

CHARTERED SECRETARY

THE JOURNAL FOR GOVERNANCE PROFESSIONALS



PoSH Legislations : Building Safe Workplaces



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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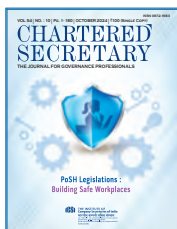


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56th Foundation Day Celebrations of ICSI held on October 4, 2024 at New Delhi

Chief Guest : Smt. Anupriya Patel, Hon'ble Minister of State for Health & Family Welfare and Chemicals & Fertilizers, Government of India



56th Foundation Day Celebrations of ICSI held on October 4, 2024 at New Delhi

Special Guests : **Shri Harvinder Singh**, Indian Paralympic Archer and Gold Medalist, Paris Para Olympic 2024
Ms. Anjali Devi, Gold Medalist, World Boccia Challenger, Cairo 2024



56th Foundation Day Celebrations of ICSI held on October 4, 2024 at New Delhi



Highlights of 56th Foundation Day Celebrations of ICSI held on October 4, 2024 at New Delhi



Sustainability has a lot of relevance in present times. The three pillars of sustainability – economic, social and environmental can flourish only when rightly guided by governance professionals like Company Secretaries.

The Institute of Company Secretaries of India celebrated its 56th Foundation Day on Friday, October 4, 2024 in New Delhi, on the theme, **Governance for Sustainable Growth**, in the august presence of **Smt. Anupriya Patel, Hon'ble Minister of State for Health & Family Welfare and Chemicals & Fertilizers, Government of India**.

The event also witnessed the presence of **Pride of the Nation, Shri Harvinder Singh**, Indian Paralympic Archer and Gold Medalist, Paris Para Olympic 2024, and **Ms. Anjali Devi**, Gold Medalist, World Boccia Challenger, Cairo 2024.

Excerpts from the speech of Smt. Anupriya Patel, Hon'ble Minister of State for Health & Family Welfare and Chemicals & Fertilizers -

- Sustainability has a lot of relevance in present times. The three pillars of sustainability – economic, social and environmental can flourish only when rightly guided by governance professionals like Company Secretaries.
- The Government wants the ICSI and its members to partner in realizing the aspiration of becoming Viksit Bharat. Company Secretaries understand best that the image of a country is much bigger than its profits and turnovers.

Special Session with **Shri Harvinder Singh** and **Ms. Anjali Devi** focused on the journey of the two, highlighting their countless hours of practice, unwavering story of dedication, indomitable spirit and their relentless pursuit of excellence.

Leaders from trade and industry, senior corporate professionals, corporate directors, senior officers from the Government, Former Presidents and Secretaries of the ICSI, ICSI members, students and employees attended the event that was telecast live on ICSI social media handles for the stakeholders in India and abroad.

On this momentous occasion, the Institute unveiled two significant publications:

- **Guidance Note on Loan to Directors and Loan, Investment, Issue of Guarantee and Security by Companies (Sections 185 & 186 of the Companies Act, 2013)**
- **The ICSI Bi-Annual Progress Report**

The Government wants the ICSI and its members to partner in realizing the aspiration of becoming Viksit Bharat. Company Secretaries understand best that the image of a country is much bigger than its profits and turnovers.



EDITORIAL

The 56th Foundation Day of the Institute of Company Secretaries of India witnessed grand celebrations at Dr. Ambedkar International Centre, Janpath, New Delhi on the theme 'Governance for Sustainable Growth' with the privileged presence of Smt. Anupriya Patel, Hon'ble Minister of State for Health & Family Welfare and Chemicals and Fertilizers, Government of India as the Chief Guest. A Special session was also organised to felicitate Shri Harvinder Singh, Indian Paralympic Archer Gold Medalist, Paris Para Olympic 2024 and Ms. Anjali Devi, Gold Medalist, World Boccia Challenger, Cairo 2024. Many distinguished dignitaries graced the occasion with their inspiring presence, acknowledging with accolades on the accomplishments of ICSI, which enhanced the grandeur of this momentous occasion, filling each one of us with great pride and honour, for being part of this remarkable legacy. I congratulate one and all associated with ICSI and let us aim to become the upright torch bearers of our profession and the Institute with the same dignity and honour, preserving the heritage of this extraordinary Institution and marching towards a bright and prosperous future.

In keeping with this commitment to uphold ethical standards and promote a safe working environment, it is imperative that we continue to lead by example in every aspect of governance.

Going a step further in the law, the Institute has developed the 'Governance and Compliance Standard on the Prevention, Prohibition, and Redressal of Sexual Harassment at Workplace', which was released at the ICSI Middle East Conference held during 4-6 September, 2024 at Abu Dhabi, UAE. This Standard aims to enhance the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, by harmonizing workplace practices and provides for standardized procedures for Internal Committee meetings, complaint and inquiry processes, and training/capacity building programmes for employees/Internal Committee members. The Standard also

offers guidance on drafting gender-neutral PoSH policy, promoting inclusivity.

To bring focus on various aspects of development and progress in the Act, this month's Chartered Secretary Journal is based on the theme 'PoSH Legislations: Building Safe Workplace'. The article titled 'Prevention of Sexual Harassment at Workplace Act: A Historical, Cultural, and Ethical Perspective' highlights the significance of the PoSH Act, 2013, in India, linking it to the country's historical and cultural values that emphasize respect for women followed by an article titled 'Balancing Due Process and Workplace Safety: Ethical Dilemmas for Effectively Implementing the POSH Act'. The integration of Artificial Intelligence in the Act is highlighted by the author in the article titled 'Leveraging Artificial Intelligence for Robust POSH Act Compliance in the Workplace' followed by a manuscript on 'POSH Legislation – Role of Professionals in Implementation'. Other manuscripts on 'Transforming Workplace Culture: The Role and Impact of PoSH Legislations' and 'Ensuring Gender inclusivity and Workplace Safety: The impact of PoSH Legislation in India' highlights various aspects of the PoSH Act.

We are thankful to the authors for contributing articles on 'Law & Procedure Relating to Adjudication of Penalties Under Companies Act, 2013'; 'The Shift to Dematerialization: Challenges in Protecting Shareholder Rights for Private Companies' and 'Resignation by a Director-Its ramifications under the Law', through which they have tried to capture various issues and challenges related to Companies Act, 2013.

The Global Connect section covers the article on 'The POSH Act: Developing Discourses in South Asian Countries and China' and the Research Section covers an article titled 'Prevention of Sexual Harassment (POSH): A Global Outlook'.

Happy reading!

CS Asish Mohan
(Editor - Chartered Secretary)



1. ICSI delegation led by CS B. Narasimhan, President, The ICSI met with Shri Nitin Gadkari, Hon'ble Minister of Road Transport & Highways, GoI.
2. ICSI delegation led by CS B. Narasimhan, President, The ICSI met Shri Harsh Malhotra, Hon'ble Minister of State for Corporate Affairs and Road Transport & Highways, GoI to apprise him about the initiatives taken by ICSI towards building Viksit Bharat.
3. ICSI delegation led by CS B. Narasimhan, President, The ICSI with Shri Bhartruhari Mahtab, Hon'ble Member of the Lok Sabha, GoI.
4. CS B. Narasimhan, President, The ICSI met with Shri Faggan Singh Kulaste, Member of Parliament, Lok Sabha, GoI.
5. ICSI delegation led by CS B. Narasimhan, President, The ICSI met with Ms. Deepti Gaur Mukerjee, IAS, Secretary, Ministry of Corporate Affairs, GoI.
6. ICSI delegation led by CS B. Narasimhan, President, The ICSI met with CMD & Officials of Cochin Shipyard Limited at Kochi.



7. CS B. Narasimhan, President, The ICSI and Sh. Sajeevan P, Joint Director, The ICSI met with Brother Brij Mohan ji, Sister Shivani ji & Sister Asha ji at the Brahma Kumari's establishment at Abu Road on October 5, 2024.
8. The Siliguri Chapter of EIRC of ICSI organized a Full Day Seminar on the theme 'ज्ञानसंगमः Confluence of Knowledge' on September 29, 2024, at Siliguri. Shri Goutam Deb, Hon'ble Mayor of Siliguri Municipal Corporation was the Chief Guest and CS B. Narasimhan, President, The ICSI was the Guest of Honour. CS Rupanjana De, Central Council Member, The ICSI and Mentor of the Siliguri Chapter, along with CS (Dr.) Mohit Shaw, Chairman of EIRC, The ICSI were the Special Guests.
9. The Investor Education and Protection Fund Authority (IEPFA) organized its 8th Foundation Day in collaboration with the ICSI and National Council of Applied Economic Research (NCAER) on September 6, 2024 at SCOPE Convention Centre, New Delhi on the theme "Empowering Investors: Financial Literacy as the Key to Combat Fraud and Digital Scams". Ms. Anita Shah Akella, CEO, IEPFA and Joint Secretary, MCA, CS Manish Gupta, Immediate Past President, The ICSI, Mr. Dharendra Kumar, Board Member, IEPFA and Lt. Col. Rajesh Kumar, General Manager, IEPFA graced the Event.
10. Dr. Sanjay Pandey, Joint Secretary (Senior Grade), The ICSI met with Sh. Arvind Nautiyal, Member Secretary, Commission for Air Quality Management (CAQM) in NCR and Adjoining Area, New Delhi.
11. Udaan – Career Pathways Expo 2024, jointly organized by EIRC of ICSI and Shri Shikshayatan College, Kolkata held on September 21-22, 2024 at Kolkata.

Glimpses from ICSI - CCGRTs



12-13. CS B. Narasimhan, President, The ICSI addressed the 24th RCLDP held from August 20-September 4, 2024 at ICSI-CCGRT, Mumbai. CS Pawan Chandak, Central Council Member, The ICSI also graced the occasion. CS Ashish Karodia, Central Council Member, The ICSI graced the Valedictory Session.

14. ICSI - CCGRT Kolkata and Amity University Kolkata jointly organized a Half Day Symposium on September 13, 2024 on the topic: Impact of green economy and environmental sustainability on climate change and its Resilience: A Modern Approach Towards National Agenda "Viksit Bharat". CS Sandip Kejriwal, Council Member & Convenor, The ICSI - CCGRT Kolkata and CS Rupanjana De, Council Member, The ICSI graced the occasion.

15. ICSI - CCGRT Kolkata organized a Full Day Conference on September 21, 2024 at Kolkata. CS Sandip Kejriwal, Council Member and Convenor, ICSI - CCGRT Kolkata, CS Rupanjana De, Council Member, The ICSI and CS T B Chatterjee, renowned tax expert graced the occasion.

16. 4th batch of Residential Corporate Leadership Development Programme (CLDP) organized by CCGRT Kolkata from September 11-25, 2024. CS Sandip Kejriwal, Council Member & Convenor, The ICSI - CCGRT Kolkata and CS Rupanjana De, Council Member, The ICSI addressed the participants.



सर्वस्वरूपे सर्वेशे सर्वशक्तिसमन्विते।
भयेभ्यस्त्राहि नो देवि दुर्गे देवि नमोऽस्तुते॥

(You exist in all forms and possess All Powers, O Devi, Protect us from all Fears.)



Dear Professional Colleagues,

It is a matter of great delight as we all welcome Maa Durga, seeking blessings of good health, knowledge, wisdom, strength, and the intellectual capabilities to choose right over wrong every single time in whatever we do. The celebration coincides with that of the 56th Foundation Day of the Institute of Company Secretaries of India, our alma mater – a day that we so deeply cherish.

The moment at hand reminds me of an old saying, “Great has been our past, wonderful is our present, and glorious can be our future.” The ICSI with its legacy of more than five decades has been a key role player and a positive game changer in the Indian corporate ecosystem. If we are honoured and gratified to have been a part of policy making, of sharing moments of deliberation in the creation of law, we are equally proud to have taken the baton of governance forward ensuring compliance and imbibing good governance practices in the heart and soul of every Indian corporate – big and small.

We are delighted to share stage with global governance partners, we are glad to guide Company Secretary Organizations of other countries in shaping their

governance frameworks and we are gleefully contented for having our presence felt in some of the most futuristically inclined nations. So yes, it would not be an exaggeration to say that “Great is our past.”

As of this moment, we are engaging in riveting discussions globally on matters of sustainability and governance – the two main drivers to economic development in a sustainable manner. And it is with this very thought and ideology we had uptilted the opportunity presented to us in the form of 56th Foundation Day Celebrations to open doors for activities on the theme “**Governance for Sustainable Growth**”.

56TH FOUNDATION DAY : SOWING SEEDS FOR A SUSTAINABLE FUTURE

“In a gentle way, you can shake the world.”

- Mahatma Gandhi

If history has taught us anything it is primarily that we have to be the change that we wish to see in this world. As a nation which intends to be one amongst the next global superpowers, for a nation which hopes to become Viksit Bharat by its 100th year of Independence and for a nation which is relying on the power of its youth for the achievement of all its visions and missions; it is inevitable that there is a strong governance framework encasing – one which is heavily guarded by competent professionals.

The Institute of Company Secretaries of India, as we see it, is a sum total of all its past, present and future actions. The celebration of the 56th Foundation Day reiterates this fact in every way. At a personal level, having been with the ICSI for more than 46 years myself, the exuberance and exhilaration is beyond words.

I feel extremely thrilled to reminisce the moments of the historic day and extend my heartiest gratitude towards our Chief Guest, Smt. Anupriya Patel, Hon'ble Minister of State for Health & Family Welfare and Chemicals and Fertilizers, Government of India and with her; our Special Guests - Shri Harvinder Singh, Indian Paralympic Archer, Gold Medalist, Paris Para Olympic 2024, and Ms. Anjali Devi, Gold Medalist World Boccia Challenger, Cairo 2024 whose presence and words of inspiration have filled us with copious amounts of zeal to march forward.

This year, our celebration of the Foundation Day, prefaced with a string of activities every single day. Our first activity was the ICSI Treasure Hunt. Equally fun as is the name, this activity was spread out across 4 days – from 30th September to 3rd October, 2024 – where we posted 2 questions about the Institute daily on our social media platforms and rewarded the fastest 5 correct entries. I am immensely delighted to witness the overwhelming response of our members and students and my heartiest congratulations to all the winners. Our second activity which was conducted on 1st of October was aligned with the sustainability part of the Foundation Day's theme. We organized plantation and cleanliness drives in all the Regional Offices, Chapter Offices and CCGRTs of ICSI Pan India. On 2nd October – the Birth Anniversary of both Mahatma Gandhi and Lal Bahadur Shastri – both pioneers of governance in their own way – we tried to gain an insight into the professional lives of our members. The ICSI solicited their self-governance stories to find inspiration from within ourselves and share it forward.

3rd of October, a day prior to the Foundation Day was focused on emphasizing on Health and Happiness and focusing on the thought of creating work-life balance we called upon our 75,000 members and 2.5 lakh students to share their smiles with us. The number of smiling selfies received brought smiles on our faces as well.

For the 4th of October, we had the legacy of Fit India movement to take forward.

The FIT India – Fit ICSI Walkathons saw all our members, students from across the country – waking up early and joining the closest ICSI Offices – taking

the pledge to live by a code of ethics and values and taking care of their own well-being at the same time.

The celebration of the 56th Foundation Day of ICSI is one of hope, happiness, exuberance but above all with great responsibility and accountability. The times ahead, call for much greater action from each one of us – to guide, handhold and to show the corporate sector as to how compliance is done – in the best possible way.

On that note, I extend my heartiest congratulations to all of you of the 56th Foundation Day of the ICSI.

ICSI BOARD MENTORSHIP PROGRAMME – LEADING THE LEADERS

To go back in history a bit, a few years ago, the ICSI had formed a section 8 company – the ICSI Governance Research and Knowledge Foundation also known as the GRKF. Over the years we realized that the research activities were being already undertaken by the CCGRTs and it was then that the objective of the entity was steered in a different direction. That's when the first order of business became to change its name to Institute of Governance Professionals of India.

While understanding the role of this entity in shaping governance culture, we were reminded of the famous quote that says, "The single biggest way to impact an organization is to focus on leadership development." That is when the idea of hosting a dedicated learning event for the business leaders was conceived.

For us at ICSI, the ICSI Board Mentorship Programme is a means to realize faster the ICSI vision **"to be a global leader in promoting good corporate governance"** – one which can be achieved only when all stakeholders work together. And what better way than to ingrain the thought of good governance right where it will have the greatest and long-lasting impact. The thought was simultaneously driven by the mandate given under the SEBI (LODR) Regulations explicating the need for Directors Training. Prior to this, the ICSI has been organizing Training Programmes dedicatedly for the Officials and Directors of Public Sector Enterprises and when such requests have been received.

The ICSI Board Mentorship Programme marks the beginning of not just a new Chapter in elevating governance but of a new era altogether. As we were joined by more than 35 leaders of corporates from across the nation, the first edition of the ICSI Board Mentorship Programme became a platform of knowledge-sharing, a celebration of corporate leadership and an event of exploring governance with innovation.

This 3-day residential Programme in the heart of Ooty brought together present and future Board leaders, steering them towards sustainable governance, inspiring them to find solutions to practical challenges – all in the company of like-minded intellectuals.

Our aim of bringing together – both current and future Board members was primarily to equip them all, to strategize and formulate policies with altered perspectives, for active engagement in today's evolving board environment.

These 3 days focused on developing practical, industry-aligned skills for managing and inspiring teams in the realms of Corporate Governance and sustainability, is a step into the future and we hope to be hosting many more editions soon.

GLOBAL ACHIEVEMENTS AND FUTURE OUTLOOK

On the global front our Council Members, CS Suresh Pandey at the Governance Institute of Australia's International Governance Leadership Conference 2024 on September 04-05, 2024 in Melbourne, Australia and CS R. Venkata Ramana at the National Conference of the Malaysian Association of Company Secretaries (MACS) on September 25, 2024, in Malaysia; led intellectual deliberations both of which were highly appreciated.

Expanding the global outreach further, I would urge all of you to join the CSIA Governance Talent Hub—a new platform designed exclusively for CSIA members and students. This innovative hub is our gateway to connecting with a global network of potential employers, opening doors to career opportunities across the world. As a Corporate Secretary, Governance Professional or student eager to advance your career in a different country, adding your profile to the Governance Talent Hub would accord you unparalleled access to a vast pool of employers from around the globe who are actively seeking top talent in corporate governance – surely an opportunity not to be left untouched.

Also, I would take this moment to remind you of the discussions which will be happening at the 2024 London Convention on Corporate Governance and Sustainability during November 13-16, 2024.

Do join us for some amazing sit-downs with global experts as we chalk the future pathways together !!!

THE DAYS AHEAD – DELIBERATING GOVERNANCE EXPANSIVELY

Each handshake, each meeting is a realization of all the dreams and expectations that the Regulators, the

Ministries and various other stakeholders have from us. As I feel a sense of delight to have met some of the greatest leaders, I am elated to have them extend their wholehearted support to our endeavours. Be it the all-ears approach of the dignitaries hailing from the Ministry of Corporate Affairs - Shri Harsh Malhotra, Hon'ble Minister of State for Corporate Affairs and Road Transport & Highways and Ms. Deepti Gaur Mukerjee, IAS, Secretary, Ministry of Corporate Affairs; or the appreciations met out by Shri Nitin Gadkari, Hon'ble Minister of Road Transport & Highways, and Shri Bhartruhari Mahtab, Hon'ble Member of the Lok Sabha; all of them have lent greater impetus and strength to our actions.

I am also glad to share with all of you the recent meeting with Shri Piyush Goyal, Hon'ble Union Minister, Ministry of Commerce and Industry wherein we discussed about granting approvals for renewal as well as fresh applications of our members pending with the Trademarks Authority. This was followed by an intense discussion with Prof. (Dr.) Unnat P. Pandit, Controller General of Patents, Designs & Trade Marks on the same matter and a positive response was received. With the kind intervention of the Hon'ble Minister, the matter stands resolved and all pending applications for renewal and registration of Trademarks Agent has resumed.

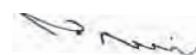
Another meeting that has warmed my heart to the core and will remain etched in my memories for years to follow is the one that was had with some of the most revered spiritual leaders Shivani Didi, Brij Mohan Bhai sahab, General Secretary, Brahma Kumaris, Asha Didiji, Director Omshanti Retreat Centre at the Brahma Kumaris Global Summit 2024. Having been accorded the opportunity to share my thoughts on the theme "United Efforts to Combat Climate Change" in the presence of some of the greatest minds and souls was an experience of a lifetime.

My heartfelt gratitude to each one of them.

As we relish in the glories of the celebrations of Foundation Day, we shall not be taking a moment to relax but rather be in high spirits to meet you all much sooner than later at the 52nd National Convention of Company Secretaries in the business and financial hub of Mumbai on November 8-9-10, 2024.

City of Dreams awaits you !!!

Yours Sincerely



CS B. Narasimhan
President, ICSI

THIS MONTH THAT YEAR



2006
[LEFT] - Arrival of the Chief Guest - Prem Chand Gupta (Hon'ble Union Minister for Company Affairs), being escorted by President, Vice President and Secretary & CEO of the ICSI. [RIGHT] - Inaugural Session - A view of the dais - Sitting from Left : N.K. Jain, Amit K. Sen, M. Choraria, Prem Chand Gupta, Anil K. Agarwal (President, ASSOCHAM) and Preeti Malhotra.



2007
Thirty-fifth National Convention of Company Secretaries - [LEFT] - Arrival of the Chief Guest - Prem Chand Gupta (Hon'ble Union Minister of Corporate Affairs) being received by N.K. Jain. [CENTRE] - Prem Chand Gupta being escorted among others by Preeti Malhotra. [RIGHT] - Anurag Goel (Secretary, MCA) being escorted among others by N.K. Jain & Sanjay Grover.



2008
9th National Conference of Practising Company Secretaries on Be the Change You Want to Become held at Bhubaneswar - [LEFT & CENTRE] - His Excellency M.C. Bhandare (Governor of Orissa) and Baijayant Panda (Member, Rajya Sabha) seen addressing. [RIGHT] - Release of the Publication titled A Guide to Company Secretary in Practice- On the dais from Left: N.K. Jain, V.S. Khanvalkar, Anurag Goel, Keyoor Bakshi, M.C. Bhandare, Baijayant Panda, Datla Hanumanta Raju & Mukesh Chaturvedi.



2010
Hon'ble Minister presenting the Meritorious Student Award.

Activity Highlights of September, 2024

MEETINGS WITH DIGNITARIES DURING THE MONTH OF SEPTEMBER 2024

- Shri Nitin Gadkari, Hon'ble Minister of Road Transport & Highways
- Shri Piyush Goyal, Hon'ble Union Minister, Ministry of Commerce and Industry
- Shri Harsh Malhotra, Hon'ble Minister of State for Corporate Affairs and Road Transport & Highways
- Shri Bhartruhari Mahtab, Hon'ble Member of the Lok Sabha
- Ms. Deepti Gaur Mukerjee, IAS, Secretary, Ministry of Corporate Affairs
- Prof. (Dr.) Unnat P. Pandit, Controller General of Patents, Designs & Trade Marks
- Shri Arvind Nautiyal, Member Secretary, Commission for Air Quality Management (CAQM) in NCR and Adjoining Areas, New Delhi

ICSI MIDDLE EAST CONFERENCE

The ICSI organised its Middle East Conference on 4-5-6 September 2024, in Abu Dhabi, UAE, on the theme, Responsible Investment for a Sustainable Future. The Conference advocated a paradigm shift towards equitable and eco-friendly economies while equipping Company Secretaries with the knowledge and tools that will help them lead the charge in responsible investment, ensuring a sustainable future for all.

INTERNATIONAL GOVERNANCE LEADERSHIP CONFERENCE 2024

The ICSI participated in the Governance Institute of Australia's International Governance Leadership Conference 2024 on 4-5 September, 2024 in Melbourne, Australia. Featuring a global conversation

converging around the theme of the human condition, the conference examined the governance and risk management implications of socio-economic factors, geopolitics, war, environmental issues, technological transformation and AI. CS Suresh Pandey, Council Member, The ICSI represented the Institute at the Conference.

NATIONAL CONFERENCE OF MALAYSIAN ASSOCIATION OF COMPANY SECRETARIES (MACS)

The ICSI participated in the National Conference of the Malaysian Association of Company Secretaries (MACS) on the theme Empowering the Company Secretary: Digitalization & Sustainability, on 25 September 2024, in Petaling Jaya, Malaysia.

CS Venkata Ramana R., Council Member, The ICSI, represented the Institute in the Session on Digitalisation Impact on Governance & Role of Company Secretary and highlighted the diverse skill set and acumen that Company Secretaries possess to guide the Board and Leadership in pursuit of Corporate Stewardship, Governance and Sustainability.

CS B NARASIMHAN, PRESIDENT, THE ICSI BECOMES SECRETARY CSIA FOR THE YEAR 2025

CS B Narasimhan, President, The ICSI, has been unanimously elected as the Secretary of the Council of Corporate Secretaries International Association (CSIA), for the year 2025. CSIA represents more than 1,00,000 Corporate Secretaries and Governance Professionals in over 100 countries in the world.

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:

Topic	Speaker	Date	YouTube Link
Navigating the Financial Dimensions of CSR	CA Kamal Garg	September 11, 2024	youtube.com/watch?v=Mn-7zAXvaRLA
IEPF Processes and Filing for Companies - A Primer	Ms. Anita Shah Akella Joint Secretary, MCA & CEO, IEPFA Mr. Ruvit Kumar Dty, Director, IEPFA Mr. Gaurav Gupta Dty, Director, IEPFA	September 23, 2024	youtube.com/watch?v=1xrm-puDXxJ4
MSMEs: Opportunities for Professionals	CS Rajiv Bajaj CEO, Bajaj & Bajaj Corporate Chambers Dr. (CS) Ajay Garg Social Entrepreneur	September 25, 2024	youtube.com/watch?v=GM-MYkH10sZY

TRAINING PROGRAMME FOR COMPANY SECRETARIES OF CPSEs

The ICSI in association with the Department of Public Enterprises (DPE) organized a Residential Two Days Capacity Building Programme for Company Secretaries of CPSEs on September 26-27, 2024 at Hotel Regenta Central Herald, Mysuru. The training programme was attended by around 35 Company Secretaries from various CPSEs across India. Six Technical sessions on the topics (i) Board's Legal & Regulatory Environment under Companies Act, 2013 (ii) Duties and Responsibilities of Company Secretary in Board & Committees (iii) Enhanced Disclosures & Compliances under Companies Act, 2013 & SEBI Laws (iv) DPE Guidelines and Secretarial Standards (v) CSR Framework and Recent Developments (vi) Sustainability Reporting, were organised during the programme. Eminent Company Secretaries were the Guest Speakers during the training programme.

8TH FOUNDATION DAY OF IEPFA CELEBRATED IN COLLABORATION WITH ICSI & NCAER

The Investor Education and Protection Fund Authority (IEPFA) organised its 8th Foundation Day in collaboration with the ICSI and National Council of Applied Economic Research (NCAER) on September 6, 2024 at SCOPE Convention Centre, New Delhi on the theme "Empowering Investors: Financial Literacy as the Key to Combat Fraud and Digital Scams". Ms. Anita Shah Akella, CEO, IEPFA and Joint Secretary, MCA, CS Manish Gupta, Immediate Past President, The ICSI, Mr. Dharendra Kumar, Board Member, IEPFA and Lt. Col. Rajesh Kumar, General Manager, IEPFA graced the Inaugural Session. A panel discussion was also organised during the programme with Mr. Dharendra Kumar, Board Member, IEPFA; Mr. Rajeev Saxena, Joint Secretary (Investment), Department of Economic Affairs, Ministry of Finance; Dr. Manas Shankar Ray, Former Chief Commissioner of Income Tax (IRS) & Former Executive Director, SEBI; Mr. Shailendra Nath Jha, Former DGM & Deputy Ombudsman, Reserve Bank of India; Lt. Col. Rajesh Kumar, GM, IEPFA and Mr. Gaurav Gupta, Deputy Director, IEPFA. Dr. C. S. Mohapatra, IEPF Chair Professor at NCAER moderated the panel discussion.

REPRESENTATIONS SUBMITTED

Date	Purpose	Authority
September 09, 2024	Request for Extension of Provisions of Demat of Securities on Private Companies	MCA
September 11, 2024	Comments of ICSI on SEBI Consultation paper on clarification on the term "pecuniary relationship" of Debenture Trustee (DT) with the issuer as per Regulation 13A of the DT Regulations	SEBI

September 12, 2024	Comments of ICSI on SEBI Consultation paper on "Provisions pertaining to appointment of Public Interest Directors"	SEBI
September 19, 2024	Comments of Institute of Company Secretaries of India on Consultation Paper on the Review of IFSCA (Market Infrastructure Institutions) Regulations, 2021	IFSCA
September 19, 2024	Request to process applications of Company Secretaries to act as Trade Marks Agent	Shri Piyush Goyal, Hon'ble Union Minister, Ministry of Commerce and Industry
September 20, 2024	Request to process applications of Company Secretaries to act as Trade Marks Agent	Prof. (Dr) Unnat P. Pandit, Controller General of Patents, Designs & Trade Marks
September 25, 2024	Request to dispense with the requirement for dispatch of physical copy of Notice and Annual Report and Proxy forms with respect to General Meetings of Listed Entities	SEBI
September 25, 2024	Request to dispense with the requirement for dispatch of physical copy of Notice and Annual Report with respect to General Meetings of Listed Entities who have listed their Non-convertible Securities under Regulation 58 (1) of the SEBI (LODR) Regulations, 2015	SEBI

ICSI GUIDING PRINCIPLES ON STEWARDSHIP (IGPS)

In line with the Institute's vision of "to be a global leader in promoting good corporate governance", the ICSI has taken a lead to develop ICSI Guiding Principles on Stewardship ("IGPS"), which were released on 4th September, 2024 during the ICSI Middle East Conference at Abu Dhabi, UAE. The IGPS is first of its kind principles that are aligned with the global best practices to offer much needed guidance towards responsible investing and disclosures thereon.

HANDBOOK ON BUSINESS RESPONSIBILITY AND SUSTAINABILITY

To serve as a comprehensive guide to both - the corporates as well as their professionals, the ICSI has come up with the second edition of the publication 'Handbook on Business Responsibility and Sustainability Version 2.0'. It navigates ways in which companies can successfully manage their transition to a more responsible and sustainable way of doing business. It is a compilation of the legislative journey both in India as well as internationally, observed practices amongst shortlisted companies during the process of evaluation for the Awards along with a step-by-step guidance for corporates to prepare BRS Report.

GOVERNANCE AND COMPLIANCE STANDARD-POSH

ICSI has introduced the Governance and Compliance Standard on the Prevention, Prohibition, and Redressal of Sexual Harassment at Workplace. This Standard aims to enhance the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, by harmonizing workplace practices. It provides standardized procedures for Internal Committee meetings, complaint and inquiry processes, and training/ capacity building programs for employees/ Internal Committee members. The Standard also offers guidance on drafting gender-neutral PoSH policy, promoting inclusivity.

CS: A PREFERRED PROFESSIONAL (REVISED EDITION)

The publication CS: A Preferred Professional was released by the Institute in the year 2022 to provide a comprehensive overview of the CS Profession to the stakeholders. The Revised Edition incorporates contemporary developments in the economic and regulatory arena, emerging areas for the profession, new recognitions to the profession, dedicated chapter on Overseas Avenues for Company Secretaries and initiatives of the Institute aimed at promoting good governance. This edition aims to provide detailed information about the CS Profession covering the role of Company Secretaries and the multitude of opportunities for the students aspiring to pursue Company Secretaryship Course.

ONLINE CLASSES OF PMQ COURSES

During the month, Online Classes for the following courses were organized:

- PMQ Course on Corporate Governance- Dec 2024 session
- PMQ Course on Internal Audit- Dec 2024 session
- PMQ Course on Arbitration- Dec 2024 session

ONLINE ASSESSMENT OF CERTIFICATE COURSES

The online assessment of Certificate Courses on GST, FEMA, Corporate Restructuring and Independent

Director was held between 19th to 21st September 2024 and subsequent assessment was held between 27th to 28th September 2024.

E-LEARNING FACILITY

The E-learning facility offered with anytime anywhere flexibility through online Learning Management System (LMS) to 207000 students and members. Preliminary round of Company Law Quiz 2024 conducted. Many candidates facilitated for Online Pre-Examination Test Online Classroom Teaching which included 22170 assessment completion for Executive and 8520 for Professional Stage. All other courses like KOD, PCS orientation program going on regularly.

PEER REVIEW CERTIFICATES ISSUED

During the month September 2024, Peer Review of 95 Practice Units was completed and accordingly Peer Review Certificate issued. The list of Peer Reviewed Units is updated on ICSI website from time to time and can be accessed at www.icsi.edu/media/webmodules/List_Peer_Reviewed_Practice_Units.pdf

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.

(September 2024)

No. of Corporates/ MCA and other Government Bodies/ PSUs/ PCS Firms that Posted Jobs on the ICSI Placement Portal	126
No. of Openings available on the ICSI Placement Portal	197

For more details, kindly visit ICSI Placement Portal - placement.icsi.edu

STATUS OF REGISTRATIONS AND POSTINGS AT THE PLACEMENT PORTAL

(As on September 27, 2024)

Registered Users			Total no. of Vacancies
Members	Students	Corporates	Jobs / Trainings
19,632	28,223	6,773	14,416

ICSI-SECTION 8 COMPANIES

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

• WORKSHOPS

Date	Subject	Speaker(s)	YouTube link
September 05, 2024	Navigating Voluntary Liquidation and Liquidation Processes under IBC and Its Challenges	IP and CS Sandeep Kulkarni	youtube.com/watch?v=Pk_thcw0X0Y
		IP and CS S. Rajendran	youtube.com/watch?v=1CjaCJvwMFQ&t=5s
September 17, 2024	Managing Business Continuity During CIRP and Liquidation	IP and CS Suhasini Ashok B.	youtube.com/watch?v=nY-fs7hEopo
		IP and CS Prakul Thadi	youtube.com/watch?v=4c3VjzYTIeM
September 23, 2024	Decoding Liquidation and Voluntary Liquidation Forms	IP and CS Prakul Thadi	youtube.com/watch?v=IDt2UXzUH1s
		IP and CS Vishawjeet Gupta	youtube.com/watch?v=7E57CikNLw8

• Webinars

Date	Subject	Speaker(s)	YouTube link
September 04, 2024	Treatment of Pending Tax Liability under IBC	IP and CA Nilesh Sharma	youtube.com/watch?v=u_bIFot9U8U
September 10, 2024	An Insights into CoC Guidelines and discussion on IBBI's discussion paper on MSME disclosures	IP and CS Harmeet Kaur	-
September 20, 2024	Anatomy of IBC Case Laws - 20	IP and Advocate Ajay Kumar Jain	youtube.com/watch?v=qWFP4in1DYc
September 25, 2024	Planning and time management of CIRP	IP and CS Siva Rama Prasad Puvvala	youtube.com/watch?v=TrSkgbuAlrI

• Joint Program

IBBI jointly with ICSI Institute of Insolvency Professionals, Indian Institute of Insolvency Professionals of ICAI and IPA of Institute of Cost Accountants of India conducted:

- Workshop for Insolvency Professionals on September 03, 2024.
- Workshop for Insolvency Professionals on September 18, 2024.

ICSI REGISTERED VALUERS ORGANISATION

Programme	Topic	Date	Faculty
50 Hours Online Educational Course on "Valuation of Securities or Financial Assets" (Online)	Valuation of Securities or Financial Assets"	September 24-30, 2024	Dr. Ajay Garg Mr. Chaitanya jee Srivastava CS Harish Chander Dhamija CS K. Chandra Sekhar CS Kanishk Arora CS Preeti Garg CS Rajesh Mittal CA Raveesh Chaudhary CS Sandeep Kothari CA Sumit Dhadda CA Tarun Mahajan CMA Murali Raman
Online Continuing Professional Education (CPE) Programme	Role of Valuer in Purchase Price allocation	September 19, 2024	CS K. Chandra Sekhar
COP Training	Code of Conduct for Registered valuers AND Professional Ethics	September 04, 2024	CA Rajesh Mittal
	Drafting Valuation Report Soft Skills (How to communicate with the clients and peers)		CS K Chandrasekhar

INSTITUTE OF GOVERNANCE PROFESSIONALS OF INDIA

- *ICSI Board Mentorship Programme during September 12-14, 2024 at Ooty, Tamil Nadu*

The Institute of Company Secretaries of India (ICSI) through Institute of Governance Professionals of India (a Section 8 company promoted by ICSI), organised a first of its kind Training Programme under the aegis of ICSI Board Mentorship Programme during September 12-14, 2024 at Ooty, Tamil Nadu. This pioneering initiative aims to enhance the skills and knowledge of present and future Board Members, directors, decision-makers, and senior leaders, keeping in sight the transforming role of directors on the Boards of Indian companies. The Inaugural Session was presided over by CS B. Narasimhan, President of ICSI and Director of IGPI; CS Dhananjay Shukla, Vice President, The ICSI and CS Manish Gupta, Immediate Past President, The ICSI and Directors, IGPI.

ICSI-CCGRTs

ICSI-CCGRT KOLKATA

- *Half Day Symposium (Joint Programme with Amity University Kolkata) on 13th September 2024*

CCGRT Kolkata organised Half Day Symposium, jointly with Amity University, Kolkata on topic: Impact of green economy and Environmental Sustainability on climate change and its Resilience: A Modern Approach Towards National Agenda "Viksit Bharat" on 13th September, 2024. CS Rupanjana De, Council Member, ICSI and CS Sandip Kejriwal, Council Member, ICSI and Convenor, CCGRT Kolkata represented ICSI thereat. Dr. Sanjay Kumar, Vice Chancellor, Amity University, expressed his delight in being a part of this endeavour. Shri Ankur Chaturvedi, Associate, VP- HSE, Excellence & Quality, Emami Limited and Dr. Bidhan Das, Deputy Director & Branch Head, Indian Institute of Packaging, Kolkata were the guest speakers on the occasion.

- *4th Batch of Residential CLDP during September 11-25, 2024*

25 students from various parts of the country joined for the 4th batch of Residential Corporate Leadership Development Programme (CLDP) organised by CCGRT Kolkata between 11-25 September, 2024. CS Rupanjana De, Council Member, ICSI addressed the participants in the Inaugural session. CS Sandip Kejriwal, Council Member, ICSI and Convenor, CCGRT Kolkata addressed the participants in the valedictory session and advised them to maintain integrity in their profession as they are the torch bearers of the Institute.

- *Full Day Conference on 21st September 2024*

CCGRT Kolkata organised a Full Day Conference on September 21, 2024 at CS Deepak Kumar Khaitan Auditorium of CCGRT Kolkata. CS T B Chatterjee, renowned tax expert addressed the delegates on this occasion. In technical sessions, CS V G Malagi, Head-Compliance, Tata Steel Limited deliberated on "CS -A Strategic Guide for Compliance Framework" whereas

CA Mohit Bhuteria, Practising Chartered Accountant deliberated on "NBFCs – Recent Amendments, Key Trends and Challenges". Prof. (Dr) Rajib Dutta, Associate Professor, Amity University Kolkata elucidated on "Importance and Relevance of Financial Inclusions / Planning in context with Corporate Finance" whereas CS Arpan Sengupta, Practising Company Secretary discussed about "Dematerialization of Shares of Private Limited Companies" and CS Arani Guha deliberated on "Effects and Process on Non-Compliance" on this occasion.

ICSI-CCGRT MUMBAI

- *24th RCLDP organised from 20th August to 4th September, 2024*

The 24th RCLDP was conducted from 20th August to 4th September 2024 at ICSI-CCGRT, Mumbai with 26 participants representing various states across the country. CLDP participants had the privilege of interacting with CS B. Narasimhan, President, The ICSI, along with CS Pawan Chandak, Central Council member. The valedictory session on September 4, 2024, was graced by the presence of two distinguished guests: Dr. Prashant Narnaware, IAS, Commissioner of the Pune Women and Child Welfare Department, as the Chief Guest, and Senior Member CS (Dr.) S. K. Jain, Practising Company Secretary, as the Guest of Honor.

- *25th RCLDP being organised from 24th September to 9th October 2024*

The 25th RCLDP is being conducted at CCGRT, Mumbai from 24th September 2024 which will be concluded on 9th October 2024. This program has gathered twenty-eight participants from different parts of the country, fostering a diverse learning atmosphere. CS Hemanshu Kapadia, Senior Practising Company Secretary, graced the Inaugural Session as Chief Guest.

- *Joint Seminar organised with Navi Mumbai Chapter on August 31, 2024*

Adv. Sonal Verma, Partner & Global Leader Markets & Strategy, Dhir & Dhir Associates shared his thought on the topic 'AI & Corporate Governance: Challenges & Opportunities' in the first session. The second session on topic 'Overview of Bharatiya Nyaya Sanhita, 2023' was addressed by Adv. Srinivas Atreya Chatti, Partner Cyril Amarchand Mangaldas.

ICSI-REGIONAL OFFICES

ICSI-EIRO

September 06, 2024	Seminar on CSR in light of Companies Act, 2013 with Bijoi Krishna Girl's College, Howrah
September 21, 2024	A Half Day Workshop on "Sankalpna – Bridging Concepts with Expertise"
September 21-22, 2024	Udaan – Career Pathways Expo 2024 organized jointly with Shri Shikshayatan College, Kolkata
September 28, 2024	Study Circle of EIRC of ICSI

ICSI SIRO

Date (s)	Event
September 17, 2024	Commencement of 17 th Batch of EDP
September 19, 2024	Commencement of 2 nd batch of webinar mode CLDP
September 20, 2024	Commencement of 7 th Batch of Classroom CLDP
September 04, 2024	105TH ODOP conducted
September 09, 2024	106TH ODOP conducted
September 11, 2024	107TH ODOP conducted
September 18, 2024	108TH ODOP conducted
September 13, 2024	ICSI NCLT Conclave 2024
September 06, 2024	Debate Competition conducted (Chennai Round)
September 11, 2024	Campus Selection conducted for NLC
September 21, 2024	Placement Drive conducted for Members
September 23, 2024	CRT commenced for Professional Programme (Group-II)
September 26, 2024	Teachers Conference conducted for HST
September 27, 2024	Teachers Conference conducted for Degree, University
September 27, 2024	Debate Competition Regional Round
September 30, 2024	Trainee Drive for Executive passed Students

INITIATIVES FOR EMPLOYEES

WEBINAR ON “PARENTING” BY DR. REDDY’S FOUNDATION

A webinar was organized on 13th September, 2024 on the topic “**Parenting**” by Dr Reddy’s Foundation for the benefit of ICSI employees and pensioners. All employees/ veterans participated in the webinar presented by **Dr. Chitti Vishnupriya**.

EYE CHECKUP CAMP AT HQ OFFICE ON 13TH SEPTEMBER, 2024

A Basic Eye Screening Camp was organised by Shroff Eye Centre for the welfare of the employees. The camp was organized on 13th September, 2024 for the employees posted at Lodi Road Office. A total of 65 employees participated in the camp. Eye testing was carried out by a team of two Ophthalmologists with the supporting staff.

GENERAL HEALTHCARE CHECKUP CAMP AT NOIDA

A general healthcare checkup camp was organized at Noida Office in collaboration with Medanta Hospital, Gurugram on 30th September, 2024 for the wellbeing of employees, as a part of continuous employee welfare programme.

A team of 10 medical staff including a Cardiologist and Physician visited the Institute. All employees posted at Noida office participated in the camp.

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 September 27, 2024. The next rounds will be conducted as per the following schedule:

Semi-Final Round	October 22, 2024 (10 AM - 5 PM)	Online Mode (MCQ pattern)
Final Round	Saturday, November 16, 2024	Physical/Virtual as decided by Institute

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

FACILITATION AND RELAXATION

• CS MITR SCHEME:

ICSI has recently introduced CS Mittr incentive Scheme wherein any person who is above 18 years of age is eligible to become CS Mittr under the scheme. Incentive @ ₹500 will be paid per student to the CS Mittr 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 Mittr will be required to apply through online process. After their credentials are verified and they are registered with ICSI as CS Mittr, 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#

- CENTRALIZED FREE ONLINE CLASSES FOR EXECUTIVE AND PROFESSIONAL PROGRAMME**

ICSI is conducting free online Centralized classes for the students of Executive Program (New Syllabus) and Professional Programme (New Syllabus) from July 01, 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 December 2024 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

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.

- UNLOCKING ENROLMENT OPPORTUNITIES WITH EXTENDED DATES FOR DECEMBER 2024**

Many students missed the opportunity to enrol for December 2024 session of Examination as the last date to enrol without late fee was 25th September 2024. To facilitate such students the Institute decided to extend the last date without late fee upto 10th October 2024 and with late fee from 11th to 15th October 2024. Accordingly, necessary announcement was shared through following link for information to

all concerned: www.icsi.edu/media/webmodules/student/announcementLateFeeWaiver963741852.pdf

- 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.).

- SUCCESSFUL CONFIGURATION OF DECEMBER 2024 ENROLMENT SETUP FOR EXECUTIVE & PROFESSIONAL NEW SYLLABUS (2022), EXECUTIVE & PROFESSIONAL OLD SYLLABUS 2017**

The first exam for Professional Programme New Syllabus (2022) took place in June 2024. Consequently, the system has been successfully configured to enrol students for December 2024 session of examination. Subsequently Enrolment Setup also activated for Executive Old (2017) & New Syllabus (2022) & Professional Old Syllabus (2017) students with revised Examination Fee.

- 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 5100 students registered in Professional Programme up to September 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 AGNEEPATH 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 47th Samadhan Diwas, on Wednesday, September 11, 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, 05 Transcripts were issued.

Likewise, on request of the employer/PSU/government authorities and other Education verifier agencies, 08 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

• **PROFESSIONAL PROGRAMME PASS CERTIFICATE OF ICSI IN DIGILOCKER**

The Institute decided to issue Professional Programme Pass Certificate online via DIGILOCKER. The same initiative was Launched at 50th National Convention of ICSI at Kolkata with the support of the National e-Governance Division (NeGD), Ministry of Electronics and Information Technology (MeitY), Govt of India. The students who passed on or after June 2021 Session of Examination can download Professional Pass Certificate from DIGI Locker. Announcement hosted and Communication via Bulk Mail has been sent to students for extracting their Professional Pass Certificate for June 2023 & December 2023 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*
www.icsi.edu/media/webmodules/Executive_FAQ_SW_23022023.pdf; www.icsi.edu/media/webmodules/Declaration_to_cater_switchover_Request_of_executive_&_professional_old_syllabus_students.pdf
- *FAQ for Professional Switchover to New Syllabus:*
www.icsi.edu/media/webmodules/Executive_FAQ_SW_23022023.pdf

• **TRAINING OPPORTUNITIES**

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

No. of Corporates/ MCA and other Government Bodies/ PSUs/ PCS Firms that Posted Training Opportunities on the ICSI Placement Portal	118
No. of Training Opportunities available on the ICSI Placement Portal	233

For more details, kindly visit ICSI Placement Portal - 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 – November Session**

ICSI shall be conducting online Centralized classes for the students of CSEET registering for November 2024 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

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

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

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

To get exemption from CSEET on the basis of above qualification, such students shall be required to pay applicable exemption fees along with the requisite registration fees for the Executive Programme. For more details, please click

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 ₹1000 (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 ₹1500. The same is available at: 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 **September, 2024**. The journals are available on the Academic corner of the Institute's website at the link: 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/.

- **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

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/

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 sensitise the students, parents and teachers about the CS Profession.

- **Career awareness Programmes, Career Fairs being conducted across the country by ICSI-HQ and Regional 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 organised and conducted following Career Fairs and Career Awareness Programmes in the month of September, 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.	EIRC	DAV Public School, Bokaro	September 30, 2024	Dhanbad
2.	EIRC	MGM High School Bokaro	September 30, 2024	Dhanbad
3.	EIRC	Oxford Public School	September 19, 2024	Ranchi
4.	EIRC	K B College Bermo	September 25, 2024	Dhanbad
5.	EIRC	Govind Vidyalaya	September 28, 2024	Jamshedpur
6.	SIRC	Ayyanadar Janaki Ammal college	September 18, 2024	Sivakasi
7.	SIRC	Standard Fireworks Women's Arts College	September 18, 2024	Sivakasi
8.	SIRC	Ayyanadar Janaki Ammal college	September 09, 2024	Sivakasi
9.	NIRC	GL Bajaj Institute of Management	September 09, 2024	Gr. Noida
10.	WIRC	Sardar Patel Mahavidyalaya	September 03, 2024	Chandrapur
11.	WIRC	Raje Dharmarao Arts & Commerce College	September 04, 2024	Nagapalli
12.	WIRC	Dharmarao Junior College	September 04, 2024	Alapalli
13.	WIRC	Sharadrao Pawar Arts & Commerce College	September 05, 2024	Gadchandur
14.	WIRC	SNDT Women's College	September 05, 2024	Chandarpur
15.	WIRC	Chintamani College of Arts and Science	September 06, 2024	Chandrapur
16.	WIRC	Chintamani College of Commerce	September 06, 2024	Chandrapur
17.	WIRC	Bari Vidyalaya High School HS	September 23, 2024	Hirapur
18.	SIRC	G Venkataswamy Naidu College	September 10, 2024	Kovilpati
19.	SIRC	Pope's College	September 11, 2024	Thoothukudi
20.	SIRC	K.R. College of Arts and Science	September 13, 2024	Kovilpati
21.	SIRC	V O Chidambaram College	September 13, 2024	Thoothukudi
22.	SIRC	Holy Cross College	September 10, 2024	Nagercoil
23.	SIRC	Sree Ayyappa College for Women	September 10, 2024	Nagercoil
24.	SIRC	Nanjil Catholic College of Arts & Science	September 11, 2024	Kaliyakkavilai
25.	SIRC	St Teresa Arts & Science College for Women	September 11, 2024	Kanyakumari
26.	SIRC	Vivekananda College	September 11, 2024	Agastewaram
27.	SIRC	Annai Velankanni College	September 12, 2024	Tholayavattam
28.	SIRC	Sarah Tucker College	September 09, 2024	Tirunelveli

Career Fairs				
S. No.	Region	Name of Institution	Date	Venue
29.	NIRC	Mayo College Higher Education	September 07, 2024	Ajmer

• 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 Samiti 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.

Fit India - ICSI Walkathon Organised Pan India on the Occasion of 56th Foundation Day of ICSI on October 4, 2024



Plantation Drives Organised Pan India at ICSI Regional Offices & Chapters



Cleanliness Drives Organised Pan India at ICSI Regional Offices & Chapters



CCGRT Kolkata & EIRO



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Navi Mumbai



Nagpur



Nashik



Hooghly



Chandigarh

ICSI Board Mentorship Programme held from September 12-14, 2024 at Ooty

The ICSI through Institute of Governance Professionals of India (A Section 8 Company promoted by ICSI), organised a Training Programme under the aegis of ICSI Board Mentorship Programme during September 12-14, 2024 at Ooty, Tamil Nadu. CS B. Narasimhan, President, The ICSI and Director of IGPI, CS Dhananjay Shukla, Vice President, The ICSI, CS Manish Gupta, Immediate Past President, The ICSI and Directors, IGPI graced the occasion.

Speakers: CS Kalidas Ramaswami, PCS, CS K. S. Ravichandran, Managing Partner, KSR & Co., Company Secretaries LLP, CS B. Murli, Former General Counsel and Company Secretary, Nestle India Limited, CS Ranjeet Pandey, Former President, The ICSI and PCS.



ICSI NCLT ONCLAVE'24

Theme : Corporate Dispute Resolution : Evolving a Way Forward

Date & Venue : September 13, 2024, Chennai

Chief Guest: Shri Ravichandran Ramasamy, Hon'ble Member (Technical), National Company Law Tribunal, Chennai Bench

Distinguished Guest : Shri Sanjiv Jain, Hon'ble Member (Judicial), National Company Law Tribunal, Chennai Bench



Theme : Corporate Dispute Resolution : Evolving a Way Forward

Date & Venue : September 18, 2024, Bhubaneswar

Chief Guest: Mr. Kaushalendra Kumar Singh, Hon'ble Member, Cuttack Bench

Special Guest : Mr. Himanshu Shekhar

Special Guest : Sourya Sundar Das- Senior Advocate, Vice-President, NOPA



Theme : Corporate Dispute Resolution : Evolving a Way Forward

Date & Venue : September 21, 2024, Hyderabad

Chief Guest: CS (Dr.) P Bhaskara Mohan, Advocate, Telangana High Court and Arbitrator, Former Judicial Member, NCLT, Jaipur, Hyderabad

Special Guest : CS Rajavolu Venkata Ramana, Council Member, ICSI & Convener, CCGRT Hyderabad



ICSI NCLT ONCLAVE'24

Theme : Corporate Dispute Resolution : Evolving a Way Forward

Date & Venue : September 21, 2024, Ahmedabad

Guest of Honour : Sh. Sandeep Engineer, President, Gujarat Chamber of Commerce & Industry (GCCI)



Theme : Corporate Dispute Resolution : Evolving a Way Forward

Date & Venue : September 28, 2024, Bhilwara Chapter in collaboration with Jaipur Chapter at Jaipur

Chief Guest: Hon'ble Justice Deep Chandra Joshi, Member NCLT, Jaipur



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WEBINAR ON

Navigating the Financial Dimensions of CSR
held on 11.09.2024



Speaker:
CA Kamal Garg



Moderator:
Ms. Srishti Singh
The ICSI

WEBINAR ON

IEPF Processes and Filing for Companies - A Primer
held on 23.09.2024



Speaker:
Ms. Anita Shah Akella
Joint Secretary, MCA & CEO,
IEPFA



Speaker:
Mr. Ruvit Kumar
Dty. Director, IEPFA



Speaker:
Mr. Gaurav Gupta
Dty, Director, IEPFA



Moderator:
CS Pawan G. Chandak
Central Council Member
The ICSI

WEBINAR ON

MSMEs: Opportunities for Professionals
held on 25.09.2024



Speaker:
CS Rajiv Bajaj
CEO, Bajaj & Bajaj Corporate
Chambers



Speaker:
Dr. (CS) Ajay Garg
Social Entrepreneur



Moderator:
CS (Dr.) Pooja Rahi
The ICSI



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Theme: Responsible Investment for Sustainable Future

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Opening Plenary



The theme of the conference "Responsible Investment for Sustainable Future" championed a paradigm shift towards equitable, eco-friendly economies, empowering Company Secretaries with the tools to lead the charge in responsible investment, ensuring a sustainable future for all.

Highlighting India-UAE partnership, H. E. Dr. Abdelrahman Almuaini, Assistant Undersecretary for IP Sector, Ministry of Economy, UAE thanked ICSI for holding this conference to support cross border businesses & invited CS Professionals to join in building sustainable future.



Chief Guest: **H.E. Dr. Abdelrahman Almuaini**,
Assistant Undersecretary for IP Sector, Ministry of Economy, UAE



Guest of Honour: **Mr. A. Amarnath**,
Deputy Chief of Mission, Embassy of India, UAE

Mr. A. Amarnath, Deputy Chief of Mission, Embassy of India, UAE, appreciated the CS community in UAE & affirmed that their collective contribution will be vital for building India-UAE bilateral relation.



Mr. Yusuff Ali M. A., Chairman & Managing Director, LuLu Group International acknowledged the competence & reliability of Company Secretaries in the corporate landscape and appreciated their commitment towards governance, ethics and sustainability.

Guest of Honour: **Mr. Yusuff Ali M. A.**,
Chairman & Managing Director, LuLu Group International

Mr. Abdulla Salem Alnuaimi, Group CEO, Abu Dhabi Securities Exchange, highlighted that ADX shares ICSI's perspective & believes that Sustainable Finance is intertwined with Economic growth and Governance and is reshaping businesses today.



Guest of Honour: **Mr. Abdulla Salem Alnuaimi**,
Group CEO, Abu Dhabi Securities Exchange



Mr. Hamad Sayah Al Mazrouei, CEO, ADGM Registration Authority, advocated ADGM's commitment to sustainable practices & long-term value creation and invited ICSI & CS Professionals to align with the broader vision of sustainable development.

Guest of Honour: **Mr. Hamad Sayah Al Mazrouei**,
CEO, ADGM Registration Authority

Special Session



Dr. R Seetharaman, Former CEO, Doha Bank

Role of Good Governance in Sustainable Development

The session gave an insight on the pivotal role of good governance in driving sustainable development. Characterized by transparency, accountability, compliance and participation, good governance fosters trust, attracts investment, and ensures equal distribution of resources.

Plenary II

Global trends, Opportunities and Challenges in Responsible Investments

The session provided an overview of the evolving landscape of responsible investments in emerging markets. It underlined key global trends, opportunities like technological advancements and the circular economy, and challenges such as greenwashing and data reliability.



Ms. Soumya Rajan, Founder & CEO, Waterfield Advisors
Mr. Suresh Vaidhyanathan, CEO Special Projects, Ghassan Aboud Group
CS Prashant Tandon, CEO & MD, Lighthouse Canton, UAE
Mr. Loai Bataineh, Senior Executive Officer, Ominvest Capital DIFC

Plenary III



Mr. Kailash Adhikari, Managing Director, Governance Now
Mr. Aakash Moondhra, Co-Founder India, Secondary Fiduciaries Fund
Ms. Padmaja Ruparel, Co-Founder, Indian Angel Network

Private Equity Investment -Governance Perspective

The session highlighted the importance of governance in private equity investments. Key governance principles were discussed, while focussing on diversity, equity and inclusivity. The session also addressed common challenges, and best practices in private equity investing.

Plenary IV



Global Stewardship Codes and Reporting Behaviour on Responsible Investment

The session discussed the importance of stewardship codes and reporting frameworks in promoting responsible investment. Highlighting the ICSI Guiding Principles on Stewardship (IGPS), a new framework for ethical stewardship practices, the session deliberated on data quality, assurance issues and investor expectations.

Ms. Sameera Fernandes, Chief Sustainability Officer, Century Financial
CS Subbu Subramaniam, Independent Non-Executive Director, Ganesha Ecosphere
Mr. Saad Maniar, Senior Partner, Crowe Mak
CS Asish Mohan, Secretary, The ICSI

Plenary V

The Current Landscape of Sustainability, Innovation, and Investments

The session discussed sustainability, innovation, and investments. It covered climate change, renewable energy, and disaster resilience. It also explored the social impact of SDGs, inequality, and education, besides exploring the role of AI and blockchain in data-driven decision-making, compliance, and investor relations.



Mr. Maher Al Kaabi, Independent Board Member, Alserkal Group

Plenary VI



ESG Investment: Building a Strong Ecosystem

The session discussed the rise of ESG investment in the Middle East, driven by economic diversification and climate action. It highlighted opportunities for governance professionals, the role of sovereign wealth funds in global ESG goals, and challenges like regulation and data availability. Emerging trends in ESG reporting, technology, and investor engagement were also explored.

CS Sharda Balaji, Founder, NovoJuris Legal
Mr Padmanabha Acharya, President, Indian Business & Professional Group
Ms. Anisha Ramakrishnan, Director, Transworld
Mr. Bikash Prasad, President & CFO, Olam Agri

Plenary VII



Dr. R. Seetharaman, Former CEO, Doha Bank

Green Financing: Structuring Corporate Finance

The session explored the intricacies of green financing, highlighting the importance of public and private sector collaboration in achieving net zero emissions. It discussed various financial instruments, project financing strategies, and the evolving policy and regulatory landscape supporting green initiatives.

Plenary VIII

Leadership for a Sustainable and Happy Planet

The session highlighted the crucial role of effective leadership in driving a sustainable and equitable future. It discussed the qualities and competencies needed for leaders in a rapidly changing world, emphasizing vision, empathy, and resilience. The session also addressed the challenges and opportunities, the leaders face today.



Mr. Avinash Ananda, Leadership Advisor & Happiness Strategist

Plenary IX



Mr. Martin Malmros, Founder & CEO, The Green Box
Dr. Rajesh Pai, Director, HLB HAMT Academy
Dr. Harish Ahuja, Head Power & Carbon markets, Issuers relationship, National Stock Exchange

Carbon Credits: Combating Climate Change for a Greener Planet

The session explained carbon credits, regulations, markets, and their role in climate mitigation. By clarifying these concepts, the session helped participants understand environmental sustainability for combating climate change.



