolutely not possible in case of court.
3. **Freedom in procedure** is available in case of ADR, including arbitration proceedings. Parties may agree for recording, camera etc. or otherwise.
4. **Procedures are informal**: No technicalities of court procedure is required. CPC do not apply.
5. In ADR, parties may and normally select a person who has domain knowledge. In case of panel, there can be at least one arbitrator who has domain knowledge. This may not be there in case of court involvement of expert/ domain specific person.
6. **ADR proceeding will take lesser time** than courts as parties can fix dates at short duration for hearing. Besides the convenience of time, as mentioned above will be available. This is not possible in case of judiciary.
7. ADR is a process of settlement with the consent of both the litigant parties. It means that prima facie, the parties intent to settle and are ready to compromise or sacrifice to some extent, if not to a greater extent.

## JUDICIAL AUTONOMY

Judicial autonomy is the independence of any discretionary authority to decide the substance effects and outcome of some dispute referred to such forum by the parties or through the process of law or practice. Independence of judiciary is such autonomy. In case of ADR, the parties have autonomy to decide the facilitator, i.e. mediator or conciliator, appoint arbitrator, who will act a private judge. The parties will also decide on procedures, method of recording, venue etc. Through ADR mechanism, almost full autonomy is given to parties, subject to, of course, court intervention in few situations. Corporate houses should take this as advantage and go forward to settle disputes through this mechanism.

## ROLE OF COMPANY SECRETARIES

A CS is involved in a company as professional in three roles:

1. As full time CS- KMP:
2. As practicing CS, serving as per terms of engagement:
3. As consultant on corporate and allied laws:

As per opinion of the author, the roles to be played by CS in ADR can be as follows.

1. *As full time CS- KMP*: CS happens to be a corporate a manager to overlook the corporate affairs, governance and business responsibility. He also happens to be the compliance officer. Being a professional to look after compliances, it is his duty to reduce disputes, solve disputes in time and reduce/ avoid litigation. He has to keep in place adequate compliance system and convince the management to do things in most legal manner. The decisions of the company should be commercially acceptable, in the first place.
2. *As practicing CS, serving as per terms of engagement*: While role of CS in practice is limited to his engagement with the client company. However, his ethical and professional duty requires that he should report any non compliances in any area which he observes while certification or audit. He should advice the client not to do something which would lead to legal non compliance risk and also to safeguard itself from any business deal. If agreed, he can act as arbitrator as well or represent the client in arbitration.
3. *As consultant on corporate and allied law*: A consultant plays the role of an advisor and his role depends on engagement. However, there is no bar for him to suggest ways to reduce and settle disputes in the best possible way.

## CONCLUSION

High performing companies are those who have less disputes and are eager and serious about settlement of disputes. With ADR, capturing a larger space in dispute settlement mechanism, parties are not dependent on judiciary, which is already facing pendency of cases. The Govt. as well as the Judiciary is promoting ADR. Enactment of Mediation Act, 2023 is a testimony to this effect. Few recent Supreme Court notices have, at the end solicited, going for ADR.

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- RERA (section 32).*
- Website: National Judicial Data Grid.*

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# AI & Digitization in Arbitration

The rapid advancement of Artificial Intelligence (AI) and digital technologies are transforming Alternative Dispute Resolution (ADR) processes, making them faster, more cost-effective, and accessible globally. Tools like AI-powered analytics, virtual hearings and digitized case management are helping ADR systems adapt to the demands of a digitally connected world.



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## INTRODUCTION

The rapid advancement of artificial intelligence (AI) and digital technologies are transforming Alternative Dispute Resolution (ADR) processes, making them faster, more cost-effective, and accessible globally. Tools like AI-powered analytics, virtual hearings, and digitized case management are helping ADR systems adapt to the demands of a digitally connected world. While these innovations bring efficiency, they also introduce risks, including privacy concerns, cybersecurity threats, and ethical challenges, emphasizing the need for robust risk management frameworks. Addressing these concerns will ensure that ADR remains a secure, fair, and effective mechanism for dispute resolution in the digital age.

## TECHNOLOGICAL ADVANCEMENTS IN ADR

Technological advancements have redefined ADR procedures, especially in case management and hearings:

- **Digital Case Management Systems:** Advanced platforms help to organize case documents, deadlines, and updates, enabling seamless coordination among parties and arbitrators.
- **Virtual Hearings:** Popularized during the COVID-19 pandemic, they ensure continuity despite geographical barriers, significantly reducing costs and delays.
- **Cloud-Based Solutions:** Secure cloud platforms centralize document storage, offering encryption and role-based access to ensure data confidentiality and integrity.
- **Cybersecurity Measures:** As ADR processes migrate online, robust encryption protocols and secure communication channels are essential to counter cyber risks and protect sensitive information.

While these tools increase efficiency, they also require rigorous safeguards against data breaches, unauthorized access, and system vulnerabilities.

## APPLICATIONS OF AI IN ADR

AI is transforming how disputes are managed and resolved by offering innovative solutions at various stages:

- **Predictive Analytics:** AI systems analyze precedents to forecast potential outcomes, assisting legal teams in strategy formulation and assessing case merits.
- **Document Review and Language Processing:** AI-powered tools like **Kira Systems** and **Ross Intelligence** expedite evidence review by identifying relevant documents, extracting critical information, and analyzing linguistic patterns for inconsistencies or bias.
- **Real-Time Support in Virtual Hearings:** AI provides live transcription, translation, and data interpretation, helping participants focus on substantive discussions rather than logistical challenges.

Despite these benefits, reliance on AI introduces risks, such as algorithmic bias, where historical data or poorly designed models perpetuate inaccuracies or inequities.

## BENEFITS OF DIGITIZATION IN ADR

The integration of digitization offers several significant advantages:

1. **Efficiency and Accessibility:** Virtual hearings and digitized processes make ADR accessible to geographically dispersed parties, reducing logistical and financial burdens.

2. **Speed:** AI tools streamline evidence review and automate routine tasks, accelerating dispute resolution timelines.
3. **Cost Savings:** Reductions in travel, physical documentation, and procedural delays lead to overall cost efficiency.
4. **Fairness:** AI's data-driven analyses can provide impartial insights, reducing human bias in decision-making.
5. **Environmental Impact:** Paperless operations and virtual hearings contribute to sustainability goals by minimizing resource consumption.

## RISKS AND CHALLENGES OF AI AND DIGITIZATION IN ADR

While technology enhances ADR, it also introduces significant challenges:

### Privacy and Information Security

- ADR involves sensitive data, and its digitization exposes it to risks like hacking, unauthorized access, and data breaches.
- Robust information security frameworks, including encryption, regular audits, and secure data transfer protocols, are essential to safeguard privacy.

### Cyber Risks

- Increased reliance on online platforms and virtual hearings makes ADR vulnerable to cyberattacks, ransomware, and phishing.
- ADR institutions must adopt risk management strategies, such as multi-factor authentication, firewalls, and incident response plans, to mitigate these threats.

### Algorithmic Bias in AI

- AI systems rely on historical data for training, which may embed existing biases into their predictions, impacting fairness. For example, biases in contract interpretation or precedent analysis could disadvantage certain parties.
- Transparent AI development and regular audits of algorithms are necessary to address these risks.

### Over-Reliance on Technology

- Dependence on AI and automation could undermine human judgment, which remains critical for understanding nuances, cultural sensitivities, and context-specific details in disputes.
- Hybrid models that combine AI assistance with human oversight are crucial to maintaining the integrity of ADR outcomes.

## GLOBAL EXAMPLES OF AI IN ADR

### Singapore

The **Singapore International Arbitration Centre (SIAC)** employs AI-driven tools for document analysis, case management, and procedural efficiency. SIAC is also a leader in adopting blockchain for secure record-keeping.

### United States

Platforms like Ross Intelligence and Kira Systems have significantly transformed the legal landscape, particularly in arbitration and mediation, by leveraging the power of artificial intelligence to enhance legal research, document review, and case preparation. These tools utilize machine learning algorithms to analyze vast volumes of legal texts, identify relevant precedents, extract critical clauses, and suggest potential arguments. This has made it possible for legal teams to prepare for arbitration and mediation with unprecedented speed and accuracy, particularly in complex commercial disputes involving intricate contracts or voluminous evidence.

Ross Intelligence, for instance, uses advanced natural language processing (NLP) to answer legal queries by providing precise and contextual insights from case law, legislation, and other legal materials. This capability enables lawyers and arbitrators to focus on substantive matters without being bogged down by hours of manual research. Similarly, Kira Systems specializes in contract analysis, allowing legal professionals to review, organize, and identify key terms in contracts more efficiently. This is particularly beneficial in commercial disputes where a thorough understanding of contractual obligations is crucial to building effective arguments or achieving settlements.

*By blending technological innovation with human expertise and global cooperation, ADR is poised to become the gold standard for dispute resolution in an increasingly digital and interconnected world.*

In addition to private-sector innovations, organizations such as the American Bar Association (ABA) have undertaken initiatives to integrate technology into legal practice, including in the field of Alternative Dispute Resolution (ADR). The ABA's Center for Innovation promotes the adoption of AI and digital tools to enhance access to justice and improve the efficiency of dispute resolution processes. The ABA has also advocated for the use of e-discovery tools and virtual platforms in arbitration and mediation, recognizing their potential to reduce costs and improve the speed of proceedings. Furthermore, the ABA's ongoing efforts to develop ethical guidelines for AI usage in legal practice help address concerns about transparency, bias, and accountability in AI-driven decision-making.

In the ADR domain, such tools are also enabling parties to resolve disputes remotely through virtual arbitration platforms that integrate features like real-time transcription, automated document analysis, and predictive analytics. For example, AI-powered predictive analytics tools can help parties to estimate the potential





outcome of arbitration or mediation by analyzing historical data and providing statistical insights. These tools not only improve the efficiency of dispute resolution but also help parties to make more informed decisions about settlement offers or arbitration strategies.

As technology continues to evolve, platforms like Ross Intelligence, Kira Systems, and other AI-driven tools are expected to play an even greater role in shaping the future of ADR. By automating routine tasks, enhancing analytical capabilities, and improving accessibility to legal resources, these innovations are helping to redefine the boundaries of efficiency and effectiveness in arbitration and mediation, particularly in cross-border commercial disputes.

### Hong Kong

Hong Kong's ADR institutions leverage virtual platforms and AI to streamline cross-border disputes, especially in commercial arbitration. These efforts enhance Hong Kong's standing as a global ADR hub.

### India

India's E-Courts Project has modernized arbitration-related processes, integrating digital filing and virtual hearings into its judicial framework. Emerging ADR centers like the Mumbai Centre for International Arbitration (MCIA) are incorporating AI for efficiency.

### United Arab Emirates (UAE)

The Dubai International Arbitration Centre (DIAC) and other UAE institutions utilize AI-powered tools for case management and analytics, reflecting the UAE's focus on becoming a global ADR leader.

## THE FUTURE OF AI AND DIGITIZATION IN ADR

The future of AI and digitization in ADR holds immense potential to reshape the landscape of dispute resolution, bringing increased efficiency, accessibility, and transparency. Emerging technologies like blockchain and Natural Language Processing (NLP) are at the forefront of this transformation.

**Blockchain in ADR:** Blockchain technology is particularly promising for enhancing trust and integrity in ADR processes. It enables the creation of secure, immutable records of arbitration agreements, procedural steps, and arbitral awards, ensuring that parties cannot tamper with or dispute the authenticity of these records. Smart contracts, powered by blockchain, could automate aspects of ADR processes, such as triggering actions based on predefined conditions, reducing delays, and improving compliance with agreements. This is especially beneficial in cross-border disputes where ensuring trust and transparency is critical.

**Natural Language Processing (NLP):** NLP tools are advancing rapidly, enabling arbitrators and mediators to process and analyze complex legal arguments and vast quantities of data more efficiently. NLP can assist in extracting key information from legal documents, identifying inconsistencies in evidence, and even predicting outcomes based on precedent. This capability is especially useful in disputes involving multilingual parties or complex contracts, as it allows for accurate translations and semantic analysis of legal texts, thereby enhancing clarity and precision in decision-making.

**AI for Predictive Analytics and Decision Support:** Beyond NLP, AI-driven predictive analytics will help

parties and arbitrators assess potential outcomes by analyzing historical data and patterns. Decision support systems powered by AI could provide arbitrators with recommendations based on case law, post arbitral awards, and legal standards, improving the consistency and reliability of decisions while leaving final judgments to human expertise.

**Virtual Hearings and Online ADR Platforms:** The COVID-19 pandemic accelerated the adoption of virtual hearings and online ADR platforms, and these tools are now becoming the norm in many jurisdictions. Advanced platforms equipped with integrated AI tools, real-time transcription, and language translation capabilities are making arbitration and mediation more accessible, especially for international parties. These platforms also reduce logistical challenges, travel costs, and carbon footprints, aligning with sustainability goals.

**Global Standardization of Digital ADR:** As ADR becomes increasingly digitized, the need for global standards in e-ADR will grow. Organizations such as UNCITRAL and leading ADR institutions are expected to develop frameworks that ensure consistency, interoperability, and security across digital platforms. Standardization will address issues such as data privacy, cybersecurity, and enforceability of decisions rendered via digital platforms, helping build trust in technology-driven ADR processes.

**Risk Management and Cybersecurity:** The integration of advanced technologies in ADR will require robust risk management frameworks to address ethical concerns and mitigate cyber risks. Institutions will need to implement stringent data protection measures to safeguard sensitive information shared during proceedings. AI algorithms must be designed to minimize bias and ensure fairness, as over-reliance on automated systems could raise concerns about the transparency of decision-making processes.

**Hybrid Models of ADR:** The future will likely see the widespread adoption of hybrid ADR models that combine technological tools with human expertise. For instance, “AI-assisted mediation” could use algorithms to generate initial settlement proposals, which mediators then refine based on the parties’ inputs. Similarly, “tech-enabled arbitration” may involve AI-driven procedural management while reserving substantive decision-making for arbitrators. These models aim to balance the efficiency of technology with the nuance and context sensitivity that only humans can provide.

**Environmental Impact and Sustainability:** Digital ADR aligns with global sustainability goals by promoting paperless proceedings, virtual hearings, and reduced travel requirements. Institutions may adopt green ADR protocols, encouraging the use of environmentally friendly technologies and processes. Blockchain’s energy efficiency and sustainable AI practices will also be key considerations as these technologies become integral to ADR.

**Industry-Specific Applications:** As technology evolves, ADR processes will become increasingly tailored to

specific industries. For instance, blockchain and smart contracts are particularly suited for resolving disputes in the supply chain and logistics sectors, while AI-driven tools can be highly effective in resolving intellectual property disputes or addressing privacy and data breaches in the tech sector. Industry-specific tools and standards will enable faster and more accurate dispute resolution, enhancing ADR’s appeal.

In summary, AI and digitization are set to revolutionize ADR by making it faster, more accessible, and better suited to the complexities of modern disputes. However, their integration must be accompanied by robust ethical, regulatory, and risk management frameworks to ensure that efficiency gains do not compromise fairness, transparency, or security. By blending technological innovation with human expertise and global cooperation, ADR is poised to become the gold standard for dispute resolution in an increasingly digital and interconnected world.

## CONCLUSION

The integration of AI and digitization in ADR marks a transformative shift, enhancing efficiency, accessibility, and fairness in dispute resolution. However, these advancements come with risks, including algorithmic bias, privacy concerns, and cybersecurity threats. Addressing these challenges through robust risk management, ethical AI development, and secure digital frameworks will ensure that ADR continues to adapt responsibly in an ever-evolving technological landscape. Striking a balance between human expertise and technological innovation will be critical to maximizing the potential of ADR while safeguarding its integrity.

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# Mediation and Arbitration: Securing the Future for Company Secretaries Professionals

In today's rapidly evolving corporate landscape, Company Secretaries (CS) are increasingly called upon to perform roles that go beyond governance and compliance. As business environments become more complex, the need for effective and efficient dispute resolution mechanisms have gained prominence. Mediation and arbitration, two key methods of alternative dispute resolution (ADR), have emerged as valuable tools for resolving disputes in a timely and cost-effective manner. These processes not only help companies to avoid the protracted and expensive nature of litigation but also provide an opportunity to preserve business relationships and maintain confidentiality.



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## MEDIATION AND ARBITRATION: DEFINITIONS AND OVERVIEW

### 1. Mediation:

Mediation is a voluntary, non-binding process in which an impartial third party (the mediator) assists the disputing parties in reaching a mutually agreed-upon resolution. The mediator does not have the authority to impose a decision; instead, they facilitate negotiations and help the parties find common ground.

#### Key Features:

- **Voluntary and non-binding:** The parties are not obligated to accept the mediator's suggestions.
- **Confidential:** Any statements or offers made during mediation cannot be used in future litigation or arbitration.
- Focuses on mutually agreeable solutions to resolve underlying issues, rather than on legal positions.

### 2. Arbitration:

Arbitration is a formal, binding process in which an impartial third party (the arbitrator) is appointed to hear the dispute and deliver a decision (the award). Arbitration is often seen as an alternative to litigation, as it is usually quicker and less formal than court procedures, but the decision is legally binding and enforceable.

#### Key Features:

- **Binding decision:** The arbitrator's award is legally enforceable and has the same power as a court judgment.
- More efficient and cost-effective than lengthy court procedures.
- **Confidential:** The proceedings and the award are private, protecting the parties' reputation.

## THE LEGAL FRAMEWORK: WHY DID THESE ACTS COME INTO FORCE?

The Arbitration and Conciliation Act, 1996 and the Indian Mediation Act, 2023 have been instrumental in transforming the landscape of dispute resolution in India. These Acts were introduced to provide a modern framework for ADR, encouraging businesses to settle disputes quickly and efficiently without the burden of formal court proceedings.

### 1. Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 was enacted with the aim of promoting arbitration as an alternative to the traditional litigation system. Several factors contributed to the introduction of this Act:

- **Globalization and Economic Growth:** As Indian businesses expanded globally, the need for efficient and neutral dispute resolution mechanisms became evident. Arbitration was seen as the most viable solution for resolving cross-border disputes, especially those in commercial contracts.
- **Delays in Litigation:** The Indian judicial system, with its backlog of cases and slow process, led to delays in the resolution of commercial disputes. The Act provided an expedited process for resolving disputes.
- **International Best Practices:** The UNCITRAL Model Law on International Commercial Arbitration served as a model for India's Arbitration and Conciliation Act, 1996. The Act sought to align Indian arbitration laws with international standards to make India an attractive destination for international arbitration.



- **Reducing Court Overload:** By promoting ADR, the Act sought to reduce the burden on courts, allowing them to focus on more serious cases.

## 2. Indian Mediation Act, 2023

The Indian Mediation Act, 2023, marks a significant step towards institutionalizing mediation in India. The key motivations behind its enactment include:

- **Growing Need for Alternative Dispute Resolution:** The government recognized the growing need for ADR mechanisms like mediation, especially in the context of the commercial disputes, family disputes and consumer disputes that are increasingly handled outside of courts.
- **Efficient Case Management:** The Act was designed to address the backlog in courts by encouraging businesses and individuals to opt for mediation as a first step in dispute resolution.
- **Global Trends:** International organizations, including the United Nations and the European Union, have long supported mediation as a means of resolving conflicts. India sought to align itself with global ADR trends by introducing a formal framework for mediation.
- **Fostering a Mediation Culture:** By establishing a comprehensive legal framework, the Act aims to create a culture of mediation in India, encouraging disputing parties to resolve matters amicably without resorting to litigation.

*Company Secretaries who are adept in ADR will be better positioned to guide their organizations through disputes—whether internal or external—thereby enhancing their strategic role within the company.*

to India's Arbitration and Conciliation Act, 1996. The UK is a popular jurisdiction for international arbitration due to its robust and business-friendly arbitration laws.

## 3. Singapore:

Singapore is a leading hub for arbitration, thanks to its Arbitration Act and the Singapore Mediation Centre. The country has developed a strong reputation for arbitration, particularly in commercial disputes, due to its impartial legal system and modern infrastructure.

## 4. Australia:

Australia's Arbitration Act 1974 provides a framework for the enforcement of arbitration awards and ensures that arbitration is an effective method for resolving commercial disputes. In addition, mediation has become widely accepted in Australia as an ADR method.

## 5. United Nations:

The UNCITRAL Model Law on International Commercial Arbitration has been adopted by over 80 countries around the world. This model law provides a consistent framework for resolving international commercial disputes, ensuring that arbitration remains an effective tool for global trade.

## THE ROLE OF COMPANY SECRETARIES IN ADR: MEDIATION AND ARBITRATION

Company Secretaries play a crucial role in corporate governance, compliance, and risk management. Their increasing involvement in dispute resolution through mediation and arbitration is a natural extension of their responsibilities. Here are the key areas where company secretaries can contribute:

### 1. Advising on Dispute Resolution

Company Secretaries are often called upon to advise the Board and senior management on dispute resolution mechanisms. Whether a conflict arises with employees, suppliers, shareholders, or regulators, they can recommend mediation or arbitration as cost-effective and efficient alternatives to litigation.

### 2. Risk Mitigation and Corporate Governance

Mediation and arbitration offer a means of managing risks related to disputes, preserving corporate governance, and avoiding reputational damage. The involvement of Company Secretaries ensures that disputes are resolved in line with legal and regulatory requirements, which is crucial for maintaining the company's reputation and integrity.

## IS A SIMILAR ACT AVAILABLE IN OTHER COUNTRIES?

Many countries have adopted laws similar to India's Arbitration and Conciliation Act, 1996 and Indian Mediation Act, 2023 driven by the desire to improve dispute resolution efficiency, reduce court congestion, and attract international business.

### 1. United States:

The Federal Arbitration Act (FAA) was enacted in 1925 to enforce arbitration agreements and provide a framework for resolving disputes outside of court. The FAA has been pivotal in promoting arbitration in the U.S. and continues to be a cornerstone of alternative dispute resolution.

### 2. United Kingdom:

The Arbitration Act, 1996 (UK) provides a framework for both domestic and international arbitration, modeled on the UNCITRAL Model Law, similar

### 3. Ensuring Confidentiality

Disputes, especially those involving sensitive business information, can damage a company's reputation if exposed publicly. Mediation and arbitration allow for confidential proceedings, which Company Secretaries can manage to ensure that the company's interests are safeguarded.

### 4. International Dispute Resolution

For companies engaged in global operations, cross-border disputes are inevitable. Mediation and arbitration are particularly valuable in resolving international conflicts, as they offer a neutral, private platform that avoids the complexities of litigation in foreign jurisdictions. Company Secretaries must be familiar with international ADR frameworks, ensuring smooth dispute resolution for the company.

## WHY COMPANY SECRETARIES MUST EMBRACE ADR?

The role of Company Secretaries is evolving, and embracing ADR methods like mediation and arbitration will enhance their value to organizations. Here are several reasons why Company Secretaries must master ADR:

#### 1. Cost and Time Efficiency

ADR processes like mediation and arbitration offer faster and cheaper alternatives to litigation, reducing the legal costs and business disruption associated with traditional court battles. Company Secretaries can help organizations to save time and money by recommending and managing these alternatives effectively.

#### 2. Enhancing Professional Competence

Knowledge of ADR enhances the skillset of Company Secretaries, making them indispensable to Boards of Directors and senior management teams. These professionals can play a critical role in dispute prevention, resolution, and governance, contributing to the overall success of the organization.

#### 3. Preserving Corporate Reputation

Corporate reputation is increasingly under scrutiny and disputes in the public eye can tarnish a company's image. By leveraging ADR methods, Company Secretaries help ensure that disputes remain confidential and are resolved amicably thereby preserving the company's reputation.

#### 4. Compliance with Legal Frameworks

India's legal frameworks, such as the Arbitration and Conciliation Act, 1996, and the Indian Mediation Act, 2023, emphasize the importance of ADR. Company Secretaries must be familiar with these laws to ensure the organization remains compliant and makes the best use of ADR to resolve disputes.

## NOTABLE INDIAN CASE STUDIES ON MEDIATION AND ARBITRATION

India has seen several significant cases where arbitration and mediation have been instrumental in resolving corporate disputes. Here are some prominent examples:

#### 1. The BCCI v. Lodha Committee (2016-2018)

The dispute between the Board of Control for Cricket in India (BCCI) and the Lodha Committee (which was appointed by the Supreme Court to reform the governance of cricket in India) eventually led to an arbitration process. Although the matter involved the governance of a national sports body, it also highlighted the importance of arbitration in resolving complex governance and compliance disputes. The Supreme Court of India emphasized the use of arbitration and conciliation as tools for resolving such conflicts, offering a lesson for corporate entities dealing with internal governance challenges. **Outcome:** The arbitration proceedings led to the implementation of a new governance structure for BCCI, demonstrating the effectiveness of arbitration in resolving issues that could not be addressed by litigation.

#### 2. Reliance Industries Limited v. RNRL (2010)

This case involved a dispute between Reliance Industries and Reliance Natural Resources Limited (RNRL) regarding the supply of natural gas. The dispute was initially settled through mediation under the supervision of the Bombay High Court, but it was later taken to arbitration. The matter focused on interpreting a gas supply agreement and its enforcement, which had significant implications for both parties' commercial operations. **Outcome:** The arbitration award was in favor of Reliance Industries, and the case is an example of how arbitration can resolve high-stakes commercial disputes, ensuring that both parties respect the terms of the contract while avoiding lengthy litigation.

#### 3. ONGC v. Saw Pipes (2003)

This landmark case, decided by the Supreme Court of India, involved a contractual dispute between Oil and Natural Gas Corporation (ONGC) and Saw Pipes Ltd regarding the supply of goods. Although the case primarily focused on arbitration, it underscored the importance of adhering to the principles of arbitration, particularly in enforcing arbitration awards. **Outcome:** The Supreme Court upheld the arbitral award, emphasizing the finality of arbitration decisions in India and reinforcing arbitration as a vital dispute resolution tool in commercial contracts.

#### 4. The Vodafone India v. The Union of India (2014)

This case involved a dispute over the tax liability of Vodafone India, which was challenged by the Indian government. The matter was eventually referred



to arbitration in a bid to resolve the issue without escalating to a full legal battle. The arbitration panel in this case provided a platform for both parties to resolve the dispute in a neutral and efficient manner. **Outcome:** The case highlighted the use of arbitration for resolving cross-border tax disputes, ensuring that businesses are able to resolve contentious issues with the government effectively.

## HOW ARBITRATION AND MEDIATION WORK?

Arbitration and mediation, while both alternative dispute resolution (ADR) mechanisms, follow distinct processes. However, both methods aim to provide efficient, confidential, and cost-effective means of resolving disputes without resorting to traditional court proceedings. Understanding how these processes work is crucial for Company Secretaries (CS) as they guide their organizations through the resolution of conflicts, whether domestic or international.

### 1. Arbitration:

Arbitration is a more formal process than mediation, where an impartial third-party arbitrator makes a binding decision after hearing both parties' arguments.

#### Step 1: Agreement to Arbitrate

The first step in the arbitration process is for the parties to agree to resolve the dispute through arbitration. This may happen either:

- **Before the dispute arises:** Often through an arbitration clause included in a contract, stating that any future disputes will be settled by arbitration.
- **After a dispute arises:** The parties may mutually agree to submit the dispute to arbitration after the conflict occurs, either voluntarily or following an existing contract stipulation.

**Example of Arbitration Clause in Contract:** *"Any dispute, controversy, or claim arising out of or relating to this contract shall be resolved by arbitration under the rules of the Arbitration and Conciliation Act, 1996."*

#### Step 2: Selection of Arbitrator(s)

Once both parties agree to arbitration, they need to select an arbitrator or a panel of arbitrators (typically one to three). The selection can be:

- **By mutual agreement:** The parties choose an arbitrator they trust.
- **From a pre-established list:** If the parties have agreed upon a list of acceptable arbitrators, they will select from that list.
- **By an arbitration institution:** If the parties are unable to agree, a professional body or institution (like the Indian Council of Arbitration or the London Court of International Arbitration) can appoint the arbitrator.

The arbitrator must be impartial, unbiased, and independent.

#### Step 3: Terms of Reference (ToR) and Preliminary Hearing

A preliminary hearing is conducted to establish the terms of reference (ToR) for the arbitration proceedings. This includes:

- Identifying the issues in dispute.
- Agreeing on the rules and procedure for arbitration (e.g., language, timeline, etc.).
- Setting the arbitration schedule.
- Deciding on any interim measures (e.g., injunctions).



This hearing helps in ensure that both parties understand the arbitration process and the scope of the issues to be resolved.

#### Step 4: Submission of Statements and Evidence

Both parties submit their statements of claim and defense, which may include the following:

- **Claimant's Statement:** A detailed written document outlining the dispute, the claims and the relief sought.
- **Respondent's Statement:** The defense, objections and counterclaims.
- **Documentary Evidence:** Each side presents evidence supporting its claims, such as contracts, emails, invoices, etc.

The **arbitrator(s)** will then review all the documents submitted by both parties.

#### Step 5: Arbitration Hearing

The arbitrator(s) will conduct one or more hearings to allow the parties to present their case in person. This involves:

- **Oral Arguments:** Both sides present their case, and the arbitrator(s) can ask questions.
- **Examination of Witnesses:** Both parties may call witnesses to testify in support of their claims.
- **Cross-examination:** The opposing party may cross-examine the witnesses.

The hearing may be conducted in person or virtually, depending on the agreement between the parties and the arbitrator.

#### Step 6: Arbitration Award

After hearing all the evidence and arguments, the arbitrator(s) will issue a final decision called the arbitral award. This decision is binding, and the parties are required to comply with it. The award is usually made in writing and includes:

- A detailed explanation of the decision.
- The reasons for the award.
- The relief granted (e.g., financial compensation, performance of a specific action, etc.).

#### Step 7: Enforcement of the Award

Once the award is issued, the next step is the enforcement of the award. If either party fails to comply with the award voluntarily, the prevailing party may apply to the courts for enforcement. Arbitration awards are typically recognized and enforceable internationally under treaties such as the New York Convention.

#### Step 8: Appeal

In general, arbitration awards are final and binding. However, limited grounds exist for challenging or appealing an award, such as:

- Lack of jurisdiction.
- Fraud or corruption in the arbitration process.
- Violation of public policy.

In India, the **Arbitration and Conciliation Act, 1996** allows a party to challenge an award in court under Section 34, but the grounds for appeal are narrow.

## 2. Mediation:

Mediation, by contrast, is a more informal and flexible process where a neutral third party (the mediator) facilitates communication between disputing parties to help them reach a voluntary, mutually acceptable agreement. Here is a typical SOP for mediation:

#### Step 1: Agreement to Mediate

Just like arbitration, mediation begins when the parties agree to attempt resolving their dispute through mediation. This can occur either:

- **Before the dispute:** Via a mediation clause in a contract, where the parties agree to mediate in the event of a conflict.
- **After the dispute arises:** The parties may voluntarily choose to mediate.

**Example of Mediation Clause in Contract:** *"In the event of any dispute, the parties agree to attempt to resolve the matter through mediation before pursuing other legal remedies."*

#### Step 2: Selection of Mediator

The parties jointly select a mediator. The mediator must be impartial and neutral, without any personal or financial interest in the outcome of the dispute. Typically, the mediator is a professional with expertise in the subject matter of the dispute.

If the parties cannot agree on a mediator, a mediation institution (such as the **Indian Mediation Centre**) may appoint one.

#### Step 3: Opening Session

The mediator typically begins by explaining the mediation process to the parties, establishing ground rules for communication, and encouraging a cooperative approach. This session usually includes:

- A brief introduction by the mediator.
- An explanation of the mediator's role (to facilitate negotiation, not to make decisions).

- An overview of the ground rules for the session (e.g., confidentiality, respectful communication).
- Allowing both parties to express their views on the dispute.

#### Step 4: Issue Identification

In this phase, the mediator helps the parties in identify the key issues in dispute. The mediator works to clarify the concerns of both sides, ensuring that each party understands the other's position and motivations. This process of **active listening** helps in reducing misunderstandings and encourages cooperation.

#### Step 5: Joint Discussion

The mediator encourages the parties to engage in joint discussions. The parties are encouraged to share their concerns, goals and expectations with the mediator helping to guide the conversation in a constructive direction.

During this stage, the mediator may suggest possible solutions, but it is up to the parties to agree on a resolution.

#### Step 6: Private Sessions (Caucus)

If necessary, the mediator may meet with each party individually in private sessions (caucus). In these private meetings, the mediator can:

- Understand each party's position in more depth.
- Discuss potential solutions confidentially.
- Help each party to evaluate their options and move toward a compromise.

These private meetings are particularly useful if tensions are high or if one party is reluctant to share certain information in the presence of the other.

#### Step 7: Negotiation and Agreement

If both parties reach a mutually acceptable resolution, the mediator helps them draft a mediation agreement or settlement agreement, which outlines the terms of the resolution. The agreement is typically signed by both parties and may be legally binding depending on the jurisdiction and the nature of the dispute.

If no agreement is reached, the mediator will document the outcome of the session. The parties may choose to pursue other forms of dispute resolution, such as arbitration or litigation.

#### Step 8: Closure

The mediation process concludes once a resolution is reached or if the parties decide to terminate the session without resolution. If the dispute is resolved, the mediator will facilitate the signing of a settlement agreement. If mediation does not lead to an agreement, the parties are free to pursue litigation or arbitration.

Both **arbitration** and **mediation** are highly effective ADR methods, but they operate under different procedures, with arbitration being more formal and binding, while mediation is collaborative and non-binding. For Company Secretaries, understanding the detailed processes and Standard Operating Procedures (SOPs) for these methods is critical. As organizations increasingly turn to these dispute resolution mechanisms, Company Secretaries who are skilled in managing these processes will be integral in preserving business relationships, ensuring compliance, and minimizing risk for their organizations.

With the enactment of modern arbitration and mediation laws, like the Arbitration and Conciliation Act, 1996 and the Indian Mediation Act, 2023, India is creating a conducive environment for ADR, offering a more efficient and effective alternative to traditional litigation.

## CONCLUSION

The increasing complexity of corporate governance and business operations in India demands that Company Secretaries not only possess traditional legal and regulatory expertise but also embrace the growing significance of alternative dispute resolution (ADR) methods like mediation and arbitration. These methods provide companies with efficient, cost-effective ways to resolve disputes, protect their reputation, and ensure compliance with legal frameworks.

Company Secretaries who are adept in ADR will be better positioned to guide their organizations through disputes—whether internal or external—thereby enhancing their strategic role within the company.