Group Photograph

Study Tour



Abu Dhabi Securities Exchange



Khalifa Economic Zones Abu Dhabi



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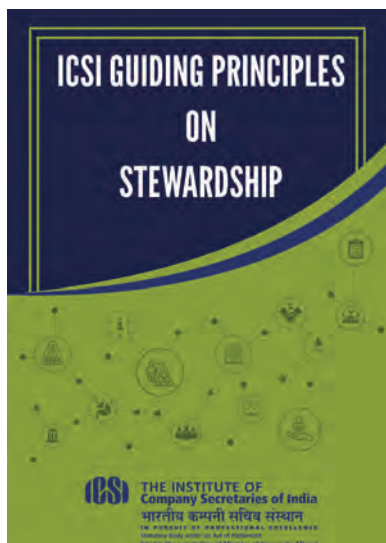
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Releases at the ICSI Middle East Conference held on September 4-5-6, 2024



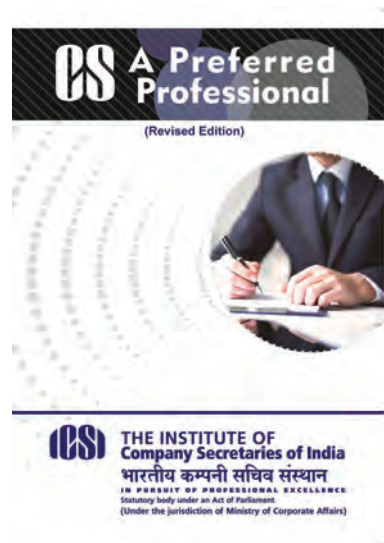
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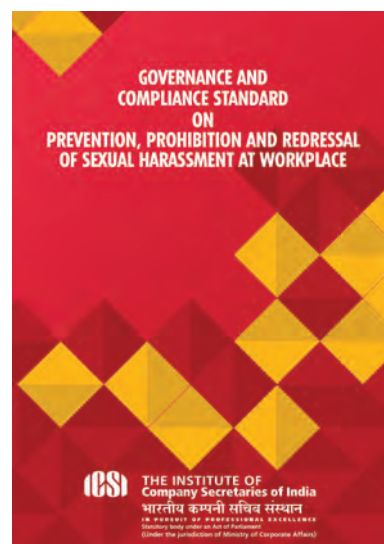
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ICSI delegates at the MACS National Conference in Malaysia



ICSI presence at the 2024 International Governance Leadership Conference held at Australia





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Eugene Mayne
Founder &
Group Chief Executive
Tristar Group, UAE



Dr. Vivek Lall
Chief Executive
General Atomics Global
Corporation, USA



CS Dhananjay Shukla
Vice President
The Institute of Company
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Chairman
Tata Motors Finance
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ARTICLES INVITED FOR GLOBAL CONNECT IN CHARTERED SECRETARY JOURNAL

Dear Member,

The ICSI invites articles for its prestigious Chartered Secretary Journal - a monthly compendium of the critical aspects of the Company Secretary Profession from across the globe.

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.

We therefore request you to kindly share your valuable insights and expertise, and enrich the coveted Chartered Secretary Journal with diverse perspectives on contemporary issues relevant to Company Secretaries globally.

The article should be submitted in Word Document Format at overseas@icsi.edu and may cover any of the following:

- **Corporate Governance Trends:** Share your insights on emerging trends and developments in corporate governance arena globally.
- **Best Practices:** Discuss successful strategies and best practices adopted by companies in different jurisdictions.
- **Regulatory Updates:** Provide an overview of recent regulatory changes and their implications for company secretaries in different jurisdiction.

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

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 overseas@icsi.edu
11. The article shall be accompanied by a 'Declaration-cum-Undertaking' from the author(s) as under:

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2. I affirm that:
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 - a) comply with the guidelines for authors,
 - b) shall abide by the decision of the Institute, i.e., whether this article will be published and / or will be published with modification / editing.
 - c) shall be liable for any breach of this 'Declaration-cum-Undertaking'.

(Signature)

Prevention of Sexual Harassment (PoSH): A Global Outlook

Today, PoSH stands not only as a legal framework but as a testament to evolving workplace culture—an indispensable shield of inclusivity and equality, now recognized as the cornerstone of ethical corporate governance. With movements like #MeToo shaking the foundations of industries worldwide, the PoSH law has become the lighthouse guiding organizations toward a future where respect, mutual trust, and equity are non-negotiable. Its traction grows stronger each day, a beacon of both accountability and hope, serving the very purpose for which it was forged: to ensure that no voice goes unheard, and no individual's dignity is compromised.



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INTRODUCTION

The dawn of the PoSH law was no mere flicker of legal innovation—it was the blazing response to an age-old issue that had silently plagued workplaces for far too long. Born out of necessity and fueled by the cries of countless voices demanding dignity and respect, the Prevention of Sexual Harassment (PoSH) law came into perspective as societies began to confront the undercurrents of power dynamics and gender inequities that lurked in professional corridors. Its rise was inevitable, as the veil was lifted on the hidden scourge of workplace harassment, exposing the urgent need for a structured, lawful safeguard to protect individuals from exploitation and fear. Over time, what began as a local outcry morphed into a global call to arms. Today, PoSH stands not only as a legal framework

but as a testament to evolving workplace culture—an indispensable shield of inclusivity and equality, now recognized as the cornerstone of ethical corporate governance. With movements like #MeToo shaking the foundations of industries worldwide, the PoSH law has become the lighthouse guiding organizations toward a future where respect, mutual trust, and equity are non-negotiable. Its traction grows stronger each day, a beacon of both accountability and hope, serving the very purpose for which it was forged: to ensure that no voice goes unheard, and no individual's dignity is compromised.

Sexual harassment in the workplace is not a new phenomenon, but the global conversation surrounding its prevention has gained significant momentum in recent years. Today, PoSH is not merely about legal compliance—it is a critical component of corporate social responsibility, deeply intertwined with global frameworks like the Global Reporting Initiative (GRI), the Sustainable Development Goals (SDGs), and the evolution of workplace culture. The global outlook on PoSH laws reflects a mosaic of cultural, legal, and corporate approaches, aiming to foster inclusivity, diversity, and equity across all sectors.

THE ENVIRONMENTAL, SOCIAL AND GOVERNANCE CONNECT TO PoSH

The focus on Environmental, Social and Corporate Governance (ESG) has been mainly 'E' factor with climate change at its core. It is important that corporates equally focus on "S" in ESG to address workplace culture. As organizations increasingly prioritize ESG, integrating robust PoSH frameworks showcases their commitment to social responsibility, gender equality, and human rights. The correct and transparent disclosures of material and credible allegations of sexual harassment and other workplace misconduct is crucial in ensuring authenticity in BRSR reporting. Equally important is framing policies and processes and training the workforce, environment including contract employees, by promoting safe, respectful, and equitable working. Open speak-up culture is crucial in creating an atmosphere of trust and respect amongst employees that will enable aggrieved women to report any violation of PoSH. This proactive approach enhances employee well-being, boosts morale, and reinforces the organization's reputation as a responsible, forward-thinking entity in the global marketplace.

THE GLOBAL REPORTING INITIATIVE (GRI) FRAMEWORK AND PoSH

The GRI framework provides an international standard for businesses to report their sustainability efforts, including social factors such as gender equality and human rights. GRI Standards emphasize the importance of workplace safety and fairness, which include policies on sexual harassment prevention. Sexual harassment not only disrupts an employee's well-being but also undermines the ethical and social fabric of an organization.

Under GRI, organizations must report on mechanisms for seeking advice and raising concerns about ethical issues, including sexual harassment. The GRI 405 and 406 standards¹ on diversity and non-discrimination encourage transparency about how companies handle sexual harassment complaints. Incorporating PoSH policies within GRI reporting allows companies to demonstrate their commitment to ethical behavior, social responsibility, and the well-being of their workforce.

PoSH LAWS: A GLOBAL PERSPECTIVE

Nations around the globe have adopted distinct approaches to the prevention of sexual harassment, each shaped by their unique legal frameworks, cultural norms, and deeply ingrained societal values. While the core objective remains universal—ensuring safe and respectful workplaces—the paths taken by different countries vary significantly. These approaches are influenced by centuries-old traditions, evolving perceptions of gender roles, and the socio-political landscape that governs behavior in both public and professional spheres. From comprehensive legislation in some regions to more nascent frameworks in others, the response to sexual harassment is as diverse as the cultures from which they emerge, reflecting the delicate balance between progressive lawmaking and the preservation of societal identities. This intricate tapestry of laws and customs paints a vivid picture of how each country navigates the fine line between safeguarding individual rights and upholding its cultural fabric.

Here is a glimpse of how various regions address PoSH:

- **India:** India's PoSH law, the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, is one of the most comprehensive². It mandates the formation of an Internal Complaints Committee (ICC) in organizations to handle complaints. In furtherance of the PoSH Act, the Government introduced the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, commonly referred to as the *PoSH Rules*. These rules laid the foundation for structured redressal mechanisms and preventative measures, ensuring that workplaces remain safe and respectful environments. The year 2013 also marked

a significant turning point with the enactment of the Criminal Law (Amendment) Act, which criminalized offenses like sexual harassment, stalking, and voyeurism. Together, these legal frameworks embody the essence of inclusivity, extending protection to employees across all spectrums—whether permanent, temporary, or interns—underscoring that no individual, regardless of their employment status, should ever face harassment. This comprehensive approach not only fortifies the rights of women but also ensures that workplaces cultivate an atmosphere of respect, equity, and dignity for all.

- **United States³:** The *Civil Rights Act of 1964* (Title VII)⁴ prohibits workplace sexual harassment as a form of gender discrimination. The Equal Employment Opportunity Commission (EEOC) oversees the enforcement, and states like California have their own more stringent PoSH laws, with mandatory training sessions for employees.

It is a violation of the law to subject an individual—be it an applicant or an employee—to harassment based on their sex. This encompasses not only explicit “sexual harassment,” such as unwelcome sexual advances, requests for sexual favors, or other verbal and physical conduct of a sexual nature but extends to any unwelcome conduct tied to a person's gender.

- **European Union:** The *EU Directive 2006/54/EC⁵* addresses gender discrimination in the workplace, including sexual harassment. The European Commission encourages member states to implement policies that ensure safe workplaces, free from harassment. This directive not only condemns such behavior but also mandates equal treatment between men and women in employment and professional life. Under the guidance of this directive, the European Commission actively urges member states to adopt comprehensive policies that foster safe and inclusive work environments, where harassment in any form is neither tolerated nor ignored. By encouraging the implementation of protective measures, the directive aspires to create workplaces where individuals can thrive without fear of discrimination, ensuring dignity, respect, and equality for all. This commitment to fostering a harassment-free workplace is not just a legal obligation but a moral imperative for the collective progress of the European Union.
- **Australia:** The *Sex Discrimination Act 1984⁶* is the cornerstone of sexual harassment law in Australia, protecting employees from gender-based discrimination, including harassment. The Australian Human Rights Commission plays an active role in addressing complaints and ensuring compliance.

³ <https://www.eeoc.gov/sexual-harassment>

⁴ <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>

⁶ <https://humanrights.gov.au/our-work/sex-discrimination/about-sex-discrimination>

¹ <https://www.globalreporting.org/publications/documents/english/gri-406-non-discrimination-2016/>

² https://www.indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362

The Act provides robust protection against discrimination, ensuring that individuals are treated fairly regardless of their sex, sexual orientation, gender identity, or intersex status. It extends its safeguards to include those facing bias based on marital or relationship status, pregnancy, or breastfeeding, recognizing the need for equitable treatment in various stages of life. Furthermore, the Act upholds the rights of workers with family responsibilities, acknowledging the importance of balancing professional and personal obligations. A pivotal aspect of this legislation is its firm stance against sexual harassment, categorically deeming such behavior illegal. This comprehensive framework fosters a more inclusive, respectful, and equitable work environment for all.

Although the specific provisions of these laws may differ in scope and detail across jurisdictions, their fundamental purpose remains consistent: to cultivate a workplace where respect, dignity, and safety are paramount for every employee. These legal frameworks are designed to ensure that all individuals, regardless of their position or background, can work in an environment free from harassment, discrimination, or hostility. At their core, these laws aim to foster a culture of mutual respect, inclusivity, and fairness, setting the foundation for a healthier and more productive professional ecosystem.

POSH LAWS AND THE SUSTAINABLE DEVELOPMENT GOALS (SDGs)

PoSH laws are inherently linked to several of the United Nations' Sustainable Development Goals (SDGs), particularly Goal 5—*Gender Equality*⁷—and Goal 8—*Decent Work and Economic Growth*⁸. Gender equality cannot be achieved without ensuring women's safety and dignity in the workplace. PoSH policies contribute to SDG Goal 5 by promoting gender parity, eliminating workplace violence, and fostering a culture of respect.

Furthermore, Goal 8 emphasizes safe working conditions as a key component of decent work. By enforcing sexual harassment prevention laws, countries and corporations contribute to more inclusive and equitable economic growth, ensuring that all individuals—regardless of gender—can participate in the workforce without fear of harassment or discrimination.

POSH LAWS: A COMMITMENT TO INCLUSIVITY

The essence of PoSH laws is inclusivity. Initially, most sexual harassment laws were focused on protecting women, given their historical and statistical vulnerability to workplace harassment. However, the evolving understanding of gender dynamics in the workplace has broadened the scope of these laws. Inclusivity today means recognizing that harassment can affect anyone, regardless of gender, sexual orientation, or employment status.

⁷ <https://www.undp.org/sustainable-development-goals/gender-equality>

⁸ <https://www.undp.org/sustainable-development-goals/decent-work-and-economic-growth>

Prevention of sexual harassment transcends mere legal compliance; it stands as a vital pillar in fostering a dynamic, ethical, and truly inclusive workplace.

In some countries, such as India, PoSH laws explicitly cover all workers, including male employees, LGBTQ+ individuals, and contractual or freelance workers. This approach ensures that no individual is left behind in the fight against workplace harassment. The *Men Too* movement, while controversial in some aspects, has highlighted the need for policies that address sexual harassment cases where male employees are the victims. This move towards inclusivity ensures that workplaces offer dignity and respect to every individual.

POSH LAWS ACROSS VARIOUS SECTORS

PoSH regulations are not confined to specific industries; they cut across all sectors—corporate, government, nonprofit, and educational institutions⁹. In sectors like healthcare and hospitality¹⁰, where interactions with the public are frequent and employees are particularly vulnerable, companies have adopted stringent PoSH policies to ensure worker safety. Even in traditionally male-dominated industries, such as engineering, manufacturing, and technology, PoSH laws are integral to fostering a more diverse workforce.

In the financial sector, companies have begun integrating PoSH principles into broader ESG (Environmental, Social, and Governance) criteria¹¹, recognizing the importance of ethical conduct, fair treatment, and gender equality for investors and stakeholders. As companies seek to diversify and become more inclusive, PoSH laws provide a critical foundation for ensuring that these workplaces are welcoming to everyone.

THE ME TOO AND MEN TOO MOVEMENTS: CULTURAL SHIFTS AND POSH

The global *MeToo* movement revolutionized the way sexual harassment was addressed in workplaces worldwide. The movement empowered survivors to speak up and led to an overhaul in how organizations, governments, and societies approached harassment. However, it also raised concerns about the misuse of harassment laws, particularly among male employees and employers.

The *Men Too* movement emerged in response, emphasizing that men, too, can be victims of harassment, and in some cases, the fear of false accusations has led to

⁹ <https://sere.in/safeguarding-institutions-through-the-ugc-pocso-PoSH-framework/>

¹⁰ <https://PoSHatwork.com/what-to-do-when-facing-sexual-harassment-while-accessing-healthcare-services/>

¹¹ <https://rainmaker.co.in/blog/view/harmonizing-PoSH-compliance-and-esg-excellence>

organizational hesitation in addressing the issue openly. Companies began fearing the backlash of mishandling PoSH policies, with male employees expressing concerns about interacting with female colleagues, even in professional contexts.

While the fear of misuse of PoSH laws exists, it is vital to recognize that these laws are meant to establish fairness, trust, and respect within the workplace. The solution lies not in curbing communication or interaction but in building an open and transparent organizational culture. Encouraging mutual respect, proper communication, and clearly defined professional boundaries can mitigate fears while ensuring compliance with PoSH laws.

Examples across the globe include: -

1. India: The Vishakha Guidelines and Their Evolution

One of the most landmark examples in India is the **Vishakha Guidelines**, which were laid down by the Supreme Court of India in 1997 following the harrowing case of Bhanwari Devi, a social worker in Rajasthan who was gang-raped for trying to prevent a child marriage. This incident highlighted the glaring absence of a legal framework to deal with sexual harassment in the workplace. The Vishakha Guidelines laid the groundwork for the **Prevention of Sexual Harassment at Workplace (PoSH) Act of 2013**, which has since been crucial in institutionalizing internal complaints committees (ICCs) in organizations to address sexual harassment cases. Since its enactment, there has been a noticeable rise in the reporting of sexual harassment cases, especially in corporate and educational settings, signifying a progressive cultural shift.

2. United States: The Impact of the #MeToo Movement

The #MeToo movement, which gained global traction in 2017, brought to light the pervasive nature of sexual harassment in workplaces across industries, particularly in the United States. Major corporations like **Uber and Google**¹² were forced to overhaul their internal policies after employees staged walkouts, protesting the mishandling of sexual harassment claims. The movement led to the implementation of more robust sexual harassment policies, mandatory training sessions, and increased transparency around complaints and settlements. The spotlight on workplace misconduct also resulted in sweeping changes in Hollywood, where organizations like the **Academy of Motion Picture Arts and Sciences**¹³ introduced new conduct codes, leading to the expulsion of individuals.

¹² <https://www.nytimes.com/2018/11/08/technology/google-arbitration-sexual-harassment.html#:~:text=SAN%20FRANCISCO%20%E2%80%94%20Google%20said%20on,handles%20cases%20of%20sexual%20misconduct>

¹³ <https://www.newyorker.com/culture/cultural-comment/the-implications-of-the-academy-kicking-out-harvey-weinstein>

3. Australia: Respect@Work Report

The 2020 **Respect@Work Report** in Australia¹⁴, stemming from a national inquiry into sexual harassment, marked a watershed moment in reshaping the country's approach to workplace harassment. The report not only highlighted the widespread nature of sexual harassment but also introduced legislative reforms aimed at making employers accountable for preventing harassment. The government's response to the report led to enhanced protections under the **Sex Discrimination Act**, making it mandatory for employers to take proactive steps to address workplace harassment and discrimination. High-profile cases like those in **Parliament House** further pushed the government to introduce structural changes in how complaints are handled in public institutions.

These examples from India and around the world illustrate the profound impact that PoSH laws and related regulations have had in fostering safer and more inclusive workplaces. From legal reforms and landmark court rulings to societal movements like #MeToo, these frameworks are not just legal obligations but are vital for ensuring respect, equality, and safety in professional environments. Each case serves as a reminder that strong legal frameworks, when coupled with organizational commitment, can create meaningful change in workplace culture.

THE ROLE OF CULTURE AND ORGANIZATIONAL DEVELOPMENT

PoSH policies alone cannot prevent harassment; they need to be backed by a culture of respect, inclusivity, and ethical conduct. Training programs, for instance, are a crucial aspect of enforcing PoSH, yet many companies have hesitated to train their employees, fearing that misunderstandings or cultural biases might lead to confusion.

However, the trend is changing. Companies are beginning to realize that training should not be feared but embraced. Open discussions on sexual harassment, professional boundaries, and the importance of mutual respect are becoming more common. Organizations are shifting from a policy-centric approach to a culture-driven one, where employees feel comfortable addressing harassment, knowing they are part of a supportive and respectful community.

DRESS, BEHAVIOR AND CONDUCT: FOSTERING MUTUAL RESPECT

PoSH is not merely about legal enforcement—it encompasses aspects of professional behavior, including how employees dress, conduct themselves, and interact with others. While dress codes are often debated in PoSH policies, the fundamental issue is not clothing

¹⁴ <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>

but behavior. Both men and women must maintain professional conduct, avoiding actions that may be perceived as disrespectful or inappropriate.

Encouraging employees to treat one another with respect and courtesy is key to preventing harassment. Whether it is in the form of offhand remarks, inappropriate jokes, or unwelcome advances, harassment is rooted in a lack of mutual respect. By fostering a culture where such behavior is not tolerated, companies can create a safer and more equitable environment.

OPEN COMMUNICATION AND CHANGING TRENDS

One of the most significant trends in the prevention of sexual harassment is the rise in open communication. Employees are encouraged to speak up about their concerns, and organizations are facilitating this by providing multiple channels for reporting incidents—anonously or otherwise.

This change in attitude is a positive development. The more organizations encourage discussions around respect, equality, and workplace conduct, the less room there is for misunderstandings or misbehavior. Rather than seeing PoSH laws as a deterrent or a burden, companies are beginning to understand their role in building trust, integrity, and loyalty within their teams.

DIVERSITY, INCLUSIVITY AND EQUITY: BEYOND COMPLIANCE - POLICY, PROCESS AND CULTURE

PoSH laws are an important starting point for organizations to create safe and respectful workplaces, but they are just one piece of a larger puzzle. The ultimate goal is to foster diversity, inclusivity, and equity (DIE) across all levels of the organization. True diversity means ensuring representation of different genders, cultures, ethnicities, and backgrounds. Inclusivity goes a step further by ensuring that everyone feels welcome and valued. Equity ensures that everyone has equal access to opportunities, support, and resources.

When companies integrate DIE into their policies, processes and culture, they create environments where sexual harassment is less likely to occur because everyone is treated with respect. PoSH laws are not just about compliance—they are about building a fair, inclusive, and just workplace.

MEASUREMENT ARENA

Global indexes like the Bloomberg Gender-Equality Index (GEI) is not only relevant but crucial in evaluating and benchmarking corporate efforts related to sexual harassment and broader gender issues. The Bloomberg GEI assesses companies on their commitment to transparency and gender equality, including workplace policies that address sexual harassment. By drawing on

this index, corporations can benchmark their progress against global standards, ensuring that their initiatives align with best practices. Companies featured in such indexes often demonstrate a proactive stance on fostering safe, inclusive work environments, where sexual harassment prevention is a key component. Integrating these evaluations into an ESG framework strengthens corporate accountability and reinforces the link between gender equality, ethical governance, and sustainable growth.

BLOOMBERG GENDER EQUALITY INDEX REPORT

The Bloomberg Gender-Equality Index (GEI) serves as a catalyst for companies to disclose and evaluate their social data pertaining to gender equality. This framework undergoes annual updates to incorporate emerging best practices in addressing this global challenge. Built upon five foundational pillars which are: -

- Leadership & talent pipeline (25%),
- Equal pay & gender pay parity (25%),
- Inclusive culture (30%),
- Anti-sexual harassment policies (10%),
- External brand (10%)

The GEI framework provides a structured approach for companies to measure and monitor data crucial for fostering gender equity in the workplace. It empowers companies to identify areas for enhancement and benchmark their progress against industry peers. The framework leverages data collected by Bloomberg from company filings, which is pre-populated where available. All disclosed data, whether manually entered or pre-populated, contributes positively to the overall Bloomberg GEI Score. Companies are encouraged to complete the entire framework to maximize their score, as unanswered questions do not earn any value.

CONCLUSION

Prevention of sexual harassment transcends mere legal compliance; it stands as a vital pillar in fostering a dynamic, ethical, and truly inclusive workplace. Whether viewed through the lens of the Global Reporting Initiative (GRI) framework or the varied legal landscapes across nations, PoSH laws are actively reshaping the future of work. The movements such as #MeToo and #MenToo have further amplified the urgency of addressing these issues, while evolving organizational cultures emphasize dialogue, transparency, and respect. The trend is unmistakably moving towards a more open, inclusive environment where mutual respect is not just encouraged but embedded into the very fabric of workplace culture. PoSH is not just a regulatory measure—it is the foundation of a progressive, equitable, and thriving professional ecosystem globally. □

Articles

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Articles Part - I

The Prevention of Sexual Harassment at Workplace Act: A Historical, Cultural, and Ethical Perspective 56

CS (Dr.) Sudheendhra Putty, FCS

This article explores the significance of the Prevention of Sexual Harassment (PoSH) Act, 2013, in India, linking it to the country's historical and cultural values that emphasize respect for women. Citing episodes like Draupadi's disrobing in the Mahabharata and Lord Krishna's interventions, it illustrates how Indian traditions have long upheld women's dignity. Historical figures like Chhatrapati Shivaji Maharaj also exemplified this respect.

Balancing Due Process and Workplace Safety: Ethical Dilemmas for Effectively Implementing the PoSH Act 60

Urvashi Saikumar Pathak, CS Nikhil Kalra, ACS

The legislative impetus for the PoSH Act arose from the landmark Vishaka judgment of 1997, where the Supreme Court of India provided essential guidelines for preventing sexual harassment in workplaces lacking specific legal provisions. This ruling was catalyzed by the tragic gang rape of Bhanwari Devi, a social worker in Rajasthan, underscoring the urgent need for a comprehensive legal framework to protect women's rights at work. This judgment was a pivotal step toward aligning national laws with global human rights standards, emphasizing the fundamental right of women to work in a safe and dignified environment.

Leveraging Artificial Intelligence for Robust PoSH Act Compliance in the Workplace 65

CS (Dr.) Dipti Sharma, ACS

PoSH Act in 2013 ruling was crucial in safeguarding the rights of women and ensuring workplace safety. Despite 10 years since its implementation, the number of total PoSH complaints from 700 NSE-listed companies studied by The Udaiti Foundation rose from 1,807 in the fiscal year 2022-23 to 2,325 in 2023-24, representing a 29% uptick.

PoSH Legislation – Role of Professionals in Implementation 68

Anjali Aggarwal, CS Shivam Singhal, ACS

While the Act provides a comprehensive legal structure, its success hinges on effective implementation. Merely having policies in place is not enough; a strong commitment to enforcement is essential to fostering a workplace culture that upholds respect and equality. Organizations are required not only to form Internal Complaints Committees (ICC) but also to conduct regular training and sensitization programs to ensure awareness across all levels of the workforce. The proper implementation of the PoSH Act is crucial in promoting an inclusive environment where employees feel empowered to raise concerns without fear of reprisal.

Transforming Workplace Culture: The Role and Impact of PoSH Legislations 74

CS Soniya Sethi, ACS

This article explores the extensive implications of PoSH legislations, examining their legal and HR aspects, the benefits of adhering to the PoSH Standard, global perspectives, key landmark judgments, and the critical role of professionals in effective implementation.

Ensuring Gender inclusivity and Workplace Safety: The impact of PoSH Legislation in India 80

CS Harshad Narsinhbhai Patel, ACS

This article delves into the key aspects of the PoSH Act, the importance of employee awareness, the employer's role in ensuring compliance, significant case laws that have shaped the application of the Act, and a comprehensive understanding of how organizations can cultivate a workplace environment that promotes gender inclusivity and safety.

Articles Part - II

Law & Procedure Relating to Adjudication of Penalties Under Companies Act, 2013 85

CS (Dr.) K R Chandratre, FCS

The gist of adjudication orders passed by the Registrars of Companies and Regional Director imposing penalty of lakhs of rupees, being published by 'Chartered Secretary', is the evidence of rampant adjudication cases under Section 454 of the Companies Act, 2013 ('the Act') lately, after the Companies (Amendment) Act, 2020 by which in several Sections of the Act 'penalty' has been substituted for 'punishment' thereby rendering for penalty on adjudication the company in respect of which a contravention of the relevant Sections and officers of the company who are in default. In a way, adjudication is a better statutory measure than punishment as it absolves the companies and their Directors and Directors/officers from the traumatic (at times vexatious) trouble they have otherwise to undergo in prosecution in a criminal court; they go free by shelling out a few lakh rupees.

The Shift to Dematerialization: Challenges in Protecting Shareholder Rights for Private Companies 93

CS Makarand Lele, FCS

This article explores the implications of this mandate on the restrictive rights traditionally enjoyed by shareholders in private limited companies and measures to be adopted by the companies to protect these rights in dematerialized regime with the help of professionals like Company Secretary (CS).

Resignation by a Director - Its Ramifications under the Law

CS Ramaswami Kalidas, FCS

97

Resignation by a Director is not an uncommon occurrence in the Corporate World. However, when the event happens it throws up several ramifications. In this exposition we shall endeavor to capture the quintessence of the consequences that follow.

Research Corner

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The PoSH Act: Developing Discourses in South Asian Countries and China

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Kusha Tiwari, Manila Kohli

This paper has engaged contextual regulatory snippets and comparative vignette analysis including case contexts to compare and analyze the legislative provisions implemented in the six countries for regulating and curbing sexual harassment at workplace, and for safeguarding the rights and interests of employees with clearly defined responsibilities and roles of employers. The paper, finally, puts forward recommendations for further boosting the social and legal framework to address the issue of workplace sexual harassment.

Legal World

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- **LMJ 10:10:2024** The finding of fact recorded by the Special Court that there had been no allotment at all and it was sought to be made only after the second respondent was notified under the Act to avoid payment of money of a sum of Rs. 20 lakhs cannot be seriously disputed.[SC]
- **LW 71:10:2024** We find that the Appellant's inclusion of inflated interest rates, unsubstantiated reimbursements, and amounts that fall under the Section 10A period demonstrates a deliberate attempt to manipulate the figures to meet the threshold for initiating CIRP. This constitutes an abuse of the insolvency process, and the Adjudicating Authority was right in dismissing the Section 9 Petition.[NCLAT]
- **LW 72:10:2024** It cannot be the unilateral prerogative of the Applicant to elect when it chooses to cure the defects. The Applicant cannot be given any indulgence keeping in view that the IBC proceedings have stringent timelines to be followed and the proceedings have to be concluded in a time-bound manner.[NCLAT]
- **LW 73:10:2024** When the claim has to be filed on the liquidation commencement date any claims subsequent including any on the basis of assessment subsequent to the liquidation commencement date cannot be given any credence by the liquidator and no error was committed by liquidator in not accepting the claim of damages and interest consequent to the assessment paying in the year 2021. [NCLAT]
- **LW 74:10:2024** Vote share of the Prem Trading Company is only 2.48% and vote share for Prem Trading Company was not considered in favour of the approval of the Plan and the Plan was approved by 92.87% vote shares of HDFC Bank Ltd. the largest Financial Creditor. [NCLAT]
- **LW 75:10:2024** I am of the view that petitioner having submitted his letter seeking to withdraw the resignation much before the effective date, withdrawal of resignation ought to have been accepted by the respondents and continued the petitioner in service.[Del]
- **LW 76:10:2024** The learned Single Judge has rightly found merit in the grievance ventilated by the respondent that he had not received fair treatment at the hands of the appellant Bank and while co- delinquents had been given lesser punishments, he had been awarded the harshest punishment in service jurisprudence.[Del]

- **LW 77:10:2024** The Commission observes that it is a settled position that the provisions of the Act do not provide for inquiry into the cases of joint/collective dominance. Accordingly, no case of contravention under Section 4 of the Act has been established.[CCI]
- **LW 78:10:2024** The allegations that the Opposite Party is allegedly spreading mis- information/misstatements about the cost of such treatment do not fall within the ambit of the Competition Act, 2002.[CCI]

From The Government P-129

- The Companies (Accounts) Amendment Rules, 2024
- The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024
- Clarification on holding of Annual General Meeting (AGM) and EGM through Video Conference (VC) or Other Audio Visual Means (OAVM) and passing of Ordinary and Special resolutions by the companies under the Companies Act, 2013 read with Rules made thereunder -Extension of timeline-reg.
- Notification
- The Companies (Indian Accounting Standards) Second Amendment Rules, 2024
- The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024
- The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024
- Operational Guidelines for Foreign Venture Capital Investors (FVCIs) and Designated Depository Participants (DDPs)
- Reduction in the timeline for listing of debt securities and Non-convertible Redeemable Preference Shares to T+3 working days from existing T + 6 working days (as an option to issuers for a period of one year and on a permanent basis thereafter such that all listings occur on a T+3 basis)
- Parameters for Performance Evaluation of Market Infrastructure Institutions
- Usage of UPI by individual investors for making an application in public issue of securities through intermediaries
- Ease of Doing Business in the context of Standard Operating Procedure for payment of "Financial Disincentives" by Market Infrastructure Institutions (MIIs) as a result of Technical Glitch
- Flexibility in participation of Mutual Funds in Credit Default Swaps (CDS)
- Modification in framework for valuation of investment portfolio of AIFs
- Enabling T+2 trading of Bonus shares where T is the record date
- Reporting by Foreign Venture Capital Investors (FVCIs)
- Optional mechanism for fee collection by SEBI registered Investment Advisers (IAs) and Research Analysts (RAs)
- Modifications in Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs)
- Allowing securities funded through cash collateral as maintenance margin for Margin Trading Facility (MTF)
- Modification in the timeline for submission of status regarding payment obligations to the stock exchanges by entities that have listed commercial paper
- Interest Equalization Scheme (IES) on Pre and Post Shipment Rupee Export Credit
- Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Amendments)
- Liberalised Remittance Scheme (LRS) for Resident Individuals-Discontinuation of Reporting of monthly return
- Review of Extant Instructions – Withdrawal of Circulars

Other Highlights

- ❖ NEWS FROM THE INSTITUTE
- ❖ GST CORNER
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- ❖ CG CORNER
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Call For ARTICLES

Call For Articles in CS Journal – November 2024 Issue



Exploring Opportunities : Paving the road ahead for Governance Professionals

Having celebrated the 56th Foundation Day of ICSI on October 04, 2024 in the august presence of Smt. Anupriya Patel, Hon'ble Minister of State for Health & Family Welfare and Chemicals and Fertilizers Government of India and having revered in the glory of the history created and the legacy carried forward, it is immensely significant that the steps ahead are taken with great responsibility but also with even greater hope of endless possibility.

Company Secretaries, as Governance Professionals, are diversifying their footprint on a continual basis. And it is in this backdrop that it becomes imperative that a deliberation is raised on exploring opportunities for the future.

In view of the same, we are pleased to inform you that the **November 2024** issue of Chartered Secretary Journal will be devoted to the theme **Exploring Opportunities : Paving the road ahead for Governance Professionals** covering *inter alia* the following aspects:

- ❖ Digital Transformation & AI : Shaping profiles of future professionals
- ❖ Adding Standards to laws : Enhancing accountability through transparency
- ❖ Arbitration and Mediation : Adding Advocacy to the to-do list
- ❖ Governance in MSMEs and Startups : Growing Responsibility of Governance Professionals
- ❖ Ever-increasing role of Compliance Officers : Guiding the Boards right
- ❖ CS as KMP : Expanding horizons
- ❖ Audit and Auditing Standards : Redefining core areas
- ❖ Space Laws, Maritime Laws : Stepping into lesser treaded areas
- ❖ International Financial Services Centre : Opening doors to global opportunity

And many more...

Members and other readers desirous of contributing articles may send the same latest by Friday, October 25, 2024 at cs.journal@icsi.edu for November 2024 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.

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ARTICLES



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- THE PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE ACT: A HISTORICAL, CULTURAL AND ETHICAL PERSPECTIVE
- BALANCING DUE PROCESS AND WORKPLACE SAFETY: ETHICAL DILEMMAS FOR EFFECTIVELY IMPLEMENTING THE PoSH ACT
- LEVERAGING ARTIFICIAL INTELLIGENCE FOR ROBUST PoSH ACT COMPLIANCE IN THE WORKPLACE
- PoSH LEGISLATION – ROLE OF PROFESSIONALS IN IMPLEMENTATION
- TRANSFORMING WORKPLACE CULTURE: THE ROLE AND IMPACT OF PoSH LEGISLATIONS
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Articles Part - II

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- THE SHIFT TO DEMATERIALIZATION: CHALLENGES IN PROTECTING SHAREHOLDER RIGHTS FOR PRIVATE COMPANIES
- RESIGNATION BY A DIRECTOR-ITS RAMIFICATIONS UNDER THE LAW

The Prevention of Sexual Harassment at Workplace Act: A Historical, Cultural and Ethical Perspective

The article underscores the critical role of Company Secretaries in enforcing the PoSH Act, ensuring compliance, policy formulation and awareness training. It also calls for amendments to the Act to include protections for men and the LGBTQIA+ community, addressing challenges like patriarchy, victim shaming, and power imbalances. The future demands a cultural transformation, enhanced inclusivity and the adoption of global best practices, ensuring safer and more respectful workplaces for all.



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INTRODUCTION

समञ्जन्तु विश्वे देवाः समापो हृदयादिह।

यथा स्त्रीणां परिरक्षता संनद्धा शान्तियज्ञाः॥

*Samanjantu vishve devāḥ samāpo hrdayād iha|
Yathā strīnām pariraksatāḥ sannaddhāḥ śānti-yajñāḥ ||*

‘Women should be treated with the highest respect and protected, for their protection ensures the harmony of society.’

- Rigveda 10.85.44

Sexual harassment at the workplace is a pressing issue in today’s globalized world. In India, the Prevention of Sexual Harassment at Workplace Act (PoSH Act) was enacted in 2013 to ensure a safe working environment for women. However, the principles of dignity, respect and protection for women are not new to Indian society. Drawing on historical, cultural and spiritual perspectives, India has long emphasized the sanctity of womanhood. The PoSH Act, when viewed through the lens of ancient Indian values, traditions and practices, emerges as a law deeply connected to India’s moral and ethical mores and fabric.

This article explores how historical figures like Chhatrapati Shivaji Maharaj, episodes from epics like the *Mahabharata*, teachings from the *Srimad Bhagavatam*

and the life of Lord Krishna offer insights into the inherent respect for women in Indian culture. Furthermore, the role of Company Secretaries in enforcing the PoSH Act and the future imperatives this entails is discussed in detail.

HISTORICAL PERSPECTIVES: PROTECTING WOMEN’S DIGNITY IN INDIAN TRADITION THE MAHABHARATA: DRAUPADI’S ATTEMPTED DISROBING

The *Mahabharata* provides one of the most poignant examples of the violation of a woman’s dignity and the societal repercussions it can bring. The attempted disrobing of Draupadi in the Kaurava’s court, where the powerful men present¹, including her husbands, did nothing to defend her honour, is a stark reminder of how neglecting a woman’s dignity leads to chaos and destruction. Draupadi’s violation led to the Kurukshetra war, underscoring how societal inaction in the face of such offenses brings about catastrophic consequences.²

The protection of women’s dignity, as illustrated in this epic, goes beyond individual morality—it is a societal obligation. In the context of the modern workplace, this episode symbolizes how the failure to prevent sexual harassment harms not only the victim but also disrupts organizational and social harmony.

SHRI KRISHNA AND THE PROTECTION OF WOMEN’S DIGNITY

In the *Srimad Bhagavatam*, Lord Krishna is a divine figure who intervenes to protect the honour and dignity of women. The most famous instance is his intervention during the humiliation meted out to Draupadi as alluded above. As the Kauravas attempted to disrobe her in front of the royal court, Draupadi prayed to Krishna, who miraculously extended her garment, preserving her honour. This act of Krishna is a clear representation of how (divine) justice stands for the protection of women’s dignity.

¹. Mainly Bheeshma and Drona; Vidura however chides and opposes the unfortunate turn of events

². It must be noted that Bhima who practised Shuddha Bhagawata Dharma knew of Krishna’s resolve and played his part in the flow.

In another instance, Krishna's playful interaction with the *Gopis* of Vrindavan is often cited as an example of deep devotion and love. However, the underlying message here is Krishna's reverence for the *Gopis*, despite the playful exchanges. He uplifts their status by recognizing their pure love and devotion, reinforcing the respect women deserve in every aspect of life.

Further, the *Srimad Bhagawatam* reinforces the importance of respecting women. The story of Prahlada's mother, Kayadhu, who was protected by the great sage Narada during her pregnancy, exemplifies the deep reverence for women and the role they play in nurturing life. Kayadhu was treated with the utmost respect, even though her husband, Hiranyakashipu, was a tyrant. The sage's protection of her illustrates the belief that a woman's dignity and well-being should be preserved at all costs.

CHHATRAPATI SHIVAJI MAHARAJ: A HISTORICAL CHAMPION OF WOMEN'S RIGHTS

Chhatrapati Shivaji Maharaj, known for his bravery and strategic acumen, also set an exceptional example in his treatment of women. One significant instance of his respect for women occurred after the capture of a fort, where a noblewoman was presented to him as a reward for his victory. Shivaji, instead of accepting her as a prize, remarked, "She is like my mother," and ensured her safe return to her family. He even chastised the recalcitrant men in his forces for their unbecoming behaviour.

At a time when women were often treated as trophies of war, Shivaji shone as a beacon of virtue, emphasizing that a woman's dignity is inviolable. This anecdote reflects a core cultural value of protecting women's honour, which must be deeply embedded in today's workplaces to prevent harassment.

THE ROLE OF COMPANY SECRETARIES IN IMPLEMENTING THE PoSH ACT

While the historic perspective is strong and serves as a lighthouse, in the corporate world of today, the enactment of the PoSH Act in the last decade has been a watershed herald as it did a new regime in preventing sexual harassment at the workplace. The law brought forth mechanisms, processes and compliance requirements including maintenance of records and making of appropriate disclosures. The Company Secretary (CS), as a key managerial personnel in the corporate sector, plays a critical role in ensuring compliance with the provisions of the PoSH Act in letter and spirit. The CS is tasked with several responsibilities under the Act:

1. Compliance Management

The CS must ensure that the company complies with all the provisions of the PoSH Act. This includes facilitating the establishment of an Internal Complaints Committee (ICC) in every branch or

office of the organization with 10 or more employees. The committee is responsible for addressing and redressing complaints of sexual harassment at the workplace.

2. Policy Formulation and Implementation

A primary duty of the CS is to help draft and implement the company's policy on sexual harassment prevention, as mandated by the PoSH Act. This policy must:

- Define sexual harassment as per the Act,
- Lay down the procedures for complaints, inquiries and redressal,
- Detail the composition and functioning of the ICC,
- Ensure it is communicated across all levels of the organization.

3. Organizing Awareness and Training Programmes

The CS is responsible for conducting periodic awareness and sensitization programmes to educate employees about the PoSH Act and the procedures for raising complaints. Additionally, the CS ensures that the members of the ICC undergo training to handle cases of sexual harassment with sensitivity and professionalism.

4. Secretarial Assistance to the Internal Complaints Committee (ICC)

The CS provides secretarial assistance to the ICC. This includes:

- Facilitating the establishment of the ICC, ensuring proper appointments of its members,
- Ensuring periodic meetings of the ICC and assisting in drafting minutes,
- Maintaining records of complaints and their resolutions,
- Assisting in drafting annual reports on compliance with the Act, which need to be submitted to the respective authorities.

5. Advisory Role to the Board of Directors

The CS is expected to advise the Board of Directors on matters of compliance with the PoSH Act, ensuring that the Board is aware of its legal responsibilities. This also includes advising on the necessary actions when sexual harassment cases arise and ensuring they are handled without violating the law or the rights of individuals involved.

6. Annual Reporting and Disclosures

The CS ensures that the annual report of the company includes details about the number of sexual harassment cases filed and resolved during the year, as mandated by the PoSH Act. This information may

also be included in the Director's Report submitted to regulatory authorities like the Registrar of Companies (ROC).

7. Ensuring Procedural Fairness

The CS must ensure that any inquiry conducted by the ICC follows the principles of natural justice, ensuring that both the complainant and the respondent are given a fair hearing. The CS is also responsible for ensuring that confidentiality is maintained throughout the inquiry process.

CULTURAL PARADIGMS THAT IMPACT THE IMPLEMENTATION OF PoSH ACT

Patriarchal Mindset: Traditional gender roles and deeply entrenched patriarchal structures often lead to an underreporting or even non-reporting of cases of sexual harassment. Women may face stigma, backlash, or fear of retaliation if they report harassment.

Victim Shaming and Guilt: In many parts of Indian society, the onus is wrongly placed on the victim, perpetuating a culture of shame around sexual harassment. This is exacerbated by social norms that silence discussions on workplace harassment, especially in rural and semi-urban settings.

Hierarchy and Power Imbalance: The hierarchical structures in Indian workplaces, especially in government sectors, may discourage reporting. The fear of offending someone in power can deter employees from seeking redressal.

Lack of Awareness: Despite the PoSH Act being in place for over a decade, many employees, especially in smaller companies and informal sectors, are unaware of their rights under the law. This lack of awareness extends to employers as well, leading to poor or non-existent ICCs.

Cultural Reluctance to Address Sexuality: Talking openly about harassment is often avoided in Indian workplaces, particularly in more conservative regions. This cultural reluctance can prevent women from coming forward and disclosing their experiences.

CHALLENGES AND SHORTCOMINGS WITH THE CURRENT SCOPE OF THE PoSH ACT

1. **Exclusion of Men:** The PoSH Act, in its current form, specifically addresses the protection of women from sexual harassment at the workplace. Men are not explicitly covered, though they can face harassment, especially in industries or situations where power dynamics are imbalanced. Men may also be hesitant to report harassment due to societal stigmas.
2. **Lack of Recognition for the LGBTQIA+ Community:** The PoSH Act does not explicitly mention protections for the LGBTQIA+ community, despite individuals from these groups facing significant harassment and discrimination. Sexual harassment in the form

Today, the role of company secretaries is vital in translating these cultural values into practical, enforceable policies that safeguard women in the workplace in the corporate sector.

of homophobic or transphobic slurs, unwanted advances, and inappropriate behaviour is a common issue in many workplaces.

3. **Gender Binary Focus:** The focus of the Act on women-victims and men-perpetrators reinforces a gender binary, failing to recognize the complexities of gender identities and the fact that harassment can be experienced by anyone, including men and gender non-conforming individuals.

THE CASE FOR INCLUSION OF LGBTQIA+ AND MEN

1. **Evolving Understanding of Gender and Sexuality:** The legal system, organizations, and society are slowly moving towards a more inclusive understanding of gender and sexuality. The Supreme Court's judgment in *Navtej Singh Johar v. Union of India* (2018), which decriminalized Section 377 and recognized LGBTQIA+ rights, has opened the door to broader conversations about inclusivity.
2. **Changing Workplace Dynamics:** Increasing diversity in workplaces requires legal frameworks that protect all individuals, irrespective of their gender identity or sexual orientation. A safe working environment promotes equity, fosters respect, and enhances productivity.
3. **Precedents in Other Countries:** Several countries have already moved towards gender-neutral anti-harassment laws. For instance, the UK's Equality Act 2010 covers harassment faced by any individual based on sexual orientation, gender identity, or gender expression. This broader scope ensures comprehensive protection.

THE WAY FORWARD FOR INCLUSIVE POLICIES UNDER THE PoSH ACT

The implementation of the PoSH Act requires not just legal enforcement but a cultural transformation. Indian traditions have long emphasized respect for women, and these values must be translated into modern organizational frameworks. The cultural paradigm of *maryada* (respect) and *satya* (truth) must guide workplace interactions.

1. **Amendment of the Act:** To make the PoSH Act truly inclusive, amendments are needed to explicitly extend protections to men and LGBTQIA+ individuals. The definition of “aggrieved person” should be broadened to include all genders and be gender agnostic. This would ensure that anyone facing harassment, regardless of gender or sexual orientation, can seek redressal.
2. **Creating Gender-Neutral Complaint Mechanisms:** Internal Complaints Committees (ICCs) in organizations should be trained to handle complaints from all employees, including men and LGBTQIA+ individuals. The processes must be sensitive to their unique experiences, including discrimination and harassment based on gender identity or sexual orientation.
3. **Awareness and Sensitization:** Workplaces must undertake awareness campaigns that go beyond gender-specific harassment. Sensitization training should cover issues related to homophobia, transphobia, and the specific challenges faced by LGBTQIA+ individuals and men in the workplace. This is crucial to breaking down stereotypes and creating a supportive environment.
4. **Support Systems for LGBTQIA+ Employees:** Workplaces should actively promote allyship and build support systems for LGBTQIA+ employees. This includes establishing safe spaces for them to report harassment without fear of discrimination, implementing diversity and inclusion policies, and fostering a workplace culture that respects all identities.
5. **Encouraging Reporting by Men:** Societal perceptions of masculinity often discourage men from reporting harassment, especially sexual harassment. By creating gender-neutral policies and offering anonymous or confidential reporting options, organizations can help reduce the stigma and make it easier for men to come forward.
6. **Policy Frameworks Addressing Harassment in Non-Sexual Contexts:** LGBTQIA+ employees may also face **discrimination** in the form of offensive jokes, exclusionary behaviour or microaggressions. Policies should address not only sexual harassment but also broader forms of **harassment** that target gender identity or sexual orientation.
7. **Intersectionality:** A broader understanding of harassment should be incorporated into the law, acknowledging that individuals may experience harassment differently based on multiple factors like gender, sexuality, caste, race, and disability. Intersectional policies will better protect marginalized groups within the workplace.
8. **Technology and Anonymity in Reporting:** In the digital age, workplaces are increasingly moving online, and harassment can manifest in new forms,

such as inappropriate emails or virtual meetings. Organizations must adopt technology-driven solutions like AI-powered monitoring systems that flag inappropriate behaviour. Company Secretaries must ensure that digital workplaces are governed by the same ethical standards as physical ones.

9. **Global Standards and Best Practices:** As Indian companies expand globally, aligning workplace safety standards with international norms becomes essential. The PoSH Act should be seen as part of a broader commitment to global best practices in corporate governance and employee rights. Company Secretaries must ensure that organizations meet these standards not only in India but across international operations.

CONCLUSION

The PoSH Act is more than a legal framework—it is a reflection of India’s deeply rooted cultural values of respect for women. From the protection of Draupadi in the *Mahabharata* to the reverence for women seen in Lord Krishna’s life and the virtuous behaviour of Chhatrapati Shivaji Maharaj, Indian tradition has long emphasized the sanctity of a woman’s dignity.

Today, the role of Company Secretaries is vital in translating these cultural values into practical, enforceable policies that safeguard women in the workplace in the corporate sector. As custodians of corporate governance, they need to ensure compliance with the law while promoting a work environment based on mutual respect and ethical conduct.

The future imperatives include leveraging technology, addressing intersectionality and aligning with global standards to ensure workplaces remain safe, inclusive, and respectful for all. In doing so, the PoSH Act will not only fulfil its legal mandate but also reaffirm India’s age-old commitment to the dignity of women, both in the workplace and beyond. It should also be fine-tuned and aligned to cover the LGBTQIA+ and men.

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Balancing Due Process and Workplace Safety: Ethical Dilemmas for Effectively Implementing the PoSH Act

Adherence to PoSH guidelines fosters a culture centered on respect and dignity, enhancing the well-being and productivity of all employees. Balancing the rights of both complainants and the accused is fundamental to the successful implementation of the PoSH Act.



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INTRODUCTION

“Empowerment is not just about rights, but also about creating an environment where those rights are respected and upheld.” — Thuli Madonsela

The Convention on the Elimination of All Forms of Discrimination against Women (“Convention”) embodies a global commitment to gender equality and requires the establishment of safe work environments. It recognizes a woman’s fundamental right to protection against sexual harassment and her right to work with dignity. In response to this commitment, many countries have enacted legal frameworks to address workplace harassment, viewing it as a serious violation of

fundamental rights and a barrier to equal opportunity. In India, this commitment was crystallized with the enactment of the Prevention of Sexual Harassment Act, 2013 (PoSH Act), nearly a decade after the Government of India ratified the Convention.

The legislative impetus for the PoSH Act arose from the landmark Vishaka judgment of 1997, where the Supreme Court of India provided essential guidelines for preventing sexual harassment in workplaces lacking specific legal provisions. This ruling was catalyzed by the tragic gang rape of Bhanwari Devi, a social worker in Rajasthan, underscoring the urgent need for a comprehensive legal framework to protect women’s rights at work. This judgment was a pivotal step toward aligning national laws with global human rights standards, emphasizing the fundamental right of women to work in a safe and dignified environment.

Beyond its legal implications, the PoSH Act serves as a catalyst for cultural transformation in Indian workplaces. It offers a comprehensive definition of sexual harassment, including unwelcome physical contact, advances, requests for sexual favors, and various forms of verbal and non-verbal conduct. Crucially, the PoSH Act prioritizes the victim’s perception of such behavior, reinforcing the idea that intent is secondary to the impact on the victim.

The impact of the PoSH Act extends beyond mere legal compliance; it empowers women to report sexual harassment without fear of retaliation, fostering gender equality and promoting a culture of respect and inclusivity. By establishing clear guidelines for the prevention, prohibition, and redressal of sexual harassment, the PoSH Act not only safeguards employees but also holds employers accountable for maintaining a respectful and secure workplace. This legislation is vital in advancing a culture of equality and empowerment, making it an essential tool in the ongoing fight against workplace sexual harassment.

However, the implementation of the PoSH Act has not been without challenges. Instances of misuse have emerged, complicating the landscape of workplace safety and due process. Several notable cases highlight the delicate balance between protecting genuine complaints and safeguarding against false allegations.

For example, in *Anita Suresh v. Union of India & Ors* (2019), the Delhi High Court imposed a fine of Rs. 50,000 on complainant for filing a false complaint of workplace sexual harassment. The court noted inconsistencies in her allegations and concluded that the complaint was made with malicious intent. This case underscores the potential harm of false allegations and emphasizes the necessity for careful examination of evidence and witness testimonies to maintain the integrity of genuine complaints.

Similarly, in *Union of India vs. Reema Srinivasan Iyengar*, the Madras High Court quashed orders from both the Central Administrative Tribunal and the Local Complaint Committee, which had ruled in favor of the complainant. The court emphasized that the PoSH Act should not be misused to harass individuals with baseless allegations, reinforcing the need for meticulous and unbiased inquiry processes to ensure justice for both complainants and the accused.

These cases collectively emphasize the necessity of distinguishing genuine complaints from malicious ones, highlighting the importance of thorough and impartial inquiries to ensure justice and prevent misuse of legal systems.

CULTURAL SHIFTS SINCE PoSH ACT IMPLEMENTATION

Since the implementation of the PoSH Act, workplace culture has experienced a significant transformation, particularly in how organizations address sexual harassment. Before the PoSH Act, many workplaces lacked structured processes for conducting inquiries, which often led to ineffective responses to complaints and a culture of silence around inappropriate behavior. There was little awareness of rights and responsibilities, leaving many employees unsure of how to voice their concerns.

Now, companies are more vigilant and proactive, placing a greater emphasis on creating safe, respectful, and inclusive environments. The PoSH Act has encouraged organizations to prioritize employee education, leading to increased awareness about individual rights and responsibilities under the law.

This cultural shift has empowered employees to speak up against inappropriate behavior, fostering an environment where open dialogue on harassment is not only encouraged but supported. Regular training sessions and awareness programs have become standard practice, emphasizing the importance of professional conduct and mutual respect. As a result, employees feel more secure in reporting incidents without fear of retaliation, contributing to a workplace culture where respect and dignity are core values.

Moreover, the implementation of the PoSH Act has instilled a deeper sense of accountability within organizations. Leaders and HR professionals are now more actively engaged in crafting policies that uphold the principles of the PoSH Act, ensuring that respect and equality take center stage. These changes have led to a more supportive and harmonious workplace, where employees feel valued, protected, and empowered.

ETHICAL DILEMMAS IN PoSH

Handling sexual harassment cases under the PoSH Act presents significant ethical challenges, particularly regarding the potential misuse of the law for personal vendettas, retaliation, or damaging someone's reputation. These dilemmas necessitate careful decision-making to ensure fairness while maintaining a safe and respectful workplace for all employees.

The misuse of the PoSH Act can have serious consequences for the accused, jeopardizing their careers, reputations, and personal lives. It is essential to approach these cases with an impartial mindset, rigorously investigating claims to differentiate between genuine grievances and malicious accusations. This process involves actively listening to both the complainant and the accused, thoroughly examining evidence, and maintaining confidentiality to protect the dignity of all parties involved.

The key challenge is to strike a balance between protecting the rights of the complainant and ensuring that no innocent person is unjustly penalized. Organizations must establish safeguards to prevent the misuse of the PoSH Act in workplace disputes, ensuring it fulfills its purpose of creating a safe and supportive environment. By fostering a culture of fairness and accountability, organizations can address these challenges while promoting a workplace where all employees feel secure and respected.

A recent ruling, delivered on November 6, 2023, by a bench led by Chief Justice of India Dhananjaya Y Chandrachud, alongside Justices JB Pardiwala and Manoj Misra, emphasizes the importance of ethical considerations in cases of workplace harassment. The court stressed that *'sexual harassment in any form at the workplace must be viewed seriously and the harasser should not be allowed to escape from the clutches of law.'* However, the bench also recognized the potential for misuse of such laws, cautioning that *"The veracity and genuineness of the complaint should be scrutinised to prevent any misuse of such laudable laws enunciated for the upliftment of the society and for equal rights of people without gender discrimination by anybody under the garb of 'sexual harassment', lest justice rendering system would become a mockery."*

This judgment highlights the ongoing ethical challenges of implementing the PoSH Act: ensuring it protects individuals from harassment without being exploited. Maintaining this balance is essential to upholding the integrity of the law while fostering a workplace culture rooted in fairness, dignity, and respect.

FALSE ACCUSATIONS

As Eleanor Roosevelt aptly stated, *"Justice cannot be for one side alone, but must be for both"*. In the context of the PoSH Act, false accusations refer to allegations made with malicious intent, fully aware of their untrue nature. It is crucial to differentiate these from unsubstantiated claims, which may lack sufficient evidence but are not

Organizations must establish safeguards to prevent the misuse of the Act in workplace disputes, ensuring it fulfills its purpose of creating a safe and supportive environment.

motivated by ill intent. To combat the misuse of the law, the PoSH Act, under Section 14, imposes penalties for false and malicious complaints, including a fine that may extend to ₹ 50,000, and in serious cases, may lead to dismissal from employment. This framework reinforces the importance of integrity in the reporting process.

The impact of false accusations can be profound, both psychologically and socially, for the accused. Psychologically, individuals may endure stress, anxiety, depression, and feelings of betrayal. The stigma associated with such allegations can lead to isolation, diminished self-esteem, and long-term damage to personal and professional relationships. Socially, the accused may experience ostracism from colleagues, friends, and even family, resulting in a tarnished reputation that adversely affects future career opportunities.

In the workplace, false accusations foster a climate of mistrust and fear. Employees may become hesitant to engage openly, fearing misinterpretation of their actions, which can obstruct communication, collaboration, and overall productivity. Furthermore, the morale of the entire workforce can suffer, leading to decreased job satisfaction, lower engagement, and increased turnover rates.

Organizations must handle these situations with care, ensuring that justice is served while preserving a supportive and respectful work environment for everyone. By fostering a culture of accountability and fairness, organizations can mitigate the risks associated with false accusations and uphold the core values of the PoSH Act.

CHALLENGES ENCOUNTERED BY INTERNAL COMPLAINTS COMMITTEES (ICCs)

Internal Complaints Committees (ICCs), established under the PoSH Act, bear the responsibility of receiving and investigating complaints of sexual harassment, while ensuring fairness and justice for all parties involved. However, their role often involves navigating complex ethical dilemmas.

The ICC's primary responsibility is to create a safe and supportive environment for the complainant, which includes maintaining confidentiality, offering access to counseling, and implementing interim measures to prevent further harassment. However, a key challenge is safeguarding the rights of the complainant while

ensuring procedural fairness to the accused. In this regard, it is equally important to uphold the principle of fairness for the accused, who must be presumed innocent until proven otherwise. This involves giving the accused the opportunity to present their case while ensuring the investigation remains impartial and evidence-driven. Managing this dual responsibility can be challenging, as any appearance of bias or partiality could damage the credibility of the ICC and the integrity of its decisions.

Another challenge ICCs face is addressing grey areas in sexual harassment cases, where the distinction between inappropriate behavior and simple miscommunication may be unclear. Cultural differences, personal perceptions, and varying interpretations of behavior often complicate the process. For example, what might seem like a harmless joke to one could be perceived as offensive or uncomfortable by another. In such instances, the ICC must carefully evaluate the context, intent, and impact of the behavior. Even if the actions were not intended to cause harm, the committee must consider whether they have contributed to a hostile work environment for the complainant.

In these situations, the ICC must not only assess the specifics of the case but also remain vigilant against unconscious biases that could influence their decisions. This requires a nuanced and empathetic approach toward both the complainant and the accused, ensuring that neither party is unfairly treated or disregarded.

ICCs must also contend with the risk of unintended consequences—whether overcorrecting in favor of complainants at the expense of fairness to the accused or dismissing valid complaints due to a lack of clear evidence. In navigating these challenges, ICCs must uphold the principles of procedural fairness, integrity, and respect for both parties. This necessitates constant vigilance, careful deliberation, and a commitment to transparency.

Training and awareness programs play a crucial role in equipping ICC members to manage these challenges effectively. Such initiatives help to foster a deeper understanding of workplace dynamics, enhance awareness of unconscious biases, and promote a more equitable approach to investigating and resolving complex cases.

NAVIGATING FALSE ALLEGATIONS AND PRESERVING TRUST

ICCs are integral in managing these challenges by ensuring a fair and impartial process during harassment investigations. To balance the rights of both the complainant and the accused, ICCs must conduct investigations that are thorough, unbiased, and grounded in evidence. This requires maintaining strict confidentiality, allowing both parties the opportunity to present their perspectives, and ensuring that decisions are based on factual evidence rather than conjecture. Implementing interim measures, such as temporary relocation or no-contact orders, can help in protect the complainant while avoiding premature judgments about the accused.



To navigate the complexities of false allegations and maintain trust, ICCs can benefit from utilizing ethical decision-making models. One effective approach is the seven-step process:

1. **Identify the Problem:** Clearly define the issues at hand.
2. **Consider Relevant Laws and Policies:** Review applicable legal frameworks and organizational policies.
3. **Evaluate Ethical Principles:** Assess the ethical considerations involved in the case.
4. **Explore Options:** Consider possible courses of action.
5. **Consult with Colleagues or Experts:** Seek input from others to gain diverse perspectives.
6. **Make the Decision:** Choose the most appropriate action based on the information and principles.
7. **Reflect on the Outcome:** Evaluate the decision's effectiveness and learn from the process.

Adhering to the principles of transparency, impartiality, and empathy is essential throughout the process. By cultivating a culture of respect and integrity, ICCs can ensure that their decisions are both fair and just, thereby maintaining trust within the organization. This approach not only promotes the equitable treatment of all parties but also strengthens the credibility and effectiveness of the PoSH Act's implementation.

BEST PRACTICES TO ADDRESS FALSE ACCUSATIONS WITHOUT UNDERMINING PoSH ACT

As discussed above, addressing false accusations under the PoSH Act requires a careful and balanced approach to ensure both fairness and integrity throughout the investigative process. In this regard, organizations must adopt a series of best practices that promote thoroughness, transparency, and respect.

A critical aspect of managing such cases is enhancing investigation protocols. While the Indian Evidence Act may not apply directly, it remains essential to thoroughly examine circumstantial evidence. ICCs should establish robust procedures for collecting and evaluating evidence, including obtaining concrete documentation such as emails, text messages, and other relevant records. Witness statements must be meticulously verified to provide a comprehensive understanding of the incident. Detailed documentation of each step in the investigation process, including transcripts of interviews and summaries of findings, is vital. This approach not only ensures transparency but also upholds the credibility and integrity of the investigation.

Ongoing training and sensitization are essential components of this process. Regular training sessions for employees should focus on educating them about what constitutes sexual harassment and the importance of reporting genuine cases. This education helps in building an informed workforce that understands both their rights and

responsibilities. For ICC members, specialized training is crucial to enhance their ability to handle complaints impartially and effectively. This training should cover legal frameworks, investigative techniques, and strategies to maintain objectivity. Sensitization programs are equally important for addressing unconscious biases and promoting a culture of respect and empathy within the organization. These initiatives help to reduce the risk of false accusations while ensuring that genuine complaints are treated with the seriousness they deserve.

Clear communication and policy transparency are critical in maintaining trust and addressing concerns about false accusations. Organizations should clearly articulate their stance on false accusations, making it clear that such actions are unacceptable and will not be tolerated. At the same time, it is essential to reassure employees that legitimate complaints will be treated with the utmost seriousness and confidentiality. Transparent policies and procedures for handling complaints and investigations help in building trust and encourage employees to report genuine concerns. By adopting a balanced approach that safeguards the rights of all parties, organizations can uphold the principles of the PoSH Act and foster a workplace culture rooted in fairness, respect, and accountability.

RESTORING TRUST POST - FALSE ALLEGATION

Rebuilding the reputation of individuals falsely accused of harassment is crucial for preserving a positive and harmonious workplace. Organizations should implement a comprehensive strategy centered on transparency, support, and continuous improvement.

To restore trust where the matter is in the public domain, a clear communication strategy is vital. It should convey the investigation's outcome and affirm the accused's innocence, helping to dispel lingering doubts and reinforce the fairness of the process. Additionally, organizations should provide opportunities for the falsely accused to reestablish their professional standing, such as assigning them to new projects or leadership roles, facilitating their career revitalization. Creating a supportive environment where colleagues are encouraged to welcome them back is also crucial for social reintegration.

Strong support systems are necessary for both the complainant and the falsely accused. Access to counseling and psychological support can help both parties to manage the emotional impacts of the investigation. For complainants, this support aids in processing and recovery, while for the falsely accused, it addresses stress, anxiety, and feelings of betrayal. Legal assistance should also be available to navigate any potential repercussions.

Like a PoSH complaint, every false accusation should be viewed as an opportunity for organizational learning and where necessary, policy refinement. A thorough review of the investigation process can highlight areas for improvement, ensuring that policies remain both effective and fair. It is essential to update training programs to clarify the definitions of harassment and emphasize the

importance of genuine reporting. Gathering feedback from all involved parties provides valuable insights to enhance transparency and uphold procedural integrity. By continually evolving and adapting, organizations can reinforce their commitment to maintaining a fair, respectful, and safe workplace.

CONCLUSION

Navigating the complexities of implementing the PoSH Act, particularly in addressing false accusations, requires a thoughtful and balanced approach. While concerns about false allegations are valid, they should not overshadow the core objective of the PoSH Act: to create a safe, respectful, and inclusive workplace. The PoSH Act is vital for protecting employees against sexual harassment, and it's essential to acknowledge that the majority of harassment claims are legitimate, deserving thorough investigation and resolution. Adherence to PoSH guidelines fosters a culture centered on respect and dignity, enhancing the well-being and productivity of all employees.

Balancing the rights of both complainants and the accused is fundamental to the successful implementation of the PoSH Act. This involves empowering complainants to voice their concerns while upholding the accused's right to a fair process. Achieving this balance necessitates a rigorous and impartial investigation process grounded in robust evidence and transparency. Maintaining high ethical standards and clear, unbiased procedures is crucial for navigating the complexities of harassment cases and ensuring that justice is served.

In this regard, organizations must address the nuances that can arise in harassment cases. Developing comprehensive frameworks to manage these challenges is essential, including refining investigation protocols and ensuring clear communication regarding policies and addressing reintegration of those who have been falsely accused. Treating each case as a learning opportunity allows organizations to enhance their PoSH policies and promote a culture of accountability. The ultimate aim is to create a workplace where every employee feels safe, respected, and valued, free from the fear of harassment or unfounded accusations.

In addressing these issues, organizations must remain steadfast in their commitment to eradicating sexual harassment. The PoSH Act is not just a legal requirement; it is a fundamental framework that empowers employees and transforms workplace culture. Balancing the rights of all parties, upholding ethical principles, and fostering a culture of trust and respect are essential for the effective implementation of the PoSH Act, reinforcing the idea that every employee deserves to work free from harassment and fear.

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Leveraging Artificial Intelligence for Robust PoSH Act Compliance in the Workplace

As per the National Crime Record Bureau (NCRB) data, 4,45,256 cases of crimes against women were registered in 2022. In comparison to 2021's 428,278 cases, there was a 4% rise in the figure. Results in a crime occurring every 51 minute. The issue of women being involved in crimes at the workplace is a significant problem in India, as it not only violates women's basic rights but also affects their mental health. The Vishaka Committee was established to address this issue, with guidelines set by the Supreme Court of India in the Vishaka v. State of Rajasthan (1997) case. These rules were created to stop sexual harassment of women in the workplace, as India did not have specific laws at the time. The Court's ruling required preventative actions, employer duties, and grievance procedures, establishing the legal structure prior to the implementation of the PoSH Act in 2013.



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INTRODUCTION

Workplace harassment poses a serious problem on a global scale. As per a study conducted by the International Labour Organization (ILO), approximately 33% of women have encountered harassment in their workplace. In India, although the PoSH Act is a meaningful legal progression, there exists a disparity between the legislation and its actual execution. A large number of workers choose not to report incidents because they are afraid of retaliation, unaware of the procedures, and don't trust the investigation processes (Kaushik, 2020).

AI is becoming a remedy for these issues by providing resources that can support in the reporting, examination, and settlement of harassment grievances. Lee and Baskar (2019) suggest that AI could transform how workplace safety laws are enforced by automating investigation tasks and eliminating biases that may hinder justice. This article examines the different ways in which AI is changing how the PoSH Act is enforced.

AI-DRIVEN REPORTING SYSTEMS: ENSURING ANONYMITY AND PROMOTING ACCESSIBILITY

One of the main factors why workers avoid reporting harassment is the absence of anonymity. Traditional reporting methods usually require employees to communicate directly with HR staff, which can discourage them from speaking up. AI provides a resolution via digital reporting platforms that offer private and easy ways to submit complaints.

AI-powered chatbots are being widely used as a tool for gathering reports of harassment. Powered by NLP, these chatbots assist employees in delivering precise and thorough descriptions of their experiences. These AI chatbots are accessible all day and night, unlike human investigators, so employees can report incidents at their convenience. Mehta and Gupta (2021) conducted a study showing that organizations that implemented AI chatbots saw a 40% rise in reported incidents.

In 2019, McKinsey report revealed that companies using AI-powered reporting tools experienced a 30% rise in harassment reports within the initial year. These systems provide the option for employees to stay unidentified if they wish, which is important for those concerned about potential negative reactions from colleagues or managers. AI creates a non-judgmental space for harassment victims to feel comfortable reporting incidents, resulting in increased reporting rates and promoting a safer workplace atmosphere.

AI IN INVESTIGATIONS: SPEED AND ACCURACY

After a harassment complaint is submitted, the PoSH Act requires the Internal Committee (IC) to conduct a thorough investigation. This procedure, nonetheless, frequently requires a lot of time, is done by hand, and is prone to human mistakes. AI's ability to process data provides a major benefit in this field by streamlining the investigative process, leading to quicker results and

enhanced precision. In a Gartner survey in 2022, it was found that 67% of companies utilizing AI reporting tools experienced quicker resolution times for harassment cases in comparison to those employing traditional methods.

AI systems are able to analyze extensive amounts of data, such as emails, chat logs, and video recordings, with greater efficiency compared to human investigators. AI algorithms have the ability to recognize patterns of inappropriate behavior or language by examining months or even years worth of communication, for instance. Ravichandran (2022) stated that AI-supported investigations can analyze substantial evidence within hours, a task that would require human investigators days or even weeks.

AI is able to identify harassment trends that may not be easily noticed by human investigators. Through the utilization of machine learning algorithms, artificial intelligence systems are able to identify potentially harmful actions, like repeatedly making inappropriate comments or engaging in bullying, even if these instances seem insignificant when observed individually. This ability enables organizations to take action sooner, stopping more severe incidents from happening.

REDUCING BIAS IN DECISION-MAKING

One key benefit of AI in enforcing the PoSH Act is its capacity to decrease human bias during investigations. Cases of harassment frequently require subjective evaluations, which may be swayed by the investigator's unconscious prejudices based on the gender, race, or position of those involved. Biases like these can impact the results of a probe, resulting in unjust or partial conclusions.

On the contrary, artificial intelligence systems use impartial data for examining situations, guaranteeing that conclusions are made only from evidence and not individual beliefs or cultural biases. According to Zhu (2021), AI offers a degree of objectivity not attainable by human investigators. AI-driven investigations promote fair outcomes and trust in the organization's processes by removing unconscious bias.

Some firms such as Wipro, Tata Consultancy Services (TCS), Tech Mahindra, Accenture India, Infosys, among others, have observed positive changes in employee faith and contentment following the introduction of AI-powered harassment probes. According to a study carried out by Vasudevan (2021), 82% of workers were more reassured that their grievances would be dealt with fairly when AI technology was utilized in the inquiry phase.

PREDICTIVE ANALYTICS: PREVENTING HARASSMENT BEFORE IT HAPPENS

The utilization of predictive analytics in AI-powered PoSH enforcement is an exciting advancement that aims to detect possible harassment risks ahead of time. AI can pinpoint patterns of harassment by analyzing historical data like frequent employee departures from departments or repeated inappropriate remarks from certain people.

Ultimately, the integration of AI in a responsible manner can establish a workplace that values fairness, transparency, and safety for all staff, leading to more efficient resolutions with the help of human empathy, and creating truly inclusive and respectful environments.

This information allows organizations to proactively address harassment and prevent it. In the case that AI identifies a trend of harassment within a specific team or department, HR can step in by holding training sessions, enhancing supervision, or introducing additional preventative measures. Taking proactive measures not only stops harassment but also leads to a safer and more diverse workplace.

As per Raisch and Krakowski (2021), the utilization of predictive analytics in AI presents a groundbreaking strategy for enhancing workplace safety by moving from reactive responses to proactive interventions. This feature enables businesses to tackle possible problems before they worsen, decreasing the chances of harassment occurrences.

ETHICAL CONCERNS AND LIMITATIONS

Although AI shows great promise in enforcing the PoSH Act, it also comes with obstacles. Data privacy is a significant issue that is causing concern. AI systems frequently need to have access to confidential data, such as email correspondence, chat histories, and personal information. Robust cybersecurity measures must be implemented to securely manage this data and prevent the misuse or leakage of confidential information.

Mishra and Saxena (2022) stated that the increase of AI in compliance systems raises major privacy issues, especially in handling sensitive harassment complaints. In a study conducted by KPMG in 2021, it was discovered that 60% of workers had worries about data privacy, while utilising AI powered tool.

AI also has a deficiency in emotional understanding. Even though AI is good at analyzing data and identifying inappropriate behavior, it struggles to grasp the emotional intricacies of harassment cases. According to Chakraborty (2023), while AI is effective in recognizing patterns, it cannot substitute the human connection essential for showing empathy towards victims and offering emotional support during delicate investigations.

Moreover, depending too much on AI may result in a workplace that lacks humanity, causing employees to feel uneasy about sharing sensitive matters through a remote platform. It is essential for organizations to strike a balance between AI-powered systems and human supervision to guarantee victims of harassment get the care and assistance they require.



THE FUTURE OF AI IN PoSH ACT ENFORCEMENT

There are high hopes for AI's role in the enforcement of the PoSH Act in the future. With the ongoing advancement of AI technology, we anticipate more advanced tools being utilized to assist in the detection, examination, and avoidance of workplace harassment. In the future, we might witness the emergence of AI-driven virtual advisors offering instant assistance to individuals in need, or more sophisticated predictive algorithms able to pinpoint harassment threats more effectively.

Nevertheless, with the increasing incorporation of AI in enforcing the PoSH Act, it is crucial for organizations to tackle the ethical issues linked to its utilization. It is important to enhance data privacy laws in order to safeguard the privacy of harassment reports, while human participation should continue to be a crucial part of the procedure to guarantee that victims get the necessary emotional assistance.

According to Vasudevan (2021), artificial intelligence should not replace human empathy, but rather be used as a means to improve the fairness and effectiveness of harassment probes. The enforcement of the PoSH Act in the future depends on finding a balance between technology and human empathy.

CONCLUSION

Artificial intelligence could revolutionize the implementation of the PoSH Act by simplifying reporting, speeding up investigations, and minimizing human biases. By incorporating AI into the processes of preventing and resolving harassment, companies can establish safer and fairer work environments. AI can also play a role in proactive monitoring, pinpointing harassment threats before they escalate. Analyzing data on employee interactions, absenteeism, and turnover rates can help with early intervention. It is important to address ethical concerns about AI, like data privacy and the absence of emotional intelligence, to make sure AI supports humans instead of replacing them.

Furthermore, AI's capacity to create in-depth analytics and reports gives management actionable insights to enhance workplace culture and tackle systemic problems linked to harassment. AI can improve compliance audits by helping companies follow the necessary legal guidelines set by the PoSH Act, decreasing the chances of facing legal consequences or harm to their reputation. However, it is essential to guarantee that the technology is introduced openly, along with providing employee training and awareness in order to establish trust in these systems.

AI presents new and creative solutions to longstanding workplace harassment issues, promising a positive future for enforcing the PoSH Act. Ultimately, the integration of AI in a responsible manner can establish a workplace that values fairness, transparency, and safety for all staff, leading to more efficient resolutions with the help of human empathy, and creating truly inclusive and respectful environments.

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PoSH Legislation – Role of Professionals in Implementation

At the heart of this implementation lie the professionals—legal experts, human resources personnel, compliance officers, and external consultants—whose roles are pivotal in bringing the PoSH framework to life. These professionals are responsible for drafting clear policies, educating employees, managing complaints, ensuring legal compliance, and driving cultural shifts within organizations. Their expertise and vigilance can ensure that the intent of the PoSH Act is realized in practice, thus safeguarding workplaces and building trust within the corporate environment.



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INTRODUCTION

According to the preamble of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

The Supreme Court of India in the case of *Vishaka & Ors. v. State of Rajasthan & Ors.* [1997 (7) SCC 323], also

reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognised that it violates the constitutional right to equality and provided guidelines to address this issue pending the enactment of a suitable legislation.

This is an Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

While the Act provides a comprehensive legal structure, its success hinges on effective implementation. Merely having policies in place is not enough; a strong commitment to enforcement is essential to fostering a workplace culture that upholds respect and equality. Organizations are required not only to form Internal Complaints Committees (ICC) but also to conduct regular training and sensitization programs to ensure awareness across all levels of the workforce. The proper implementation of the PoSH Act is crucial in promoting an inclusive environment where employees feel empowered to raise concerns without fear of reprisal.

At the heart of this implementation lie the professionals—legal experts, human resources personnel, compliance officers, and external consultants—whose roles are pivotal in bringing the PoSH framework to life. These professionals are responsible for drafting clear policies, educating employees, managing complaints, ensuring legal compliance, and driving cultural shifts within organizations. Their expertise and vigilance can ensure that the intent of the PoSH Act is realized in practice, thus safeguarding workplaces and building trust within the corporate environment.

OVERVIEW OF THE PoSH ACT, 2013

Legal Framework

The PoSH Act, 2013, defines “sexual harassment” broadly, encompassing physical contact, demand for sexual favors, making sexually coloured remarks, showing pornography and inappropriate comments of sexual nature. The Act applies to both the organized and unorganized sectors, covering workplaces ranging from private companies to government organizations and NGOs.

The Act mandates the formation of an Internal Complaints Committee (ICC) for establishments with 10 or more employees to handle sexual harassment complaints.

THE INTERNAL COMPLAINTS COMMITTEE (ICC)

The ICC is a central feature of the PoSH Act and plays a critical role in ensuring an effective mechanism for resolving complaints of sexual harassment. The ICC must include:

- A **presiding officer** who is a senior female employee.
- At least **two members** from within the organization, preferably with a background in social work or having legal knowledge.
- An **external member** from an NGO or association committed to women's issues, ensuring objectivity in handling complaints.

However, at least 50% of the total Members so nominated shall be women.

The ICC has the authority to initiate inquiries, gather evidence, and recommend appropriate action to the employer. It must ensure confidentiality and complete the inquiry within 90 days. Upon inquiry, the ICC submits its findings to the employer, who must act on the recommendations within 60 days.

MANDATORY TRAINING AND AWARENESS

The PoSH Act emphasizes the importance of regular **training programs** to foster awareness and prevent sexual harassment at the workplace. Employers are obligated to conduct workshops and sensitization programs for employees and ICC members alike.

Training sessions should cover the following:

- Defining sexual harassment and its consequences.
- Rights and responsibilities of employees and employers under the PoSH Act.
- Procedures for filing a complaint and the role of the ICC in ensuring fair investigation.
- Empowering ICC members with knowledge of investigation techniques, legal frameworks, and empathetic handling of sensitive issues.

ROLE OF LEGAL PROFESSIONALS IN IMPLEMENTATION

Ensuring Legal Compliance

Legal professionals play a pivotal role in ensuring that companies adhere to the Prevention of Sexual Harassment (PoSH) Act, 2013. Their expertise is crucial for guiding businesses through the legal intricacies of the legislation, ensuring that all requirements are met, and creating a safe workplace for employees.

1. *Drafting PoSH Policies*

A key responsibility of legal professionals is to assist companies in formulating detailed PoSH policies that are in strict alignment with the statutory provisions of the PoSH Act. These policies must not only meet the regulatory standards but also be tailored to the unique needs of the organization. Legal experts ensure that the policies are comprehensive, clearly outlining definitions of sexual harassment, procedures for filing complaints, the composition and functions of the Internal Complaints Committee (ICC), and timelines for inquiry processes. The role also includes periodic reviews and updates of policies to ensure they remain relevant and effective in light of any legal amendments or evolving workplace dynamics.

2. *Handling Legal Challenges*

Legal professionals are often called upon to address challenges that arise from the implementation of PoSH policies. This includes advising companies on how to manage situations like false complaints or delays in the inquiry process. They help develop a legal strategy to protect both the integrity of the complaint process and the rights of all parties involved. Their guidance ensures that the company's actions are consistent with the legal framework, minimizing risks of litigation or non-compliance penalties.

Supporting the Internal Complaints Committee (ICC)

The ICC plays a central role in PoSH-related inquiries and investigations. Legal professionals support the ICC by providing crucial legal insights that help guide their actions and decisions.

1. *Providing Legal Expertise in Investigations*

Legal professionals assist the ICC in conducting investigations that comply with the principles of natural justice and adhere to PoSH Act requirements. They ensure that inquiries are conducted fairly, impartially, and without bias.

2. *Guiding Disciplinary Actions*

Once the ICC concludes its investigation, legal professionals provide counsel on the appropriate disciplinary actions based on the findings. They ensure that the measures taken are proportionate to the severity of the offense and are in line with the company's policies and the PoSH Act. In cases of disputes or appeals, legal professionals may also represent the company or the ICC's decisions in external legal forums, ensuring that all actions withstand legal scrutiny.

ROLE OF HUMAN RESOURCES (HR) PROFESSIONALS

One of the most significant roles HR professionals play under the PoSH Act is in fostering a workplace culture that is safe, inclusive, and respectful. HR is the driving force behind setting the tone for employee behavior and ensuring

that anti-harassment policies are not just legal obligations but integral to the organization's values. The key roles of HR professionals under the PoSH Act are as follows:

1. *Handling Complaints Sensitively*

HR professionals are often the first point of contact for employees who wish to report incidents of sexual harassment. Their ability to handle complaints with sensitivity and empathy is crucial. They must listen without judgment, provide reassurance to the complainant, and ensure confidentiality throughout the process. HR's role extends to guiding employees on how to file complaints formally and providing them with support as the Internal Complaints Committee (ICC) takes over the investigation. HR is responsible for making the process approachable, ensuring that employees feel safe and supported when coming forward with complaints.

2. *Organizing Awareness Programs*

Creating awareness is a core HR responsibility under the PoSH Act. HR should ensure that regular training sessions on the prevention of sexual harassment are conducted for all employees, including new hires. These programs must cover the definition of sexual harassment, complaint mechanisms, and the roles and responsibilities of employees and the ICC. Beyond mandatory training, HR can drive awareness through workshops, discussion forums, and communication campaigns that promote a respectful workplace culture.

3. *Data Collection & Reporting*

HR professionals are responsible for maintaining records related to complaints and their outcomes. This includes documenting details of complaints, actions taken, and the final resolution. Regular reporting on the status of complaints to senior management and external regulatory bodies, as required by law, is essential for transparency and accountability.

ROLE OF COMPLIANCE OFFICER AND INTERNAL AUDIT TEAMS

1. *Ensuring Legal Compliance*

Compliance officer ensures that the PoSH policy covers all aspects mandated by the law, such as the definition of sexual harassment, complaint procedures, composition and responsibilities of the Internal Complaints Committee (ICC), and timelines for addressing complaints. They also make sure the policy is communicated effectively across the organization and updated periodically to reflect any changes in the law or internal workplace dynamics.

2. *Ensuring Reporting Compliance*

According to Section 134, read with Rule 8(5) (ix) and (x) of the Companies (Accounts) Rules, 2014, it is mandatory for companies, other than One Person Companies and Small Companies, to

include a statement in the Board's report confirming compliance with the provisions relating to the constitution of the Internal Complaints Committee (ICC) under the PoSH Act, 2013. Therefore, it is the prime responsibility of the Compliance Officer to ensure that the company complies with the provisions of the PoSH Act and reports the same in the Board's report.

3. *Regular Audits*

Internal audit teams are responsible for conducting regular audits to assess how well the company is adhering to its PoSH guidelines. These audits involve reviewing documentation of complaints, the processes followed, and the outcomes to ensure they are in line with legal requirements. Internal auditors check whether mandatory training programs have been conducted, whether employees are aware of the complaint mechanisms, and whether the ICC is functioning effectively. Regular audits not only ensure compliance but also help identify gaps in the existing framework that may need corrective action.

4. *Corrective Actions*

Beyond just monitoring, internal audit teams and compliance officers play a pivotal role in recommending and implementing corrective actions based on their findings. If any lapses in compliance are identified—such as delays in handling complaints, inadequate record-keeping, or lack of follow-up on training programs—these teams are responsible for suggesting improvements and ensuring they are implemented.

ROLE OF EXTERNAL CONSULTANTS AND PoSH EXPERTS

1. *Specialized Training Programs*

PoSH experts provide detailed, hands-on training that includes real-life scenarios, role plays, and case studies. This kind of focused training equips employees and the Internal Complaints Committee (ICC) with the skills needed to handle complaints appropriately. Additionally, external consultants often conduct capacity-building workshops for senior management, helping them understand their role in fostering a harassment-free workplace.

2. *Third-Party Investigations*

One of the significant contributions of external consultants is their involvement in conducting neutral, unbiased investigations when there is a potential conflict of interest within the organization. As an external member of the ICC, the role of a PoSH expert becomes more significant in situations where internal stakeholders are too closely involved, or the complainant fears bias. Bringing in external investigators ensures impartiality and fairness in the investigation process.

3. *Providing Advisory Services*

External consultants offer critical advisory services, especially when companies face complex or sensitive cases. They provide guidance on interpreting the law in challenging situations and ensure that companies navigate legal and ethical considerations with care. This can include advising on appropriate disciplinary actions, helping manage appeals, or offering recommendations for systemic changes based on the patterns emerging from complaints.

The successful implementation of PoSH legislation depends heavily on the active involvement of various professionals, including legal experts, HR personnel, compliance officers, and external consultants.

CHALLENGES IN IMPLEMENTATION

1. **Lack of Awareness**

One of the primary challenges in implementing the PoSH Act is the lack of awareness among employees about their rights and the procedures for filing complaints. Many organizations, especially in smaller or less structured environments, may not fully understand the nuances of the legislation. This leads to confusion and reluctance to report incidents of sexual harassment.

2. **Bias in Investigations**

Another significant challenge is the presence of bias in investigations, which can undermine the integrity of the PoSH process. This bias can manifest when internal stakeholders have close relationships with the parties involved or hold preconceived notions, leading to partial decisions. Additionally, maintaining confidentiality is often compromised in sensitive cases, further eroding trust in the system.

3. **Non-Compliance Penalties**

Failure to comply with the PoSH Act not only undermines the organization's efforts to create a safe working environment but also exposes it to legal risks. Companies that do not have proper policies, training, or complaint mechanisms in place can face severe penalties, including fines, reputational damage, and legal action.

cases, employers may attempt to influence ICC decisions. Apart from this, ICC members, particularly external members, may not have the required legal expertise or understanding of sexual harassment issues, leading to flawed decisions or delays in resolving cases.

3. **Subjectivity in Defining Harassment:**

Some critics argue that the Act's definitions of sexual harassment, particularly what constitutes "unwelcome" behavior, can be subject to subjective interpretation, leading to inconsistent application across cases.

4. **Power Dynamics Overlooked:**

The Act does not sufficiently address the inherent power dynamics that can make it difficult for junior employees to report harassment by senior colleagues, as the fear of losing their job or career progression remains high.

5. **Social Stigma and Fear**

Many women do not come forward to report harassment due to societal stigma, fear of being judged, or fear of career repercussions. The law does not sufficiently address the broader social and cultural factors that contribute to underreporting. In some cases, women fear that reporting harassment may damage their professional reputation or lead to further isolation within the workplace.

DRAWBACKS OF PoSH ACT

1. **Ineffective Implementation in the Unorganized Sector**

The Act applies to the organized as well as the unorganized sector, but implementing PoSH in the informal sector (e.g., domestic workers, daily wage laborers) has been a major challenge due to lack of resources, administrative support, and monitoring mechanisms.

2. **Lack of Independence & Expertise in Internal Complaints Committee (ICC):**

The ICC is constituted by the employer and functions within the organization, which may lead to concerns about its independence and impartiality. In some

6. **Exclusion of Male Victims:**

The PoSH Act focuses specifically on the harassment of women in the workplace, which leaves male victims of workplace harassment without similar legal protections under this law. This creates a gap in addressing workplace harassment holistically.

7. **Concerns Over False Complaints**

While studies have shown that false complaints of sexual harassment are rare, the fear of such complaints has been raised as a concern, particularly among men in leadership positions. This has led to a perception that the law can be misused to settle personal or professional scores.



BEST PRACTICES FOR PoSH IMPLEMENTATION

1. Establish a Clear and Comprehensive Policy

- Organizations should draft a comprehensive policy on sexual harassment that clearly defines what constitutes harassment, outlines reporting mechanisms, explains the role of the ICC, and details the disciplinary actions for non-compliance.
- The PoSH policy should be accessible to all employees, and its provisions should be communicated clearly through onboarding programs, employee handbooks, and other internal communications.

2. Constitute a Competent Internal Complaints Committee (ICC)

- Ensure that a well-structured Internal Committee is constituted, comprising at least four members, including a senior woman employee as the presiding officer, at least two employees with awareness of sexual harassment issues, and one external member with expertise in social work, law, or related fields.
- The ICC must function independently, without any undue influence from management or senior

leadership. The inclusion of an external expert helps to enhance impartiality.

- Ensure gender and departmental diversity in the ICC to represent the various sections of the workforce and foster trust among employees.

3. Comprehensive Training and Awareness Programs

- Conduct regular workshops, seminars, and e-learning sessions on sexual harassment, gender sensitivity, and PoSH compliance. All employees, including management and contractual staff, should undergo training.
- Provide specialized training to ICC members on how to handle complaints, conduct inquiries, maintain confidentiality, and adhere to the legal provisions of the PoSH Act.
- Use posters, newsletters, email campaigns, and other materials to continuously raise awareness about the law, the company's policy, and the reporting process.

4. Ensure Confidential and Safe Reporting Mechanisms

- Provide employees with multiple, confidential ways to report harassment, such as email,

telephone, or an anonymous reporting portal. This ensures that employees feel safe in coming forward.

- Maintain strict confidentiality at every stage of the complaint and inquiry process to protect the identity of the complainant and the respondent. The ICC should communicate this clearly to all parties involved.
- Ensure that the organization has a zero-tolerance policy toward retaliation against employees who file complaints or participate in investigations.

5. Timely and Transparent Complaint Handling

- Establish clear timelines for reporting, inquiry, and resolution as per the PoSH Act (a 90-day limit for inquiry and a 60-day limit for implementation of the recommendations). Delays in handling cases erode employee trust.
- The ICC should conduct the inquiry in an unbiased manner, ensuring both the complainant and the respondent are given a fair opportunity to present their case.
- Take prompt and appropriate disciplinary action against offenders in line with the findings of the ICC. Ensure that the consequences for non-compliance are severe enough to deter future misconduct.

6. Monitor and Review Compliance Regularly

- As per the PoSH Act, the ICC must prepare and submit an annual report to the employer and the district officer, detailing the number of cases received, disposed of, and any actions taken.
- Conduct periodic audits of the organization's PoSH compliance, policies, and processes. This helps to identify gaps, areas of improvement, and ensures that the ICC is functioning properly.
- Regularly seek feedback from employees on the workplace environment and the effectiveness of the PoSH policy. Conducting anonymous surveys or focus group discussions can help assess the perception of workplace safety.

7. Handle False Complaints with Care

- While it is important to address false complaints, this should be done cautiously and with a proper inquiry process. False complaints should be penalized, but the organization must ensure that this provision does not deter genuine complainants from coming forward.
- Provide clear communication on how false complaints are dealt with while maintaining the integrity of the grievance redressal process.

BEST PRACTICE CASE STUDIES FOR PoSH IMPLEMENTATION IN INDIA

1. Infosys: Technology-Driven PoSH Compliance

Infosys, a leading IT services company, has embraced technology to streamline PoSH compliance and reporting. With a large, geographically dispersed workforce, they recognized the need for an efficient, tech-enabled solution to handle sexual harassment complaints.

2. Hindustan Unilever Limited (HUL): Senior Leadership Accountability

Hindustan Unilever (HUL), a leading FMCG company in India, integrated PoSH compliance into its core business culture by emphasizing senior leadership accountability. HUL's top management took an active role in promoting a safe and inclusive workplace.

3. Zomato: Supporting Gig Workers under PoSH

Zomato, a leading food delivery platform, took a progressive step by including gig workers, particularly delivery women, under its PoSH policy. Since many delivery executives face harassment while on the job, Zomato extended its sexual harassment protections to cover them.

CONCLUSION

The successful implementation of PoSH legislation depends heavily on the active involvement of various professionals, including legal experts, HR personnel, compliance officers, and external consultants. Each of these roles plays a crucial part in not only ensuring compliance with the law but also in fostering a culture of respect, safety, and inclusivity within the workplace. Legal professionals help interpret the nuances of the legislation, HR ensures that policies are embedded into the organizational fabric, compliance officers monitor adherence, and external consultants provide impartial expertise when needed.

Investing in robust PoSH mechanisms is not just a legal obligation; it is a key factor in promoting a healthy and positive work environment where employees feel safe and valued. Companies must take proactive steps to ensure that all employees are trained, that there are clear and accessible channels for reporting incidents, and that complaints are handled with the utmost confidentiality and fairness. By doing so, organizations not only protect themselves from legal risks but also build a workplace culture that thrives on mutual respect and trust.

The time for action is now—organizations must prioritize the creation of safe and harassment-free workplaces by fully integrating PoSH principles into their operations. This is not just about compliance; it is about ensuring dignity and equality for all employees, laying the foundation for a more productive, engaged, and resilient workforce.

□

Transforming Workplace Culture: The Role and Impact of PoSH Legislations

The PoSH Standard extends beyond compliance by advocating for best practices in harassment prevention, such as inclusive policies and continuous employee education. Global trends indicate increasing reporting rates, adoption of technology for anonymous reporting, and a heightened focus on gender-sensitive policies. Landmark judgments like India's "Vishaka guidelines" and the U.S. Supreme Court decisions in Faragher and Ellerth have significantly impacted the legal landscape, setting precedents for handling harassment claims. The successful implementation of PoSH measures relies heavily on the contributions of HR professionals, legal advisors, and consultants, who work together to uphold the standards and foster an inclusive workplace culture.



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INTRODUCTION

In an era where workplace culture is increasingly under scrutiny, the Prevention of Sexual Harassment (PoSH) legislations have become essential in fostering environments of respect, safety, and inclusivity. These laws are designed not only to prevent and address incidents of sexual harassment but also to build a comprehensive framework that promotes gender equality and supports employees' well-being. This article explores the extensive implications of PoSH legislations, examining their legal and HR aspects, the benefits of adhering to the PoSH Standard, global perspectives, key landmark judgments, and the critical role of professionals in effective implementation.

LEGAL AND HR DIMENSIONS OF PoSH

Legal Frameworks: An In-Depth Overview

Sexual harassment laws have evolved significantly to address various forms of harassment and ensure comprehensive protection for employees. Understanding the intricacies of these laws is crucial for organizations striving to create a safe and respectful work environment.

India's PoSH Legislation

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013,

represents a major step forward in safeguarding women in the workplace in India. Enacted in response to strong calls for enhanced protection for women at work, the Act mandatorily requires organizations to establish Internal Complaints Committees (ICCs) to handle complaints of sexual harassment and ensure fair and just resolutions.

The Act offers a broad definition of sexual harassment, including physical contact, advances, comments, and any behavior that creates a hostile work environment. This inclusive definition aims to address a wide range of inappropriate conduct, ensuring that all forms of harassment are tackled effectively.

Furthermore, the Act highlights the importance of educating employees about their rights and the reporting mechanisms available to them. Employers are obligated to conduct regular workshops and training sessions to raise awareness about what constitutes sexual harassment and how to report it.

U.S. Legal Framework

In the United States, the Civil Rights Act of 1964, specifically Title VII, provides the legal foundation for addressing sexual harassment. Under this Act, sexual harassment is considered a form of sex discrimination, which is prohibited in the workplace. The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing these provisions and ensuring that employers comply with anti-harassment requirements.

The EEOC's guidelines define sexual harassment as unwelcome conduct of a sexual nature that creates a hostile work environment or leads to adverse employment decisions. These guidelines cover both quid pro quo harassment (where submission to harassment is linked to employment benefits) and hostile work environment harassment.

Employers in the U.S. are required to implement effective anti-harassment policies, provide training, and establish complaint procedures. Failure to do so can result in legal liability, including compensatory and punitive damages, as well as reputational damage.

UK's Approach

The UK's Equality Act, 2010 consolidates various anti-discrimination laws into a single framework, including provisions related to sexual harassment. This Act requires employers to take proactive steps to prevent harassment and to address it effectively when it occurs.

The Act defines sexual harassment as unwanted conduct related to sex that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating, or offensive environment. This broad definition ensures that a wide range of behaviors are covered, reflecting the diverse experiences of harassment that individuals may face.

Employers are required to implement measures to prevent harassment, such as conducting risk assessments, providing training, and establishing clear reporting mechanisms. Additionally, the Act requires that employers address complaints promptly and take appropriate action to prevent further harassment.

Australia's Legislation

Australia's Sex Discrimination Act, 1984 mandates that organizations take steps to prevent sexual harassment and provide mechanisms for addressing it. This Act defines sexual harassment as any unwelcome sexual advance, request for sexual favors, or other conduct of a sexual nature that creates a hostile or intimidating work environment.

Organizations in Australia are required to establish and implement anti-harassment policies, provide training, and ensure that employees are aware of their rights and the procedures for reporting harassment. The Act also provides for complaint mechanisms and remedies for victims, including compensation and remedies for loss of dignity and emotional distress.

HR RESPONSIBILITIES IN POSH COMPLIANCE

Developing and Implementing Policies

HR professionals play a crucial role in the implementation and enforcement of PoSH laws. One of their primary responsibilities is to develop and maintain comprehensive anti-harassment policies. These policies should clearly define what constitutes sexual harassment, outline procedures for reporting and investigating complaints, and specify the consequences for those found guilty of harassment.

An effective anti-harassment policy should be detailed and inclusive. It should address various forms of harassment, including verbal, physical, and non-verbal behavior. The policy should also include procedures for filing complaints, conducting investigations, and providing support to victims. Additionally, it should outline the steps taken to protect employees from retaliation for reporting harassment.

Training and Education

Regular training is a fundamental aspect of PoSH compliance. HR departments must design and deliver training programs that educate employees about their rights and responsibilities under PoSH laws. These training sessions should be interactive and engaging, incorporating real-life scenarios and case studies to help employees understand and navigate potential harassment situations.

Training should be conducted for all employees, including management and supervisory staff. It should cover the definitions of sexual harassment, the reporting process, and the organization's policies and procedures. Additionally, training should be updated regularly to address new challenges and reinforce key principles.

Monitoring and Evaluation

HR professionals should implement mechanisms for monitoring and evaluating PoSH practices within the organization. This includes conducting regular audits of anti-harassment policies and procedures, soliciting feedback from employees, and assessing the effectiveness of training programs. Monitoring helps to identify areas for improvement and ensures that policies and practices remain relevant and effective.

Organizations should also establish channels for employees to provide feedback on the effectiveness of anti-harassment measures. This feedback can be gathered through surveys, focus groups, or anonymous suggestion boxes. By actively seeking employee input, HR can make informed decisions about necessary changes and improvements.

THE POSH STANDARD: ADDING VALUE BEYOND COMPLIANCE

Embracing Best Practices

Adopting the PoSH Standard involves going beyond mere legal compliance to implement best practices in harassment prevention and response. This proactive approach helps create a culture of respect and inclusivity, demonstrating a genuine commitment to employee well being.

Comprehensive Anti-Harassment Policies

The PoSH Standard emphasizes the development of detailed anti-harassment policies that cover a wide range of behaviors and situations. These policies should be designed to address all forms of harassment, including physical, verbal, and psychological harassment. Additionally, policies should include clear procedures for reporting, investigating, and resolving complaints.

Interactive and Engaging Training Programs

Training programs aligned with the PoSH Standard should be interactive and engaging. They should include role-playing exercises, case studies, and discussions to help employees understand and navigate potential

harassment scenarios. The training should also be tailored to address the specific needs and challenges of different departments or job roles within the organization.

Ongoing Monitoring and Evaluation

Under the PoSH Standard, organizations should continuously monitor and evaluate their anti-harassment practices. This includes conducting regular audits, reviewing feedback from employees, and assessing the effectiveness of training programs. By staying informed about best practices and emerging trends, organizations can make necessary adjustments to their policies and practices.

THE ADDED VALUE OF ADHERING TO THE PoSH STANDARD

Building Employee Trust

Adhering to the PoSH Standard helps in build employee trust by demonstrating a genuine commitment to creating a safe and respectful workplace. When employees see that their organization takes harassment seriously and has implemented comprehensive measures to address it, they are more likely to feel valued and supported.

Mitigating Legal Risks

By proactively addressing harassment and maintaining robust anti-harassment measures, organizations can reduce their legal risks. Effective policies and training programs help to ensure compliance with PoSH laws, reducing the likelihood of legal disputes and reputational damage. A proactive approach to harassment prevention also helps to create a positive work environment, where employees feel confident that their concerns will be addressed.

Enhancing Workplace Culture

Promoting respect and inclusivity through the PoSH Standard contributes to a positive workplace culture. Employees who feel respected and valued are more likely to be engaged and motivated, leading to increased job satisfaction and productivity. A positive workplace culture also fosters collaboration, creativity, and overall organizational success.

GLOBAL PERSPECTIVES ON PoSH LEGISLATION

International Approaches and Trends

Sexual harassment is a global issue, and different countries have developed varied frameworks to address it. Understanding these international approaches provides valuable insights into how different regions tackle workplace harassment and the emerging trends in this area.

The U.S. Approach

In the United States, the framework established under Title VII of the Civil Rights Act, 1964, has set a global

A comprehensive approach to PoSH implementation benefits not only individuals but the entire organization, paving the way for a more inclusive and equitable future.

precedent for addressing sexual harassment. The EEOC's guidelines and enforcement mechanisms have influenced similar laws in other countries, emphasizing the importance of effective policies and training.

The UK Framework

The UK's Equality Act, 2010 requires employers to take proactive measures to prevent harassment and address it effectively. This legislation reflects a commitment to workplace equality and provides a comprehensive framework for addressing sexual harassment. Recent trends in the UK include a greater focus on gender-sensitive training and expanded definitions of harassment.

Australia's Approach

Australia's Sex Discrimination Act, 1984 mandates that organizations take steps to prevent and address sexual harassment. This Act highlights the importance of creating a supportive work environment and provides mechanisms for addressing complaints. Recent trends in Australia include increased emphasis on effective reporting mechanisms and ongoing education.

Recent Global Trends

Recent global trends in PoSH legislations include a greater emphasis on comprehensive training programs, expanded definitions of harassment, and strengthened enforcement mechanisms. Many countries are focusing on creating inclusive work environments and addressing systemic biases. Technology also plays a role in facilitating anonymous reporting and streamlining complaint processes.

LANDMARK JUDGMENTS AND THEIR IMPACT

Key Cases Shaping PoSH Legislation

Landmark judgments have had a profound impact on the interpretation and enforcement of PoSH laws. These cases have shaped legal precedents and influenced how organizations address workplace harassment.

India's Vishaka Guidelines

The Supreme Court of India's ruling in **Vishaka v. State of Rajasthan (1997)** established guidelines for preventing and addressing workplace harassment. These guidelines formed the basis for the Sexual Harassment of Women at

Workplace (Prevention, Prohibition, and Redressal) Act, 2013. The Vishaka guidelines emphasized the need for comprehensive policies, effective complaint mechanisms, and training programs.

U.S. Faragher and Ellerth Decisions

In the United States, the Supreme Court's decisions in **Faragher v. City of Boca Raton* (1998)** and ***Burlington Industries, Inc. v. Ellerth (1998)** established the principle of employer liability for harassment if appropriate measures are not taken. These rulings highlighted the importance of having effective anti-harassment policies and training programs. The decisions also clarified the legal standards for employer liability and the requirements for preventing and addressing harassment.

UK's Mba Case

The UK case of **Mba v. London Borough of Merton (2011)** reinforced the need for employers to take reasonable steps to prevent harassment and address complaints effectively. The judgment emphasized the importance of maintaining a proactive approach to harassment and ensuring that employees are aware of their rights and the procedures for reporting issues.

GENDER SENSITIVITY IN PoSH LEGISLATION

The Importance of Gender Sensitivity

Gender sensitivity is a fundamental aspect of PoSH legislations. It involves addressing power imbalances and ensuring that all employees are protected from harassment, regardless of gender. Gender-sensitive policies should include inclusive definitions of harassment and equitable reporting mechanisms.

Developing Gender-Sensitive Policies

Gender-sensitive PoSH policies should address various forms of harassment and ensure that all employees, regardless of gender, are protected. This involves creating policies that are inclusive and reflective of the diverse experiences of harassment. Policies should also include provisions for addressing systemic biases and promoting gender equality.

Creating Equitable Reporting Mechanisms

Equitable reporting mechanisms are essential for ensuring that all employees have access to fair and confidential processes for reporting harassment. This includes providing multiple reporting channels, ensuring confidentiality, and protecting employees from retaliation. By creating accessible and unbiased reporting mechanisms, organizations can encourage employees to come forward with their concerns and ensure that they are addressed effectively.

The Impact of Gender-Sensitive Policies on Workplace Culture

Gender-sensitive PoSH policies contribute to a more inclusive and respectful workplace culture. By addressing

systemic biases and promoting gender equality, these policies help create a supportive environment where all employees feel valued and respected. A positive workplace culture leads to increased employee engagement, satisfaction, and overall organizational success.

BUILDING GENDER INCLUSIVITY THROUGH PoSH STANDARDS

Promoting Inclusive Work Environments

The PoSH Standard plays a critical role in fostering gender inclusivity within organizations. Best practices for promoting inclusivity include ensuring diverse representation in decision-making bodies, such as ICCs, and providing ongoing training on gender sensitivity and inclusivity.

Ensuring Diverse Representation

Diverse representation in decision-making bodies helps ensure that a wide range of perspectives and experiences are considered. This includes having representatives from different genders, backgrounds, and levels within the organization. Diverse ICCs are better equipped to address a broad range of issues and ensure fair and equitable decision-making.

Ongoing Training and Education

Ongoing training on gender sensitivity and inclusivity is essential for creating a respectful and inclusive workplace culture. Training programs should be regularly updated to address new challenges and reinforce best practices. Additionally, training should be tailored to address the specific needs and experiences of different departments or job roles within the organization.

Creating Inclusive Policies and Practices

Organizations should develop policies and practices that promote gender inclusivity and address systemic biases. This includes creating policies that support work-life balance, provide equal opportunities for career advancement, and address issues related to pay equity. By fostering an inclusive environment, organizations can support the growth and development of all employees.

TRENDS IN REPORTING AND COMPLIANCE

Recent Developments in Reporting and Compliance

Recent trends in PoSH reporting and compliance reflect a growing commitment to creating safe and respectful workplaces. Increasing reporting rates and the use of technology to facilitate reporting are some of the key developments in this area.

Increased Reporting Rates

Recent data indicates that reporting rates for sexual harassment have increased, suggesting that employees are more confident in the reporting process and the effectiveness of anti-harassment measures. This increase may be attributed to greater awareness of PoSH policies,

improved reporting mechanisms, and a stronger organizational commitment to addressing harassment.

Technological Innovations

Technology is playing a significant role in facilitating anonymous reporting and streamlining complaint processes. Many organizations are implementing digital platforms that allow employees to report harassment confidentially and track the progress of their complaints. These technological innovations help to ensure that complaints are addressed promptly and transparently.

Proactive Compliance Measures

Organizations are increasingly adopting proactive measures to ensure compliance with PoSH laws. This includes conducting regular audits of anti-harassment policies and practices, seeking external expertise, and engaging in continuous improvement efforts. By staying informed about best practices and emerging trends, organizations can maintain effective anti-harassment measures and reduce legal risks.

THE CRUCIAL ROLE OF PROFESSIONALS IN PoSH IMPLEMENTATION

Key Roles and Responsibilities

The successful implementation of PoSH legislations relies on the efforts of various professionals, including HR experts, legal advisors, and consultants. Each of these roles contributes to the effective enforcement of anti-harassment policies and the creation of a supportive workplace culture.

HR Professionals

HR professionals are responsible for developing and implementing anti-harassment policies, conducting training programs, and providing support to employees and management. They play a critical role in ensuring that policies are clear, accessible, and enforced consistently. HR professionals also handle the investigation of complaints and work to create a culture of respect and inclusivity.

Legal Advisors

Legal advisors offer guidance on compliance with PoSH laws and assist in handling complaints to ensure impartial investigations. They provide expertise in legal requirements, help to draft policies and procedures, and advise on risk management. Legal advisors also assist in responding to legal challenges and ensuring that the organization's practices align with legal standards.

Consultants and Trainers

Consultants and trainers provide expert advice on best practices and develop comprehensive training programs. They help organizations stay informed about emerging trends and challenges in harassment prevention. Consultants and trainers also assist in evaluating the effectiveness of anti-harassment measures and making necessary improvements.

CONCLUSION

The Prevention of Sexual Harassment (PoSH) legislations are essential for creating safe, respectful, and inclusive workplaces. By understanding and implementing these laws, organizations can ensure compliance while fostering an environment where all employees feel valued and supported. The PoSH Standard enhances this effort by promoting best practices and continuous improvement, contributing to a positive workplace culture. Landmark judgments have shaped the interpretation and enforcement of these laws, while global perspectives and trends provide valuable insights into emerging practices. Ultimately, a comprehensive approach to PoSH implementation benefits not only individuals but the entire organization, paving the way for a more inclusive and equitable future.

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Appendix

- i. Sample PoSH Policy Template
- ii. Audit Checklist for PoSH Compliance
- iii. Case Studies on PoSH Implementation

1. Sample PoSH Policy Template

Prevention of Sexual Harassment Policy

i. Introduction

Name of the Company..... is committed to providing a work environment free from sexual harassment. This policy outlines the procedures for preventing, reporting, and addressing sexual harassment in the workplace.

ii. Definition of Sexual Harassment

Sexual harassment includes any unwelcome behavior of a sexual nature that creates an intimidating, hostile, or offensive work environment. This includes physical advances, verbal comments, and non-verbal actions.

iii. Scope

This policy applies to all employees, contractors, and third parties interacting with (Insert Name of the Company).

iv. Reporting Mechanism

Employees should report incidents of sexual harassment to their direct supervisor, HR department, or a designated Internal Complaints Committee (ICC) member. Reports can be made verbally or in writing.

v. Investigation Procedures

Upon receiving a complaint, the ICC will conduct a thorough and impartial investigation. Both parties involved will have the opportunity to present their case.

vi. Confidentiality

All complaints and investigations will be handled with the utmost confidentiality to protect the privacy of all parties involved.

vii. Disciplinary Actions

Appropriate disciplinary actions will be taken against individuals found guilty of sexual harassment, which may include counseling, suspension, or termination of employment.

viii. Training and Awareness

Regular training sessions will be conducted to ensure that all employees understand this policy and their rights under it.

ix. Review and Updates

This policy will be reviewed annually and updated as necessary to comply with legal requirements and organizational changes.

x. Contact Information

For any questions or further assistance, contact HR Department/ICC contact details.

2. Compliance Officer Checklist for PoSH Compliance**i. Policy Review**

- *Is there a documented PoSH policy in place?*
- *Is the policy reviewed and updated annually?*
- *Does the policy include definitions, reporting procedures, and disciplinary actions?*

ii. Training and Awareness

- *Are employees provided with PoSH training upon joining and periodically thereafter?*
- *Is training content up-to-date and relevant?*
- *Are records of training attendance maintained?*

iii. Reporting Mechanisms

- *Are multiple reporting channels available (e.g., direct supervisor, HR, ICC)?*
- *Are employees aware of how to report harassment?*
- *Is there a system for anonymous reporting?*

iv. Investigation Procedures

- *Is there a clear procedure for investigating complaints?*
- *Are investigations conducted impartially and confidentially?*
- *Are records of investigations maintained?*

v. Disciplinary Actions

- *Are disciplinary actions clearly defined in the policy?*
- *Are actions taken in response to proven cases of harassment documented?*
- *Is there a process for appealing disciplinary decisions?*

vi. Monitoring and Evaluation

- *Is there a regular review of PoSH policies and practices?*
- *Are feedback mechanisms in place for employees to provide input on PoSH measures?*
- *Are audit results used to improve PoSH practices?*

vii. Documentation

- *Are all PoSH-related documents (policies, training records, investigation reports) properly filed and accessible?*
- *Is there a system for tracking and managing PoSH-related incidents?*

3. Case Studies on PoSH Implementation**Case Study 1: Large Tech Company**

Background: A global tech company faced a series of sexual harassment complaints that highlighted gaps in their existing policies.

Implementation: The company revised its PoSH policy to include clearer definitions of harassment, established a dedicated Internal Complaints Committee (ICC), and launched a comprehensive training program.

Outcome: Improved reporting rates and employee feedback showed increased confidence in the reporting and resolution process. The company saw a significant reduction in harassment incidents and an enhanced workplace culture.

Case Study 2: Financial Services Firm

Background: A financial services firm received feedback indicating that employees were unaware of their rights and the reporting procedures for harassment.

Implementation: The firm implemented a series of workshops and e-learning modules to educate employees about sexual harassment, reporting procedures, and the importance of a respectful workplace. They also introduced an anonymous reporting system.

Outcome: Increased employee awareness and a higher rate of reporting. The firm reported a more proactive approach to addressing harassment and a positive shift in workplace culture.

Case Study 3: Educational Institution

Background: An educational institution experienced challenges in addressing harassment due to a lack of clear procedures and inconsistent application of policies.

Implementation: The institution developed a detailed PoSH policy, provided specialized training for staff and students, and established a transparent investigation process. They also created a dedicated office for handling complaints.

Outcome: Improved handling of harassment cases, greater transparency in investigations, and a stronger commitment to creating a safe and supportive environment for both staff and students. □

Ensuring Gender inclusivity and Workplace Safety: The impact of PoSH Legislation in India

Creating a safe, inclusive, and harassment-free workplace is the shared responsibility of employers and employees. While employees must be aware of their rights and the processes available to them under the PoSH Act, employers have a critical role in ensuring compliance with the law and fostering a culture of respect and safety.



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INTRODUCTION

Sexual harassment at the workplace has long been a pervasive issue worldwide, and in India, the introduction of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013**—commonly known as the **PoSH Act**—was a monumental step towards creating safer work environments. This law was enacted to address sexual harassment comprehensively and mandates preventive, prohibitory, and redressal measures. However, ensuring the success of this law depends not only on legal mandates but also on the awareness and commitment of both employees and employers.

Creating a safe, inclusive, and harassment-free workplace is the shared responsibility of employers and employees. While employees must be aware of their rights and the processes available to them under the PoSH Act, employers have a critical role in ensuring compliance with the law and fostering a culture of respect and safety.

This article delves into the key aspects of the PoSH Act, the importance of employee awareness, the employer's role in ensuring compliance, significant case laws that have shaped the application of the Act, and a comprehensive understanding of how organizations can cultivate a workplace environment that promotes gender inclusivity and safety.

BACKGROUND AND THE NEED FOR PoSH LEGISLATION

Sexual harassment has always been a significant issue, particularly for women in the workplace. Before the enactment of the PoSH Act, there was no clear legislative framework to address such harassment. The absence of a formal law became glaringly obvious in the landmark case of **Vishaka & Ors vs. State of Rajasthan (1997)**, which involved the brutal gang rape of a social worker, highlighted the legal vacuum in preventing and addressing workplace sexual harassment. As a result, the Supreme Court of India issued the “**Vishaka Guidelines**”, which were to be followed until Parliament passed formal legislation.

The Vishaka Guidelines laid the foundation for the **PoSH Act, 2013**, which offers a detailed framework for preventing sexual harassment, prohibiting it, and creating mechanisms for redressal. The Act's purpose was to create a conducive workplace environment where employees, especially women, could work without fear of being harassed.

OVERVIEW OF THE PoSH ACT, 2013

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013** is designed to ensure the safety of women at the workplace by providing guidelines and processes for addressing complaints of sexual harassment. It applies to all workplaces in both the organized and unorganized sectors.

Key provisions of the PoSH Act includes:

- **Sexual Harassment:** The Act provides a broad definition of sexual harassment, including unwelcome acts like physical contact, demands for sexual favors, sexually colored remarks, showing pornography, and other forms of unwelcome verbal or non-verbal conduct of a sexual nature.
- **Workplace:** The definition of a workplace is expansive and covers government offices, private companies, NGOs, hospitals, sports institutions, and any place where the employee may visit during the course of their work, including transportation.

- **Internal Complaints Committee (ICC):** Every organization with 10 or more employees is mandated to set up an **Internal Complaints Committee (ICC)** to handle complaints of sexual harassment. The ICC must include a senior female employee as the Presiding Officer, two other employees, and an external member with knowledge of sexual harassment issues.
- **Local Complaints Committee (LCC):** In places where an establishment does not have an ICC, such as in the unorganized sector or in workplaces with fewer than 10 employees, a **Local Complaints Committee (LCC)** is constituted at the district level.
- **Complaint Mechanism:** Victims must file a written complaint with the ICC or LCC within three months of the incident, with provisions for extension in special cases. The ICC is required to conduct an inquiry and submit its report within 90 days.
- **Confidentiality:** The Act mandates that the identity of the complainant, respondent, witnesses, and any details of the inquiry remain confidential. There are penalties for violating this provision.
- **Employer's Responsibilities:** Employers must take preventive steps, such as organizing regular awareness programs, conducting workshops, prominently displaying the anti-harassment policy, and constituting an ICC.

KEY CASE LAWS ON PoSH LEGISLATION

Judicial interpretation of the PoSH Act has helped clarify and enforce the provisions of the law. Several important cases have set legal precedents and established the scope of employer responsibilities under the PoSH Act:

- **Dr. Punita K. Sodhi vs. Union of India & Ors (2010):** In this case, the Delhi High Court ruled that workplace harassment is a violation of human dignity, and employers are responsible for maintaining a safe and respectful workplace. The court underscored the necessity for prompt action when complaints are filed, ensuring that employers understand their role in fostering a secure work environment.
- **Ruchi Gupta vs. Air India Ltd (2017):** This case highlighted the importance of timely and fair inquiry processes. The Bombay High Court reprimanded Air India for mishandling a sexual harassment complaint, directing the company to conduct a fresh inquiry. The ruling emphasized that organizations must ensure that inquiries are conducted promptly and without bias.
- **Shanta Kumar vs. Council of Scientific & Industrial Research (2016):** In this case, the Delhi High Court ruled that employers are vicariously liable for not addressing sexual harassment complaints appropriately. The court stressed the importance of training ICC members to conduct inquiries with fairness and impartiality.

Creating a gender-inclusive workplace where employees can work without fear of harassment is a shared responsibility. Employers must go beyond the legal requirements and truly commit to building a safe and inclusive workplace for all.

- **Soma Chakraborty vs. State of West Bengal (2018):** The Calcutta High Court discussed the procedural responsibilities of the ICC and the employer, ruling that failure to follow due procedure in inquiries could lead to penalties and compensations. This case reinforced the importance of adhering to PoSH Act mandates.

IMPORTANCE OF EMPLOYEE AWARENESS IN PoSH COMPLIANCE

The success of the PoSH Act hinges largely on the awareness of employees. Employees must understand what constitutes sexual harassment, how to file complaints, and what rights they have under the law. Employee awareness can prevent incidents of harassment from escalating and ensure that when harassment does occur, victims are empowered to seek justice.

Awareness Programs

Under the PoSH Act, employers are required to conduct regular awareness and sensitization programs. These programs are crucial to educating employees about their rights and responsibilities. Training programs should cover:

- ♦ The definition of sexual harassment.
- ♦ How to file a complaint?.
- ♦ The inquiry process conducted by the ICC.
- ♦ The consequences of filing a false complaint.

These programs should be conducted regularly and be inclusive of all employees, regardless of rank or position.

Policy Communication

Organizations must ensure that their anti-harassment policy is well communicated to employees. Policies should be easily accessible and displayed prominently in workplaces. All employees should be made aware of what constitutes inappropriate behavior and the steps to be taken when they experience or witness harassment.

Sensitization and Breaking Stereotypes

One of the key challenges in addressing sexual harassment is societal stereotypes and norms that

often stigmatize victims. Sensitization programs aim to educate employees on the cultural and social dynamics of harassment, challenge gender biases, and foster an environment where both men and women feel safe.

- **Reporting Mechanisms**

Employees must have access to clear reporting mechanisms. These mechanisms must be well-communicated, transparent, and efficient. Apart from formal complaints to the ICC, employers can provide anonymous channels for reporting, which may encourage victims who fear retaliation.

- **Trust in the Process**

A major barrier to reporting sexual harassment is a lack of trust in the system. Employees must be assured that complaints will be handled with confidentiality, impartiality, and promptness. Building this trust involves ensuring that the ICC is well-trained, inquiries are conducted impartially, and the complainant is kept informed throughout the process.

- **Implications of Non-Adherence**

Failure by an employer to establish an Internal Complaints Committee (ICC) or comply with the provisions of the PoSH Act can result in a monetary fine of up to Rs.50,000. Repeated violations may lead to doubling of the penalty and/or cancellation of the entity's registration or revocation of business licenses. However, it remains unclear which specific licenses are being referred to in this context. It's important to note that all offences under the PoSH Act are non-cognizable.

EMPLOYER'S COMMITMENT: ENSURING COMPLIANCE AND A SAFE WORKPLACE

Under the PoSH Act, employers are not just legally obligated to prevent sexual harassment but are also responsible for creating a workplace environment that fosters safety, dignity, and gender inclusivity.