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# Transforming Alternate Dispute Resolution: Role of AI and Digitisation in Shaping Future of Conflict Resolution

Alternate Dispute Resolution (ADR) encompasses various mechanisms like arbitration, mediation, and negotiation, providing an efficient means of resolving disputes outside the courtroom. With the rapid advancements in Artificial Intelligence (AI) and digitization, ADR has undergone significant transformation. AI-driven tools, digital platforms, and online dispute resolution (ODR) systems are enhancing the speed, accessibility, and efficiency of ADR processes. This paper explores the impact of AI and digitization on ADR, aiming to examine how these technologies are revolutionizing the resolution of disputes. The study highlights the objectives of improving accessibility, reducing costs, and enhancing the decision-making process. It also explores the ethical and legal considerations surrounding AI's involvement in ADR, such as algorithmic transparency and data privacy.



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## INTRODUCTION

**A**lternate Dispute Resolution (ADR) refers to a set of mechanisms designed to resolve disputes outside the traditional court system. Methods such as arbitration, mediation, conciliation, and negotiation allow parties to address conflicts in a more flexible, efficient, and cost-effective manner. ADR reduces the burden on courts, offers

privacy in sensitive matters, and ensures a collaborative approach to dispute resolution. For instance, mediation has been successfully employed in resolving cross-border commercial disputes, providing faster outcomes compared to litigation.

Over the years, the evolution of ADR has been closely tied to globalisation and the increasing complexity of disputes in international commerce, family law, and labour relations. With technological advancements, ADR has expanded its scope beyond physical spaces, enabling Online Dispute Resolution (ODR). This digitised form of ADR leverages technology to offer remote, real-time solutions, transcending geographical barriers. Platforms like eBay's ODR system, which resolves millions of disputes annually between buyers and sellers, exemplify the transformative potential of technology in dispute resolution.

Artificial Intelligence (AI) and digitisation have emerged as game-changers in ADR, reshaping its processes and outcomes. AI-driven tools such as predictive analytics, virtual mediators, and blockchain for secure record-keeping are revolutionising the way disputes are resolved. These technologies enhance efficiency, reduce human biases, and provide parties with data-driven insights for decision-making. For example, China's AI-powered "Smart Courts" utilise AI to resolve disputes digitally, showcasing the integration of AI with ADR systems.

## RESEARCH OBJECTIVES AND METHODOLOGY

This paper explores the impact of AI and digitisation on ADR, focusing on their potential to transform dispute resolution processes. By examining practical applications, benefits, challenges, and ethical considerations, this study aims to highlight how these advancements can shape the future of ADR. The scope extends to understanding the legal, technical, and societal implications of these innovations in global and local contexts.



## HISTORICAL PERSPECTIVE OF ADR

The concept of Alternate Dispute Resolution (ADR) has deep historical roots, tracing back to ancient civilizations. In ancient India, Panchayats served as local dispute resolution bodies, mediating conflicts through negotiation and community-based decision-making. Similarly, ancient Greece and Rome relied on arbitration to resolve commercial and civil disputes. These early mechanisms were built on principles of fairness, collaboration, and efficiency, providing alternatives to formal judicial processes.

Over time, ADR evolved to address the growing complexity of disputes, particularly in the 20<sup>th</sup> century, when industrialisation and globalisation increased cross-border interactions. International organisations like the United Nations Commission on International Trade Law (UNCITRAL) and the International Chamber of Commerce (ICC) formalised ADR processes, fostering the development of globally accepted frameworks for arbitration and mediation. The adoption of the UNCITRAL Model Law on International Commercial Arbitration in 1985 marked a significant milestone in the global acceptance of ADR mechanisms.

The key methods of ADR include arbitration, mediation, conciliation, and negotiation. Arbitration involves a neutral third party delivering a binding decision based on evidence and arguments, often used in commercial disputes. Mediation facilitates negotiation between parties with the help of a mediator to reach a mutually agreeable solution. Conciliation, similar to mediation, focuses on building understanding and resolving conflicts amicably. Negotiation is a direct discussion between disputing parties to achieve resolution without external facilitation.

*The Institute of Company Secretaries of India (ICSI) could play a vital role in facilitating the education and certification of professionals on how to integrate AI into their ADR processes, ensuring the ethical use of these technologies.*

## INTEGRATION OF AI AND DIGITISATION IN ADR

### • AI Applications in ADR

The integration of Artificial Intelligence (AI) in Alternate Dispute Resolution (ADR) has revolutionized the way disputes are managed and resolved. AI-driven tools are increasingly being utilized for case management, significantly improving efficiency and accuracy. Predictive analytics, for instance, enables parties to forecast potential outcomes based on historical case data, offering informed decision-making pathways. For example, tools like Blue J Legal use machine learning to predict litigation outcomes in tax and employment disputes, helping parties evaluate their positions early in the process.

Natural Language Processing (NLP) is another transformative application of AI in ADR. NLP algorithms analyze complex legal contracts and dispute documents, identifying critical clauses, inconsistencies, or potential areas of conflict. Tools like Kira Systems employ NLP to streamline contract review and risk assessment in high-stakes disputes.

Additionally, AI-powered chatbots and virtual assistants are enhancing accessibility and affordability in ADR. These systems, capable of facilitating mediation or providing legal guidance, are particularly valuable in online dispute resolution (ODR) platforms. For instance, the European Union's ODR platform uses AI-based assistance to guide users through cross-border consumer disputes.

### • Digital Platforms for ADR:

Digital platforms are revolutionising Alternate Dispute Resolution (ADR), particularly through Online Dispute Resolution (ODR). ODR platforms enable remote mediation and arbitration by leveraging technology to facilitate disputes without requiring physical presence. Platforms like eBay's ODR system, which resolves over 60 million disputes annually, showcase the scalability and efficiency of such systems. These platforms use automated workflows, video conferencing, and digital document management, making ADR accessible globally and reducing time and costs.

Blockchain technology is another transformative tool in ADR, ensuring transparency, security, and immutability of records. Blockchain's decentralised ledger can securely store evidence, agreements, and decisions, eliminating concerns of tampering or manipulation. For instance, smart contracts on blockchain platforms can automate enforcement of arbitration awards, providing a seamless resolution process. Countries like Singapore have begun integrating blockchain into their ADR frameworks to enhance trust and efficiency.

## BENEFITS OF AI AND DIGITISATION IN ADR

The integration of Artificial Intelligence (AI) and digitisation into Alternate Dispute Resolution (ADR) has significantly enhanced the efficiency, accessibility, and fairness of dispute resolution processes. One of the most notable benefits is the substantial reduction in time and costs associated with resolving disputes. AI-driven tools streamline case management, automate routine tasks such as document review and scheduling, and use predictive analytics to offer probable outcomes, enabling parties to settle disputes more swiftly. This efficiency reduces reliance on prolonged deliberations, making ADR a cost-effective alternative to litigation. Another critical advantage is enhanced accessibility and global reach. Digital platforms eliminate geographical constraints, allowing parties from different parts of the world to participate in mediation or arbitration through Online Dispute Resolution (ODR). For instance, ODR platforms like Modria and eBay have successfully resolved millions of cross-border disputes, demonstrating the potential of digitised ADR in creating inclusive and accessible systems.

This global reach also supports businesses operating in diverse markets, enabling them to resolve conflicts without the need for costly international travel. AI's ability to minimise human biases in decision-making is transformative for ADR. By analysing data objectively and applying consistent algorithms, AI ensures impartiality in processes such as evidence evaluation and outcome prediction. For example,

tools like Blue J Legal use data-driven insights to assess case probabilities, ensuring that decisions are less influenced by subjective factors. Furthermore, AI can process vast volumes of information, including historical case precedents, cultural nuances, and applicable laws, to enhance the accuracy and reliability of ADR outcomes.

The Institute of Company Secretaries of India (ICSI) also underscores the benefits of digitisation in ADR by promoting awareness and adoption of advanced technologies among governance professionals. Through capacity-building initiatives, training, and regulatory recommendations, ICSI equips company secretaries to leverage AI and digitisation for efficient corporate dispute resolution, fostering trust and transparency in business operations.

## CHALLENGES AND LIMITATIONS OF AI AND DIGITISATION IN ADR

Despite the transformative potential of AI and digitisation in Alternate Dispute Resolution (ADR), several challenges and limitations hinder their widespread adoption and effective implementation. A primary concern revolves around the ethical implications of AI-driven decision-making. While AI can process vast datasets to predict outcomes, its decisions often lack transparency, raising questions about accountability. The “black-box” nature of AI algorithms makes it difficult to verify how conclusions are reached, which can erode trust among parties. For instance, biases embedded in training data could lead to unfair outcomes, as seen in AI systems like COMPAS, which was criticised for racial bias in criminal justice decisions. Such challenges underscore the need for robust ethical frameworks and algorithmic transparency in ADR.

Data security and privacy issues also pose significant obstacles. Digitised ADR relies on sensitive information, including personal and financial data, which is susceptible to breaches and misuse. Cyberattacks targeting ODR platforms, such as ransomware attacks on legal databases, have highlighted the vulnerability of such systems. Ensuring compliance with data protection laws like the GDPR is critical, but it also increases operational complexity. Blockchain technology offers potential solutions through secure and immutable records; however, its widespread adoption remains limited due to scalability and cost concerns.

Additionally, resistance to adopting digital tools among traditionalists presents a significant barrier. Many practitioners and stakeholders in ADR prefer conventional methods, viewing digital platforms as impersonal and less reliable. For example, small businesses and individuals in developing countries may lack the digital literacy or infrastructure required to engage with advanced ODR systems. This resistance is compounded by the reluctance of legal professionals to adapt to AI-driven tools, fearing job displacement or loss of control over dispute outcomes.

The Institute of Company Secretaries of India (ICSI) plays a critical role in addressing these challenges by fostering digital literacy and advocating for ethical practices in AI-based ADR. Through training programs and policy advocacy, ICSI helps bridge the gap between traditional ADR methods and modern digital solutions, promoting a balanced approach to integrating technology while safeguarding ethical and security standards.

## IMPACT ON LEGAL PRACTITIONERS AND STAKEHOLDERS

### • Legal Professionals

AI and digitisation are significantly reshaping the roles of legal professionals in ADR. Lawyers now use AI-driven platforms, such as ROSS Intelligence and Blue J Legal, to enhance case preparation through predictive analytics and research tools. Natural Language Processing (NLP) also aids in contract review, reducing time spent on manual tasks. Mediators and arbitrators benefit from AI by accessing data insights and automated documentation, allowing them to focus on negotiation rather than administrative duties. However, these advancements may reduce the human-centric approach to conflict resolution, requiring mediators to balance technology with empathy.

### • Stakeholders

For stakeholders, AI and digitisation improve accessibility and efficiency in ADR. Platforms like Modria and eBay's ODR system offer cost-effective, remote dispute resolution, bypassing traditional barriers such as physical attendance and high fees. AI tools like DoNotPay also empower underrepresented parties by providing multilingual support and legal resources. China's AI-powered courts, resolving e-commerce and intellectual property disputes, highlight AI's scalability in addressing diverse stakeholder needs.

### • Courts and Governments

Governments and courts are increasingly integrating ADR with formal judicial systems to reduce workload and enhance efficiency. The UK's Online Civil Money Claims System and India's National e-Governance Plan showcase efforts to digitise legal processes. These initiatives demonstrate how technology can complement traditional legal systems, promoting a more accessible and efficient justice system.

## LEGAL AND ETHICAL CONSIDERATIONS IN AI-DRIVEN ADR

The adoption of AI and digitisation in Alternate Dispute Resolution (ADR) raises significant legal and ethical questions that warrant careful consideration from both Indian and global perspectives. These issues are critical to ensuring the legitimacy, fairness, and compliance of AI-driven ADR mechanisms with established legal frameworks and ethical principles.

### • Legal Validity of AI-Driven Decisions in ADR

A pivotal concern is the legal enforceability of decisions generated by AI systems. In jurisdictions such as India, ADR outcomes, including those from arbitration or mediation, must comply with statutory frameworks like the Arbitration and Conciliation Act, 1996. However, Indian law does not yet explicitly recognize decisions made solely by AI, leaving ambiguity around their enforceability. Globally, countries like the U.S. and EU have begun addressing the validity of AI-driven decisions in ADR through regulatory frameworks. For example, the European Union's General Data

Protection Regulation (GDPR) emphasizes the right to human intervention in automated decision-making, which could limit the adoption of fully autonomous ADR systems.

Practical examples highlight this challenge. In a dispute resolved using AI-driven ODR platforms, such as Modria, the question of whether the decision is legally binding often depends on parties' pre-agreement and jurisdictional laws. Without explicit legal recognition, such outcomes risk being challenged in formal courts, undermining their effectiveness.

- **Ethical Concerns: Algorithm Transparency, Accountability, and Fairness**

AI systems in ADR bring ethical complexities, particularly concerning algorithm transparency. Stakeholders often lack visibility into how AI systems reach decisions, leading to concerns over fairness and accountability. Bias in AI algorithms, stemming from skewed training data, can inadvertently favor one party, as seen in the case of COMPAS, an AI tool criticized for racial bias in criminal sentencing in the U.S. Translating this to ADR, such biases could compromise the impartiality of dispute resolution processes.

Accountability is another critical issue. Unlike human arbitrators, AI lacks legal personality, raising questions about who bears responsibility for errors or biases in AI-driven decisions. This is particularly relevant in India, where the ethical duties of arbitrators are codified under the Code of Conduct for Arbitrators. Applying similar standards to AI systems remains a significant challenge.

- **Compliance with International and National ADR Regulations**

The integration of AI into ADR must align with national and international regulatory frameworks. For example, India's initiatives like the E-Courts Project promote the digitisation of judicial processes but do not yet extend to AI-driven ADR. Globally, the United Nations Commission on International Trade Law (UNCITRAL) has issued guidelines encouraging the use of technology in ADR while emphasizing compliance with established procedural fairness standards.

Practical examples underscore the regulatory gap. In China, AI-powered courts like the Hangzhou Internet Court have successfully resolved disputes online, but their reliance on national-level support highlights the need for robust governance frameworks. Meanwhile, India's absence of AI-specific ADR regulations risks slowing the adoption of such technologies.

The Institute of Company Secretaries of India (ICSI) can play a pivotal role in addressing these legal and ethical challenges. By advocating for regulatory updates and conducting training programs on the ethical use of AI in ADR, ICSI can ensure that ADR professionals are equipped to navigate these complexities responsibly. Addressing these considerations is essential for fostering trust in AI-driven ADR while aligning with broader legal and ethical norms.

## FUTURE OF ADR WITH AI AND DIGITISATION

The future of Alternate Dispute Resolution (ADR) is intricately linked to the ongoing advancements in Artificial Intelligence (AI) and digitisation. As these technologies continue to evolve, their integration into ADR frameworks will redefine the dispute resolution landscape, offering new opportunities for efficiency, accessibility, and fairness. In this section, we explore the emerging technologies shaping ADR, the concept of predictive justice, and how AI can be effectively integrated into ADR frameworks globally.

- **Emerging Technologies Shaping ADR: Machine Learning, IoT, and Cloud Computing**

Machine learning, the Internet of Things (IoT), and cloud computing are poised to significantly transform the ADR landscape. Machine learning algorithms are already being utilized to analyze past case data, identify patterns, and offer insights that assist arbitrators and mediators in decision-making. In particular, AI tools can help legal professionals with case preparation by quickly analyzing vast amounts of information and offering predictive insights based on historical data. For instance, Robo-Advisor platforms can now predict the likelihood of certain outcomes based on historical trends, empowering ADR participants to make more informed decisions.

IoT is another emerging technology that holds great potential in ADR, especially in cases involving contracts or disputes related to the Internet of Things. IoT devices can provide real-time data relevant to a dispute, such as usage metrics, timestamps, and geolocation, which can be valuable evidence in resolving disputes efficiently. For example, IoT-enabled devices in logistics can provide transparent data to resolve shipping disputes without the need for extensive human intervention.

Cloud computing also plays a key role in enabling secure, remote ADR processes. Cloud platforms facilitate the easy storage, retrieval, and sharing of dispute-related documents, ensuring that parties from around the globe can access case files securely and in real time. This is particularly important in cross-border disputes where traditional ADR processes may be hindered by geographical and logistical barriers.

- **Predictive Justice and Real-Time Conflict Resolution**

One of the most promising applications of AI in ADR is the concept of predictive justice. Using AI algorithms, historical case data, and machine learning techniques, ADR platforms can predict the likely outcome of a dispute, assisting parties in making more informed decisions about settling a case. These predictive tools help streamline the decision-making process, reducing the time and resources typically required for lengthy litigation or arbitration.

For example, in China, AI-powered systems like the Hangzhou Internet Court are already using predictive analytics to resolve small claims and consumer disputes, with significant success. By analyzing past decisions, the AI system can predict outcomes for new cases,



offering recommendations to parties in real time, and sometimes even assisting in settling disputes without human involvement. This not only enhances the speed of resolution but also reduces costs and increases access to justice.

Additionally, real-time conflict resolution facilitated by AI can significantly improve ADR processes. Through online platforms powered by AI, parties can engage in real-time mediation and arbitration, with the AI system providing immediate feedback, suggestions, and guidance. This on-demand support can help resolve disputes much faster than traditional methods, which often require scheduling, waiting for responses, and delays in document processing.

#### • Recommendations for Integrating AI into ADR Frameworks Globally

As AI and digitisation reshape ADR, there are key recommendations for integrating these technologies into ADR frameworks globally. First, regulatory frameworks should be established to ensure that AI-driven ADR platforms adhere to national and international laws, such as the UNCITRAL Model Law on International Commercial Arbitration and OECD Guidelines on Artificial Intelligence. These frameworks should focus on transparency, accountability, and fairness, ensuring that AI systems used in ADR processes are unbiased and subject to scrutiny.

Second, collaboration among stakeholders is essential to ensure successful AI integration. This includes cooperation between governments, ADR practitioners, technology companies, and academic institutions to develop standards and best practices for AI in ADR. For instance, the Institute of Company Secretaries of India (ICSI) could play a vital role in facilitating the education and certification of professionals on how to integrate AI into their ADR processes, ensuring the ethical use of these technologies.

Lastly, investment in training and infrastructure is necessary for widespread adoption. ADR professionals must be trained not only in traditional dispute resolution techniques but also in the use of AI tools to enhance their decision-making. Furthermore, establishing robust infrastructure to support AI-driven ADR platforms will ensure that stakeholders can access and use these technologies effectively.

## CONCLUSION

The integration of Artificial Intelligence (AI) and digitisation into Alternate Dispute Resolution (ADR) has brought transformative changes to the field, revolutionising traditional methods of dispute resolution. As explored throughout this paper, the application of AI, machine learning, and digital tools has the potential to significantly enhance the accessibility, efficiency, and fairness of ADR processes.

The integration of AI and digitisation into ADR has demonstrated substantial potential in enhancing efficiency, cost-effectiveness, and global accessibility. By leveraging tools such as predictive analytics and machine learning, ADR processes have achieved significant improvements in case preparation and decision-making accuracy. However,

this advancement necessitates a balanced approach to ensure fairness and inclusivity.

To advance the field, further research must focus on addressing ethical and legal challenges, fostering algorithmic accountability, and exploring innovative applications of emerging technologies like blockchain and machine learning. The establishment of comprehensive regulatory frameworks is critical to ensure compliance with ethical standards and legal norms.

Global collaboration among stakeholders is vital for standardizing practices and sharing best practices across borders, promoting a unified and ethical framework for AI integration in ADR. A harmonious blend of technological advancements and traditional dispute resolution mechanisms will ensure the development of efficient, equitable, and accessible ADR systems, paving the way for a transformative and sustainable future in the field.

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# Computation of Net Profit under Section 198 of the Companies Act, 2013 for the purposes of Managerial Remuneration and CSR

Section 198 of the Companies Act, 2013 provides for computation of net profits of a company for a financial year for the purpose of Sections 197 and 135. Section 198 has limited applicability. An amount of net profit calculated in accordance with this Section is relevant for the purpose of only two provisions of the Act, namely Section 198 and Section 135. Section 135 lays down the criteria for applicability of the Section and also for CSR contribution in its sub-sections (1) and (5) respectively. According to the Explanation appended to Section 135, for the purposes of this Section "net profit" shall not include such sums as may be prescribed and shall be calculated in accordance with the provisions of Section 198. The amount of net profit is required to be considered for sub-section (1) and sub-section (5) of this Section. So far as managerial remuneration is concerned, the percentage ceilings laid down in Section 197 are linked to net profit calculated in accordance with Section 198. Interestingly, when the amount of net profit calculated pursuant to Section 198 is on the higher side, a company can pay higher remuneration to its directors in terms of percentage limits under Section 197, but it has a higher outflow of funds on account of CSR contribution. So, the higher the amount of net profit, the higher will be the amount available for distribution to the directors by way of remuneration and for CSR contribution; and the lower the amount of net profit, the lower will be the amount available for distribution to the directors and for CSR contribution.

## INTRODUCTION

### STATUTORY FRAMEWORK OF SECTION 198

According to sub-section (1), in computing the net profits of a company in any financial year:

- (a) credit shall be given for the sums specified in sub-section (2) [meaning that these sums can form part of net profits];
- (b) credit shall not be given for those specified in sub-section (3) [meaning that these sums cannot form part of net profits];
- (c) the sums specified in sub-section (4) shall be deducted [meaning that these sums cannot form part of net profit];
- (d) the sums specified in sub-section (5) shall not be deducted [meaning that these sums can form part of net profit].

Thus, Section 198 specifies the categories of sums which, while computing the net profits of the company in any financial year under Section 198-

- can be credited and which cannot be credited;
- can be deducted and which cannot be deducted.

The term 'credit', in accounting parlance, denotes an amount that is written in a company's financial accounts to show an increase in revenue that the company earns. In the context of Section 198, it means an amount that forms part of net profit.



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In calculating net profit under Section 198, one has to take the amount of net profit as per Profit and Loss Account, if the amounts representing the items enumerated in sub-sections (2) to (5) have been or have not been already considered (added or deducted), they will be given appropriate treatment (addition or deduction) now in calculating net profit according to Section 198. When profit before tax is taken as the basis of calculation, the tax amount is not to be added back. But if profit after tax is taken as the basis of calculation, the tax amount is to be added back to net profit.

It should be noted that Section 198 contemplates adding or deducting actual gain/profit or loss and not notional gain or loss. What is required to be added or deducted is what is actually earned as a gain or suffered as a loss and not notional gain or loss.

### **SUMS FOR WHICH CREDIT SHALL BE GIVEN [SUB-SECTION (2)]**

According to sub-section (2), in computing the net profits of a company in any financial year, *credit shall be given* to the sums representing bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

The sums specified in sub-section (2) may be added to the net profit, although they do not constitute profit arising out of business operations, are allowed, by operation of law, to be considered as part of profit and credited to Profit and Loss Account; hence they can form part of the net profit under Section 198, and can be added to the amount of net profit as per Profit and Loss Account if it has not been already credited to Profit and Loss Account. Consequently, the net profit as per Profit and Loss Account stand increased. These sums are to be added back in the net profit as per Profit and Loss Account in computing net profit under Section 198, if not already credited in Profit and Loss Account. But if it has already been credited to Profit and Loss Account, nothing more is required to be done in computing net profit under Section 198.

### **SUMS FOR WHICH CREDIT SHALL NOT BE GIVEN [SUB-SECTION (3)]**

According to sub-section (3), in computing the net profits of a company in any financial year, *credit shall not be given* to the sums specified in Clauses (a) to (f) of sub-section (3).

The sums specified in clauses (a) to (f) of this sub-section are not to be credited to the profit and loss account for the purpose of computing net profits under Section 198. It means while these sums will get normally credited to Profit and Loss Account, they are not supposed to be credited while computing net profits under Section 198. In other words, these sums cannot form part of net profit under Section 198. So, deduct these from the net profit if not already deducted in Profit and Loss Account.

For instance, if the company had made some profits on sale or re-issue of forfeited shares, this profit does not arise

from regular profits derived from operations or business of the company in its ordinary course of business. Hence, such gains cannot be credited to the profit and loss account while computing the net profits for the purpose of Section 197 and 135 as mandated by clause (b) of Section 198(3).

By reason of the words “credit shall not be given”, the sums specified in sub-section (3) cannot form part of net profit under Section 198 and hence not to be added to net profit as per Profit and Loss Account. If they have not been credited to Profit and Loss Account, nothing more is required to be done in the computation of net profit under Section 198. But if they have been credited to Profit and Loss Account, they shall now be deducted from the net profit while computing net profit under Section 198. Consequently, the net profit as per Profit and Loss Account stand decreased.

The reason for excluding the above items from the profits, in computing the net profits under Section 198, is that these items of profits are not made in the usual course of business of the company and, presumably, do not require any managerial skill and expertise on the part of directors; hence they should be excluded from net profits. In other words, these sums received by the company, being in the nature of capital receipts, are not considered profit arising out of business operations, and therefore not allowed to be part of profits.

### **SUMS TO BE DEDUCTED [SUB-SECTION (4)]**

According to sub-section (4), in computing the net profits of a company in any financial year, the sums specified in Clauses (a) to (o) of sub-section (4) *shall be deducted* (and so they must be deducted if not already deducted).

By reason of the words “The following sums shall be deducted”, the sums representing any of the item specified in sub-section (4) cannot form part of net profit under Section 198. If they have been already deducted while arriving at net profit in the Profit and Loss Account, nothing more is required to be done in the computation of net profit under Section 198. But if they have not been already deducted while arriving at net profit in the Profit and Loss Account, they shall be now deducted while computing net profit under Section 198.

The expression ‘*shall be deducted*’ means that the sums in respect of the items specified in sub-section (4) must be deducted from the net profits as per the profit and loss account. Needless to state, if these sums have been already deducted while arriving at net profit in the profit and loss account, no further deduction will be necessary while computing net profit as per Section 198.

Although sub-section (4)(b) provides for deduction of directors’ remuneration, Section 197(1) provides that remuneration of directors shall not be deducted. Thus, in computing the net profits of a company in any financial year for the purposes of Section 197, the sum representing, remuneration of directors payable in that financial year shall not be deducted.



The reason for excluding the above items from the profits, in computing the net profits under Section 198, is that these items represent usual expenditure or overheads incurred by the company in carrying on its business. In other words, these are normal business expenses incurred by a company in the normal course of business operations for earning income, and hence required to be deducted (if not already deducted) from the computation of net profit which reduces the net profit.

### SUMS NOT TO BE DEDUCTED [SUB-SECTION (5)]

According to sub-section (5), in computing net profit under Section 198, the sums specified in Clauses (a) to (d) *shall not be deducted* from the net profit as per the profit and loss account (and so they must be added back if already deducted).

By reason of the words “The following sums shall not be deducted”, the sums representing any of the items need not be debited to Profit and Loss Account and can form part of the net profit for the purpose of computation under Section 198. If it has been deducted while arriving at net profit in the profit and loss account, it must be added back to the net profit while computing net profit as per Section 198.

Thus, the expression ‘*shall not be deducted*’ means that the sums in respect of the items specified in sub-section (5) must not be deducted from the net profits as per the profit and loss account. Needless to state, if these sums have been already deducted while arriving at net profit in the profit and loss account, they must be added back while computing net profit as per Section 198. And if these have not been so deducted, then nothing is required to be done.

### INTERPRETATION OF THE ITEMS OF SUB-SECTIONS (3) AND (4)

#### Sub-section (3):

**Clause (a):** According to clause (a) of sub-section (3), credit shall not be given for profits by way of premium on shares or debentures of the company, which are issued or sold by the company, unless the company is an investment company as referred to in clause (a) of the *Explanation* to Section 186.

This means that any profit made by a company by way of premium on the company’s own shares or debentures, issued or sold by it cannot be included in net profit in the computation under Section 198.

But credit can be given for the profit made in such a case, if the company is an investment company as referred to in clause (a) of the *Explanation* to Section 186.

**Clause (b):** When a company sells its forfeited shares, no credit can be given to any profit made on such sale by the company in the computation of net profit under Section 198. Articles of Association of companies usually provide that a forfeited share may be sold or otherwise disposed off on such terms and in such manner as the Board thinks fit.

**Clause (c):** According to clause (c) of sub-section (3), credit shall not be given for profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof.

The question that arises for consideration is whether profit earned by the Company on sale of investments in shares or other securities (including units of mutual funds) constitutes profit of a capital nature. This is because, according to clause (c) of sub-section (3), credit shall not be given for the profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or any part thereof.

If the answer to this question is in affirmative, then for the amount of such profit, according to clause (c) of sub-section (3), in computing net profits under Section 198, credit shall not be given (meaning that it shall not be considered as part of the net profits to be computed under Section 198 and hence it must be ignored) for the purpose of such computation. But if the answer is in negative, then the amount of such profit can be included in the computation of net profit under Section 198.

There lacks clarity on this point, in the absence of a clearly defined expression “profits of a capital nature”. One view is that the expression “profits of a capital nature” must be understood to mean a profit earned by sale of a capital asset. According to the Oxford Dictionary of Accounting, capital asset means a fixed asset, meaning an asset of a business intended for continuing use, rather than a short-term current asset.

The words “profits of a capital nature” in clause (c) of sub-section (3) are followed by the words “including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof”. These latter words indicate that the provision in Section 198(3)(c) can apply only when a company makes a profit on a fixed asset and not a profit on a current asset. Furthermore, the words “Profits of a capital nature” must be interpreted by applying the rule of *ejusdem generis*.

Thus, what is to be excluded under Section 198(3) is profit on sale of an asset which is used by the company permanently or fairly long time in carrying on its business. The words, following the words “capital nature” indicate what type of profit is to be excluded. These words must be interpreted by applying the rule of *ejusdem generis*. In my opinion, profit on sale of investment in securities, even if it was classified as non-current, would not attract the provision of Section 198(3) and hence need not be excluded.

A contrary view is that the expression “profits of a capital nature” is to be understood by contrasting it with the expression “profits of a revenue nature”, so that profit by sale of any asset (whether movable or immovable) must be excluded in the computation under Section 198. In other words, profit made by a company through its operations only should be considered for the computation of net profit under Section 198 and all other profits must be ignored. With regard to computation of net profit under Section 198, for the purpose of managerial remuneration,

earning of profit by a company in the ordinary course of its business or operations alone involves managerial skills and efficiency of the management or managerial personnel, which is not the case in earning profit by sale of assets or property or undertaking of the company hence such profit must not be included in the net profit computation.

In this differentiation the profit earned by the business from the sale of its assets, shares, and debentures is capital profit. If assets are sold at a price more than their book values then the excess of book value is capital profit. Such profit is not earned in the ordinary course of the business. It is not available for distribution to shareholders as dividend. Such profits are transferred to capital reserve. It is used for meeting capital losses. It is shown on the liabilities side of balance sheet. On the contrary, revenue profit is the difference between revenue incomes and revenue expenses. It is earned in the ordinary course of the business. It results from the sale of goods and services at a price more than their cost price. Revenue profit is the outcome of regular transactions of the business. It is available for distribution to the shareholders as dividend or for creating reserve fund for various purposes. It shows the efficiency of the business; earning revenue profit being the main objective of every business.

The object and purpose of Section 198 is to ensure that a company pays managerial remuneration only out of *genuine operating profits*, and not out of profits through extraneous sources other than operations such as sale of assets. Since the purpose of ascertaining net profit under Section 198 is to determine remuneration payable to the directors and managerial personnel so as to compensate them for their contribution in running the business and earning profit, only those profits which involve their contribution and managerial skills should be considered and all those profits which do not involve the same should be excluded.

Profits from the sale of securities can arise from two distinct sources: (1) divestment of long-term investments held by the entity for strategic purposes, such as investments in subsidiaries, joint ventures, and associate companies; and (2) profits earned from the sale of securities as part of the company's treasury operations.

The profit in the first category cannot be attributed to managerial personnel, whereas the profit in the second category can be. Consequently, profits from the first category should be excluded from the computation of net profit as per Section 198, while profits from the second category can be included in the computation of net profit under Section 198 as these supposedly accrue with the involvement, direction and supervision by the managerial personnel.

Therefore, for the purpose of clause (c) of sub-section (3), the profit in the first category should be considered as capital in nature and be excluded in computation of net profit as per Section 198.

**Clause (d):** According to clause (d) sub-section (3), in computing the net profits of a company in any financial

year for the purpose of Section 197, credit shall not be given for profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets; provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written-down value. Let's understand this with the help of an illustration.

## ILLUSTRATION

Let's assume a company has a machine with the following details:

**Original Cost of the Machine:** ₹10,00,000. **Written-Down Value (WDV):** ₹4,00,000 (after depreciation over the years). **Sale Price of the Machine:** ₹6,50,000 (the amount for which the machine is sold)

**Computation of the amount of capital gain which can be credited in this case, to the net profit computation:**

**Amount of capital Gain on Sale of the Asset:**

**Sale Price (₹6,50,000) - WDV (₹4,00,000) = ₹2,50,000.**  
So, there's a gain of ₹2,50,000 from the Sale of the machine.

**Calculation of the Maximum Creditable Amount:** The maximum amount that can be credited to the profit is limited to the difference between the Original Cost and the WDV.

**Original Cost (₹10,00,000) - WDV (₹4,00,000) = ₹6,00,000**

Thus, the maximum amount of capital gain that can be credited is ₹6,00,000.

**Computation of the Amount of capital gain to be credited to net profit:** Since the capital gain on sale (₹2,50,000) is less than the maximum creditable amount (₹6,00,000), the entire gain of ₹2,50,000 can be credited to the profit for the purpose of calculating net profit under Section 198.

**What if the machine was sold for ₹11,00,000 in the above case?** There would have been a capital gain of ₹7,00,000 (₹11,00,000 – ₹4,00,000). However, the maximum amount that would have been credited to the net profit computation would have been restricted ₹6,00,000 only and the balance capital gain of ₹1,00,000 would have been excluded from the net profit computation.

Selling of fixed assets is an abnormal activity, not a business activity. Hence profit arising out of sale of assets is a capital profit. This has to be recorded in profit and loss account as an exceptional item.

Thus, under clause (d) of sub-section (3), no credit can be given for profit made by a company on the sale of any immovable property or fixed assets of a capital nature

comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling of any such property or assets.