- **Creating a PoSH Policy**

Every organization must formulate a PoSH policy that outlines the procedures for filing complaints, conducting inquiries, and imposing penalties. This policy must align with the provisions of the PoSH Act and be easily accessible to all employees. It should also reflect the company's commitment to preventing sexual harassment and promoting gender equality.

- **Training to the members of Internal Complaints Committee (ICC)**

The effectiveness of the ICC depends on how well its members are trained. The ICC must be composed of individuals who understand the seriousness of sexual

harassment and are equipped to handle complaints in a sensitive, fair, and timely manner. Training programs for ICC members should focus on:

- ♦ The legal provisions of the PoSH Act.
- ♦ The process of conducting fair inquiries.
- ♦ Handling complaints confidentially.
- ♦ Ensuring a non-biased investigation.

- **Timely and Fair Inquiries**

Employers must ensure that all complaints are addressed promptly. The ICC is required to complete its inquiry within 90 days of receiving a complaint, and employers must ensure that this timeline is adhered to. Delayed inquiries erode employee trust and can lead to legal repercussions.

- **Preventive Measures**

Employers should take proactive steps to prevent incidents of sexual harassment from occurring in the first place. This includes regular training and sensitization workshops, promoting an inclusive work environment, and implementing a zero-tolerance policy for harassment.

- **Confidentiality**

The PoSH Act emphasizes confidentiality in handling sexual harassment complaints. Employers must ensure that the identities of the complainant, respondent, and witnesses are protected during the inquiry process. Breaches of confidentiality can result in penalties and damage the company's reputation.

- **Filing Annual Reports**

One of the key compliance obligations under the PoSH Act is the requirement to file an annual report with the District Officer, detailing the number of complaints received, the number of cases resolved, and the preventive measures taken by the company. This helps ensure transparency and accountability in how sexual harassment complaints are handled.

- **Penalties for Non-Compliance**

Employers who fail to comply with the provisions of the PoSH Act face significant penalties, including a fine of up to Rs.50,000. Repeated violations can lead to higher fines and even cancellation of the employer's business license. Employers must take compliance seriously to avoid legal and financial repercussions.

- **PoSH Notices and posters**

Under the PoSH Act, every employer must put up notices and posters at every workplace for sexual harassment in the company. These must also contain the details of the PoSH Committee and a brief procedure of the complaint redressal mechanism with posters that you can put up in your workplace for PoSH awareness.

SEXUAL HARASSMENT COMPLAINT PROCESS & INQUIRY TIMELINE

Stage	Action/Requirement	Timeline
Filing of Complaint	Submission of a written complaint to the Internal Complaints Committee (ICC)	Within 3 months from the incident
	Time extension for filing if justified by the complainant	Up to 3 additional months
Initiation of Inquiry	ICC or Local Complaints Committee (LCC) to begin inquiry process	Promptly after receiving the complaint
Completion of Inquiry	ICC/LCC to complete the inquiry process	Within 90 days of receiving the complaint
Submission of Report	ICC/LCC to submit findings in a detailed report to the employer or District Officer	Within 10 days of completing the inquiry
Action on Inquiry Report	Employer to take appropriate action based on ICC/LCC recommendations	Within 60 days of receiving the report
Right to Appeal	Either party (complainant/respondent) may appeal if dissatisfied with the inquiry outcome	Within 90 days of receiving the report

ADDRESSING FRIVOLOUS COMPLAINTS

To safeguard against the misuse of protections under the PoSH Act, the law includes provisions for dealing with “false or malicious” complaints. If the Internal Complaint Committee (ICC) or Local Committee (LC) determines that a complaint is fabricated, malicious, or knowingly untrue, or if misleading information has been provided during the inquiry, the complainant may face disciplinary action as per the organization’s service rules.

Where no service rules exist, the PoSH Act outlines potential disciplinary actions, including:

- Issuing a written apology
- Warning or reprimand
- Censure or withholding of promotion
- Freezing pay raises or increments
- Termination of employment
- Mandating participation in counseling sessions
- Requiring community service

It is essential to note, however, that simply being unable to substantiate a complaint, or present sufficient evidence does not automatically render the complaint false or malicious. The Act emphasizes that genuine complaints, even if unproven, are to be treated with care and fairness.

CREATING A CULTURE OF RESPECT AND INCLUSION

Legal compliance alone is not enough to ensure a harassment-free workplace. Employers must foster a culture of respect and inclusivity. This requires:

- **Leadership Commitment:** Leaders must set the tone for a respectful workplace by modelling appropriate behavior, addressing complaints promptly, and holding perpetrators accountable.
- **Zero-Tolerance Policy:** Employers should adopt a zero-tolerance policy for harassment and discrimination, ensuring that all employees understand that inappropriate behavior will not be tolerated.
- **Support for Victims:** Employers must provide support to victims of harassment, including access to counseling services and ensuring that they are not subject to retaliation.
- **Open Communication Channels:** Employers should encourage open communication, ensuring that employees feel comfortable speaking up about harassment or other workplace issues.

Profound shloka from the “Shrimad Bhagavad Gita” that perfectly aligns with the values of respect, dignity, and non-harmfulness, which are at the heart of the **PoSH Act, 2013**.

अद्वेषा सर्वभूतानां मैत्रः करुण एव च ।
निर्ममो निरहमारः समदुःखसुखः क्षमी ॥ १३॥
सन्तुष्टः सततं योगी यतात्मा दृढनिश्चयः ।
मय्यर्पितमनोबुद्धिर्यो मद्भक्तः स मे प्रियः ॥ १४॥

(Bhagavad Gita - Chapter 12, Verse 13-14)

Meaning: “He who is free from malice towards all beings, friendly and compassionate, free from possessiveness and ego, patient in pain and pleasure, forgiving, ever content, self-controlled, and firm in conviction, with mind and intellect dedicated to Me—such a devotee is dear to Me.”

Relevance to PoSH Act, 2013:

- **Freedom from Malice (Advēstā sarva-bhūtānām):** Encourages behavior that is free from ill will and harm towards others, aligning with the PoSH Act’s goal of eliminating harassment.
- **Friendliness and Compassion (Maitrah karuna):** Fosters a workplace atmosphere where individuals

treat each other with kindness and understanding, key for preventing any form of exploitation or misconduct.

- **Ego-Free and Patient (Nirmamo nirahankārah ksami):** Reminds us to shed ego and practice patience, avoiding any actions that could harm others or create toxic work environments.
- **Self-Control (Yatātmā):** Calls for inner discipline, which is essential for maintaining professional behavior and preventing harassment or misconduct.

This shloka emphasizes values such as compassion, self-control, and respect for all, which are essential to creating a safe and respectful workplace, in line with the PoSH Act.

THE ANTI-SEXUAL HARASSMENT POLICY – SOME TIPS TO FOLLOW

- **Clearly Define Sexual Harassment:** Provide a precise and comprehensive definition of sexual harassment, specifying whether the policy applies in a gender-neutral manner or otherwise. Ensure the scope is clearly outlined, including what constitutes unacceptable behavior.
- **Zero-Tolerance Commitment:** Emphasize the organization's unwavering stance against any form of sexual harassment in the workplace. Clearly state that violations will result in disciplinary action, fostering a safe and respectful environment for all employees.
- **Expanded Definition of Workplace:** Include an extended concept of the workplace that accounts for both physical and virtual settings, such as remote working environments, off-site business meetings, and social gatherings linked to work.
- **Clear Complaint Mechanism:** Establish a clear, confidential, and accessible process for lodging complaints. Employees should be informed on how to approach the Internal Complaint Committee (ICC) or designated authorities, and the steps involved in the investigation process.
- **Regular Promotion and Distribution:** Ensure that the policy is frequently communicated to employees at all levels. Use various mediums such as workshops, email newsletters, and workplace postings to raise awareness and reinforce the policy's importance.
- **Easy Access to the Policy:** Make sure the policy is readily accessible, whether through the company's internal portal, printed copies, or other easily reachable channels, so employees can reference it whenever needed.

- **Induction for New Employees:** Include a copy of the policy as part of the onboarding process for new hires. This ensures that every employee is aware of the organization's standards from the very beginning.
- **Periodic Reviews and Updates:** Regularly review the policy to ensure it remains up-to-date with legal requirements and organizational changes. Update the contact details of ICC members and other critical information on a timely basis to maintain its effectiveness.
- **Training and Awareness Programs:** Conduct regular workshops and training sessions to educate employees about their rights and responsibilities under the policy. This fosters a proactive culture of awareness and helps prevent issues before they arise.
- **Support for Victims:** Offer emotional and professional support to individuals affected by harassment. Providing counselling services or access to external resources can help create a more supportive and empathetic workplace culture.
- **Transparency and Accountability:** Build trust by ensuring transparency in handling complaints and enforcing accountability at all levels, including management, to demonstrate the organization's commitment to creating a harassment-free environment.

CONCLUSION

The PoSH Act is a vital piece of legislation that has provided a robust framework for preventing and addressing sexual harassment in Indian workplaces. However, the effectiveness of the law depends on the commitment of both employees and employers. Employees must be aware of their rights, and employers must ensure compliance with the law while fostering a culture of respect and safety.

Creating a gender-inclusive workplace where employees can work without fear of harassment is a shared responsibility. It requires continuous effort, including regular sensitization programs, timely and fair inquiry processes, and leadership commitment to maintaining a harassment-free environment. Employers must go beyond the legal requirements and truly commit to building a safe and inclusive workplace for all.

As the Bhagavad Gita reminds us:

“Samah sarvesu bhūtesu tishthantam parameshvaram”

(Bhagavad Gita 13.27)

Meaning: *“The wise see the same divinity in all beings, without discrimination.”*

This timeless teaching underscores the importance of equality and respect, principles that should be at the heart of every workplace striving for gender inclusivity and safety. □

Law & Procedure Relating to Adjudication of Penalties Under Companies Act, 2013



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INTRODUCTION

The gist of adjudication orders passed by the Registrars of Companies and Regional Director imposing penalty of lakhs of rupees, being published by 'Chartered Secretary', is the evidence of rampant adjudication cases under Section 454 of the Companies Act, 2013 ('the Act') lately, after the Companies (Amendment) Act 2020 by which in several Sections of the Act 'penalty' has been substituted for 'punishment' thereby rendering for penalty on adjudication the company in respect of which a contravention of the relevant Sections and officers of the company who are in default. In a way, adjudication is a better statutory measure than punishment as it absolves the companies and their directors/officers from the traumatic and (at times vexatious) trouble they have otherwise to undergo in prosecution in a criminal court; they go free by shelling out a few lakh rupees.

Besides those Sections which specifically provide for penalty, Section 450 empowers adjudication officers imposition of penalty under any Section which does not contain a specific provision for punishment or penalty, a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

Section 450 is very wide in scope inasmuch as according to it, if a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other

person shall be liable to a maximum penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

DIFFERENCE BETWEEN PUNISHMENT AND PENALTY AND BETWEEN FINE AND PENALTY

As noted above, section 454 was enacted by the Companies Act, 2013 providing for adjudication of penalties. The Companies Act, 1956 did not have such a provision. Throughout the section the word used is 'penalty' as against 'fine' which exists in many Sections.

The word 'punishment' is used in the Companies Act (or, for that matter, in any Act), to refer to punishment of fine and/or imprisonment as awarded by a criminal court on conviction of an accused if after trial the criminal court (magistrate) finds him guilty of the offence for which he was prosecuted. The word 'punishable' denotes such warding of punishment of fine and/or imprisonment as prescribed under the relevant Section of the Act. When a Section prescribes 'penalty', it refers to the amount which may be imposed by the Adjudicating Officer by an order passed in adjudication proceedings, which does not amount to awarding of punishment of fine on conviction of the accused. Section 454 contains the statutory framework for adjudication leading to penalty.

The Companies Act, 2013, especially, after by Companies (Amendment) Act, 2020, uses the words 'fine' and 'penalty' indiscriminately. The two phrases 'punishable with fine' and 'liable to penalty' are used in different Sections. The word 'default' is used invariably in conjunction with 'punishment/punishable' but in some Sections prescribing penalty also it is used. Some Sections use the word 'contravention' instead of default. According to sub-section (3) the adjudicating officer may ... impose the penalty on the company, the officer who is in default, or any other person, for *any non-compliance or default*.

MEANING OF 'ADJUDICATION' AND 'ADJUDICATION OF PENALTY'

Literally, to adjudicate means to pronounce or decree by judicial sentence; to settle or determine (an issue or dispute) judicially. Adjudication means an act of adjudicating; the act of a court in making an order, judgment, or decree; a judicial decision or sentence. It denotes the legal process of resolving a dispute or the process of judicially deciding a case.

The word 'adjudication', when used independently without any suffix, means legal process of resolving a dispute; the formal giving or pronouncing of a judgment or decree in a court proceeding; also, the judgment or decision given. But when used with the suffix 'penalty', it means the process of determining an amount that a party, against whom the adjudication process is commenced, that such party is ordered to pay as penalty for a breach or contravention of a statutory provision which such party has committed or for which such party is held responsible.

Many statutes provide for adjudication by administrative or quasi-judicial authorities leading to penalty; this is not in lieu of prosecution, but generally no prosecution launched if matter adjudicated; e.g. Section 13 of Foreign Exchange Management Act; Section 15-I of the Securities and Exchange Board of India Act, 1992.

The expression 'adjudication of penalty' denotes the process of determining, by an adjudication officer, in a judicial manner, the amount of penalty to be paid by a company and/or a director/officer of a company which has committed by the company under the Companies Act and passing an order in connection therewith pursuant to the provisions of Section 454 of the Companies Act, 2013.

In the context of the Companies Act, in terms of Section 454, adjudication is only with regard to penalties for offences under the Act.

Section 454 was enacted by the Act providing for adjudication of penalties. The Companies Act, 1956 did not have such a provision. Throughout the Section the word used is 'penalty' as against 'fine' which exists in many Sections.

POWER OF ADJUDICATION UNDER SECTION 454 OF COMPANIES ACT, 2013 - STATUTORY FRAMEWORK

Section 454 of the Act empowers the Central Government, by an order published in the Official Gazette, to appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as may be prescribed; and specify their jurisdiction in the order under sub-section (1).

The adjudicating officer has the power to—

- (a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and
- (b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.

However, in case the default relates to non-compliance of Section 92(4) or Section 137(1) or (2), and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty

shall be imposed in this regard and all proceedings under this Section in respect of such default shall be deemed to be concluded.

Thus, an Adjudicating Officer can exercise the power of adjudication of penalty in terms of Section 454 in respect of only those Sections of the Companies Act which prescribe a penalty for a default in complying with the requirements under those Sections, and he cannot exercise such power in respect of those Sections of the Companies Act which prescribe punishment of fine and/or imprisonment. The Sections which contain a provision for penalty use the words "liable to a penalty" (or "liable for a penalty") fall within the ambit of Section 454 and contemplate adjudication of penalty. For example, Section 173(4) provides: "Every officer of the company whose duty is to give notice under this Section and who fails to do so shall be *liable to a penalty* of twenty-five thousand rupees."

To summarize the legal position, from the above discussion it should be clear that, so far as the provisions of the Companies Act, 2013 are concerned—

- (1) Where a Section provides that a company and/or its director/officer-in-default/any other person shall be punishable with fine and/or imprisonment, for a default/contravention, it would constitute a criminal offence and only criminal court/special court can impose the punishment on conviction if prosecution is instituted and the company/director/ officer-in-default/any other person is found guilty and hence convicted.
- (2) Such offence can be compounded with regard to the fine prescribed under any Section of the Act under and in accordance with the provisions of Section 441 of the Act. Such offence cannot be adjudicated under Section 454 Act (because it does not seek to impose 'penalty' but seeks to impose punishment by way of fine).
- (3) Where any Section provides that a company and/or its director/officer-in-default/any other person which/ who makes or commits or who is made responsible for the consequence of any default in complying with the provisions of the Section and shall be liable to a penalty prescribed under the Section, it can be adjudicated and the penalty imposed by the adjudicating officer under and in accordance with Section 454 of the.
- (4) In cases covered in (2) and (3), the imposition of compounding fee or the penalty would not amount to 'conviction for an offence' (because such a case would fall within (1) and only a criminal court can do that).

HOW MUCH PENALTY CAN ADJUDICATING OFFICER IMPOSE?

There is nothing in Section 454 as regards the amount of penalty to be determined by the Adjudicating Officer or any basis or formula in this regard. However, from the various orders passed under Section 454 it appears clear that the Adjudicating Officers have been determining the

amount of penalty having regard to the penalty provided for in the relevant Sections or (in the absence of such provision in any Section under Section 450 of the Act). The Adjudicating Officer, of course, cannot impose more than the maximum amount of penalty prescribed under the Section. Within that limit, the Adjudicating Officer can impose any amount at his discretion, having regard to the proviso to sub-section (1) of Section 454 and Section 454A. In no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant Section of the Act.

Section 446B seeks to provide a relief by way of lesser penalty for certain companies, notwithstanding anything contained in the Act, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company. In such a case, such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.

WHETHER MENS REA IS A RELEVANT FACTOR

Mens rea is variously described, such as guilty mind, blameworthy mind, criminal intention, evil intent, guilty or wrongful purpose etc. *Mens rea* is one of the essentials of a crime. It means 'criminal intent', the essential mental element that in theory has to be proved for all crimes, although in practice some statutory offences are crimes of absolute liability, regardless of criminal intent. Every crime requires a mental element. Even in strict or absolute liability some mental element is required. *Mens rea* or *actus non facit reum nisi mens sit rea*¹ is considered a fundamental principle of penal liability.

Section 454 does not seem to have *mens rea* to be a relevant factor an Adjudicating Officer needs to consider. Thus, the Section *ipso facto*, renders the company and/or officers liable for penalty once it is established that a non-compliance or default under the relevant provisions of the Act has occurred. An Adjudicating Officer only has to ensure that a non-compliance or default under a provision of the Act has taken place.

¹ The maxim *actus non facit reum nisi mens sit rea* means that the intent and act must both concur to constitute the crime; the act itself does not make a man guilty unless his intention were so or his mind is also guilty. *Actus reus* (Latin) means a guilty act; the wrongful that comprises the physical components of a crime and that generally must be coupled with *mens rea* to establish criminal liability. The essential element of a crime that must be proved to secure a conviction, as opposed to the mental state of the accused. In most cases the *actus reus* will simply be an act (e.g. appropriation of property is the act of theft) accompanied by specified circumstances (e.g. that the property belongs to another). Sometimes, however, it may be an omission to act (e.g. failure to prevent death may be the *actus reus* of manslaughter) or it may include a specified consequence (death resulting within a year being the consequence required for the *actus reus* of manslaughter or murder). In certain cases the *actus reus* may simply be a state of affairs rather than an act (e.g. being unfit to drive through drink or drugs when in charge of a motor vehicle on a road).

It appears that the same principle should apply in the case of compounding of an offence vis-à-vis adjudication or prosecution.

However, although the Act does not explicitly provide for *mens rea* to be established before imposing penalty, Rule 3(12) of the Companies (Adjudication of Penalties) Rules, 2014 casts a duty on the Adjudicating Officer, while adjudging quantum of penalty, to pay due regard to certain factors. The said Rule according to which while adjudging quantum of penalty, the adjudicating officer *shall have due regard to the following factors*, namely:

- (a) size of the company;
- (b) nature of business carried on by the company;
- (c) injury to public interest;
- (d) nature of the default;
- (e) repetition of the default;
- (f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and
- (g) the amount of loss caused to an investor or group of investors or creditors as a result of the default.

This provision seeks to alleviate the load of penalty if the case in hand deserves leniency by the Adjudicating Officer in determining the quantum of penalty and not impose it without paying due regard to these factors. These factors, therefore, act like directive principles or guiding light that an Adjudicating Officer should not ignore while quantifying penalty. For example, if a non-compliance is a mere technical and unintentional one, and no loss or injury has been caused to the company or shareholders or public interest, there is no reason why the Adjudicating Officer should not levy a nominal penalty. After all, punishing a company or its officers or extracting money for the Government, is not the purpose of imposing penalty; the purpose is, to secure compliance with law. Several non-compliances take place without intention of breaking law or deriving undue benefit or happen unknowingly, in view of the huge magnitude and complexities of the statutory provisions under the Companies Act, Rules, Notifications, Circulars, etc; sometimes they happen due to interpretational issues arising due to ambiguities in law (which are not few in the current law). These non-compliances are not criminal in nature; they are of civil nature. Frequent amendments to law also makes compliance difficult though not impossible.

APPLICATION FOR ADJUDICATION OF PENALTY

Neither Section 454 nor the Companies (Adjudication of Penalties) Rules, 2014, expressly provide for an application to be made by a company or its director/officer opting for adjudication of penalty in respect of any default for which penalty is prescribed in the relevant Section. Adjudicating proceedings seems to be a voluntary (*suo motu*) action to be initiated by the Adjudicating Officer. However, in practice there are cases in which a mention of application submitted by the company and/or directors/officers is found. Legally, there doesn't seem to be any hindrance for a company initiating action for adjudication of penalty by writing a letter to the Adjudicating Officer to initiate adjudication proceedings.

APPEAL AGAINST ADJUDICATION ORDER

Sub-sections (5), (6) and (7) deal with appeal against adjudication order. Any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer an appeal² to the Regional Director having jurisdiction in the matter.

The appeal shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed.

The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

Rules 4, 5 and 6 of the Companies (Adjudication of Penalties) Rules, 2014 contain procedural requirements concerning Appeal against the order of Adjudicating Officer. Rule 4 provides as follows:

“4. Appeal against the order of adjudicating officer.—(1) Every appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having jurisdiction in the matter within a period of sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought:

Provided that where the party is represented by an authorised representative, a copy of such authorisation in favour of the representative and the written consent thereto by such authorised representative shall also be appended to the appeal:

Provided further that an appeal in Form ADJ shall not seek relief(s) therein against more than one order unless the reliefs prayed for are consequential.

(2) Every appeal filed under this rule shall be accompanied by such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.”

E-ADJUDICATION PLATFORM

Rules 3A, inserted by G.S.R. 476(E), dated 5th August 2024, issued by MCA, seeks to make it mandatory to conduct adjudication proceedings only through ‘e-adjudication platform’ thereby dispensing with conduct adjudication proceedings physically, in all respects. Rule 3A reads as follows:

“3A. Adjudication Platform.- (1) On the commencement of the Companies (Adjudication of Penalties) Amendment Rules, 2024, all proceedings (including issue of notices, filing replies or documents, evidences, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer and Regional Director under these rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose.

(2) In case the e-mail address of any person to whom a notice or summons is required to be issued under these rules is not available, the adjudicating officer shall send the notice by post at the last intimated address or address available in the records and the officer shall preserve a copy of such notice in the electronic record in the e-adjudication platform referred to in sub-rule (1):

Provided that in case no address of the person concerned is available, the notice shall be placed on the e-adjudication platform.”

APPLICABILITY OF PRINCIPLES OF NATURAL JUSTICE

Section 454 does not contain an explicit provision similar to that in Section 424 of the Act (which enjoins on the Tribunal and the Appellate Tribunal, while disposing of any proceeding before it to be guided by the principles of natural justice). Nonetheless, there can no doubt that an Adjudicating Officer appointed under Section 454 is obligated to follow the principles of natural justice in adjudicating a case under the Section, the proceedings under Section 454 are undoubtedly being quasi-judicial in nature.

The aim of the rule of natural justice is to secure justice. To put it negatively, these rules can operate only in areas not covered by any law validly made. The concept of natural justice, indeed, has undergone a change with the passage of time, but still the time-tested rules, namely, are (i) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (ii) no decision shall be given against a party without affording him a reasonable opportunity of hearing (*audi alteram partem*). At the same time, action of the authority must be held in good faith without bias and not arbitrary or unreasonable.³

The proceedings of adjudication of penalties cannot be called an administrative power; it is a quasi-judicial power

² See Form No. ADJ, Companies (Adjudication of Penalties) Rules, 2014.

³ Office of the Odhiha Lokayukta v Dr. Pradeep Kumar Panigrahi AIR 2023 SC 1202.

and hence observance of the principles of natural justice scrupulously by the adjudicating office is imperative and non-observance of such principles may vitiate the proceeding and render the order invalid.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is, after all, an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate”. In the celebrated case of *Cooper v. Wandsworth Board of Works* [(1863) 143 ER 414], the principle was thus stated:

“Even God did not pass a sentence upon Adam, before he was called upon to make his defence. “Adam” says God, “where art thou? hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat.””

Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

Natural justice is a legal philosophy used in some jurisdictions in the determination of just, or fair, processes in legal proceedings.

Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:

- A person accused of a crime, or at risk of some form of loss, should be given adequate notice about the proceedings (including any charges).
- A person making a decision should declare any personal interest they may have in the proceedings.
- A person who makes a decision should be unbiased and act in good faith. He therefore cannot be one of the parties in the case, or have an interest in the

outcome. This is expressed in the latin maxim, *nemo iudex in sua causa*: “no man is permitted to be judge in his own cause”.

- Proceedings should be conducted so they are fair to all the parties - expressed in the latin maxim *audi alteram partem*: “let the other side be heard”.
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party.
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations.
- Justice should be seen to be done. If the community is satisfied that justice has been done, they will continue to place their faith in the courts.

Sub-rules (2) to (7) of Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014 embrace the various principles of natural justice which an Adjudicating Officer has to follow in dealing with a case for adjudication of penalties; however, the requirements laid down by Rule 3 do not encompass the entire spectrum of natural justice. Besides those requirements, there are other requirements that the principles of natural justice.

Rule 3(2) mandates a show-cause notice to be issued by the Adjudicating Officer before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person, to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.

Rules 3(3) mandates that the show-cause notice must clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.

Rule 3(5) mandates that the Adjudicating Officer must consider the reply submitted by such company, its officer, or any other person, and if he/she is of the opinion that physical appearance is required, he/she shall issue a notice, for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative. The words “if he/she is of the opinion that physical appearance is required” seek to give the Adjudicating Officer a discretionary power as to the opportunity of personal hearing to be given to the party to the adjudication proceedings. This is inconsistent with the well-settled principle that the appellant has to be given a reasonable opportunity of hearing. The Rules should provide that it is mandatory for the Adjudicating Officer to provide the aggrieved party opportunity of hearing, which he may or may not avail of.

The Proviso to Rule 3(5) mandates that if any person, to whom a show-cause notice has been issued desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer must allow such person to make such representation after fixing a date of appearance.

Rule 3(6) mandates that on the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit.

Concept of quasi-judicial act

It is well known that the concept of quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. Principles to determine as to what constitutes a 'quasi-judicial act' may be stated as under:

If a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a 'lis' and prima facie and in the absence of anything in the statute to the contrary, it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act.

If a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial acts if the authority is nevertheless required by the statute to act judicially. The inference whether the authority acting under a statute, where it is silent, has the duty to act judicially will depend upon the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion, if any, to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute.

Where there is a charge and a denial followed by an enquiry at which evidence is led and assessment of the material before conclusion is reached, these facts do make the matter quasi-judicial and attract the principles of natural justice.⁴

⁴ *Union of India v Mohd. Ramzan Khan* (1991) 1 SCC 588 (SC): AIR 1991 SC 471.

An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called purely administrative and there is no third category.⁵

The concept of a quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. The mode of performing quasi-judicial acts by administrative tribunals has been the subject of judicial decisions in England as well as in India.

The distinction between an administrative power and a quasi-judicial power was succinctly expounded by Hegde J in *A K Kraipak v UOI* (1969) 2 SCC 262, in the following words:

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours, it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years, the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power".

Speaking orders

A tribunal which exercises judicial or quasi-judicial powers can certainly indicate its mind as to why it acts in a particular way and when important rights of parties of far-reaching consequence to them are adjudicated upon in a summary fashion, without giving a person hearing, where proposals and counter proposals are made and examined, the least that can be expected is that the tribunal should tell the party why the decision is going against him in all cases where the law gives a further right of appeal.⁶ The decisions of tribunals in India are subject to the supervisory powers of the High Courts under article 227 of the Constitution and of appellate powers

⁵ *Neelama Misra v Harinder Kaur Painted* AIR 1990SC1402: (1990) 2 SCC 746.

⁶ *MP Industries Ltd. v Union of India* AIR 1966 SC 671.



of the Supreme Court under article 136. It goes without saying that both the High Court and the Supreme Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word “rejected”, or “dismissed”. In such a case, the Supreme Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal.⁷

The court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or the Supreme Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.⁸

It has been emphasized that in the context of a welfare State, administrative tribunals have come to stay. Indeed, they are the necessary concomitants of a welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision exclude or at any rate minimize arbitrariness. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal. If tribunals can make orders without giving reasons, the said power in the

hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuses of power. But, if reasons for an order are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard.

The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Secondly, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Thirdly, it should be remembered that an appeal generally lies from the decision of judicial and quasi-judicial authorities to the Supreme Court by special leave granted under article 136. A judgment which does not disclose the reasons, will be of little assistance to the court.⁹

An interpretation of a provision an alleged contravention of which has led to the adjudication and imposition of penalty by the Adjudicating Officer may not be correct or it might have failed to consider the matter in the light

⁷ *Bhagat Raja v Union of India* AIR 1967 SC 1606.

⁸ *Travencore Rayon Ltd. v Union of India* (1969) 3 SCC 868; AIR 1971 SC 862 AIR 1971SC862.

⁹ *Oolcombers of India Ltd. v Woolcombers Workers' Union* (1974) 3 SCC 318; see also *Maharashtra State Board of Secondary & Higher Secondary Education v KS Gandhi* AIR 1991 SC 879; *State of Orissa v Dhaniram Luhar* (2004) 5 SCC 569; 2004 AIR SCW 751; *Tutul Kumari Sen v State of Jharkhand* 2009 AIR SCW 4445..

of interpretation by a court of law (if any) or application of the principles of statutory interpretation correctly, the aggrieved party has the right of appeal and if the party prefers to go in for appeal, it must know the interpretation sought to be placed on the relevant provision of the Act. This would be possible only if the order passed by the Adjudicating Officer states reasons and, in his view, what is the interpretation of the provision. In fact, correct interpretation of the relevant statutory provision is a major challenge to the Adjudicating Officer in arriving at the correct conclusion. A member of a tribunal or a judge of court has the benefit of interpretational debate by the two counsels appearing for the petitioner/applicant and respondent, the adjudication officer does not have that advantage. It goes without saying that the Adjudicating Officer's interpretation of the relevant provision need not necessarily be the correct one. Therefore, the Adjudicating Officer is duty-bound to discuss with sufficient elaboration and case law (if any), his interpretation of the provision to support his interpretation.

Disclosure of documents

One of requirements of natural justice is disclosure of documents to the company or officer of the company who is arrayed in adjudication, on the basis of which the Adjudicating Officer has issued a show cause notice and initiated the adjudication proceedings. It has been emphasized by the Supreme Court that It would be fundamentally contrary to the principles of natural justice if the relevant part of the investigation report which pertains to the appellant is not disclosed. The appellant has to be given a reasonable opportunity of hearing. The requirement of a reasonable opportunity would postulate that such material which has been and has to be taken into account must be disclosed to the noticee. If the report of the investigation authority has to be considered by the Board (SEBI) before satisfaction is arrived at on a possible violation of the regulations, the principles of natural justice require due disclosure of the report. If the investigating authority attempted to circumvent its duty by revealing minimal information, to the prejudice of the appellant, it would be in violation of the principles of natural justice. The court or appellate forum in an appropriate case would be empowered to call for the investigation report and determine if the duty to disclose had been effectively complied with.¹⁰

The apex court in the case of *Kanwar Natwar Singh v. Directorate of Enforcement* [2010] 160 Comp Cas 301 (SC); [2010] 13 SCC 255, has laid down there is no duty to disclose all the documents under the possession of the adjudicating authority. The apex court in paragraph 48 of the said judgment held as under (page 321 of 160 Comp Cas):

“On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the adjudicating authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a noticee. Even the principles

of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one-way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework.” (emphasis supplied)

WHETHER ADJUDICATION CAN BE INITIATED AFTER AN OFFENCE IS COMPOUNDED

Both Sections 441 and 454 are silent on this issue. Section 441(3)(c) and (d) bar only prosecution when any offence is compounded before the institution of prosecution or after the institution of prosecution; it does not talk about adjudication. It appears that the same principle should apply in the case of compounding of an offence vis-à-vis adjudication or prosecution.

Sub-section (1) of Section 15 of the Foreign Exchange Management Act states that any contravention under Section 13 may, on an application made by the person committing such contravention can be compounded within one hundred and eighty days from the date of receipt of the application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank of India, as may be authorised in this behalf by the Central Government in such manner as may be prescribed. Sub-section (2) states that where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that Section, in respect of the contravention so compounded. The Bombay High Court held that applying the aforementioned provisions to the facts of the case that the adjudication order levying penalty passed one day after the passing of the compounding order was in violation of Section 15(2) which clearly envisages a position that once a contravention has been compounded under sub-Section (1), no proceeding or further proceeding, shall be initiated or continued, as the case may be, against the person committing the contravention.¹¹

ADJUDICATING OFFICERS APPOINTED BY THE CENTRAL GOVERNMENT

With effect from. 24-03-2015, the Central Government, vide SO 831(E), dated 24-03-2015, appoints the following Registrars of Companies as adjudicating officers for the purposes of this Act in respect of jurisdictions indicated against each Registrar.

¹⁰. *T. Takano v Securities and Exchange Board of India* [2022] 232 Comp Cas 136 (SC)

¹¹. *Sterlite Industries (India) Ltd v Special Director of Enforcement* (2022) 140 taxmann.com 615 (Bombay).

The Shift to Dematerialization: Challenges in Protecting Shareholder Rights for Private Companies

Historically, private companies operated with a significant degree of flexibility regarding shareholding structures, largely because shares were held in physical form. This allowed for the enforcement of restrictive rights designed to maintain control over the ownership and management of the company. However, the introduction of mandatory dematerialization—where shares are converted from physical to electronic form, compels private companies to reassess these traditional structures and adapt to a new regulatory environment.



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“The transition to mandatory dematerialization presents unique challenges for private companies, (other than small companies) particularly in safeguarding shareholder rights. As regulatory requirements become more stringent, private companies must navigate these changes carefully to ensure compliance without compromising the interests of their shareholders. Professionals must examine the key obstacles posed by dematerialization and offers insights on how private companies (Other than small companies) can address these issues while maintaining shareholder protection.”

INTRODUCTION

The mandatory dematerialization of shares, enforced through amendments to the Companies (Prospectus and Allotment of Securities) Rules, 2014, marks a transformative shift in the governance and administration of private limited companies in India. Historically, private companies operated with a significant degree of flexibility regarding shareholding structures, largely because shares were held in physical form. This allowed for the enforcement of restrictive rights designed to maintain control over the ownership and management of the company. However, the introduction of mandatory dematerialization—where shares are converted from physical to electronic form, compels private companies to reassess these traditional structures and adapt to a

new regulatory environment. This article explores the implications of this mandate on the restrictive rights traditionally enjoyed by shareholders in private limited companies and measures to be adopted by the companies to protect these rights in dematerialized regime with the help of professionals like Company Secretary (CS).

BACKGROUND AND LEGAL FRAMEWORK OF DEMATERIALIZATION MANDATE

The mandate for dematerialization stems from the broader goal of enhancing corporate governance, transparency and accountability in the corporate sector. Initially, the requirement for dematerialization applied primarily to unlisted public companies. However, Rule 9B of the Companies (Prospectus and Allotment of Securities) Rules notified on 27th October, 2023, extended this requirement to private limited companies, thereby mandating that all securities of non-small private companies must be held in dematerialized form within a window of 18 months ending on 30th September, 2024.

This regulation aligns with the objectives of reducing risks associated with physical certificates, such as loss, theft, fraud and streamlining the process of share transfer and payment and collection of stamp duty in electronic mode, which becomes faster and more transparent in a dematerialized environment. However, this seemingly positive shift introduces complexities for private limited companies, particularly concerning the enforcement of restrictive covenants that have traditionally governed shareholding and transfers.

TRADITIONAL RESTRICTIVE RIGHTS IN PRIVATE LIMITED COMPANIES

Shareholders of Private limited companies have traditionally exercised a range of restrictive rights that allow them to maintain control over their ownership structure and safeguard their interest. Section 2 (68) of the Companies Act mandates that every private limited company must include restrictions on share transfers as a compulsory provision in its Articles. Additionally, there is a statutory limit on the number of members, capped at 200 at any given time. Within this legal framework, it is

incumbent upon the promoters and directors of a private company to design and implement restrictions on the transfer and issuance of further shares, ensuring these restrictions are binding on all members through the company's registered Articles of Association.

Typically, in family-owned companies, restrictions may include prohibitions on transferring shares to individuals outside the family or to competitors unless they are first offered to existing shareholders. In the case of joint ventures between two or more families or groups, shares must first be offered to another family or group before being offered to any outsider. Furthermore, if an employee is made a shareholder, his shareholding automatically ceases upon the termination of his employment by mandatory share transfer back to promoters. In essence, private companies have developed various mechanisms and structures to adhere to these mandatory restrictions on the transfer and issuance of shares. These restrictive covenants are strategically protected by granting the Board of directors the authority to approve share transfers.

Section 58 of the Companies Act, 2013, reinforces the transfer restrictions stipulated in the Articles of a private company, with the caveat that in case of refusal to transfer, Board must provide a reasoned notice of such refusal to both the transferor and transferee within 30 days of the lodgement of the transfer. The aggrieved parties retain the right to appeal such a refusal before the National Company Law Tribunal. Notably, courts tend to uphold the restrictive provisions contained in the Articles when adjudicating such appeals, rendering decisions that align with those provisions.

Moreover, this section implicitly acknowledges that securities or interests therein are not freely transferable within a private company. However, it also recognizes the enforceability of arrangements or contracts between two or more parties concerning the transfer of securities, provided the company is a party to such a contract, and the provisions of the contract are incorporated into the Articles of Association by suitable amendment, thereby making them binding on shareholders and others dealing with the company.

These rights include:

Restrictions on Transfer: Usually provisions in the articles of association or shareholder agreements that restrict the transfer of shares to outsiders without the approval of the Board or a majority of existing shareholders.

Right of First Refusal (ROFR): A provision requiring a shareholder who wishes to sell his/her shares to first offer them to existing shareholders before selling to a third party. This helps to keep control within the current shareholder group.

Tag-Along Rights: A minority shareholder's right to join in on the sale of shares by a majority shareholder. This ensures that if the majority sells, the minority is not left behind in an unfavourable position.

Company Secretaries play a crucial role in mitigating risks associated with dematerialization in private companies by updating legal frameworks and ensuring compliance with applicable regulations.

Drag-Along Rights: The right of majority shareholders to force minority shareholders to join in the sale of the company, ensuring that a sale can proceed without holdouts from minority shareholders.

Pre-emptive Rights: The right of existing shareholders to subscribe to new shares issued by the company before they are offered to outsiders, thereby preventing dilution of their ownership.

These rights are critical in maintaining the close-knit ownership structure that private companies often desire. However, with shares now mandated to be in dematerialized form, the ease and speed of electronic transfers pose challenges to enforcing these restrictive covenants.

IMPLICATIONS OF MANDATORY DEMATERIALIZATION ON RESTRICTIVE RIGHTS

Challenges in Enforcing Restrictive Covenants: The dematerialization of shares necessitates that shares are held in electronic form with depositories like NSDL and CDSL, and transfers are executed through DPs. This electronic system, designed for efficiency, could bypass traditional manual processes where the enforcement of restrictions such as ROFR, tag-along, and drag-along rights were more straightforward. For example, once shares are in dematerialized form, their transfer becomes a matter of electronic entry rather than a physical exchange that requires company oversight or approval. This could lead to situations where shares are transferred before the company or other shareholders can exercise their rights.

Legal Consequences and Potential Disputes: The shift to dematerialized shares could also lead to an increase in legal disputes if restrictive covenants are not honoured due to gaps in the electronic system. Shareholders who believe their rights under a shareholders' agreement have been compromised due to dematerialization may seek legal recourse. For example, if a shareholder transfers shares in violation of an ROFR clause because the depository system did not flag the transfer, the aggrieved party may pursue litigation for breach of contract.

Moreover, the enforceability of such rights in the dematerialized framework could be challenged, leading to the need for judicial interpretation of

how these traditional rights align with the modern dematerialization framework. This could result in new precedents that reshape shareholder rights in private limited companies.

Impact on Shareholder Privacy and Control: One of the unintended consequences of dematerialization is the potential loss of privacy for shareholders. In the physical shareholding regime, share transfers were often private, with only the company and the involved parties being aware till the time of filing of annual return with the Registrar by the Company. However, in the dematerialization regime, all transactions are recorded electronically, potentially exposing shareholder information to a wider audience than before. This increased transparency, while beneficial for corporate governance, could be seen as a disadvantage for private companies that prefer to maintain confidentiality in their operations and ownership structure.

Furthermore, the increased liquidity and ease of transfer associated with dematerialized shares could dilute the control that existing shareholders have over the company. While this might be seen as a benefit in terms of increasing the marketability and value of shares, it could undermine the traditional control mechanisms that private companies rely on to maintain a stable ownership structure.

NEED FOR OPERATIONAL ADJUSTMENTS

To address these challenges, private companies must ensure that restrictive rights are clearly defined and enforceable within the depository system. This may involve working closely with depositories and Depository Participants (DPs) to ensure that any transfer of shares that might trigger restrictive covenants is flagged and subject to manual approval of the Board before completion. Companies may also need to update their Articles of Association and shareholder agreements to reflect these changes.

POTENTIAL SOLUTIONS TO OVERCOME THESE CHALLENGES

Revising Shareholder Agreements and Articles of Association: In light of these challenges, private companies may need to revise their shareholder agreements and Articles of Association to specifically address the nuances of dematerialization. This could involve adding clauses that explicitly require DPs to recognize and enforce restrictive covenants or revising the terms of restrictive rights to fit within the dematerialized framework. For instance, companies might introduce new procedures for electronic approvals or notifications that must be adhered to before any share transfer is executed.

Such revisions would also need to take into account the legal framework governing dematerialization, ensuring that any new provisions comply with the Companies Act, 2013, the Indian Stamp Duty Act, and other relevant regulations. This process will likely require the involvement of Company Secretaries to ensure that all

aspects of the dematerialized shareholding structure are legally sound and enforceable.

Private companies can instruct depositories to restrict the transfer of shares by following a specific procedure that aligns with the regulatory framework and internal corporate governance policies. Here's how a private company can achieve this:

COMMUNICATION WITH DEPOSITORY PARTICIPANTS (DPs)

- **Formal Instructions:** The company must formally instruct its Depository Participants (DPs) in writing, requesting that the ISIN be marked as "FREEZ FOR DEBIT" in the depository system. This instruction should include a copy of the relevant clauses from the Articles of Association.
- **Compliance with SEBI Regulations:** Ensure that all instructions are in compliance with the Securities and Exchange Board of India (SEBI) regulations, particularly the SEBI (Depositories and Participants) Regulations, 2018.

Execution of Tripartite Agreement

- **Company, DP, and RTA:** A tripartite agreement needs to be executed between the company, the Depository Participant, and the Registrar and Transfer Agent (RTA) if the company uses an RTA. This agreement should outline the process and conditions under which shares can be transferred.
- **Update Beneficial Owner (BO) Account:** The restriction should be reflected in the BO account of each shareholder. The DP should ensure that any attempt to transfer these shares is flagged and requires additional authorization.

Approval Mechanism

- **Pre-Transfer Approval:** Implement a system where any transfer request is subject to the approval of the company's Board of Directors or a designated committee. The depository should only process the transfer after receiving formal approval from the company.
- **No Objection Certificate (NOC):** The company can require that a No Objection Certificate (NOC) be obtained from the Board before any transfer of shares is processed by the DP.

Use of Digital Authorizations

- **Digital Signatures:** Utilize digital signatures or electronic authorizations to approve or reject transfer requests swiftly. The DP should be instructed to process only those transfer requests that have the company's digital approval.
- **Online Approval Systems:** Develop an online approval system that integrates with the DP's systems, allowing real-time processing and approval of transfer requests.

Regular Audits and Compliance Checks

- **Internal Audits:** Regularly audit the share transfer process to ensure that the depository and DP are complying with the company's instructions.
- **Compliance Reporting:** Request periodic compliance reports from the DP to ensure that no unauthorized transfers have occurred.

Contractual Agreements with Shareholders

- **Binding Agreements:** Have all shareholders enter into binding agreements that explicitly acknowledge and accept the share transfer restrictions. These agreements should be enforceable under Indian contract law. However, the conditions as mentioned in the Articles of Association, is deemed to be having agreed by the shareholders, without requirement of any specific agreement.
- **Penalty Clauses:** Include penalty clauses in the shareholder agreements may be inserted for penalising such shareholders for any attempt to bypass the transfer restrictions.

Engage Services of Company Secretary (CS)

- **Legal Framework:** Engage Company Secretary to ensure that all procedures are in compliance with the Companies Act, 2013, and applicable SEBI regulations. CS can also help in setting up standard operating process (SOP) of transfer of dematerialized shares in the company as well drafting the necessary documents and agreements to enforce these restrictions.

Judicial Backing

- **Court Orders:** In some cases, companies may need to seek court orders to enforce these restrictions, especially if there is a dispute or if a shareholder tries to bypass the restrictions.

Training and Awareness

- **Educate DPs:** Conduct sessions with your concern staff members and DPs officer to ensure they are aware of the company's specific restrictions and the importance of compliance.
- **Shareholder Communication:** Regularly communicate with shareholders about the transfer restrictions and the process for obtaining approvals.

By following these steps, a private company can effectively instruct depositories to restrict the transfer of its dematerialized shares, thereby ensuring compliance with its internal governance policies and safeguarding its ownership structure.

INTRODUCING MANDATORY "FREEZE FOR DEBIT"

Transfer restrictions and pre-emptive rights were easier to enforce in the physical mode, where companies had greater control over the share transfer process. However, in a dematerialized environment, the automatic nature of electronic transfers can inadvertently bypass these restrictive rights, unless they are properly integrated into the depository's system. Utilizing the "Freeze for Debit" facility provided by depositories is essential to maintaining such control.

While introducing the dematerialization (Demat) environment for private companies, the government could have considered mandating all depositories to automatically implement a "Freeze for Debit" option for private companies. This would eliminate the need for companies to make specific requests and pay additional annual fees to freeze the transfer of shares. Such a provision could still be implemented by issuing necessary directions to the depositories.

This move would potentially safeguard many private companies and their promoters from the risk of hostile takeovers, particularly in cases where there are ongoing disputes or potential conflicts among the promoters. By proactively freezing the debit function, the government could offer an additional layer of security, especially during internal battles or when a company's control is contested. Implementing this measure would not only strengthen corporate governance but also reduce the administrative burden on private companies, offering much-needed protection in a competitive and evolving corporate landscape.

THE IMPACT OF DEMATERIALIZATION ON THE STAMP DUTY UNDER THE INDIAN STAMP ACT

Dematerialization has positively impacted charging and collection of stamp duty for issue and transfer of shares under the Indian Stamp Act. Traditionally, stamp duty was imposed on the transfer of physical share certificates at a rate of 0.25% of the consideration value. However, with the transition to dematerialized shares, stamp duty rates have been significantly reduced for both the issuance and transfer of shares or securities, offering substantial benefits to companies and their shareholders compared to holding shares in physical form.

For the issuance of shares and the creation of corresponding records in the depository, a stamp duty of 0.005% on the total market value of such shares, as declared by the company, is now levied and collected electronically by the depository. In the case of transferring dematerialized shares, a stamp duty of 0.015% on the stated consideration amount is similarly collected electronically by the depository before approving the transfer.

This streamlined, electronic collection of stamp duties has not only simplified the process but has also resolved the issue of double stamp duty payments. Previously, companies faced dual obligations arising from the issuance of securities in physical form under the Indian Stamp Act, as well as the issuance of share certificates under the Maharashtra Stamp Act and similar other state legislations. Dematerialization has effectively eliminated these complications, making the process more efficient and cost-effective for companies and shareholders alike.

CONCLUSION

As the corporate landscape continues to evolve with increasing regulatory demands for transparency and efficiency, private companies must find a balance between these demands and the need to protect the interests of their shareholders. Ultimately, with thoughtful execution and a commitment to best practices, private companies can thrive in this new regulatory landscape. With a careful planning and legal foresight, private limited companies can continue to thrive while safeguarding their shareholders' rights and can maintain their competitive edge in an increasingly regulated and transparent corporate world. □

Resignation by a Director - Its Ramifications under the Law

At the outset, we would state that the provisions in the Companies Act, 2013 (hereinafter “The Act”) relating to resignation are contained in Section 168 of the Act. This is a new provision in the Act and did not have a corresponding provision in the erstwhile 1956 Act.



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INTRODUCTION

Resignation by a Director is not an uncommon occurrence in the Corporate World. However, when the event happens it throws up several ramifications. In this exposition we shall endeavor to capture the quintessence of the consequences that follow.

At the outset, we would state that the provisions in the Companies Act, 2013 (hereinafter “The Act”) relating to resignation are contained in Section 168 of the Act. This is a new provision in the Act and did not have a corresponding provision in the erstwhile 1956 Act.

WHAT CONSTITUTES “RESIGNATION”

The Act does not have a definition to the term, and it is necessary for us to look at the definition provided to the term as per the Legal Lexicon.

In Ramanathan Aiyar’s Concise Law Dictionary (Seventh Edition), the term has been explained as under:

“Resignation of an Office to be complete implies that it has the consent of the incumbent; It implies that the person resigning has been elected into the office he resigns. One cannot resign that which he is not entitled to and which he has no right to occupy”.

In Latin the term has been described as “*Resignatio est juris propiis spontanearefustatio*” which translated into English means that it is the spontaneous relinquishment of one’s own right.

The Supreme Court in its decision in *Moti Ram v Param Devi* (AIR1993 SC 1662) has explained the term “Resignation” as under:

“Resignation is the spontaneous relinquishment of one’s own right and in relation to an office, it connotes the giving up or relinquishing the office. It comes into effect when such act indicating the intention to relinquish the office is communicated to the competent Authority”.

Resignation represents, therefore, the voluntary form of termination of employment generally. For such termination to be valid, it has to be voluntarily tendered. Where resignation is forced upon the incumbent through duress or coercion, it amounts to termination under a more acceptable euphemism of resignation and does not satisfy the basic ingredient that it has to be a voluntary and unilateral act.

WHEN IS RESIGNATION SUPPOSED TO BE COMPLETE

Section 168(2) clarifies that the resignation of the Director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the Director in the notice whichever is later. This signifies that the resignation could be taken on record upon receipt thereof by the company or on a prospective date as indicated by the director whichever is later.

The above also means that there is no requirement that the resignation has to be accepted by the Board, given that as discussed above, it is an unilateral act.

Reference in this connection may be made to the decision in *Rajan Sangameshwaran v Saralaya Technologies Pvt. Ltd.* (3 Comp LJ 140) where the Madras Bench of the CLB held that there was no provision in the Companies Act, 1956 or in the Standard Articles prescribed in Table A to signify that the resignation has to be accepted by the Board.

The Court noted that submission of Form 32 as existing at that point of time could not be delayed on the pretext that the resignation had not been accepted by the Board.

It is also incorrect to opine, based on a plain reading of Section 168(2) that the resignation shall take effect only from the date on which the relevant form (DIR-12) is filed with the Registrar. Filing of the said form is a mere formality and administrative duty, which needs to be discharged by the company which has the effect of informing the Registrar

about the resignation, the same having taken effect on the date as indicated by the Director or immediately upon the same being received by the company.

The above principle also stands validated based on a postulate laid down in an old English case involving *Glossop v Glossop* (1970) (2 Ch.370) where the Court observed that the resignation goes back to the date on which the Director intended to cede his relationship with the company.

The above principle in *Glossop's* case has been applied in India in *T.Murari v The State* (46 Comp Cas 613).

That the resignation process is not consummated by the mere submission of Form DIR 12 has also been driven home by the decision of the NCLT, Kerala Bench in *Tap World v Kerala Chamber of Commerce and Industry* (135 Taxmann.com 198) where the Court observed that when the Director of the company had tendered her resignation and the same was acknowledged before the Board, mere non-submission of the prescribed Form DIR-12 by the company or the non filing of form 11 by the Director concerned, did not make the resignation invalid.

RESIGNATION COULD HAVE BEEN EVEN VERBAL OR IMPLIED FROM THE ACTION OF THE DIRECTOR BUT FOR THE SPECIFIC PROVISION IN SECTION 168(1)

Section 168(1) makes it amply clear that the Director may resign from his office by giving notice to the company in writing.

Arising from the above, it follows that the resignation cannot be verbal or implied from the conduct of the Director.

The above position in the law is in contrast to the earlier position whereby a Director could demit office verbally as held in *Latchford Premier Cinema Limited v Ennion and Peterson* (1932)(2 Comp Cas 106) where it was held that a Director could resign at a General Meeting verbally even though the Articles of the company provided that the resignation should be in writing.

The decision of the Court in *Vikram Singh v Ram Balabhji Kasat* (AIR 1995) (MP 140) that where the letter of resignation was typewritten and bore the signature of the Director, it would be considered valid also establishes the requirement that the letter should be in writing.

DICHOTOMY IN THE ACT BETWEEN SECTION 168 AND 165 AS TO WHEN RESIGNATION IS COMPLETE

We have seen above that under Section 168(2) the process of resignation culminates upon the letter of resignation from the director being received by the company and taken on record.

However, a different view emerges in the law on this point from a perusal of Section 165.

Section 165 primarily sets the upper limits as regards the number of Directorships that can be held by an individual. However, sub-section (4) thereto stipulates that where a Director resigns his position upon realizing that his number of Directorships have exceeded the maximum ceiling as stated in the Act, the resignation tendered by him shall be effective immediately upon the letter being dispatched to the company concerned. This sub-section does not emphasize on the fact that the letter as stated in Section 168(2) should be received by the company. What would be the situation if as stated in Section 165(4) the letter is lost in transit and goes astray and is not received by the company.

The pivotal question that needs to be addressed is whether it is necessary that the letter of resignation should be received by the company.

In our considered view, Section 168(2) states the correct position in the law and logically the resignation is to be considered complete only when the letter is received and taken on record.

If for some inexplicable reason the letter dispatched by the director as postulated in Section 165(4) is never received by the company, can we say that the act of resignation is complete regardless.

It is submitted that there is a clear conflict as between Section 168(2) and Section 165(4) and it is important to articulate as to which provision shall carry greater precedence in the face of such conflict.

It is pertinent to note that Section 168 is a provision which deals with the resignation process of a Director whereas Section 165 primarily deal with the limits on the number of Directorships a person can hold. Section 165 has to be therefore seen as a general provision as against Section 168 which is a specific provision.

It is a settled principle in statutory interpretation that a general provision has to necessarily yield to a specific provision.

The Supreme Court has set the principle in *Venkateshwar Rao v Government of AP* (AIR 1966 SC 828) that where a special provision has been laid down in respect of a specific matter, that matter is to be excluded from the general provision.

Reference may also be made to decision of the Apex Court in *UOI v Indian Fisheries Pvt. Ltd.* (1965) (35 Comp Cas 669(SC)) where the ruling was that when there is a conflict between two independent provisions, the special provision must prevail.

The above Rule of construction is based on the maxim "*Generalia Specialibus non derogant*" (meaning that general things do not derogate from special things). The above principle is also considered as the rule of *implied exception*.

Considering the above discussion, we can say clearly that Section 168(2) shall prevail in so far as consummation of the act of resignation is concerned.

CAN THE WITHDRAWAL OF RESIGNATION BY DIRECTOR BE UNILATERAL

In the Corporate World it is often seen that when a Director has tendered his resignation from the Board, he is persuaded by the Board to withdraw the same and requested to continue in office.

The question that needs to be examined is whether such withdrawal can be unilateral.

This question came to the fore in the AP High Court in *Smt. Renuka Datla v Biological E Ltd.* (65 Taxmann.com52). The Court held that whilst it is the prerogative of the Director to resign his position unilaterally, the withdrawal of the resignation cannot be unilateral and it can be acted upon only if the Board has reconsidered the issue and allowed the Director to withdraw his resignation. Till such time this happens, the resignation of the Director shall continue to be valid.

The Supreme Court has also ruled in *UOI v Gopal Chandra Mishra* (AIR 1978 SC 694) that a Director can withdraw his resignation till such time it takes effect.

Once the resignation has become effective through its receipt by the company, the way forward for the company is to take the resignation on record and file Form DIR 12 within the stipulated period.

If there is a re-think on the part of the Board and it wishes that the Director continues in office, the entire process relating to appointment shall have to be done afresh.

DIRECTOR WHO HAS RESIGNED SHALL BE LIABLE ONLY FOR OFFENCES IF ANY, COMMITTED BY HIM BEFORE HIS RESIGNATION

An important question that emerges is on the point at which point of time the Directors' liabilities for action taken by him shall cease upon his resignation.

The answer to this question is that his liabilities shall exist in respect of actions taken by him during his tenure even if proceedings if any, for non-compliance are initiated after his resignation from the Board.

The above becomes clear from a plain reading of the proviso under Section 168(2) which provides that a Director who has resigned shall be liable even after his resignation in respect of offences which have occurred during his tenure.

He cannot be made liable in respect of any acts committed after his resignation from the company, notwithstanding that the company may not intimated his resignation with the Registrar immediately, considering that the company has a thirty day window within which to file Form DIR 12.

The Directors' liabilities cease from the date on which his resignation has been received by the company regardless of whether the company has completed the formalities in connection thereof.

It is the duty of the Company Secretary to handle the entire process with maturity seamlessly such that no points are missed out which could spring up unpleasant surprises in the future.

IS IT COMPULSORY FOR A DIRECTOR TO FORWARD A COPY OF THE RESIGNATION WITH THE REGISTRAR TO ENSURE THAT PROCESS OF RESIGNATION IS COMPLETE- IMPLICATIONS OF THE USE OF THE WORDS "SHALL" AND "MAY" IN THE STATUTE

It is pertinent to note that the proviso under Sub-section (1) of Section 168 read originally at the time of its inception as under:

Quote

"Provided that a Director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed."

Unquote

A plain reading of the proviso led to the view that in as much as the expression "shall" was used therein, there was a compulsion thrust on the resigning Director that he should also, on his part intimate the Registrar about his resignation in Form DIR 11 so that the resignation could be treated as complete. This led to an apprehension particularly amongst those directors who had not filed form DIR 11 that their resignation was incomplete till such time they had filed form DIR-11.

At this juncture it would be appropriate to articulate on the usage of the expressions "shall" and "may" in a Statutory Provision.

It is the standard rule of interpretation that whenever the expression "shall" is used in a statutory provision, it conveys that there is a mandatory force to the provision.

In *State of UP v Babu Ram Upadhyaya* (AIR1961 SC 751), the Supreme Court observed as under:

"When a Statute uses the word "shall", prima facie it is mandatory. but the Court may ascertain the real intention of the Legislature by carefully attending to the whole scope of the Statute. For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the way or the other, the impact of other provisions whereby the necessity of complying with the provisions is avoided, the circumstance that the Statute provides for a contingency of the non-compliance

with the provisions, the fact that non-compliance with the provisions is or not visited by some penalty, the serious or trivial consequences that flow therefrom, and above all, whether the object of the legislation will be defeated or furthered”.

From the above passage, it can be discerned that the use of “shall” in a provision is not always indicative of its mandatory force and that other factors such as whether the purpose of the Statute shall be defeated by such non-compliance, the extent of penalties that would be visited shall have to be considered.

Notwithstanding the above, the use of “shall” led to apprehension in several quarters that it was compulsory for a Director to also intimate to the Registrar the fact of his resignation.

Perhaps with an intent to allay such apprehensions, the expression “shall” in the Proviso under Section 168(1) was substituted by the expression “may” with effect from 7.5.2018 by the Companies (Amendment) Act, 2017.

It is well known that the use of “may” in a statutory provision is considered as a permissive provision, giving discretionary power or authority and that the provision is not mandatory.

In *Prema Pushpamala Reddy v G.Veera Swamy (2011)* (AIR SCW 1676) it was observed that where there is no compelling duty to do something as an obligation and where the power conferred is discretionary or gives choice, the use of “may” indicates that the provision is permissive and it is not mandatory.

Considering the reasons behind the substitution of the expression “shall” by “may” in the Proviso under Section 168(1), we can conclude that it is now optional for a resigning director to file intimation about his resignation in Form DIR-11 and that the resignation process would be a *fiat accompli* once the Director’s intimation of resignation is received and taken on record by the company.

RESIGNATION SHOULD BE SENT BY THE DIRECTOR TO THE COMPETENT AUTHORITY FOR IT TO BE EFFECTIVE

The Supreme Court has observed in *Moti Ram v Param Devi (Supra)* that the decision to relinquish office should be conveyed to the competent authority. It therefore stands to reason that the resigning Director should send his intimation to the Director/Chairman or address it to the Board of Directors and not to any third party.

In *Registrar of Companies v Orissa Paper Projects Ltd. (63 Comp Cas 460)* it was held that the Director’s resignation does not require any acceptance but it should be sent to a competent person. The resignation sent to a third party would not be effective.

STEPS TO BE TAKEN UPON RESIGNATION BY DIRECTOR

It would be appropriate at this juncture to summarize the steps to be taken by the Company Secretary upon receipt of resignation by Director as under:

- a) If the letter has been received by the Company Secretary, he should send the same forthwith to the Chairperson of the Board and to the other Directors.
- b) Upon receipt of intimation from the Board that the resignation could be taken on record, in case of a listed company, the intimation as regards resignation should be sent to the Stock Exchanges within 7 days from the date of it is received along with a copy of the letter of resignation. The intimation shall also state that there are no reasons for the resignation other than what has been stated in the letter. The intimation should also state that in case a replacement is called for as the Board structure may have been destabilized by the resignation, necessary steps would be taken by the Board to appoint another person at the earliest and that consent of the members for the appointment of the new Director shall be obtained within three months as stated in the listing regulations.
- c) The Company Secretary should ensure to file Form DIR 12 within thirty days enclosing therewith the copy of the resignation letter duly acknowledged of its receipt with the Registrar.
- d) The resignation should be noted and included in the Quarterly report on corporate governance to be submitted by the company to the Stock Exchanges, in case of a listed company.
- e) Intimation on the resignation should be also sent to all regulatory authorities.
- f) The fact of resignation should be stated in the Board’s report and in case where the company is listed with the stock exchange in the Report on Corporate Governance for the year.
- g) As a matter of courtesy a letter should be sent preferably signed by the Chair Person to the Director placing on record the appreciation of the Board for the services extended by the person concerned during his tenure.
- h) At the next Board meeting the resignation should be taken on record with an acknowledgement for the services rendered.
- i) The concerning Director should also be provided for his records a copy of Form DIR12 filed with the Registrar.

CONCLUSION

In the above exposition we have traversed through almost entirely the gamut of the law and identified the action points to be taken and the implications arising from resignations. It is the duty of the Company Secretary to handle the entire process with maturity seamlessly such that no points are missed out which could spring up unpleasant surprises in the future. □








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RESEARCH PAPER

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We invite Research papers/ Manuscripts to publish in 'Chartered Secretary' with the objective of creating proclivity towards research among its members both in employment and practice. As research is an integral part of the scientific approach towards an issue for arriving at concrete solutions, in view of this it is essential to ensconce the research-oriented approach. Further, research is pervasive, i.e., it is not restricted to a particular field. Whether it is engineering, management, law, medicine, etc. without proper research, it is almost next to impossible to ascertain the solution of a problem.

Contributions may be sent on topics like Secretarial Practice, Auditing Standards, Company Law, Mercantile Law, Industrial Law, Labour Relations, Business Administration, Accounting, CG & CSR, Legal Discipline, and Digital Transformation & Artificial Intelligence or on any other subject and topic of professional interest.

Participants are requested to send their articles/ research papers with the following terms:

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The length of the research paper should ordinarily be between 2,500 - 4,000 words. The research paper should be forwarded in MS Word format.

We look forward to your co-operation in making this initiative of the Institute a success.

Regards,

Team ICSI

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RESEARCH CORNER



- THE PoSH ACT: DEVELOPING DISCOURSES IN SOUTH ASIAN COUNTRIES AND CHINA

The PoSH Act: Developing Discourses in South Asian Countries and China

The Indian subcontinent along with neighbouring Nepal, China, Bangladesh, Sri Lanka and Pakistan, (as a representative block of the Global South) are a dynamic milieu grappling with the demands of the modern society to promote and facilitate gender equality and equity. The Indian work environment has come a long way as the PoSH Act completed a decade in 2023 since its implementation and indeed another landmark development came in 2018 when the Securities and Exchange Board of India (SEBI) mandated all listed companies to disclose this data in their annual reports each year. However, the situation is not same in the neighbourhood.



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INTRODUCTION

Women's lives and subjectivities are shaped by the cultural, political, social, economic, institutional discourses and developments. For the longest time, women have struggled to sidestep and rise above the socially sanctioned biological determinism that curtails their participation in the political, social and economic institutions for achieving gender and socio-economic justice. The situation is more precarious in the Global South wherein redrawing gender boundaries and building solidarities is still a distant dream for women as they face discrimination,

harassment and abuse at various levels. The Indian subcontinent along with neighbouring Nepal, China, Bangladesh, Sri Lanka and Pakistan, (as a representative block of the Global South) are a dynamic milieu grappling with the demands of the modern society to promote and facilitate gender equality and equity. The Indian work environment has come a long way as the PoSH Act completed a decade in 2023 since its implementation and indeed another landmark development came in 2018 when the Securities and Exchange Board of India (SEBI) mandated all listed companies to disclose this data in their annual reports each year. However, the situation is not same in the neighbourhood. With this background, the paper explores women's position and experiences in India and its five neighbouring countries – Nepal, China, Bangladesh Sri Lanka and Pakistan, with respect to how their participation in the economic sector is adversely affected by discrimination and sexual harassment that they face on the basis of their gender. Secondly, examining the Acts and measures or lack of it in the specific country context, the paper offers a comparative study of these six countries for a critical understanding of the social and legislative responses to the workplace sexual harassment. Third, the paper also explores the effectiveness of these Acts and provisions in covering the welfare of women employed in the informal sector in this region since South Asia has 95 percent of its employed women population working in the informal sector (UN Women, 2015-16). Lastly, it is important to see how these six countries (both as individual units and a collective group), which are a representative economic and social block in the Global South, fare in the global context with respect to women's right to a safe working environment.

This paper has engaged contextual regulatory snippets and comparative vignette analysis including case contexts to compare and analyze the legislative provisions implemented in the six countries for regulating and curbing sexual harassment at workplace, and for safeguarding the rights and interests of employees with clearly defined responsibilities and roles of employers. The paper, finally, puts forward recommendations for further boosting the social and legal framework to address the issue of workplace sexual harassment.

THEORETICAL CONSTRUCT

Women's lives, in India and its neighbouring countries, are moulded by the historical experiences around nationalist movements, colonial past and partition, electoral politics, Islamic repression, subdued economic participation, intersections between gender, class and religion. Patriarchal systems and customs, in these countries, deprive women of educational and employment opportunities; property and inheritance rights; intra-household and workplace equities. At the same time, the social and economic modernization of this neighbourhood/region in the 21st Century, though lopsided, has resulted in the development of certain socio-legal frameworks to overcome macro, micro and meso realities of gender interactions that, most of the time, put women at the receiving end, both in the public and the private sphere. In this context, the paper explores sexual harassment at workplace, recognized as a "violation of human rights and human dignity, which undermines equality of opportunity and treatment between men and women" (Pradhan-Malla, 1), and is prevalent in workplaces in both the formal and the informal sector. All the countries considered in this paper are signatories to CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) which was adopted by the UN in 1979 and is regarded as "the international bill of rights for women," though some like Bangladesh have declared "reservations" to specific articles which are seemingly in conflict with the existing laws of the state (Rana 112). Articles 2 and 3 of CEDAW require states to "take ... all appropriate measures, including legislation to ensure the full development and advancement of women..." (Brandt, 106). India and most of the neighbouring countries, considered here, have worked out and implemented legislations to address workplace sexual harassment as a violation of human rights, besides other statutes, non-discrimination policies, contract law, tort law etc.

One of the first to define and engage with the concept and experience of sexual harassment was Catherine A. MacKinnon, especially in her work, *Sexual Harassment of Working Women: A Case of Sex Discrimination*, wherein she identified the two forms that it generally takes, which continues to frame contemporary understandings of it. These two forms are, "quid pro quo in which sexual compliance is exchanged, or proposed to be exchanged for an employment opportunity. The second arises when sexual harassment is a persistent condition of work," which can take many forms from being subjected to unwanted comments and gestures to "being generally taken advantage of at work" (32, 40). Sexual Harassment, a widespread and global problem, is a violation of an individual's dignity and privacy while exposing the manifested power relations in the given scenario. The United Nations General Recommendations 19 to CEDAW (1992) define sexual harassment as "such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions."¹ ILO recognizes sexual harassment

as a "violation of human rights and an affront to the dignity of persons, which seriously undermines equality of opportunity and treatment between men and women, young and older workers" (Haspels et.al, 2001). Women are more vulnerable to episodes of sexual harassment because they are at the receiving end in the power relations, are financially insecure and have been socialized to suffer in silence. According to a global study by the World Bank 1.5 billion women in education, 359 million women in employment and 2.2 billion women in public spaces respectively are not protected under any law from sexual harassment across the globe (Tavares and Wodon, 2018). For a very long time, sexual harassment at workplace has been a taboo subject in Asia, it is only in the last two decades or so that the issue has gained traction in most of the countries in this region with some developing legislative mechanism for legal redressal of the problem.

CONTEXTUAL REGULATORY SNIPPETS

The Constitution of India, over and beyond the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH), ensures the right to work with dignity at workplace along with gender equity under Article 14, 15 and 21. The PoSH Act came into existence in 2013 with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment. The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 ("Criminal Law Amendment Act") which has criminalized offences such as sexual harassment, stalking and voyeurism in India. Nepal has ratified 16 international human rights mechanisms including CEDAW 1979, and ensures effective measures such as strong penal sanctions to protect women against workplace sexual harassment along with The Sexual Harassment at Workplace (Elimination) Act, 2071 (SH Act) enacted in 2015. China has, over a period of time, enacted measures such as The Special Regulations on Labor Protection of Female Workers (2012) and The Civil Code (2020) that broadly try to address sexual harassment faced by women workers in the country. Sexual harassment has been declared a criminal offence under the penal code of Sri Lanka. It also has a detailed "Code of Conduct and Guidelines to Prevent and Address Sexual Harassment," issued in 2013. Bangladesh has also tried to address this problem through acts such as, the Prevention of Oppression Against Women and Children Act, 2000 and amended Labour Rules, 2022. Here, one must emphasize the pivotal role played by women's groups and movements in drawing attention to this issue and the urgent need to address it. For instance, it was the extensive groundwork undertaken by AASHA (Alliance Against Sexual Harassment at Workplace), a group of women's organizations in Pakistan, which ultimately led to the law against sexual harassment enacted in 2010 (Thakur 180). As women's participation in the employment sector, in Asia, has increased over the years, so has the problem of sexual harassment that may stem from organizational structure with a higher ratio of males as co-workers and

¹ <https://www.legal-tools.org/doc/f8d998/pdf/&ved=2ahUKEwi4r8KY2dX>

in leadership positions, and social norms and practices that reinforce gender inequitable attitudes and beliefs. Sexual harassment, in general and in the workplace, in particular, leads to long lasting physical, emotional, psychological trauma and professional repercussions for the victims. The redressal mechanism may vary from country to country depending upon the social, legal and organizational frameworks in the particular setting. The countries, under study here, have distinctive social milieu, legal systems and peculiar set of challenges to define, acknowledge, devise legislations and enforce them for effective redressal of workplace sexual harassment. The following section will elaborate upon the specific country contexts for comparative analysis.

COMPARATIVE VIGNETTES

India - In India, workplace sexual harassment was first recognized and addressed by the Supreme Court of India in its landmark *Vishaka* Judgement in 1997 wherein the court framed guidelines and issued directions to the government to enact a law to address sexual harassment at work. Subsequently, the PoSH Act and Rules were enacted in 2013. *Vishaka* judgement defined sexual harassment as “such unwelcome sexually determined behaviour (whether directly or by implication) as: a) physical contact and advances, b) a demand for sexual favours, c) sexually coloured remarks, d) showing pornography, e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature”². This definition was further revised with civil cases filed and heard in the Supreme Court after *Vishaka* judgement, and with the notification of PoSH Act and Rules in 2013 to include both direct or implied sexual conduct which may be physical, verbal or written. Interestingly, the PoSH Act takes great care to define the aggrieved woman and safeguards women working in both organized and unorganized sector covering domestic workers, daily wagers, volunteers, trainees, apprentices, contract workers along with regular women employees in a sector. Regulatory bodies like University Grants Commission have further taken steps to ensure that PoSH Act is implemented in its true spirit by creating Saksham Portal that aims towards empowerment of women in campuses³, and with the mandatory provisions of ‘Gender Champions’ who are “responsible leaders who will facilitate an enabling environment within their schools/colleges/academic institutions where girls are treated with dignity and respect”⁴.

Nepal - Nepal is a peculiar case study because sexual harassment is a taboo subject in the country, and gender-based segregation persists in all spheres of life. Even the legal system is highly influenced by the “defective value system of gender discrimination” (ILO, 2004). Sexual harassment is considered a gender issue in Nepal which occurs “mainly due to the patriarchal norms in society, discriminating between men and women...” (ILO, 2004). Over the years there have been consistent efforts by Nepal’s

civil society to bring about legal, policy and institutional regulations to address sexual harassment. The Supreme Court of Nepal, in response to a public interest litigation, issued guidelines, in 2008, to protect women in the entertainment industry from sexual harassment. Further, the Ministry of Industry, Commerce and Supplies adopted a Code of Conduct against gender-based violence at workplace in industries in 2010. It was in 2015 that The Sexual Harassment at Workplace (Elimination) Act, 2071 came into effect that gave detailed guidelines for compliance. Though this Act addresses many aspects of sexual harassment at workplace, there are some lacunae which have not been addressed, such as: due to its limited definition of ‘workplace’, this Act does not protect the women who work in the informal sector, secondly, the awareness about the Act is very low among the general public; also the stigma associated with sexual harassment is still rampant that leads to high instances of loss of jobs for the victims⁵.

China - Anti-harassment laws in China had not fully developed or were underenforced before 2005, the year in which the first national law *Women’s Rights Protection Law*, prohibiting sexual harassment was passed in the country. Article 40 of this law prohibits sexual harassment of women and declares the victim’s right to complain to the employer about it. The *Special Regulations on Labor Protection of Female Workers* (2012) was the first national regulation in the country to make the employer duty bound to “prevent and stop sexual harassment against female workers” (Article 11)⁶. It was only in 2020 that *Civil Code*, China’s first national law to even rudimentarily define sexual harassment was enacted. Article 1010 of the law declares a person (uses the pronoun ‘his’ for further references) sexually harassed “through oral words, written languages, images, physical acts, or the like”, furthermore, it requires “The State organs, enterprises, schools, and other organizations shall take reasonable precautions, accept and hear complaints, investigate and handle cases, and take other like measures to prevent and stop sexual harassment conducted by a person through taking advantage of his position and power or a superior-subordinate relationship, and the like”⁷. In the 200 odd pages of this Code, this is the only article that attempts to define sexual harassment and the subsequent obligatory response from the employers in China. Even the local laws and regulations in Chinese provinces adopt very narrow definitions of sexual harassment that it must be “related to sex and involve sexual content”, “contain obscene content” or “sexual demands” (Wang, 2022, 4) leaving scope for a lot of sexually inappropriate behaviour going unreported in office spaces. A 2007 survey states that 80% working women in China have faced sexual harassment (Srivastava and Gu, 2009), this has further been substantiated by a 2017 poll highlighting that over 80% of the 255 women journalists surveyed, have been subjected to sexual harassment at work (Halegua, 2021). National as

² <https://main.sci.gov.in/jonew/judis/13856.pdf>

³ <https://saksham.ugc.ac.in/>

⁴ https://www.ugc.gov.in/pdfnews/7155619_Advisory-Gender-Champions-in-English.pdf

⁵ [file:///Users/kushatiwari/Downloads/wcms_740056%20\(1\).pdf](file:///Users/kushatiwari/Downloads/wcms_740056%20(1).pdf)

⁶ <https://www.fasco.com.cn/english/article-detail?id=185&ids=WH2020000051>

⁷ <https://regional.chinadaily.com.cn/pdf/CivilCodeofthePeople'sRepublicofChina.pdf>

well as local legislations and provisions in China do not provide any concrete guidelines for obligations of various actors, grievance redressal mechanism and prescribing punishments. Most of these provisions are expressed in vague terms and do not provide any “explicit provisions on employer liability” (Wang, 2022, 8). A 2021 study conducted by Global Labor Justice – International Labor Rights Forum and U.S.-Asia Law Institute reviews more than 100 civil cases pertaining to sexual harassment at workplace and in general in China, and found that few victims seek justice through legal process and those who do encounter many obstacles in redressal due to “an unclear definition of sexual harassment, a high burden of proof and an emphasis on physical evidence, and a reluctance to award meaningful damages” (Halegua, 7).

Bangladesh - In Bangladesh and, also in Pakistan, women’s groups have played central role in forcing the government and legal systems to recognize sexual harassment, in its multiple forms, as a grave crime, and also take note of the need for stringent laws against the same to enable women to perform their roles in public sphere and workplaces without fear (Thakur 177). The struggle for safer workplaces and higher education institutes was led by Bangladesh National Women Lawyers’ Association (BNWLA), which filed a petition in the Supreme Court in 2008, seeking the court’s directions for the formulation of a policy/law to address sexual harassment in the absence of any such existing laws. The immediate context was the high incidence of the same across different universities and public places in Bangladesh⁸. In response to the petition the Court issued interim guidelines to be followed by organisations in public as well as private sector till appropriate laws are adopted. One of the most important aspects of the 2009 directives is the court’s widening of the ambit of what all may henceforth be seen as amounting to sexual harassment. It made provision for the formation of five-member complaints committee to handle the grievances; it also emphasised the need to raise awareness among employees and take preventive measures.

Sri Lanka - Sexual harassment at workplace and in public spaces was made a criminal offence in Sri Lanka in 1995. Cases of sexual harassment that pertain to a student or faculty member of a HEI can also be dealt with under the Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, 1998. The country’s Code of Conduct and Guideline provides a definition of sexual harassment that covers physical, verbal, gestural and visual forms it can take (ILO, 2013). However, unlike India and Pakistan there is no provision for an internal inquiry committee to address complaints. Sri Lanka ratified CEDAW in 1981 and a women’s charter based on CEDAW provisions was prepared in 1993, and accepted by the Sri Lankan government, but its enactment as a law still remains pending.

Pakistan - Demands for greater equality and attempts to formulate gender-sensitive laws in Pakistan have had

Sexual harassment at workplace is an extension of the regressive attitudes prevalent in society towards women’s position, rights and status that are directly reflected in women’s participation/non-participation in the public sphere in a country.

to contend with the presence of a strong, vocal section that insists on the supremacy of traditional or customary laws. These customary laws, based on a certain reading of Islam and its tenets, lay down a code of conduct for women, defining their place in the private and public domains. Thus, the state has to perform a fine balancing act between two competing notions of women’s *place*. Orthodox forces in the country, such as, Jammat-i-Islami (“the oldest Islamist party” in the country), have pushed back against reforms and, under certain regimes, found support from the state itself, President Zia-ul- Haq’s “Islamization program,” launched in 1979, being one such instance (Weiss 14,2). Haq introduced the Hudood laws which severely compromised the rights of women⁹. These coercive measures encountered resistance from largely middle and upper-class “urban based women’s groups [who] formed the *Women’s Action Forum* (WAF)...” and got support from other like-minded organizations (Imran 93). While the consistent efforts of a host of women’s organizations constituted one of the reasons for gradual change in laws during the later years, equally significant a factor was the need to fit in with a very different global order and its expectations of a responsible and responsive state. Thus, the Pakistani state had to be “seen” as sensitive to the rights of its women. As Anita M. Weiss points out, this need partly explains some of the steps undertaken during the regime of Pervez Musharraf who initiated the process of review of the controversial Hudood laws and also pushed through the Protection of Women Bill, 2006 (6-7).

COMPARATIVE ANALYSIS

The Indian PoSH Act and Rules prioritize prevention and offer an innovative template for the redressal mechanism comprising of 50 per cent women, a woman as presiding officer and an external third party expert. The Act in India, covers both *quid pro quo* harassment and hostile environment harassment and also directs setting up of a grievance redressal forum in the form of an Internal Committee (IC) or Local Committee (LC). A 2022 study by UN Women and Pacta reveal that from 2018-19, 100 percent Indian companies across Tier A,B and C complied with the requirement of setting up the IC and made the mandatory disclosures of compliance (10). The respondents of the study reported that their companies

⁸ <https://www.blast.org.bd/content/judgement/BNWLA-VS-Bangladesh2.pdf>

⁹ For a detailed discussion of the impact of Hudood laws on women, one may refer to Rahat Imran’s “Legal Injustices: The Zina Hudood Ordinance of Pakistan and Its Implications for Women.”

took initiatives to strengthen informal channels to raise and discuss instances of sexual harassment, and have sound whistle blower policy, a code of conduct, drop-boxes for complaints which were opened by senior management only. It is to be noted that sexual harassment at workplace in all the countries being studies here, partially stems from low participation of women in the higher rungs of the organizational setup: only 10 percent of the women workers have management roles in Indian corporations (Kersely, 2021). In 2015, SEBI introduced the minimum 'one-woman mandate' resulting in a sudden change in the demographics of boards with an increase in the presence of women in them. When compared globally, representation of women on corporate boards in India is at par with world average of 16.9 percent¹⁰ which makes India doing much better than developed or middle income economies like South Korea (which has the lowest gender parity on Company boards according to this study), China, Russia and Japan. With these progressive developments in the neighbourhood, Nepal has enacted the Act with several challenges yet to be resolved and redressal mechanisms to be fully functional. Sri Lanka is still in the process of making concrete guidelines and laws to curb sexual harassment at workplace, but the persisting political turmoil and instability in the country are affecting the process to create a robust legal and social system to address such issues and more. The situation in Nepal is very precarious with studies pointing out rampant sexual harassment in the workplaces which is not limited to urban centres as many women labourers working in carpet factories and other similar industries are sexually molested by their supervisors. (ILO, 2004).

When it comes to China, Article 1010 of Chinese Civil Code and all the previous legal provisions emphasize only on the need to prevent *quid pro quo* harassment and do not address hostile environment harassment. Chinese legal redressal system strongly weighs physical evidence over oral testimony in such cases. There are no constitutional or legal provisions, as of now, to constitute a fully empowered and structured complaint mechanism at the organizational or institutional level

that may safeguard the interests of the female workforce in China. In a 2018 survey of 100 respondent companies in China, 81 percent revealed that the company had no anti-sexual harassment policy and 12 percent stated that a written policy existed but was not implemented (Halegua, 2021). Halegua further talks about China's "culture of silence" that prevails in such cases with victims feeling embarrassed to be involved in such situations. The Chinese authorities clamp down upon the civil society actors that fight for the rights of women which greatly limits the scope for any meaningful work to bring about changes in the law, societal attitudes and organizational structures for creating safe spaces for women (Halegua, 2021). The case of Bangladesh and Pakistan is peculiar in the neighbourhood, since both are Islamic countries, their commitment to women's rights become contradictory to Sharia laws that prevail in these countries. The pressure to meet the expectations of the international community compelled the two countries to adopt more progressive policies, though their realization depends on sustained efforts on the part of citizens, civil society etc. In Bangladesh, despite Judicial interventions leading to comprehensive set of guidelines, the situation on the ground has not improved much, largely because of poor implementation and lack of awareness among women workers about the presence of such mechanisms or measures for their safety. For instance, a "2017 report by Human Rights Watch found that workers interviewed were not aware of the guidelines, or of any cases of harassers being held accountable" (Yasmin 116). The failure of the concerned government agencies to monitor compliance with these guidelines is another major factor (Yasmin 116). Though Pakistan has a similar law to the Indian PoSH Law with a provision for an internal committee, their composition differs. While the laws in India require that a woman be the chairperson of the committee, it is not mandatory as per the law in Pakistan (Thakur 182). Table 1* highlights a comparative study of different aspects of preventing and redressing sexual harassment at workplace in the six countries studied here:

Table 1: Comparative Analysis of the Countries Studied

Status	India	Nepal	China	Bangladesh	Sri Lanka	Pakistan
Enactment of Law	Yes	Yes	Yes	No	No	Yes
Female Chairperson in the Internal Committee in organizations	Yes	NA	NA	NA	NA	Not Mandatory
Redressal Mechanism	Yes	Yes	Yes	No	No	Yes
Anti-Sexual harassment policies in Companies	Yes	No	No	No	No	Yes
Widespread Awareness about the law/provisions	Yes	No	Yes	No	No	Yes
Mandatory appointment of Gender Champions in Educational Institutions	Yes	No	No	No	No	No
Percentage of Women in Company Boards ¹¹	17	13	14 ¹²	15	13	13

*The table is authors' own compilation based on the research material referred (as given in the References and Footnotes) to for this paper.

¹⁰ <https://corpgov.law.harvard.edu/2017/01/05/gender-parity-on-boards-around-the-world/>

¹¹ data retrieved from IFC Market Monitor: Gender equality in corporate leadership – Asia analysis <https://sseinitiative.org/sites/sseinitiative/files/publications-files/2023-sse-ifc-gender-equality-asia.pdf>

¹² This is an average of the three figures given by three different Exchanges in China.

This compilation is indicative of the progress made/to be made in forming, enacting and implementing a robust regulatory framework that addresses the issues of sexual harassment at workplace so as to create safe spaces of work for women.

CONCLUSION

India is faring much better as compared to its neighbouring countries in enacting law, devising redressal mechanism and implementing anti-sexual harassment policies via various regulatory bodies like UGC and SEBI. It has been clearly visible from the paper that India has put herculean efforts to address sexual harassment issues in workplace though same may not be true for neighbouring countries. Other neighbouring countries, with the exception of Nepal and Pakistan, do not have law to specifically deal with this issue. Although comprehensive trainings and policies are the foundations, many organizations have not yet fully embedded and consistently reinforced these learnings, compounding ongoing concerns about conduct and reporting. Creating a more vigorous culture, is a priority, with robust confidentiality and anti-victimization measures. No doubt, these implementation issues can be rectified through efficient and effective implementation (and monitoring, to understand grey areas) of the mechanism provided under the PoSH Act, but the real challenge, which goes beyond this, is achieving the 'cultural change'. Sexual harassment at workplace is an extension of the regressive attitudes prevalent in society towards women's position, rights and status that are directly reflected in women's participation/non-participation in the public sphere in a country. Ensuring women's social and economic empowerment is integral for shared prosperity and economic boost as it is estimated that "closing the gender gap could give the global economy a USD 7 trillion boost"¹³.

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**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)



**National Convention of
Company Secretaries**

#ICSIGovCon

Vision

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

सत्यं वद। धर्मं चर।

Motto

इष्टार्थं कुरु त्वत्कर्म: क्लेशहेतुं न कुरु।

Mission

"To develop high calibre professionals
facilitating good corporate governance"

52nd National Convention of Company Secretaries

November 8-9-10, 2024 | Hotel Sahara Star, Mumbai

Theme – India@2047: Expanding Horizons for Professionals





52nd National Convention of Company Secretaries



Dear Professional Colleague,

Sabka Saath, Sabka Vikas, Sabka Vishwas, and Sabka Prayas

These words of Shri Narendra Modi, Hon'ble Prime Minister of India acts as guiding force for the *Kartavya Kaal* wherein inclusive economic participation from all citizens is essential to steer India's economic growth towards the vision of a developed economy by 2047. Indian economy is aiming towards being the third largest by 2030 and the ambition of USD 30 trillion economy by 2047 requires crafting a new narrative of strategic development that embodies resilience, innovation and quality.

The Government has dedicated the last decade on reforming, formalizing and revitalizing the Indian economy by scrapping over 1,500 outdated processes, rules and regulations, facilitating ease of doing business, reshaping contours of real estate and the MSME sector, nurturing startups and fintechs, enacting IBC in 2016 and GST Act in 2017, strengthening dispute resolution mechanisms, subsuming 29 Central labour laws into 4 comprehensive labour codes, digitizing interfaces, simplifying FDI routes, etc.

The next decades of the *Kartavya Kaal* will showcase a multifaceted approach harnessing India's intellectual capital and demographic dividend to foster macro-economic growth and all-inclusive welfare. Active participation and responsible stewardship of the corporate sector will play a vital role in spurring economic growth to position India as a developed nation. The call for opportunities rings louder than ever and Professionals like Company Secretaries will emerge as facilitators providing the impetus, guidance and direction for Indian corporates.

With a view to support this ambitious initiative of the Government of India, I am extremely delighted to inform that the ICSI is organizing its 52nd National Convention of Company Secretaries to be held from **Friday, November 8 to Sunday, November 10, 2024** on the theme **India@2047: Expanding Horizons for Professionals** at **Hotel Sahara Star, Mumbai**, the economic hub and financial capital of India. The Convention aims to delve into the pivotal role of professionals, particularly Company Secretaries, in driving sustainable development and effectively contributing to this national vision.

The event will provide an insightful platform featuring prominent speakers, industry leaders and policymakers to discuss and deliberate on the economic landscape of India and the evolving opportunities for Professionals. Your kind presence will surely enable exchange of ideas, experiences and networking with your professional colleagues from all parts of the country and abroad. Your spouse, children and other guests are also welcome to the National Convention, sight-seeing, cultural programme and other attractions.

The Institute also proposes to release a Souvenir containing messages of good wishes, theme articles, programme details, and other interesting features on this significant occasion. We request you to use your good offices in obtaining advertisement and sponsorship support for this mega event. We are delighted to call upon you to register for the 52nd National Convention of Company Secretaries at Mumbai.

I look forward to our meeting at the *City of Dreams*!

With best regards,

Yours' sincerely,

CSB. Narasimhan
President, The ICSI





52nd National Convention of Company Secretaries

India@2047: Expanding Horizons for Professionals

"Remember the time before independence...yes, people had different methods of working but the goal was same and the goal was big - the freedom of India. In this Amrit Kaal we have to come together and work towards another big goal of a Viksit Bharat."

- Shri Narendra Modi, Hon'ble Prime Minister

The vision of *Viksit Bharat* outlines a comprehensive roadmap to transform India to mark its presence amongst the top three economies by 2047 – the 100th year of its independence, which encompasses varied facets of development, such as economic growth, environmental sustainability, social progress and good governance. And for an Institute functioning with a vision "to be a global leader in promoting good corporate governance", it is pertinent that the roles and responsibilities of Company Secretaries are synergized with the national aspirations.

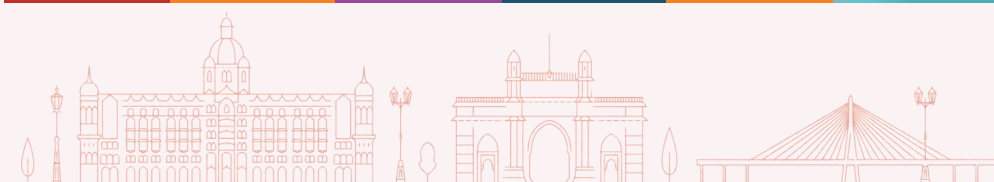
The Union Budget 2024 is a significant milestone in India's journey towards becoming a developed nation by 2047. The Budget lays a solid foundation for a prosperous and resilient economy with far-reaching and transformative provisions with focus upon employment generation, support to the middle class, agriculture growth, MSMEs, urban infrastructure development, next-generation reforms and improving factors of production.

Initiatives like Digital India and Make in India are revolutionizing industries and empowering millions. At the same time MSMEs are shaping India's economic future and paving the way for a *Viksit Bharat*. The nation's unwavering commitment to green energy, climate change and cutting-edge infrastructure is laying the foundation for a sustainable future. In healthcare and space exploration, India is reaching unprecedented heights, exemplifying its resilience and visionary ethos.

The theme of the 52nd National Convention, **India@2047: Expanding Horizons for Professionals** symbolizes a journey of limitless possibilities and expanding horizons for professionals with excellence and innovation in the nation's journey towards a global leader through promotion of good governance, technology, sustainable development, education, entrepreneurship, and innovation.

In the corporate arena, Company Secretaries have transcended traditional roles, becoming pivotal architects of organizational strategy, governance, and sustainable practices. Today, the role of a Company Secretary has evolved from an administrative function to a strategic ally, who is instrumental in navigating complex business landscapes and driving long-term growth.

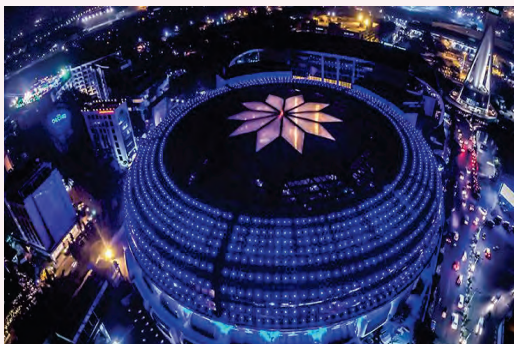
The 52nd National Convention aims to brainstorm new ideas, foster knowledge sharing, capacity building, and collaborative initiatives through discussions during the Technical Sessions leading to fruitful outcomes to contribute towards vision of *Viksit Bharat*. The **sub-themes** for the technical sessions for the three-day Convention covering aspects of the theme in a professional context are as under:





52nd National Convention of Company Secretaries

Venue of the Convention



Hotel Sahara Star

Opposite : Domestic Terminal-1, 70C,
Nehru Road, Vile Parle, Mumbai- 400 099

About Mumbai

Mumbai, capital of Maharashtra, situated on west coast of India is also known as 'Financial Capital of India' or the 'City of Dreams'. Mumbai is in all ways a mega-city which attracts people to give shape to their dreams and aspirations. But it is also a city with strong historical links, wonderful architecture, museums, beaches, places of worship. A city of diverse cultures and a melting pot of commerce, industry, education, entertainment, enterprise, and politics.

The incredible culture of Mumbai is a perfect union of festivities, religion, music, food and theaters. Fun is equally important to the people of Mumbai. This is evident from the way various festivals are celebrated here, in particular, *Ganesh Chaturthi*, a 10-day festival which is celebrated with grandeur and glory.

Mumbai is famous for its handmade fabrics, textiles and jewellery. A good reason to visit Mumbai is the food, be it street food or local favourites or the seafood. Offshore, nearby Elephanta Caves holds ancient cave temples dedicated to the *Lord Shiva*.

Tourist Attractions



Gateway of India

The Gateway of India is an arch monument built during the 20th century to commemorate the landing of King George V and Queen Mary at Apollo Bunder on their visit to India in 1911. The monument has also been referred to as the Taj Mahal of Mumbai. Today, it is a favourite among locals and tourists for the beautiful view of the Arabian Sea. Distance from venue about 26 km.

Chhatrapati Shivaji Terminus

The modern railway station of Mumbai, Chhatrapati Shivaji Terminus is also known as Victoria Terminus. Built in 1888, it is one of the UNESCO World Heritage Site and has a great historic significance. It is a perfect fusion of Late-Italian and Victorian/Gothic and Mughal Architecture Styles. Distance from venue about 25 km.





Siddhivinayak Temple

Siddhivinayak Temple is located in Prabhadevi in Mumbai. It is a temple dedicated to *Lord Ganesha* and was originally constructed in 1801 and is considered one of the richest temples of the country. Inside a little mandap is the shrine of Siddhivinayak with the wooden doors of the sanctum carved with figures of Ashtavinayak while its inner roof is plated with gold. Distance from venue about 10 km.

Mahalakshmi Temple

Mahalaxmi Temple is one of the most famous temples of Mumbai situated on Bhulabhai Desai Road in Mahalakshmi area. The temple was built in 1831 by Dhakji Dadaji, a Hindu merchant. The Mahalakshmi temple contains images of the Tridevi goddesses Mahakali, Mahalakshmi, and Mahasaraswati. Distance from venue about 18 km.



Marine Drive

The best location in Mumbai to watch the sunset is the Marine Drive, a 3 Km. long arc shaped road along the coast of South Mumbai. Popularly known as the Queen's Necklace because of its shape and yellow streetlights, Marine Drive is a place which is

Juhu Beach

Probably one of the most visited places in Mumbai, Juhu Beach is situated in Ville Parle. Juhu Beach comes to life mostly in the evening, when people from all walks of life visit here to enjoy sunset, play in the water and treat their taste buds. With the houses of many Bollywood stars and Celebrities near the Juhu Beach, it is another famous tourist location of the city. Distance from venue about 5 km.



Kala Ghoda

Kala Ghoda is known as the art district of South Mumbai, where art galleries, museums, educational centers and cinemas are clustered together. Translating as 'the black horse', Kala Ghoda is named after the black stone statue of King Edward VII mounted on a horse which is a focal point of the area. Kala Ghoda area is an abode for art lovers, and is one of the most artistic and culturally rich place in Colaba. Distance from venue about 25 km.

Lonavala & Khandala

Lonavala and the adjacent Khandala are twin hill stations, in the Sahyadri ranges situated at a distance of about 96 Km. from Mumbai. Lonavala and Khandala are home to amazing landscapes, forts, ancient caves, sunset points, beautiful lakes and waterfalls.



Alibaug

Alibaug is a coastal town in Raigad, Maharashtra located about 100 Km. from Mumbai. It is well known for its sandy beaches, forts, temples and beautiful scenery. Alibaug is a holy place for Goddess Shree Padmakshi Renuka, the goddess of Konkan.





52nd National Convention of Company Secretaries

Tentative Programme Schedule

DAY-1: FRIDAY, NOVEMBER 8, 2024	
11:00 AM Onwards	Registration of Delegates
12:00 Noon – 2:00 PM	Lunch
2:00 PM – 3:30 PM	Opening Plenary
3:30 PM – 5:00 PM	Technical Session-I
5:00 PM – 5:30 PM	Tea Break & B2B Session
5:30 PM – 6:30 PM	Special Session
7:30 PM Onwards	Cultural Evening & Dinner

DAY-3: SUNDAY, NOVEMBER 10, 2024	
9:30 AM – 11:00 AM	Open House
11:00 AM – 12:30 PM	Technical Session-V
12:30 PM – 1:00 PM	Tea Break & B2B Session
1:00 PM – 2:30 PM	Technical Session-VI
2:30 PM Onwards	Lunch

DAY-2: SATURDAY, NOVEMBER 9, 2024	
10:00 AM – 11:30 AM	Technical Session-II
11:30 AM – 12:00 Noon	Tea Break & B2B Session
12:00 Noon – 1:30 PM	Technical Session – III
1:30 PM – 2:30 PM	Lunch Break
2:30 PM – 3:00 PM	Special B2B Session
3:00 PM – 4:30 PM	Technical Session-IV
4:30 PM – 5:00 PM	Tea Break & B2B Session
5:00 PM – 6:30 PM	Special Session
7:30 PM Onwards	Cultural Evening & Dinner

Delegate Fee and Registration Process

Delegate Registration Fee* (Non-Residential)

Delegate Category	Early Bird Registration-I (Extended upto September 15, 2024)	Early Bird Registration-II (From September 16, 2024 to October 31, 2024)	Delegate Fee (From November 1, 2024 onwards including on the spot registration)
Member of ICSI/ ICAI/ ICMAI	Rs.8,000	Rs.9,000	Rs.10,000
Accompanying Spouse / Child (5 years and above) / Sr. Member (60 years and above)	Rs.6,500	Rs.7,500	Rs.8,500
Student of ICSI	Rs.6,000	Rs.7,000	Rs.8,000
Non-Member/Guest	Rs.10,000	Rs.11,000	Rs.12,000
Foreign Delegate	USD 175	USD 225	USD 275

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

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





52nd National Convention of Company Secretaries

Registration Process

- Delegates are requested to register for the Convention by visiting the Registration Link: <https://tinyurl.com/3re42saw>
- Registration for the Convention shall be through Online Mode only.
- Please note that payments are not accepted through Demand draft, Cheque & Cash.



Programme Credits

- 10 (Ten) Structured CPE Credits for members of the Institute

Speakers



Participants





52nd National Convention of Company Secretaries

Accompanying Guests, Spouse and Children

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

Articles for Souvenir

Members who wish to contribute article for publication in the Souvenir are requested to send the same through email at **conference@icsi.edu** on or before **September 15, 2024**. The article should be between 2,500 – 4,000 words (font size Arial 11 point – single space / single column and without any diagrams / sketches / downloaded pictures from internet). The content shall be original work of the author. Articles will be checked for plagiarism by the Institute.

The Articles Screening Committee constituted specially for the 52nd National Convention will consider the Articles received and the decision of the Committee will be final in all respects. Member whose article is published in the Souvenir shall be granted 4 (FOUR) CPE Credits (Structured) and select publications of the Institute in recognition of his/her efforts. **Please send article in the MS Word mentioning your Name, Designation, Organisation/Firm Name.** Articles not complying with above specifications including length of the article shall be rejected.

How to reach Mumbai



By Air

Chhatrapati Shivaji International Airport, formerly known as Sahar International Airport, is the primary international airport serving the Mumbai Metropolitan Area. It is situated about 30 Kms. from Chhatrapati Shivaji Terminus (CST) Station. The Santa Cruz Domestic Airport is about 4.5 Kms. from the International Airport.



By Train

The main Railway stations in Mumbai are Chhatrapati Shivaji Terminus (CST), Bandra Terminus, Mumbai Central and Lokmanya Tilak Terminus Railway Station, Kurla. These major railway stations connect Mumbai with different parts of the country.



By Road

Mumbai is well-connected with national highways and expressways. Mumbai visit by bus is the most economical for individual tourists. Government, as well as private buses, operate daily services to this route. Mumbai bus stand is situated at the centre of the city.

CS B. Narasimhan
President, The ICSI

CS Dhananjay Shukla
Vice President, The ICSI

CS Pawan G. Chandak
Council Member, The ICSI &
Programme Director

CS Asish Mohan
Secretary, The ICSI

CS Mehul Ganesh Rajput
Chairman, WIRC, The ICSI





52nd National Convention of Company Secretaries

Hotel Booking For Delegates

1. The members/students/others (as the case may be) are required to first get themselves registered as delegate for the 52nd National Convention of Company Secretaries.
2. The ICSI has taken best/ negotiated rates from some of the hotels and blocked the rooms at concessional rates for delegates of National Convention. The delegates are advised to avail this opportunity latest by **September 15, 2024**. The rates may be changed post this date at the discretion of the hotel.
3. **For booking of rooms in hotel, delegates may select the hotel as per their choice from the list of hotels given below. They may download the Room Booking Form from the link given against that hotel's name. They are required to fill-up details including the Delegate Registration No. in the form and after that scanned copy of this form is required to be sent by e-mail to respective hotel. After receiving the same, the hotel will share link for the payment and accordingly, delegates may make the payment and book rooms by their own.**
4. All payments related to hotels are to be settled by the delegate with the hotel concerned directly.
5. **All delegates may kindly note that hotel rooms shall be booked on full occupancy basis.** The sharing of the room with the other delegate is permissible and will depend completely on the mutual understanding amongst the delegates. The details of the accompanying delegate are to be filled in the form at the time of booking of the hotel. The ICSI in no way is involved in the process and would not be suggesting any names for sharing of room.
6. Hotel may allow delegates for early check-in, if some of them are reaching before check-in time, but this facility is subject to availability of rooms at that point of time. Lunch is also being arranged to be served from 12:00 Noon onwards at Convention Venue to facilitate such delegates who are reaching Mumbai before check-in time of their respective hotels.
7. Delegates are free to book their stay in any hotel of their choice at their own.

Sl. No.	Name & Address of the Hotel	Hotel Booking Form	Star Category	Distance from Convention Venue	Distance from Airport	Distance from Railway Station	No. of Rooms blocked for delegates	Room Tariff (Per Room Per Night Including Breakfast)			Contact Details
								Single Occupancy	Double Occupancy	Triple Occupancy	
1.	Hotel Sahara Star , Opp: Domestic Terminal-1, 70C, Nehru Road, Vile Parle, Mumbai- 400 099	https://tinyurl.com/Hotel-Form	5 Star	Convention Venue	650 M from Terminal 1 4 KM from International Terminal	25 KM from CST 18 KM from Mumbai Central	100	9,000 +GST	10,000 +GST	11,000 +GST	8657931933 reservations@saharastar.com
2.	Hotel Ibis Mumbai Airport, Near Domestic Airport-Western	https://tinyurl.com/nha5yixj	3 Star	100 Meters	1 km from Terminal 1 & 4 kms appx from International Terminal	25 KM from CST 18 KM from Mumbai Central	35	7,000 +GST	7,500 +GST	—	Ms. Vanessa Pereira, Sales Manager Mob: 9167797714 022-67167782 Pereira.vanessa@accor.com
3.	Hotel Orchid , T-1, 70C, Nehru Road, Navpada, Vile Parle (E), Mumbai- 400 099	https://tinyurl.com/y558k mx	5 Star	100 Meters	1 km from Terminal 1 & 4 kms appx from International Terminal	25 KM from CST 18 KM from Mumbai Central	60	8,000 +GST	8,000 +GST	105000 +GST	CENTRAL RESERVATIONS +91 916 916 6789 7.30 AM to 9.30 PM reservations@orchidhotel.com
							20 Executive	8,500 +GST	8,500 +GST	11000 +GST	
							Premium (based on availability)	10,000 +GST	10,000 +GST	13000 +GST	





52nd National Convention of Company Secretaries

Sponsorship/Advertisement Tariff

Sl. No.	Details	Rs.
1.	Principal Sponsor <ul style="list-style-type: none"> • Advertisement in Souvenir • Delegate fee exemption • Display at Convention Backdrop • Stall (6'x6') • Publicity material in delegate kits • Special Acknowledgement 	20,00,000 4 Delegates (Residential) 6 Delegates (Non Residential)
2.	Co-Sponsor <ul style="list-style-type: none"> • Advertisement in Souvenir • Delegate fee exemption • Display at Convention Backdrop • Publicity material in delegate kits • Special Acknowledgement 	15,00,000 2 Delegates (Residential) 5 Delegates (Non Residential)
3.	Sponsorship for Bags <ul style="list-style-type: none"> • Advertisement in Souvenir • Delegate fee exemption • Display at the Convention site/ Convention Bag • Publicity material in delegate kits • Special Acknowledgement 	12,00,000 2 Delegates (Residential) 4 Delegates (Non Residential)
4.	Diamond Sponsor <ul style="list-style-type: none"> • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site • Special Acknowledgement 	8,00,000 5 Delegates (Non Residential)
5.	Souvenir Sponsor <ul style="list-style-type: none"> • Logo on the Souvenir cover page • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site • Special Acknowledgement 	6,00,000 4 Delegates (Non Residential)
6.	Gold Sponsor <ul style="list-style-type: none"> • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site • Special Acknowledgement 	5,00,000 3 Delegates (Non Residential)
7.	Cultural Programme Sponsor Day 1 <ul style="list-style-type: none"> • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site & Cultural Programme Site • Special Acknowledgement 	5,00,000 3 Delegates (Non Residential)
	Day 2 <ul style="list-style-type: none"> • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site & Cultural Programme Site • Special Acknowledgement 	5,00,000 3 Delegates (Non Residential)
8.	Silver Sponsor <ul style="list-style-type: none"> • One Special Full Page advertisement in Souvenir • Delegate fee exemption • Display at Convention Site • Special Acknowledgement 	3,00,000 2 Delegates (Non Residential)





52nd National Convention of Company Secretaries

Sl. No.	Details	Rs.
9.	Advertisements in Souvenir	
	- Back Cover	1,00,000
	- Inside Cover	70,000
	- Special Full Page (coloured printing)	50,000
	- Full Page (B/W)	30,000
	- Half Page (coloured printing)	30,000
	- Half Page (B/W)	15,000
10.	Advertisements in Souvenir (Concessional tariff for PCS)	
	- Special Full Page (coloured printing)	25,000
	- Full Page (B/W)	15,000
	- Half Page (coloured printing)	15,000
	- Half Page (B/W)	7,500
11.	Banner	
	• 8' x 3' + Spl. Full Page Advertisement (Colour)	1,00,000
	• 8' x 3'	50,000
	• 6' x 3'	35,000
12.	STALL • 6' x 6'	1,00,000 2 Delegates (Non Residential)
13.	Distribution of Publicity Material, literature, Pen/Pad etc.	1,00,000 1 Delegate (Non Residential)
14.	Sponsorship of Pen/ Pad for Convention Delegates	3,50,000
	• Logo on Pen and notepad (Cover page)	
	• Advertisement in Notepad (Back Cover)	
	• One Special Full Page advertisement in Souvenir	
	• Delegate fee exemption	
	• Special Acknowledgement	2 Delegates (Non Residential)
15.	Miscellaneous	
	• For any member who procures advertisements above Rs.2,00,000-Delegate Fee (non-residential) exemption for 2 delegates	
	• For any member who procures advertisements above Rs.5,00,000 -Delegate Fee (non-residential) exemption for 4 delegate	
	• 10% Incentive to the RO/Chapter for procuring any of above sponsorships / advertisements	

QUERY/ CLARIFICATION

For any query/clarification, please contact:

Query / Clarification	Name of the ICSI Official	E-mail ID	Contact No.
Delegate Registration	Mr. Niranjana Sarkar	niranjana.sarkar@icsi.edu	0120- 4522087
Hotel booking for Delegates	Ms. Vinny Mehta	vinny.mehta@icsi.edu	9650555384
Sponsorship	Ms. Pooja Sharma	pooja.sharma@icsi.edu	9625655045



3

LEGAL WORLD



- RAHUL SUBODH WINDOORS LTD v. A.K. MENON & ANR [SC]
- SAMRAT RESTAURANT v. BREWCRAFTS MICRO BREWING PRIVATE LTD [NCLAT]
- RUGBY RENERGY PVT. LTD v. SREI EQUIPMENT FINANCE LTD [NCLAT]
- THE ASSISTANT PROVIDENT FUND COMMISSIONER (LEGAL) EPFO v. CHANDRA PRAKASH JAIN LIQUIDATOR OF KHUSHI FOODS LTD [NCLAT]
- PREM TRADING COMPANY & ANR v. RAMCHANDRA DALLARAM CHOUDHARY & ORS [NCLAT]
- S.D. MANOHARA v. KONKAN RAILWAY CORPORATION LTD[SC]
- PUNJAB AND SINDH BANK v. RAJ KUMAR [DEL]
- M/s VANDE MATARAM CABLE TV NETWORK & ANR v UOI & ORS [CCI]
- SABINE S. v. MITERA HOSPITAL [CCI]



Corporate Laws

Landmark Judgement

LMJ 10:10:2024

RAHUL SUBODH WINDOORS LTD v. A.K. MENON & ANR [SC]

Criminal Appeal No.552 of 1995

G.B.Pattanaik & S.Rajendra Babu, JJ. [Decided on 06/04/1999]

Equivalent citations: AIR 1999 SC 1675; 1999 (4) SCC 446; (1999) 2 JT 552 (SC); (1999) 96 Comp Cas 597; (1999) 33 CLA 468.

Section 9A of the Special Court (Trial of Offences Relating to Transactions in Securities) Act 1992 read with section 41(2) of the Companies Act, 1956- allotment of shares- allotment made in blank to unknown persons- Special court finding this as no proper allotment- special court directed the Company to return the money to the custodian- whether correct- Held, Yes.

Brief facts:

The Special Court came to the conclusion that there has been no allotment of shares at all inasmuch as there can be no allotment of shares in blank and in the copies of the share certificates produced before the Special Court no names have been entered. No application had been filed by the second respondent in terms of Section 41(2) of the Companies Act agreeing to become a member of the company and his name be entered in the Register of Members. On examination of the Register of Members, the Special Court found that there were certain suspicious circumstances which clearly indicated the fact that the second respondent had never made an application in writing for allotment of shares. The Special Court further examined the matter with reference to the distinctive numbers of the shares which revealed a lot of suspicion to the effect that their names in the Register of Members were made sometime after the letter was sent by the Custodian only to over-come the difficulty of an application being made by him and long after the second respondent was notified. Therefore, the allotment is purportedly to be made in his name without any application in writing and only with a view not to return the money belonging to the notified party. Further, there is no intimation to the Registrar of Companies either for filing a return of the statement stating the number, the nominal amount of the

shares, the names, addresses, occupation of the allottees and the amounts, if any, paid or due and payable on each share. Thus on the basis of these circumstances and certain other attendant circumstances, the Special Court came to the conclusion that there was no allotment of shares and it is not now open to the appellant to make such an allotment of shares and, therefore, it directed the repayment of the sum of Rs. 20 lakhs with interest. Alternatively, the Special Court held that the sale/purchase of shares was on a buy-back basis and it was only an arrangement for financing and even on that basis the price must be the original price plus some amount for interest at a reasonable rate and that must be repaid. In conclusion, the Special Court directed the appellant to pay the Custodian for and on behalf of the second respondent a sum of Rs. 20 lakhs together with interest thereon @ 18% per annum from November 13, 1991 till payment.

Decision: Dismissed.

Reason:

Challenging this order several grounds have been raised in the appeal but at the time of hearing only two contentions are put forth before us by the learned counsel for the appellant.

In the first place, he contended that the Special Court had no jurisdiction to entertain the application of respondent No. 1, the Custodian, since the matter did not relate to any offence contemplated under Section 3 of the Act. The learned counsel drew our attention to the scheme of the Act to impress upon us that the Special Court does not have any jurisdiction to entertain an application for declaration to the effect that a sum of Rs. 20 lakhs in question belong to the second respondent. Section 7 of the Act provides for the jurisdiction of the Special Court in respect of transaction for any offence referred to in Section 3(2) of the Act and bars the jurisdiction of any other court. If the matter stood thus, the contention put forth on behalf of the appellant perhaps needs further examination. Now after the insertion of Section 9A with effect from 25 January, 1994 the Special Court exercises the jurisdiction of a civil court in relation to any matter or claim (a) relating to any property standing attached under Section 3(3) of the Act, and (b) arising out of transactions in securities entered into after the 1st day of April, 1991 and on or before the 6th day of June, 1992, in which a person is notified under Section 3(2) is involved as a party, broker, intermediary or in other manner. Sub-section (3) of Section 9A bars the jurisdiction of other courts in respect of these matters. Therefore, the Special Court is the only court which can inquire into and deal with the matters of this nature where the transaction covered by Section 9A or property standing attached under Section 3(3) is involved and, therefore, we think the first contention urged on behalf of the appellant is plainly misconceived and stands rejected.

The second contention put forth on behalf of the appellant is that the shares are granted and, therefore, on the allotment of shares the money does not belong to respondent No. 2 but to the appellant. In the narration of facts made earlier

while referring to the proceedings in the Special Court out of which this appeal arises we have stated the various circumstances taken note of by the Special Court in not accepting that there had been any allotment of shares. A few of these circumstances are firstly, there can be no allotment of shares to unknown persons; secondly, allotment can be made to a person who becomes a member of the company when an application is made to that effect, and thirdly, no application was made to the company by the second respondent in that regard was forthcoming. Cloud of doubts was cast upon the entries in the Register of Members and the distinctive numbers of the shares and, therefore, the finding of fact recorded by the Special Court that there had been no allotment at all and it was sought to be made only after the second respondent was notified under the Act to avoid payment of money of a sum of Rs. 20 lakhs cannot be seriously disputed. We find no good reason to interfere with the said finding and the second contention urged also stands rejected. The Special Court was also justified in noticing that the transaction between the parties was really a financial arrangement with the buy-back agreement and even on that basis a sum of Rs. 20 lakhs with interest can be ordered to be paid to the Custodian. We cannot take any exception to this view either. Inasmuch as the appellant has failed in both these contentions, there is no merit in the appeal and the same shall stand dismissed.

LW 71:10:2024

SAMRAT RESTAURANT v. BREWCRAFTS MICRO BREWING PRIVATE LTD [NCLAT]

Company Appeal (AT) (Insolvency) No. 1409 of 2024

Ashok Bhushan, Barun Mitra & Arun Baroka. [Decided on 25/09/2024]

Insolvency and Bankruptcy Act, 2016- section 9- CIRP by operational creditor- amount inflated by including prohibited amounts u/s.10A, unreasonably high interest, other charges etc- NCLT rejected the application disallowing these amounts and finding the correct amount is less than the prescribed amount- whether correct- Held, Yes.

Brief facts:

The Appellant (Operational Creditor) had entered into a L&L agreement with the Respondent (Corporate Debtor) on May 4, 2017. Over time, the Respondent defaulted on its payment obligations under this agreement, and the Appellant sent several notices demanding payment of overdue amounts. On February 6, 2019, the Appellant sent a demand notice for Rs 1.04 crores. The Appellant filed an Application under Section 9 of the IBC, but the NCLT rejected the Application, holding that part of the debt fell within the Section 10A period, thus disqualifying the total debt from meeting the Rs 1 crore threshold. The Appellant had challenged this rejection before the NCLAT.

Decision: Dismissed.

Reason:

Overall, we find that Adjudicating Authority has correctly excluded the following amounts:

Rs 1,66,56,022/- which was wrongly claimed by the Appellant towards interest, Rs 47,01,629/- towards arbitrary and unsubstantiated reimbursements and Rs 69,30,442/- was excluded which fell due during the 'prohibited period' under Section 10A of IBC. After examining the facts of the case, it is noted by the Adjudicating Authority that the outstanding license fees should have been Rs 1,04,33,299/- which gets further reduced by Rs 69,30,442/- which fell due during the "prohibited period" under the Section 10A of IBC.

Consequently, the total amount of outstanding default that the Appellant has against the Respondent stands at Rs 35,02,857/- which is below the threshold limit of Rs 1 crore prescribed under Section 4 of IBC, making the Section 9 Petition filed by the Appellant not maintainable. The IBC mandates that for a Corporate Debtor to be admitted into CIRP under Section 9, the defaulted amount must meet the threshold of Rs 1 crore. In recalculating the actual unpaid amount, excluding the portion protected under Section 10A and the improperly calculated interest and reimbursements, the NCLT correctly determined that the outstanding default amounted to Rs 35,02,857/-, far below the threshold requirement. This finding is legally sound and consistent with established principles of insolvency law.

In conclusion we find that:

- a) A significant portion of the default, amounting to Rs. 69,30,442/- occurred during the Section 10A period, which cannot be included in the calculation of default for initiating CIRP.
- b) The Appellant included interest at an inflated rate of 18% pa, despite no agreement to this effect in the L&L agreement, further inflating the claimed amount.
- c) The OTS agreement did not alter the date of default, and the default during the Section 10A period remained protected under law.
- d) The Appellant's claim was inflated, and the Adjudicating Authority rightly recalculated the actual unpaid amount, which fell below the Rs 1 crore threshold.

We find that the Appellant's inclusion of inflated interest rates, unsubstantiated reimbursements, and amounts that fall under the Section 10A period demonstrates a deliberate attempt to manipulate the figures to meet the threshold for initiating CIRP. This constitutes an abuse of the insolvency process, and the Adjudicating Authority was right in dismissing the Section 9 Petition.

For the above-noted reasons, this Tribunal finds that the Adjudicating Authority correctly interpreted and

applied Section 10A of the IBC and rightly Company Appeal (AT) (Insolvency) No. 1409 of 2024 31 of 32 concluded that the outstanding default did not meet the Rs 1 crore threshold. We, therefore, find the Appeal to be devoid of merit and deserves to be dismissed.

LW 72:10:2024

RUGBY RENERGY PVT. LTD v. SREI EQUIPMENT FINANCE LTD [NCLAT]

I.A. No. 4327, 4515 of 2024 in Company Appeal (AT) (Ins) No. 1266 of 2024

Ashok Bhushan, Barun Mitra& Arun Baroka. [Decided on 25/09/2024]

Insolvency and Bankruptcy Act, 2016- appeal- appeal filed with 15 days delay- refiled with 185 days delay- whether the delay could be condoned- Held, No.

Brief facts:

The appellant filed an appeal with a delay of 15 days. The registry pointed out certain defects and directed the appellant to remove the same and refile the appeal. The appeal was refiled with a delay of 185 days. Applications to condone the delay in filing the appeal as well as refile the appeal were rejected by the NCLT. The appellant appealed to the NCLAT.

Decision: Dismissed.

Reason:

Coming to our analysis, we have no doubts in our minds that the delay in refile can be condoned only if the Tribunal is satisfied that there is reasonable and justifiable cause for not refile the appeal on time. When we look at the sequence of events, we find that the Appeal was e-filed on 02.12.2023 and defects were intimated soon thereafter by the Registry on 11.12.2023. When we peruse the defect list pointed out by the Registry, most of the defects are minor in nature like lack of pagination, need of rescanning of certain pages of the appeal, correction of index etc. The correction of such defects was by no stretch of imagination of a time-consuming nature. The defects which were indicated by the Registry clearly fell in the routine category which were easily curable.

The Applicant has also not indicated any circumstance beyond his control which warranted 185 days to clear the defects. Even the attribution of court vacations as a ground for delay does not cut ice since duration of court vacations are never that long. Clearly therefore, since the time of intimation of defects, the Applicant slept over the defects for nearly six months. No earnest efforts were made by the Applicant to correct the defects. It cannot be the unilateral prerogative of the Applicant to elect when it chooses to cure the defects to get the matter listed. This shows that the applicant was casual, callous and negligent in refile the appeal.

We are of the considered view that from the conduct of the Applicant it becomes amply clear that after filing the Appeal, the Applicant deliberately kept the appeal petition in a state of suspended animation to suit their whims and convenience. Such masterly inaction on the part of the Applicant does not commend us. It cannot be the unilateral prerogative of the Applicant to elect when it chooses to cure the defects. The Applicant cannot be given any indulgence keeping in view that the IBC proceedings have stringent timelines to be followed and the proceedings have to be concluded in a time-bound manner.