**Meaning of 'undertaking':** Both clauses (c) and (d) use the word 'undertaking'. This word is used in some provisions of the Companies Act, but it is not defined in the Companies Act. Section 180(1)(a) corresponds to Section 293(1)(a) of the 1956 Act with one major difference, that is Section 180(1)(a) now explains as to what the term 'undertaking' will mean for the purpose of this provision. But it is not truly speaking meaning of the word 'undertaking'. It doesn't provide the meaning of the term 'undertaking'; it only sets out a criteria as to what would constitute an 'undertaking' for the purposes of the provision in Section 180(1)(a)

Some other statutes define this word and in several judgments the courts have elucidated its true meaning and scope.

The term 'undertaking' means an enterprise; a unit, a business as a going concern, the activity of the company duly integrated with all its components in the form of assets and not merely some asset of the undertaking.

Undertaking means any business or any work or project which one engages in or attempts an enterprise analogous to business or trade. The business or undertaking must be distinguished from the properties belonging to the company.

By the word 'undertaking' is meant the entire organisation. A company whether it has a plant or whether it has an organisation is considered as one whole unit and the entire business of the going concern is embraced within the word 'undertaking'.

A judgment of the Bombay High Court has dealt in detail with the question under consideration. The learned judge referred to all the cases cited earlier and observed that "the expression 'undertaking' used in this Section is liable to be interpreted to mean 'the unit', the business as a going concern, the activity of the company duly integrated with all its components in the form of assets and not merely some asset of the undertaking. Having regard to the object of the provision, it can, at the most, embrace within it all the assets of the business as a unit or practically all such constituents. If the question arises as to whether the major capital assets of the company constitute the undertaking of the company while examining the authority of the Board to dispose off the same without the authority of the general body, *the test to be applied would be to see whether the business of the company could be carried on effectively even after disposal of the assets in question or whether the mere husk of the undertaking would remain after disposal of the assets ....* It appears that the 'undertaking' means a unit, a business or a project. Each factory of a company may be considered as a separate undertaking..... *If, after disposal of practically all the assets of a company, what remains is only the husk of the assets, it would be perhaps difficult to take the view that, merely, assets of the undertaking were*

*disposed off and not the undertaking itself.* It is, therefore, possible to take a view that the Board of Directors cannot dispose off 'all the capital assets of the company' taken together which will denude the company of its business or will leave merely the husk left behind".

**Clause (e):** Any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

Clause (e), specifies that any change in the carrying amount of an asset or a liability recognized in equity reserves, including surplus in the profit and loss account due to fair value measurement, should not be credited when calculating the net profits for the purpose of Section 197. This clause aims to exclude certain non-operational adjustments in asset or liability valuations from the profit calculation as per Section 198, used to determine limits of managerial remuneration. Clause (e) requires that changes in the carrying amount of assets or liabilities recognized in equity reserves, including those from fair value adjustments, should not be credited in computing net profit for managerial remuneration. This exclusion ensures that only realized, operational gains are considered, aligning managerial pay with actual business performance rather than with non-cash, market-based fluctuations.

**Clause (f):** Any amount representing unrealised gains, notional gains or revaluation of assets. As per clause (f) of the Companies Act, 2013, any amount representing unrealized gains, notional gains, or revaluation of assets is explicitly excluded from the computation of "net profit" for the purpose of determining managerial remuneration ceiling as explained below:

Unrealized gains refer to increases in the value of assets that have not yet been sold or converted to cash. For example, if the market value of an investment in securities rises, the gain is unrealized until the asset is actually sold. Since unrealized gains are not cash earnings and could fluctuate with market conditions, they are excluded to prevent an inflated net profit figure based on temporary, market-driven increases.

Notional gains are theoretical gains recorded due to accounting adjustments or assumptions but do not reflect actual transactions or cash flow. These include gains from hypothetical scenarios, such as changes in the fair value of derivatives or other financial instruments held by the company. Notional gains are not included in net profit to ensure that managerial remuneration is based on actual, realized earnings rather than hypothetical values.

Revaluation of assets involves adjusting the book value of assets to reflect current fair value or market value. Although this adjustment may create a revaluation surplus, this surplus is not realized through operations or cash flows and is therefore excluded from net profit computation. Revaluation often reflects changes in asset prices due to market conditions and does not represent the company's core, operational profit.



By excluding unrealized gains, notional gains, and revaluation adjustments, Clause (f) ensures that only realized and operational profits contribute to the calculation of net profit under Section 198. This prevents any inflation of net profit for remuneration purposes based on non-cash, non-operational, or market-sensitive adjustments, providing a stable and genuine basis for managerial remuneration.

#### **Sub-section (4):**

According to sub-section (4), when computing a company's net profits for any financial year, the expenses specified in Clauses (a) to (o) of sub-section (4) are to be deducted. These expenses represent costs incurred in the normal course of business operations. As routine business expenses, they must be deducted for the purpose of net profit calculation under Section 198, if not already deducted.

Although specific expenses are listed in Clauses (a) to (o), this list should not be viewed as an exhaustive one but an indicative one. In practice, all expenses incurred in the ordinary course of business should be deducted when calculating net profit under Section 198. A clause-wise explanation of the expenses mentioned in Clauses (a) to (o) of sub-section (4) is given below:

**Clause (a):** All the usual working charges. Clause (a) specifies that all the usual working charges should be deducted when calculating net profit for the purpose of managerial remuneration. This clause is aimed at deducting all routine operational expenses from the net profit computation, ensuring that managerial remuneration is based on profit derived from the company's actual operational earnings arrived at after deducting all genuine business expenses.

**Clause (b):** Directors' remuneration. Clause (b) specifies that directors' remuneration must be deducted when calculating net profit for the purpose of determining managerial remuneration. Directors' remuneration refers to the payments made to the board members and executive directors, which may include salaries, bonuses, allowances, perquisites, and other forms of compensation provided for their role in managing or overseeing the company. Directors' remuneration is deducted to ensure that net profit reflects the company's earnings after paying those responsible for management. Since this remuneration is an expense for the company, it should not be included in the profit figure used to calculate further managerial remuneration.

Although sub-section (4)(b) provides for deduction of directors' remuneration, Section 197(1) provides that remuneration of directors shall not be deducted. Thus, in computing the net profits of a company in any financial year for the purposes of Section 197, the sum representing, remuneration of directors payable in that financial year shall not be deducted.

**Clause (c):** Bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company,

whether on a whole-time or on a part-time basis. This clause applies to all employees, including staff, engineers, technicians, and any other individuals employed by the company on a full-time or part-time basis. It includes both permanent and contractual workers involved in the company's operations.

Bonus is any additional payment given to employees as a reward for performance, typically linked to individual or company performance. Commission is any payment calculated as a percentage of sales, profits, or other performance metrics, provided to incentivize employees or contractors. Whether these payments are fixed or variable, or linked to personal or company performance, they fall within the scope of Clause (c).

**Clause (d):** Any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits. Clause (d), specifies that any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits should be deducted from the income when calculating net profits for the purpose of Section 197. This deduction is essential because it allows companies to compute net profits used for determining managerial remuneration in a way that excludes profits inflated by extraordinary or abnormal conditions, focusing instead on the company's typical operational earnings. This ensures that net profits accurately reflect typical, operational earnings rather than inflated figures from temporary, abnormal profits, thus aligning managerial pay with the company's core business performance.

**Clause (e):** Any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf. Clause (e), specifies that any tax on business profits imposed for special reasons or in special circumstances, as notified by the Central Government, should be deducted from the company's net profit calculation when determining managerial remuneration under Section 197. This provision ensures that certain exceptional taxes, which may arise due to unique, non-recurring circumstances—do not inflate the net profit used for remuneration calculations. This deduction aligns the net profit with the company's usual operational results, avoiding the impact of extraordinary taxes on executive pay calculations. It ensures fair, sustainable remuneration aligned with core profitability and promotes transparent corporate governance.

**Clause (f):** Interest on debentures issued by the company. Clause (f) of sub-section (4) of Section 198 in the Companies Act, 2013, specifies that interest on debentures issued by the company must be deducted when computing net profits for the purpose of determining managerial remuneration limits. This deduction ensures that the net profit calculated for managerial remuneration is not inflated by ignoring the company's financing obligations, as interest on debentures is an unavoidable expense. Effectively, the interest on debentures is subtracted alongside other financing costs to arrive at an adjusted net profit that accurately reflects profits attributable to operational performance rather than financing structure.



This deduction aligns executive pay with operational results, ensuring remuneration is not inflated by excluding essential financing costs. It avoids situations where net profit for remuneration purposes appears higher than actual operational profits, which could lead to disproportionate compensation.

Clause (f) ensures that interest on debentures is deducted from net profit when determining the ceiling for managerial remuneration. This deduction results in a more accurate profit figure reflecting the company's operating income after covering financing obligations. By mandating this exclusion, the Act safeguards against inflated executive pay, aligning managerial compensation with the company's core operational performance and supporting transparent, fair governance practices.

**Clause (g):** Interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets. Clause (g) of sub-section (4) of Section 198 of the Companies Act, 2013 specifies that interest on mortgages executed by the company, as well as on loans and advances secured by a charge on the company's fixed or floating assets, must be deducted when computing net profits for determining managerial remuneration. The aim is to ensure that the calculation for managerial remuneration reflects the operational profitability of the company by removing financing-related expenses tied to asset-backed borrowings.

**Clause (h):** Interest on unsecured loans and advances. Clause (h) specifies that interest on unsecured loans and advances need to be deducted when calculating net profits for the purpose of determining managerial remuneration limits. This clause is part of the broader set of rules under Section 198, which aims to ensure that net profit is calculated in a standardized way, providing a consistent and fair basis for determining managerial remuneration.

**Clause (i):** Expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature. Clause (i) of sub-section (4), specifies that expenses on repairs, whether to immovable or movable property, must be deducted when computing net profits

for determining managerial remuneration, provided that these repairs are not of a capital nature.

This clause mandates that expenses on repairs, whether to immovable property (such as buildings or land) or movable property (like machinery, vehicles, or equipment), must be deducted from the net profit calculation. However, this deduction only applies to repairs that are not of a capital nature. Capital repairs are those that enhance the value of an asset or significantly extend its useful life and are thus capitalized rather than treated as an expense.

Repairs of a capital nature typically increase the value or capacity of an asset or extend its useful life. For example, adding a new Section to a building or overhauling machinery to enhance its functionality would be considered capital repairs. These are not deductible under Clause (i) because they are treated as capital expenses. Revenue repairs are routine maintenance and minor repairs needed to keep an asset in working condition. Examples include repainting a building, fixing leaks, replacing parts, or conducting regular machine maintenance. These expenses do not increase the value of the asset but are necessary to maintain its functionality.

Clause (i) allows the deduction of only those repair expenses that are revenue in nature, as these are recurring, operational expenses rather than investments in the asset. Deducting revenue repair expenses ensures that the net profit calculation under Section 198 reflects the actual profitability from ongoing operations, excluding operational costs necessary to keep the company's assets functional. This deduction prevents overstatement of profit by accounting for the maintenance costs required to sustain operational efficiency.

**Clause (j):** Outgoings inclusive of contributions made under Section 181. Clause (j) specifies that outgoings, including contributions made under Section 181, should be deducted from the calculation of net profits for determining the limit on managerial remuneration.

Section 181 of the Companies Act, 2013, allows a company to contribute to bona fide charitable and other funds, provided such contributions are not made for political purposes.

Clause (j) requires the deduction of outgoings, including contributions made under Section 181, from net profit when calculating managerial remuneration limits. By deducting discretionary expenditures like charitable donations, the calculation reflects the company's operational earnings. This aligns managerial remuneration with core business performance as contributions under Section 181 being discretionary expenditures are specifically allowed to be deducted as per Clause (j).

**Clause (k):** Depreciation to the extent specified in Section 123.

Clause (k) specifies that depreciation should be deducted in the computation of net profit for managerial remuneration purposes, but only to the extent specified in Section 123 of the Act.

Section 123 of the Companies Act, 2013, governs how companies declare dividends and outlines the methodology for determining distributable profits, including rules on how depreciation should be calculated to ensure that profits are not overstated. This clause prevents companies from overestimating or underestimating depreciation, ensuring consistency and comparability across financial statements, and helps determine fair managerial remuneration based on operational performance.

Section 123 requires that depreciation be calculated as per Schedule II of the Companies Act, 2013, which specifies the useful life of different classes of assets and provides a consistent basis for depreciation calculations. Companies may choose either the Straight-Line Method (SLM) or Written-Down Value Method (WDV), based on the asset class, as per the guidelines in Schedule II.

Only the specified depreciation rates in Schedule II should be applied. Any accelerated or additional depreciation (beyond what is prescribed for dividend calculation) is not deductible under Clause (k) for calculating profits under Section 198, nor is any undercharging of depreciation allowed as per clause (k) of Sub-section (4).

The deduction of depreciation ensures that the profit used to determine managerial remuneration reflects the company's actual operating profit after accounting for the wear and tear of assets. Depreciation is a non-cash expense but is essential for accurately representing the asset's decreasing value over time. Deducting this depreciation helps avoid overstated profits and, thus, potential overpayment of managerial remuneration.

**Clause (l):** The excess of expenditure over income, which had arisen in computing the net profits in accordance with this Section in any year, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained.

As noted earlier, in computing the net profits of a company in any financial year, as per sub-section (1)(b) the sums specified in sub-section (4) shall be deducted. One of the sums specified is in Clause (l) of sub-section (4), which reads as follows: "the excess of expenditure over income, which

had arisen in computing the net profits in accordance with this Section in any year in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained, shall be deducted."

### ***Conditions for attracting Clause (l)***

Clause (l) stipulates the following conditions for deduction in computation of net profit under Section 198:

- There is excess of expenditure over income.
- Such excess had arisen in computing the net profits in accordance with Section 198 in any year.
- Such excesses have not been deducted in any year after the year in which it had arisen, until the year in which net profit is to be computed.

### ***Meaning of "excess of expenditure over income"***

The expression "excess of expenditure over income" means nothing but a loss or deficit. In the context of profit and loss account, surplus is the excess of income over expenditure. A credit balance in the Income and Expenditure Account shows surplus. It is the profit earned and should be added to the capital fund on the liabilities side of the balance sheet. On the contrary, excess of expenditure over income is known as deficit. The balance of the account, if credit, indicates surplus, i.e. excess of income over expenditure, while the balance of the account, if debit, indicates deficit, i.e. excess of expenditure over income.

The expression "in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained", in simple words, means that the amount of loss of previous year(s), to the extent (in so far as means to the extent) it was not deducted in any earlier financial year, should be deducted in the current financial year, in calculating net profit under Section 198. For example, if a company had incurred a loss of ₹10 lakhs in the financial year 2021-22 which is an accumulated loss in financial year 2022-23 and in the financial year 2022-23 the company earned a profit of ₹12 lakhs, in computing net profit under Section 198 for the financial year 2022-23, the said accumulated loss of ₹10 lakhs will be deducted from the profit of ₹12 lakhs for the financial year 2022-23.

It should be noted that what is to be deducted is the amount of loss "which had arisen in computing the net profits in accordance with this Section" (This Section means Section 198); and not the amount of loss as per the profit and loss account. Therefore, to ascertain the deductible amount of loss in the current financial year, one must consider the loss arrived at as per Section 198 in the earlier year(s). This is also the view expressed by the Expert Advisory Committee of the Institute of Chartered Accountants of India in its advice set out below.

Thus, Clause (l) of sub-section (4) contemplates deduction of the amount of net loss of any previous financial year(s) which had arisen in computing the net profits in



accordance with this Section in any year, if not already deducted (adjusted) in any of the previous year(s), in the current financial year for which net profit is being calculated under Section 198. So, if loss is incurred in any earlier year(s) in the computation of net profit under Section 198, it will need to be set off first in determining net profit as per Section 198.

**Clause (m):** Any compensation or damages to be paid by virtue of any legal liability including a liability arising from a breach of contract.

Clause (m) mandates that any compensation or damages which a company pays due to legal liability, including those arising from a breach of contract, should be deducted in the calculation of net profit. This clause ensures that the costs stemming from legal obligations or contractual breaches even though not necessarily typical business expenses are factored into the company's profitability for calculating managerial remuneration limits as per Section 198. This includes payments due to legal liability, such as fines, penalties, or damages awarded in a court case, as well as liabilities from breach of contract.

Clause (m) ensures that only the profits after accounting for legal liabilities are considered when determining managerial remuneration limit, reflecting the impact of any adverse legal outcomes on the company's financial health, even though such expenses are not necessarily normal operational expenses. Clause (m) stipulates that any compensation or damages payable due to legal liability, including breaches of contract, be deducted from net profit when calculating managerial remuneration limits. This deduction ensures the profit calculation reflects the company's financial position after accounting for legal or contractual liabilities, leading to fairer and more transparent remuneration practices. This clause helps align executive pay with actual business performance by including the impact of any adverse legal outcomes.

**Clause (n):** any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m). Clause (n) specifies that any sum paid by the company for insurance against the risk of meeting a liability including but not limited to such as those liabilities referred to in Clause (m), should be deducted when calculating net profit for managerial remuneration purposes. This means that insurance premiums paid by the company to cover potential legal liabilities or compensation obligations must be subtracted from profits when determining the maximum allowable managerial remuneration.

Companies often take out insurance policies to cover potential liabilities, such as public liability insurance, professional indemnity insurance, and Directors & Officers (D&O) insurance. These policies provide financial protection for the company by covering or mitigating the costs of compensation, damages, or legal settlements. Clause (m) requires that compensation and damages paid due to legal liabilities be deducted from profit. Clause (n) complements this by allowing the deduction of insurance costs associated with managing these potential liabilities. Together, these clauses ensure that both actual liabilities

and preventive costs (such as insurance premiums) are deducted from the profit calculation.

**Clause (o):** According to sub-section (4), in making the computation of net profit, the sums specified in clauses (a) to (o) shall be deducted. One of the sums specified is as follows: "(o) debts considered bad and written off or adjusted during the year of account."

This item refers, inter alia, to bad debts written off during the financial year; it does not cover a provision for bad and/or doubtful debts. Therefore, in my opinion, the amount of provision need not be debited to the profit and loss account. Consequently, if this amount has been debited, it can be added back in the computation of net profits under Section 198.

#### **Sub-section (5):**

**Clause (a):** Income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4).

**Clause (b):** According to clause (b) of sub-section (5) of Section 198, any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4), shall not be deducted. Accordingly, the sum of such compensation paid by the company during the financial year can form part of the net profit for the purpose of computation under Section 198. If it has been deducted, i.e. debited to profit and loss account, while arriving at net profit in the profit and loss account, it can be added back to the net profit while computing net profit as per Section 198.

A question arises as to the interpretation of the term 'compensation' used in sub-section 5(b). The word 'compensation' is not defined in the Companies Act, 2013.

One of rules of statutory interpretation is that, when a word has been defined in the interpretation clause, *prima facie* that definition governs wherever that word is used in the body of the statute, but where an Act does not define a word used in the Act (undefined words), the legislature must be taken to have used that word in its ordinary, dictionary meaning.

The word 'compensation' has a variety of meanings. In the context of the provision in sub-section (5)(b), the word 'compensation' means monetary payment to compensate for loss or damage; something given or received as an equivalent for services, debt, loss, injury, suffering, lack, etc.; indemnity; something that constitutes an equivalent or recompense; something that makes up for a loss; something that is done or given to make up for damage, trouble, etc.

The scope of the word 'compensation' cannot be limited to payment made to any specific person or kind of payment. Clause (b) of sub-section (5) uses the words 'made voluntarily'. Thus, any payment towards indemnifying a person (fully or partly) for the loss he is going to or likely to suffer can be brought as compensation under clause (b).

Any compensation paid by a company to its employees who have opted for the Voluntary Separation Scheme floated by the company is covered by clause (b) of sub-section (5).

**Clause (c):** Loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;

**Clause (d):** As noted above, Section 198(1)(b) states, inter alia, in computing the net profits of a company in any financial year the sums specified in sub-section (5) shall not be deducted.

According to clause (d) of sub-section (5), any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

Accounting of impairment is a charge against profits and is required to be so accounted as per the Accounting Standards. The provision for impairment losses is required to be treated as expenditure and debited to the Profit & Loss Account. Accordingly, impairment charge is not a “change carrying amount of an asset or a liability on account of measurement at fair value,” and would not fall under Section 198(5).

There is no specific mention of any adjustments for impairment in Section 198 and as such impairment will have to be treated as deduction and expenditure. Impairment expenses are akin to depreciation. Reference can be drawn from Section 198(4)(k) which states that depreciation is to be deducted and treated as an expenditure while arriving at profits for the purpose of managerial remuneration.

Following the same ratio, it can be concluded that impairment losses would be debited to the Profit & Loss A/c and shall be considered as expenditure for the purpose of computation of profits under Section 198.

## Annexure

### Skeleton of a Statement of Computation of Net Profit under Section 198

Profit before tax as per Profit and Loss Statement	xxxx
<b>Add the following items if debited to Profit and Loss Statement before arriving profit before tax</b>	xxxx
Managerial remuneration	xxxx
Provision for Bad doubtful debts	xxxx
Loss on sale/disposal/discarding of assets.	xxxx
Loss on sale of investments	xxxx
Provision for diminution in the value of investments	xxxx
Fixed assets written off	xxxx
Fall in the value of foreign currency monetary assets	xxxx
Loss on cancellation of foreign exchange contracts	xxxx
Write off of investments	

Provision for contingencies and unascertained liabilities	xxxx
Lease premium written off	xxxx
Provision for warranty spares/supplies	xxxx
Infructuous project expenses written off	xxxx
Provision for anticipated loss in case of contracts	xxxx
Loss on sale of undertaking	xxxx
Provision for wealth tax	xxxx
Compensation paid under VRS or otherwise	xxxx
<b>Deduct the following if credited to P&amp;L statement for arriving at profit before tax:</b>	xxxx
Capital profit on sale/disposal of fixed assets (the same should be added if the company's business comprises buying & selling any such property or asset) and revenue profit (difference between original cost and WDV should not be deducted)	xxxx
Profit on sale of any undertaking (or its part) of the company	xxxx
Profit on buy-back of shares	xxxx
Profit/discount on redemption of shares or debentures	xxxx
Profit on sale of investments	xxxx
Compensation received on non-compete agreements	xxxx
Write back of provision for doubtful debts	xxxx
Write back of provision for doubtful advances	xxxx
Appreciation in value of any investments	xxxx
Compensation received on surrender of tenancy rights	xxxx
Profit on sale of undertaking	xxxx
Write back of provision for diminution in the value of investments	xxxx
Profit on sale of forfeited shares & shares of subsidiary/associated companies	xxxx
<b>Net Profit as per Section 198</b>	xxxx

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The length of the Research Paper should ordinarily be between 2,500 - 4,000 words in MS Word format.

We look forward to your co-operation in making this initiative of the Institute a success.

Regards,

**Team ICSI**

# 2

## RESEARCH CORNER



- THE MEDIATION ACT, 2023: PIONEERING A NEW PARADIGM IN DISPUTE RESOLUTION

# The Mediation Act, 2023: Pioneering a New Paradigm in Dispute Resolution

In today's fast-paced business environment, disputes are inevitable but the methods for resolving them are evolving rapidly. Traditionally, litigation has been the go-to mechanism for addressing commercial and corporate conflicts. However, the limitations of court processes, such as time-consuming procedures, escalating costs and an overburdened judiciary have prompted a significant shift toward Alternative Dispute Resolution (ADR) methods, particularly arbitration and mediation. These methods offer more flexibility, confidentiality and efficiency making them highly attractive to businesses seeking swift and less adversarial solutions.



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## INTRODUCTION

### USHERING A NEW ERA OF DISPUTE RESOLUTION

**M**ediation has evolved as a powerful alternative dispute resolution mechanism worldwide, offering a voluntary, confidential process to resolve conflicts amicably.

To address this, the Mediation Bill 2021, which received the Presidential assent on September 15, 2023, became the "Mediation Act, 2023." The enactment of the Mediation Act, 2023, marks a watershed moment in institutionalizing mediation as a viable option for resolving civil and commercial disputes. This article delves into the key provisions of the Mediation Act and its implications for professionals, while also providing some key recommendations to the Mediators for successful conduct of mediation.

### HISTORICAL UNDERPINNINGS: FROM LOVEDAYS TO MODERN FRAMEWORKS

The journey of mediation on the global stage reflects its transformation from a culturally ingrained practice to a structured and modern dispute resolution mechanism. This evolution spans centuries and continents, shaped by societal needs, legal developments, and reform movements.

#### 1. English Common Law: The Early Integration of Mediation

Mediation was a fundamental part of medieval English society. Before parliamentary statutes became the cornerstone of law, English common law applied local customs, with mediation often preferred over court litigation. Key features of early mediation included:

- **Lovedays:** Certain days were designated for mediations, allowing parties to resolve disputes without court intervention.
- **Court-Adjourned Mediation:** Courts sometimes adjourned cases to allow disputing parties to mediate.

As legal systems evolved, the preference for mediation declined, giving way to litigation as the dominant mode of dispute resolution. Legal rights, contracts, and adversarial arguments became more prominent, sidelining mediation.

#### 2. The Modern Revival: Civil Rights Movements in the U.S.

The resurgence of mediation in the 20<sup>th</sup> century is often attributed to the civil rights campaigns of the 1960s in the United States. This era witnessed:

- **Community Mediation Initiatives:** Inspired by participatory democracy, mediation was used



to address community grievances. The Vietnam War activism further fueled the search for constructive alternatives to conflict.

- **Institutionalization of Mediation:** Organizations like the San Francisco Community Mediation Board, established by Ray Shonholtz, laid the foundation for modern community mediation programs.
- **Court-Connected Family Mediation:** Led by figures such as John Haynes and Joan Kelly, family mediation became widespread, creating specialized approaches to conflict resolution.

The U.S. also saw the rise of organizations like the National Association for Community Mediation (NAFCM) and the Society of Professionals in Dispute Resolution (SPIDR), which expanded mediation beyond labor-management contexts to broader conflicts.

### 3. Mediation in Australia and the Multi-Door Courthouse Concept

Australia was one of the earliest countries to adopt mediation as a formalized alternative dispute resolution mechanism. Simultaneously, Frank Sander's "Multi-Door Courthouse" concept in the U.S. introduced the idea of offering multiple resolution options—including mediation—within the court system, promoting efficiency and accessibility.

### 4. The Woolf Reforms: Mediation in England and Wales

In the 1990s, England and Wales underwent significant civil justice reform through the Woolf Reforms, led by Lord Woolf, who later became the Lord Chief Justice. These reforms targeted the pressing issues of:

- **Cost:** Reducing expenses associated with protracted litigation.
- **Delay:** Ensuring timely resolution of disputes.
- **Complexity:** Simplifying procedural rules.

Mediation became a central element of the reforms, alongside enhanced case management by judges. These changes culminated in the Civil Procedure Rules of 1998, which formally integrated mediation into the civil justice system.

### 5. Hong Kong's Civil Procedure Reforms

Inspired by the Woolf Reforms, Hong Kong introduced its own civil procedure reforms in 2009. While sharing similarities, Hong Kong's framework differed by excluding pre-action protocols. Mediation and

case management played vital roles in these reforms, showcasing a tailored approach to addressing local legal challenges.

### 6. Mediation's Expansion into Schools and the Private Sector

Before the 1970s, mediation was predominantly used in labor-management contexts, such as transportation disputes mediated by the Federal Mediation and Conciliation Services in the U.S. However, the following decades witnessed its expansion into:

- **Education:** Organizations like the National Association for Mediation in Education (NAME) introduced peer mediation programs in schools, later succeeded by the Conflict Resolution Education Network (CRENet).
- **Private Sector:** Mediation gained traction in corporate disputes, marking a departure from its earlier focus on community and labor issues.

*By mastering these skills and leveraging the opportunities presented by the Mediation Act, professionals can position themselves as key players in transforming India's dispute resolution landscape.*

### THE EVOLUTION OF MEDIATION IN INDIA

Mediation in India is intricately woven into the fabric of its cultural heritage, reflecting a long-standing tradition that spans from the traditional Panchayat system to contemporary legal frameworks. This rich history showcases the evolution of dispute resolution in Indian society, where community-based approaches have historically played a crucial role in fostering harmony and understanding among individuals.

Today, modern statutory laws build upon this legacy, incorporating traditional practices into formal structures to enhance conflict resolution and promote social cohesion. The following serves as an indicative timeline of how Mediation has evolved in India:

- **The Panchayat System:** Served as a model for community-driven conflict resolution.
- **Industrial Disputes Act, 1947:** Introduced mediation to address labor conflicts.
- **Legal Services Authorities Act, 1987:** Facilitated compromise through *Lok Adalats*.
- **129<sup>th</sup> Law Commission Report:** Justice Malimath Committee's report on Urban Litigation and Mediation as Alternative to Adjudication and the Arrears recommended encouragement of parties to refer their disputes to ADR mechanisms.
- **CPC Amendment, 1999:** Integrated mediation into civil justice under Section 89.
- **Tamil Nadu Mediation and Conciliation Centre:** Became the first court-annexed mediation centre in India, having opened on April 09, 2005.

- **Section 442 of the Companies Act, 2013:** Provides that the Central Government is authorised to maintain a panel of experts to be called as ‘Mediation Panel’ for mediation between parties during the pendency of any proceedings before the Central Government or Tribunal or Appellate Tribunal. Companies (Mediation and Conciliation) Rules, 2016 were also notified in this regard.
- **Commercial Courts Act, 2015:** Provides for mandatory pre-institutional mediation in certain classes of Commercial Suits, where no urgent relief is sought.

## THE ADVENT OF MEDIATION ACT, 2023

To establish a robust legal framework for mediation and enhance its practice in India, the Mediation Bill, 2021, was introduced in the Rajya Sabha on December 20, 2021. The following day, it was referred to the Standing Committee for a detailed review. After thorough deliberation, the Committee submitted its 117<sup>th</sup> Report on July 13, 2022, with several recommendations for improvement. Incorporating these recommendations, the Union Cabinet approved revisions to the Bill, leading to its passage in the Rajya Sabha on August 2, 2023, and in the Lok Sabha on August 7, 2023. Upon receiving presidential assent on September 15, 2023, the Mediation Bill became the **Mediation Act, 2023**, marking a significant milestone in India’s dispute resolution landscape.

As per its preamble, the objective of the Mediation Act, 2023 is to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.

The Mediation Act defines the word “Mediation” as follows:

*“Mediation” includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute;*

Mediation, as defined under the Mediation Act, 2023, is a flexible and inclusive process that encompasses pre-litigation mediation, online mediation, community mediation, and conciliation. At its core, mediation is a voluntary mechanism where parties work collaboratively to reach an amicable settlement under the guidance of a neutral third party—the mediator—who facilitates discussions but holds no authority to impose a resolution. This emphasis on mutual consent and dialogue underscores mediation’s distinct and non-adversarial approach to resolving disputes.

**Section 6**, read with the **First Schedule** of the Act, outlines specific exclusions to ensure that mediation is applied only to disputes that are appropriate for consensual resolution. These exclusions safeguard the process from being misapplied in cases where mediation might be unsuitable or impractical. The following types of disputes are excluded from the ambit of mediation under the Act:

1. **Disputes Involving Vulnerable Parties:** Cases involving minors, persons with intellectual disabilities, or individuals of unsound mind are excluded. This ensures that vulnerable parties are adequately protected through judicial oversight rather than consensual mechanisms.
2. **Criminal Proceedings:** Mediation cannot be used for the prosecution of criminal offences, recognizing that such matters require adjudication through formal legal processes due to their public interest implications.
3. **Professional Complaints or Disciplinary Proceedings:** Complaints or disciplinary proceedings against practitioners, such as CS, CA, lawyers or doctors, are excluded, as these typically involve regulatory bodies and statutory oversight.
4. **Third-Party Rights:** Disputes that affect the rights of third parties not privy to the mediation process are outside its scope. This ensures that the mediation process does not inadvertently affect the rights of uninvolved parties.
5. **Tax Disputes:** Any dispute related to the levy, collection, penalties, or refunds of direct or indirect taxes is excluded, given the statutory nature of tax assessments and enforcement.
6. **Statutory and Regulatory Proceedings:** Proceedings under specialized laws such as the National Green Tribunal Act, Electricity Act, TRAI Act, PNGRB Act, SEBI Act, and Competition Act are excluded. These involve technical adjudication and regulatory frameworks beyond the scope of mediation.
7. **Land Acquisition Proceedings:** Disputes arising from land acquisition proceedings are excluded, as they often involve broader public interest considerations and statutory compliance.

## Rationale for Exclusions

The exclusions are carefully designed to ensure that:

- **Judicial Oversight is Retained:** Certain disputes require adjudication by courts or regulatory bodies to ensure compliance with public policy and statutory mandates.
- **Complexity and Public Interest are Addressed:** Issues involving criminal law, taxation, or land acquisition often involve technical, statutory, or public interest considerations that go beyond the collaborative nature of mediation.



- **Parties Are Protected:** Vulnerable individuals, third-party rights, and sensitive regulatory matters are better suited to formal judicial or administrative processes.

### PRE-LITIGATION MEDIATION: A GATEWAY TO AMICABLE RESOLUTIONS

One of the cornerstone features of the Mediation Act, 2023, is its focus on **pre-litigation mediation**, as borne in Section 5 of the Act designed to encourage parties to resolve disputes amicably before resorting to formal court proceedings. While earlier drafts of the Mediation Bill, 2021, proposed mandatory pre-litigation mediation, the Standing Committee recommended making it voluntary to preserve the essence of mediation as a consensual process. The Act, therefore, reflects this balanced approach, ensuring pre-litigation mediation remains encouraged but not obligatory.

In jurisdictions like the United Kingdom and Singapore, mandatory pre-litigation mediation has been successfully implemented, demonstrating its potential to streamline dispute resolution. While the Mediation Act, 2023, opts for a voluntary approach, it opens the door for future reforms as mediation gains broader acceptance in India.

#### Objectives of Pre-Litigation Mediation

1. **Reducing Court Backlogs:** By resolving disputes before they escalate to the courts, pre-litigation mediation helps in alleviate the overwhelming caseload on judicial systems.
2. **Cost and Time Efficiency:** Mediation offers a faster and more affordable alternative to protracted litigation, saving resources for all stakeholders.
3. **Preserving Relationships:** Especially in commercial or family disputes, mediation fosters a cooperative environment, enabling parties to preserve or even improve relationships.
4. **Promoting Settlement-Oriented Culture:** Pre-litigation mediation creates a shift in mindset, encouraging parties to focus on resolution rather than confrontation.

### CONFLICT OF INTEREST: UPHOLDING MEDIATOR NEUTRALITY

The Act underscores the importance of impartiality through rigorous conflict-of-interest provisions, as contained in Section 10. Mediators must disclose any potential conflicts—whether personal, professional, or financial before mediation commences. If a conflict arises mid-process, mediators must immediately notify the parties.

Consequences: Parties may waive the conflict through express consent or seek the removal of the mediator by the service provider. This transparent framework ensures trust



in the mediation process and aligns with international best practices for ethical conduct.

## TECHNOLOGICAL INTEGRATION: ONLINE MEDIATION

Online mediation is a groundbreaking feature of the Act, signalling India's readiness for digital transformation in dispute resolution. Section 30 recognizes electronic forms of mediation, including video conferencing, secure chat rooms, and email communication. Key advantages include:

- **Accessibility:** Enables parties in different locations to resolve disputes without physical presence.
- **Cost Efficiency:** Reduces logistical expenses associated with traditional mediation.
- **Confidentiality:** Digital platforms are mandated to maintain the integrity and privacy of proceedings.

The incorporation of online mediation aligns with global trends, including the rise of Online Dispute Resolution (ODR) platforms, such as those introduced by SEBI for resolving investor grievances.

## MEDIATION COUNCIL OF INDIA: PILLAR OF THE FRAMEWORK

The establishment of the **Mediation Council of India (MCI)** is a pivotal aspect of the Act, aiming to regulate and promote mediation as a professional discipline.

### Role and Responsibilities

Outlined in Chapter VIII of the Act, the Council is tasked with:

1. **Standard Setting:** Formulating guidelines for the ethical and professional conduct of mediators.
2. **Accreditation and Registration:** Accrediting mediators and mediation service providers while maintaining an updated panel.
3. **Training and Certification:** Conducting workshops, training programs, and continuous education for mediators.
4. **Promotion of Mediation:** Organizing awareness campaigns to integrate mediation into the mainstream legal framework.
5. **Digital Repository:** Maintaining an electronic repository of mediated settlement agreements to enhance transparency and accessibility.

### Ensuring Quality

The Council envisions a stringent accreditation process, ensuring mediators possess the necessary qualifications and undergo periodic assessments to uphold high standards.

## International Mediation Hub

MCI is also entrusted with promoting India as a global mediation hub, fostering international collaborations, and aligning domestic practices with global benchmarks.

The Mediation Council's proactive role will be instrumental in shaping India's mediation landscape, ensuring its credibility and acceptance.

## COMMUNITY MEDIATION: STRENGTHENING SOCIAL HARMONY

The concept of **community mediation**, introduced under Section 43 of the Mediation Act, 2023, is one of the most innovative and socially significant provisions of the Act. This mechanism aims to address disputes at the grassroots level, particularly those likely to affect peace and harmony within neighborhoods or local communities. By fostering localized solutions, community mediation ensures that disputes are resolved in a way that is inclusive, participatory, and sensitive to cultural and social contexts.

### Initiation of Mediation:

- The process requires prior mutual consent of the parties involved.
- An application can be submitted to the Legal Services Authority, District Magistrate (DM), or Sub-Divisional Magistrate (SDM) to initiate the mediation process.

### Constitution of the Mediation Panel:

- A three-member panel is constituted to mediate the dispute. The panel includes individuals of standing and integrity who are respected within the community.
- Eligible mediators may include:
  - Local leaders or individuals recognized for their contribution to society.
  - Representatives from area or resident welfare associations.
  - Individuals with prior experience in mediation.
  - Any other person deemed appropriate by the authority.

## BINDING NATURE AND ENFORCEMENT OF SETTLEMENTS

Section 27 elevates mediation agreements to the status of court decrees, making them enforceable under the CPC. Challenges to settlements are limited to fraud, corruption, impersonation, or disputes excluded under the First Schedule, ensuring finality and trust in the process.

## MEDIATION RULES

The Mediation Council of India shall, with the previous approval of the Central Government, make the following



important rules and regulations under the Mediation Act, 2023:

- 1) Qualification, experience and accreditation for mediators of foreign nationality;
- 2) Manner of conducting mediation proceeding;
- 3) Standards for professional and ethical conduct of mediators;
- 4) Manner of registration of mediated settlement agreement;
- 5) Fees for registration of mediated settlement agreement;
- 6) Cost of mediation;
- 7) Manner of process of conducting online mediation;
- 8) The terms and conditions of experts and committees of experts;
- 9) Conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations;
- 10) Criteria for recognition of mediation institutes and mediation service;
- 11) Manner of maintenance of electronic repository of mediated settlement agreements;
- 12) Manner for recognition of mediation service provider;
- 13) Such other functions of mediation service provider;
- 14) Duties and functions to be performed by mediation institutes; and
- 15) Any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.

## MEDIATION: OPPORTUNITIES FOR COMPANY SECRETARIES

- 1) **Role as Mediators in Corporate Disputes:** The current Section 442 of the Companies Act, 2013 provides for the maintenance of a panel of mediators

and conciliators to mediate disputes before the Central Government, National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT). Practicing Company Secretaries having 15 years of experience, with proper training, can be empaneled as mediators under this provision. This allows them to mediate in cases referred by NCLT/NCLAT involving oppression & mismanagement and shareholder conflicts.

- 2) **Advisory Role in Mediation Procedures:** Company Secretaries can advise companies on the benefits and processes of mediation, helping them navigate pre-litigation mediation under the Mediation Act, 2023. With a focus on compliance and governance, they can assist corporate Boards in understanding how mediation can serve as a cost-effective and timely dispute resolution method.
- 3) **Enhancing Stakeholder Relations:** With their knowledge of stakeholder dynamics, Company Secretaries can mediate between the board, management, and shareholders. The Mediation Act, 2023 and Section 442 of the Companies Act, 2013 allow for mediation in disputes that would otherwise lead to costly litigation, giving CS professionals the opportunity to enhance their value by improving stakeholder relationships and conflict management through mediation.
- 4) **Assisting in Drafting and Implementing Mediation:** Company Secretaries can assist in drafting mediation clauses in contracts, agreements and memorandums of understanding (MoUs), leveraging the provisions of the Mediation Act, 2023.

## PRACTICAL TIPS FOR PRACTISING COMPANY SECRETARIES IN MEDIATION

- 1) **Active Listening:** Mediators must listen beyond words, interpreting both verbal and non-verbal cues, including moments of silence, which may signal agreement, confusion, or dissent. For instance, if one party suddenly falls silent, it may reflect internal conflict or hesitation. Picking up on these subtle cues builds trust and encourages parties to share more openly.

- 2) **Empathy and Emotional Intelligence:** Empathy allows mediators to connect at a human level, fostering a cooperative environment. By sharing a personal story or showing understanding, such as recalling the traditional “Panchayat” conflict resolution system, mediators demonstrate that they are approachable and relatable, not just professionals delivering a service.
- 3) **Cultural Sensitivity:** Cultural awareness helps mediators to prevent misunderstandings, especially in family matters or disputes across India’s diverse regions. For example, certain customs may be meaningful for one region but less so for another. In family mediations, awareness of such nuances can be crucial for reaching agreements that respect each party’s values and customs.
- 4) **Problem-Solving Skills:** Effective mediators prioritize finding solutions that satisfy all parties. In a dispute between family shareholders, a mediator discerned that the widow in the case had a strong sentimental attachment to a specific part of the family estate—around the swimming pool. By suggesting this area be allocated to her, the mediator unlocked a resolution that brought the entire dispute to an amicable close.
- 5) **Patience and Perseverance:** Mediation can be time-intensive, requiring mediators to maintain patience to ensure parties stay engaged. For example, in a shareholder dispute within a family, a mediator worked with the family for three months, eventually recognizing that one of the sons was deeply attached to his mother. By patiently proposing a fair share of ownership (20% to each family member), the mediator successfully resolved a lengthy and emotionally charged dispute.
- 6) **Communication Skills:** Clear, respectful and jargon-free communication prevents misunderstandings and ensures parties are aligned. Mediators should use simple language, avoiding complex legal terms, to create a welcoming environment where all parties feel comfortable.
- 7) **Impartiality and Objectivity:** Maintaining an unbiased stance fosters a fair environment, allowing parties to feel equally respected. A mediator’s body language, tone, and words should consistently convey neutrality, avoiding any suggestion of favoritism that might derail negotiations.
- 8) **Strategic Thinking:** Before starting, mediators benefit from understanding the background, interests, and positions of each party, which allows them to navigate challenges more effectively. In commercial mediations, this might mean helping parties recognize tax implications for proposed solutions, guiding them toward options that avoid future legal or financial issues.
- 9) **Legal and Procedural Knowledge:** Knowledge of legal frameworks is critical to ensuring agreements are enforceable. In one case, a mediator drafted a settlement that transferred corporate property without making the company itself a party to the agreement. When contested, this oversight led to the agreement’s invalidation in court. Understanding such nuances helps mediators to avoid costly errors.
- 10) **Building Trust and Rapport:** Trust is essential for productive mediation, built through respectful and honest interactions. Parties feel reassured when they sense that the mediator genuinely seeks to help them resolve the issue, saving them time and expense compared to prolonged litigation.

## CONCLUSION

The Mediation Act, 2023 marks a transformative shift in India’s approach to dispute resolution, emphasizing collaboration, efficiency and the preservation of relationships over adversarial litigation. By institutionalizing mediation and providing a robust framework for its practice, the Act not only reduces the burden on the judiciary but also empowers individuals and businesses with a flexible and cost-effective mechanism to resolve disputes.

For professionals such as Practicing Company Secretaries, the Act opens new avenues to enhance their roles in corporate governance, compliance and conflict resolution. From advising on pre-litigation mediation to acting as mediators or facilitating structured negotiations, these professionals can significantly contribute to fostering a culture of amicable dispute resolution in India.

Mediation is more than a legal process; it is a collaborative art that requires empathy, cultural sensitivity, patience, and strategic thinking. By mastering these skills and leveraging the opportunities presented by the Mediation Act, professionals can position themselves as key players in transforming India’s dispute resolution landscape.

In an era where businesses value efficiency and harmony, mediation is no longer an alternative but a preferred solution. The Mediation Act, 2023 not only formalizes this process but also paves the way for a future where disputes are resolved with dignity, preserving both relationships and resources. The time is ripe for stakeholders across industries to embrace this shift and make mediation a cornerstone of their conflict resolution strategies.

## REFERENCES:

- i. *Mediation Act, 2023;*
- ii. *Parliamentary Standing Committee Report on the Mediation Bill, 2021 (July, 2022);*
- iii. *Webinar on “Opportunities for Professionals in Mediation” conducted by Corporate Professionals on 08<sup>th</sup> November, 2024: <https://www.youtube.com/watch?v=PPV94-ISJ5M>* □





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**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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#### *Motto*

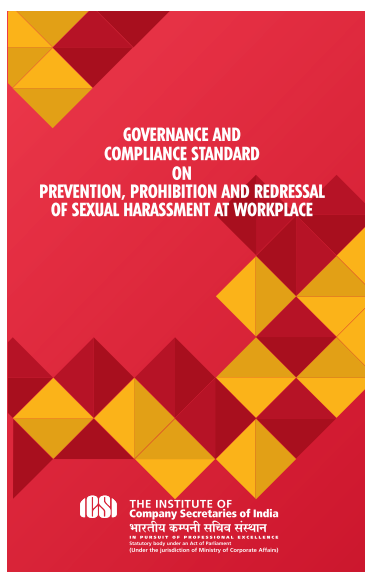
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# Governance and Compliance Standard on Prevention, Prohibition, and Redressal of Sexual Harassment at Workplace

The Standard is designed to enhance the implementation of the PoSH Act, 2013 by harmonizing workplace practices.



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Creating an inclusive environment where all employees feel secure to express themselves without fear of harassment.

### Training for Transformation

To equip employees and Internal Committee members with the knowledge they need through targeted training and capacity-building programs.

### Standardized Solutions

Streamline Internal Committee procedures with clear guidelines for meetings, complaint handling, and inquiries—ensuring fairness and transparency.

### Inclusive Policies for All

Develop a gender-neutral PoSH policy that fosters inclusivity and equality, ensuring every voice is heard and respected.

The PoSH Standard is available at:  
**Governance\_and\_Compliance\_Standard\_on\_POSH.pdf**

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President, The ICSI

**CS Dhananjay Shukla**  
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**CS Asish Mohan**  
Secretary, The ICSI

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# 2<sup>nd</sup> ICSI BOARD MENTORSHIP PROGRAMME



6<sup>th</sup> to 9<sup>th</sup> January, 2025



Port Blair, Andaman & Nicobar Islands



*Leadership and Learning are indispensable to each other.*

*~ John F. Kennedy*

**L**eadership – the word itself is an assimilation of a multitude of aspects – ethics, integrity, an all-inclusive approach and above all empathy. Where on one hand positions of leadership bring with them the luxury of decision making, touching lives of many, with one single signature; the authority brings with it a much more humungous responsibility – to take those decisions in a manner where the negative side of impact is equally accounted for and negated.

Each large corporation which has stood the test of time, has been written for giving equal and sometimes even greater reverence to the leaders to alighted their way. You name a longstanding company and the name of their founder or the Chairperson, the leading Managing Director follows along.

Given this significance of the leadership roles it is imperative that the modern-day leaders are well-equipped to succeed in their designated roles and take the organizations forward with grit, patience and embracing the changes brought about by the altering dynamics of the ecosystem encasing the businesses.

Understanding the need for a dedicated learning platform for those who lead by action, lead by example and lead from the front, the ICSI along with its section 8 company – the Institute of Governance Professionals of India had conceived the idea of the ICSI Board Mentorship Programme.

A 4-day residential Programme touching upon the finer nuances of Board Processes, regulatory aspects as well as growing stakeholder expectations, the first edition of the IBMP organized in the heart of Ooty (Tamil Nadu) garnered much appreciation.

Taking the baton forward, we are pleased to invite both present and future directors, Board Members, CEOs, CFOs, Key Managerial Personnel to join us for the 2nd edition of the ICSI Board Mentorship Programme scheduled to be held during January 06-09, 2025 at Port Blair (Andaman & Nicobar Islands).

Let us all begin the new year on a note of deep learning and understanding !!!

Regards,

**(CS B. Narasimhan)**

President, The Institute of Company Secretaries of India  
Chairperson, Institute of Governance Professionals of India



## About Institute of Governance Professionals of India

Institute of Governance Professionals of India (IGPI) is an ICSI initiative for nurturing governance and sustainability. The Company intends to take forward its purpose to generate, spread and impart knowledge, directly or in association with person(s) having similar objects or engaged in similar activities by way of Research, Publications, Training and Education. The areas of focus of these activities include Corporate Laws, Governance, Management, Business Sustainability and CSR, Capital and Financial Markets, Economic Laws and Policies, Information and Control Systems and Allied Disciplines.

## About Institute of Company Secretaries of India

The Institute of Company Secretaries of India (ICSI) is a premier professional body, established under an Act of Parliament (The Company Secretaries Act, 1980), to regulate and develop the profession of Company Secretaries. ICSI functions under the jurisdiction of the Ministry of Corporate Affairs, Government of India. The Institute provides top-quality education to the students of Company Secretaries (CS) Course.

As an inclusive body on the global governance map, the ICSI has been taking various initiatives for the growth and development of the profession as well as contributing to the initiatives of Government of India that have potential to enhance the social-economic growth of the nation.

Headquartered in New Delhi, the ICSI has a nationwide presence with four Regional Offices in New Delhi, Chennai, Kolkata and Mumbai, 73 Chapter Offices spread all across the country and Centre for Corporate Governance, Research and Training (CCGRT) in Mumbai, Hyderabad and Kolkata. The Institute also has six overseas centres at Australia, Canada, Singapore, UAE, UK and USA. With over 73,000 members and around 200,000 students, the ICSI has the largest membership and student base of Company Secretaries in the world.



## Programme Highlights

The ICSI Board Mentorship Programme is designed to cultivate practical, industry-relevant skills that empower individuals to effectively lead and inspire teams in the realms of Corporate Governance and

sustainability. This programme aims to enhance leadership capabilities, personal resilience, risk management expertise, cross-functional competencies, and strategic thinking skills, equipping participants to navigate the complexities and challenges of the modern corporate landscape.



### Module: I Board Room Wizardry

- Tools for Directors
- Effective Decision making through Board Committees
- Corporate Resilience & Role of the Board
- KMP–Appointment, Duties, Powers & Remuneration



### Module: II RPT's & Insider Trading *Related Party Transaction*

- Decoding Related Party Transactions
- RPT: Restriction on Participation and Voting



## Regulatory Framework for Insider Trading in India

- Understanding UPSI - Unpublished Price Sensitive Information
- Standard operating procedures to identify, classify, process and store UPSI
- Trading and Disclosure Requirements for Insiders: Compliance and Best Practices
- Sanctions, Violations, and Enforcement: Consequences of Insider Trading in India
- Case Studies



### Module: III

## Corporate Social Responsibility (CSR)

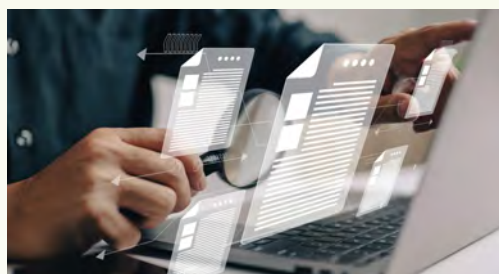
- Applicability, Framework, Activities and Implementation
- Impact Assessment, Reporting & Disclosure
- Discovering Opportunities for Investments, Innovations and Collaboration through CSR
- Case Studies



### Module: IV

## Inspection, Inquiry And Investigation (3i)

- Framework
- Power of the Registrar & Regional Directors
- Central Government's powers to direct the Registrar or an Inspector to conduct inquiry
- Conduct of Inspection and Inquiry
- Liability of Officers for fraud
- Search and Seizure
- Investigation of ownership of company
- Case Studies



### Module: V

- Secretarial Standard on Meetings of the Board of Directors (SS-1)
- Secretarial Standard on General Meetings (SS-2)
- Secretarial Standard on Dividend (SS-3)



### Module: VI

## Environmental, Social and Governance (ESG) way to Corporate Sustainability

- ESG: Emergence, Relevance, Concept and Framework
- Key global standards and frameworks for ESG Reporting
- Board's role in developing Corporate Strategy based on ESG
- Concept of Business Responsibility and Sustainability Reporting (BRSR)
- National Guidelines on Responsible Business Conduct (NGRBC)
- Business Responsibility and Sustainability Report (BRSR) framework
- Case studies and best practices





*Glimpses of*  
**1<sup>st</sup> ICSI Board Mentorship Programme**  
at Ooty, Tamil Nadu on September 12-13-14, 2024



## Publications forming part of Kit

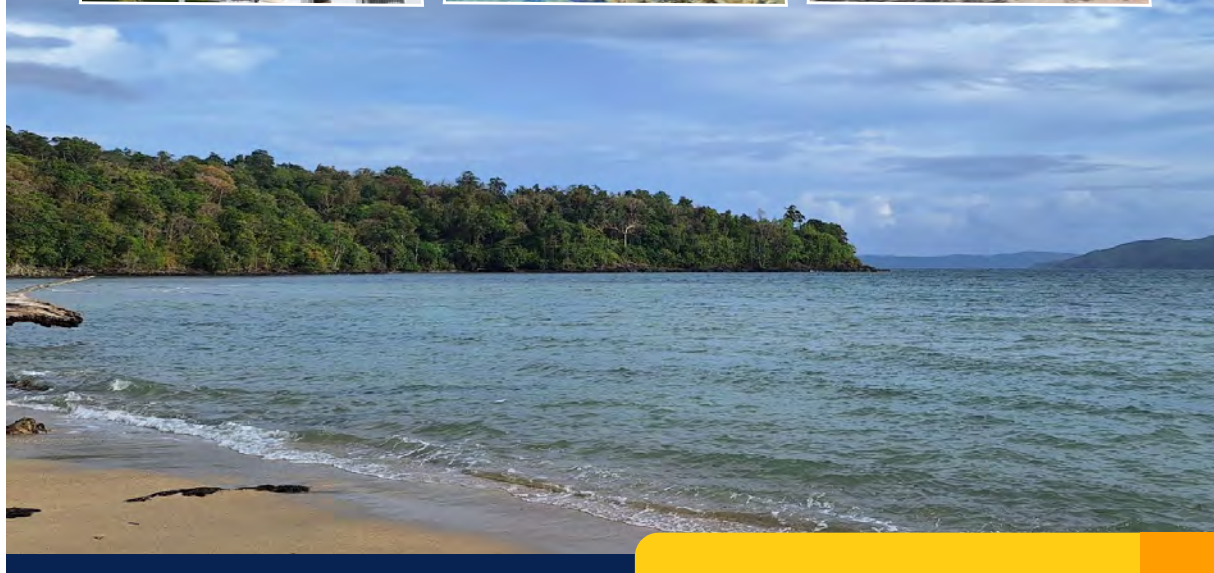
- 📖 Guidance Note on Loan to Directors and Loan, Investment, Issue of Guarantee and Security by Companies (Sections 185 & 186 of the Companies Act, 2013)
- 📖 Corporate Governance: From Compliance to Excellence (Handbook on Best Practices)
- 📖 Handbook on Business Responsibility and Sustainability
- 📖 SS-1 (Secretarial Standard on Meetings of the Board of Directors)
- 📖 SS-2 (Secretarial Standard on General Meetings)
- 📖 Guidance Note on Meeting of the Board of Directors
- 📖 Guidance Note on Report of the Board of Directors

- 📖 Guidance Note on Independent Directors
- 📖 Guidance Note on Related Party Transaction
- 📖 ICSI Guiding Principles on Stewardship
- 📖 Governance and Compliance Standard on PoSH
- 📖 Chartered Secretary (Latest edition)



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# 3

## LEGAL WORLD



- PRASAD TECHNOLOGY PARK PVT LTD v. SUB- REGISTRAR & ORS [SC]
- PRABHAT JAIN LIQUIDATOR OF NARMADA CEREAL PVT LTD v. MP INDUSTRIAL DEVELOPMENT CORPORATION & ORS [NCLAT]
- RAVI AUTO LTD v. SURANA MERCANTILES PVT LTD [NCLAT]
- MURLIDHAR VINCOM PVT LTD v. SKODA (INDIA) PVT. LTD [NCLAT]
- ANURAG GUPTA & ANR v. GREENBAY INFRASTRUCTURE PVT. LTD [CCI]
- HARISH KUMAR v. S.B TELECOMMUNICATION & ORS [CCI]
- AJAY PROTECH PVT LTD v. GENERAL MANAGER [SC]
- BHARTI AIRTEL LTD v. THE COMMISSIONER OF CENTRAL EXCISE, PUNE [SC]
- STATE BANK OF INDIA v. NAVIN KUMAR SINHA [SC]



## Corporate Laws

### Landmark Judgement

**LMJ 12:12:2024**

**PRASAD TECHNOLOGY PARK PVT LTD v. SUB-REGISTRAR & ORS [SC]**

**Appeal (Civil) 7305 of 2005 [SLP (Civil) No. 16313 of 2004]**

**S.B. Sinha & P.K. Balasubramanyan, JJ. [Decided on 08/12/2005]**

**Equivalent citations: AIR 2006 SC 604; 2006 (1) SCC 473; (2005) 10 JT 417 (SC); 2005 (10) SCALE 56; (2005) 128 Comp Cas 996(SC).**

**Companies Act, 1956- sections 21&23- change of name of company- whether involves transfer of property- Held, No.**

#### Brief facts:

Prasad Garments Pvt. Ltd ["PGPL"] entered into a lease-cum-sale agreement with the Third Respondent on or about 05.03.1999 for a period of eleven years computed from 25.06.1997. The name of the said company, however, was changed to Prasad Technology Park Pvt. Ltd ["PTPPL"]. The Appellant presented a supplementary agreement [which was in the name of PTPPL] to the original lease deed [which was in the name of PGPL] for registration as deed of rectification with a nominal stamp duty of RS.100/-. However, the Stamp authorities considered it as an instrument of transfer between PGPL to PTPPL and demanded the payment of full stamp duty as payable on the original lease deed. The Karnataka High Court also confirmed the levy of stamp duty against which the present appeal has been filed before the Supreme Court.

Whether execution of a supplementary agreement entered into by and between the Appellant and the Third Respondent herein would amount to a transfer so as to attract stamp duty payable in terms of Article 5(d) of the Schedule appended to the Karnataka Stamp Act, 1957, consequent upon the change of the name of the erstwhile company to the Appellant Company is the question involved in this appeal.

**Decision: Appeal allowed.**

#### Reason:

Change of the name of a company can be allowed by the Registrar of the Companies in terms of Section 21 of the Companies Act. Once such a name is permitted to be changed, a certificate is issued in terms of Section 23 thereof.

The Appellant indisputably was permitted by the Third Respondent herein to establish a software park. The execution of supplementary agreement, it has categorically been stated, became necessary consequent upon the change in the name of the company. By reason of such supplementary agreement although it was permitted to establish a software park but by reason thereof no fresh transaction was entered into. We have noticed hereinbefore that in terms of the aforementioned agreement dated 05.03.1999, the land in question was demised for a period of eleven years with effect from 25.06.1997 on payment of premium fixed thereunder as also on yearly lease rent stipulated thereby.

The said lease indisputably was governed by Section 105 of the Transfer of Property Act. By reason of the supplementary agreement, a restrictive covenant has been amended in terms whereof the Appellant herein was permitted to carry on the business of a Technology Park instead of manufacture of readymade garments/leather garments. Only because the name of the company was changed, the same would not mean that a fresh transaction took place. Having regard to the change in the name of the company, the Appellant's name was sought to be substituted in the original agreement. The period of the lease, the quantum of the premium paid and other terms and conditions remained unaltered except the restriction contained in clause 2(q) of the said deed, was removed.

By reason of mere change of user from carrying on one business to another, it is trite, a fresh transaction does not take place. The terms and conditions of the lease can be changed by mutual consent. Unless the essential ingredients thereof as contained in Section 105 of the Transfer of Property Act are not altered, it cannot be said that the parties to the contract entered into a fresh transaction. The Third Respondent merely reserved unto itself a right of re-entry on expiry of the said period of eleven years. It could in terms of the covenant of the lease also extend the period of tenancy or terminate the same. Unless the lease itself came to an end, the third respondent did not have any right to re-convey the property. By reason of mere change in the name of the company "Prasad Garments Pvt. Ltd." the erstwhile lessee also cannot be held to have transferred its leasehold interest in favour of the Appellant herein.

Execution of an instrument which would attract payment of stamp duty in terms of Article 5(d) of the Act must involve transfer of the property or otherwise a right or liability may inter alia be created, transferred etc., as envisaged in Section 3 thereof. Once it is held that the supplementary agreement is neither a deed of lease nor a deed of sale within the meaning of Section 105 or Section 54 of the Transfer of Property Act, as the case may be, Article 5(d) of the schedule to the Act will have no application. If Article 5(d) has no application, indisputably the residuary clause contained in Article 5(f)(i) would have. The Appellant admittedly paid the stamp duty in terms thereof.

It is now well settled that for the purpose of levy of stamp duty, the real and true meaning of the instrument must be ascertained. [See *The Madras Refineries Ltd. v. The Chief Controlling Revenue Authority, Board of Revenue, Madras (1977) 2 SCC 308*].



The High Court held that 'the supplementary lease agreement cannot be said to be an instrument whereunder the Appellant-Company claims certain leasehold from the Board'; but having done so, the High Court was not correct in holding that it is liable to pay the stamp duty.

Having regard to the fact that the entity of the Appellant cannot be said to be totally different from Prasad Garments Pvt. Ltd. and as by reason of the supplementary agreement, no fresh transaction has been entered into, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. The Appellant shall be entitled to costs.

**LW 87:12:2024**

**PRABHAT JAIN LIQUIDATOR OF NARMADA CEREAL PVT LTD v. MP INDUSTRIAL DEVELOPMENT CORPORATION & ORS [NCLAT]**

**Comp. App. (AT) (Ins.) No. 697 of 2023 & I.A. No. 2322 of 2023**

**Rakesh Kumar Jain, Naresh Salecha & Indevvar Pandey. [Decided on 27/11/ 2024]**

**Insolvency and Bankruptcy Code, 2016- Cd in liquidation- permission sought to sub-lease the leased property- lessor objected to the sub-lease- NCLT dismissed the application- whether correct- Held, Yes.**

**Brief Facts:**

The Respondent No.1 is the Lessor of the land of the subject factory of the Corporate Debtor. The Appellant Liquidator of the Corporate Debtor filed an application seeking to sub-lease the factory to a third party without the consent of the Respondent No.1. The Adjudicating authority [NCLT] rejected and dismissed the application. Hence the present appeal.

**Decision: Dismissed.**

**Reason:** Clause 12 of Lease Deed which reads as under :-

"12-The Lessee agrees it shall not sub-let, assign or otherwise transfer the said land or any part thereof or any building constructed thereon for any purpose whatsoever except as provided in Rule 20 of MP Allotment of Shed Plot and Land Rule 1974 without previous sanction in writing of the lessor or any other officer authorized by him."

This makes very clear that the Appellant could not have sub-leased the land or premises without specific approval of the Respondent No. 1. We also observe that the Clause 12 also uses the word "any building constructed thereon". We recall pleadings of the Appellant that the Appellant did not sub-lease land and only gave lease of plant and machinery etc. We wonder, if the building is not part of such agreement between the Corporate Debtor and M/s. Maa Yashoda Food Grains how and where these plant and machinery would have been housed and how these would have been operated. Hence, we are unable to accept contention of the Appellant that no permission of the Respondent No. 1 was required.

We find that the facts of the Sundresh Bhatt (Supra) were entirely different and were related to custom duty payments by the Corporate Debtor and right of the custom authorities to initiate recovery action. In context with the facts in the present case, there is no such action involved and rather it is the violation by the Appellant himself regarding Lease Deed entered with Respondent No. 2 which led to issue of notices by the Respondent No. 2 which cannot be termed as legal proceedings against the Corporate Debtor. Hence, the contentions of the Appellant do not appeal to us.

We note that in fact the Respondent No. 2, as banker, has taken stand that as Financial Creditor his role is limited matters of operation of the Corporate Debtor which is role of the Appellant as Liquidator. In fact, we find that the Respondent No. 2 has indirectly supported the cause of the Appellant in so much so it cut the cost on the part of the Corporate Debtor. However, we are not clear as to why single member CoC/ Financial Creditor/ PNB/ Respondent No. 2, did not question legal requirements needing the consent of the Respondent No. 1 for sub-leasing by the Appellant, which admittedly not taken by the Appellant from the Respondent No. 1.

At this stage, we would like to go in detail the rationale of the Adjudicating Authority as contained in the Impugned Order while rejecting the application of the Appellant. We find that the Adjudicating Authority has given detailed reasoning, after full analysis and examining the Lease Deed, MP Rules, cited judgments of the Hon'ble Supreme Court of India and the provision of the Code, while rejecting the application of the Appellant. We do not find any fault in the Impugned Order or any violation of the Code or regulations which can be found in the Impugned Order. Therefore, we support the Impugned Order and do not accept the pleadings of the Appellant made before us in the present appeal.

We have observed that the Section 35(1)(d) of the Code does not entitle a Liquidator to grant sub-leases over properties not owned by the Corporate Debtor and therefore Section 238 of the Code cannot be interpreted in a manner that has the effect of overriding the Respondent No. 1 duty to enforce the relevant Rules on how public lands are to be regulated. We have already noted earlier that this is supported by a three-judge bench decision of the Hon'ble Supreme Court in Municipal Corporation of Greater Mumbai vs. Abhilash La/, (2020) 13 SCC 234.

We find this judgment clearly negates the contention of the Appellant, that Section 238 of the Code overrides the provisions of the M.P. State Industrial Land and Building Management Rules, 2019. We note that the Hon'ble Supreme Court of India has categorically held that the statutory powers of a public body to regulate public lands cannot be overridden by provisions of the Code. Therefore, we find that the Appellant did not have right to create sub-leases over a third party's land. We also note that this judgement has been followed by this Appellate Tribunal in New Okhla Industrial Development Authority vs. Abhishek Anand, Liquidator of Mega Soft Infrastructure Pvt. Ltd., Company Appeal (AT) (Ins.) No. 998 of 2021 and Maharashtra Industrial Development Corporation vs. Santanu T Ray, Company Appeal (AT) (Ins.) No. 1004 of 2021 etc., and therefore, we are duty bound to follow the same.

In view of above detailed analysis we hold that action of the Appellant to sub-lease to M/s Maa Yashoda Food Grains, without specific permission of the Respondent No. 1 was incorrect and illegal as correctly held by the Adjudicating Authority in the Impugned Order. In fine the appeal, devoid of any merit, fails and stands dismissed. No costs. IA, if any, are closed.

**LW 88:12:2024**

**RAVI AUTO LTD v. SURANA MERCANTILES PVT LTD [NCLAT]**

**Company Appeal (AT) (Insolvency) No. 1059 of 2022**

**Ashok Bhushan & Arun Baroka. [Decided on 27/11/2024]**

**Insolvency and Bankruptcy Code, 2016- section 7- loan given on the basis of promissory note- loan shown in the ledger of the FC- CD paid interest for some period and stopped thereafter-FC filed a CIRP petition- rejected by NCLT- Whether correct- Held, No.**

#### **Brief facts:**

The Financial Creditor disbursed an amount of Rs.1,00,00,000/- to the Corporate Debtor on 01.11.2016 on the basis of a . A Promissory Note. The disbursement of Rs.1,00,00,000/- was also reflected in the ledger entry of the Financial Creditor. Corporate Debtor paid interest on the Inter Corporate Deposit (ICD) on quarterly basis till 31.03.2018. No payments were made towards interest w.e.f. 01.04.2018. Financial Creditor issued confirmation of the accounts to the corporate debtor for the period 01.04.2017 to 31.03.2018. The confirmation was duly signed by the corporate debtor acknowledging an amount of Rs.1,10,79,999/-. Financial Creditor filed Section 7 application claiming debt due totalling to Rs.1,27,74,686/-. Rs.1,00,00,000/- as principal amount and Rs.27,74,686/- as interest. Adjudicating Authority held that there is no written agreement between the parties and that the Promissory Note is not in proper format and not on a stamp paper and not properly signed.