We are thus of the considered view that sufficient ground has not been made out for condonation of 185 days delay in refile of the Appeal. The refile delay application is rejected. Having rejected this application, the I.A. No. 4515 of 2024 seeking condonation of delay is also dismissed as infructuous. Consequently, all other IAs, if any, as well as the Memo of Appeal is rejected.

LW 73:10:2024

THE ASSISTANT PROVIDENT FUND COMMISSIONER (LEGAL) EPFO v. CHANDRA PRAKASH JAIN LIQUIDATOR OF KHUSHI FOODS LTD [NCLAT]

Company Appeal (AT) (Insolvency) No. 1743 of 2024

Ashok Bhushan, Barun Mitra& Arun Baroka. [Decided on 24/09/2024]

Insolvency and Bankruptcy Act, 2016- PF dues- CD under liquidation- appellant filed claim with liquidator- rejected on the ground of that the claimed amount were determined after the CIRP period- whether rejection of claim tenable- Held, Yes.

Brief facts:

The application filed by the Appellant seeking direction to set aside the communication dated 22.08.2022 and 11.11.2022 issued by liquidator refusing to accept the claim, the Appellant sought a direction to liquidator to make an additional payment of 16,58,159/-. The said application came to be dismissed.

The Adjudicating Authority noticed that liquidation commencement date was 09.10.2019, whereas the order under Section 7A was passed on 10.03.2021 and order under Section 7Q was passed on 21.04.2021. Hence, the claim of the Appellant for payment of interest and damages was not accepted.

Decision: Dismissed.

Reason:

We have considered submission of Counsel for the parties and perused the record. There is no dispute in the parties that the liquidation commenced on 09.10.2019. The claim which was filed by the Appellant on the basis of the order dated 10.03.2021 and 21.04.2021 are subsequent to passing of the said order and the said claim was not accepted and

declined by the liquidator, which letters were sought to be challenged.

Learned Counsel for the Respondent has relied on the judgments of this Tribunal in *Regional Provident Fund Commissioner Vs. Manish Kumar Bhagat and Anr.* 2023 SCC OnLine NCLAT 731 where it was held that the claim under Section 14B which was subsequent to the CIRP could not have been accepted. Another judgment relied by the Respondent in *DBS Bank India Limited Vs. Kuldeep Verma in Company Appeal (AT) (Insolvency) No. 1048 of 2024* where this Tribunal has laid down paragraph 20 are as follows:

“20. We have noticed above that statutory scheme provides submission of claim on a liquidation commencement date which is a fixed connotation. When a statute provides for liquidation commencement date as a date up to which claims can be filed and proved, no claim thereafter can be entertained by the Liquidator. The amount of interest which was retained by the Appellant claiming to be interest in addition to the claim as filed by it in Form D till the date of realization of receipt of the sale, cannot be permitted to be retained by the Appellant and the Adjudicating Authority has rightly passed the order allowing application filed by the Liquidator to hand over the additional amount to the Liquidator. Learned Counsel for the Appellant submits that out of Rs. 1.84 Crores, amount of Rs. 20 Lakhs have already been paid.”

The submission of the Appellant that since the claim was for April 26 to February, 2018 interest liability was their @ 12%, which is statutory interest. There is no dispute that assessment for the interest was done in the year, 2021 much after the liquidation commencement date. The claim under Regulation 12 and 16 of Liquidation Regulation, 2016 had to be filed as on liquidation commencement date. When the claim has to be filed on the liquidation commencement date any claims subsequent including any on the basis of assessment subsequent to the liquidation commencement date cannot be given any credence by the liquidator and no error was committed by liquidator in not accepting the claim of damages and interest consequent to the assessment paying in the year 2021. We thus, do not find any error in the order of Adjudicating Authority. Appeal is dismissed.

LW 74:10:2024

PREM TRADING COMPANY & ANR v. RAMCHANDRA DALLARAM CHOUDHARY & ORS [NCLAT]

Company Appeal (AT) (Insolvency) No. 1020-1021 of 2024 with connected appeals

Ashok Bhushan, Barun Mitra & Arun Baroka. [Decided on 23/09/2024]

Insolvency and Bankruptcy Act, 2016- resolution plan- two resolution applicants- plan of one resolution applicant approved by CoC and the other was rejected- whether then rejection was correct- Held, Yes.

Brief facts:

The appellant is the unsuccessful resolution applicant. The CoC of the Corporate Debtor rejected the resolution plan of the appellant and approved the resolution plan submitted by the successful resolution applicant by 98% votes. The application moved by the RP for the approval of the resolution plan was allowed. The appellant challenged this before the NCLAT.

Decision: Dismissed.

Reason:

We have considered the submissions of the Counsel for the Parties and perused the record.

Two Resolution Plans were submitted in the CIRP of the Corporate Debtor, one by M/s. Saverni Neutech Pvt. Ltd., and other by M/s. Trinity India Forgetech Pvt. Ltd. Resolution Plan submitted by M/s. Saverni Neutech Pvt. Ltd. was Plan submitted by Consortium of three Applicants. Discussion of feasibility and viability of Resolution Plan of M/s. Trinity India Forgetech Pvt. Ltd. was also submitted. The Resolution was passed by the CoC to disapprove the Plan submitted by M/s. Saverni Neutech Pvt. Ltd., which was disapproved with 92.87% vote shares, whereas the Plan submitted by M/s. Trinity India Forgetech Pvt. Ltd. was approved by 92.87% vote shares.

From the sequence of the event, it is clear that Application was filed by Unsuccessful Resolution Applicant after approval of the Resolution Plan on 15.12.2023 of M/s. Trinity India Forgetech Pvt. Ltd. and after rejection of the Resolution Plan submitted by M/s. Saverni Neutech Pvt. Ltd.

From the Minutes of the 9th CoC Meeting held on 15.12.2023, as quoted above, it is clear that CoC on 15.12.2023, considered both the Resolution Plan i.e., Resolution Plans submitted by M/s. Saverni Neutech Pvt. Ltd. as well as the SRA M/s. Trinity India Forgetech Pvt. Limited. Resolution Plan of M/s. Trinity India Forgetech Pvt. Ltd. was approved with 92.87% vote shares and Resolution Plan of M/s. Saverni Neutech Pvt. Ltd. was disapproved by 92.87%, vote shares and the Plan which was earlier submitted by M/s. Saverni Neutech Pvt. Ltd. has considered and rejected. There is no occasion for M/s. Saverni Neutech Pvt. Ltd. to pray for further revised Resolution Plan when it failed to file Resolution Plan, according to its own case within the time allowed as it reflected from the email dated 18.12.2023 sent by the Appellant themselves.

Adjudicating Authority did not commit any error in rejecting the Application I.A. No.124/2024 filed by Sandeep Jayantilal Vadodria. Insofar as the Appeal filed by the Prem Trading Company, one of the contentions raised is that Prem Trading Company who was Financial Creditor having 2.48%, vote shares was not permitted to vote. Suffice it to say that Authorised Representative of the Appellant Prem Trading Company, Rakesh Patel was present in the CoC Meeting, which is recorded in the Minutes as noted

above. It has been noted that Rakesh Patel has voted only on the agenda 1, 6, 7 & 8, and thereafter he exited, he having participated in the EOI process as co- Resolution Applicant in M/s. Saverni Neutech Pvt. Ltd. and Rakesh Patel who was Authorised Representative of Financial Creditor was participating in EOI. He was rightly not permitted to vote. He rightly exited from the voting which was held on Item No. 2.

In any view of the matter, vote share of the Prem Trading Company is only 2.48% and vote share for Prem Trading Company was not considered in favour of the approval of the Plan and the Plan was approved by 92.87% vote shares of HDFC Bank Ltd. the largest Financial Creditor.

We do not find any merit in the Appeal filed by Prem Trading Company. In the CoC Meeting held on 15.12.2023, Prem Trading Company was represented by its Authorised Representative and the grounds which are sought to be raised in the Appeal are without any substance. In result of above discussion, we do not find any error in the Order passed by the Adjudicating Authority.



Labour Law

LW 75:10:2024

S.D. MANOHARA v. KONKAN RAILWAY CORPORATION LTD[SC]

Civil Appeal No. of 2024 [@ SLP (C) No. 15788 of 2021]

P.S. Narasimha & Pankaj Mithal, JJ. [Decided on 13/09/2024]

Employee submitted resignation letter- later withdrew the same before acceptance- employer rejected the withdrawal of rejection letter- whether correct- Held, No.

Brief facts:

The core issue decided in this appeal is with respect to submission of resignation, acceptance thereof and withdrawal of resignation letter. The adjudication in this case was intended to resolve a long standing service dispute between the parties, rather than to lay down any precedent of law. The invariable question that arises in disputes involving withdrawal of the resignation letter¹, i.e. whether the employee Resignation can be withdrawn before its acceptance?

The appellant has been in service of the respondent since 1990. After having put in 13 years of service, he tendered his

resignation on 05.12.2013 stating that it may be considered as coming into effect on expiry of one month. On the question whether this resignation letter was withdrawn before its acceptance, there are a number of letters and instances cited by the appellant and the respondent as well, but the crucial letters that would clinch the issue are just four in number.

Decision: Allowed.

Reason:

At the outset, we may record that, even assuming that the appellant withdrew resignation letter dated 05.12.2013 on 26.05.2014, it is just about five months in a long service of 24 years in the Indian Railways. Between these two admitted dates, lie the competing and highly contested claims of parties that the resignation is either withdrawn or not withdrawn before its acceptance. Our enquiry is confined to finding this fact.

The respondent-employer strongly relies on the letter of acceptance of resignation dated 15.04.2014 and submits that it has come into effect from 07.04.2014. We are inclined to accept the submission made by the appellant that the letter dated 15.04.2014 is an internal communication. There is no clear evidence about the service of such letter on the appellant. Further, it is also not denied that the appellant has been continuously in touch with the respondent. There is no reason as to why the respondent-Corporation would write a letter on 10.05.2014 requesting the appellant to report to duty for considering his unauthorised absence from 28.04.2014 to 18.05.2014.

It is an admitted fact that the appellant has in fact reported to duty on 19.05.2014. There is also the communication of the appellants wife on 17.04.2014 and 20.05.2014 requesting that the resignation dated 05.12.2013 should not be accepted by the respondents. As stated earlier, there is also the letter dated 10.05.2014 of the respondent asking the appellant to report on duty for considering his unauthorised absence from 28.04.2014 to 18.05.2014 which gives an indication that there was no finality to the letter of resignation dated 05.12.2013.

The learned single Judge was correct in his conclusion that the resignation was withdrawn before its acceptance. The relevant portion of the single Judge order is as under:-

“13. In the present case, the resignation which was submitted on 05.12.2013 with a request to accept it at the expiry of one month was stated to have been accepted only on 15.04.2014. There is undue delay in accepting the resignation by the respondents. In the above decision, the delay of mere 13 days in communicating acceptance of the resignation, is held to be not an undue delay so as to infer that resignation had not already been accepted. Therefore, the decision in Vedpathi Dinesh Kumar's case is also of no help to the respondents.

In the circumstances, I am of the view that petitioner having submitted his letter dated 26.5.2014 seeking to withdraw the resignation much before the effective date, 01.07.2014

with official order on 15.07.2014 by which the petitioner was relieved of his duties, withdrawal of resignation ought to have been accepted by the respondents and continued the petitioner in service. The contrary decision by the respondents by the communication dated 23.06.2014 that withdrawal of resignation is not accepted and decision accepting the resignation stands good, is not sustainable in law....”

In our opinion, the decision of the Single Judge is correct, and the Division Bench committed an error in not eschewing the communication dated 15.04.2014 from consideration.

In view of the above, and in the facts and the circumstances of the case, we allow the appeal and set-aside the judgment of the Division Bench of the High Court of Karnataka. In the facts and circumstances of the case, we direct that the appellant shall be reinstated into service within thirty days from the date of our order. He shall however be entitled to receive 50 percent of salary for the period he is said to have been relieved from service i.e. from 01.07.2014 under letter dated 23.06.2014 to the date of reinstatement, pursuant to our orders. The amount shall be calculated and paid within a period of two months from today. This period shall however be counted for pensionary benefits, if any.

LW 76:10:2024

PUNJAB AND SINDH BANK v. RAJ KUMAR [DEL]

LPA 410/2023 & CM APPL. 53223/2024

Suresh Kumar Kait & Girish Kathpalia, JJ. [Decided on 11/09/2024]

Service law- respondent along with other employees charged with various misdeeds and dismissed from services- other employees were given lesser punishment- whether the dismissal of respondent tenable-Held, No.

Brief facts:

The Appellant along with three other employees was found to have debited excess amounts to some irrelevant accounts on certain dates for personal gains, took away/ stole certain records of the Bank, credited amounts of unavailed KCC limits to earn interest, cancelled the drafts of the customers and credited the amounts to irrelevant accounts, etc. The Appellant was given the punishment of dismissal while other have been punished with lowering by two stages and compulsorily retirement. The Appellant challenged this dismissal successfully before the Single Judge. The employer bank challenged the reinstatement before then Division Bench.

Decision: Dismissed.

Reason:

The moot point before the learned Single Judge was to examine whether the action of the appellant bank in awarding higher punishment to the respondent compared

to co-delinquents amounted to discrimination and violated Article 14 of the Constitution of India as well as the binding dictum of the Supreme Court that those equally placed and found guilty, must be treated equally, even while considering imposition of punishments.

Coming back to the present case, in the light of guiding principles laid down by the Supreme Court, the learned Single Judge has rightly found merit in the grievance ventilated by the respondent that he had not received fair treatment at the hands of the appellant Bank and while co- delinquents had been given lesser punishments, he had been awarded the harshest punishment in service jurisprudence.

Looking at the punishments awarded to the co-delinquents for same incidents/transactions and acts of connivance and testing the impugned action on the anvil of Article 14 of the Constitution of India as well as keeping in mind the long and unblemished spell of service of the respondent, save and except, the learned Single Judge was inclined to convert the punishment from ‘dismissal’ to one of ‘compulsory retirement’.

In view of the above discussion and the settled position of law, we find no error or perversity in the order passed by the learned Single Judge. Accordingly, we confirm the same. Finding no merit in the present appeal, the same is, accordingly, dismissed along with all pending applications. The appellant Bank is directed to comply with the order passed by the learned Single Judge within four weeks.



LW 77:10:2024

M/s VANDE MATARAM CABLE TV NETWORK & ANR v UOI & ORS [CCI]

Case No. 19 of 2024

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag. [Decided on 25/09/ 2024]

Competition Act, 2002- section 4- abuse of dominance by combination of entities - informant is a MSO- various allegations made against the OPs with respect to grabbing of market share, forcing the MSOs to leave the business etc- whether allegations constitute abuse of dominance-Held, No.

Brief facts:

Informant-1 is registered as a Multi System Operator by the Ministry of Information & Broadcasting, Government of India having its Cable TV Network in Korba, Chhattisgarh,

and Informant-2 is the owner of the Korba Cable TV Network, Chhattisgarh which is a registered Local Cable Operator. Further, OP-5 (Taranjeet Singh Hora) and OP-6 (Gurucharan Singh Hora) are owners of OP-7 (Grand Vision Television Network, MSO) and OP-8 and OP-9 are broadcasters.

The core issue raised by the Informants arises from the purported unlawful seizure of shares and the monopolization of the cable TV network business in Chhattisgarh by the Opposite Parties (OP-5, OP-6, and OP-7), as detailed hereinabove.

Decision: Dismissed.

Reason:

The Commission observes that there is a distinction in the roles, as OP-8 and OP-9 serve as content creators and broadcasters, producing original programming and distributing it via their network of channels, while the MSOs and LCOs function as part of the distribution chain, responsible for delivering this content to viewers. As regards contravention of Section 3 of the Act, the Commission notes that the provisions of Section 3(1) of the Act read with Section 3(3) thereof have no manner of application in the factual matrix of the present case as Section 3(3) of the Act requires two or more enterprises engaged in identical or similar trade of goods or provision of services and even if they are not engaged in identical trade, they must be presumed to be part of an agreement if they participate or intend to participate in furthering such an agreement. Looking at the relationship among OPs and the facts and circumstances of the case, as detailed above, it is evident that provisions of Section 3(3) of the Act are not applicable.

Further, the Commission is of the view that, for the applicability of Section 4 of the Act and the examination of contravention thereof, it may be axiomatic to define a relevant market and assess the dominance of the entity alleged to be abusing its dominant position in such market. However, considering the facts and circumstances of the case and having regard to the abuses as alleged, the Commission does not find it imperative to define a precise relevant market in the instant matter. Furthermore, the Commission notes that the Informants have alleged violation of Section 4 of the Act against all the OPs. The Commission observes that it is a settled position that the provisions of the Act do not provide for inquiry into the cases of joint/collective dominance. Accordingly, no case of contravention under Section 4 of the Act has been established.

The Commission notes that for the aforesaid reasons, it is unnecessary to delve deeper into the allegations. While the grievances raised by the Informant may give rise to a dispute, however, the Commission is not the right forum for adjudication of the same. Resultantly, the Commission is of the opinion, prima facie, no case of contravention of provisions of Section 3 and Section 4 of the Act is made out and accordingly, the Information filed against OPs is directed to be closed forthwith.

LW 78:10:2024

SABINE S. v. MITERA HOSPITAL[CCT]

Case No. 17 of 2024

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag. [Decided on 10/09/ 2024]

Competition Act, 2002- section 4- abuse of dominance- allegation that informant's treatments were disparaged and misinformation were spread by the OP- whether abuse of dominance-Held, No.

Brief facts:

The primary grievance of the Informant is that the Opposite Party through Dr. Raju Nair, has made certain misleading statements/misinformation about the cost of IVF and fertility treatments on its You Tube channel against hospitals offering affordable treatment for infertility care. These statements are alleged to be detrimental to a competitive market and would prejudice market players who are willing to offer quality treatment at an affordable rate. This conduct has been alleged to be in abuse of dominant position by the Opposite Party in contravention of provisions of Section 4 of the Act

The Informant has sought the following relief against the Opposite Party:

- a. Conduct necessary investigation and direct the Opposite Party to remove the YouTube video, whose link is furnished, with immediate effect; b. Direct the Opposite Party to refrain from publishing inaccurate and misleading statements in social media that can either directly or indirectly affect the interest of the patients and the market adversely; and c. Grant such other reliefs which this Commission may deem fit and proper in the interest of justice.

Decision: Dismissed.

Reason:

Upon perusal of the Information, it appears that the primary grievance of the Informant is that the Opposite Party through Dr. Raju Nair, has made certain misleading statements/misinformation about the cost of IVF and fertility treatments on its You Tube channel against hospitals offering affordable treatment for infertility care. These statements are alleged to be detrimental to a competitive market and would prejudice market players who are willing to offer quality treatment at an affordable rate. This conduct has been alleged to be in abuse of dominant position by the Opposite Party in contravention of provisions of Section 4 of the Act.

As per the Information available in public domain, it appears that Informant is running a hospital which offers services including infertility treatments such as IVE; paediatrics, laparoscopy (Endoscopy); obstetrics & gynaecology; orthopaedics treatment etc. However, the allegations that the Opposite Party is allegedly spreading mis- information/misstatements about the cost of such treatment do not fall within the ambit of the Competition Act, 2002.

In view of the foregoing and in the facts and circumstances of the present matter, the Commission is of the view that there is no prima-facie case of contravention of provisions of the Act warranting an investigation into the matter. Accordingly, the Information is directed to be closed forthwith.

4

FROM THE GOVERNMENT



- THE COMPANIES (ACCOUNTS) AMENDMENT RULES, 2024
- THE COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2024
- CLARIFICATION ON HOLDING OF ANNUAL GENERAL MEETING (AGM) AND EGM THROUGH VIDEO CONFERENCE (VC) OR OTHER AUDIO VISUAL MEANS (OAVM) AND PASSING OF ORDINARY AND SPECIAL RESOLUTIONS BY THE COMPANIES UNDER THE COMPANIES ACT, 2013 READ WITH RULES MADE THEREUNDER -EXTENSION OF TIMELINE-REG.
- NOTIFICATION
- THE COMPANIES (INDIAN ACCOUNTING STANDARDS) SECOND AMENDMENT RULES, 2024
- THE COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) AMENDMENT RULES, 2024
- THE INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) SECOND AMENDMENT RULES, 2024
- OPERATIONAL GUIDELINES FOR FOREIGN VENTURE CAPITAL INVESTORS (FVCIs) AND DESIGNATED DEPOSITORY PARTICIPANTS (DDPs)
- REDUCTION IN THE TIMELINE FOR LISTING OF DEBT SECURITIES AND NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES TO T+3 WORKING DAYS FROM EXISTING T + 6 WORKING DAYS (AS AN OPTION TO ISSUERS FOR A PERIOD OF ONE YEAR AND ON A PERMANENT BASIS THEREAFTER SUCH THAT ALL LISTINGS OCCUR ON A T+3 BASIS)
- PARAMETERS FOR PERFORMANCE EVALUATION OF MARKET INFRASTRUCTURE INSTITUTIONS
- USAGE OF UPI BY INDIVIDUAL INVESTORS FOR MAKING AN APPLICATION IN PUBLIC ISSUE OF SECURITIES THROUGH INTERMEDIARIES
- EASE OF DOING BUSINESS IN THE CONTEXT OF STANDARD OPERATING PROCEDURE FOR PAYMENT OF "FINANCIAL DISINCENTIVES" BY MARKET INFRASTRUCTURE INSTITUTIONS (MIIs) AS A RESULT OF TECHNICAL GLITCH
- FLEXIBILITY IN PARTICIPATION OF MUTUAL FUNDS IN CREDIT DEFAULT SWAPS (CDS)
- MODIFICATION IN FRAMEWORK FOR VALUATION OF INVESTMENT PORTFOLIO OF AIFs
- ENABLING T+2 TRADING OF BONUS SHARES WHERE T IS THE RECORD DATE
- REPORTING BY FOREIGN VENTURE CAPITAL INVESTORS (FVCIs)
- OPTIONAL MECHANISM FOR FEE COLLECTION BY SEBI REGISTERED INVESTMENT ADVISERS (IAS) AND RESEARCH ANALYSTS (RAs)
- MODIFICATIONS IN GUIDELINES FOR BUSINESS CONTINUITY PLAN (BCP) AND DISASTER RECOVERY (DR) OF MARKET INFRASTRUCTURE INSTITUTIONS (MIIs)
- ALLOWING SECURITIES FUNDED THROUGH CASH COLLATERAL AS MAINTENANCE MARGIN FOR MARGIN TRADING FACILITY (MTF)
- MODIFICATION IN THE TIMELINE FOR SUBMISSION OF STATUS REGARDING PAYMENT OBLIGATIONS TO THE STOCK EXCHANGES BY ENTITIES THAT HAVE LISTED COMMERCIAL PAPER
- INTEREST EQUALIZATION SCHEME (IES) ON PRE AND POST SHIPMENT RUPEE EXPORT CREDIT
- IMPLEMENTATION OF SECTION 12A OF THE WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005: DESIGNATED LIST (AMENDMENTS)
- LIBERALISED REMITTANCE SCHEME (LRS) FOR RESIDENT INDIVIDUALS- DISCONTINUATION OF REPORTING OF MONTHLY RETURN
- REVIEW OF EXISTANT INSTRUCTIONS – WITHDRAWAL OF CIRCULARS



Corporate Laws

01 The Companies (Accounts) Amendment Rules, 2024

[Issued by the Ministry of Corporate Affairs [F. No. 1/19/2013-CL-VPartIV-Part(1)] dated 24.09.2024.]

In exercise of the powers conferred by sub-sections (1) and (3) of section 128, sub-section (3) of section 129, section 133, section 134, sub-section (4) of section 135, sub-section (1) of section 136, section 137 and section 138 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:—

1. Short title and commencement. —(1) These rules may be called the Companies (Accounts) Amendment Rules, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Accounts) Rules, 2014, in rule 12, in sub-rule (1B), after the third proviso, the following proviso shall be inserted, namely: —

“Provided also that for the financial year 2023-2024, Form CSR-2 shall be filed separately on or before 31st December, 2024 after filing Form No. AOC-4 or Form No. AOC-4-NBFC (Ind AS), as specified in these rules or Form No. AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 as the case may be.”

MANOJ PANDEY
Additional Secretary

02 The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024

[Issued by the Ministry of Corporate Affairs [F. NO. 1/21/2013-CL-V] dated 20.09.2024.]

In exercise of the powers conferred by section 26, sub-section (1) of section 27, section 28, section 29, sub-section (2) of section 31, sub-sections (3) and (4) of section 39, sub-section (6) of section 40 and section 42 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in sub-rule (2) of rule 9B, the following proviso shall be inserted, namely:-

“Provided that a producer company covered under this sub-rule shall, within a period of five years of closure of such financial year, comply with the provision of this sub-rule.”

MANOJ PANDEY
Additional Secretary

03 Clarification on holding of Annual General Meeting (AGM) and EGM through Video Conference (VC) or Other Audio Visual Means (OAVM) and passing of Ordinary and Special resolutions by the companies under the Companies Act, 2013 read with Rules made thereunder -Extension of timeline-reg.

[Issued by the Ministry of Corporate Affairs File No. Policy-17/57/2021-CL-MCA dated 19.09.2024.]

In continuation to this Ministry's General Circular No. 20/2020 dated 05.05.2020, General Circular No. 02/2022 dated 05.05.2022, General Circular No. 10/2022 dated 28.12.2022 and General Circular No. 09/2023 dated 25.09.2023 after due examination, it has been decided to allow companies whose AGMs are due in the Year 2024 or 2025, to conduct their AGMs through VC or OAVM on or before 30th September, 2025 in accordance with the requirements laid down in Para 3 and Para 4 of the General Circular No. 20/2020 dated 05.05.2020.

2. However, it is hereby clarified that General Circular shall not be construed as conferring any extension of statutory time for holding of AGMs by the companies under the Companies Act, 2013 (the Act) and the companies which have not adhered to the relevant statutory timelines shall be liable to legal action under the appropriate provisions of the Act.
3. Further, in continuation to this Ministry's General Circular No. 14/2020 dated 08.04.2020, General Circular No. 03/2022 dated 05.05.2022, General Circular No. 11/2022 dated 28.12.2022 and General Circular No. 09/2023 dated 25.09.2023 and after due examination, it has also been decided to allow companies to conduct their EGMs through Video Conference (VC) or Other Audio Visual Means (OAVM) or transact items through postal ballot in accordance with framework provided in their aforesaid Circulars up to 30th September, 2025. All other requirements provided in the said Circulars shall remain unchanged.
4. This issues with the approval of the Competent Authority.

C.M KARL MARX
Joint Director

04 Notification

[Issued by the Ministry of Corporate Affairs [E No. Policy-03/1/2024-CL-V-MCA] dated 10.09.2024.]

In exercise of the powers conferred by sub-clause (v) of clause (72) of Section 2 of the Companies Act, 2013 (18 of 2013), the Central Government, in consultation with the Reserve Bank of India, hereby notifies the following institution as a public financial institution, namely:-

"National Bank for Financing Infrastructure and Development".

MANOJ PANDEY
Additional Secretary

05 The Companies (Indian Accounting Standards) Second Amendment Rules, 2024

[Issued by the Ministry of Corporate Affairs [E No. 01/01/2009-CL-V (Part. XII)] dated 09.09.2024.]

In exercise of the powers conferred by section 133 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority, hereby makes the following rules further to amend the Companies (Indian Accounting Standards) Rules, 2015, namely:-

1. (1) These rules may be called the Companies (Indian Accounting Standards) Second Amendment Rules, 2024.

(2) They shall come into force with effect from the date of their publication in the official gazette.

2. In the Companies (Indian Accounting Standards) Rules, 2015, in the 'Annexure', under heading "B. Indian Accounting Standards (Ind AS)", in "Indian Accounting Standard (Ind AS) 116", -

(i) after paragraph 102, the following paragraph shall be inserted, namely: -

"102A After the commencement date, the seller-lessee shall apply paragraphs 29–35 to the right-of-use asset arising from the leaseback and paragraphs 36–46 to the lease liability arising from the leaseback. In applying paragraphs 36–46, the seller-lessee shall determine 'lease payments' or 'revised lease payments' in a way that the seller-lessee would not recognise any amount of the gain or loss that relates to the right of use retained by the seller-lessee. Applying the requirements in this paragraph does not prevent the seller-lessee from recognising in profit or loss any gain or loss relating to the partial or full termination of a lease as required by paragraph 46(a).";

(ii) in Appendix C,

- (a) after paragraph C1C, the following paragraph shall be inserted, namely:-

"C1D Lease Liability in a Sale and Leaseback, amended paragraph C2 and added paragraphs 102A and C20E. A seller-lessee shall apply these amendments for annual reporting periods beginning on or after 1 April 2024."

- (b) for paragraph C2, the following paragraph shall be substituted, namely:-

"C2 For the purposes of the requirements in paragraphs C1– C20E, the date of initial application is the beginning of the annual reporting period in which an entity first applies this Standard."

- (c) after paragraph C20D, the following paragraph shall be inserted, namely:-

"Lease liability in a sale and leaseback"

C20E A seller-lessee shall apply Lease Liability in a Sale and Leaseback (see paragraph C1D) retrospectively in accordance with Ind AS 8 to sale and leaseback transactions entered into after the date of initial application."

MANOJ PANDEY
Additional Secretary

Complete details are not published here for want of space. For complete notification readers may log on to www.mca.gov.in

06 The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024

[Issued by the Ministry of Corporate Affairs [E No. 2/31/CAA/2013 – CL.V Part] dated 09.09.2024.]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with sections 233 and 234 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, namely: -

1. (1) These rules may be called the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024.

(2) They shall come into force from the 17th day of September, 2024.

2. In the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, in rule 25A, after sub-rule (4), the following sub-rule shall be inserted, namely: -

"(5) Where the transferor foreign company incorporated outside India being a holding company and the transferee Indian company being a wholly owned subsidiary company incorporated in India, enter into merger or amalgamation,–

- (i) both the companies shall obtain the prior approval of the Reserve Bank of India;

- (ii) the transferee Indian company shall comply with the provisions of section 233;
- (iii) the application shall be made by the transferee Indian company to the Central Government under Section 233 of the Act and provisions of rule 25 shall apply to such application; and
- (iv) the declaration referred to in sub-rule (4) shall be made at the stage of making application under section 233 of the Act."

MANOJ PANDEY
Additional Secretary

Complete details are not published here for want of space. For complete notification readers may log on to www.mca.gov.in

07 The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024

[Issued by the Ministry of Corporate Affairs [F. No. 05/01/2021-IEPF] dated 09.09.2024.]

In exercise of the powers conferred by sub-sections (1), (2), (3), (4), (8), (9), (10) and (11) of section 125 and sub-section (6) of section 124 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, namely:-

1. (1) These rules may be called the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024.
- (2) These rules shall come into force on the date of their publication in Official Gazette.
2. In the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (hereinafter referred to as the said rules), in Schedule II,-
 - (1) for the word "shares", wherever it occurs, the word "securities", shall be substituted;
 - (2) In Part A,-
 - (i) in item 2,-
 - (a) in sub-item 2.2, in clause (a), after the word "Tribunal", the words "or legal heir certificate issued by the revenue authority not below the rank of Tahsildar having jurisdiction" shall be inserted;
 - (b) in sub-item 2.3, after the word "Tribunal", the words "or legal heir certificate issued by the revenue authority not below the rank of Tahsildar having jurisdiction" shall be inserted;
 - (c) in the "Explanation", for clause (2), the following clauses shall be substituted, namely:-

"(2) In cases where a copy of Will is submitted as may be applicable in terms of the Indian Succession Act, 1925 (39 of 1925), the same shall be accompanied with a notarised indemnity bond from the claimant to whom the securities are transmitted.

- (3) In cases where a copy of legal heir certificate issued by the revenue authority not below the rank of Tahsildar having jurisdiction is submitted, the same shall be accompanied with-
 - (a) a notarised indemnity bond from the legal heir or claimant to whom the securities are transmitted; and
 - (b) a no objection certificate from all legal heirs other than claimants, stating that they have relinquished their rights to the claim for transmission of securities, duly attested by a notary public or by a gazetted officer.

- (4) The value of the securities as on the date of application shall be quantified by the applicant on the basis of the closing price of such securities at any one of the recognised stock exchange a day prior to the date of such submission in the application, for listed securities and for unlisted securities, the value shall be quantified basis on the face value or the maturity value of the security, whichever is more."

ANITA SHAH AKELLA
Joint Secretary

Complete details are not published here for want of space. For complete notification readers may log on to www.mca.gov.in

08 Operational Guidelines for Foreign Venture Capital Investors (FVCIs) and Designated Depository Participants (DDPs)

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/AFD/AFD-PoD-3/P/CIR/2024/130 dated 26.09.2024]

1. SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("FVCI Regulations") were amended vide notification dated September 05, 2024. The said amendments shall come into force with effect from January 01, 2025. The amendment notification, inter alia, specified provisions related to registration of FVCI through Designated Depository Participants, eligibility conditions, renewal of registration, etc.
2. In order to ensure smooth transition to the amended FVCI regime and operationalise the amended provisions of the FVCI Regulations, it has been decided to issue necessary guidance in the form of operational guidelines (Annexure-1).
3. The provisions of this circular shall come into force with effect from January 01, 2025.
4. 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, 8, 9, 10, and 15 of FVCI Regulations to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

5. This Circular is available at www.sebi.gov.in under the link "Legal ---Circulars".

MANISH KUMAR JHA
Deputy General Manager

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09 Reduction in the timeline for listing of debt securities and Non-convertible Redeemable Preference Shares to T+3 working days from existing T + 6 working days (as an option to issuers for a period of one year and on a permanent basis thereafter such that all listings occur on a T+3 basis)

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/129 date 26.09.2024]

1. Para 12 of Chapter I (Application process in case of public issues of securities and timelines for listing) of the Master Circular no. SEBI/HO/DDHS/PoD1/P/CIR/2024/54 dated May 22, 2024, (hereinafter referred as 'Master Circular') issued by SEBI, inter-alia specifies that the listing of debt securities and Non-convertible Redeemable Preference Shares (NCRPS) issued through public issue process shall be completed within T+6 working days from the date of closure of the issue.
2. Regulation 37 (2) of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("NCS Regulations") applicable to public issues of debt securities and NCRPS, requires issuers to refund the application moneys in an event of failure to list such securities within specified timelines. The same is reproduced below:

"In the event of failure to list such securities within such days from the date of closure of issue as may be specified by the Board (scheduled listing date), all application moneys received or blocked in the public issue shall be refunded or unblocked forthwith within two working days from the scheduled listing date to the applicants through the permissible modes of making refunds and unblocking of funds. For delay in refund/unblocking of funds beyond the timeline as specified above, the issuer shall be liable to pay interest at the rate of fifteen percent per annum to the investors from the scheduled listing date till the date of actual payment."
3. In order to facilitate faster access to funds for issuers and investors to have early credit and liquidity of their investment, and with a view to align the listing timeline in case of public issue of debt securities and NCRPS with that of non convertible securities issued on private placement basis and specified securities, it

has been decided to reduce the listing timeline in case of public issue of debt securities and NCRPS to T+3 working days from existing timeline of T+6 working days.

4. Accordingly, the revised timelines for listing of debt securities and NCRPS and various activities involved in the public issue process are specified in Annexure to this circular.
5. Further, to ensure ease of compliance for issuers, the listing timeline of T+3 working days is introduced as an option to issuers for a period of one year and on a permanent basis thereafter such that all listings occur on a T+3 basis.
6. Accordingly, during the period of voluntary applicability of the listing timeline of T+3 working days, the provisions of regulation 37 (2) of NCS Regulations shall become applicable only after T+6 working day, even in cases where issuer has chosen T+3 as the listing timeline but fails to meet the same.
7. The T+3 timeline for listing shall be appropriately disclosed in the Offer Documents of public issues.
8. The provisions of this circular shall be applicable:
 - 8.1. On voluntary basis to public issues of debt securities and NCRPS opening on or after November 01, 2024.
 - 8.2. Mandatory for public issues of debt securities and NCRPS opening on or after November 01, 2025.
9. Stock Exchanges shall monitor compliance with the provisions of this circular.
10. The Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 55 (1) of the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.
11. This Circular is available at www.sebi.gov.in under the link "Legal → Circulars".

RISHI BARUA
Deputy General Manager

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10 Parameters for Performance Evaluation of Market Infrastructure Institutions

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/MRD/POD-III/CIR/P/2024/127 dated 24.09.2024]

1. Regulation 33(6) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (hereafter referred to as "SECC Regulations, 2018") and Regulation 31(6)

of the SEBI (Depositories and Participant Regulations, 2018 (hereafter referred to as “D&P Regulations, 2018”) states that every recognised stock exchange, recognised clearing corporation and depository (collectively referred as Market Infrastructure Institutions (MIIs)) shall appoint an independent external agency to evaluate its performance and the performance of its statutory committees within such periodicity and in such a manner as may be specified by the Board.

- In order to bring consistency and uniformity with respect to evaluations to be done by the external agency, it was felt that basic minimum standards and principles should be developed along with weightages. Accordingly, the matter was discussed at the Industry Standards Forum (ISF) of MIIs where the broad criteria, the weightage for each criterion, sub-parameters under each criterion, etc. were deliberated. For each sub-parameter, sample Key Performance Indicators (KPIs), both quantitative and qualitative in nature, were identified by SEBI in consultation with the ISF.
- Based on the deliberations at the ISF of MIIs and subsequent internal deliberations, the broad framework with basic minimum criteria for independent external evaluation of performance of MIIs has been approved by the Board in its meeting held on June 27, 2024. The minimum criteria for the independent external evaluation of performance of MIIs and their weightages are as under:

S.N.	Criteria	Weightage
(i)	Resilience in technology and processes of MII, in delivery of its core functions.	40%
(ii)	Investor Education and Protection.	17%
(iii)	Efficient discharge of Regulatory role by MII.	15%
(iv)	Compliance with Regulatory Norms.	10%
(v)	Evaluation of Governance Practices.	8%
(vi)	Adequacy of Resources.	5%
(vii)	Fair access and treatment to all stakeholders and information disclosure.	5%

The above criteria may be subsequently reviewed, depending upon the evolving regulatory and operating context.

- A broad framework in this regard, developed in consultation with ISF of MIIs is provided at Annexure-A.

HRUDA RANJAN SAHOO
Deputy General Manager

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Usage of UPI by individual investors for making an application in public issue of securities through intermediaries

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/128 dated 24.09.2024]

- Chapter I (Application process in case of public issues of securities and timelines for listing) of the Master Circular no. SEBI/HO/DDHS/PoD1/P/CIR/2024/54 dated May 22, 2024, (hereinafter referred as ‘Master Circular’) issued by SEBI, prescribes provisions pertaining to application process in case of public issue of securities under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 and SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008.
- In order to streamline and align the process of applying in the public issue of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments with that of public issue of equity shares and convertibles, it has been decided that all individual investors applying in public issues of such securities through intermediaries (viz. syndicate members, registered stock brokers, registrar to an issue and transfer agent and depository participants), where the application amount is upto Rs. 5 Lakh, shall only use UPI for the purpose of blocking of funds and provide his/ her bank account linked UPI ID in the bid-cum-application form submitted with intermediaries.
- Further, individual investors shall continue to have the choice of availing other modes (viz. through SCSBs and Stock Exchange Platform) for making an application in the public issue.
- The provisions of this circular shall be applicable to public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments opening on or after November 01, 2024.
- The Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 55 (1) of the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021, Regulation 29 of SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 and Regulation 48 of SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 to protect the interest 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 under the link “Legal → Circulars”.

RISHI BARUA
Deputy General Manager

12

Ease of Doing Business in the context of Standard Operating Procedure for payment of “Financial Disincentives” by Market Infrastructure Institutions (MIIs) as a result of Technical Glitch

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/MRD/TPD-1/P/CIR/2024/124 dated 20.09.2024]

1. Para 9.3 of Chapter 2 of SEBI Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Para 4.70 of SEBI Master Circular for Depositories dated October 06, 2023, have specified the Standard Operating Procedure (SOP) for handling of technical glitches by Market Infrastructure Institutions (MIIs) and payment of “Financial Disincentives” thereof. The said SOP, inter-alia, has provision for automatic trigger of financial disincentive on the MII and individuals i.e. Managing Director (MD) and Chief Technology Officer (CTO) of the MII if predefined criteria in handling of technical glitches are not adhered to.
2. In this regard, SEBI received recommendations/ references to review imposition of Financial Disincentive on individuals from various fora like Committee on “Strengthening Governance of Market Infrastructure Institutions”, Working Group on Ease of Doing Business (EoDB) and Technical Advisory Committee (TAC) of SEBI. Separately, MIIs had also jointly represented that such disincentives on individuals may be reviewed for Ease of Doing Business of MIIs.
3. Pursuant to deliberations, it was noted that operations of MIIs are increasingly becoming system driven, with them operating constellation of IT systems (both software and hardware) having dependency on various vendors/ service providers. Further, the test for ascertaining any individual responsibility for a technical glitch would entail ascertaining if there have been any act of omission/commission, including if an MD/CTO did or did not ensure adequate oversight/ resources/checks and balances to prevent such glitch reasonably and by definition such a test would require application of mind and assessment. Accordingly, in line with discussions with TAC and other fora mentioned above, it has been decided to restrict imposition of existing financial disincentives to MIIs only. Further, SEBI shall provide an opportunity to the concerned MII to make its submission in respect of glitch which shall be considered by SEBI before imposing any financial disincentive as per the instant framework.
4. Accordingly, it has been decided to modify para 9.3 of Chapter 2 of SEBI Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Para 4.70 of SEBI Master Circular for Depositories dated October 06, 2023, as follows.
 - 4.1. Para 9.3.4 of aforesaid Master Circular for Stock Exchanges and Clearing Corporations dated

October 16, 2023, and Para 4.70.4 of SEBI Master Circular for Depositories dated October 06, 2023, are modified as below:

Considering the criticality of smooth functioning of systems of MIIs (as any disruption adversely impacts all classes of investors / market participants as well as the credibility of the securities market), specifying a pre-defined threshold for downtime of systems of MIIs becomes desirable. For any downtime or unavailability of services, beyond such pre-defined time, there is a need to ensure that “Financial Disincentive” is paid by the MIIs. This will encourage MIIs to constantly monitor the performance and efficiency of their systems and upgrade/ enhance their systems etc. to avoid any possibility of technical glitches/ disruption/ disaster and restart their operations expeditiously in the event of glitch/ disruption/ disaster.

- 4.2. “Financial disincentive on Managing Director (MD) and Chief Technology Officer (CTO) of MII Separately” as mentioned in Clauses 3,4,5 of Annexure XII to the Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Clauses 3,4,5 mentioned under sub-para 4.70.5.B of the SEBI Master Circular for Depositories dated October 06, 2023, stand deleted.
- 4.3. The words “MD and CTO” in Clause 7 of Annexure XII of the Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Clause 7 mentioned under para 4.70.5.B of the SEBI Master Circular for Depositories dated October 06, 2023, stand deleted.
- 4.4. Clauses 8 and 9 of Annexure XII of the said Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, and Clauses 8 and 9 mentioned under para 4.70.5.B of the SEBI Master Circular for Depositories dated October 06, 2023, have been modified as below:

ANSUMAN DEV PRADHAN

General Manager

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13

Flexibility in participation of Mutual Funds in Credit Default Swaps (CDS)

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/IMD/PoD2/P/CIR/2024/125 dated 20.09.2024]

1. Under the existing regulatory framework, Mutual Funds in India are permitted to participate in CDS transactions only as users i.e. to buy credit protection only to hedge the credit risk on corporate bonds held by them. Furthermore, such transactions can be currently undertaken by Mutual Funds only in the

portfolios of Fixed Maturity Plans (FMP) schemes having tenor of more than one year.

2. Reserve Bank of India has issued a revised regulatory framework for CDS on February 10, 2022 "Master Direction – Reserve Bank of India (Credit Derivatives) Directions, 2022" in order to provide the necessary impetus for the development of CDS market by, inter alia, expanding the base of protection sellers including selling of protection by all major non-bank regulated entities including by Mutual Funds.
3. In view of the above, after taking into consideration the recommendations of the Working Group set up to deliberate on the issue, recommendations of Advisory Committee on Mutual Funds (MFAC), inputs by AMFI and feedback received on the consultation paper on this issue, it has been decided to allow greater flexibility to Mutual Funds to both buy and sell CDS with adequate risk management. Such flexibility to participate in CDS shall serve as an additional investment product for Mutual Funds and also aid in increasing liquidity in the corporate bond market.
4. Accordingly, clause 12.28 of the Master Circular for Mutual Funds dated June 27, 2024 stand modified as under:

12.28. Participation of Mutual Funds in Credit Default Swaps (CDS)

Mutual Fund Schemes as buyer of CDS

12.28.1. Schemes may buy CDS only for the purpose of hedging their credit risk on debt securities they hold in various schemes. The exposure of CDS shall not exceed respective debt security exposure, and such exposure may not be added to gross exposure of the scheme.

12.28.2. In case the protected debt security is sold, schemes shall ensure that the respective CDS position is closed within fifteen working days of selling the above protected debt security.

12.28.3. The exposure of any protected debt security, for determining single issuer, group, sectoral limits and credit risk for various purposes including Risk-o-meter and Potential Risk Class (PRC) matrix of MF schemes, shall be considered as exposure to either issuer of debt security (reference entity) or seller of CDS, whichever has higher credit rating (lowest long term rating of instruments of seller of CDS shall be considered for comparison).

The exposure shall form part of overall single issuer limits for the reference entity or seller of CDS, whichever is applicable.

In case of same rating for reference entity and seller of CDS, the exposure shall then be considered on reference entity and not on seller of CDS.

12.28.4. MF schemes shall buy CDS only from such sellers that have instruments with lowest long-term rating of investment grade and above.

12.28.5. Schemes may buy CDS for investment grade and existing below investment grade debt securities in the portfolio, if any.

LAKSHAYA CHAWLA

Deputy General Manager

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14

Modification in framework for valuation of investment portfolio of AIFs

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/AFD/PoD-1/P/CIR/2024/123 dated 19.09.2024]

1. SEBI (Alternative Investment Funds) Regulations, 2012 ('AIF Regulations') were amended and notified on June 15, 2023 and SEBI circular no. SEBI/HO/AFD/PoD/CIR/2023/97 dated June 21, 2023 [subsumed subsequently in Chapter 22 of Master Circular for AIFs dated May 07, 2024 ("Master Circular")] was issued to provide guidance to AIFs towards a consistent and standardized approach for valuation of their investment portfolios.
2. In terms of Clause 22.1.2 of the Master Circular, valuation of securities which are not covered in para 22.1.1 of the Master Circular, shall be carried out as per valuation guidelines (taking into account recommendations of AIPAC of SEBI), endorsed by any AIF industry association, which in terms of membership represents at least 33% of the number of SEBI registered AIFs.
3. In this context, an eligible AIF industry association meeting the aforesaid criteria, endorsed the International Private Equity and Venture Capital Valuation (IPEV) Guidelines for valuation of investment portfolio of AIFs in terms of Clause 22.1.2 of the Master Circular.
4. Subsequently, SEBI received representations from the AIF industry highlighting issues with regard to certain aspects of the valuation framework for AIFs. In this regard, based on the public comments on consultation paper on "review of certain aspects of the framework for valuation of investment portfolio of AIFs", recommendations of AIPAC and internal deliberations, the following has been decided:

4.1. Clause 22.1.1 of the Master Circular stands modified as under:

22.1.1 Valuation of securities, other than unlisted securities and listed securities which are non-traded and thinly traded, for which valuation norms have been prescribed under SEBI (Mutual Funds) Regulations, 1996 ('MF Regulations'), shall be carried out as per the norms prescribed under MF Regulations.

4.2. The valuation norms for securities which are not covered in Para 22.1.1 of the master circular have been provided in Clause 22.1.2 of the master circular. For the sake of clarity, the same is reproduced as under:

22.1.2 Valuation of securities which are not covered in para 22.1.1 above, shall be carried out as per valuation guidelines endorsed by any AIF industry association, which in terms of membership represents at least 33% of the number of SEBI registered AIFs. The eligible AIF industry association shall endorse appropriate valuation guidelines after taking into account recommendations of Alternative Investment Policy Advisory Committee of SEBI.

4.3. With respect to thinly traded and non-traded securities, it is envisaged to harmonize the valuation norms across entities within SEBI's regulatory purview in a time bound manner so as to facilitate applicability of the same for valuation of investment portfolios of AIFs on or after March 31, 2025.

SANJAY SINGH BHATI
Deputy General Manager

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15 Enabling T+2 trading of Bonus shares where T is the record date

[Issued by the Securities and Exchange Board of India vide Circular CIR/CFD/PoD/2024/122 dated 16.09.2024]

1. As a part of the continuing endeavor to streamline the process of Bonus issue of equity shares, in consultation with the market participants, it has been decided to reduce the time taken for credit of bonus shares and trading of such shares, from the record date of the Bonus Issue under SEBI (ICDR) Regulations, 2018.
2. The operational procedure to implement the above is as given below:
 - (i) The Issuer proposing a bonus issue shall apply for the in-principle approval under Regulation 28(1) of SEBI (LODR) Regulations, 2015, to the Stock Exchange within 5 working days from the date of board meeting approving the Bonus issue.
 - (ii) The Issuer while fixing and intimating the record date (T day) to the Stock Exchange as required under Regulation 42(1) of SEBI (LODR) Regulations, 2015, for the proposed bonus issue, shall also take on record deemed date of allotment on next working date of record date (T+1 day).
 - (iii) Upon receipt of intimation of the record date (T Day) and requisite documents from the Issuer, the Stock Exchange(s) shall issue notification accepting the record date and notifying the

number of shares considered in the bonus issue. The notification shall include the deemed date of allotment (T+1 day).

- (iv) After issuance of notification issued by the Stock Exchange for acceptance of record date, the Issuers shall ensure submission of the requisite documents to Depositories for credit of bonus shares in the depository system latest by 12 P.M. of next working day of the record date (i.e. T+1 day).
- (v) The Issuer shall ensure upload of the distinctive number (DN) ranges in the DN database of the depository and stock exchange(s) shall ensure updation of relevant dates before credit of bonus shares.
- (vi) The shares allotted pursuant to the bonus issue shall be made available for trading on the next working date of allotment (T+2 day).
- (vii) The directions issued pursuant to SEBI Circular No. CIR/MRD/DP/21/2012 dated August 02, 2012 and CIR/MRD/DP/ 24 /2012 dated September 11, 2012 requiring credit of bonus shares in temporary ISIN shall be exempted in case of bonus issue of equity shares, and credit of shares directly in permanent ISIN (existing ISIN) shall be permitted in case of bonus issue of equity shares.

3. The Exchange(s) and Depositories are advised to make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision, as may be applicable.
4. This circular shall be applicable for all bonus issues announced on or after October 01, 2024. Any delay in compliance with the timelines as mentioned above will attract penalties as determined under point 4.1 of SEBI circular SEBI/HO/CFD/DIL2/CIR/P/2019/94 dated August 19, 2019 on 'Non-compliance with certain provisions of SEBI ICDR Regulations'.
5. This circular is being issued in exercise of the powers under section 11 read with section 11A of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
6. This circular is available on SEBI website at www.sebi.gov.in under the category: 'Legal→Circulars'. Yours faithfully,

YOGITA JADHAV
General Manager

16 Reporting by Foreign Venture Capital Investors (FVCIs)

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/AFD/AFD-PoD-3/P/CIR/2024/121 dated 13.09.2024]

1. In accordance with Regulation 13(1) of SEBI (FVCI) Regulations, 2000, FVCIs are required to submit

- quarterly reports to SEBI in the format specified with respect to their venture capital activity as Foreign Venture Capital Investor.
2. The format for the quarterly report on venture capital activity to be submitted by FVCIs is revised and same is enclosed as Annexure-1.
3. FVCIs shall submit the aforesaid quarterly report irrespective of the fact that any investment is made or not during the quarter.
4. In accordance with Regulation 14 (2) of FVCI Regulations, 2000, Custodian shall be responsible for timely submission of the report.

Applicability

5. The report for the quarter ending September 30, 2024 and December 31, 2024 shall be submitted in excel file in the revised format by November 15, 2024 and January 15, 2025 respectively through email at fvci-report@sebi.gov.in.
6. From quarter ending March 31, 2025 onwards, FVCIs shall submit quarterly report in the revised format on the SEBI intermediary portal (SI Portal). The report shall be submitted within 15 calendar days from the end of each quarter.
7. This Circular is issued in exercise of the powers conferred under Section 11(1) and Section 11A of the Securities and Exchange Board of India Act, 1992 read with Regulations 13 (1) SEBI (Foreign Venture Capital Investor) Regulations, 2000 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.
8. This Circular is available at www.sebi.gov.in under the link "Legal → Circulars".

MANISH KUMAR JHA

Deputy General Manager

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17 Optional mechanism for fee collection by SEBI registered Investment Advisers (IAs) and Research Analysts (RAs)

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/MIRSD/MIRSD-POD-1/P/CIR/2024/120 dated 13.09.2024]

1. With the growing interest in the securities market, there is a need for a mechanism for an investor to discern whether payment of fees is being made only to a registered IA/RA. In order to create a closed and transparent payment ecosystem, consultations were held with relevant stakeholders on the proposal of a separate centralized mechanism for fee collection by IAs and RAs.
2. Pursuant to public consultation and various discussions with stakeholders, the "Centralized Fee Collection Mechanism for IA and RA" (CeFCoM) is being operationalized to facilitate collection of fees by registered IAs and RAs from their clients.

3. Under this mechanism, clients shall pay fees to IAs/RAs, through a designated platform/portal administered by recognized Administration and Supervisory Body (ASB).
4. The mechanism has been co-created by BSE Limited with the help of various stakeholders. BSE Limited shall specify the operational framework for the mechanism on or before September 23, 2024 and make the mechanism operational from October 01, 2024.
5. Though the mechanism is optional, ASB, in the interest of investors, shall take steps to encourage clients and the registered IAs and RAs to avail the services of this mechanism. Registered IAs and RAs shall encourage their clients to use this mechanism.
6. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with regulation 14 and regulation 15A of SEBI (Investment Advisers) Regulations, 2013 and SEBI (Research Analysts) Regulations, 2014 to protect the interests of investors in securities market and to promote the development of, and to regulate the securities market.
7. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal > Circulars", "Info For > Investment Advisers" and "Info For > Research Analysts".

ARADHANA VERMA

General Manager

18 Modifications in Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs)

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/MRD/TPD/P/CIR/2024/119 dated 12.09.2024]

1. SEBI has specified the Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) for Stock Exchanges and Clearing Corporations in Master Circular No. SEBI/HO/MRD2/PoD-2/CIR/P/2023/171 dated October 16, 2023 at Clause 9.1 of Chapter 2. Additionally, SEBI has specified the Guidelines for BCP and DR for Depositories in Master Circular No. SEBI/HO/MRD2/PoD-2/CIR/P/2023/166 dated October 06, 2023 at Clause 4.31. Further, SEBI has specified the Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) for Commodity Derivatives Segment in Master Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/136 dated August 04, 2023 at Clause No. 16.4.
2. Based on consultations with MIIs and recommendations of the Technical Advisory Committee (TAC) of SEBI, the following provisions of aforesaid circulars on BCP and DR for MIIs stand modified as under: -
 - 2.1 Clause 9.1.1.2 of Chapter 2 of the SEBI Master Circular dated October 16, 2023, Clause 4.31.1.2 of Section 4 of the SEBI Master Circular dated

October 06, 2023 and Clause 16.4.2(b) of Section 16 of the SEBI Master Circular dated August 4, 2023 shall be read as under:

"For Stock Exchanges: Apart from DRS, all Stock Exchanges shall also have a Near Site (NS) to ensure near zero data loss.

For Clearing Corporations and Depositories: Apart from DRS, all Clearing Corporations and Depositories shall also have a Near Site (NS) to ensure zero data loss."

- 2.2 Clause 9.1.1.4 of Chapter 2 of the SEBI Master Circular dated October 16, 2023, Clause 4.31.1.4 of Section 4 of the SEBI Master Circular dated October 06, 2023 and Clause 16.4.2(d) of Section 16 of the SEBI Master Circular dated August 4, 2023 shall be read as under:

"The manpower deployed at DRS shall have the same expertise as available at PDC in terms of knowledge/ awareness of various technological and procedural systems and processes relating to all operations such that DRS can function at short notice, independently. MIIs shall have sufficient number of trained staff at their DRS so as to have the capability of running live operations from DRS without involving staff of the PDC."

- 2.3 Clause 9.1.2.4 of Chapter 2 of the SEBI Master Circular dated October 16, 2023, Clause 4.31.2.4 of Section 4 of the SEBI Master Circular dated October 06, 2023 and Clause 16.4.3(d) of Section 16 of the SEBI Master Circular dated August 4, 2023 shall be read as under:

"MIIs shall ensure that the Recovery Point Objective (RPO) - the maximum tolerable period for which data might be lost due to a major incident - shall be near zero. Further, MIIs shall have a documented methodology for data reconciliation when resuming operations from DRS or any other site as applicable."

- 2.4 Clause 9.1.2.5 of Chapter 2 of the SEBI Master Circular dated October 16, 2023, Clause 4.31.2.5 of Section 4 of the SEBI Master Circular dated October 06, 2023 and Clause 16.4.3(e) of Section 16 of the SEBI Master Circular dated August 4, 2023 shall be read as under:

"For Stock Exchanges: Solution architecture of PDC and DRS / NS shall ensure high availability, fault tolerance, no single point of failure, near zero data loss, and data and transaction integrity.

For Clearing Corporations and Depositories: Solution architecture of PDC and DRS / NS shall ensure high availability, fault tolerance, no single point of failure, zero data loss, and data and transaction integrity."

- 2.5 Clause 9.1.2.8 of Chapter 2 of the SEBI Master Circular dated October 16, 2023, Clause 4.31.2.8 of Section 4 of the SEBI Master Circular dated

October 06, 2023 and Clause 16.4.3(h) of Section 16 of the SEBI Master Circular dated August 4, 2023 shall be read as under:

"For Stock Exchanges: Synchronous replication or appropriate replication between PDC and NS shall be implemented to ensure near zero data loss.

Asynchronous replication may be implemented between PDC and DRS and between NS and DRS.

For Clearing Corporations and Depositories: Synchronous replication between PDC and NS shall be implemented to ensure zero data loss. Asynchronous replication may be implemented between PDC and DRS and between NS and DRS."

ANSUMAN DEV PRADHAN

General Manager

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19

Allowing securities funded through cash collateral as maintenance margin for Margin Trading Facility (MTF)

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/118 dated 11.09.2024]

- SEBI has received representations from market participants through the Industry Standards Forum (ISF) to relax the requirement, under Chapter 1 at Para 4.3.3.1 of the Master Circular (Stock Exchanges and Clearing Corporations) dated October 16, 2023, allowing securities funded through cash collateral to be considered as maintenance margin for Margin Trading Facility (MTF).
- Upon examination of the representations received, discussions were held with Stock Exchanges and representatives of the Brokers' Associations and ISF.
- Pursuant to the same, in the interest of investors and to alleviate the burden of additional collateral towards maintenance margin for MTF and in order to promote the objective of 'Ease of Doing Business', the requirement under Chapter 1 at Para 4.3.3.1 of the Master Circular (Stock Exchanges and Clearing Corporations) dated October 16, 2023 stands amended as under:

"The stocks or units of Equity ETFs deposited as collateral with the stock broker for availing margin trading facility (Collaterals) and the stocks or units of Equity ETFs purchased under the margin trading facility ('Funded stocks') shall be identifiable separately and no comingling shall be permitted for the purpose of computing funding amount. Further, in case the broker has collected cash collateral from the client in form of margin for availing margin trading facility and the Trading Member has given the said

cash collateral to the Clearing Corporation (CC) towards settlement obligation of the said client, then same can be considered as maintenance margin to the extent of securities received from CC against such cash collateral given to CC and such shares are pledged in favor of trading member in form of funded stock.”

4. Further, a new Clause 4.3.3.5 shall be included in the SEBI Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, which shall read as follows:

“Incase the funded stock is considered towards maintenance margin to the extent of cash collateral provided by the client, the Trading Members shall ensure that the funded stock considered is under Group 1 securities. The applicable margin shall be VaR + 5 times the Extreme Loss Margin, irrespective of whether the funded stock is available in F&O segment or not.”

5. The extant Clause 4.8.1. of the SEBI Master Circular on Stock Exchanges and Clearing Corporations dated October 16, 2023 is modified to allow reporting of exposure under Margin Trading Facility by the Trading Members on or before 6:00 PM on T+1 day.