It held that the confirmation of the accounts issued by the corporate debtor fails to establish that the amount due from the corporate debtor to the financial creditor is on account of the ICD. It was further held that there is no document to suggest the date of default. It is not possible for the Adjudicating Authority to ascertain whether there was a default in payment of the due amount. Aggrieved by the order rejecting Section 7 application, this Appeal has been filed.

**Decision: Allowed.**

#### **Reason:**

We have considered the submissions of the Counsel for the parties and perused the record.

It is clear that it was pleaded in Section 7 application that the corporate debtor has serviced interest till the period ending

31.03.2018 and balance confirmation was also issued. Details of outstanding interest were also annexed as Annexure A-9 to the Section 7 application. Ledger of the corporate debtor maintained by the financial creditor reflecting the payment of interest was also annexed and further letter dated 01.04.2018 on confirmation of accounts has also been pleaded.

The first reason given by the Adjudicating Authority for rejecting the application is that there is no written agreement between the parties. The issue that it is not necessary for financial debt to be proved by a written agreement is no more res integra. This Tribunal in Agarwal Polysacks Limited vs. K.K. Agro Foods and Storage Limited- 2023 SCC OnLine NCLAT 624 has held that if the transaction can be proved from other materials on record, requirement of written financial contract is not a pre- condition for proving debt.

From the materials brought on record, it is clear that the interest was paid by the corporate debtor till 31.03.2018 which was reflected in the ledger and payment of interest was not denied. Disbursement of Rs.1,00,00,000/- on 01.11.2016 is admitted fact and not denied. Payment of interest is also admitted fact; hence, it is clearly proved that the disbursement was for time value of money since the interest was admittedly paid by the corporate debtor till 31.03.2018.

The submission of the Counsel for the Corporate Debtor, as noted above, that no date of default was mentioned also need to be considered. We have already noticed that in Annexure A-9 filed to the Section 7 application, details of outstanding were mentioned and outstanding was mentioned from 01.04.2018. Balance confirmation also accepted the outstanding of Rs.1,10,79,999/- w.e.f. 01.04.2018. Thus, the date of default is clearly reflected from materials brought on the record along with Section 7 application and the mere fact that specifically there was no mention of date of default in Part IV Col.2 is not fatal. When Section 7 application, pleadings and materials brought on the record clearly point out the date of default which in the present case is 01.04.2018, non-mention of specific date of default in Part-IV is not fatal.

The next reason given by the Adjudicating Authority for rejecting Section 7 application was that the promissory note was not in proper format and stamped. Promissory note was only an additional material filed by the financial creditor to prove that the amount was disbursed to the corporate debtor. When disbursement of the amount is not even disputed, the factum that the promissory note is not duly stamped becomes insignificant.

The promissory note is not the only document relied by the financial creditor to support his claim. Promissory note was filed to prove the disbursement. The corporate debtor does not deny that the promissory note was issued. When there are other materials on record to prove the disbursement and default, non-stamping of promissory note is inconsequential and could not be a reason to reject Section 7 application.

From the above discussions, we are satisfied that the financial creditor has been able to satisfactorily prove that there was financial transaction between the parties and financial debt is due to be paid by the corporate debtor in which default

was committed. Sufficient ground was made out to admit Section 7 application. Adjudicating Authority committed error in rejecting Section 7 application.

**LW 89:12:2024**

**MURLIDHAR VINCOM PVT LTD v. SKODA (INDIA) PVT. LTD [NCLAT]**

**Company Appeal (AT) (Insolvency) No. 1334 of 2024**

**Ashok Bhushan, Barun Mitra & Arun Baroka. [Decided on 26/11/2024]**

**Insolvency and Bankruptcy Code 2016- Sections 5(8) and 61-**

**Insolvency and Bankruptcy Code, 2016- section 7- appellant paid share application money to CD-shares were not allotted by CD- claiming to be FC appellant filed a CIRP application- NCLT rejected the same- whether correct- -Held, Yes.**

#### **Brief facts:**

The Appellant paid share application money to the Respondent but the Respondent did not allot any shares. Therefore, the Appellant filed a CIRP petition, claiming itself to be a financial creditor, against the Respondent. The Adjudicating Authority dismissed the petition holding that the share application money is not a financial debt under section 5(8) of the IBC. The present appeal challenges this order of the Adjudicating authority.

**Decision: Dismissed.**

#### **Reason:**

Having heard the Ld. Counsel for the Appellant and perused the materials on record carefully, we find that the short point which requires our consideration is whether in the facts of the present case, the share application money which was deposited with the Corporate Debtor by the Appellant fell in the category of Section 5(8) of the IBC.

From the principal clause of the above statutory construct, it becomes clear that the basic ingredients which are required to be met for a debt to become 'financial debt' are that there must be a disbursement against the consideration for time value of money. Further sub clauses (a) to (i) of Section 5(8) delineates the various transactions which are included in the ambit of 'financial debt'. Prima-facie, amounts raised by way of share application money is not expressly covered in the transactions covered by sub clauses (a) to (i) of Section 5(8) of the IBC.

Now that we have noted the relevant statutory provisions of the IBC, the Companies Act and CADR Rules, we now proceed to examine the tenability of the contention of the Appellant that on a conjoint reading of Section 5(8) of the IBC and Section 42(6) of the Companies Act, 2013 read with Rule 2 of the CADR Rules, the share application money in the instant case had become a deposit as shares were not allotted within 60 days of receipt of money and that such

deposit fell within the meaning and scope of financial debt as defined under Section 5(8) of the IBC.

When we peruse the impugned order, we find that the Adjudicating Authority has in the impugned order after considering the above contention of the Appellant has however held that share application cannot be deemed to be a financial debt.

When we look at Rule 2(c)(vii) of the CADR Rules, 2014 and the explanatory clause appended thereto, it becomes clear that it refers to any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money. It flows therefrom that for the aforementioned CADR Rules to be attracted in respect of share application money, there has to be a clear nexus to show that the share application money amount was advanced in conformity with the relevant provisions of the Companies Act, 2013. When we look at Section 42 of the Companies Act, 2013 it is clear that several statutory compliances are required to be met prior to issue of shares on private placement basis. Section 42(2) of the Companies Act stipulates the requirement of issue of private placement offer letter in such cases. From the records available on file, we do not find that the Corporate Debtor had issued any such private placement offer letter to the Appellant. There is no evidence of any valid concluded agreement between the two parties with respect to allotment of shares. Hence, the amount which was advanced by the Appellant cannot be treated to be amount in response to the private placement offer. Rule 2 of CADR Rules envisages that only if any amount is received pursuant to any private placement offer made in accordance with the provisions of the Companies Act, 2013 and no shares are allotted qua that amount, only then the sum becomes a deposit. When no proof of any private placement offer made in accordance with the provisions of the Companies Act, 2013 has been placed on record by the Appellant, the CADR Rules cannot be held to be applicable. Since the amount advanced cannot be related to Section 42 of the Companies Act, the applicability of Section 42(6) cannot be pressed as is being sought by the Appellant in the present case.

We would also like to add here that the Kushan Mitra judgment supra cannot come to the aid of the Appellant since the above judgment of this Tribunal was challenged before the Hon'ble Supreme Court of India in *Shobori Ganguly Vs Amit Goel and Ors. in Civil Appeal No. 4333 of 2022* and a stay has been put on this judgment. On the other hand, the Adjudicating Authority has relied on the precedent laid down in a subsequent three-bench judgment of this Tribunal in *Promod Sharma* judgment supra wherein it has been held that the amount given as share application money did not constitute a financial debt under Section 5(8) of the IBC.

In sum, we do not find any infirmity in the order of the Adjudicating Authority rejecting the Section 7 application of the Appellant. It shall however remain open to the Appellant to seek refund/recovery of the share application money in appropriate proceedings before an appropriate forum in accordance with law. There is no merit in the Appeal. The Appeal is dismissed.





## Competition Laws

**LW 90:12:2024**

**ANURAG GUPTA & ANR v. GREENBAY INFRASTRUCTURE PVT. LTD [CCI]**

**Case No. 20 of 2024**

**Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag.**

**[Decided on 19/11/2024]**

**Competition Act, 2002- sections 3 & 4- disputes relating to allotment of plots- whether competition issues involved-Held, No.**

### **Brief facts:**

The grievance of the Informants ["plot buyers"] was that the OP ["real estate seller"], in spite of receiving a considerable amount towards the total consideration, has allotted a disputed land and failed to deliver possession of the same to the Informants within the stipulated time period. The Informants have, thus, inter alia, alleged contravention of Sections 3 and 4 of the Competition Act, 2002 ["the Act"] by the OP.

**Decision: Dismissed.**

### **Reason:**

The Commission has perused the Information filed and noted that the grievance of the Informants is that the OP, in spite of receiving a considerable amount towards the total consideration, has allotted a disputed land and failed to deliver possession of the same to the Informants within the stipulated time period. The Informants have, thus, inter alia, alleged contravention of Sections 3 and 4 of the Act by the OP. Considering the overall facts and the allegations made in the matter, the Commission is of the view that the issues agitated before the Commission do not raise any competition concern in terms of the provisions of the Act and the Informants are at liberty to raise such issues before an appropriate forum.

In light of the above, the Commission directs that the matter be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises and the same is also rejected.

**LW 91:12:2024**

**HARISH KUMAR v. S.B TELECOMMUNICATION & ORS [CCI]**

**Case No. 38 of 2023**

**Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag.**

**[Decided on 11/11/2024]**

**Competition Act, 2002- sections 3 – anti competition restrictions- tender for advertisements- disputes relating to grant of advertisement contract – financial criteria based selection- informant not selected- whether alleged competition issues involved-Held, No.**

### **Brief facts:**

The Informant is engaged in the business of advertisement and publicity and is a registered vendor of OP-4. E-tender Invitation Notice was published by OP-4 in newspapers for the allotment of unipole /single pole/cantilever/advertisement space at different places under the jurisdiction of OP-4 for the purpose of advertising. As per certain tender conditions, only those agencies which were registered with OP-4 and with turnover exceeding ₹20 crores, could participate in the tender process. Based on this turnover criteria, out of all agencies, only OP-3 was found to be eligible. The Informant had alleged that the terms and conditions were not in consonance with the provisions of the Act as these had been fixed by OP-4 to favour a particular company and preclude others.

**Decision: Dismissed.**

### **Reason:**

The Commission notes from the response of OP-4, that 28 firms applied for registration in response to advertisement dated 28.03.2022. The applications were largely submitted during the period between 19.04.2022 and 20.04.2022. OP-4 further stated that out of 28 firms which applied for registration, 25 firms got registered and registration of 3 firms got cancelled due to non-payment of fees as per the advertisement dated 28.03.2022. OP-4 referred to tender condition no. 5 and stated that only those firms which had a turnover of Rs. 20 crores in any one year of the last 3 years could participate in the tender process. On perusal of the response submitted by OP-4 (turnover figures of all 28 firms which applied for registration), the Commission observed that OP-1 to OP-3 were eligible to participate in the tender process.

OP-4 further stated that the firms gave their applications on 20.04.2022 by personally visiting the office of OP-4 and submitted their applications by hand along with their respective cheques/EMD/FDR deposits. Thereafter, OP-4 had to follow its internal procedure for scrutiny and clearing of cheques/FDR/EMD deposits. It also needed to get approval from the Municipal Commissioner to get these firms registered. All this took some time and only after the Commissioner gave approval on 04.05.2022 for registering 25 firms, these firms could get their registration certificate on 10.05.2022 and 12.05.2022. Therefore, on 05.05.2022, all the eligible firms were undergoing process of registration and got their registration certificates only on 10.05.2022 and 12.05.2022. It also submitted that even the Informant submitted his registration application on 19.04.2022 along with FDR/ EMD vide no. 645272 and got his registration

certificate on 10.05.2022. OP-4 added that, as per the e-tender invitation notice, it was categorically mentioned that all registered firms with OP-4 may apply for Tender but it was nowhere mentioned that only those firms can apply for tender that are registered till 20.04.2022.

The Informant in para 6 of the Information had stated that though OP-1 and OP-2 had provided the EMD on 21.05.2022 they were given registration by OP-4 on 04.05.2022 which was beyond the due dates of getting registration i.e, 15.04.2022 and 20.04.2022. In its response, OP -4 has submitted that OP-1 and OP-2 had provided the EMD deposit in the form of FDR on 14.04.2022 and 13.04.2022 respectively and not on 21.05.2022. OP-1 and OP-2 were given registration on 12.05.2022 and 10.05.2022 after getting approval from the Municipal Commissioner of OP-4 on 04.05.2022. OP-4 further submitted that the tender was to be opened on 23.05.2022. So, the two firms i.e. OP-1 and OP-2 got their registration done within time and prior to the closing date of e-tender and hence, the question of giving the registration to these firms beyond due date does not arise at all.

OP-4 denied that OP-1 and OP-2 are dummy and associated firms of OP-3 for want of knowledge and stated that it had issued a public tender and not to the firms in question. Further, it allotted the tender to OP-3 only after going through the eligibility as well as considering the highest bid made by OP-3 in the entire e-tender process. The allotment of tender process was transparent as well as in consonance with the bye-laws and terms and conditions of the tender. Further, M/s Divtatv Welness Pvt. Ltd. has no concern with the tender process nor it has got itself registered or participated in the e-tender process. This allegation of links is an afterthought of the Informant. OP-4 further stated that in the said tender process it earned income more than the previously issued tender. As per OP-4, the criteria of ₹20 crores was slashed to ₹9.5 crores to make competition healthy.

OP-4 submitted that, earlier the last date to submit the tender was 20.05.2022 and later on, it was extended to 22.05.2022 and there was no violation of any guidelines and bye- laws while extending the last date of submission of tender because it was clearly mentioned in the e-tender invitation notice dated 05.05.2022 that incase of any changes, amendment and additional information, the same will be uploaded on the official website of OP-4 i.e. www. nagarnigambareilly.com, which was published in two newspapers i.e. Amar Ujala and Dainik Bhaskar. Therefore, OP-4 has not violated any terms and conditions of the tender and the entire tender process was conducted as per rules and regulations. Moreover, if there were any violation of terms and conditions in the tender process on the part of OP-4, the Informant would have raised this objection at that time and not at a belated stage. OP-4 added that due to technical issues it was only available to and seen by the parties who applied for the tender.

OP-4 stated that OP-3 had deposited the entire amount by 28.06.2022. The work order was issued by OP-4 on 15.06.2022 and accordingly OP-3 was directed to deposit 50% of Tender amount within 15 days from the date of work order. Thus, there was no delay in the deposit of the amount as per OP-4.

The Commission notes that OP-4 as a procurer has replied to the allegations made by the Informant, as briefly discussed above, concerning the tender process and is of the view that the allegations are misconceived and a prima facie case is not made out under the provisions of Section 3(3) of the Act which may merit an investigation into the matter. Further, the Commission is also of the view that setting tender terms and conditions is largely within the domain of the procurer and generally does not call for any interference within the provisions of the Act.



**LW 92:12:2024**

**AJAY PROTECH PVT LTD v. GENERAL MANAGER [SC]**

**Civil Appeal No. \_\_\_\_\_/2024 [@ S L P (Civil) No. 2272 of 2024]**

**P.S.Narasimha & Sandeep Mehta,JJ. [Decided on 22/11/2024]**

**Arbitration and Conciliation Act,1996- section 29A- extension of the mandate of the arbitrator- delay in making application to court- whether delay to be condoned- Held, Yes.**

#### **Brief facts:**

The short issue in this appeal is whether the application filed by the appellant under Section 29A(4) of the Arbitration and Conciliation Act, 1996 for extension of the mandate of the Arbitral Tribunal ought to have been allowed by the High Court.

**Decision: Allowed.**

#### **Reason:**

Having heard learned senior counsel and the learned ASG, there are two issues that we must consider:

- i. Whether the application for extension can be entertained if it is filed after the expiry of the Arbitral Tribunal's mandate?
- ii. If yes, do the facts and circumstances warrant an extension in the present case?

When must an application under Section 29A(4) be filed. The first issue is no longer res integra in view of a recent decision of this Court in Rohan Builders (supra). Despite Mr. Banerjee's reliance on this decision, we find that it squarely covers the issue against him.

This Court in Rohan Builders (supra) has held that the application for extension of time can be filed even after the expiry of the period in sub-sections (1) and (3). Even if sub-

section (4) provides for the termination of the Tribunal's mandate on the expiry of the period, it recognises party autonomy to move an application before the Court for further extension. Thus, the termination of mandate under the provision is only conditional on the non-filing of an extension application, and cannot be taken to mean that the mandate cannot be extended once it expires. The wording of Section 29A(4) and the decision in Rohan Builders (supra) clearly answer the first issue in favour of the appellant, i.e., an application for extension can be filed either Rohan Builders (supra), para 6. before or after the termination of the Tribunal's mandate upon expiry of the statutory and extendable period.

Whether extension must be granted. The next question is whether an extension of time should be granted in the present case. As per Section 29A(5), the decision to extend the time is an exercise of discretion by the court and must be done on sufficient cause being shown, and on such terms and conditions that the court deems fit.

We will have to consider if there is sufficient cause for not filing the application before 31.03.2023. In the application for extension, the appellant has submitted that the reasons for extension of time are as follows: (i) the Arbitral Tribunal proceeded with online hearings in 2022, but was required to adjourn the proceedings on several occasions at the request of the respondents' counsel as the panel from which the arbitrator was appointed had been changed. (ii) That the dispute involved technical and legal questions, and the record of the case is bulky. (iii) That the delay is neither attributable to the parties, nor to the Arbitral Tribunal, who have acted in a prompt and cautious manner. (iv) The hearing is complete, and only the award needs to be declared, thereby leading to hardship to the parties if the time for making the award is not extended. On these grounds, the appellant prayed for a one- month extension under Section 29A(4).

Efficiency in the conduct of arbitral proceedings is integral to the effectiveness of the dispute resolution remedy through arbitration. Efficiency is inextricably connected with expeditious conclusion of arbitral proceedings. While the statute incorporates party autonomy even with respect to the conduct and conclusion of arbitral proceedings, there is a statutory recognition of the power of the Court to step in wherever it is necessary to ensure that the process of resolution of the dispute is taken to its logical end, if according to the Court, the circumstances so warrant. It is in this context that the Arbitration and Conciliation Act adopts the well-known language of limitation statutes and provides that the Court can extend the time if it finds that there is sufficient cause.

The meaning of 'sufficient cause' for extending the time to make an award must take colour from the underlying purpose of the arbitration process. The primary objective in rendering an arbitral award is to resolve disputes through the agreed dispute resolution mechanism as contracted by the parties. Therefore, 'sufficient cause' should be interpreted in the context of facilitating effective dispute resolution.

Having taken note of the fact that the pandemic had commenced even before the expiry of 12 months from the

completion of pleadings, this Court excluding the period between 15.03.2020 to 28.02.2023 in Re: Cognizance for Extension of Limitation (supra), and the agreement between the parties on 05.05.2023 to seek extension of time by filing an application before the Court, we are of the opinion that there is sufficient cause for extension of time.



**LW 93:12:2024**

### **BHARTI AIRTEL LTD v. THE COMMISSIONER OF CENTRAL EXCISE, PUNE [SC]**

**Civil Appeal Nos. 10409-10410 of 2014 with connected appeals.**

**B.V. Nagarathna & N.K.Singh, JJ. [Decided on 20/11/2024]**

**CENVAT Credit Rules, 2004- availing input tax credit on the installation of prefabricated mobile towers- conflict between Bombay and Delhi High court judgements- whether credit is available- Held, Yes.**

#### **Brief facts:**

The core issue involved in this set of appeals is whether the mobile service providers (MSPs) who pay excise duties on various items for setting up their business more particularly for erection of mobile towers and peripherals like prefabricated buildings (PFBs) etc. can take the benefit of CENVAT Credit under the CENVAT Credit Rules, 2004 (hereinafter referred to as the "CENVAT Rules") for the purpose of payment of service tax on the output services rendered by them. With respect to the same, conflicting views have been given by two High Courts, namely the High Court of Bombay and High Court of Delhi.

Bombay High Court held, in the case of Bharti Airtel Ltd v. The Commissioner Of Central Excise- Pune rendered on 26.08.2014 in Central Excise Appeal Nos.73 of 2012 and No. 119 of 2012, , that mobile towers and other components do not fall within the definition of "capital goods" as defined under Rule 2(a)(A) of the CENVAT Rules, nor are these "inputs" within the meaning of Rule 2(k) and, hence, the MSP is not entitled to CENVAT credit on duty paid on these items.

Delhi High Court held, in the case of Vodafone Mobile Services Limited v. CST, Delhi 2019 [(27) G.S.T.L. 481 (Del.)], that towers and other associated structures like prefabricated buildings (PFBs) are covered by the definition of "capital goods" and are "inputs" as defined under CENVAT Rules and hence, MSPs are entitled to input credit on excise duty paid towards installation of mobile towers and PFBs.



The decisions of both the High Courts have been challenged before this Court by the respective aggrieved parties, by way of the present set of appeals.

**Decision: Judgement of the Delhi High Court upheld while that of the Bombay High Court set aside.**

**Reason:**

From the above discussion, what is evident is that the entire controversy revolves around the core issue as to whether the mobile service providers (MSPs) are entitled to claim CENVAT credit on excise duties paid on mobile tower, its parts thereof and prefabricated buildings (PFBs) in terms of the Rule 3 of the CENVAT Rules and whether the credit so claimed can be used to pay service tax for the output services rendered by the MSPs.

What we have also noticed is that the Bombay High Court has held that since the towers and parts thereof are fastened and fixed to the earth and after their erection, they become immovable, and therefore, these cannot be classified as goods. While this conclusion is based on the classic definition of immovable property based on one criterion, as noticed earlier, that may not be the sole consideration to determine whether a property is immovable or movable. Even if the property is embedded to the earth and appears ex-facie immovable, if there are other indicators which show the characteristics of a movable property, as for instance, susceptibility to removal of the property from the fixture without causing any damage to its basic structure and change in character, ability of relocation to a new location and if the same can be sold thereby showing marketability, and lack of intention to make it a permanent fixture, in spite of the said property being embedded to the earth by way of fixing, the property may still be considered to be movable as has been held in many of the cases referred to above including in *Solid and Correct Engineering* (supra).

We are of the opinion that the aforesaid finding was erroneous for the reason that there was no admission on the part of the Assessee that towers are immovable structures and in fact, that was the disputed issue before the Court which was required to be determined.

There is no dispute to the fact that BTS is a composite system consisting of the transmitter, receiver, antenna and other equipment, and antenna can be said to be an integral part of BTS. As discussed above, and not disputed by the Revenue, tower is needed to keep the antenna at an appropriate height and keep it stable. Without the tower, it is not possible to hoist the antenna at the requisite height and without it being securely fastened to the tower, antenna cannot be kept firm and steady for proper receipt and transmission of radio signals. Thus, there cannot be any doubt that a mobile tower can be treated to be an accessory of antenna and BTS. Accordingly, since in terms of sub-clause (iii) of Rule 2(a)(A), all components, spares and accessories of such capital goods falling under sub-clause (i) would also be treated as capital goods, a mobile tower can also be treated as "capital good".

We, therefore, agree with the conclusion arrived at by the Delhi High Court that towers and shelters (PFBs) support

the BTS/antenna for effective transmission of mobile signals and thus enhance their efficiency and since these articles are components/accessories of BTS/antenna which are admittedly "capital goods" falling under Chapter 85 within sub-clause (i) of Rule 2(a)(A) of CENVAT Rules, these items consequently are covered by the definition of "capital goods" within the meaning of sub-clause (iii) read with sub-clause (i) of Rule 2(a)(A) of CENVAT Rules. Further, since these are used for providing output service, i.e., mobile telecommunication service, and since these are "capital goods" received in the premises of the provider of output service as contemplated under Rule 3(1)(i), the Assessee would be entitled to CENVAT credit on the excise duties paid on these goods.

We have also noted that the Bombay High Court had taken the view that it cannot be said that it is impossible to provide the service without the aid of the towers, thus showing non dependency of antenna on tower. In our view, while theoretically antenna may receive and transmit signal without the tower, practically, the same is not feasible and tower is an essential accessory for keeping the antenna at an appropriate height and in a stable position so that there is no disturbance in receiving and transmission of signal and there can be wider coverage of signal. The link between antenna and tower is almost inseparable for the effective functioning of antenna for providing mobile telecommunication service and it cannot be said that the nexus between antenna and tower is remote. Rather, in our view, their relationship is quite proximate and inseparable for proper functioning of antenna.

What we have noted also is that the CESTAT rejected the plea of the Assessee that towers and parts thereof are inputs under Rule 2(k) by observing that the towers are admittedly immovable structures and hence ipso facto non-marketable and non-excisable and these do not lead to manufacture of goods and that towers and PFBs certainly are not used for providing mobile services. By relying on Explanation-2 to Rule 2(k) which provides that input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer, the CESTAT held that these items are not inputs. However, in our view, invoking Explanation-2 is neither appropriate nor necessary as sub-clause (ii) of Rule 2(k) itself clearly provides that "input" means all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service. Even though tower and the PFBs are not electrical items/equipment in the sense that these do not transmit signals, yet these are indispensable for the effective functioning of antenna by which the radio signals are received and transmitted and accordingly, used for providing the mobile telephonic services to the subscribers. Thus, towers and PFBs, though are not electrical equipment for transmission of signals, yet these are used for transmission of signal by the antennas. Therefore, there can be no denying of the fact that there is a close proximity and nexus between their functioning and the ultimate transmission of radio signals which is the output service rendered by the MSPs. Hence, the view of the CESTAT which has not been disturbed by the Bombay High Court does not commend our acceptance.

Having held that the tower and prefabricated buildings (PFBs) are “goods” and not immovable property and since these goods are used for providing mobile telecommunication services, the inescapable conclusion is that they would also qualify as “inputs” under Rule 2(k) for the purpose of credit benefits under the CENVAT Rules.

For the foregoing reasons, we agree with the conclusions arrived at by the Delhi High Court and for the same reasons, we are unable to agree with the view of the Bombay High Court. Consequently, all the appeals and connected applications are disposed off in terms of the above findings and conclusions.



## Labour Law

**LW 94:12:2024**

**STATE BANK OF INDIA v. NAVIN KUMAR SINHA [SC]**

**Civil Appeal No. 1279 of 2024**

**Abhay S. Oka & Ujjal Bhuyan, JJ.[Decided on 19/11/2024]**

**Service law- initiation of disciplinary proceedings and dismissal from services after superannuation-whether tenable-Held,No.**

### **Brief facts:**

Respondent, an officer of the State Bank of India (SBI), was subjected to a disciplinary proceeding, which was initiated after superannuation of the respondent including the extended period of service following which the penalty of dismissal from service was imposed on him.

Respondent was appointed in the SBI as a clerk typist on 08.06.1973. In due course of time, he rose through the ranks and reached managerial position. On completion of 30 years of service, he was due to superannuate on 26.12.2003. Exercising powers under Rule 19(1) of the Service Rules, respondent was granted extension of service vide order dated 05.08.2003 from 27.12.2003 to 01.10.2010. On 18.08.2009, a notice was issued to the petitioner wherein and whereby serious irregularities allegedly committed by him were highlighted and his response was sought for. On 21.08.2009, respondent was placed under suspension. Though respondent had submitted his reply to the notice dated 18.08.2009 on 27.10.2009, it appears that the disciplinary authority did not accept such reply and decided to initiate disciplinary proceeding against the respondent by issuing show cause notice dated 18.03.2011 under Rule 68(1) of the Service Rules. Along with the show cause notice, articles of charges and the statement of allegations on the basis of which the charges were framed, were sent to the respondent. There is

nothing on record to show further continuance of service by the respondent beyond 01.10.2010. As noted above, service of the respondent was extended from 27.12.2003 to 01.10.2010.

**Decision: Dismissed.**

### **Reason:**

In so far the present case is concerned, respondent was due to superannuate on 26.12.2003 apparently on completion of 30 years of service but his service was extended on 05.08.2003 from 27.12.2003 to 01.10.2010. Thus, the extended service of the respondent came to an end on 01.10.2010. The relationship of master and servant between the appellants and the respondent came to be severed on and from 01.10.2010. The factum of receipt of subsistence allowance thereafter or the respondent declaring that he would superannuate on a later date i.e. on 30.10.2012 on attaining the age of 60 years would not make any difference to the legal and factual scenario. Therefore, it is evident that respondent was no longer in the service of SBI post 01.10.2010.

Attaining 60 years of service (earlier 58 years) is not the sole criterion of superannuation of an officer serving in SBI. As already noted and discussed above, it is one of the three contingencies. If any of the three contingencies are fulfilled, an officer would be superannuated. Respondent had actually superannuated from service in SBI on 26.12.2003 on completion of 30 years of service but his service was extended prior thereto on 05.08.2003 from 27.12.2003 to 01.10.2010. Post 01.10.2010 there was no further extension of service.

Disciplinary proceeding against the respondent was not initiated on 18.08.2009 when the first notice to show cause was issued but was initiated only on 18.03.2011 when the disciplinary authority issued the charge memo to the respondent.

As has been held by this Court on more than one occasion, a subsisting disciplinary proceeding i.e. one initiated before superannuation of the delinquent officer may be continued post superannuation by creating a legal fiction of continuance of service of the delinquent officer for the purpose of conclusion of the disciplinary proceeding (in this case as per Rule 19(3) of the Service Rules). But no disciplinary proceeding can be initiated after the delinquent employee or officer retires from service on attaining the age of superannuation or after the extended period of service.

Even in the case of C.B. Dhall (supra) relied upon by the appellants, this Court while considering the purport of Rule 20B of the State Bank of India (Supervising Staff) Service Rules, 1975 held that under Rule 20B disciplinary proceeding, if initiated against an employee before he retires from service, could be continued and concluded even after his retirement and for the purpose of conclusion of the disciplinary proceeding, the employee is deemed to have continued in service but for no other purpose.

That being the position, we see no merit in the appeal. Accordingly, the appeal is dismissed. Appellants are directed to release all the service dues of the respondent expeditiously and at any rate not later than six weeks from today. □

# 4

## FROM THE GOVERNMENT



- VALUATION OF REPURCHASE (REPO) TRANSACTIONS BY MUTUAL FUNDS
- GUIDELINES TO STOCK EXCHANGES, CLEARING CORPORATIONS AND DEPOSITORIES
- WITHDRAWAL OF MASTER CIRCULAR ON ISSUANCE OF NO OBJECTION CERTIFICATE (NOC) FOR RELEASE OF 1% OF ISSUE AMOUNT
- AMENDMENT TO PARA 15 OF MASTER CIRCULAR FOR CREDIT RATING AGENCIES (CRAs) DATED MAY 16, 2024 ("MASTER CIRCULAR")
- RELAXATION FROM CERTAIN PROVISIONS FOR UNITS ALLOTTED TO AN EMPLOYEE BENEFIT TRUST FOR THE PURPOSE OF A UNIT BASED EMPLOYEE BENEFIT SCHEME, ALIGNMENT OF TIMELINES FOR MAKING DISTRIBUTION BY InvITs AND FORMAT OF QUARTERLY REPORT AND COMPLIANCE CERTIFICATE – INFRASTRUCTURE INVESTMENT TRUSTS (InvITs)
- RELAXATION FROM CERTAIN PROVISIONS FOR UNITS ALLOTTED TO AN EMPLOYEE BENEFIT TRUST FOR THE PURPOSE OF A UNIT BASED EMPLOYEE BENEFIT SCHEME, ALIGNMENT OF TIMELINES FOR MAKING DISTRIBUTION BY REITs AND FORMAT OF QUARTERLY REPORT AND COMPLIANCE CERTIFICATE - REAL ESTATE INVESTMENT TRUSTS (REITs)
- SIMPLIFIED REGISTRATION FOR FOREIGN PORTFOLIO INVESTORS (FPIs)
- TRADING SUPPORTED BY BLOCKED AMOUNT IN SECONDARY MARKET
- PROCEDURE FOR RECLASSIFICATION OF FPI INVESTMENT TO FDI
- DISCLOSURE OF EXPENSES, HALF YEARLY RETURNS, YIELD AND RISK-O-METER OF SCHEMES OF MUTUAL FUNDS
- INVESTMENTS IN OVERSEAS MUTUAL FUNDS/ UNIT TRUSTS BY INDIAN MUTUAL FUNDS
- OPERATIONAL FRAMEWORK FOR RECLASSIFICATION OF FOREIGN PORTFOLIO INVESTMENT TO FOREIGN DIRECT INVESTMENT (FDI)
- REPORTING OF FOREIGN EXCHANGE TRANSACTIONS TO TRADE REPOSITORY
- 'FULLY ACCESSIBLE ROUTE' FOR INVESTMENT BY NON-RESIDENTS IN GOVERNMENT SECURITIES – INCLUSION OF SOVEREIGN GREEN BONDS
- AMENDMENT TO THE MASTER DIRECTION - KNOW YOUR CUSTOMER (KYC) DIRECTION, 2016





## Corporate Laws

### 01 Valuation of repurchase (repo) transactions by Mutual Funds

**[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/IMD/IMD-I PoD-1/P/CIR/2024/163 date 26.11.2024]**

- Chapter 9 of the SEBI Master Circular dated June 27, 2024 on Mutual Funds ("Master Circular"), which specifies the provisions for valuation of investment in securities by Mutual Funds, inter alia mandate that money market and debt securities with residual maturity over 30 days shall be valued as per the prices obtained from the Association of Mutual Funds in India (AMFI) empanelled valuation agencies and the methodology specified therein.
- Clause 9.6.2 of the Master Circular specifies that investments in short-term deposits with banks (pending deployment) and repurchase (repo) transactions (including tri-party repo i.e. TREPS) with tenor of upto 30 days shall be valued on cost plus accrual basis.
- In order to have uniformity in valuation methodology of all money market and debt instruments and to address the concerns of unintended regulatory arbitrage that may arise due to different valuation methodology adopted, it has been decided that the valuation of repurchase (repo) transactions including TREPS with tenor of upto 30 days shall also be valued at mark to market basis. Accordingly, clause 9.6.2 of the Master Circular stands modified as under:

*"Investments in short-term deposits with banks (pending deployment) shall be valued on cost plus accrual basis."*

- Further, valuation of all repo transactions, except for overnight repos, in addition to the valuation of money market and debt securities, shall be obtained from valuation agencies. Accordingly, paragraph 9.2.3 (b) of the Master Circular stands modified as under:

*"Valuation of money market and debt securities:*

- All money market and debt securities including floating rate securities shall be valued at average of security level prices obtained from valuation agencies.*
- In case security level prices given by valuation agencies are not available for a new security*

*(which is currently not held by any Mutual Fund), then such security may be valued at purchase yield/price on the date of allotment / purchase."*

- The provisions of this circular shall come into effect from January 01, 2025.
- 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 the provision of Regulations 25(19), 47 and 77 of SEBI (Mutual Funds) Regulations, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
- This Circular is available at [www.sebi.gov.in](http://www.sebi.gov.in) under the link "Legal - Circulars".