VISHAL SHUKLA
General Manager

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20 **Modification in the timeline for submission of status regarding payment obligations to the stock exchanges by entities that have listed commercial paper**

[Issued by the Securities and Exchange Board of India vide Circular SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/117 dated 06.09.2024]

1. Chapter XVII (Listing of Commercial Paper) of the Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated May 22, 2024, (hereinafter referred as ‘NCS Master Circular’) issued by SEBI, specifies provisions pertaining to listing of Commercial Paper.
2. Regulation 57 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “LoDR Regulations”) mandates entities with listed non-convertible securities to report the status of their payment obligations (payment of interest or dividend or repayment or redemption of principal) within one working day of its payment becoming due whereas Para 8.4 of Chapter XVII of the NCS Master Circular requires issuers of listed Commercial Paper to submit a certificate confirming the fulfilment of their payment obligations within two days of payment becoming due.

3. The relevant extract of the said provision is given as under:

Para 8.4 of Chapter XVII of the NCS Master Circular reads as under:

“8.4 A certificate confirming fulfilment of its payment obligations, within 2 days of payment becoming due”.

4. In order to align the timeline of intimating Stock Exchanges regarding status of payment obligations for listed non-convertible securities and listed Commercial Paper, paragraph 8.4 of Chapter XVII of the NCS Master Circular, is hereby amended as under:

“8.4 A certificate confirming fulfilment of its payment obligations, within one working day of payment becoming due”

5. The Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 55 (1) of the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.
6. This Circular is available at www.sebi.gov.in under the link “Legal → Circulars”.

RISHI BARUA

Deputy General Manager

21 **Interest Equalization Scheme (IES) on Pre and Post Shipment Rupee Export Credit**

[Issued by the Reserve Bank of India vide RBI/2024-25/76 DOR.STR.REC.44/04.02.001/2024-25 dated 20.09.2024]

Please refer to the instructions issued vide circular No.DOR.STR.REC.41/04.02.001/2024-25 dated August 29, 2024.

2. Government of India (GoI), vide Trade Notice No.16/2024-2025 dated August 31, 2024, read with Trade Notice No.17/2024-2025 dated September 17, 2024, has allowed for an extension of the Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit ('Scheme') from September 1, 2024, to September 30, 2024.
3. Further, the Government has advised the following modifications/clarifications to the Scheme:
 - a) The aforesaid extension is applicable only for MSME Manufacturer exporters.
 - b) The annual net subvention amount is capped at Rs. 10 Crore per Importer-Exporter Code (IEC) for a given financial year, accordingly a cap of Rs. 5 Crore per IEC for MSME Manufacturer exporters is imposed till September 30, 2024, for the financial year starting from April 1, 2024.
 - c) It is further advised that for Manufacturer Exporters and Merchant Exporters under the non-MSME category, the cap shall be Rs. 2.5 Crore per IEC till June 30, 2024, as per the Government's Trade Notice No.17/2024-2025 dated September 17, 2024.
4. Other provisions of the extant instructions issued by the Bank on the captioned Scheme shall remain unchanged.

VAIBHAV CHATURVEDI

Chief General Manager

22 Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Amendments)

[Issued by the Reserve Bank of India vide RBI/2024-25/75 DOR.AML.REC.43/14.06.001/2024-25 dated 19.09.2024]

Please refer to Section 52 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on January 04, 2024 (MD on KYC), in terms of which, inter alia, "Regulated Entities (REs) shall ensure meticulous compliance with the "Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005" laid down in terms of Section 12A of the WMD Act, 2005 vide Order dated September 01, 2023, by the Ministry of Finance, Government of India (Annex III of the Master Direction on Know Your Customer)."

- Further, in terms of Section 53 of our MD on KYC "the REs shall verify every day, the 'UNSCR 1718 Sanctions List of Designated Individuals and Entities', as available at <https://www.mea.gov.in/Implementation-of-UNSC-Sanctions-DPRK.htm>, to take into account any modifications to the list in terms of additions, deletions or other changes and also ensure compliance with the 'Implementation of Security Council Resolution on Democratic People's Republic of Korea Order, 2017', as amended from time to time by the Central Government".
- A reference is also invited to our circular DOR.AML.REC.23/14.06.001/2023-24 dated July 04, 2023, communicating thereby the Consolidated Lists of UNSC Designated / Sanctioned Individuals and Entities under the UNSC Resolutions relating to non-proliferation. Amendments to the entries in the Lists are carried out from time to time.

The last such amendment was notified vide our circular DOR.AML.REC.14/14.06.001/2024-25 dated April 16, 2024.

- In this regard, Ministry of External Affairs (MEA), GoI has informed that the UNSC Committee established pursuant to resolution 1718 (2006) has enacted the amendments, specified with strikethrough and/ or underline in an entry on its Sanctions List of individuals and entities (enclosed with this circular). Hence, the 'designated list' as referred in Paragraph 2.1 and other relevant paragraphs of the aforementioned Order dated September 01, 2023 is amended in accordance with the changes in the relevant entry.
- The latest version of the UNSC Sanctions list on DPRK is accessible on the UN Security Council's website at the following URLs: <https://www.un.org/securitycouncil/sanctions/1718>
- The REs are advised to take note of the aforementioned communications and ensure meticulous compliance.

VEENA SRIVASTAVA
Chief General Manager

23 Liberalised Remittance Scheme (LRS) for Resident Individuals- Discontinuation of Reporting of monthly return

[Issued by the Reserve Bank of India vide RBI/2024-25/74 A.P. (DIR Series) Circular No. 16 dated 06.09.2024]

Attention of all Authorised Dealer Category-I (AD Category-I) banks is invited to A.P. (DIR Series) Circular No. 36 dated April 04, 2008 read with A.P. (DIR Series) Circular No. 11 dated December 22, 2023, in terms of which, AD Category-I banks were required to furnish information on the number of applications received and total amount remitted under LRS on a monthly basis in the Centralised Information Management System (CIMS).

- On a review, it has now been decided to discontinue the requirement for submission of LRS monthly return by AD Category-I banks. Accordingly, from the reporting month of September 2024, AD Category-I banks shall not submit LRS monthly return (Return code : R089).
- AD Category-I banks, henceforth, will be required to upload only transaction-wise information under LRS daily return (CIMS return code: R010) at the close of business of the next working day on CIMS (URL: <https://sankalan.rbi.org.in>). In case no data is to be furnished, AD Category-I banks shall upload a 'NIL' report.
- Accordingly, instructions issued vide circulars A.P. (DIR Series) Circular No. 36 dated April 04, 2008, A.P. (DIR Series) Circular No. 106 dated May 23, 2013, A.P. (DIR Series) Circular No. 23 dated April 12, 2018, A.P. (DIR Series) Circular No. 07 dated June 17, 2021 and A.P. (DIR Series) Circular No. 11 dated December 22, 2023 stand withdrawn with immediate effect.
- AD Category-I banks shall bring the contents of this circular to the notice of their constituents. The Master Direction – Reporting under Foreign Exchange Management Act, 1999 is being updated to reflect this change.
- The directions contained in this circular have been issued under Section 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.

N. SENTHIL KUMAR
General Manager

24 Review of Extant Instructions – Withdrawal of Circulars

[Issued by the Reserve Bank of India vide RBI/2024-25/73 CO.FIDD.PCD. BC.No.9/04-04-003/2024-25 dated 02.09.2024]

An internal review was carried out to identify and withdraw obsolete/ outdated/ superfluous instructions. Based on the same, the circulars listed in the Annex stand withdrawn with immediate effect in view of subsequent updated instructions issued on the subject matters.

NISHA NAMBIAR
Chief General Manager-in-Charge

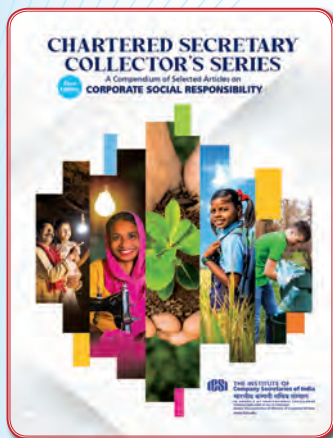
Complete details are not published here for want of space. For complete notification readers may log on to www.rbi.org.in



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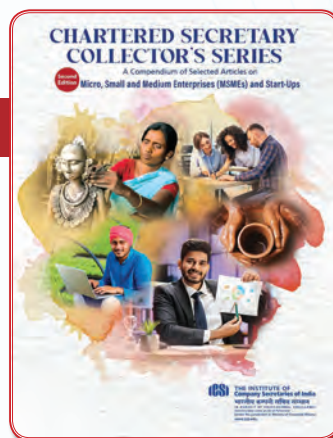
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5

NEWS FROM THE INSTITUTE



- MEMBERS RESTORED DURING THE MONTH OF AUGUST 2024
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF AUGUST 2024
- NEW ADMISSIONS
- UPLOADING OF PHOTOGRAPH AND SIGNATURE
- CHANGE / UPDATION OF ADDRESS



Institute News

MEMBERS RESTORED DURING THE MONTH OF AUGUST 2024

SL. NO.	NAME	MEMB NO.	REGION
1	CS DHANSHREE SRIVASTAVA	ACS - 35035	SIRC
2	CS KEERTI MAHESHWARI	ACS - 47042	NIRC
3	CS DEVASHISH PRANAM SARAF	ACS - 51155	WIRC
4	CS DEEPTI TUSHAR DALVI	ACS - 24494	WIRC
5	CS SANCHITA KASHYAP	ACS - 25375	WIRC
6	CS SWATI GUPTA	ACS - 35620	NIRC
7	CS PRIYANCI MITTAL	ACS - 65374	NIRC
8	CS SHEETAL JAGETIYA	ACS - 22737	NIRC
9	CS DIPANKAR DAS	ACS - 35261	EIRC
10	CS VAISHALI DHOOT	ACS - 57543	WIRC
11	CS YUG SAMRAT	FCS - 6118	NIRC
12	CS DEEPAK ARORA	ACS - 68034	WIRC
13	CS K MAHALAKSHMI	ACS - 12056	SIRC
14	CS ARCHANA	ACS - 53656	NIRC
15	CS SOLANKI TANVI BHARATBHAI	ACS - 58435	WIRC
16	CS RICHA TIWARI	ACS - 69708	NIRC
17	CS RAVI RAJAGOPAL	FCS - 2830	WIRC
18	CS SANTOSH KUMAR	FCS - 3553	NIRC
19	CS SANJAY KUMAR	ACS - 31699	NIRC
20	CS RADHIKA CHANDAK	ACS - 46899	SIRC
21	CS KAJOL MATHUR	ACS - 60959	NIRC
22	CS NANDKUMAR DADASO PATIL	ACS - 34904	WIRC
23	CS VAIBHAV AGIWAL	ACS - 67277	NIRC

24	CS SRIRAM S	ACS - 39023	SIRC
25	CS VALLARI JIVAN DAVE	ACS - 27244	WIRC
26	CS SONALI	ACS - 32544	NIRC
27	CS ARPITA NAGAR	ACS - 49767	WIRC
28	CS NANDAPRABHA K CHARATE	ACS - 53608	SIRC
29	CS PRASHANT TANDON	ACS - 15099	NIRC
30	CS ABHISHEK MISHRA	FCS - 9566	NIRC
31	CS NAWIN KUMAR LAHOTY	ACS - 11491	EIRC
32	CS PRADIP PRABHAKAR RASANKAR	FCS - 10616	WIRC
33	CS HARSIMRAN JIT KAUR	ACS - 42458	NIRC
34	CS SNEHA JAIN	ACS - 61321	NIRC
35	CS COYALKAR UDAYA RAJ	FCS - 4866	SIRC
36	CS MANMADKAR JAYANT BHALCHANDRA	ACS - 12444	SIRC
37	CS SANDEEP CHOUDHARY	ACS - 33439	NIRC
38	CS JITENDRA KUMAR VYAS	ACS - 38559	NIRC
39	CS MRIDUL MUNDHRA	ACS - 68149	WIRC
40	CS RAJEEV KUMAR NAIN	ACS - 35449	NIRC
41	CS VIVEK MAKHIJANI	ACS - 50008	WIRC
42	CS RAMNEET KAUR CHHABRA	ACS - 59992	WIRC
43	CS VINITA CHURIWALA	ACS - 41150	EIRC
44	CS RADHA L	ACS - 55315	SIRC
45	CS ASHWINI GOPALKRISHNAN	ACS - 67400	SIRC
46	CS ARCHANA ANAND TATU	ACS - 8834	WIRC
47	CS PANKAJ KAJARIA	ACS - 16734	EIRC
48	CS ROHINI	ACS - 29726	SIRC
49	CS ANUBHA MAHESHWARI	ACS - 45361	NIRC
50	CS SHILPA NAMA	ACS - 55711	NIRC
51	CS GEETHA SRINIVASAN	ACS - 13548	SIRC
52	CS JATIN CHOPRA	ACS - 49958	NIRC
53	CS KAVITA KOTHARI	ACS - 59858	NIRC

**CERTIFICATE OF PRACTICE SURRENDERED
DURING THE MONTH OF AUGUST 2024**

SL. NO.	NAME	MEMB NO	COP NO.	REGION
1	CS KANIKA SUKHEEJA	ACS - 23832	26866	NIRC
2	CS RUCHI BANSAL	ACS - 22954	10068	NIRC
3	CS SANIDHYA TOSHNIWAL	ACS - 66623	24875	NIRC
4	CS REENA SHARMA	FCS - 9039	17180	NIRC
5	CS SWARA JIMIT DEVANI	ACS - 20851	25409	WIRC
6	CS BHAVIN JAGDISHBHAI WAGHELA	ACS - 46806	26762	WIRC
7	CS VIJAY LUXMI SARAWAGI	ACS - 35116	13052	WIRC
8	CS HARSHIT JAIN	ACS - 60620	23435	NIRC
9	CS PRATIK VIRALBHAI SOLANI	ACS - 64868	25004	WIRC
10	CS SAKSHI THAPAR	FCS - 10156	12407	NIRC
11	CS YASH MANISH SHAH	ACS - 49746	18226	WIRC
12	CS JITENDRA SHARMA	ACS - 50857	21762	NIRC
13	CS NATTAKATHU RAJASEKHARAN KRISHNAN UNNI	ACS - 38770	20328	SIRC
14	CS ANKITA MORE	ACS - 59161	26439	EIRC
15	CS ANIKA TYAGI	ACS - 70247	26425	NIRC
16	CS VIDYA H PAWAR	ACS - 22015	8164	SIRC
17	CS VIDHI RAKHECHA	ACS - 70633	26983	WIRC
18	CS APEKSHA JAIN	ACS - 39096	24246	NIRC
19	CS PRACHI KALPESH PATWA	ACS - 28329	22208	WIRC
20	CS KINJAL MONISH CHANDARANA	FCS - 11427	17042	WIRC
21	CS KURUNGATTU VASUDEVAN BALAKRISHNANNAIR	FCS - 11816	27267	SIRC
22	CS RAHUL MITTAL	ACS - 69400	26325	NIRC
23	CS SUMIT KANUNGO	ACS - 30810	21084	EIRC
24	CS PRIYA KHANDELWAL	ACS - 40672	15084	NIRC
25	CS SHWETA GARG	ACS - 34258	25007	NIRC
26	CS ASHOK GUPTA	FCS - 3298	15684	NIRC
27	CS VEENA DEVARU BHAT	FCS - 9821	27131	SIRC

28	CS ANUPMA	ACS - 35899	15346	NIRC
29	CS GURDEEP KAUR	FCS - 10320	19672	NIRC
30	CS VINEET SHRIKANT PARANJAPE	ACS - 45269	19733	WIRC
31	CS JHANKI RONAK HAJRANI	ACS - 37338	17582	WIRC
32	CS NAMRATA GIRISH VYAS	ACS - 46184	17283	WIRC
33	CS SHRADDHA DHACHOLIA	FCS - 11105	26977	EIRC
34	CS BAJRANG KUMAR GARG	ACS - 54483	27456	EIRC
35	CS MUSKAN AGRAWAL	ACS - 70313	26299	EIRC
36	CS NIKITA SHARMA	ACS - 60595	27541	WIRC
37	CS SUBHASH SAINI	FCS - 7427	6911	NIRC
38	CS RAVI KUMAR MISHRA	ACS - 43076	20272	NIRC

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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
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- 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

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1. Go to www.icsi.edu
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3. Click on **Member Search** on the member home page
4. Enter your membership number and check
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1. Go to www.icsi.edu
2. On the Online Services ----select **Member Portal** from dropdown menu
3. Login using your membership number e.g. A1234/F1234
4. Under **My Profile** --- Click on View and update option and check all the details and make the changes required and save
5. To change the mobile number and email id click the side option "**Click Here to update Mobile Number and E-mail Id**"
6. Check the residential address and link the Country-State-District-City and check your address in the fields Add. Line1/Add. Line2 & Add. Line3 (Click Here to change residential address)
 - a) Select the Country[#]
 - b) Select the State
 - c) Select the City
 - d) Submit the Pincode which should be 6 digits without space.
 - e) Then click on "Save" button.
7. Select the appropriate radio button for Employment Status and check your address in the fields Add. Line1/ Add. Line2 & Add. Line3 click the link on the right (Click Here to change Professional address)
 - a) Select the Country[#]
 - b) Select the State
 - c) Select the City
 - d) Submit the Pincode which should be 6 digits without space.
 - e) Then click on "Save" button.
8. Go back to the Dashboard and check if the new address is being displayed.

[#]in case of Foreign Country and State is not available in options then Select "**Overseas**" – A pop-up will open and you can add the "City, District, State" of that Country alongwith Zipcode

Members are required to verify and update their address and contact details as required under Regulation 3 of the CS Regulations, 1982 amended till date

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6. For COP certificate enter your COP number e.g. 12345 and select COP.
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6

MISCELLANEOUS CORNER



- GST CORNER
- ETHICS IN PROFESSION
- CG CORNER
- ESG CORNER
- GIST OF RD & ROC ADJUDICATION ORDERS

INVOICE MANAGEMENT SYSTEM

To enable taxpayers to efficiently address invoice corrections/amendments with their suppliers through the portal, a new communication process called the **Invoice Management System (IMS)** is being brought up at portal. This will also facilitate taxpayer in matching of their records/invoices vis-a-vis issued by their suppliers for availing the correct Input Tax Credit (ITC) and shall allow the recipient taxpayers to either accept or reject an invoice or to keep it pending in the system, which can be availed later.

This facility is available for the taxpayers on the GST portal from 1st October 2024.

Source: <https://services.gst.gov.in/services/advisoryandreleases/read/517>

RE-OPENING OF REPORTING ITC REVERSAL OPENING BALANCE

A ledger **Electronic Credit Reversal and Re-claimed Statement** was introduced on the GST portal from August 2023 return period for monthly taxpayers and from July-September 2023 quarter for quarterly taxpayers. The taxpayers were also given an opportunity to report their cumulative ITC reversal as an opening balance in the newly introduced Electronic Credit Reversal and Re-claimed Statement.

Extension of due dates for reporting opening balance

Taxpayers are being provided with one final opportunity to report their cumulative ITC reversal (ITC that has been reversed earlier and has not yet been reclaimed) as opening balance for **"Electronic Credit Reversal and Re-claimed Statement"**, if any, before hard locking the reversal and reclaim ledger.

Important dates to report opening balance are mentioned below:

- The functionality to reporting the opening balance is available from 15th September 2024 to 31st October 2024.
- The amendments in declared opening balance will be available till 30th November, 2024.
- Taxpayers having monthly filing frequency are required to report their opening balance considering the ITC reversal done till the return period of July 2023 only. As after this period balance is already available in ledger.
- Quarterly taxpayers shall report their opening balance up to Q1 of the financial year 2023-24, considering the ITC reversal made till the April-June 2023 return period only. As after this period balance is already available in ledger.

Source: <https://services.gst.gov.in/services/advisoryandreleases/read/520>

DRAFT MANUAL ON INVOICE MANAGEMENT SYSTEM

GST Common Portal has unveiled a ground breaking new facility, the Invoice Management System, revolutionizing the way recipient taxpayers interact with invoices. This innovative feature empowers taxpayers to seamlessly accept, reject, or keep invoices pending in the system to avail later as and when required, streamlining the reconciliation process, and ensuring greater accuracy and efficiency in GST compliance. Taxpayers may visit the following link to access the draft Manual to know the detailed step wise procedure for using the facility

Source: https://tutorial.gst.gov.in/downloads/news/draft_manual_ims.pdf

ARCHIVAL OF GST RETURNS DATA ON GST PORTAL

Section 39(11) of the CGST Act, 2017, implemented w.e.f 01-10-2023 vide Notification No. 28/2023 – Central Tax dated 31st July, 2023, provides that the taxpayers shall not be allowed to file their GST returns after the expiry

of a period of three years from the due date of furnishing the said return.

Further, as per GST portal data policy, data for view of taxpayer to be retained for seven years only. Therefore, the same data policy is being implemented on the GST portal. Thus, return data will not be available to view beyond 7 years for taxpayers.

Accordingly, on 01st August 2024 return filed for July 2017 has been archived and on 01st September 2024, data for August 2017 has been archived. Further, this data archival is going to be a monthly activity hence on 01st October, 2024 data of September 2017 shall be taken down from the GST portal and so on so forth.

Therefore, the taxpayers are advised to download their relevant data from the GST portal for any future reference, if required.

Source: <https://services.gst.gov.in/services/advisoryandreleases/read/523>

RESTORATION OF GST RETURNS DATA ON PORTAL

The advisory issued on 24th September 2024 regarding the archival of return data from the Common Portal after seven years, pursuant to which the data was archived in line with data archival policy. Data archival process was implemented monthly. Consequently, the return data for July 2017 and August 2017 was archived on 01st August and on 01st September respectively.

However, in view of the requests received from the trade due to the difficulties faced, data has been restored back on the portal. It is recommended to download and save the data if needed, as the archival policy shall be implemented again after giving advance information.

Source: <https://services.gst.gov.in/services/advisoryandreleases/read/526>

NOTIFICATION**NOTIFICATION NO. 17/2024–CENTRAL TAX**

As per the notification No. 17/2024–Central Tax, the provisions of sections 118, 142, 148 and 150 of the said Act shall come into force from the 27th September, 2024, the date of publication of the said notification;

The 1st day of November, 2024, as the date on which the provisions of sections 114 to 117, 119 to 141, 143 to 147, 149 and 151 to 157 of the said Act shall come into force.

Source: <https://taxinformation.cbic.gov.in/view-pdf/1010163/ENG/Notifications>

CIRCULARS**CIRCULAR NO. 232/26/2024-GST**

The Circular provides clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

Source: <https://taxinformation.cbic.gov.in/view-pdf/1003231/ENG/Circulars>

CIRCULAR NO. 231/25/2024-GST

The Circular provides clarification on availability of input tax credit in respect of demo vehicles-reg.

Source: <https://taxinformation.cbic.gov.in/view-pdf/1003230/ENG/Circulars>

CIRCULAR NO. 230/24/2024-GST

The Circular provides clarification on advertising services provided to foreign clients-reg.

Source: <https://taxinformation.cbic.gov.in/view-pdf/1003229/ENG/Circulars>

Material departure from generally accepted procedures relating to Secretarial Practices

A member of the Institute in practice, shall be deemed to be guilty of professional misconduct under Clause (9) of Part I of the Second Schedule to the Company Secretaries Act, 1980, if he,

“fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;”

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.

Company Secretaries in Practice should be more careful in dealing with matters relating to any change in management or directorships while undertaking assignments where any management dispute or any family dispute exists. Wherever any material departure from generally accepted procedures relating to Secretarial Practices is observed, Company Secretaries in Practice should invite attention of their clients regarding such material departure.

CASE STUDY

1. A complaint of professional or other misconduct was filed against one Practising Company Secretary (hereinafter referred to as ‘the Respondent’) *inter-alia* alleging/stating that there were six directors in one Private company (‘the company’) ‘S’, ‘T’, ‘U’, ‘V’, ‘W’ and the Complainant. Three Directors including Complainant were suspended from their directorship. Petition in this respect was filed before the Hon’ble Civil Court and Hon’ble NCLT.
2. The Complainant has further stated that a notice dated 5th October, 2020 calling for a meeting of the Board of Directors on 21st October, 2020 at 2:00 PM at the registered office of the company was issued under the signature of ‘S’, the Managing Director of the company. ‘U’, ‘V’, ‘W’ under the guidance of the Respondent hijacked the said meeting and wrongly shown it to have been held on 21st October, 2020 via audio - visual mode without following due procedure as defined under the Companies (Meetings of Board of Directors and its Powers) Rules, 2014 for calling meeting via audio - visual mode. That the Respondent in consent and connivance with erring directors have falsely certified and filed Form-DIR-12 for removal of the Complainant and ‘S’, wrongly showing their retirement on 21st October, 2020 upon attaining age of 65 years by twisting Clause 51 of Articles of Association (AoA) of the company. That the Respondent had wrongly certified, approved and filed forged documents with the office of ROC via MCA portal and has also altered the statutory and legal records of the company.
3. The Respondent has submitted that he had cross checked the Notice of the meeting of Board of Directors of the company and the same was duly issued as per Section 173 of the Companies Act, 2013. Out of six directors, three directors, namely, ‘U’, ‘V’, ‘W’ agreed to attend the meeting via videoconferencing due to Covid-19 restrictions for which they had given advance notice on 19th October, 2020 and 20th October, 2020. On 20th October, 2020, the link was shared with all directors via email and WhatsApp. He had cross checked the video recording of the said Board Meeting, and the quorum was complied as per Section 174 of the Companies Act, 2013. The draft minutes were shared with the Complainant and ‘S’ on 4th November, 2020 in accordance with Section 118 of Companies Act, 2013 read with Secretarial Standards on Meeting of the Board of Directors. No objection was raised in the draft minutes. The final minutes were also shared with the Complainant and ‘S’. The Respondent submitted that there were sufficient reasons for him to certify Form DIR-12. Further, Article 51 of AoA of the company states that the directors who have reached the age of 65 years shall give notice to the company. However, no such notice has been received from the Complainant. The Respondent has also relied upon Section 167(4) of the Companies Act, 2013 and he has no malafide intentions against the family of the Complainant and ‘S’.
4. The Complainant reiterated the allegations and stated that as per AoA and MoA intimation of age is not a ground for vacation of office.
5. The Disciplinary Committee, after hearing the submissions observed that there were two groups in the company. A notice for meeting of the Board of Directors of the company on 21st October, 2020 at registered office was issued on 5th October, 2020 by ‘S’, the Managing Director. Three directors of another group vide letter dated 19th October, 2020 and 20th October, 2020 desired to attend the meeting through videoconferencing mode. Further, vide the aforesaid letter dated 19th October, 2020, it was *inter-alia* proposed to discuss regarding deletion of Articles 45 to 51 (Rotation of Directors) of the AoA. ‘S’, the Managing Director joined the meeting through phone call and expressed his disapproval for the meeting through videoconferencing mode and disconnected the call and none of the directors from his group were present in the said meeting. The meeting continued and took the matter of retirement of the Complainant and ‘S’ in pursuance of Article 51 of AoA and passed resolution to this effect which resulted in filing of Form DIR-12 for cessation of directorship. There was management dispute, and petitions were filed before Hon’ble NCLT. Parties to dispute arrived at settlement and Hon’ble NCLT has allowed withdrawal of the petitions. The matter placed before the Disciplinary Committee was only for certification of Form DIR-12 for cessation of directorship of the Complainant and ‘S’. The Disciplinary Committee was of view that the language of Article 51 of AoA is very clear, and it mentions only for intimation of age on attaining sixty-five years. Its interpretation as retirement is highly misplaced. The Respondent while certifying the impugned Form DIR-12 has failed to exercise due diligence and to invite attention to material departure from the generally accepted procedure.
6. The Disciplinary Committee held the Respondent ‘Guilty’ of Professional Misconduct under Clause (7) and (9) of Part I of the Second Schedule to the Company Secretaries Act, 1980 and after giving an opportunity of being heard passed an order of Reprimand and imposed a Fine of ₹ 10000 (Rupees Ten thousand only) against the Respondent.

Understanding “Controlling shareholder” under UK Listing Rules Instrument 2024

The Financial Conduct Authority (FCA) has issued new listing rules that came into force on 29th July 2024. FCA has set out a simplified listings regime with a single category and streamlined eligibility for those companies seeking to list their shares in the UK.

The UK listing rules inter alia covers various corporate governance compliances including requirements for listing, responsibilities of issuers, requirements with continuing application, Controlling Shareholder, significant transactions and reverse takeovers, Classifying transactions, etc.

With reference to the UK Listing Rules, 2024 it is imperative to comprehend the concept of Controlling Shareholder.

Controlling Shareholder means any person who exercises or controls on their own or together with any person with whom they are acting in concert, 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the company.

For the purposes of calculating voting rights, the following voting rights are not to be considered:

- (1) any voting rights which such a person exercises (or controls the exercise of) independently in its capacity as:
 - (a) bare trustee,
 - (b) investment manager,
 - (c) collective investment undertaking; or
 - (d) a long-term insurer in respect of its linked long-term business,

if no associate of that person interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such person confers or collaborates with such an associate which also acts in its capacity as investment manager, collective investment undertaking or long-term insurer); or
- (2) any voting rights which a person may hold (or control the exercise of) solely in relation to the direct performance, by way of business, of:
 - (a) underwriting the issue or sale of securities; or
 - (b) placing securities, where the person provides a firm commitment to acquire any securities which it does not place; or
 - (c) acquiring securities from existing shareholders or the issuer pursuant to an agreement to procure third-party purchases of securities; and where the conditions below are satisfied:
 - (i) the activities set out in (2)(a) to (c) are performed in the ordinary course of business;
 - (ii) the securities to which the voting rights attach are held for a consecutive period of 5 trading days or less, beginning with the first trading day on which the securities are held;

- (iii) the voting rights are not exercised within the period the securities are held; and
- (iv) no attempt is made directly or indirectly by the person to intervene in (or attempt to intervene in) or exert (or attempt to exert) influence on the management of the issuer within the period the securities are held.

Compliance requirements for issuers with regards to controlling shareholder:

- An applicant (issuer) with a controlling shareholder must demonstrate that, despite having a controlling shareholder, the applicant is able to carry on the business it carries on as its main activity independently from such controlling shareholder at all times. (5.3.1)
- Details must be disclosed of any contract of significance between the issuer or one of its subsidiary undertakings and a controlling shareholder as well as details of any contract for the provision of services to the issuer or any of its subsidiary undertakings by a controlling shareholder (6.6)
- There will now no longer be a requirement for issuers to enter into binding relationship agreements with controlling shareholders.
- However, when in a listed company that has a controlling shareholder; and the controlling shareholder or any of its associates proposes or procures the proposal of a shareholder resolution which a director considers is intended or appears to be intended to circumvent the proper application of the listing rules, the circular accompanying the notice of meeting which contains the relevant shareholder resolution must set out a statement by the board of the director's opinion in respect of the resolution. (6.2.10)
- Where a listed company has a controlling shareholder, a circular to shareholders relating to the election or re-election of an independent director must include the details of any existing or previous relationship, transaction or arrangement the proposed independent director has or had with the listed company, its directors, any controlling shareholder or any associate of a controlling shareholder or a confirmation that there have been no such relationships, transactions or arrangements and description thereto. (10.6.16)

For details kindly refer: https://www.handbook.fca.org.uk/instrument/2024/FCA_2024_23.pdf

The amendments in the UK listing Rules instrument 2024 is expected to usher in drastic changes in the ways of regulating UK capital market with a focus on less regulatory intervention and a more disclosure-based approach instead of mandated regulations.

IFRS foundation issued guidance on voluntarily applying ISSB Standards

Globally the investors have called on companies to voluntarily apply ISSB Standards to provide investors with decision-useful, globally comparable information in the absence of regulatory requirements to apply ISSB Standards.

To meet this growing demand, the IFRS Foundation on 25th September, 2024 has published a guide titled “*Voluntarily applying ISSB Standards—A guide for preparers*” at New York Climate Week. This guide provides clear steps for companies seeking to align their reporting with ISSB Standards, even in jurisdictions where it’s not yet mandatory.

IFRS S1 and IFRS S2 (ISSB Standards) enable companies or entities to disclose comparable and reliable information to support investor decision-making. The voluntary application guide issued by IFRS foundation is designed to help companies clearly communicate their progress as they begin to apply IFRS-S1: General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2: Climate-related Disclosures in advance of or in the absence of jurisdictional regulation, which may specify or restrict the reporting that entities in a jurisdiction can do voluntarily.

This guide is intended to help companies to navigate a path to IFRS S1 and IFRS S2 compliance; and also, to help them to communicate about their progress in a way that enables investors and other stakeholders to understand the sustainability-related financial information that companies are able to provide at different stages of their journey. It is not part of IFRS Standards and does not add to or change the requirements in IFRS S1 or IFRS S2. Nor does this guide override jurisdictional rules and guidance.

Source: <https://www.ifrs.org/content/dam/ifrs/supporting-implementation/issb-standards/issb-voluntary-application-preparers.pdf>

Hong Kong Sets Stage for Global Sustainability Reporting Standards with HKFRS S1 and S2

The Hong Kong Institute of Certified Public Accountants (HKICPA) announced the release of Exposure Drafts for the first-ever Hong Kong Sustainability Disclosure Standards, namely HKFRS S1 and HKFRS S2. These standards, aligned with the IFRS Sustainability Disclosure Standards, are open for public consultation until October 27, 2024.

HKICPA proposes full convergence with IFRS S1 and S2, which focus on sustainability-related financial disclosures and climate-related reporting, respectively. This initiative follows years of engagement and technical feasibility studies conducted with various stakeholders, and it is set to take effect on August 1, 2025.

Following the Hong Kong Government’s release of a vision statement on enhancing the local sustainability



disclosure ecosystem, the HKICPA was tasked with the development of sustainability reporting standards. The vision aims to bring Hong Kong’s sustainability reporting requirements in line with global norms and encompasses entities such as listed companies, banks, fund managers, and insurance companies. This move aims to connect local businesses and global capital markets, reinforcing Hong Kong’s role as a hub for sustainable finance in Asia.

Source: <https://esgnews.com/hong-kong-sets-stage-for-global-sustainability-reporting-standards-with-hkfrs-s1-and-s2/>

UAE to Announce New Climate Plan Before COP29

The United Arab Emirates (UAE) plans to release its new national climate plan under the Paris Agreement ahead of the COP29 climate summit in November, setting a precedent for other countries to follow.

Sultan Al Jaber, president of last year’s COP28 summit, announced that the UAE will submit its updated “nationally determined contribution (NDC)” to the United Nations. The new NDC will outline how the oil-producing nation aims to cut greenhouse gas emissions from 2025 to 2035. NDCs are central to the Paris Agreement, encouraging nations to set ambitious emission-reduction goals to achieve net-zero by 2050 and limit global temperature rise to 1.5°C. The Paris Agreement requires countries to submit stronger NDCs every five years.

This new round of NDCs will be the first test of last year’s COP28 agreement to transition away from fossil fuels. Previous NDCs by major oil, gas, and coal producers failed to address phasing down fossil fuel output, according to the International Institute for Sustainable Development.

Global civil society groups, including scientists, corporate leaders, and youth organisations, advocate for new national climate policies aligning with the 1.5°C goal. Their letter, addressed to all focal points of United Nations Framework Convention on Climate Change (UNFCCC), advocates for stopping fossil fuel expansion, sector-specific targets, and plans to triple renewable energy capacity. As Brazil, Azerbaijan, and the UAE prepare to announce their updated NDCs,

all countries are under pressure to demonstrate bold leadership and submit ambitious, credible plans to reduce emissions while creating economic opportunities, improving human well-being, and addressing global inequalities.

Source:<https://esgnews.com/uae-to-announce-new-climate-plan-before-cop29-setting-global-precedent/>

EU Commission Launches Public Consultation on Flight Emissions Label to Standardize Airline CO₂ Reporting

The European Commission has initiated a public consultation on its draft proposal to introduce the EU Flight Emissions Label (FEL). This voluntary initiative is designed to provide passengers with standardized and trustworthy environmental information on flights within the European Union.

Currently, airlines use different methodologies for reporting flight emissions, making it difficult for passengers to compare data. The FEL aims to create a unified system to ensure reliability and transparency. Airlines adopting the FEL will display emissions data alongside their flight information online, allowing passengers to make more environmentally conscious decisions. 80% of air passengers want to understand the carbon impact of their flights, yet only 5% can access this information. The FEL seeks to change this by offering clear data on emissions, such as aircraft type, average passenger numbers, freight volume, and fuel type.

By 2025, airlines operating flights within or departing from the EU will have the option to join the FEL. A dedicated logo will highlight flights that adhere to the label's standards. Additionally, a public webpage will be launched for travellers to compare emissions data and rank airlines based on their environmental performance on specific routes.

The European Union Aviation Safety Agency (EASA) will oversee the implementation, including data collection and emissions verification in line with the EN ISO 14083:2023 standard. This initiative marks a significant move toward increased transparency and environmental responsibility in aviation, empowering passengers with the data they need to choose greener travel options.

Source:<https://esgnews.com/eu-commission-launches-public-consultation-on-flight-emissions-label-to-standardize-airline-co2-reporting/>

Morningstar survey reveals that Environmental factors have become more material over social and governance issues

Environment outweighs social and governance factors among pensions, foundations, and other stewards, as per recent Morningstar survey. It reveals that a growing number of asset owners, including pension funds,

insurance accounts, and endowments, are prioritizing climate over social and governance issues in their investment decisions. According to Morningstar's recent Voice of the Asset Owner Survey, 64% of respondents feel environmental factors have become more financially relevant over the past year, compared to 52% in 2023.

Environmental, social, and governance (ESG) factors continue to gain traction in institutional investment strategies. The survey found that 80% of asset owners view ESG as having a neutral to positive impact on their fiduciary duties. As ESG factors, particularly environmental ones, become more material, they fall within the purview of fiduciary responsibilities. In particular, climate change tops the list of concerns, with 55% of respondents highlighting the transition to net zero emissions as a critical factor. This aligns with the urgency of tackling climate change and reflects its increasing materiality in the financial sector.

Asset owners are leveraging their influence through active ownership to drive ESG policies. About 78% of asset owners believe that direct engagement with portfolio companies is the most effective tool for enacting change, followed by public policy engagement and collective initiatives like Climate Action 100+. Proxy voting, while important, is considered the least influential method of influencing ESG outcomes.

High-quality data is essential for implementing ESG strategies, with 43% of asset owners considering ESG data the most useful tool, compared to ratings (24%) and indexes (23%). Despite improvements, asset owners are calling for greater accuracy, standardization, and relevance in ESG data.

Source:<https://esgnews.com/64-globally-feel-that-environmental-factors-have-become-more-material-or-financially-relevant-morningstar-survey/>

ANNOUNCEMENT

The Institute has adopted the "Green Initiatives in the Corporate Governance" initiated by the Ministry of Corporate Affairs, allowing the companies to send Notices / Documents / Annual Reports and other communications to its shareholders by electronic mode. Accordingly, the Annual Report of the Institute for the Financial Year 2023-24 (as published in the Official Gazette of India), has been sent to all the Members of the Institute through electronic mode on 30th September, 2024. The Annual Report has also been hosted on the website of the Institute on link-https://www.icsi.edu/media/webmodules/ICSI_Annual_Report_2023-24_30092024.pdf

GIST OF RD & ROC ADJUDICATION ORDERS

Gist of RD Adjudication Orders

Adjudication order for violation of section 158 of the Companies Act, 2013 in the matter of MAHEEP MARKETING PVT LTD.

RD (EAST) in the matter of Maheep Marketing Pvt. Ltd., vide order dated 27th June, 2024 after considering the facts of the case confirmed a penalty of ₹1,50,000 imposed by ROC West Bengal upon the company and two directors in default for violation of Section 158 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=K9WRl01l7%252BUqxJBzeOkUXA%253D%253D&type=open>

Adjudication order for violation of Section 203 of Companies Act, 2013 in the matter of UNIQUE MANUFACTURING & MARKETING LTD

RD (EAST) in the matter of Unique Manufacturing and Marketing Limited, vide order dated 1st January, 2024 after considering the facts of the case confirmed a penalty of ₹10,00,000 imposed by ROC West Bengal upon the company and one director in default for violation of Section 203 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=tMBxm0nGDTs60ebaWykOEg%253D%253D&type=open>

Adjudication order for violation of Section 158 of Companies Act, 2013 in the matter of PRE-STRESSED UDYOG (INDIA) PVT. LTD.

RD (EAST) in the matter of Pre-stressed Udyog (India) Pvt. Ltd., vide order dated 9th July, 2024 had "Reduced" the penalty to ₹3,50,000 as imposed by ROC, West Bengal each upon the company and two officers in default for violation of Section 158 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=693qLwOqO6IB3%252Bnllz%252FZ0A%253D%253D&type=open>

Adjudication order for violation of Section 203 of Companies Act, 2013 in the matter of UTKAL GALVANIZERS LIMITED

RD (EAST) In the matter of Utkal Galvanizers Ltd., vide order dated 10th July, 2024 after considering the facts of the case confirmed a penalty of ₹17,42,000 imposed by ROC West Bengal upon the company, directors and CFO in default for violation of Section 203(1)(ii) of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=sb-9GD%252FnQsGVWfeL02t6btQ%253D%253D&type=open>

Adjudication order for violation of Section 203 of Companies Act, 2013 in the matter of UTKAL GALVANIZERS LIMITED

RD (EAST) in the matter of Utkal Galvanizers Ltd., vide order dated 10th July, 2024 after considering the facts of the case confirmed a penalty of ₹16,00,000 imposed by

ROC West Bengal upon the company and two directors in default for violation of Section 203(1)(iii) of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=94gRWKH2ncZHT1QAiCVSmQ%253D%253D&type=open>

Adjudication order for violation of Section 203 of Companies Act, 2013 in the matter of WESTERN CARRIERS (INDIA) LIMITED

RD (EAST) in the matter of Western Carriers (India) Limited, vide order dated 9th July, 2024 after considering the facts of the case confirmed a penalty of ₹30,88,000 imposed by ROC West Bengal upon the company and officers in default for violation of section 203 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=35fEW06QliPOvj36P9suMw%253D%253D&type=open>

Adjudication order for violation of Section 203 of Companies Act, 2013 in the matter of MERRYGOLD MERCANTILES LTD.

RD (EAST) in the matter of Merrygold Mercantiles Limited, vide order dated 5th January, 2024 after considering the facts of the case confirmed a penalty of ₹35,00,000 imposed by ROC West Bengal upon the company and six directors in default for violation of Section 203 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=BKf6N%252F2IXlvBU9Cjv4NdeA%253D%253D&type=open>

Adjudication order for violation of Section 12 of Companies Act, 2013 in the matter of HANUMAN COAL TRADING PRIVATE LIMITED

RD (EAST) in the matter of Hanuman Coal Trading Private Limited, vide order dated 1st January, 2024 after considering the facts of the case confirmed a penalty of ₹3,00,000 imposed by ROC West Bengal upon the company and officers in default for violation of Section 12 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=WT-NxIRx5sTc9wGclMf8M9A%253D%253D&type=open>

Adjudication order for violation of Section 203 of Companies Act, 2013 in the matter of PEEBEE STEEL INDUSTRIES LTD.

RD (EAST) in the matter of Peebee Steel Industries Limited, vide order dated 2nd January, 2024 after considering the facts of the case confirmed a penalty of ₹10,00,000 imposed by ROC West Bengal upon the company and on one officer in default for violation of Section 203(5) of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=M6lbPjPQTNI%252BdqZlr6R0uQ%253D%253D&type=open>

Adjudication order for violation of Section 143 of Companies Act, 2013 in the matter of PRE-STRESSED UDYOG (INDIA) PVT. LTD.

RD (EAST) in the matter of Pre-stressed Udyog (India) Pvt. Ltd., vide order dated 9th July, 2024 after considering the facts of the case confirmed a penalty of ₹2,40,000 imposed by ROC West Bengal upon the auditor in default for violation of Section 143 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=eftZLmc0R2KsjNGXRlwz0A%253D%253D&type=open>

Adjudication order for violation of Section 92 of Companies Act, 2013 in the matter of THE KUTCH SALT AND ALLIED INDUSTRIES LIMITED

RD (WEST) in the matter of The Kutch Salt and Allied Industries Limited, vide order dated 5th August, 2024 after considering the facts of the case confirmed a penalty of ₹40,00,000 imposed by ROC Mumbai upon the company and the officers in default for violation of section 92 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=nW%252BznibKyPpEZgw5KAW7CA%253D%253D&type=open>

Adjudication order for violation of Section 12 of the Companies Act, 2013 in the matter of ASTRASAGE SOFTWARE SOLUTIONS PRIVATE LIMITED

RD (SOUTH EAST) in the matter of Astrasage Software Solutions Private Limited, vide order dated 27th June, 2024 after considering the facts of the case 'Reduced' the quantum of penalty amount to 50% of the penalty imposed by ROC Hyderabad to ₹25,000 each upon the officers in default for violation of Section 12 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=ZSvrcJL2xf%252F9WATLs6fWxw%253D%253D&type=open>

Adjudication order for violation of Section 149(4) of the Companies Act, 2013 in the matter of MUKKA PROTEINS LIMITED

RD (SOUTH EAST) in the matter of M/s. Mukka Proteins Limited, vide order dated 26th June, 2024 after considering the facts of the case 'Reduced' the penalty amount to 50% of the quantum of the penalty as imposed by ROC Hyderabad ₹4,50,000 on the Company and six of the officers in default for violation of Section 149(4) of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=tW7RKj%252FX9yL%252FgUXRPn6pcQ%253D%253D&type=open>

Adjudication order for violation of Section 178(1) of the Companies Act, 2013 in the matter of MUKKA PROTEINS LIMITED

RD (SOUTH EAST) in the matter of Mukka Proteins Limited, vide order dated 26th June, 2024 after considering the facts of the case 'Reduced' the penalty amount to 50% of the quantum of the penalty as imposed by ROC

Hyderabad to ₹6,00,000 on the Company and seven of the officers in default for violation of Section 178(1) of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=vEyPjcsjg8RWhytZ4gtVZw%253D%253D&type=open>

Adjudication order for violation of Section 405 of the Companies Act, 2013 in the matter of SAMSUNG R&D INSTITUTE INDIA-BANGALORE PRIVATE LIMITED

RD (SOUTH EAST) In the matter of Samsung R&D Institute India-Bangalore Private Limited, vide order dated 26th June, 2024 after considering the facts of the case Reduced the penalty amount to 60% of the quantum of the penalty imposed by ROC Hyderabad to ₹7,00,200 on the Company and two of the directors in default for violation of Section 405 of the Companies Act, 2013

<https://www.mca.gov.in/bin/dms/getdocument?mds=RvGXHcUt1NY7d%252BKKGW1iAg%253D%253D&type=open>

Adjudication order for violation of Section 137 of Companies Act, 2013 in the matter of JEET MACHINE TOLLS LIMITED

RD (WEST) in the matter of Jeet Machine Tolls Limited, vide order dated 9th August, 2024 after considering the facts of the case, waived off penalty, as the ROC Mumbai failed to give the benefit of immunity granted by MCA to the Company and its directors vide Circular No. 12/2020 under CFSS -2020.

<https://www.mca.gov.in/bin/dms/getdocument?mds=bLzLnp%252BxvBu0NALIY73FQ%253D%253D&type=open>

Adjudication order for violation of Section 92 of Companies Act, 2013 in the matter of JEET MACHINE TOLLS LIMITED

RD (WEST) in the matter of Jeet Machine Tolls Limited, vide order dated 9th August, 2024 after considering the facts of the case, waived off penalty, as the ROC Mumbai failed to give the benefit of immunity granted by MCA to the Company and its directors vide Circular No. 12/2020 under CFSS -2020.

<https://www.mca.gov.in/bin/dms/getdocument?mds=ACKsZ6SwIHHzDeqbk5mwEfA%253D%253D&type=open>

Adjudication order for violation of Section 137 of Companies Act, 2013 in the matter of THE KUTCH SALT AND ALLIED INDUSTRIES LIMITED

RD (WEST) in the matter of the Kutch Salt and Allied Industries Limited, vide order dated 5th August, 2024 after considering the facts of the case 'confirmed' a penalty of ₹45,00,000 imposed by ROC Mumbai upon the company and the officers in default for violation of Section 137 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=le64KzxpebWaMiXsZF9x4Q%253D%253D&type=open>

Adjudication order for violation of Section 135 of the Companies Act, 2013 in the matter of MUKKA PROTEINS LIMITED

RD (SOUTH EAST) in the matter of Mukka Proteins Limited, vide order dated 26th June, 2024 after considering the facts of the case 'Reduced' the penalty amount to 50%, to ₹2,57,000 as imposed by ROC Hyderabad on the Company and six of the officers in default for violation of Section 135 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=wHa6hxtF%252FteXYFmnQYvOxw%253D%253D&type=open>

Adjudication order for violation of Section 203 of the Companies Act, 2013 in the matter of VATTIKUTI TECHNOLOGIES PRIVATE LIMITED

RD (SOUTH EAST) in the matter of Vattikuti Technologies Private Limited, vide order dated 5th July, 2024 after considering the facts of the case 'Reduced' the quantum of penalty amount to 15% of penalty imposed by ROC Hyderabad to ₹4,37,100 on the Company and three of the officers in default for violation of Section 203 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=lu9mY9XTLfsAd2Ye4NPL8A%253D%253D&type=open>

Adjudication order for violation of Section 177(2) of the Companies Act, 2013 in the matter of MUKKA PROTEINS LIMITED

RD (SOUTH EAST) in the matter of Mukka Proteins Limited, vide order dated 26th June, 2024 after considering the facts of the case 'Reduced' the penalty amount to 50%, to ₹6,00,000 as imposed by ROC Hyderabad on the Company and seven of the officers in default for violation of Section 177(2) of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=GHOj6yULUrqnHFIL0FTsA%253D%253D&type=open>

Adjudication order for violation of section 203 of Companies Act, 2013 in the matter of SVR SPINNING MILLS PVT. LTD.

RD (SOUTH EAST) in the matter of SVR Spinning Mills Private Limited, vide order dated 31st July, 2024 after considering the facts of the case 'Reduced' the penalty amount to 50%, to ₹1,72,000 as imposed by ROC Hyderabad on the Company and two of the directors in default for violation of Section 203(6) of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=mh-Gx7O3KXaIDqPuN8K0glg%253D%253D&type=open>

Adjudication order for violation of section 173 of Companies Act, 2013 in the matter of MAHEEP MARKETING PVT. LTD.

RD (EAST) in the matter of Maheep Marketing Private Limited, vide order dated 20th September, 2024 after considering the facts of the case 'confirmed' a penalty of ₹90,000 imposed by ROC West Bengal upon the company and two directors in default for violation of Section 173 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=GtbP-0Pz3VlvrXkIvNAynA%253D%253D&type=open>

Adjudication order for violation of Section 170 of Companies Act, 2013 in the matter of KALINGA TREXIM PRIVATE LIMITED

RD (EAST) in the matter of Kalinga Trexim Private Limited, vide order dated 20th September, 2024 after considering the facts of the case 'Reduced' the penalty amount to ₹1,50,000 imposed by ROC West Bengal upon the company and two directors in default for violation of Section 170 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=1ZPd8Yr9Wkehv%252Bnl8DvLMg%253D%253D&type=open>

Adjudication order for violation of Section 88 of Companies Act, 2013 in the matter of KALINGA TREXIM PVT. LTD.

RD (EAST) in the matter of Kalinga Trexim Private Limited, vide order dated 20th September, 2024 after considering the facts of the case 'Reduced' the penalty amount to ₹4,00,000 imposed by ROC West Bengal upon the company and two directors in default for violation of Section 88 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=U1gX%252Bvk840pR7HCO%252FGOl8g%253D%253D&type=open>

Adjudication order for violation of Section 158 of Companies Act, 2013 in the matter of CALCUTTA SOUTH CLUB LTD.

RD (EAST) in the matter of Calcutta South Club Limited, vide order dated 20th September, 2024 after considering the facts of the case 'confirmed' a penalty of ₹2,00,000 imposed by ROC West Bengal upon the company and three directors in default for violation of Section 158 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=qEf-00gLynwim1kfuFMg7Jg%253D%253D&type=open>

Gist of ROC Adjudication Orders

Adjudication order for violation of Rule 14(6) of the Companies (Prospectus and allotment of Securities) Nidhi Rules, 2014 in the matter of DHANALAKSHMI SRINIVASAN NIDHI LIMITED

ROC Chennai issued adjudication order dated 11th July 2024 in the matter of Dhanalakshmi Srinivasan Nidhi Limited for not filing Form PAS-3 with requisite details as stipulated under rule 14(6) of the Companies (Prospectus and allotment of Securities) Nidhi Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and three directors of the company.

www.mca.gov.in/bin/dms/getdocument?mds=9URUhedeYytNs0Rx9fmemg%253D%253D&type=open

Adjudication order for violation of Section 117(3) (g) of Companies Act, 2013 in the matter of DHANALAKSHMI SRINIVASAN NIDHI LIMITED

ROC Chennai issued adjudication order dated 11th July 2024 in the matter of Dhanalakshmi Srinivasan Nidhi Limited as it had not filed Form MGT-14 for Board

Resolution passed for approval of accounts as required under section 117(3)(9) of the Companies Act, 2013 for the financial years 2017 - 2019. The Adjudicating Authority imposed penalty of ₹2,00,000 upon the company for two financial years 2017 and 2018 and ₹1,82,700 for financial year 2019. Penalty of ₹50,000 each was imposed upon three directors for each financial year.

www.mca.gov.in/bin/dms/getdocument?mds=eHALsUWXttRbapf2F5eJ3A%253D%253D&type=open

Adjudication order for Section 12 of Companies Act, 2013 in the matter of INDIA PAGEANT AND PRODUCTIONS PRIVATE LIMITED

ROC Chennai issued adjudication order dated 1st August 2024 in the matter of India Pageant and Productions 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 ₹50,000 each upon the company and on one director in default.

www.mca.gov.in/bin/dms/getdocument?mds=glSXr MKYxSuCFtQDQBQyTA%253D%253D&type=open

Adjudication order for Rule 12(2) of the Companies (Prospectus and allotment of Securities) Rules, 2014 in the matter of ERAVANCHERY NIDHI LIMITED

ROC Chennai issued adjudication order dated 6th August 2024 in the matter of Eravanchery Nidhi Limited for not filing Form PAS-3 with occupation details of allottees as required under rule 12(2) of the Companies (Prospectus and allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and one director in default.

www.mca.gov.in/bin/dms/getdocument?mds=812E13JmWESfrbhWqAeX%252BA%253D%253D&type=open

Adjudication order for violation of Section 158 of Companies Act, 2013 in the matter of ERAVANCHERY NIDHI LIMITED

ROC Chennai issued adjudication order dated 6th August 2024 in the matter of Eravanchery Nidhi Limited for not mentioning DIN over documents attached with ADT-I & PAS-3 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 one director in default.

www.mca.gov.in/bin/dms/getdocument?mds=Udim ki8esb-gzr%252FEm3cJrtQ%253D%253D&type=open

Adjudication order for violation of Section 117 of Companies Act, 2013 in the matter of ERAVANCHERY NIDHI LIMITED

ROC Chennai issued adjudication order dated 6th August 2024 in the matter of Eravanchery Nidhi Limited as it had not filed Form MGT-14 for Board Resolution passed for approval of accounts as required under section 117(3)(9) of the Companies Act, 2013 for the financial years 2018 and 2020. The Adjudicating Authority imposed penalty

of ₹2,00,000 each upon the company for both financial years and ₹50,000 upon one director for each financial year.

www.mca.gov.in/bin/dms/getdocument?mds=100Zkv8 Ujh-cwReTUB2Xx5w%253D%253D&type=open

Adjudication order for violation of Section 134 of Companies Act, 2013 in the matter of ERAVANCHERY NIDHI LIMITED

ROC Chennai issued adjudication order dated 6th August 2024 in the matter of Eravanchery Nidhi Limited as the financial statements for financial years 2019 and 2020 not signed by two directors and thus violated the provisions of section 134(1) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹3,00,000 upon the company and ₹50,000 on one director in default.

www.mca.gov.in/bin/dms/getdocument?mds=4gXNtWY-TioPA46poqkib9w%253D%253D&type=open

Adjudication order for violation of Rule 12(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of AGNISWARI NIDHI LIMITED

ROC Chennai issued adjudication order dated 11th July 2024 in the matter of Agniswari Nidhi Limited for not filing Form PAS-3 with occupation details of allottees as required under rule 12(2) of the Companies (Prospectus and allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹ 10,000 each upon the company and three directors of the company.

www.mca.gov.in/bin/dms/getdocument?mds=UPJiAoPP3aJ4eTuCwcYVJQ%253D%253D&type=open

Adjudication order for violation of Rule 14(6) of the Companies (Prospectus and allotment of Securities) Rules, 2014 in the matter of AGNISWARI NIDHI LIMITED

ROC Chennai issued adjudication order dated 11th July 2024 in the matter of Agniswari Nidhi Limited for not filing Form PAS-3 with required details of allottees as required under rule 14(6) of the Companies (Prospectus and allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and three directors of the company.

www.mca.gov.in/bin/dms/getdocument?mds=XbkEusjC72saU1jFb7zACQ%253D%253D&type=open

Adjudication order for violation of Rule 12 of the Companies (Appointment and Qualification of Directors) Rules, 2014 in the matter of PALLAVA RESORTS PRIVATE LIMITED

ROC Chennai issued adjudication order dated 26th July 2024 in the matter of Pallava Resorts Private Limited as the Director of the Company did not file change in his particulars in form DIR-12 as stipulated under rule 12(1) of Companies (Appointment and Qualification

of Directors) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 upon the director in default.

www.mca.gov.in/bin/dms/getdocument?mds=aMeU6XakSLPpIGKz6QMA%252Bg%253D%253D&type=open

Adjudication order for violation of section 12 of the Companies Act, 2013 in the matter of PALLAVA RESORTS PRIVATE LIMITED

ROC Chennai issued adjudication order dated 26th July 2024 in the matter of Pallava Resorts 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 imposed a penalty of ₹55,000 each upon the company and two directors in default.

www.mca.gov.in/bin/dms/getdocument?mds=dueXgbHB-dTDp3jld26Ya6A%253D%253D&type=open

Adjudication order for violation of Section 134 of Companies Act, 2013 in the matter of PALLAVA RESORTS PRIVATE LIMITED

ROC Chennai issued adjudication order dated 26th July 2024 in the matter of Pallava Resorts Private Limited as the Director of the Company did not follow such accounting policies and applied them consistently so that it shows true and fair view of the financial statements for the financial year 2014-15 to 2020-21 and thus violated section 134(5)(b) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹3,00,000 upon the company and ₹50,000 each upon two directors in default for each 6 financial years.

www.mca.gov.in/bin/dms/getdocument?mds=nWnZfB8V3DJ5Vbm%252F2PE4Nw%253D%253D&type=open

Adjudication order for violation of Rule 12(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of AJAY NIDHI LIMITED

ROC Chennai issued adjudication order dated 25th July 2024 in the matter of Ajay Nidhi Limited for not filing Form PAS-3 with occupation details of allottees as required under rule 12(2) of the Companies (Prospectus and allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=lhBLaYwuId8Kemn%252FQF4nXA%253D%253D&type=open

Adjudication order for Rule 14(6) of the Companies (Prospectus and allotment of Securities) Rules, 2014 in the matter of AJAY NIDHI LIMITED

ROC Chennai issued adjudication order dated 25th July 2024 in the matter of Ajay Nidhi Limited for not filing Form PAS-3 with required details of allottees as required under rule 14(6) of the Companies (Prospectus and allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=7zyCuv90BT-Ga4f6LZXuJAQ%253D%253D&type=open

Adjudication order for violation of Rule 12(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of DHANALAKSHMI SRINIVASAN NIDHI LIMITED

ROC Chennai issued adjudication order dated 11th July 2024 in the matter of Dhanalakshmi Srinivasan Nidhi Limited for not filing Form PAS-3 with occupation details of allottees as required under rule 12(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and three directors of the company.

www.mca.gov.in/bin/dms/getdocument?mds=MkqvdydAM-KmIYIjpVtsxfg%253D%253D&type=open

Adjudication order for violation of Section 134 of Companies Act, 2013 in the matter of DHANALAKSHMI SRINIVASAN NIDHI LIMITED

ROC Chennai issued adjudication order dated 11th July 2024 in the matter of Dhanalakshmi Srinivasan Nidhi Limited as the financial statements attached for the period 31.03.2020, 31.03.2021 & 31.03.2022 have not been duly signed by two directors and thus violated provisions of section 134 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹3,00,000 upon the company and ₹50,000 each upon two directors of the company.

www.mca.gov.in/bin/dms/getdocument?mds=LwtCilfV1n-qZPyr8aX7qZQ%253D%253D&type=open

Adjudication order for violation of Section 203 of Companies Act, 2013 in the matter of DHANALAKSHMI SRINIVASAN NIDHI LIMITED

ROC Chennai issued adjudication order dated 11th July 2024 in the matter of Dhanalakshmi Srinivasan Nidhi Limited for not appointing whole-time Company Secretary and thus violated the provisions of section 203 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹5,00,000 each upon the company and three directors of the company, penalty of ₹3,72,000 also imposed upon one director in default.