**PETER MARDI**  
Deputy General Manager

### 02 Guidelines to Stock Exchanges, Clearing Corporations and Depositories

**[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/MRD/POD-3/P/CIR/2024/162 date 22.11.2024]**

Based on the recommendations of the Committee on Strengthening of Governance of Market Infrastructure Institutions (MIIs) i.e. Stock Exchanges, Clearing Corporations and Depositories and subsequent deliberations in the Industry Standards Forum (ISF) of MIIs on certain issues, the following guidelines are provided to MIIs:

#### 1. Mechanism to enhance Accountability

##### 1.1. Meetings of Public Interest Directors and their reporting

- As per the Code of Conduct for Public Interest Directors (PIDs) specified under Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (hereinafter referred as "SECC Regulations, 2018") and Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 (hereinafter referred as "D&P Regulations, 2018"), PIDs of the MII shall meet separately, at least once in every six months, to exchange views on critical issues concerning the MII.
- All PIDs shall mandatorily attend such meetings.
- The objectives of such meetings shall, inter alia, include the following:
  - To review the status of compliance with all applicable regulations, circulars, guidelines, letters issued by SEBI from time to time;
  - To review the functioning of Vertical-1 i.e. "Critical Operations" and Vertical-2 i.e. "Regulatory, Compliance, Risk Management and Investor Grievances";

- 1.1.3.3. To review the adequacy of resources (both financial and human) for functions under Verticals 1 and 2;
- 1.1.3.4. To identify important issues which may involve conflict of interest for the MII or may have significant impact on the functioning of the MII or may not be in the interest of securities market; and
- 1.1.3.5. To review the corrective steps taken by the MII on observations of SEBI inspections particularly on issues of governance standards, technology, cyber security, system audit and cyber security audit observations.
- 1.1.4. In order to achieve the above objectives, PIDs may discuss with the concerned Vertical Heads or Key Management Personnel (KMPs) or any other personnel, as may be felt appropriate by the PIDs.
- 1.1.5. PIDs as member of various committees (including statutory committees) shall provide a report to other PIDs on the working of their committees.
- 1.1.6. A report on the outcome of such meetings shall be submitted by the PIDs to SEBI and to the Governing Board of the MII within 30 days of such meeting.
- 1.1.7. Accordingly, paragraph 2.2.3.4 of Chapter 6 of Master Circular for "Stock Exchanges and Clearing Corporations" dated October 16, 2023, paragraph 4.66.2.4 of Section 4 of Master Circular for "Depositories" dated October 06, 2023 and paragraph 15.3.3(IV) of Chapter 15 for Master Circular dated August 04, 2023 for "Commodity Derivatives Segment" will stand rescinded with effect from the date of implementation of this circular.

**HRUDA RANJAN SAHOO**  
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](http://www.sebi.gov.in)*

## 03 **Withdrawal of Master Circular on issuance of No Objection Certificate (NOC) for release of 1% of Issue Amount**

**[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/0161 date 21.11.2024]**

1. In order to facilitate ease of doing business to Issuer company, the requirement to deposit 1% of the issue size available for subscription to the public with the designated stock exchange by the Issuer company under regulation 38 (1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) has been dispensed with.
2. Consequent to amendment of ICDR Regulations vide gazette notification dated May 17<sup>th</sup> 2024, the Master Circular no. SEBI/HO/OIAE/IGRD/P/CIR/2022/0151

dated November 07, 2022 on Issuance of No Objection Certificate for release of 1% of Issue Amount stands withdrawn.

3. However, the Stock Exchanges shall frame a joint standard operating procedure (SoP) for release of 1% security deposit that were deposited with stock exchanges by the issuer prior to abovementioned amendments in ICDR Regulations, 2018.
4. The circular shall be applicable with immediate effect.
5. The Stock Exchanges are accordingly advised to:
  - a. bring the provisions of this circular to the notice of all the companies whose securities are listed in the exchange and also to disseminate the same on the website of the stock exchange.
  - b. make amendments to the relevant bye-laws, rules and regulations for the implementation of the terms of this circular, if necessary.
6. 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.
7. This Circular is available at [www.sebi.gov.in](http://www.sebi.gov.in) under the link "Legal→Circulars".

**RAJ KUMAR DAS**  
Deputy General Manager

## 04 **Amendment to Para 15 of Master Circular for Credit Rating Agencies (CRAs) dated May 16, 2024 ("Master Circular")**

**[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/DDHS/DDHS-PoD-3/P/CIR/2024/160 dated 18.11.2024]**

1. As per Annexure 11 of the Master Circular, definition of default for debentures/ bonds is specified as "A delay of 1 day even of 1 rupee (of principal or interest) from the scheduled repayment date". No exemption is provided from the above, except in case of rescheduling of the debt instrument by the lenders prior to the due date of payment. Therefore, any other instance of a one-day delay in payment or one-rupee shortfall in payment shall be recognized by the CRA as default. Such requirement is reiterated and remains unchanged from since the notification of the SEBI (Credit Rating Agencies) Regulations, 1999.
2. In the wake of COVID-19 pandemic, with a view to providing some flexibility to CRAs in taking appropriate view in cases of defaults corrected by the rated entity within a relatively shorter span of time, the following provision on post-default curing period was introduced vide SEBI Circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/87 dated May 21, 2020, which is contained in Para 15 of the Master Circular:

*"15.1 After a default is cured and the payments regularized, a CRA shall generally upgrade the rating from default to non-investment grade after a period of 90 days based on the satisfactory performance by the company during this period. CRAs may deviate from the said period of 90 days on a case to case basis, subject to the CRAs framing a detailed policy in this regard. The said policy shall also be placed on CRA's website. Cases of deviations from stipulated 90 days, if any, shall be placed before the Ratings Sub-Committee of the board of the CRA, on a half yearly basis, along with the rationale for such deviation.*

15.2 The CRA shall frame a policy in respect of upgrade of default rating to investment grade rating and place it on its website.

15.3 The policies framed as above may include scenarios like technical defaults, change in management, acquisition by another firm, sizeable inflow of long-term funds or benefits arising out of a regulatory action, etc. which fundamentally alter the credit risk profile of the defaulting firm."

3. One of the recommendations of the Working Group of CRAs for Ease of Doing Business is to provide specific policy guidance on treatment of 'technical defaults' so that the policy is applied uniformly across CRAs.
4. In this regard, the Working Group has highlighted that the following scenarios of non-payment of debt (principal and/ or interest) may arise due to reasons beyond the control of the issuer, namely, failure to remit payment due to absence of correct information or due to incorrect or dormant investor account furnished by the investor(s) or due to notice/ instruction received from a government authority to freeze the account of investor(s).
5. It has been decided that in the aforesaid scenario, the CRA shall confirm and verify the availability of adequate funds with the issuer and also confirm and verify:
  - 5.1. the proof of failure of the required payment of debt (principal and/ or interest),
  - 5.2. the reasons for failure being as specified above, and
  - 5.3. the required amounts being duly paid into a separate escrow account maintained with a scheduled commercial bank by the issuer on the due date of payment.

**SARIKA KATARIA**  
Deputy General Manager

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## 05 Relaxation from certain provisions for units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme, Alignment of timelines for making distribution by InvITs and Format of Quarterly Report and Compliance Certificate – Infrastructure Investment Trusts (InvITs)

**[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/DDHS/DDHS-PoD-2/P/CIR/2024/159 date 13.11.2024]**

Relaxation from certain provisions for units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme

1. SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") were amended on July 13, 2024 to provide a framework for unit based employee benefit ("UBEB") scheme. The framework for UBEB scheme, inter-alia, provides that issuance of units to the employee benefit trust shall be based on the guidelines for preferential issue of units, including pricing guidelines as specified by the Board.
2. Chapter 7 of the Master Circular for Infrastructure Investment Trusts (InvITs) dated May 15, 2024 ("Master Circular") provides the guidelines for preferential issue and institutional placement of units by InvITs. The provisions for preferential issue of units, inter-alia, provides the following lock-in and allotment related restrictions:

*"7.6. Lock-in*

*7.6.1. ....*

*7.6.2. The units allotted to persons other than the sponsor(s) shall be locked-in for a period of one year from the date of trading approval for such units. 7.6.3. The entire pre-preferential issue unitholding of the allottees, if any, shall be locked-in from the relevant date up to a period of six months from the date of trading approval."*

*"7.7. Allotment*

*7.7.1. Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the 90 trading days preceding the relevant date. Further, where any person belonging to the sponsor(s) has sold/transferred their units of the issuer during the 90 days preceding the relevant date, all sponsors shall be ineligible for allotment of units on a preferential basis. Provided that this restriction on preferential issue of units shall not apply to a sponsor(s), in case any asset is being acquired by the InvIT from that sponsor(s), and preferential issue of units is being made to that sponsor, as full consideration for the acquisition of such asset. 7.7.2. ....*

3. In order to promote ease of doing business and to facilitate the acquisition of units by the employee benefit trust and the subsequent transfer of units to



the employees as per the terms of the UBEB scheme, it is proposed that the aforementioned lock-in and allotment related restrictions shall not apply to the employee benefit trust. Accordingly, in Chapter 7 of the Master Circular –

3.1. a new paragraph 7.6.4. is inserted as under:

*“The lock-in requirement mentioned at paragraph 7.6.2. and 7.6.3. above shall not be applicable in case of units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme in compliance with Chapter IVB of the InvIT Regulations.”*

3.2. the following proviso is inserted under paragraph 7.7.1.:

*“Provided further that this restriction on preferential issue of units shall not be applicable in case of units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme in compliance with Chapter IVB of the InvIT Regulations.”*

**RITESH NANDWANI**  
Deputy General Manager

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## 06 Relaxation from certain provisions for units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme, Alignment of timelines for making distribution by REITs and Format of Quarterly Report and Compliance Certificate - Real Estate Investment Trusts (REITs)

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/DDHS/DDHS-PoD-2/P/CIR/2024/158 dated 13.11.2024]

Relaxation from certain provisions for units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme

- SEBI (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”) were amended on July 13, 2024 to provide a framework for unit based employee benefit (“UBEB”) scheme. The framework for UBEB scheme, inter-alia, provides that issuance of units to the employee benefit trust shall be based on the guidelines for preferential issue of units, including pricing guidelines as specified by the Board.
- Chapter 10 of the Master Circular for Real Estate Investment Trusts (REITs) dated May 15, 2024 (“Master Circular”) provides the guidelines for preferential issue and institutional placement of units by REITs. The provisions for preferential issue of units, inter-alia, provides the following lock-in and allotment related restrictions:

“10.6. Lock-in

10.6.1. ....

10.6.2. The units allotted to persons other than the sponsor(s) shall be locked-in for a period of one year from the date of trading approval for such units.

10.6.3. The entire pre-preferential issue unitholding of the allottees, if any, shall be locked-in from the relevant date up to a period of six months from the date of trading approval.”

“10.7. Allotment

10.7.1. Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the 90 trading days preceding the relevant date. Further, where any person belonging to the sponsor(s) or Sponsor group(s) has sold/transferred their units of the issuer during the 90 days preceding the relevant date, all sponsors and members of sponsor group(s) shall be ineligible for allotment of units on a preferential basis. Provided that this restriction on preferential issue of units shall not apply to a sponsor(s) or member of the sponsor group, in case any asset is being acquired by the REIT from that sponsor(s) and/or or member of sponsor group(s), and preferential issue of units is being made to that sponsor and/or member of the sponsor group, as full consideration for the acquisition of such asset.

10.7.2. ....”

- In order to promote ease of doing business and to facilitate the acquisition of units by the employee benefit trust and the subsequent transfer of units to the employees as per the terms of the UBEB scheme, it is proposed that the aforementioned lock-in and allotment related restrictions shall not apply to the employee benefit trust. Accordingly, in Chapter 10 of the Master Circular –

3.1. a new paragraph 10.6.4. is inserted as under:

*“The lock-in requirement mentioned at paragraph 10.6.2. and 10.6.3. above shall not be applicable in case of units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme in compliance with Chapter IVA of the REIT Regulations.”*

3.2. the following proviso is inserted under paragraph 10.7.1.:

*“Provided further that this restriction on preferential issue of units shall not be applicable in case of units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme in compliance with Chapter IVA of the REIT Regulations.”*

**RITESH NANDWANI**  
Deputy General Manager

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## 07 Simplified registration for Foreign Portfolio Investors (FPIs)

**[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/AFD/AFD-PoD-3/P/CIR/2024/156 dated 12.11.2024]**

1. SEBI's Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors dated May 30, 2024 inter-alia mandates every FPI applicant to submit a duly filled and signed Common Application Form (CAF) and 'Annexure to CAF' supported by required documents for registration.
2. During discussions with market participants, it has been represented that information regarding the Investment Manager (IM) and other relevant information is already captured in depositories' CAF module in case of FPI applicants belonging to the following categories:
  - i) fund(s) operated by investing/non-investing IM, wherein such IM or any fund operated by IM, is already registered as FPI;
  - ii) sub-fund(s) of a master fund, wherein such master fund or any sub-fund of such master fund, is already registered as FPI;
  - iii) sub-fund(s) or separate class(es) of shares or equivalent structure(s) with segregated portfolio of a fund, wherein such fund or any of its sub-fund or separate class of shares or equivalent structure with segregated portfolio, is already registered as FPI;
  - iv) scheme(s) of insurance companies wherein the parent entity or any scheme of insurance company is already registered as FPI.

Further, there are certain fields that are exclusive to individual FPI applicants and hence not relevant for the applicants belonging to the aforesaid categories.

3. During SEBI's course of industry consultation, there has been a feedback that, in the above constructs, permitting the applicants to fill only those fields that are unique to them, helps save significant time and efforts in terms of reviewing the application and signing reduced number of pages.
4. Accordingly, with an objective to facilitate ease of onboarding for FPI applicants and reduce duplication of available information, based on deliberations held with market participants, the following is decided:
  - a) In case of onboarding applicants belonging to the categories mentioned at Para 2 above, they may be provided with an option to fill the entire CAF or fill an abridged version of CAF, i.e., a version of CAF where applicants fill only those fields that are unique to them.

- b) In case applicant opts for this abridged version of CAF, the remaining fields shall either be auto populated from the information available in the CAF module or shall be disabled, as applicable.
  - c) While using the available information, an explicit consent to use the same and a confirmation that all the details other than those mentioned in the abridged version of CAF remain unchanged, shall be obtained from the applicant.
  - d) DDPs, upon receipt of information from the applicant, shall update the details in CAF against the application number of the applicant for future reference purposes. They shall also ensure that the CAF module hosted on the website of the Depository reflects complete information (information filled in by applicant and that auto-populated) and facilitates seamless fetching of the same.
5. The implementation standards, along with the fields that can be auto populated from the CAF module or be disabled, shall be formulated by the pilot Custodians and Designated Depository Participants Standards Setting Forum (CDSSF), in consultation with SEBI.
  6. Depositories, Custodians and Designated Depository Participants are advised to make necessary changes in their systems to effect the changes proposed above.
  7. The provisions of this circular shall come into force after three months from the date of this circular.
  8. This Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulations 3(2) and 44 of SEBI (Foreign Portfolio Investors) Regulations, 2019 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.
  9. This Circular is available at [www.sebi.gov.in](http://www.sebi.gov.in) under the link "Legal ---Circulars".

**APARNA THYAGARAJAN**  
Chief General Manager

## 08 Trading supported by Blocked Amount in Secondary Market

**[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/MRD-PoD2/CIR/P/2024/153 dated 11.11.2024]**

1. In its continuing endeavour to provide protection to the investors from the default of the Members [Trading Member ('TM')/ Clearing Member ('CM')], SEBI had vide para 25 of Chapter 1 of Master Circular on Stock Exchanges and Clearing Corporations ('Master Circular') dated October 16, 2023, introduced a supplementary process for trading in secondary market based on blocked funds in investors bank

account, instead of transferring them upfront to the TMs, thereby, providing enhanced protection to the cash collateral of the investors. The said facility went live from January 01, 2024.

2. As per para 25.4.1.2 of Chapter 1 of the Master Circular, the facility of trading using UPI block mechanism was introduced as a non-mandatory facility to be provided by the stock brokers.
3. Keeping in view the significant potential benefits to investors, public consultation was undertaken and deliberations were also held with market participants with respect to the measures needed to enable widespread adoption of the said facility.
4. Some TMs are already offering the facility of 3-in-1 trading accounts. The salient features of the 3-in-1 trading account primarily include:
  - 4.1. Integration of the trading account with the demat and bank accounts of the client.
  - 4.2. Blocking of funds, to the extent of the obligation, in the bank account of the client on placement of buy orders. In case the buy orders are not executed the funds blocked are released.
  - 4.3. Blocking of securities in the demat account of the client on placement of sell orders. In case the sell orders are not executed, the block on the securities is removed.
  - 4.4. The pay-in (transfer of Funds / securities) blocked at the time of order placement, from the bank / demat account of the client is carried out post market hours and is upstreamed to the Clearing Corporation. The client earns interest on the available funds till the pay-in.
5. Based on the aforesaid deliberations and considering the significant changes required to be made in the systems and processes of the Clearing Corporations, Stock Exchanges, Depositories, NPCI and the TMs, in implementation of the facility of trading supported by blocked amount to trade in the secondary market, the following has been decided:
  - 5.1. In addition to the current mode of trading, the Qualified Stock Brokers (QSBs) shall provide either the facility of trading supported by blocked amount in the secondary market (cash segment) using UPI block mechanism or the 3-in-1 Trading Account facility, to their clients.
  - 5.2. The 3-in-1 trading account facility offered/ to be offered by the TMs shall, at least have the features as specified at para 4 above.
  - 5.3. Clients of the QSBs will have the option, to either continue with the existing facility of trading by transferring funds to TMs or opt for either of the facilities stated at Para 5.1 above, as provided by the QSBs.

6. The provisions of this circular will come into effect from February 01, 2025.
7. The Stock Exchanges and Clearing Corporations are advised to:
  - 7.1. Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision, as may be necessary/ applicable.
  - 7.2. Bring the provisions of this circular to the notice of the market participants (including QSBs) and to disseminate the same on their website.
8. This circular is being issued in exercise of 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 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
9. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) at "Legal →Circulars".

**VISHAL SHUKLA**  
General Manager

## 09 Procedure for reclassification of FPI investment to FDI

**[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/AFD/AFD-POD-3/P/CIR/2024/152 dated 11.11.2024]**

1. Regulations 20(7) and 22(3) of the SEBI (Foreign Portfolio Investors) Regulations, 2019 provide that in case a foreign portfolio investor fails to divest its holdings (in excess of the prescribed threshold), within five trading days, the entire investment in the company by such foreign portfolio investor including its investor group shall be considered as investment under the Foreign Direct Investment ("FDI"), as per the procedure specified by the Board.
2. The procedure specified under Para 17 of Part C of Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors" No. SEBI/HO/AFD/AFD-PoD-2/P/CIR/P/2024/70 dated May 30, 2024 stands modified as under:
 

*"17. Procedure for reclassification of FPI investment to FDI*

  - i. *In case the investment made by a Foreign Portfolio Investor (along with its investor group) reaches 10% or more of the total paid up equity capital of a company on a fully diluted basis and the FPI (along with its investor group) intends to reclassify its FPI holdings as Foreign Direct Investment (FDI), it shall follow extant FEMA Rules and circulars issued thereunder in this regard.*
  - ii. *Pursuant to receipt of such intent from the FPI, the respective Custodian shall report the same*



to the Board and freeze purchase transactions by such FPI in equity instruments of such Indian company, till completion of the reclassification.

iii. On receipt of request from the FPI for transfer of the equity instruments of such Indian company from its FPI demat account to its demat account maintained for holding FDI investments, the Custodian shall process the request if the reporting for reclassification, as prescribed by RBI, is complete in all respects."

5. The provisions of this circular shall come into force with immediate effect.
6. This Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulations 20(7), 22(3) and 44 of SEBI (Foreign Portfolio Investors) Regulations, 2019 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.
7. This Circular is available at [www.sebi.gov.in](http://www.sebi.gov.in) under the link "Legal ---Circulars".

**APARNA THYAGARAJAN**

Chief General Manager

## 10 Disclosure of expenses, half yearly returns, yield and risk-o-meter of schemes of Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/IMD/PoD1/CIR/P/2024/150 dated 05.11.2024]

1. Under the current regulatory framework for Mutual Funds, various disclosure requirements have been mandated, which include disclosures by Mutual Funds with respect to expenses and risks pertaining to schemes. In order to facilitate enhanced transparency, ease of comprehension by investors and a standardised approach towards disclosures by the Mutual Fund industry, based on the recommendation of Mutual Fund Advisory Committee, following has been decided:
  - A. **Disclosure of expenses, half yearly returns and yield of a scheme**
  2. Investments under direct plan of a mutual fund scheme, which was introduced vide circular dated September 13, 2012 and came into effect from January 01, 2013, are investments which are not routed through distributors of Mutual Funds. As distribution expenses and commission cannot be charged to investors of a direct plan, the expense ratio of direct plan of any scheme is lower than that of the regular plan of the same scheme and hence the returns of the direct and regular plans also differ.
  3. Accordingly, disclosure of expenses, returns during the half year and yield of direct and regular plans shall be as under:
    - 3.1. The expenses disclosed in terms of Sl. No. 6.4 of Twelfth Schedule read with Regulation 59 SEBI (Mutual Funds) Regulations, 1996 shall contain separate disclosures for total recurring expenses for direct and regular plans, apart from the disclosure of total recurring expenses of the scheme.
    - 3.2. In terms of Sl. No. 7.1 and 7.2 of Twelfth Schedule read with Regulation 59 SEBI (Mutual Funds) Regulations, 1996, returns during the half year and compounded annualized yields respectively shall be separately disclosed for direct and regular plans.
4. To standardise the above disclosures, the format for half-yearly financial statement for MF schemes shall be reviewed and finalised by AMFI, in consultation with SEBI.
5. For all other regulatory disclosures where expenses, expense ratio, returns and/or yield of the schemes are required to be disclosed, separate disclosures shall be made for both regular and direct plans.

**PETER MARDI**

Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to [www.sebi.gov.in](http://www.sebi.gov.in)

## 11 Investments in Overseas Mutual Funds/ Unit Trusts by Indian Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/IMD/IMD-PoD-1/P/CIR/149 dated 04.11.2024]

1. Mutual Funds are permitted to invest in overseas securities as specified under paragraph 12.19.2 of the SEBI Master Circular no. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/90 dated June 27, 2024 (hereinafter referred to as 'Master Circular'), which also includes investment in overseas Mutual Funds/Unit Trusts ('MF/UTs').
2. In order to facilitate ease of investment in overseas MF/UTs, to bring transparency in the manner of investment, and to enable Mutual Funds to diversify their overseas investments, the following has been decided based on feedback received from the industry, consultation with Mutual Fund Advisory Committee and public consultation:
  - 2.1. In terms of paragraph 12.19.2.10 of the Master Circular, Indian Mutual Fund schemes may also invest in overseas MF/UTs that have exposure to Indian securities, provided that the total exposure to Indian securities by these overseas MF/UTs shall not be more than 25% of their assets.
  - 2.2. While investing in overseas MF/UTs that have exposure to Indian securities, the Indian Mutual Fund schemes shall ensure the following:
    - 2.2.1. Pooling: Contribution of all investors of the overseas MF/UT is pooled into a single investment

### Investment by schemes:

- 2.1. In terms of paragraph 12.19.2.10 of the Master Circular, Indian Mutual Fund schemes may also invest in overseas MF/UTs that have exposure to Indian securities, provided that the total exposure to Indian securities by these overseas MF/UTs shall not be more than 25% of their assets.
- 2.2. While investing in overseas MF/UTs that have exposure to Indian securities, the Indian Mutual Fund schemes shall ensure the following:
  - 2.2.1. Pooling: Contribution of all investors of the overseas MF/UT is pooled into a single investment

vehicle, with no side-vehicles including segregated portfolios, sub-funds or protected calls, etc.

2.2.2. Pari-passu and Pro-rata: Corpus of the overseas MF/UT is a blind pool (i.e. common portfolio) with no segregated portfolios. All investors in the overseas MF/UT have pari-passu and pro-rata rights in the fund, i.e. they receive a share of returns/gains from the fund in proportion to their contribution and have pari-passu rights.

2.2.3. Independent investment manager/fund manager: Overseas MF/UT is managed by an independent investment manager/fund manager who is actively involved in making all investment decisions for the fund. This ensures that the investments are made autonomously by the investment manager/fund manager without influence, directly or indirectly, from any of the investors or from any other entity.

2.2.4. Public disclosure: Such overseas MF/UTs disclose their portfolios at least on a quarterly intervals to the public to maintain transparency.

2.2.5. No advisory agreement: There shall not be any advisory agreements between Indian Mutual Funds and underlying overseas MF/UTs, to prevent conflict of interest and avoid any undue advantage to either of the parties.

**PETER MARDI**

Deputy General Manager

*Complete details are not published here for want of space. For complete notification readers may log on to [www.sebi.gov.in](http://www.sebi.gov.in)*

## 12 Operational framework for reclassification of Foreign Portfolio Investment to Foreign Direct Investment (FDI)

**[Issued by the Reserve Bank of India vide RBI/2024-25/90 A.P. (DIR Series) Circular No. 19 dated 11.11.2024]**

Attention of Authorised Dealer (AD) Category - I banks is invited to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, (hereinafter referred to as 'Rules') notified by the Central Government on October 17, 2019.

2. We draw your attention to Schedule II to the Rules which prescribes that investment made by foreign portfolio investor along with its investor group (hereinafter referred to as 'FPI') shall be less than 10 percent of the total paid-up equity capital on a fully diluted basis. Further, FPI investing in breach of the prescribed limit shall have the option of divesting their holdings or reclassifying such holdings as FDI. In this regard, an operational framework for such reclassification of foreign portfolio investment by FPI to FDI is provided in the Annex. The AD Category-I banks may accordingly facilitate the reporting of such transactions as per this framework.
3. These directions will become operative with immediate effect. AD Category-I banks may bring the contents of this circular to the notice of their customers / constituents concerned.
4. 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.

**DR. ADITYA GAIHA**

Chief General Manager-In-Charge

*Complete details are not published here for want of space. For complete notification readers may log on to [www.rbi.org.in](http://www.rbi.org.in)*

## 13 Reporting of Foreign Exchange Transactions to Trade Repository

**[Issued by the Reserve Bank of India vide RBI/2024-25/89 FMRD. MIOD.07/02.05.002/2024-25 dated 08.11.2024]**

Please refer to the Master Direction – Risk Management and Inter-Bank Dealings dated July 5, 2016, as amended from time to time, which requires, inter-alia, Authorised Dealers to report all over-the-counter (OTC) foreign exchange derivative contracts and foreign currency interest rate derivative contracts, undertaken by them directly or through their overseas entities (including overseas branches, IFSC Banking Units, wholly owned subsidiaries and joint ventures of Authorised Dealers), to the Trade Repository (TR) of Clearing Corporation of India Ltd. (CCIL).

2. To ensure completeness of transaction data in TR for all foreign exchange instruments, it has been decided to expand the reporting requirement to include foreign exchange spot (including value cash and value tom) deals in a phased manner. Accordingly, transactions in the following foreign exchange contracts, involving INR or otherwise, (hereinafter referred to as "FX contracts") shall now be reported to the TR:

- a) foreign exchange cash;
- b) foreign exchange tom; and
- c) foreign exchange spot.

Note: Money changing transactions are not in the scope of these Directions and shall be governed by the Master Direction – Money Changing Activities dated January 01, 2016, as amended from time to time, or any other rule, regulation or Direction issued in this regard.

3. Authorised Dealers shall report all inter-bank FX contracts undertaken by them to the TR of CCIL with effect from February 10, 2025 as per the following timelines:
  - a) Inter-bank FX contracts involving INR shall be reported in hourly batches within 30 minutes from completion of the hour. Such contracts executed 60 minutes prior to closure of CCIL's reporting platform for the day and subsequent to closure of CCIL's reporting platform for the day shall be reported by 10 a.m. of the following business day.
  - b) Inter-bank FX contracts not involving INR executed up to 5 p.m. on any given day should be reported by 5:30 p.m. of that day. Such contracts executed after 5 p.m. should be reported by 10 a.m. of the following business day.
4. Authorised Dealer shall report all FX contracts executed with clients to the TR of CCIL in a phased manner. The

following FX contracts executed with clients shall be mandatorily reported as per the following timelines:

- a) FX contracts with the value equal to or exceeding the threshold limit of USD 1 million and equivalent thereof in other currencies with effect from May 12, 2025.
- b) FX contracts with the value equal to or exceeding the threshold limit of USD 50,000 and equivalent thereof in other currencies with effect from November 10, 2025.

FX contracts executed with clients should be reported before 12 noon of the following business day.

5. There shall be no requirement of matching transactions with overseas counterparties and client transactions in the TR as the overseas counterparties and clients are not required to report/confirm the transaction details. Authorised Dealer shall be responsible for ensuring the accuracy in respect of transactions reported.
6. Authorised Dealer shall ensure that outstanding balances between their books and the TR are reconciled and subjected to concurrent audit on an ongoing basis.
7. The reporting formats shall be as indicated by CCIL with the prior approval of the Reserve Bank.
8. For the purpose of these Directions, Authorised Dealer shall have the same meaning assigned in the Master Direction – Risk Management and Inter-Bank Dealings dated July 5, 2016, as amended from time to time.
9. These directions are issued under the powers vested in the Reserve Bank of India under Section 45W of the Reserve Bank of India Act, 1934 and Sections 10(4), 11(1) and 11(2) of the Foreign Exchange Management Act, 1999 and are without prejudice to permissions/ approvals, if any, required under any other law.

**DIMPLE BHANDIA**  
Chief General Manager

## 14 'Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds

**[Issued by the Reserve Bank of India vide RBI/2024-25/88 FMRD.FMD. No.06/14.01.006/2024-25 dated 07.11.2024]**

A reference is invited to the Press Release on 'Issuance Calendar for Marketable Dated Securities for October 2024 - March 2025' dated September 26, 2024, issued by the Reserve Bank, notifying, inter alia, the issuance calendar for Sovereign Green Bonds for the second half of the fiscal year 2024-25. Attention is also invited to the Fully Accessible Route (FAR) introduced by the Reserve Bank, vide A.P. (DIR Series) Circular No. 25 dated March 30, 2020, wherein certain specified categories of Central Government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well.

2. The Government Securities that are eligible for investment under the FAR ('specified securities') were notified by the Bank vide the following circulars:

- a) FMRD.FMSD.No.25/14.01.006/2019-20 dated March 30, 2020;
- b) FMRD.FMID.No.04/14.01.006/2022-23 dated July 07, 2022;
- c) FMRD.FMID.No.07/14.01.006/2022-23 dated January 23, 2023;
- d) FMRD.FMID.No.04/14.01.006/2023-24 dated November 08, 2023; and
- e) FMRD.FMID.No.03/14.01.006/2024-25 dated July 29, 2024.

3. It has now been decided to also designate Sovereign Green Bonds of 10-year tenor issued by the Government in the second half of the fiscal year 2024-25 as 'specified securities' under the FAR.
4. The Directions contained in this circular have been issued under Section 45W of Chapter IIID of the Reserve Bank of India Act, 1934 and are without prejudice to permissions/ approvals, if any, required under any other law.
5. These Directions shall be applicable with immediate effect.

**DIMPLE BHANDIA**  
Chief General Manager

## 15 Amendment to the Master Direction - Know Your Customer (KYC) Direction, 2016

**[Issued by the Reserve Bank of India vide RBI/2024-2025/87 DOR.AML. REC.49/14.01.001/2024-25 dated 06.11.2024]**

Please refer to the Master Direction - Know Your Customer (KYC) Direction, 2016 dated February 25, 2016, as amended from time to time, in terms of which Regulated Entities (REs) have to undertake Customer Due Diligence (CDD), as per the process laid out therein, for their customers.

2. On a review, the Master Direction on KYC has been amended to (a) align the instructions with the recent amendments carried out in the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 vide Gazette Notification dated July 19, 2024, (b) incorporate instructions in terms of the corrigendum dated April 22, 2024 issued by the Government of India to the Order dated February 2, 2021 on the 'Procedure for implementation of Section 51A of the Unlawful Activities (Prevention) Act, 1967', and (c) revise certain existing instructions. The changes carried out in the Master Direction are provided in Annex. The amended provisions in the Master Direction shall come into force with immediate effect.

**VEENA SRIVASTAVA**  
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](http://www.rbi.org.in)*



# 5

## NEWS FROM THE INSTITUTE



- MEMBERS RESTORED DURING THE MONTH OF OCTOBER 2024
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF OCTOBER 2024
- NEW ADMISSIONS
- UPLOADING OF PHOTOGRAPH AND SIGNATURE
- OBITUARIES
- CHANGE / UPDATION OF ADDRESS



## Institute News

### MEMBERS RESTORED DURING THE MONTH OF OCTOBER 2024

SL. NO.	NAME	MEMB NO.	REGION
1	CS INDRANI BAGCHI	ACS - 11961	WIRC
2	CS RAJESH KUMAR BANSHAL	ACS - 13159	NIRC
3	CS PARAG MAHENDRA LAKHANI	ACS - 14803	WIRC
4	CS ASHU SABHARWAL	ACS - 16147	NIRC
5	CS VIMAL SHARMA	ACS - 17573	NIRC
6	CS SHEFALI BHATNAGAR	ACS - 18648	NIRC
7	CS MADHURI METKAR DALAL	ACS - 19225	WIRC
8	CS NEETU GOEL	ACS - 19734	SIRC
9	CS JYOTIBALA VIKAS PORWAL	ACS - 20566	SIRC
10	CS RAVI RAMACHANDRAN IYER	ACS - 22151	WIRC
11	CS KHUSHBOO CHOUDHARY	ACS - 24658	SIRC
12	CS MEGHA KANODIA	ACS - 25512	EIRC
13	CS DEEPIKA VISHNOI	ACS - 25765	NIRC
14	CS RIMPY RANI	ACS - 26603	NIRC
15	CS PRACHI AGARWAL	ACS - 27363	EIRC
16	CS PRIYANKA CHATURVEDI	ACS - 27372	NIRC
17	CS POOJA VINOD MODI	ACS - 27456	WIRC
18	CS TEJASWINI RAJENDRA JAGTAP	ACS - 27504	WIRC
19	CS RAMU AKKILI	ACS - 28296	SIRC
20	CS ARUNODAYA OJHA	ACS - 28472	EIRC
21	CS RAJESH KUMAR DOKANIA	ACS - 29637	EIRC
22	CS HEMEN JOSHI	ACS - 30069	WIRC
23	CS ANSHITA AGARWAL	ACS - 34862	SIRC
24	CS THAKKAR UMANGKUMAR NAVINBHAI	ACS - 40144	WIRC
25	CS POOJA MISHRA	ACS - 41044	EIRC
26	CS MRIDUL JAIN	ACS - 42430	EIRC
27	CS NEHA CHOMAL	ACS - 44030	EIRC

28	CS DHEERAJ TYAGI	ACS - 44688	NIRC
29	CS PRIYA GANDHI	ACS - 45561	NIRC
30	CS RAVEENA NIKHIL SHARMA	ACS - 46487	WIRC
31	CS ARCHANA MAHENDRA KUMAR RAJPUT	ACS - 48449	WIRC
32	CS NEELMANI GOSWAMI	ACS - 48891	NIRC
33	CS KAPIL GOPLANI	ACS - 51763	WIRC
34	CS ANURADHA BHADANA	ACS - 52192	NIRC
35	CS VIVEKANANDA UDAYA BHANDARKAR	ACS - 52278	SIRC
36	CS SACHIN SHYAM SAMANT	ACS - 52905	WIRC
37	CS AAYUSH AGGARWAL	ACS - 53204	NIRC
38	CS P ANJI REDDY	ACS - 61096	SIRC
39	CS KAMLESH HIRALAL SHAH	ACS - 6241	WIRC
40	CS PRACHI SANJEEV GOSAVI	ACS - 64510	WIRC
41	CS YASHVI KUMARPAL JAIN	ACS - 64844	WIRC
42	CS S K WADAGBALKAR	ACS - 6512	WIRC
43	CS M N PALEKAR	ACS - 6532	WIRC
44	CS SUYASHI SHAKARGAYE	ACS - 69977	WIRC
45	CS AYUSHA AGRAWAL	ACS - 71032	WIRC
46	CS RAMAMURTHY SRIDHAR	ACS - 7584	WIRC
47	CS HIMANSU SEKHAR MOHAPATRA	ACS - 8499	WIRC
48	CS M SAMBASIVA RAO	ACS - 9496	SIRC
49	CS HIRESH NADKARNI	FCS - 1346	NIRC
50	CS RAMADEVI RAMAKRISHNA IYER	FCS - 4592	SIRC
51	CS T. LAKSHMINARAYANA	FCS - 5453	SIRC
52	CS MANISH MEHTA	FCS - 6304	NIRC
53	CS VILJO GEORGE P.	FCS - 6627	SIRC

### CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF OCTOBER 2024

SL. NO.	NAME	MEMB NO	COP NO.	REGION
1	CS ABHISHEK GUPTA	ACS - 64881	26019	WIRC
2	CS AMIT NORATMALJI MUNDRA	FCS - 7933	16182	WIRC
3	CS ANANDA KRISHNA ANANTHA-PADMANABHAIAH DESHKULKARNI	FCS - 9494	22355	SIRC
4	CS ANSHU AGGARWAL	ACS - 31552	23229	NIRC
5	CS BHUMIKA CHANDAN	FCS - 7378	26423	SIRC
6	CS BRIJESH DINESH SHAH	ACS - 44476	23145	WIRC
7	CS CHANCHAL GAUR	ACS - 47866	22053	NIRC

8	CS CHETNA KHATI	ACS - 60209	26183	NIRC
9	CS GARISHMA ARORA	ACS - 37434	21650	NIRC
10	CS GAYATRI SHARMA	ACS - 71341	27519	WIRC
11	CS HITESH BALU DESALE	ACS - 60989	23012	WIRC
12	CS KAILASH CHAND JETHLIA	FCS - 1476	22328	NIRC
13	CS KAVIKONDALA RAJENDRA	ACS - 62386	25837	SIRC
14	CS KAVUNGA PARAMBIL SAREENA	FCS - 13266	19037	SIRC
15	CS MANJU BALARAM BATHAM	FCS - 7092	14820	WIRC
16	CS MANJU KUMARI	ACS - 68113	26303	WIRC
17	CS MANSI KRUNAL MEHTA	ACS - 64757	26561	WIRC
18	CS MUTHUKRISHNAN SHANMUGA THEVAR	ACS - 61530	22947	SIRC

19	CS NAGASARMA VENKATA HANUMATH SITARAMA ITIKALA	FCS - 12684	18560	SIRC
20	CS NANDINI AGARWAL	ACS - 37617	26345	EIRC
21	CS NEHA YADAV	ACS - 36913	17075	EIRC
22	CS POOJA GUPTA	ACS - 25898	15248	NIRC
23	CS PREETI	FCS - 10837	25640	NIRC
24	CS RATINAM VADIVEL SEKAR	FCS - 4075	20565	SIRC
25	CS RUPALI PUROHIT	ACS - 67537	25794	SIRC
26	CS SHEKHAR RAMJEET SINGH	FCS - 12881	26504	WIRC
27	CS SHUBHI JAIN	ACS - 55087	21592	NIRC
28	CS SUBIR BOITY	ACS - 27707	25376	SIRC
29	CS VARIYATH MANOJ	ACS - 68634	26436	SIRC

### NEW ADMISSIONS

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link <https://www.icsi.edu/member>



### 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](http://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

### OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following members:

**CS R Gopalakrishnan** (26.01.1955 - 04.03.2024), a Fellow Member of the Institute from Hyderabad.

**CS Kadagandla Narasimhulu** (01.06.1974 - 20.10.2024), a Fellow Member of the Institute from Hyderabad.

May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed souls rest in peace.



## CHANGE / UPDATION OF ADDRESS

The members are requested to check and update (if required) your professional and residential addresses ONLINE only through Member Login. Please indicate your correspondence address too.

The steps to see your details in the records of the Institute:

1. Go to [www.icsi.edu](http://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](http://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<sup>#</sup>
  - 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<sup>#</sup>
  - 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.

<sup>#</sup>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  
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(Under the jurisdiction of Ministry of Corporate Affairs)

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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.



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- 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.

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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.



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

#### Vision

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

#### Motto

सत्यं वद। धर्मं चर। इष्टञ्चैव तेन जयताम। श्रेयते इषु तेनैव जयः।

#### Mission

"To develop high calibre professionals facilitating good corporate governance"

## GUIDANCE NOTE ON LOAN TO DIRECTORS AND LOAN, INVESTMENT, ISSUE OF GUARANTEE AND SECURITY BY COMPANIES

Unlock a comprehensive understanding of legal provisions governing loans, investments, guarantees, and securities in companies with this Guidance Note.

GUIDANCE NOTE  
ON  
LOAN TO DIRECTORS AND LOAN,  
INVESTMENT, ISSUE OF GUARANTEE AND  
SECURITY BY COMPANIES  
(SECTIONS 185 & 186 OF THE COMPANIES ACT, 2013)



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### Key Features:

#### Simplified Accessibility

- Grasp the nuances of Sections 185 and 186 with clear, concise explanations tailored for professionals and stakeholders.

#### Illustrative Clarity

- Navigate complex legal principles with ease through practical and relatable illustrations.

#### Q&A for Practical Guidance

- Structured FAQ's for resolving common scenarios.

### The Guidance Note is available at:

[https://www.icsi.edu/media/webmodules/Guidance\\_Note\\_03122024.pdf](https://www.icsi.edu/media/webmodules/Guidance_Note_03122024.pdf)

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# 6

## MISCELLANEOUS CORNER



- GST CORNER
- ETHICS IN PROFESSION
- CG CORNER
- ESG CORNER
- GIST OF RD & ROC ADJUDICATION ORDERS

### **ADVISORY: TIME LIMIT FOR REPORTING E-INVOICE ON THE IRP PORTAL – LOWERING OF THRESHOLD TO ANNUALISED AGGREGATE TURNOVER (AATO) 10 CRORES AND ABOVE**

With reference to the advisory dated 13<sup>th</sup> September 2023, where time limit of 30 days for reporting e-Invoices on invoice registration portals (IRP) for taxpayers with an AATO of 100 crores and above was implemented, the threshold has now been lowered to cover taxpayers with an AATO of 10 crores and above.

Therefore, from 1<sup>st</sup> April 2025, taxpayers with an AATO of 10 crores and above would not be allowed to report e-Invoices older than 30 days from the date of reporting on IRP portals.

**Source:** <https://services.gst.gov.in/services/advisoryand-releases/read/543>

### **ADVISORY FOR FORM GST DRC-03A**

Some taxpayers have paid the demanded amount vide DRC 07/DRC 08/MOV 09/MOV 11/APL 04 through DRC-03 instead of using payment facility 'Payment towards demand' available on GST portal. This led to a situation where demand has been paid by the taxpayer, however the demand is not closed in the electronic liability register. To address this issue, the government has notified a new form named GST DRC-03A which was notified vide Notification No. 12/2024 dated 10<sup>th</sup> July 2024.

Accordingly, GSTN has developed the new Form GST DRC-03A on GST portal which is available now to adjust the paid amount through DRC-03 against the corresponding demand order. Therefore, the taxpayers are advised to use the DRC-03A form to link the payment made vide DRC-03 with the demand order. Only DRC-03 forms where the cause of payment is either 'Voluntary' or 'Others' can be used in the Form GST DRC-03A.

The detailed process of filing DRC-03A can be accessed by following the link: [https://tutorial.gst.gov.in/downloads/news/process\\_of\\_filing\\_drc.pdf](https://tutorial.gst.gov.in/downloads/news/process_of_filing_drc.pdf)

**Source:** <https://services.gst.gov.in/services/advisoryand-releases/read/544>

### **ADVISORY FOR WAIVER SCHEME UNDER SECTION 128A**

For reducing the tax disputes and to provide a big relief to the taxpayers, GST Council in its 53<sup>rd</sup> meeting held on 22<sup>nd</sup> June, 2024 had recommended for waiver of interest and penalties in the demand notices or orders issued under Section 73 of the CGST Act, 2017 (i.e., the cases not involving fraud, suppression or wilful misstatement,

etc.) for the financial years 2017-18, 2018-19 and 2019-20. To avail this waiver, the condition is that the full tax demanded is paid on or before 31.03.2025.

In view of the above, Rule 164 of CGST rules, 2017 was notified through Notification No. 20/2024 dated. 8<sup>th</sup> October 2024, effective from 1<sup>st</sup> November 2024. This rule provides procedural guidelines for the said waiver scheme. As per the waiver scheme, if a notice or order is issued under Section 73 for the financial years 2017-18, 2018-19 and 2019-20, the taxpayers are required to file an application in FORM GST SPL-01 or FORM GST SPL-02, respectively on the common portal within three months from notified date, which is 31.03.2025.

In this regard it is to inform that Form GST SPL-01 and Form GST SPL-02 are under development and same will be made available on the common portal tentatively from the first week of January 2025. In the meantime, taxpayers are advised to pay the tax amount demanded in the notice, statement, or order issued under Section 73 on or before March 31, 2025, to ensure that they receive the waiver benefits by paying their taxes before the deadline.

Taxpayer can pay the demanded tax amount through the "payment towards demand" facility in case of demand orders and through Form GST DRC-03 in case of notices. However, if payment has already been done through Form GST DRC-03 for any demand order then taxpayer need to link the said Form GST DRC 03 with such demand order through Form GST DRC-03A, which is now available on the common portal.

**Source:** <https://services.gst.gov.in/services/advisoryand-releases/read/546>

### **ADVISORY ON INVOICE MANAGEMENT SYSTEM (IMS) ON SUPPLIER VIEW**

IMS has been made available on the GST Portal from 14<sup>th</sup> October, 2024 wherein the recipient taxpayer can accept, reject or keep the invoices pending which are saved/filed by their suppliers in their respective GSTR-1/1A/IFF. First GSTR-2B on the basis of such actions taken in IMS by the recipient taxpayers will be generated on 14<sup>th</sup> November, 2024 for October-2024 period.

To further facilitate the taxpayers, the Supplier View of IMS has also been made available where the action taken by their recipients on the records/invoices reported in GSTR-1/1A/IFF, will be visible to the suppliers in 'Supplier View' functionality. This will help a supplier taxpayer to see the action taken on their reported outwards supplies and will help to avoid any wrong action taken by the recipient taxpayer.

**For further details please refer**

<https://services.gst.gov.in/services/advisoryand-releases/read/548>



### ADVISORY ON GSTR 2B AND IMS

It has been reported by few taxpayers that their GSTR-2B for October-2024 period has not been generated on 14<sup>th</sup> November, 2024. In this regard it to be informed that as per the design of IMS, GSTR-2B will not be generated by the system in below scenarios:

- In case the taxpayer has opted for QRMP scheme (Quarterly filers), GSTR-2B will not be generated for first and second month of the quarter. Ex. For quarter Oct-Dec, 2024, the quarterly taxpayer will get GSTR-2B for December-2024 period only and not for October-2024 & November-2024.
- In case the taxpayer has not filed their previous period GSTR-3B, GSTR-2B will not be generated by the system. Such taxpayers need to file their pending GSTR-3B in order to generate GSTR-2B on demand. For example, if the taxpayer has not filed GSTR-3B for September-2024, their GSTR-2B for October-2024 will not be generated. Once the taxpayer files their GSTR-3B for September-2024, they will be able to generate their GSTR-2B for October-2024 by clicking the "Compute GSTR-2B (OCT 2024)" button on the IMS dashboard.

**For further details please refer :** <https://services.gst.gov.in/services/advisoryandreleases/read/549>

### ADVISORY FOR REPORTING TDS DEDUCTED BY SCRAP DEALERS IN OCTOBER 2024

The taxpayers facing issue related to TDS under Section 51 of the CGST Act, 2017, are advised to report the consolidated amount of TDS deducted for the period from 10.10.2024 to 30.11.2024 in the GSTR-7 return to be filed for the month November 2024.

**For further details please refer**

<https://services.gst.gov.in/services/advisoryandreleases/read/551>

### ADVISORY: AUTHORISED E-INVOICE VERIFICATION APPS

A reference document to ensure that taxpayers have the most up-to-date information regarding approved B2B e-Invoice verification apps is issued by GSTN, which can be accessed by following the below given link.

[https://tutorial.gst.gov.in/downloads/news/authosied\\_e\\_invoice\\_verification\\_apps.pdf](https://tutorial.gst.gov.in/downloads/news/authosied_e_invoice_verification_apps.pdf)

**Source:** <https://services.gst.gov.in/services/advisoryandreleases/read/553>

### ADVISORY: E-INVOICE GLOSSARY AND STEPS

An informative resource in the form of an e-invoice glossary and a step-by-step guide for reference has been prepared by GSTN which can be accessed by following the below link.

1. E-Invoice Glossary:

[https://tutorial.gst.gov.in/downloads/news/glossary\\_on\\_e\\_invoicing\\_v1\\_1.pdf](https://tutorial.gst.gov.in/downloads/news/glossary_on_e_invoicing_v1_1.pdf)

2. Step by Step Guide:

[https://tutorial.gst.gov.in/downloads/news/e\\_invoice\\_overview.pdf](https://tutorial.gst.gov.in/downloads/news/e_invoice_overview.pdf)

**Source:** <https://services.gst.gov.in/services/advisoryandreleases/read/461>



## Due Diligence in certification of e-Form MGT-7

The expression “*professional and other misconduct*” as defined in Section 22 of the Company Secretaries Act, 1980 shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

A member of the Institute in practice shall be deemed to be guilty of professional misconduct under Clause (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.

Company Secretaries in Practice are expected to fill the details after thoroughly checking the number of directors of a company, number of Board meetings held during the year and the number of meetings attended by each of the directors along with other required details while certification of e-form MGT-7 of a company.

### CASE STUDY:

1. A complaint of professional or other misconduct was received against one Practicing Company Secretary (hereinafter referred to as ‘the Respondent’) *inter-alia* stating that an inquiry was conducted under section 206(4) of the Companies Act, 2013 regarding irregularities committed by a private limited company (hereinafter referred to as ‘the company’). Upon perusal of e-form MGT-7 filed for the financial year ended on 31<sup>st</sup> March, 2021, it was observed that under Para IX B, the number of Board meetings held during the year is 6, total number of directors on the meeting date is 3 and the number of directors attending the meeting is 2. However, under Para IX D, the company has declared that all the 3 Directors - L, W and Z, have attended 6 meetings during the year. It was alleged that the said e-form MGT-7 has been certified by the Respondent without proper verifications, thereby leading to omission of material facts, knowing them to be material, thereby misleading the public and the regulators.
2. The Respondent has denied, disputed and disagreed with all the allegations levelled against him by the Complainant and *inter-alia* stated that there was no suppression of material facts and no intention to mislead the public and the regulators. Since the company is a private limited company, it has no public interest as alleged in the complaint. Further, the disparity of declaration in Para IX B and IX D in e-form MGT-7 is purely a typographical, unintended, inadvertent erroneous error, only, due to oversight. Neither the company nor the Respondent has derived any kind of gain due to this typographical, unintended, inadvertent erroneous error.
3. The Respondent has further stated that the declaration made by the company in Para IX B of e-form MGT-7 under the Heading - Board Meetings i.e. the total number of Board meetings held during the year were

six (6), which were attended by two (2) directors only, out of total number of three (3) directors associated with the company, is correct and is as per the records of the company and is correctly mentioned therein. The declaration made by the said company in Para IX D of e-form MGT-7 under the Heading ‘Attendance of Directors’ is correct in respect of the two (2) directors viz. W and L that, they have attended all the six (6) Board meetings against their entitlement of attending six (6) Board meetings.

4. The declaration made by the company in Para IX D of e-form MGT-7 under the Heading ‘Attendance of Directors’ in respect of Director Z that he was entitled to attend six (6) meetings is correct, whereas the declaration made under the heading Number of meetings attended and percentage of attendance is mentioned as six (6) and 100%, respectively as against zero (0) for both the headings were mentioned due to some typographical and erroneous error only and was overlooked due to oversight and escaped the attention.
5. The Respondent has further stated no opportunity has been provided to him under Rule 10(2) and (3) of the Companies (Registration Offices and Fees) Rules, 2014. The Respondent has further stated that the country has been facing COVID-19 pandemic since March, 2020 and in such a critical unprecedented abnormal situation, the work was somehow accomplished. The Respondent emphasized that there was no loss to any of the stakeholders nor was there any gain of any nature whatsoever to any of the parties alleged to have been involved. He cannot even think of any intention to mislead the public and the regulators.
6. The complainant in his rejoinder has mainly reiterated the allegations and stated that the matter may be decided on the merits of the complaint.
7. The Director (Discipline) in prima facie opinion has observed that compliance of Rule 10 of the Companies (Registration Offices and Fees) Rules, 2014, is not a precondition for registration of complaint under the Company Secretaries Act, 1980. Further, the information in Column IX B and IX D of e-form MGT-7 certified by the Respondent for FY 2020-21 for the company is contradictory due to attendance of Director Z, who has not attended any meeting, but his attendance is shown as 100% in Column IX D instead of zero ‘0’ which is misleading. The Director (Discipline) opined that the Respondent is prima facie ‘guilty’ of professional misconduct under Clause (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980. The Disciplinary Committee agreed and decided to adjudicate the matter further.
8. The Respondent pleaded guilty to the charges against him before the Disciplinary Committee. The plea of the Respondent was recorded.
9. The Disciplinary Committee, after giving an opportunity of being heard to the Respondent, passed an order of ‘Reprimand’ against the Respondent. □

# Corporate Transparency Act : Emphasis on Beneficial Ownership Information

The United States of America witnesses formation of mammoth number of corporations and limited liability companies i.e. more than 2,000,000 under the laws of the State every year wherein majority of the States not requiring information pertaining to the beneficial owners of the corporations, limited liability companies, or other similar entities formed under the laws of the State coupled with the menace of concealment of information relating to ownership of corporations, limited liability companies, or other similar entities in the United States thereby proliferating illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United States and allies of the United States.

To curb the above-mentioned menace, Corporate Transparency Act was enacted by Congress on January 1, 2021, as part of the National Defense Authorization Act. The Corporate Transparency Act establishes a beneficial ownership reporting requirement for corporations, limited liability companies, and other similar entities formed or registered to do business in the United States. Beneficial ownership reports must be filed with the Financial Crimes Enforcement Network (FinCEN), a bureau within the U.S. Department of Treasury.

The reporting requirements under the CTA went into effect on January 1, 2024. Business entities formed prior to such date will have January 1, 2025, to comply with the CTA's reporting requirements.

The key definitions under Beneficial Ownership Information Reporting Requirements are as under:

## Reporting Company:

A reporting company is a corporation, limited liability company or other similar entity that is created by the filing of a document with a secretary of state or similar office under the law of a state, or formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or similar office under the laws of a state.

## Beneficial Owner:

The term 'Beneficial Owner' means:

“(A) with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

“(i) exercises substantial control over the entity; or

“(ii) owns or controls not less than 25 percent of the ownership interests of the entity;

and

“(B) does not include:

“(i) a minor child, as defined in the State in which the entity is formed, if the information of the parent or guardian of the minor child is reported in accordance with this section;

“(ii) an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;

“(iii) an individual acting solely as an employee of a corporation, limited liability company, or other similar entity and whose control over or economic benefits from such entity is derived solely from the employment status of the person;

“(iv) an individual whose only interest in a corporation, limited liability company, or other similar entity is through a right of inheritance; or

“(v) a creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the requirements of subparagraph (A).

## Information To be Reported

Beneficial ownership information reporting is not an annual requirement. A report only needs to be submitted once, unless the filer needs to update or correct information.

In accordance with regulations prescribed by the Secretary of the Treasury, a report delivered shall, except as provided in subparagraph(B), identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company by—

“(i) full legal name;

“(ii) date of birth;

“(iii) current, as of the date on which the report is delivered, residential or business street address; and

“(iv) (I) unique identifying number from an acceptable identification document; or

(II) FinCEN identifier

If an exempt entity has a direct or indirect ownership interest in a reporting company, the reporting company



or the applicant must only report the name of the exempt entity instead of the beneficial ownership information set forth above.

#### **Reporting of existing entities:**

In accordance with regulations prescribed by the Secretary of the Treasury, any reporting company that has been formed or registered before the effective date of the regulations prescribed under this subsection shall, in a timely manner, and not later than 2 years after the effective date of the regulations prescribed under this subsection, submit to FinCEN a report that contains the information as described.

#### **Reporting at time of formation or registration:**

In accordance with regulations prescribed by the Secretary of the Treasury, any reporting company that has been formed or registered after the effective date of the regulations promulgated under this subsection shall, at the time of formation or registration, submit to FinCEN a report that contains the information as described.

*(Effective Date: The requirements shall take effect on the effective date of the regulations prescribed by the Secretary of the Treasury which shall be promulgated not later than 1 year after the date of enactment.)*

#### **Penalties for Violation**

Any person violating the reporting requirements of the Corporate Transparency Act is liable for civil penalties

of not more than \$500 for each day that the violation continues and criminal penalties of imprisonment of up to two years and fines of up to \$10,000.

The CTA aligns the U.S. with global standards for corporate transparency, such as those established by the Financial Action Task Force (FATF). By requiring BOI disclosure, the CTA addresses vulnerabilities in the financial system and enhances accountability. It strengthens the government's ability to detect and prevent the misuse of legal entities for unlawful purposes.

The Corporate Transparency Act's beneficial ownership requirement represents a paradigm shift in how corporate transparency is regulated in the U.S. While it imposes new burdens on businesses, the long-term benefits in curbing financial crime and improving accountability outweigh the costs.

As the implementation deadlines approach, businesses must take proactive steps to ensure compliance. Understanding the law, gathering necessary documentation, and seeking expert guidance will be crucial for navigating this regulatory landscape effectively.

#### **References:**

- [https://www.fincen.gov/sites/default/files/shared/Corporate\\_Transparency\\_Act.pdf](https://www.fincen.gov/sites/default/files/shared/Corporate_Transparency_Act.pdf)
- <https://www.ohiosos.gov/businesses/corporate-transparency-act/>



## COP29: KEY TAKEAWAYS

UN Climate Change Conference or Conference of the Parties (COP) take place every year, and is the world's only multilateral decision-making forum on climate change that brings together almost every country on Earth. To put it simply, the COP is where the world comes together to agree on the actions to address the climate crisis, such as limiting the global temperature rise to 1.5 degrees Celsius, helping vulnerable communities adapt to the effects of climate change, and achieving net-zero emissions by 2050.

COP29 conference, held in Baku, Azerbaijan, from 11<sup>th</sup> to 22<sup>nd</sup> November 2024 concluded after intense negotiations. The summit delivered key agreements and highlighted challenges ahead in addressing the global climate crisis including the following:

- (i) **Climate Finance Commitment:** Developed nations pledged to provide \$300 billion annually by 2035 to assist developing countries in addressing climate change. This funding is intended to support adaptation efforts and the transition to renewable energy sources. However, some developing nations have criticized this amount as insufficient compared to the \$1.3 trillion they deem necessary.
- (ii) **Global Carbon Market Framework:** After a decade of negotiations, COP29 finalized rules for global carbon markets under Article 6 of the Paris Agreement. This framework establishes mechanisms for trading carbon credits, aiming to mobilize significant investments in emission reduction projects. The agreement includes provisions to ensure the system's credibility and effectiveness in reducing greenhouse gas emissions.
- (iii) **Enhanced Climate Reporting Standards:** The conference emphasized the importance of transparent climate reporting, urging businesses to adopt standardized disclosure practices. This move aims to improve accountability and enable investors to make informed decisions based on companies' environmental impacts.
- (iv) **Focus on Nationally Determined Contributions (NDCs):** Countries are expected to submit updated NDCs by February 2025, outlining strategies to reduce emissions and adapt to climate impacts. This process encourages businesses to align their operations with national climate goals, potentially influencing regulatory environments and market dynamics.

COP29 marked notable progress in advancing climate finance and carbon market mechanisms, showcasing the global community's commitment to addressing climate change. While challenges such as funding gaps and geopolitical dynamics underscore the

complexity of international negotiations, they also highlight the opportunities for collaboration and innovation.

Next COP30, set to take place in Belem, Brazil, is already being hailed as the "COP of COPs." The upcoming summit will likely focus on finalizing frameworks for emissions reductions and solidifying commitments to renewable energy.

*Source: <https://esgnews.com/5-key-takeaways-from-cop29-progress-challenges-and-what-lies-ahead/>*

## SAUDI ARABIA LAUNCHES FIRST VOLUNTARY CARBON CREDIT EXCHANGE PLATFORM AT COP29

Saudi Arabia marked a significant milestone in its environmental strategy by launching its first carbon credit exchange at the UN Climate Change Conference (COP29) in Baku on November 12. Managed by the Saudi Arabia's Regional Voluntary Carbon Market Company (RVCMC), the platform is designed to strengthen the voluntary carbon market as the country pushes for economic diversification. This initiative is part of Saudi Arabia's Vision 2030 plan to diversify its economy and boost renewable energy investments, despite its ongoing reliance on oil revenues. The move aligns with a growing Middle Eastern push towards carbon market participation, with efforts to address market confidence issues amidst criticisms of voluntary carbon credit quality.

The platform's debut featured an auction involving 22 companies from Saudi Arabia and other nations. This event offered 2.5 million high-quality carbon credits certified by Verra, Gold Standard, and Puro.earth, covering projects dating from 2020 onwards. These credits predominantly originated from Global South countries like Bangladesh, Brazil, Ethiopia, Malaysia, Pakistan, and Vietnam. Despite this progress, the voluntary carbon market faces challenges due to concerns over the quality of some carbon projects, affecting liquidity and offset prices. However, experts are optimistic that integrity measures in development will rejuvenate market trust.

*Source: <https://esgnews.com/saudi-arabia-launches-first-voluntary-carbon-credit-exchange-platform-cop29/>*

## EU APPROVES NEW ESG RATINGS REGULATION

ESG ratings evaluate a company's or financial instrument's sustainability profile by examining its societal and environmental impact and exposure to sustainability risks. Given their growing influence on capital markets and sustainable investments, ensuring their credibility has become a priority.

The Council of the European Union (EU) has approved a groundbreaking regulation to enhance the transparency, consistency, and comparability of environmental, social, and governance (ESG) ratings. This move aims to bolster investor confidence in sustainable financial products by addressing key concerns about the reliability of ESG assessments. Key provisions in the regulation include:

- (i) **Authorization and supervision:** ESG rating providers within the EU must now be authorized and monitored by the European Securities and Markets Authority (ESMA). These providers will also face transparency requirements about their methodologies and information sources.
- (ii) **Global participation standards:** ESG rating providers outside the EU must meet specific criteria, such as obtaining endorsements from EU-authorized entities or being listed in the EU registry based on equivalence decisions.
- (iii) **Conflict of interest prevention:** To ensure impartiality, the regulation mandates the separation of business and rating activities.

**Source:** <https://esgnews.com/eu-approves-new-esg-ratings-regulation-to-enhance-transparency-and-investor-trust/>

## INDIA'S 1<sup>ST</sup> HYDROGEN POWERED TRAIN TO RUN BETWEEN JIND AND SONIPAT

Indian Railways is set to launch the country's first hydrogen-powered train and a trial run is expected between Haryana's Jind and Sonipat railway stations in the first quarter of 2025. The Research, Design, and Standard Organisation (RDSO), a key wing of Indian Railways, has developed the design of the train. With this breakthrough, India will join a select group of countries that have initiated the use of hydrogen as fuel for trains. Notably, this will be the first large scale attempt globally.

Hydrogen powered trains use electricity generated through hydrogen and oxygen fuel cells to power the motor. While countries like Germany and China have worked on hydrogen fuel for rail transport, large scale success has been elusive. Germany is currently the only country operating a hydrogen train, which runs with two coaches. On the other hand, the RDSO designed hydrogen train model features 8 passenger coaches with capacity of carrying 2,638 passengers on a single trip at a maximum speed of 110 km/h. Additionally, three coaches will be dedicated to storing hydrogen cylinders and housing integrated fuel cell converters, batteries, and air reservoirs.

**Source:** [www.indiatoday.in](http://www.indiatoday.in)

## INDIA RANKS 23<sup>RD</sup> GLOBALLY IN THE SUSTAINABLE TRADE INDEX 2024

Sustainable trade is defined as a trade that provides mutually beneficial outcomes for trading partners while effectively balancing economic, social, and environmental

considerations. From global economies adopting policies to strengthen their domestic industries to creating a resilient workforce that can withstand economic shocks, aligning and integrating trade and environmental aspects will enable to build sustainable and green economies.

Sustainable Index Report 2024 by Hinrich Foundation and IMD highlights and ranks global economies in trade sustainability based on three pillars: **economic growth, societal advancement, and environmental resilience**. In the list New Zealand has retained as the 'most sustainable trade economy' for the third consecutive edition. It has risen one place in both the economic and societal pillars while maintaining its lead in the environmental pillar. Next is the UK, which has fallen one place in the economic pillar; however, it has remained steady at fourth in the societal pillar and second in the environmental pillar.

India, the world's fifth largest economy, has made significant strides in its economic growth; however, challenges such as poverty and inequality persist, in addition to societal challenges like gender inequality and environmental issues like air pollution and deforestation, which have led it to rank 23<sup>rd</sup> globally in the Sustainable Trade Index 2024. India's overall score is 24, with 62.3 for economic factors, 13.3 for societal aspects, and 43.1 for environmental considerations. This indicates India's strong economic performance, while also highlighting significant challenges in societal and environmental areas.

**Source:** <https://indianexpress.com/>

## GOOGLE UNVEILS FIRST MASS TIMBER OFFICE, CUTTING BUILDING EMISSIONS BY 96%

Google has announced the opening of "1265 Borregas", its first office building constructed using mass timber, in Sunnyvale, California. The building reflects Google's commitment to sustainability, employee wellbeing, and community engagement.

Mass timber, an engineered wood known for its regenerative properties, absorbs and stores carbon over time, helping reduce embodied carbon emissions. According to Google, 1265 Borregas produces 96% fewer embodied carbon emissions than an equivalent steel and concrete structure, considering sequestration. The mass timber was sourced from responsibly managed forests certified by the Forest Stewardship Council (FSC). Additional sustainability features in this building include, all-electric operations and LEED Platinum certification, rooftop solar panels that generate electricity for the building, ample natural light etc.

**Source:** <https://esgnews.com/google-unveils-first-mass-timber-office-cutting-building-emissions-by-96/>

# GIST OF RD & ROC ADJUDICATION ORDERS

## GIST OF ROC ADJUDICATION ORDERS

### 1. Adjudication order for violation of Section 173 of the Companies Act, 2013 in the matter of CENTURY GLOBAL LOGISTICS PRIVATE LIMITED

ROC Kolkata issued an adjudication order dated 04<sup>th</sup> November 2024 in the matter of Century Global Logistics Private Limited for not conducting the Board meetings from the Financial Years 2016-17 to 2019-20 within stipulated time and thus violating the provisions of Section 173 of the Companies Act, 2013. The Adjudication Authority for each financial year has imposed penalty of ₹25,000 each upon two Directors in default

<https://www.mca.gov.in/bin/dms/getdocument?mds=ch-kgqA6KlJXpLGEXROXLJw%253D%253D&type=open>

### 2. Adjudication order for violation of Section 92 of the Companies Act, 2013 in the matter of CENTURY GLOBAL LOGISTICS PRIVATE LIMITED

ROC Kolkata issued an adjudication order dated 04<sup>th</sup> November 2024 in the matter of Century Global Logistics Private Limited for not filing its Annual Return from the Financial Years 2016-17 to 2019-20 within stipulated time as specified under Section 92 of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹2,10,000 for two financial years 2016-17 & 2017-18, ₹1,80,800 and ₹1,44,200, for financial years 2018-19 to 2019-20 respectively upon company. Penalty of ₹60,000 each was imposed upon 2 Directors of company for default in each financial year from 2016-17 to 2019-20.

<https://www.mca.gov.in/bin/dms/getdocument?mds=-LEQ2vgBFm7Z4HO%252FFHdeSdg%253D%253D&type=open>

### 3. Adjudication order for violation of Section 92 and 137 of the Companies Act, 2013 in the matter of XIE FUTEC AUTOMATION PRIVATE LIMITED

ROC Coimbatore issued an adjudication order dated 05<sup>th</sup> November 2024 in the matter of XIE Futech Automation Private Limited for not filing its Annual Return and Financial Statements for the year ended on 31.03.2018 to 31.03.2021 within stipulated time as specified under Section 92 and Section 137 of the Companies Act, 2013. For violation of provisions of section 92 of the Companies Act, 2013, the Adjudication Authority has imposed penalty of ₹1,63,700, ₹1,24,400, ₹87,800 and ₹51,300 upon the Company for the year ended on 31.03.2018 to 31.03.2021 respectively and penalty of ₹50,000 each was imposed upon 4 Directors of company for each

financial year ended on 31.03.2018 to 31.03.2021 respectively. For violating the provisions of Section 137 the Adjudicating Authority imposed penalty of ₹1,63,700, ₹1,27,400, ₹90,800 and ₹54,300 upon the Company for the year ended on 31.03.2018 to 31.03.2021 respectively. Penalty of ₹50,000 was imposed upon one Director of Company for each financial year ended on 31.03.2018 to 31.03.2021.

<https://www.mca.gov.in/bin/dms/getdocument?mds=x-1G%252BDY9mKlGfgcDdL2flew%253D%253D&type=open>

### 4. Adjudication order for violation of Section 158 of the Companies Act, 2013 in the matter of SAINT PHILOMENAS NIDHI LIMITED

ROC Ernakulam issued an adjudication order dated 07<sup>th</sup> November 2024 in the matter of Saint Philomenas Nidhi Limited for not mentioning DIN over the financial statements attached with AOC-4 for the Financial Year end 31.03.2020 resulting the violation of Section 158 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹50,000 each upon the company and one Director in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=5EN-vWE1ldgl8701dO%252BcDSg%253D%253D&type=open>

### 5. Adjudication order for violation of Section 117 of the Companies Act, 2013 in the matter of SAM AGRI VENTURES LIMITED

ROC Hyderabad issued adjudication order dated 12<sup>th</sup> November 2024 in the matter of Sam Agri Ventures Limited as it has not filed Form MGT-14 for the Financial Year 2023-24 within due date and thus violated the provision of Section 117(1) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹21,100 each upon the company and on two Directors on default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=n-3BZ71fQRIY2DEVdf85TxQ%253D%253D&type=open>

### 6. Adjudication Order for violation of Section 134(1) of the Companies Act, 2013 in the matter of SONASUMAN CONSTECH ENGINEERS PRIVATE LIMITED

ROC Patna issued adjudication order dated 14<sup>th</sup> November 2024 in the matter of Sonasuman Constech Engineers Private Limited as AOC-4 filed for the financial years 2017-18, 2018-19 and 2019-20, were not duly signed by the Directors of the Company and thus violated the provisions of Sections 134(1) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹4,50,000 upon the company and ₹75,000 each on four directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=9omUb-c8yMYUcJypMG73qgg%253D%253D&type=open>



**7. Adjudication Order for violation of Section 137 of the Companies Act, 2013 in the matter of MONESHI AGRO INDUSTRIES LIMITED**

ROC Mumbai issued an adjudication order dated 30<sup>th</sup> October 2024 in the matter of Moneshi Agro Industries Limited for not filing its Financial Statements for the financial year 2018-19 within stipulated time and thus violated the provisions of Section 137 of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹3,54,000, upon the Company and ₹1,35,400 imposed on one Director of company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=KOBesZV6ML7Cd6bKB6ylMw%253D%253D&type=open>

**8. Adjudication order for violation of Section 12 of the Companies Act, 2013 in the matter of CKR STEELS PRIVATE LIMITED**

ROC Chhattisgarh issued adjudication order dated 14<sup>th</sup> November 2024 in the matter of CKR Steels Private Limited for not maintaining the Registered Office of the company and thus violating the provisions of Section 12 of the Companies Act, 2013. The adjudicating authority has imposed the penalty of ₹23,500 each upon the company and on two Directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=aGYk-8C7C%252BDNwxvjM5aZOGw%253D%253D&type=open>

**9. Adjudication order for violation of Section 92 of the Companies Act, 2013 in the matter of MONESHI AGRO INDUSTRIES LIMITED**

ROC Mumbai issued an adjudication order dated 30<sup>th</sup> October 2024 in the matter of Moneshi Agro Industries Limited for not filing its annual returns for the financial year 2018-19 within the stipulated time and thus violated the provisions of Section 92 of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹82,400 each upon the Company on one Director in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=-J3OfVT%252FQpIEy%252BExjOBjf4A%253D%253D&type=open>

**10. Adjudication order for violation of Section 158 of the Companies Act, 2013 in the matter of SONASUMAN CONSTECH ENGINEERS PRIVATE LIMITED**

ROC Patna issued adjudication order dated 14<sup>th</sup> November 2024 in the matter of Sonasuman Constech Engineers Private Limited for not mentioning DIN over financial statements for financial years ended on 31.03.2018 and 31.03.2020 and thus violated the provisions of Section 158 of the Companies Act, 2013. The Adjudicating Authority

imposed penalty of ₹50,000 each upon the company and on four Directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=j-8FUt6hMevzeL1Aua4PJ0g%253D%253D&type=open>

**11. Adjudication order for Violation of Section 165(1) of the Companies Act, 2013 in the matter of MR. JASBIR SINGH**

ROC Chandigarh issued adjudication order dated 20<sup>th</sup> November 2024 in the matter of Mr. Jasbir Singh as he was holding Directorship of more than 10 Public Companies, and thus violating the provisions of Section 165 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹2,00,000 on Mr. Jasbir Singh for the aforesaid default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=kJZ-kyW5D%252Bpia4wQ1bnHVIw%253D%253D&type=open>

**12. Adjudication order under Section 158 of the Companies Act, 2013 in the matter of AASVAS NIDHI LIMITED**

ROC Ernakulam issued an adjudication order dated 19<sup>th</sup> November 2024 in the matter of Aasvas Nidhi Limited for not mentioning DIN over the financial statements attached with AOC-4 for the Financial Years ended on 31.03.2016 to 31.02.2020 resulting violation of Section 158 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹50,000 each upon the company and on three Directors in default for each financial year.

<https://www.mca.gov.in/bin/dms/getdocument?mds=yyNumA7KN%252BNyZXZPyXppYQ%253D%253D&type=open>

**13. Adjudication order for Violation of Section 165(1) of the Companies Act, 2013 in the matter of MR. SUKHBIR SINGH**

ROC Chandigarh issued adjudication order dated 20<sup>th</sup> November 2024 in the matter of Mr. Sukhbir Singh as he was holding directorship of more than 10 Public Companies, and thus violating the provisions of Section 165 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹2,00,000 on Mr. Sukhbir Singh for the aforesaid default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=7jS6f-WDd6qvX%252BLdAUZnkuA%253D%253D&type=open>

**14. Adjudication order for Violation of Section 165(1) of the Companies Act, 2013 in the matter of MR. LAXIT AWLA**

ROC Chandigarh issued adjudication order dated 20<sup>th</sup> November 2024 in the matter of Mr. Laxit Awla as he was holding directorship of more than 10 Public Companies, and thus violating the provisions of Section 165 of the Companies Act, 2013. The

Adjudicating Authority imposed penalty of ₹2,00,000 on Mr. Laxit Awla for the aforesaid default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=d-qWxxRw3xE7eEhWjHMBpqg%253D%253D&type=open>

**15. Adjudication Order for violation of Section 134(3) b of the Companies Act, 2013 in the matter of KHIMSAR SOLAR POWER PRIVATE LIMITED**

ROC Jaipur issued adjudication order dated 06<sup>th</sup> November 2024 in the matter of Khimsar Solar Power Private Limited for wrongly mentioning the Board Meeting date in the Board Report, thus violated the provisions of Section 134(3)(b) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹3,00,000 upon the company and ₹50,000 each on two Directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=x-Ww5ZcNSBf7e9kSVryeRjg%253D%253D&type=open>

**16. Adjudication order for violation of Section 92 of the Companies Act, 2013 in the matter of SHUNMUGAM TRADERS PRIVATE LIMITED**

ROC Chennai issued an adjudication order dated 16<sup>th</sup> September 2024 in the matter of Shunmugam Traders Private Limited for not filing its annual returns from the financial year 2015-16 to 2022-23 within stipulated time thus violated the provisions of Section 92 of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹2,00,000, ₹1,82,800, ₹1,46,200, ₹73,200 and ₹36,700 upon the Company for default in each financial year respectively. Penalty of ₹50,000 each was imposed upon 5 Directors of the company for each Financial Year from 2015-16 to 2021-22. For FY 2022-23, penalty of ₹36,700 was imposed upon 5 Directors for such default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=C%252B3Lq8iQI3UuqJI6Wg-bYVQ%253D%253D&type=open>

**17. Adjudication order for violation of Section 137 of the Companies Act, 2013 in the matter of SHUNMUGAM TRADERS PRIVATE LIMITED**

ROC Chennai issued an adjudication order dated 16<sup>th</sup> September 2024 in the matter of Shunmugam Traders Private Limited for not filing its financial statements from the financial year 2015-16 to 2022-23 within stipulated time thus violated the provisions of Section 137 of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹2,00,000, ₹1,85,800, ₹1,49,200, ₹1,12,700, ₹76,200 and ₹39,700 upon the Company for default in each financial year respectively. Penalty of ₹50,000 each was imposed upon 5 Directors of the company for each Financial Year from 2015-16 to 2021-22. For FY 2022-23, penalty of ₹39,700 was imposed upon 5 Directors for such default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=ODIRsr-2luo%252FMDXm%252Fe6XVYw%253D%253D&type=open>

**18. Adjudication order for violation of Section 12 of the Companies Act, 2013 in the matter of SHUNMUGAM TRADERS PRIVATE LIMITED**

ROC Chennai issued an adjudication order dated 16<sup>th</sup> September 2024 in the matter of Shunmugam Traders Private Limited for not maintaining the Registered Office of the company and thus violating the provisions of Section 12 of the Companies Act, 2013. The adjudicating authority has imposed the penalty of ₹1,00,000 each upon the company and five Directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=X-4Fukju6PycFpxlQVUmDiA%253D%253D&type=open>

**19. Adjudication order for violation of Section 118(1), 118(2) of the companies Act, 2013 in the matter of HIND WOOLLEN AND HOSIERY MILLS PRIVATE LIMITED**

ROC Chandigarh issued adjudication order dated 27<sup>th</sup> November 2024 in the matter of Hind Woollen and Hosiery Mills Private Limited as the Chairman of the Board Meetings has not signed the minutes of the meetings and thus violating the provisions of section 118(1) and 118(2) of the Companies Act, 2013. The adjudicating Authority imposed penalty of ₹12,500 upon the company and ₹2,500 each upon five Directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=6I-YIt7XJ285C8SSWmhUnsw%253D%253D&type=open>

**20. Adjudication order for violation of Section 184(1) of the Companies Act, 2013 in the matter of HIND WOOLLEN AND HOSIERY MILLS PRIVATE LIMITED**

ROC Chandigarh issued adjudication order dated 27<sup>th</sup> November 2024 in the matter of Hind Woollen and Hosiery Mills Private Limited for non-disclosure of interest by directors, thus violating the provisions of Section 184(1) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹50,000 each upon five Directors in default for each financial year 2020-21 and 2021-22.

<https://www.mca.gov.in/bin/dms/getdocument?mds=h-belTMh49ytnBXcS0zyk8A%253D%253D&type=open>

**21. Adjudication orders for violation of Section 203(1) of the Companies Act, 2013 in the matter of VIRUPAKSHA ORGANICS LIMITED**

ROC Hyderabad issued adjudication order dated 27<sup>th</sup> November, 2024 in the matter of Virupaksha Organics Limited for not appointing whole-time Company Secretary and Chief Financial Officer

thus violated the provisions of Section 203(1) of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹5,00,000 each upon the company, six of the Directors of the company and ₹470,000 on one of the Directors for each violation separately.

<https://www.mca.gov.in/bin/dms/getdocument?mds=nrrz-kdnr%252F1GVA622%252B%252B6jMkA%253D%253D&-type=open>

## 22. Adjudication order for violation of Section 135 of the Companies Act, 2013 in the matter of LNGETEAM INDIA PRIVATE LIMITED

ROC Chennai issued adjudication order dated 3<sup>rd</sup> October, 2024 in the matter of Lngeteam India Private Limited for not spending the prescribed percentage of Net profits on CSR and not transferring the unspent CSR amount to a fund specified in Schedule VII, and thus violated the Section 135 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,18,296 upon the company and ₹50,915 each on three officers in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=1WSA8aUyb7yT0yZHKVpFYA%253D%253D&-type=open>

## 23. Adjudication order for violation of Section 12(1) of the Companies Act, 2013 in the matter of LAKSHYAM NIDHI LIMITED

ROC Ernakulum issued adjudication order dated 29<sup>th</sup> November 2024 in the matter of Lakshyam Nidhi Limited for not maintaining the Registered Office of the company and thus violating the provisions of Section 12 of the Companies Act, 2013. The adjudicating authority has imposed the penalty of ₹1,00,000 each upon the company and on the Managing Director in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=-likYIU48qjZYndKUmzSmQQ%253D%253D&-type=open>

### GIST OF RD ADJUDICATION ORDERS

## 1. Adjudication order for violation of Section 143 of Companies Act, 2013 in the matter of TRANSMISSION & DISTRIBUTION (INDIA) LIMITED

In the matter of Transmission & Distribution (India) Limited the RD (EAST) vide order dated 11<sup>th</sup> November, 2024 after considering the facts of the case *Confirmed* a penalty of ₹30,000 by RoC order upon the auditor in default for violation of Section 143 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=7YdeB-v61saiMoPnzaII8%252BQ%253D%253D&-type=open>

## 2. Adjudication order for violation of Section 143 of Companies Act, 2013 in the matter of BRICK & MORTAR REALTY PRIVATE LIMITED

In the matter of Brick & Mortar Realty Private Limited the RD (EAST) vide order dated 12<sup>th</sup> November, 2024 after considering the facts of the case *Reduced* the quantum of penalty amount to 50% of the RoC order to ₹45,000 upon the auditor in default for violation of Section 143 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=8xdnk9027x%252FnJ3ZONjsqFw%253D%253D&-type=open>

## 3. Adjudication order for violation of Section 77 of Companies Act, 2013 in the matter of MAHDEEP MARKETING PRIVATE LIMITED

In the matter of Mahdeep Marketing Private Limited the RD (EAST) vide order dated 11<sup>th</sup> November, 2024 after considering the facts of the case *Confirmed* a penalty of ₹6,00,000 by RoC order upon the Company and two Directors in default for violation of Section 77 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=%252F-P46dWZEZMDLjCwbcwUfZg%253D%253D&-type=open>

## 4. Adjudication order for violation of Section 143 of Companies Act, 2013 in the matter of REDEMPTION BUNGALOW HOSPITALITY PRIVATE LIMITED

In the matter of Redemption Bungalow Hospitality Private Limited the RD (EAST) vide order dated 11<sup>th</sup> November, 2024 after considering the facts of the case *Reduced* the quantum of penalty amount to 50% of the RoC order to 50,000 upon the auditor in default for violation of Section 143 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=-J5EkL%252FSieuqECEAeunbSvw%253D%253D&-type=open>

## 5. Adjudication order for violation of Section 143 of Companies Act, 2013 in the matter of SUPREME GRIDTECH PRIVATE LIMITED

In the matter of Supreme Gridtech Private Limited the RD (EAST) vide order dated 11<sup>th</sup> November, 2024 after considering the facts of the case *Reduced* the quantum of penalty amount to 50% of the RoC order to 35,000 upon the auditor in default for violation of Section 143 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=K%252Bdrp2aWrIWA4kkhFtZ-vRg%253D%253D&-type=open> □



# 7

## BEYOND GOVERNANCE

### Case Study

In order to make the Chartered Secretary Journal (CSJ) more interactive for the members and students, the Case Study section has been introduced from April issue. Each Case Study is followed by question(s) which are to be solved by member(s)/student(s). The answer(s) are to be sent to [cs.journal@icsi.edu](mailto:cs.journal@icsi.edu) latest by 25<sup>th</sup> 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](mailto:cs.journal@icsi.edu) latest by 25<sup>th</sup> 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.



## CASE STUDY

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION CIVIL APPEAL  
NO. OF 2024

MS Rao & ANR. .... APPELLANT(S)

VERSUS

ABC BANK & ORS. ....RESPONDENT(S)

### Brief Facts in nutshell

1. The firm-respondent no.3, had taken a loan from the respondent no.1-Bank.
2. However, as it went into default, the Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
3. In the said recovery proceedings, the Recovery Officer conducted an open auction.
4. The appellants were the highest bidder. Their bid was accepted and they made good the deposits as per the terms of this auction.
5. Accordingly, a sale certificate was issued in their favour on 30.03.2009. The appellants were tenants

of the borrower in the premises in question which had been put to auction. As such the status of the appellants changed from that of tenants to that of owners after the sale was confirmed and sale certificate was issued.

6. The borrower-respondent nos.3 and 4 filed a securitization application under Section 17 of the SARFAESI Act for setting aside the sale on the ground that the Bank had not followed the statutory procedure prescribed under the Security Interest (Enforcement) Rules, 2002, in particular, the notice as required under Rules 8(6) and 8(7) which required a mandatory notice of 30 days to the borrower, had neither been issued nor served upon the borrower.
7. The DRT, after examining the matter, came to the conclusion that the Bank itself had admitted that the statutory compliance under the above rules had not been made and as such proceeded to set aside the sale vide order dated 21.04.2015...

“...The sale as pointed out earlier is liable to be quashed for the non-compliance of Rule 8(6) and 8(7) of the Security Interest (Enforcement) Rules, 2002. The

auction purchaser set up his case that he has spent huge money on improvement of property in question. The auction purchaser has not place on record any material to prove the alleged improvements in the property. The auction purchaser is enjoying this property since 2009 as such auction purchaser is not entitled to any extra compensation. However, Bank will be under obligation to refund the auction money with interest as applicable to fixed deposit. The sale is accordingly set aside and it is made clear that Bank will refund the auction money only after receiving possession of property from auction purchaser within 15 days from the delivery of auction purchaser to the Bank.

The applicant is directed to pay the dues of the sic within 15 days with upto date interest, failing which Bank will be at liberty to proceed further under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to recover its dues.”

8. In effect the DRT, after setting aside the sale, further proceeded to direct the Bank to refund the auction money with interest as applicable to fixed deposits only after receiving possession of the property from the auction purchaser within 15 days thereof.
9. The appellants preferred an appeal before the DRAT which came to be dismissed and thereafter the appellants approached the High Court by way of a Writ Petition which has since been dismissed by the impugned judgment and order, giving rise to the present appeal.

#### Submissions on behalf of Appellant:

1. They were bonafide purchasers for value and, therefore, the DRT, the DRAT and the High Court erred in setting aside the sale and confirming it.
2. After the sale certificate was issued, the appellants have developed the suit property and have invested approximately Rs.60 lacs and in case the sale is to be set aside, the appellants should be suitably compensated not only by refund of the auction money along with interest but also for the improvements made by them in developing the property and investment made therein.

#### Submissions on behalf of the respondent-Bank

- 1 Although it had followed the procedure prescribed but could not substantiate with any material to rebut the findings recorded by the DRT, DRAT and the High Court that the Bank had failed to follow the statutory provisions of notice under Rules 8(6) and 8(7) of the 2002 Rules.

- 2 As the appellants have enjoyed the property as it was already in their possession, they cannot claim any additional compensation for the improvements made by them as they were well aware of the litigation initiated by the borrower by filing an application under Section 17 of the SARFAESI Act and whatever improvements have been made were at their own risk.

#### Submission on behalf of borrowers (respondent nos.3 and 4)

1. They have already paid the entire outstanding dues of the Bank without adjusting the auction money received by the Bank which is lying separately in an escrow account because of the litigation.
2. The Bank admits that the entire dues have been paid but at the same time it has declined to issue the No Dues Certificate because of pendency of the litigation.
3. The Bank, without following due procedure, had conducted the auction and, therefore, the DRT rightly set aside the sale which has been confirmed by the DRAT and the High Court.

#### Queries

1. Justify the order of setting aside of the auction/sale by DRT.
2. Whether the direction issued by the DRT that the Bank will first take possession and thereafter refund the auction money with interest applicable to fixed deposits is correct?
3. Whether the appellant should be compensated for the improvements made by them in developing the property and investment made therein?

#### Decide the issues.

**Disclaimer:** The case study has been framed from the facts and figures available in the public domain with some modifications/assumptions so as to enable members to apply their professional skills to answer the same and hide the identity of the case. Author is not to be held liable for any resemblance of the facts and figures with any case.

**Winner of Case Study – November 2024**

**CS Anjali Banerjee**  
**A71063**



# BEST ANSWER - CASE STUDY - NOVEMBER, 2024

## Q. 1: Comment upon the jurisdiction of NCLT w.r.t. Section 140(5) of the Act, 2013

The factual matrix provided shows that XMS Group Companies had committed a series of defaults *inter-alia* on account of failure of corporate governance and window dressing of accounts. The Investigating Authorities also alleged the auditors of the Group Companies to be guilty of abetting or colluding in the fraud by helping the Companies in dressing up their financials. Thus, proceedings were initiated under Section 140(5) of the Companies Act, 2013 (**"the Act"**) before the Hon'ble National Law Company Tribunal (**"NCLT"**) basis upon the petition filed by the Ministry of Corporate Affairs (**"MCA"**).

The facts of the case are similar to the landmark judgement of the Apex Court in the matter of *Union of India and Another vs. Deloitte Haskins and Sells LLP and Another* [2023 SCC OnLine SC 557] (**"ILFS Case"**), decided on May 03, 2023 where the MCA filed a petition under Section 140(5) of the Act dated June 10, 2019, *inter alia*, against the auditors of IL&FS Financial Services Limited (**"IFIN"**), namely, BSR&Co LLP (**"BSR"**) & Deloitte Haskins and Sells LLP (**"Deloitte"**) respectively. In the petition under Section 140(5), it was *inter alia* prayed to remove BSR as auditors of IFIN; declare that Deloitte shall be deemed to be removed as statutory auditor for IL&FS for FY 2012-13 to FY 2017-18; permit the MCA to appoint an auditor for IFIN under the first proviso of Section 140(5) of the 2013 Act; and declare/direct that BSR, its engagement partners, Deloitte and its engagement partners shall not be eligible to be appointed as auditors for a period of 5 years.

Thus, the primary question of maintainability arises, i.e. - **"Whether the NCLT has the requisite jurisdiction to entertain the case at hand?"** To answer this, we must take into consideration three provisions of the Act - (i) Section 140(5); (ii) Section 2(90); and (iii) Section 420. Averting to Section 140(5) of the Act, we must note that all throughout the bare text of the provision, the term **"Tribunal"** has been used. The same is reproduced below:

**"(5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo motu or on an application made to it by the**

**Central Government** or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors:

*Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place:*

*Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447."*

Here it is pertinent to note that Section 2(90), defines the term **"Tribunal"** as – it **"shall mean the National Company Law Tribunal, as established under Section 408 of the Act"**. Therefore, a conjoint reading of Sections 140(5) and 2(90) would show that legislatively, **the adjudicatory power in respect of Section 140(5) has been handed to the NCLT.**

However, then another pertinent question comes to the fore - *why has this power been assigned to NCLT, and would it not conflict with the adjudicatory powers of the National Financial Reporting Authority ("NFRA")?* The straightforward answer to this is in *negative*.

To explain this, we must look at both Section 132 (which establishes NFRA), and Section 408 (which establishes NCLT). Section 132(2) provides that *the object of establishing NFRA is for formulation of accounting and auditing policies and standards, monitoring and enforcing of such standards, and to oversee the quality of service of auditors.* Accordingly, it has been garnered powers to investigate, enquire into, adjudicate upon and penalize auditors for any professional or ethical misconduct. However, what it does not contemplate is *allegations of fraud against an auditor.* We must understand and appreciate that laying down

allegations of fraud against any professional (including auditors), involves a higher degree of proof, as it needs to be shown that the same was not mere negligence and it in fact involves complicity of the professional. *Section 408 provides that NCLT shall be established to discharge such functions as may be conferred upon it through the Act.* It is of significance to note that *Tribunals are “specialized quasi-judicial bodies” that are established under various legislations to deal with cases specific to that subject-matter.* In this endeavor, it has to deal with cases of serious nature and significance, which would require appreciation of evidence in this regard. As stated above, the category of cases alleging fraud is such genus which is serious in nature and would require a judicial overlook. Therefore, while the function of NFRA is to look into cases of professional and ethical misconduct, any fraud committed or colluded by the auditor, would have to be lodged before the NCLT for quasi-judicial adjudication. The same is also commensurate with the legislative intent of Section 140(5) as borne in by the recommendations of the **Standing Committee as recorded in the Statements of Objects and Reasons of the Companies Bill, 2011**, with respect to increasing the scrutiny and liability of the auditors under the Act, in the aftermath of corporate fiascos, most pertinently, *the Satyam Computers Scam of 2009.*

**The abovementioned analysis had been upheld in the decision of the Apex Court in respect of the ILFS case captioned above which reaffirmed the jurisdiction of the NCLT to entertain cases under Section 140(5) of the Act.** Here, the Supreme Court reversed the judgment of the High Court of Mumbai, which had ruled that NCLT’s powers were excessive, arbitrary and provided unguided and untrammelled powers to the NCLT. It clarified that the powers conferred upon the Tribunal under Section 140(5) are without prejudice to any action under the Act, or any other law and observed that – *“irrespective of any other provisions of the Act, 2013, the Tribunal is vested with the powers under Section 140(5) of the Act to pass a final order against the auditor on the allegation that such an auditor of the company has, directly or indirectly, acted in a fraudulent manner.”*

Accordingly, in the case of XMS Group companies, the NCLT will have the rightful jurisdiction to initiate proceedings against ABC LLP, the auditors of the group companies.

## **Q.2: Whether the act of resignation of auditors after filing of the Petition under Section 140(5) of the Act render the proceedings under Section 140(5) of the Act as void?**

To answer the question as to whether the action of resignation by the auditor would render the proceedings infructuous/void in its entirety, the language of Section 140(5) needs to be assessed to see what the object of the said provision is. A bare perusal of the said provision would reveal that its objective is multi-pronged: (1) To direct the change of auditor to the Company, on suspicion of fraud or abetment or collusion in a fraud by the auditor; (2) To permit the appointment of an alternative auditor in place of the auditor who has been removed by NCLT on application by the Central Government; (3) To debar an auditor from auditing the accounts of any Company for a period of 5 years and; (4) To proceed against the auditor for charges of fraud under Section 447 of the Act.

Thus, the very object of initiating proceedings under Section 140(5) per contra to sub-sections (1) to (4) of Section 140, goes beyond mere removal, or appointment of an auditor other than the retiring auditor - its object traverses taking action against an auditor who has committed fraud and from preventing such an auditor from continuing audit of the Company concerned or any other Company if the final order is passed against him. Henceforth, to state that the proceedings under Section 140(5) would be rendered void or infructuous if the auditor resigns himself, would be erroneous.

It is also relevant to consider that a proceeding can only be termed as infructuous if it can no more reap the fruits it sought to reap at the time of its initiation. This position was appreciated by the Hon’ble Supreme Court in the case of ***Union of India v. Narender Singh [(2005) 6 SCC 106]*** which held as follows - *“6. The expression infructuous means ineffective, unproductive and unfruitful. It is derived from the Latin word “fructus” (fruit).”* Therefore, in line with the said decision of the Hon’ble Supreme Court, it must be noted that even after resignation of the auditor, the proceedings can still continue as he would still remain liable to be tried for allegations of fraud and subsequent consequences.

Further, reference must also be drawn to the ***ILFS Case*** referred above. When this issue was laid before the Apex Court therein, it also

answered in negative by citing the following reasoning:

***“6. The view taken by the High Court is absolutely erroneous and is unsustainable. Subsequent resignation of an auditor after the application is filed under Section 140(5) by itself shall not terminate the proceedings under Section 140(5). Resignation and/or removal of an auditor cannot be said to be an end of the proceedings under Section 140(5). There are further consequences also on culmination of the enquiry under Section 140(5) proceedings and passing a final order by the Tribunal on the conduct of an auditor, whether such a auditor has, directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, as provided under the second proviso to Section 140(5) of the Act, 2013. Therefore, the enquiry/proceedings initiated under the first part of Section 140(5) has to go to its logical end and subsequent resignation and/or discontinuance of an auditor shall not terminate the enquiry/proceedings under Section 140(5). If the interpretation given by the High Court that once an auditor resigns, the proceedings under Section 140(5) stand terminated and are no longer further required to be proceeded, in that case, an auditor to avoid the final order and the consequence of final order as provided under the second proviso to Section 140(5) may resign and avoid any final order by the Tribunal. That cannot be the intention of the legislature.***

7. ***Therefore, on true interpretation and scheme of Section 140(5) of the Act, 2013, once the enquiry/proceedings is/are initiated under first part of Section 140(5) of the Act, either suo motu by the Tribunal or on an application made to it by the Central Government or by any person concerned, it must come to its logical end and irrespective of the fact whether during such enquiry/proceedings the auditor has resigned or not, there must be a final order to be passed by the Tribunal on whether such an auditor has, in fact, directly or indirectly, acted in a fraudulent manner or not... On passing the final order by the Tribunal that the auditor of a company has, directly or indirectly, acted in a fraudulent manner, the second consequence as mentioned in the second proviso to Section 140(5) shall be attracted. Therefore, for any consequence as provided under the second proviso to Section 140(5), there shall be a final order by the Tribunal on enquiry as***

*per first part of Section 140(5). Therefore, on true interpretation, even on resignation by an auditor of a company even during the enquiry/proceedings under Section 140(5) or even prior to that, there shall not be any termination of the proceedings under Section 140(5) as observed and held by the High Court... an auditor, who in fact has, directly or indirectly, acted in a fraudulent manner, to avoid any further consequence under the second proviso to Section 140(5), resigns to avoid any consequence under the second proviso to Section 140(5), it cannot be permitted.”*

Accordingly, the resignation of ABC LLP as the auditors of the group companies would not render the proceedings under Section 140(5) of the Act as void.



### YOUR OPINION MATTERS

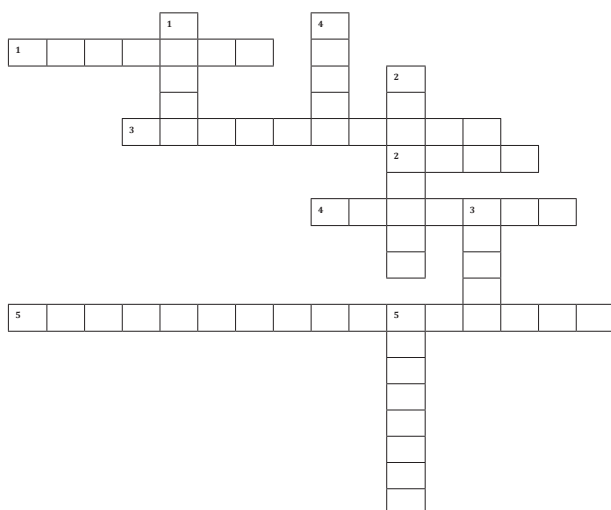
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# CROSSWORD PUZZLE – COMPANY LAW - DECEMBER 2024



## ACROSS

- Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the last date for submission of expression of interest which shall not be less than \_\_\_\_\_ days from the date of issue of detailed invitation.
- Under Companies Act, 2013, person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares ( "the registered owner"), shall file with the company, a declaration to that effect in Form No. \_\_\_\_\_ within a period of thirty days from the date on which his name is entered in the register of members of such company.
- Under the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, The Board will grant the certificate of commencement of business when the depository has a net worth of not less than rupees \_\_\_\_\_ crores.
- Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the consultation committee may extend the period between meetings of consultation committee, but there shall be at least one meeting in each \_\_\_\_\_.
- Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 The resolution professional shall file the repayment plan, as approved by the creditors, along with the report mentioned in sections 106 or 112, as the case may be, with the Adjudicating Authority on or before completion of \_\_\_\_\_ days from the resolution process commencement date.

## DOWNWARDS

- Under Securities and Exchange Board of India (Buy Back of Securities) Regulations, 2018, A copy of the

resolution passed at the general meeting under sub-section (2) of section 68 of the Companies Act shall be filed with the Board and the stock exchanges where the shares or other specified securities of the company are listed, within \_\_\_\_\_ working days from the date of passing of the resolution.

- Under the Companies Act, 2013, A private placement offer cum application letter shall be in the form of an application in \_\_\_\_\_ serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode.
- Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, The registers and books may be maintained by the Liquidator in the forms indicated in SCHEDULE \_\_\_\_\_, with such modifications as the liquidator may deem fit in the facts and circumstances of the liquidation process.
- Under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, The interim resolution professional shall hold the first meeting of the committee within \_\_\_\_\_ days of filing the report.
- Under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, a retail individual shareholder means a shareholder who applies or bids for specified securities for a value of not more than \_\_\_\_\_ rupees.

## Winners - Crossword November 2024

**1<sup>ST</sup>** CS Sheetal Patodiya ACS-68929

**2<sup>ND</sup>** CS Pratim Ramani ACS-38177

**3<sup>RD</sup>** CS Vansh Arora ACS-75013

## Crossword Puzzle – November 2024 Answers

### ACROSS

- FORM FA
- TWENTY-FIVE
- THREE-FOURTH
- TEN
- SIXTY

### DOWNWARDS

- EIGHT
- SPECIAL RESOLUTION
- THIRTY-FIVE
- NINETY-FIFTH
- TWELVE



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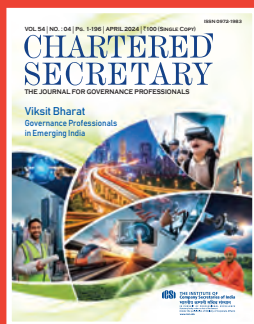
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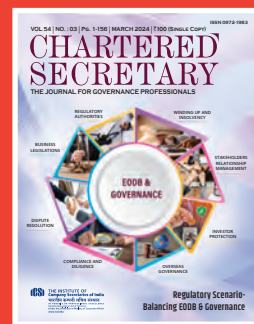


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