www.mca.gov.in/bin/dms/getdocument?mds=%252Bd-9nx0DMO2cqnKt1uzAYgw%253D%253D&type=open

Adjudication order for violation of Rule 12 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of MADHVPRABHA NIDHI LIMITED

ROC Chennai issued adjudication order dated 26th July 2024 in the matter of Madhvyprabha Nidhi Limited for not filing Form PAS-3 with occupation details of allottees as required under rule 12(2) of the Companies (Prospectus and allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and four directors of the company.

www.mca.gov.in/bin/dms/getdocument?mds=uzkWh-gcNXijPDkNLLTKe0Q%253D%253D&type=open

Adjudication order for violation of Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of MADHVPRABHA NIDHI LIMITED

ROC Chennai issued adjudication order dated 26th July 2024 in the matter of Madhvprabha Nidhi Limited for not filing Form PAS-3 with required details of allottees as required under rule 14(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and four directors of the company.

www.mca.gov.in/bin/dms/getdocument?mds=6Tx8bTzn-hukNBRPvxx4I7g%253D%253D&type=open

Adjudication order for violation of Section 12 of Companies Act, 2013 in the matter of SRI SUBHALAKSHMI INFRA PRIVATE LIMITED

ROC Chennai issued adjudication order dated 12th July 2024 in the matter of Sri Subhalakshmi Infra 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 two directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=VgH3kwAgkzmHR6VBnIhAcg%253D%253D&type=open>

Adjudication order for violation of Section 137 of Companies Act, 2013 in the matter of SRI SUBHALAKSHMI INFRA PRIVATE LIMITED

ROC Chennai issued adjudication order dated 12th July 2024 in the matter of Sri Subhalakshmi Infra Private Limited for not filing the Financial Statements from the financial year 2017-18 to 2022-23 within stipulated time as provided under section 137 of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹2,00,000, ₹1,72,400, ₹1,35,800, ₹99,300, ₹62,800 and ₹26,300 for each financial year respectively. Penalty of ₹50,000 each was imposed upon two directors in default for each financial year from 2017-18 to 2021-22. For financial year 2022-23 penalty of ₹26,300 was imposed upon two directors in default.

www.mca.gov.in/bin/dms/getdocument?mds=9Q4HMHdtit7npof17j35kw%253D%253D&type=open

Adjudication order for violation of Section 92 of Companies Act, 2013 in the matter of SRI SUBHALAKSHMI INFRA PRIVATE LIMITED

ROC Chennai issued adjudication order dated 12th July 2024 in the matter of Sri Subhalakshmi Infra Private Limited for not filing annual returns for the FYs 2017-18, 2018-19 and 2020-21 within stipulated time under section 92 of the Companies Act, 2013. The adjudicating authority has imposed the penalty of ₹2,00,000, ₹1,69,400 and ₹1,32,800 upon the company and ₹50,000 each upon two directors in default for each financial year respectively.

www.mca.gov.in/bin/dms/getdocument?mds=QPraQEdOjsa7og%252FJJUZxIA%253D%253D&type=open

Adjudication order for Section 134(5)(a) of Companies Act, 2013 in the matter of SRI SUBHALAKSHMI INFRA PRIVATE LIMITED

ROC Chennai issued adjudication order dated 12th July 2024 in the matter of Sri Subhalakshmi Infra Private Limited for not following the applicable accounting standards in preparation of financial statements of financial year 2014-15 and 2016-17 and thus violated section 134(5)(b) of the Companies Act, 2013. The Adjudicating Authority has imposed the penalty of ₹3,00,000 upon the company and ₹50,000 each upon two directors in default for each financial year.

www.mca.gov.in/bin/dms/getdocument?mds=AZZv5ZG2tFj9hRJehfHMMQ%253D%253D&type=open

Adjudication order for violation of Rule 12(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of MAGILCHI NIDHI LIMITED

ROC Chennai issued adjudication order dated 24th July 2024 in the matter of Magilchi Nidhi Limited for not filing Form PAS-3 with occupation details of allottees as required under rule 12(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and on one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=H8tmdx%252FJg1Dqpb9aiV5z4w%253D%253D&type=open

Adjudication order for violation of Rule 14(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of MAGILCHI NIDHI LIMITED

ROC Chennai issued adjudication order dated 24th July 2024 in the matter of Magilchi Nidhi Limited for not filing Form PAS-3 with required details of allottees as required under rule 14(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and on one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=hem%252F-HlcEEGwpoQPWERAY5g%253D%253D&type=open

Adjudication order for violation of for violation of Rule 12(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of ABAYANBIGAI NIDHI LIMITED

ROC Chennai issued adjudication order dated 25th June 2024 in the matter of Abayanbigai Nidhi Limited for not filing Form PAS-3 with occupation details of allottees as required under rule 12(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and on one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=l11V7jnkTvflzVPHfA%252BKzg%253D%253D&type=open

Adjudication order for violation of Section 135 of the Companies Act, 2013 in the matter of SRI MATHA SPINNING MILLS PRIVATE LIMITED

ROC Coimbatore issued adjudication order dated 30th August 2024 in the matter of Sri Matha Spinning Mills Private Limited for not explaining the reasons of unspent amount of CSR as per the format under section 135(5) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and managing director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=hk%252FSk-CPFcnpFPXmwRLz%252Bg%253D%253D&type=open

Adjudication order for violation of Section 135 of the Companies Act, 2013 in the matter of SRI VELAYUDHASWAMY SPINNING MILLS PRIVATE LIMITED

ROC Coimbatore issued adjudication order dated 30th August 2024 in the matter of Sri Velayudhaswamy Spinning Mills Private Limited for not explaining the reasons of unspent amount of CSR as per the format under section 135(5) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and managing director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=FyPbtYoK-DJjv3HzmDCUBcw%253D%253D&type=open

Adjudication order for violation of Section 134(5)(c) of Companies Act, 2013 in the matter of ABU ESTATE PRIVATE LIMITED

ROC Chennai issued adjudication order dated 25th July 2024 in the matter of Abu Estate Private Limited as the Directors of the company not signed the Directors Reports for the financial years, 2014-15, 2015-16, 2017-18 & 2018-19 and thus violated the provisions of section 134 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹3,00,000 upon the company for each of the 4 financial years. Penalty of ₹50,000 was imposed upon one director for default in each year 2014-15 and 2015-16. For financial year 2017-18 and 2018-19 penalty of ₹50,000 each was imposed upon two directors in default.

www.mca.gov.in/bin/dms/getdocument?mds=QnQTk0Ib-GGukT6TxaKbCpg%253D%253D&type=open

Adjudication order for violation of Section 134(l) of Companies Act, 2013 in the matter of ABU ESTATE PRIVATE LIMITED

ROC Chennai issued adjudication order dated 25th July 2024 in the matter of Abu Estate Private Limited as the directors had not taken proper and sufficient care for the maintenance of adequate accounting records for the financial years 2015-16, 2016-17 and 2019-20 and thus violated section 134 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹3,00,000 upon the company for each 3 financial years. Penalty of ₹50,000 was imposed upon one director for default in each year 2015-16 and 2016-17. For financial year 2019-20

penalty of ₹50,000 each was imposed upon two directors in default.

www.mca.gov.in/bin/dms/getdocument?mds=E3mq0bFh-SODToyUpW%252Fd7rw%253D%253D&type=open

Adjudication order for violation of Section 137 of Companies Act, 2013 in the matter of ABU ESTATE PRIVATE LIMITED

ROC Chennai issued adjudication order dated 25th July 2024 in the matter of Abu Estate Private Limited for not filing the Financial Statements from the financial year 2019-20 and 2020-21 within stipulated time as provided under section 137 of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹96,000 and ₹65,500 for each financial year respectively. Penalty of ₹50,000 each was imposed upon two directors in default for each financial year.

www.mca.gov.in/bin/dms/getdocument?mds=E0uW8ULk-b%252F21qtjVC8VyVw%253D%253D&type=open

Adjudication order for violation of Rule 14(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of APPATTUVILAI ST. ANTONY'S NIDHI LIMITED

ROC Chennai issued adjudication order dated 1st August 2024 in the matter of Appattuvilai St. Antony's Nidhi Limited for not filing Form PAS-3 with proper details of allottees as required under rule 14(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and on one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=caIZw3%252F3EkXRVPO4WqT5A%253D%253D&type=open

Adjudication order for violation of Rule 12 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of APPATTUVILAI ST. ANTONY'S NIDHI LIMITED

ROC Chennai issued adjudication order dated 1st August 2024 in the matter of Appattuvilai St. Antony's Nidhi Limited not filing Form PAS-3 with occupation details of allottees as required under rule 12(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and on one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=0YqxBx2FH-upkEpvey%252FbRQ%253D%253D&type=open

Adjudication order for Section 158 of Companies Act, 2013 in the matter of APPATTUVILAI ST. ANTONY'S NIDHI LIMITED

ROC Chennai issued adjudication order dated 1st August 2024 in the matter of Appattuvilai St. Antony's Nidhi Limited as the Directors Identification Number (DIN) is not mentioned in the Financial Statements for FY 31.03.2021, and thus violated section 158 of the

Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹50,000 each upon the company and on one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=cng-ZAMg667WbVDKglonyQw%253D%253D&type=open

Adjudication order for violation of Section 82 of the Companies Act, 2013 in the matter of CRYO SCIENTIFIC SYSTEMS PRIVATE LIMITED

ROC Chennai issued adjudication order dated 23rd August 2024 in the matter of Cryo Scientific Systems Private Limited for not filing form CHG-4 for satisfaction of charge and thus violated the provisions of section 82 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹2,00,000 upon the company and ₹25,000 upon one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=Py1%-252Fr1QfDXzU%252F8Xzazs%252BlQ%253D%253D&type=open

Adjudication order for violation of Section 134 of the Companies Act, 2013 in the matter of CRYO SCIENTIFIC SYSTEMS PRIVATE LIMITED

ROC Chennai issued adjudication order dated 23rd August 2024 in the matter of Cryo Scientific Systems Private Limited for not disclosing the details of Related Party Transactions in the Board's Report for financial year 2015-16, 2016-17 and 2017-18 and thus violated the provisions of Section 134 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹1,50,000 upon the company and ₹25,000 upon one director of the company for each 3 financial years.

www.mca.gov.in/bin/dms/getdocument?mds=rK%-252FaUDzwhJheRIZwaR9GnQ%253D%253D&type=open

Adjudication order for violation of Section 77 of the Companies Act, 2013 in the matter of CRYO SCIENTIFIC SYSTEMS PRIVATE LIMITED

ROC Chennai issued adjudication order dated 23rd August 2024 in the matter of Cryo Scientific Systems Private Limited for not filing form CHG-1 as required under section 77 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹2,00,000 upon the company and ₹25,000 upon one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=Blj8d-dVh%252Fe2ZryZo%252FNM2fA%253D%253D&type=open

Adjudication order for violation of Section 88 of the Companies Act, 2013 in the matter of CRYO SCIENTIFIC SYSTEMS PRIVATE LIMITED

ROC Chennai issued adjudication order dated 23rd August 2024 in the matter of Cryo Scientific Systems Private Limited for not maintaining Register of members as required under section 88 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹1,50,000

upon the company and ₹25,000 upon one director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=2ft-j%252BOunpghuxOxhoyD0RA%253D%253D&type=open

Adjudication order for violation of Section 135 of the Companies Act, 2013 in the matter of PRABHU SPINNING MILLS PRIVATE LIMITED

ROC Coimbatore issued adjudication order dated 30th August 2024 in the matter of Prabhu Spinning Mills Private Limited for not explaining the reasons of unspent amount of CSR as per the format under section 135(5) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and managing director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=Q4RGy-22taSKdvCvkHlHVDw%253D%253D&type=open

Adjudication order for violation of Section 143 of the Companies Act, 2013 in the matter of PPS EXPORT AND IMPORT PRIVATE LIMITED

ROC Patna issued adjudication order dated 2nd September 2024 in the matter of PPS Export and Import Private Limited as the Auditor failed to mention about the non-disclosure made by the company for the Related Party Transactions and thus violated the provision of section 143 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,000 upon the Statutory Auditor of the company.

www.mca.gov.in/bin/dms/getdocument?mds=%252FWEA-QLGWZ4GJP3tgPEiitg%253D%253D&type=open

Adjudication order for violation of Section 143 of the Companies Act, 2013 in the matter of PPS EXPORT AND IMPORT PRIVATE LIMITED

ROC Patna issued adjudication order dated 2nd September 2024 in the matter of PPS Export and Import Private Limited as the Auditor failed to mention about the non-proper classification of short-term loans for the financial year 2019-20 and thus violated the provision of section 143 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹5,000 upon the Statutory Auditor of the company.

www.mca.gov.in/bin/dms/getdocument?mds=cTyrFi-0MaKUYHSIV2V65XQ%253D%253D&type=open

Adjudication order for violation of Section 158 of the Companies Act, 2013 in the matter of PPS EXPORT AND IMPORT PRIVATE LIMITED

ROC Patna issued adjudication order dated 2nd September 2024 in the matter of PPS Export and Import Private Limited for not mentioning DIN over financial statements for financial years 2019, 2020 and 2021 and thus violated the provisions of section 158 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹1,50,000 upon the company and ₹50,000 each upon three directors in default for each financial year.

www.mca.gov.in/bin/dms/getdocument?mds=PouHbm7L-nzCenXgFZjrUhw%253D%253D&type=open

Adjudication order for violation of Section 135 of the Companies Act, 2013 in the matter of ADISANKARA SPINNING MILLS PRIVATE LIMITED

ROC Coimbatore issued adjudication order dated 30th August 2024 in the matter of Adisankara Spinning Mills Private Limited for not explaining the reasons of unspent amount of CSR as per the format under section 135(5) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and managing director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=Viikr%252F-G2OV5sZffpjOzGQ%253D%253D&type=open

Adjudication order for violation of Section 135 of the Companies Act, 2013 in the matter of SUDHAN SPINNING MILLS PRIVATE LIMITED

ROC Coimbatore issued adjudication order dated 30th August 2024 in the matter of Sudhan Spinning Mills Private Limited for not explaining the reasons of unspent amount of CSR as per the format under section 135(5) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and managing director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=%252F8U-oUP0Mncuoam1Pg8jOZQ%253D%253D&type=open

Adjudication order for violation of Section 135 of the Companies Act, 2013 in the matter of SRI SANKARI YARNS PRIVATE LIMITED

ROC Coimbatore issued adjudication order dated 30th August 2024 in the matter of Sri Sankari Yarns Private Limited for not explaining the reasons of unspent amount of CSR as per the format under section 135(5) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and managing director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=sY3cNxam-0svjeXK12muy1g%253D%253D&type=open

Adjudication order for Rule 14(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of RAMAX NIDHI LIMITED

ROC Chennai issued adjudication order dated 1st August 2024 in the matter of Ramax Nidhi Limited for not filing Form PAS-3 with required details of allottees as required under rule 14(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and three directors of the company.

www.mca.gov.in/bin/dms/getdocument?mds=G8MzWNi-U35a3lLHmWzH6g%253D%253D&type=open

Adjudication order for violation of Section 135 of the Companies Act, 2013 in the matter of SIVARAJ SPINNING MILLS PRIVATE LIMITED

ROC Coimbatore issued adjudication order dated 30th August 2024 in the matter of Sivaraj Spinning Mills

Private Limited for not explaining the reasons of unspent amount of CSR as per the format under section 135(5) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and managing director of the company.

www.mca.gov.in/bin/dms/getdocument?mds=4ycj9eh3E-ZOnvk8rBYI0HQ%253D%253D&type=open

Adjudication Orders Violation of Section 117 of the Companies Act, 2013 in the matter of LAKSHYA POWERTECH LIMITED

ROC Ahmedabad issued adjudication order dated 3rd September 2024 in the matter of Lakshya Powertech Limited for not filing Form MGT-14 within stipulated time as required under section 117 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹1,61,000 upon the company, ₹50,000 each upon three directors in default, ₹36,100 each upon two directors, ₹28,800 upon one director, ₹19,900 upon one director and ₹13,500 upon one director.

www.mca.gov.in/bin/dms/getdocument?mds=fynzQemS-6catpPLgplswpA%253D%253D&type=open

Adjudication Orders Violation of Section 134 of the Companies Act, 2013 in the matter of LAKSHYA POWERTECH LIMITED (Application filed sou-moto by the company)

The company filed the application for adjudication u/s 454 in Form GNL-1 for mistakenly attaching unsigned copy of the financials in the Form AOC-4 for the F.Y. 2021-22 and violated section 134 of the Companies Act, 2013, in reply ROC Ahmedabad issued adjudication order dated 3rd September 2024 and the Adjudication Authority has imposed penalty of ₹3,00,000 upon the company and ₹50,000 each upon three directors in default.

www.mca.gov.in/bin/dms/getdocument?mds=zHPvtN-GzmjNouFARnW6KMQ%253D%253D&type=open

Adjudication order for violation of Section 137(1) of the Companies Act, 2013 in the matter of ESCIENTIA ADVANCED SCIENCES PRIVATE LIMITED

ROC Hyderabad issued adjudication order dated 10th September 2024 in the matter of Escientia Advanced Sciences Private Limited for not filing the Financial Statements for the financial year 2022-23 within stipulated time as provided under section 137 of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹34,400 each upon the company and CFO in default.

www.mca.gov.in/bin/dms/getdocument?mds=cuN%252B-W3dSQkWtDKkUva7Osw%253D%253D&type=open

Adjudication order for violation of Section 92(4) of the Companies Act, 2013 in the matter of ESCIENTIA ADVANCED SCIENCES PRIVATE LIMITED

ROC Hyderabad issued adjudication order dated 10th September 2024 in the matter of Escientia Advanced Sciences Private Limited for not filing the Annual Return for the financial year 2022-23 within stipulated time as

provided under section 92 of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹31,400 each upon the company and CFO in default and ₹25,300 upon the Company Secretary in default.

www.mca.gov.in/bin/dms/getdocument?mds=84UIdmjGq-QlAc7Q4UhhqTw%253D%253D&type=open

Adjudication order for violation of Section 143 of the Companies Act, 2013 in the matter of GILLANDERS ARBUTHNOT & CO LTD.

ROC Kolkata issued adjudication order dated 5th July, 2024 in the matter of Gillanders Arbuthnot & Co Limited as the Statutory Auditor contravened the provisions of Section 227 of the Company Act, 1956 corresponding section 143 of the Companies Act, 2013 concerning the company's failure to comply with statutory audit requirements for the Financial Year 2006-07 to 2008-09. The Adjudicating Authority imposed penalty of ₹160,000 upon the Statutory Auditor in default.

www.mca.gov.in/bin/dms/getdocument?mds=UzxL%252F-drxFQkGM3zbd71Yg%253D%253D&type=open

Adjudication order Section 143(2) of the Companies Act, 2013 in the matter of GILLANDERS ARBUTHNOT & CO LTD.

ROC Kolkata issued adjudication order dated 5th July, 2024 in the matter of Gillanders Arbuthnot & Co Limited as the Statutory Auditor contravened the provisions of Section 227(3)(d) of the Companies Act, 1956 corresponding section 143(2) of the Companies Act, 2013 Auditor failed to state as to whether in their opinion, Financial Statements comply with the Accounting Standards and also related party transactions for the year ending from 31.03.2007 to 31.03.2009 are not disclosed in the Financial Statements. Hence, the Adjudicating Authority imposed penalty of ₹160,000 upon the Auditor in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=V2ri-ybn37upUIYnv1hCvZw%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of RASIKA EXPORTS PVT LTD.

ROC Kolkata issued adjudication order dated 27th July, 2023 in the matter of Rasika Exports Pvt Ltd as the Auditor contravened the provisions of Section 143 of the Companies Act, 2013 for the financial year 31.03.2021 and failed to disclose the related party transaction. The Adjudicating Authority imposed penalty of ₹20,000 upon the Auditor in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=bYu-WF0T1t7mFHgO%252FRdfXFw%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of KARAM CHAND THAPAR & BROS (COAL SALES) LTD.

ROC Kolkata issued adjudication order dated 08th November, 2023 in the matter of Karam Chand Thapar & Bros (Coal Sales) Ltd as the Auditor contravened the provisions of section 227(3)(d) of the Companies Act, 1956 corresponding section 143 of the Companies Act, 2013

Auditor failed to disclose in his report, that the Financial Statements violated the provisions of Accounting Standard-9 regarding revenue recognition, for the year end 31st March, 2007, 31st March 2008 and 31st March 2009. The Adjudicating Authority imposed penalty of ₹10,000 upon the Auditor in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=aHH-Zi6URUFwQuVvFdJZ%252FDw%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of KARAM CHAND THAPAR & BROS (COAL SALES) LTD.

ROC Kolkata issued adjudication order dated 08th November, 2023 in the matter of Karam Chand Thapar & Bros (Coal Sales) Ltd as the Auditor violated the provisions of section 227 of the Companies Act, 1956 corresponding section 143 of the Companies Act, 2013 by not disclosing in his report, of the violation of Accounting Standard-18 w.r.t disclosure of Related Party Transaction in the Financial Statements, for the year end 31st March, 2008 and 31st March 2009. The Adjudicating Authority imposed penalty of ₹10,000 for each year upon the Auditor in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=M-fI%252FHQWuxcy0LCOSheuO1Q%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of KARAM CHAND THAPAR & BROS (COAL SALES) LTD.

ROC Kolkata issued adjudication order dated 08th November, 2023 in the matter of Karam Chand Thapar & Bros (Coal Sales) Ltd as the Auditor violated the provisions of section 227(2) of the Companies Act, 1956 corresponding section 143 of the Companies Act, 2013 the auditor did not provide adequate comments on the company's investments, in the audit report for the years 2007, 2008 and 2009. The Adjudicating Authority has imposed a penalty of ₹10,000 for each year on the auditor in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=bx-Rc%252Bz5nU0A%252FqxBtkEX5Hw%253D%253D&type=open>

Adjudication order Section 158 of the Companies Act, 2013 in the matter of ASHAPURAM NIDHI LIMITED

ROC Kolkata issued adjudication order dated 31st January, 2024 in the matter of Ashapuram Nidhi Limited for not mentioning DIN over financial statements for financial year 2018 and thus violated the provisions of section 158 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹50,000 upon the company and ₹50,000 each upon three directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=A9OfXrBfq1dN7T02DkDTvA%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of KARAM CHAND THAPAR & BROS (COAL SALES) LTD.

ROC Kolkata issued adjudication order dated 08th November, 2023 in the matter of Karam Chand Thapar

& Bros (Coal Sales) Ltd as the Auditor violated the provisions of section 227(2) of the Companies Act, 1956 corresponding section 143 of the Companies Act, 2013 the auditor failed to provide adequate comments on the company's depreciation charge for freehold land, for the financial years 2007, 2008 and 2009. The Adjudicating Authority has imposed a penalty of ₹10,000 for each year on the auditor.

<https://www.mca.gov.in/bin/dms/getdocument?mds=B-9sm%252Fz2NjP7kh4RbZRNvgg%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of KARAM CHAND THAPAR & BROS (COAL SALES) LTD.

ROC Kolkata issued adjudication order dated 08th November, 2023 in the matter of Karam Chand Thapar & Bros (Coal Sales) Ltd as the Auditor violated the provisions of section 227(2) of the Companies Act, 1956 corresponding section 143 of the Companies Act, 2013 the auditor failed to provide adequate comments on the company's Fixed Assets includes Free hold Land & Building, which is disclosed in the Balance sheet without bifurcation for the year end 31st March, 2007, 31st March, 2008 and 31st March 2009. The Adjudicating Authority has imposed a penalty of ₹10,000 for each year on the auditor.

<https://www.mca.gov.in/bin/dms/getdocument?mds=TOot-A%252Fxm0aFAseB9mmMXQ%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of KARAM CHAND THAPAR & BROS (COAL SALES) LTD.

ROC Kolkata issued adjudication order dated 08th November, 2023 in the matter of Karam Chand Thapar & Bros (Coal Sales) Ltd as the Auditor violated the provisions of section 227(2) of the Companies Act, 1956 corresponding section 143 of the Companies Act, 2013 as the auditor failed to adequately address compliance with Schedule VI of Part II of the Companies Act. Consequently, the adjudicating authority imposed a penalty of ₹10,000 on the auditor.

<https://www.mca.gov.in/bin/dms/getdocument?mds=SffjgwkekcbaBYkHigQzQ%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of KARAM CHAND THAPAR & BROS (COAL SALES) LTD.

ROC Kolkata issued adjudication order dated 08th November, 2023 in the matter of Karam Chand Thapar & Bros (Coal Sales) Ltd as the Auditor violated the provisions of section 227(2) of the Companies Act, 1956 corresponding section 143 of the Companies Act, 2013 the auditor failed to adequately address compliance with the expenses incurred on the gratuity is clubbed with the salary which is contravened the provisions of section 211. Consequently, the adjudicating authority imposed a penalty of ₹10,000 on the auditor.

<https://www.mca.gov.in/bin/dms/getdocument?mds=s58W4j5%252FRSlaCSuUoHlnaA%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of KARAM CHAND THAPAR & BROS (COAL SALES) LTD.

ROC Kolkata issued adjudication order dated 08th November, 2023 in the matter of Karam Chand Thapar & Bros (Coal Sales) Ltd as the Auditor violated the provisions of section 227(2) of the Companies Act, 1956 corresponding section 143 of the Companies Act, 2013 the auditor failed to provide adequate comments on non-compliance with the provisions of Accounting Standard-6 for the year end 2007, 2008 and 2009. The Adjudicating Authority has imposed a penalty of ₹10,000 for each year on the auditor.

<https://www.mca.gov.in/bin/dms/getdocument?mds=x-SQKM3rmcrbP6xgc1%252F8hCg%253D%253D&type=open>

Adjudication order Section 158 of the Companies Act, 2013 in the matter of CALCUTTA SOUTH CLUB LTD

ROC Kolkata issued adjudication order dated 20th March, 2024 in the matter of Calcutta South Club Limited for not mentioning DIN over financial statements for financial year 2019-20 and thus violated the provisions of section 158 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹50,000 upon the company and ₹50,000 each upon three directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=TyjJD-D6Y1bfbBJT3ixhj5Q%253D%253D&type=open>

Adjudication order Section 134 of the Companies Act, 2013 in the matter of NIPPONZONE SECURITIES PVT LTD.

ROC Kolkata issued adjudication order dated 28th February 2024 in the matter of Nipponzone Securities Pvt Ltd, as it has not mentioned about auditor's comment in the Director's Report and thus violated the provision of section 134 of the Companies Act, 2013. The Adjudication Authority has imposed penalty of ₹3,00,000 upon the company and ₹50,000 each upon two directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=nn2k-DKOG0FBDYhFcSdvlgw%253D%253D&type=open>

Adjudication order Section 158 of the Companies Act, 2013 in the matter of ASHAPURAM NIDHI LIMITED

ROC Kolkata issued adjudication order dated 31st January, 2024 in the matter of Ashapuram Nidhi Limited for not mentioning DIN over financial statements for financial year 2018 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 three directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=A9OfXrBfq1dN7T02DkDTvA%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of KARAM CHAND THAPAR & BROS (COAL SALES) LTD.

In the matter of Karam Chand Thapar & Bros (Coal Sales) Ltd, various adjudication orders has been issued by ROC Kolkata, dated 08th November, 2023 due to several violations

identified in the company's financial statements for the year 2007, 2008 and 2009. The Adjudicating Authority imposed a penalty of ₹10,000 for each violation on the auditor in default for violating the provisions of Section 143 of the Companies Act, 2013.

<https://www.mca.gov.in/bin/dms/getdocument?mds=B-9sm%252Fz2NjP7kh4RbZRNvGg%253D%253D&type=open>

Adjudication order Section 143 of the Companies Act, 2013 in the matter of PIONEER FINANCIAL- Auditor IPSITA BISWAS

ROC Kalkata issued adjudication order dated 26th July, 2024 in the matter of Pioneer Financial as the Auditor failed to comment about the secured car loan, for the financial year 2018-19 and 2019-20 and thus violated the provision of section 143 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹120,000 upon the Statutory Auditor of the company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=1J-zU2mMfBi4l7hhqwpSbWA%253D%253D&type=open>

Adjudication order under Section 143 of the Companies Act, 2013 in the matter of SASTASUNDAR VENTURES LTD

ROC Kolkata issued adjudication order dated 21st August, 2024 in the matter of Sastasundar Ventures Ltd as the Auditors failed to comment about the investments disclosed in the Cash Flow Statement, for the financial year 2017-18 and 2020-21 and thus, Auditors violated the provision of section 143 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹50,000 and ₹60,000 for each financial year respectively upon the Statutory Auditors-in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=DqX-77ePIXITXIe3133tewA%253D%253D&type=open>

Adjudication Order for violation of Rule 14(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 in the matter of DPC SOCIAL BENEFITS NIDHI LIMITED

ROC Dehradun issued adjudication order dated 9th September, 2024 in the matter of DPC Social Benefits Nidhi Limited for filing incomplete information in Form PAS-3 as required under rule 14(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and on one director of the company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=DiQMB7EiUPvZg3LE12tvQg%253D%253D&type=open>

Adjudication Order for violation of section 39(4) in the matter of DPC SOCIAL BENEFITS NIDHI LIMITED

ROC Dehradun issued adjudication order dated 9th September, 2024 in the matter of DPC Social Benefits Nidhi Limited for delay in filing PAS-3 which violated the section 39(4) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹1,00,000 each upon the company and on one director of the company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=v7bY-oJ5viljqcnWHIOlrSg%253D%253D&type=open>

Adjudication order under Section 143 of the Companies Act, 2013 in the matter of HANUMAN COAL TRADING PVT. LTD. -Auditor Chinmaya Prasad Bismal

ROC Kolkata issued adjudication order dated 8th August, 2024 in the matter Hanuman Coal Trading Pvt Ltd and its auditor, Chinmaya Prasad Bismal as the Auditor failed to comment about the Non- Current Investments disclosed in Balance Sheet were not classified, for the year end 31 March 2015 thus Auditors violated the provision of section 143 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,000 upon the concerned Auditor-in-default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=np-Fjw4Osm%252B8c1qatKNz5Gg%253D%253D&type=open>

Adjudication Order for violation of Section 92(4) and Section 137(1) of the Companies Act, 2013, in the matter of BISHAL SOCIO ECONOMIC FOUNDATION (Company filed sou-moto application)

The Company filed sou-moto filed application u/s 454 in Form GNL-1 under section 92 (4) and section 137 (1) of the Companies Act, 2013. In reply ROC Guwahati issued Adjudication order dated 10th September, 2024 The Adjudication Authority has imposed penalty of ₹1,88,200 upon the company and on two Directors in default ₹1,20,000 each.

<https://www.mca.gov.in/bin/dms/getdocument?mds=r3d-FyyUHX94OPjZFoRkLmg%253D%253D&type=open>

Adjudication Order for violation of Section 117(1) of the Companies Act, 2013 in the matter of DPC SOCIAL BENEFITS NIDHI LIMITED

ROC Dehradun issued adjudication order dated 9th September, 2024 in the matter of DPC Social Benefits Nidhi Limited for delay in filing form MGT-14 and thus violated section 117(1) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹10,000 each upon the company and on one director of the company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=-jqZu7ivhykxbIRv9NvIACg%253D%253D&type=open>

Adjudication Order for violation of Section 165 of Companies Act, 2013 in the matter of Mr. Kailash Nath Bhandari Ex- Director of DAHEJ HARBOUR AND INFRASTRUCTURE LIMITED

ROC Ahmedabad issued adjudication order dated 11th September, 2024 in the matter of Mr. Kailash Nath Bhandari was holding directorship of more than 10 Public Companies, which violates the provisions of Section 165 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹1,00,000 on Mr. Kailash Nath Bhandari for the aforesaid default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=RiNY02N21IdgIXawnSkuNg%253D%253D&type=open>

Adjudication order for violation of Section 203 of the Companies Act, 2013 in the matter of ABHITECH ENERGYCON LIMITED

ROC Chandigarh issued adjudication order dated 11th September, 2024 in the matter of Abhitech Energycon Limited for not appointing whole-time Company Secretary and Chief Financial Officer as required under section 203 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹5,00,000 each upon the company and eight directors of the company in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=W-5BUr12BLf%252FS1rX0M3mIg%253D%253D&type=open>

Adjudication order for violation of section 149(4) of the Companies Act, 2013 in the matter of DALAS BIOTECH LIMITED

ROC Jaipur issued adjudication order dated 31st July, 2024 in the matter of Dalas Biotech Limited for not appointing the required number of Independent Directors on its Board and thus violated the provisions of section 149(4) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹6,00,000 upon the company and ₹2,00,000 upon the one whole time director of the company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=iwm-Cln7gi%252Bzlu2%252Ff8LpeoA%253D%253D&type=open>

Adjudication order violation of section 178(1) of the Companies Act, 2013 in the matter of DALAS BIOTECH LIMITED

ROC Jaipur issued adjudication order dated 31st July, 2024 in the matter of Dalas Biotech Limited for not constituting the Nomination and Remuneration Committee as per the provisions of section 178(1) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹5,00,000 upon the company and ₹1,00,000 upon the one whole time director of the company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=qu-OuDV1JEZV9bb1Ik36Wig%253D%253D&type=open>

Adjudication order for violation of Section 203 of the Companies Act, 2013 in the matter of HEMKUND CLASSIC RESORTS PRIVATE LIMITED

ROC Jaipur issued adjudication order dated 25th July, 2024 in the matter of Hemkund Classic Resorts Private Limited for not appointing whole-time Company Secretary from 01.02.2020 to 12.03.2024 as required under section 203(1) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹5,00,000 each upon the company and three directors of the company in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=nArc-J8rnIWx0M2RoFuJw%253D%253D&type=open>

Adjudication order for violation of Section 12 of the Companies Act, 2013 in the matter of NATURO INDIABULL LIMITED

ROC Jaipur issued adjudication order dated 25th July, 2024 in the matter of Naturo Indiabull 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 penalty of ₹1,00,000 each upon the company and on two directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=A0Q-Flx7bEyPPe8VePc395A%253D%253D&type=open>

Adjudication order for violation of section 89(6) of the Companies Act, 2013. in the matter of PRECIOUS MILESTONE PRIVATE LIMITED

ROC Jaipur issued adjudication order dated 16th August, 2024 in the matter of Precious Milestone Private Limited for delayed filing of e- form MGT-6 in pursuant to section 89(6) of the Companies Act, 2013. The adjudicating authority has imposed the penalty of ₹37,000 each upon the company and on two directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=ssLc-dpf5D6fMaM2EwnwsNg%253D%253D&type=open>

Adjudication order violation of Section 62(3) of the Companies Act, 2013 in the matter of KANISHK ALUMINIUM INDIA PRIVATE LIMITED

ROC Jaipur issued adjudication order dated 16th August, 2024 in the matter of Kanishk Aluminium India Private Limited for not passing the Special Resolution for availing unsecured loan and thus violated the provisions of section 62(3) of the Companies Act, 2013. Hence, Adjudicating Authority has imposed the penalty of ₹79,500 upon the company and ₹25,500 on two directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=cZT-0JSoabLAhGO55pbgk7Q%253D%253D&type=open>

Adjudication order violation of section 178(1) of the Companies Act, 2013 in the matter of UMA POLYMERS LIMITED COMPANY

ROC Jaipur issued adjudication order dated 13th August, 2024 in the matter of Uma Polymers Limited Company for not constituting the Nomination and Remuneration Committee as required under the provisions of section 178(1) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹5,00,000 upon the company and ₹1,00,000 each upon two whole time directors of the company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=tzTk-P2AOp4%252BnHuFWIzmkLQ%253D%253D&type=open>

Adjudication order violation of section 62(1) of the Companies Act, 2013 in the matter of KANISHK ALUMINIUM INDIA PRIVATE LIMITED

ROC Jaipur issued adjudication order dated 16th August, 2024 in the matter of Kanishk Aluminium India Private Limited for violating the provisions of section 62(1) of the Companies Act, 2013 as the rights issue offer was open for more than 30 days from the date of offer. Hence, Adjudicating Authority imposed a penalty of ₹99,000 upon the company and ₹25,500 on two directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=W4%252Fbnl6%252BF5rw4WJUSuFoNg%253D%253D&type=open>

Adjudication order for violation of section 89(6) of the Companies Act, 2013 in the matter of KIRANA KING MARKETING PRIVATE LIMITED

ROC Jaipur issued adjudication order dated 23rd August, 2024 in the matter of Kirana King Marketing Private Limited for delayed filing e- form MGT-6 in pursuant to section 89(6) of the Companies Act, 2013. The Adjudicating Authority has imposed penalty of ₹448,400 each upon the registered owner and on the beneficial owner for their default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=hzg32qSQr0OiwhJUL8fJA%253D%253D&type=open>

Adjudication order for violation of Section 155 of the Companies Act, 2013 in the matter of SHRI VISHNU KUMAR SHARMA (application filed sou-moto)

Shri Vishnu Kumar Sharma have filed sou-moto application for violating the provisions of section 155 of the Companies Act, 2013 as he holds more than two DINs. In reply, ROC Jaipur issued adjudication order dated 23rd August, 2024 and imposed penalty of ₹1,60,560 upon Shri Vishnu Kumar Sharma for default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=MCvCFTUYyHP3LDK%252FAj%252BzKA%253D%253D&type=open>

Adjudication order for violation of Section 89(1), section 89 (2) and section 89(3) of the Companies Act, 2013 in the matter of VETO ELECTRICALS PRIVATE LIMITED

ROC Jaipur issued adjudication order dated 31 July, 2024 in the matter of Veto Electricals Private Limited for violating the provisions of section 89(1), section 89 (2) and section 89(3) with Rule 9 of the Companies (Management and Administration) Rules, 2014 pursuant to section 89(5) of the Companies Act, 2013. The Adjudicating Authority has imposed penalty of ₹5,00,000 upon the Company and upon Registered owner and ₹2,27,800 for their default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=av%252FF%252Bdu5ReGo%252FfCOP67rzg%253D%253D&type=open>

Adjudication order for violation of Section 155 of the Companies Act, 2013 in the matter of SHRI RAMESH CHANDRA (application filed sou-moto application)

Shri Ramesh Chandra has filed a sou-moto application for violating the provisions of section 155 of the Companies Act, 2013 as he holds more than DIN. In reply, ROC Jaipur issued adjudication order dated 14th August, 2024 imposed the penalty of ₹17,600 upon Shri Ramesh chandra for default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=blpebufQWyNV9TWujhX%252BVQ%253D%253D&type=open>

Adjudication order for violation of section 89(1) and Section 89(2) of the Companies Act, 2013 in the matter of CEG LAB PRIVATE LIMITED

ROC Jaipur issued adjudication order dated 25 July, 2024 in the matter of CEG Lab Private Limited for violating the provisions of Section 89(1) and section 89 (2) of the

Companies Act, 2013. The Adjudicating Authority has imposed the penalty of ₹2,23,400 each upon the Company and upon Registered owner Shri Vishwas Jain for their default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=XkB-n5jqdHGIURkcyKdHlw%253D%253D&type=open>

Adjudication order for violation of Section 203(1) of the Companies Act, 2013 in the matter of HEMKUND CLASSIC RESORTS PRIVATE LIMITED

ROC Jaipur issued adjudication order dated 25th July, 2024 in the matter of Hemkund Classic Resorts Private Limited for not appointing whole-time Company Secretary and thus violated the provisions of section 203(1) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹5,00,000 each upon the company and three directors of the company for their default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=nArcJ8rnIWx0M2RoFuJw%253D%253D&type=open>

Adjudication order for violation of Section 89(1) and section 89(2) of the Companies Act, 2013 in the matter of PINK SQUARE REAL ESTATE PRIVATE LIMITED

ROC Jaipur issued adjudication order dated 25 July, 2024 in the matter of Pink Square Real Estate Private Limited for violating the provisions of section 89(1) and Section 89 (2) of the Companies Act, 2013. The Adjudicating Authority has imposed the penalty of ₹5,00,000 each upon the beneficial owner and registered owner.

<https://www.mca.gov.in/bin/dms/getdocument?mds=hTuwLOJFcNGim%252BRKvGs0fQ%253D%253D&type=open>

Adjudication order for violation of Section 155 of the Companies Act, 2013 in the matter of SHRI SUNIL KUMAR SHARMA (application filed sou-moto)

Shri Sunil Kumar Sharma filed a sou-moto application for violating the provisions of section 155 of the Companies Act, 2013 as he holds more than two DIN. In reply, ROC Jaipur issued adjudication order dated 23rd August, 2024 and imposed the penalty of ₹1,60,640 upon Shri Sunil kumar Sharma for default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=M-howYu8TJ%252FHTuSIaXUrHEA%253D%253D&type=open>

Adjudication order for violation of Section 12 of the Companies Act, 2013 in the matter of NATURO INDIABULL LIMITED

ROC Jaipur issued adjudication order dated 25th July, 2024 in the matter of Naturo Indiabull 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, one director and CFO in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=A0Q-Flx7bEyPpE8VePc395A%253D%253D&type=open>

Adjudication Order for violation of section 90 of the Companies Act, 2013 in the matter of MAJID AL FUTTAIM LIMITED

ROC Delhi issued adjudication order dated 13th September, 2024 in the matter of Majid Al Futtaim Hypermarkets Private Limited for delayed filing of return of SBO in Form BEN-2, which results in violating the provisions of section 90 of the Companies Act, 2013. The Adjudicating Authority has imposed penalty of ₹7,00,000 upon the Company, upon 3 directors ₹1,50,000 each and on other two directors ₹1,30,000 and ₹1,46,800 respectively.

<https://www.mca.gov.in/bin/dms/getdocument?mds=PVfjr-skuwYms2LHc82QPXQ%253D%253D&type=open>

Adjudication Order for violation of Section 64 of the Companies Act, 2013 in the matter of STEELSMITH CONTINENTAL MANUFACTURING PRIVATE LIMITED

ROC Ahmedabad issued adjudication order dated 12th September, 2024 in the matter of Steelsmith Continental Manufacturing Private Limited as it failed to file Form SH-7 for redemption of preference shares within prescribed time limit with Registrar of Companies. That the company and its officer(s) in default(s) have violated the provision of section 64 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹3,34,500 upon the Company and ₹1,00,000 on the managing director for their default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=d8Q3lUQ9Q3SvvpZcw%252Bnqug%253D%253D&type=open>

Adjudication order for violation of Section 140(2) of the Companies Act, 2013 in the matter of SUBH LAABH POLYMERS PRIVATE LIMITED

ROC Chattisgarh issued adjudication order dated 13th September, 2024 in the matter of Subh Laabh Polymers Private Limited, its Statutory Auditor failed to file a statement in the prescribed format with the ROC and thus violated the provision of Section 140(2) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹2,00,000 upon the Auditor for default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=MP-Swi29mFHQoXu2Nun992g%253D%253D&type=open>

Adjudication order for violation of Section 155 of the Companies Act, 2013 in the matter of SHRI RAVI GUPTA (application filed sou-moto)

Shri Ravi Gupta has filed a sou-moto application for violating the provisions of section 155 of the Companies Act, 2013 as he was holding two DINs and thus violating the provisions of section 155 of the Companies Act, 2013. In reply ROC Chhattisgarh issued adjudication order dated 13th September, 2024 and imposed penalty of ₹59,875 upon Shri Ravi Gupta for default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=nli-yFbwru0Y9pmCuR1KIQ%253D%253D&type=open>

Adjudication Order under section 454 for violation of Section 4(1)(c) of the Companies Act, 2013 in the matter of OWAIS METAL AND MINERAL PROCESSING LIMITED

ROC Gwalior issued adjudication order dated 13th September, 2024 in the matter of Owais Metal and Mineral Processing Limited for not obtaining permission to alter the object clause of MOA from 01.04.2023 to the date of passing the resolution in EGM and thus violated the provisions of section 4(1)(c) of the Companies Act, 2013. The Adjudicating Authority has imposed penalty of ₹1,89,000 upon the Company, ₹50,000 each upon director & CFO and upon Company Secretary ₹36,000 for default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=B-6nB249TvCgZ6W6pliP5nA%253D%253D&type=open>

Adjudication Order for violation of Section 90(4) of the Companies Act, 2013 in the matter of B BRAUN MEDICAL (INDIA) PVT LTD

ROC Mumbai issued adjudication order dated 17th September, 2024 in the matter of B. Braun Medical (India) Pvt. Ltd as the company made delay in filing e-form BEN-1 and BEN-2 and thus violated the provision of section 90(4) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹4,74,000 upon the Company Secretary (Representative for 6 SBOs) and ₹29,000 upon the company for default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=3XH-BoxVReZghXcwqRnLkUg%253D%253D&type=open>

Adjudication order for violation of Section 90 of the Companies Act, 2013 in the matter of UFM INDUSTRIES LIMITED

ROC Guwahati issued adjudication order dated 12th September, 2024 in the matter of UFM Industries Limited as the company failed to file BEN- and thus violated the provisions of section 90 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹3,21,500 upon the Company, ₹1,00,000 each on 2 Directors and on Company Secretary for default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=hOW-iQn5F2veNpujSkeyA%253D%253D&type=open>

Adjudication order for Violation of Section 90(4A) of the Companies Act, 2013 in the matter of FERROZEPUR FOODS ENERGY PRIVATE LIMITED

ROC Chandigarh issued adjudication order dated 18th September, 2024 in the matter of Ferozepur Foods Energy Private Limited as the company failed to file BEN-2 and thus violated the provisions of section 90 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹5,00,000 upon the Company, ₹1,00,000 each on 3 Directors for their default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=d-FyYsWlLuTgtN2%252Bp%252B1OfjQ%253D%253D&type=open>

Adjudication Order for violation of Section 89(3) of the Companies Act, 2013 in the matter of A.P. MOLLER-MAERSK A/S (Beneficial Owner of GPRO SERVICES INDIA PVT LTD)

ROC Mumbai issued adjudication order dated 19th September, 2024 in the matter of A.P. Moller - Maersk for violating the provisions of section 89 of the Companies Act,

2013 as the company's beneficial owner must file Form MGT-5 within 30 days of acquiring or changing their beneficial interests but it was delayed. The Adjudicating Authority after considering the facts imposed penalty of ₹92,800 upon the Company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=BHtr7QRtWq63FODyR3cTqw%253D%253D&type=open>

Adjudication Order for violation of Section 92 of the Companies Act, 2013 in the matter of SHREEKRISHNA BIOTECH LTD.

ROC Mumbai issued adjudication order dated 19th September, 2024 in the matter of Shreekrishna Biotech Limited for not filing annual returns for the FY 2018-19 within stipulated time under section 92 of the Companies Act, 2013. The Adjudicating Authority has imposed the penalty of ₹83,100 each upon the company and one of the additional directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=DX-Fb487Xhd0WwRP5NI%252BI2g%253D%253D&type=open>

Adjudication order for violation of Section 203(1) (ii) of the Companies Act, 2013 in the matter YASH INNOVENTURES LIMITED

ROC Ahmedabad issued adjudication order dated 20th September, 2024 in the matter of Yash Innoventures Limited for not appointing whole-time Company Secretary thus violated the provisions of section 203(1) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹5,00,000 each upon the company and on one of the Managing director of the company and ₹56,000 on the director.

<https://www.mca.gov.in/bin/dms/getdocument?mds=M7H-46djhONDOSaFO24EDg%253D%253D&type=open>

Adjudication order violation of Section 138 of the Companies Act, 2013 in the matter of YASH INNOVENTURES LIMITED

ROC Ahmedabad issued adjudication order dated 20th September, 2024 in the matter of Yash Innoventures Limited for not appointing Internal Auditor to conduct Internal Audit and thus violating the provisions of section 138 of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹1,50,000 upon the company and ₹1,00,000 on one of the Managing director of the company and ₹70,000 imposed upon the Company Secretary of the Company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=X8W-b%252FM47QbS9Kc7kuTzdsW%253D%253D&type=open>

Adjudication order for violation of Section 89(3) of the Companies Act, 2013 in the matter of MAERSK HOLDING B.V (Registered Shareholder of GPRO SERVICES INDIA PVT LTD)

ROC Mumbai issued adjudication order dated 19th September, 2024 in the matter of Maersk Holding B.V Limited for delay in filing Form MGT-4 beyond the time limits as provided in Sec 89(3) of the Companies Act, 2013. The Adjudicating Authority has imposed penalty of ₹93,600 upon the company.

<https://www.mca.gov.in/bin/dms/getdocument?mds=zO-Q3L4kAJh3Ycki0VwXGfA%253D%253D&type=open>

Adjudication order for violation of Section 137 of the Companies Act, 2013 in the matter of SHREEKRISHNA BIOTECH LTD.

ROC Mumbai issued adjudication order dated 19th September, 2024 in the matter of Shreekrishna Biotech Limited for not filing its Financial Statement for the FY 2018-19 within stipulated time limit as provided under section 137 of the Companies Act, 2013. The Adjudicating Authority has imposed penalty of ₹3,61,000 upon the company and ₹1,36,100 on one of the additional directors in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=LWh-eeipJBxHYQyyd7oPo0A%253D%253D&type=open>

Adjudication order for violation of Section 10A of the Companies Act, 2013 in the matter of NAIKA ENVIRO PRIVATE LIMITED

ROC Ahmedabad issued adjudication order dated 20th September, 2024 in the matter of Naika Enviro Private Limited for violating the provisions of section 10A of the Companies Act, 2013 for not filing the form INC-20A within a period of 180 days from the date of incorporation. The Adjudicating Authority imposed penalty of ₹25,000 upon the company and ₹50,000 each on 5 directors of the company for their default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=%252FJvMhtSME438c72o%252Fem3oA%253D%253D&type=open>

Adjudication order for violation of Section 149(4) of the Companies Act, 2013 in the matter of QUADRANT FUTURE TEK LIMITED

ROC Chandigarh issued adjudication order dated 24th September, 2024 in the matter of Quadrant Future Tek Limited for not appointing the required number of Independent Directors in its Board and thus violated the provisions of section 149(4) of the Companies Act, 2013. The Adjudicating Authority imposed penalty of ₹3,00,000 upon the company and ₹1,00,000 each upon eight directors, one CFO and two company secretaries.

<https://www.mca.gov.in/bin/dms/getdocument?mds=c%252F4m1WlkFAjh14hmLu11ZQ%253D%253D&type=open>

Adjudication order for violation of Rule 8(3) of the Companies (Registration Offices & Fees) Rules, 2014 and Section 39(4) of the Companies Act, 2013 in the matter of NEETU YOSHI LIMITED

ROC Dehradun issued adjudication order dated 13th September, 2024 in the matter of Neetu Yoshi Limited for violating section 39(4) of the Companies Act, 2013 and Rule 8(3) Companies (Registration offices & Fees) Rules, 2014 as the attached enclosures with PAS-3 were not in order. The Adjudicating Authority imposed penalty of ₹60,000 on the company and ₹1,20,000 upon the officers in default.

<https://www.mca.gov.in/bin/dms/getdocument?mds=9JHx-Oo62WVAAMf7pMWZ4sw%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 latest by 25th of each month.

The answer(s) will be reviewed by a Panel of reviewer(s). The winner will be given:

- (i) Certificate of Appreciation.
- (ii) His/Her name will be published in the next issue of the Journal.
- (iii) He/She will be awarded cash award of ₹ 2,500.

Crossword

A new section 'Crossword' containing terminologies/concepts from Companies Act, IBC, NCLT and such related areas of profession is introduced. Members/students are to send the answers of Crossword to cs.journal@icsi.edu latest by 25th of each month.

- The answer(s) will be published in the next issue of CSJ.
- The winners will be selected randomly.
- The name of three winners will be published in the next issue of CSJ.



CASE STUDY

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CCIAppellant

vs

State & Ors.....Respondents.

A complaint was received by the Competition Commission of India (for short 'appellant/CCI') seeking investigation under the Competition Act, 2002 (hereinafter referred to as the 'Competition Act') in respect of State Lottery run by the State which has given rise to the present dispute.

Facts of the case

1. The State issued an Invitation for Expression of Interest (for short 'EoI') through respondent No.2, the Director, Institutional Finance and State Lottery (IF&SL) on 20.12.2011 inviting bids for the appointment of lottery distributors and selling agents for state lotteries to be organised by the Government in terms of the State Lotteries (Regulation) Rules, 2011 (hereinafter referred to as the 'Regulation Rules') framed under the Lotteries (Regulation) Act, 1998 (hereinafter referred to as the 'Regulation Act').
2. The EoI was for appointment of lottery distributors/selling agents to organise, promote, conduct, and market the State Lottery through both conventional paper type and online system.
3. The EoI specified that the minimum rate fixed by the Government of India is Rs.5 lakh per draw for Bumper and Rs.10,000 per draw for others – bids less than these rates would be summarily rejected.
4. In pursuance of the EoI, five bids were received of which four were accepted.
5. The accepted bids quoted identical rates. The four companies/partnerships (respondents) were selected as distributors to operate the lotteries as per the Regulation Rules and the Regulation Act.
6. A complaint was made to the CCI on 16.05.2012 under Sections 3 & 4 read with Section 19(1)(a) of the Competition Act.
7. The substratum of the complaint was that identical offers of Rs.10,000 per draw were made in all four bids (one for paper and three for online) and a single bid of Rs.5 lakh per draw was made for the Bumper draw.

8. These amounts were the minimum rates fixed under the EoI.

The Developments:

- In pursuance of the complaint received, the CCI exercised its powers under Section 26(1) of the Competition Act, as it found prima facie evidence of cartelisation and bid rigging by the bidders and gave three reasons for the same:
 - Three bidders made identical bids of the minimum rate of Rs.10,000/- per draw for online lotteries;
 - Only one party made a bid for the paper lottery segment and they quoted the minimum rate for the same.
 - Only one party made a bid for the bumper draw and also quoted the minimum rate for the same.
- In the aforesaid circumstances, the CCI expressed a prima facie view that there appears to be contravention of the provisions of Section 3(1) read with Section 3(3) of the Competition Act by successful bidders. Accordingly, the CCI required the Director General (for short 'DG') to conduct an investigation into the matter.
- The DG in pursuance of the said order of the CCI, a report dated 14.01.2013 was submitted on 17.01.2013 whereby it came to the conclusion that respondents had colluded, formed a cartel, and indulged in bid rigging. Thus, they were in violation of the provisions of Section 3(1) read with Section 3(3) of the Competition Act. However, no order was passed against the State.
- Interim directions were issued by High Court, restraining CCI from delivering the final order. The Special Leave Petitions were filed by the CCI and respondent No. 4 and leave was granted with all the matters being tagged together.

Arguments

- Section 3(1) of the Competition Act would have no application as there was no "goods" or "provisions of services" which could give rise to the CCI's jurisdiction.
- Lottery tickets were not goods and there was no provision of any services.
- Lottery business being *res extra commercium*, it had to be strictly regulated under the provisions of the Regulation Act.
- A lottery ticket has been held to be only an

actionable claim and was, thus held to not be a good. Where an actionable claim was sought to be included within the definition of 'goods', it was specifically so done. For example, debentures are specifically included within the definition of 'goods' under Section 2(i)(B) of the Competition Act.

- A comparison was also sought to be made with the Monopolies and Restrictive Trade Practices Act, 1969 where there was no such inclusion and, thus, debentures were opined to be excluded.
- The Respondent claimed to be merely a distributor which did not provide any services to any potential user of lottery and such distribution does not constitute a service under Section 2(u) of the Competition Act.
- Lottery business is *res extra commercium* and strictly regulated by State. Therefore, it could not have been the intent of the legislature to promote or sustain competition in lottery business. The Competition Act will thus not apply as there was a special act promulgated for conduct of lotteries.

Issues:

Q. Whether State could be considered as an 'enterprise' or a 'group' under the Competition Act ?

Q. Owing to the plea of respondent that lotteries were not covered by the Competition Act and, thus, the CCI did not have jurisdiction to conduct an inquiry under Section 26(1) of the Competition Act, whether the Competition Act would be applicable entitling the CCI to have jurisdiction to inquire into allegations of bid rigging, collusive bidding, and cartelisation in the tender process for appointment of selling agents and distributors for lotteries organised in the State ?

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 – September 2024

CS Shikhar Pandey
ACS-72626

BEST ANSWER CASE STUDY SEPTEMBER, 2024

Q1. Whether the provision of sub-section (1) of Section 143A of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'), which provides for the grant of interim compensation, is directory or mandatory?

Response to Query:

- 1) To address the Query 1 a bare reading of the provision of sub-section (1) of Section 143A of the N.I. Act is necessary and then a comprehensive analysis considering the statutory interpretation principles and the decided cases is necessary.
- 2) The provision of Section 143A(1) reads as follows:
143-A. Power to direct interim compensation.—
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 **may order the drawer of the cheque to pay interim compensation to the complainant—**
 - (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
 - (b) in any other case, upon framing of charge.
- 3) As per the literal rule of interpretation **"the words used in statutes and legal instruments are to be construed literally i.e. by giving the words their ordinary grammatical meaning."** The language used in sub-section (1) of Section 143A of the N.I. Act is clear and unambiguous and further the usage of the word "MAY" clearly depicts that the power to grant interim compensation is discretionary and not mandatory.
- 4) Further it is the basic rule that while interpreting the question of whether a provision of law that contains the word 'may' or 'shall' is mandatory or directory, the prime rule that should be followed for such interpretation is ascertaining the true intention of the legislature which is guided by the maxim, 'Mens or Sententia Legis' by considering the entire statute. It was held in the case of *Rajender Mohan Rana & Ors vs Prem Prakash Chaudhary & Ors* (LPA No. 554/2011) by the Delhi HC that **"Courts do not interpret the word 'may' as 'shall' unless such interpretation is necessary and required to void absurdity, inconvenient consequence or is mandated by the legislature's intent, which is collected from other parts of the statute."**
- 5) Considering the above rules of interpretation it can be said that the provision of section 143A(1) of the N.I. Act is directory and not mandatory.

Further the Hon'ble Supreme Court while dealing with the similar query in the case of *Rakesh Ranjan Shrivastava v. The State of Jharkhand & Anr.* (Criminal Appeal No. 741 of 2024) on 15 March 2024 after analysing the provision of Section 143A and the purpose of insertion of section 143A held in para 14 page 13 that

"----- Considering the drastic consequences of exercising the power under Section 143A and that also before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall". The provision will have to be held as a directory and not mandatory. Hence, we have no manner of doubt **that the word "may" used in Section 143A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of Section 143A is discretionary**".

Conclusion:

Considering the language of the provision and the law laid down by the Hon'ble Supreme Court it can be clearly said that **"The provision of sub-section (1) of Section 143A of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'), which provides for the grant of interim compensation, is directory."**

Q2. Will same interpretation be applicable to the power of the Appellate Court to order payment pending appeal against conviction under section 148 of the Act?

Response:

- 1) To address the Query 2 a bare reading of the provision of Section 148 of the N.I. Act is necessary and then following the dictum laid down by the Hon'ble Supreme Court or the High Courts is necessary.
- 2) The provision of Section 148 reads as follows:
"148. Power of Appellate Court to order payment pending appeal against conviction.—
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court **may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:**

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

- (2) The amount referred to in subsection (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.
- (3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

- 3) As per the literal rule of interpretation **"the words used in statutes and legal instruments are to be construed literally i.e. by giving the words their ordinary grammatical meaning."** However the rule is not strict and the interpretation is dependent upon the object of the legislature while inserting the section. As noted by the Supreme Court in the case of Official Liquidator v. Dharti Dhan (P) Ltd. (1977) 2 SCC 166 **"7. In fact it is quite accurate to say that the word 'may' by itself, acquires the meaning of 'must' or 'shall' sometimes. This word, however, always signifies conferment of power. That power 'may', having regard to the context in which it occurs, and the requirements contemplated for its exercise, have annexed to it an obligation which compels its exercise in a certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, 'may' impart to the power that obligatoriness."**
- 4) Considering the above, the power under section 148 is arising due to the fact that a person is convicted of the offence under the N.I. Act and the power is conferred on the appellate court to deposit compensation and the usage of the word "May" is conferring obligation on the appellate court. Further the Hon'ble Supreme Court in the case of Surinder Singh Deswal @ Col. S.S. Deswal And Others V. Virender Gandhi (Criminal Appeal Nos. 917-944 of 2019) May 29, 2019 held that **"When the amended Section 148 of the N.I. Act as a whole is considered with the Statement of Objects and Reasons of the amending Section 148 of the N.I. Act, though it is true that in**

amended Section 148 of the N.I. Act, the word used is "may", it is generally to be construed as a "rule" or "shall". "

- 5) Further the Hon'ble Supreme Court in the case of Rakesh Ranjan Shrivastava v. The State of Jharkhand & Anr. (Criminal Appeal No. 741 of 2024) on 15 March 2024 held in para 15. 1. **"----- The tests applicable for the exercise of jurisdiction under sub-section (1) of Section 148 can never apply to the exercise of jurisdiction under subsection (1) of Section 143A of the N.I. Act".**

Conclusion:

Considering the language of the provision and the law laid down by the Hon'ble Supreme Court in the above cases it is clear that **the same interpretation cannot be applicable to the power of the Appellate Court to order payment pending appeal against conviction under section 148 of the Act.**



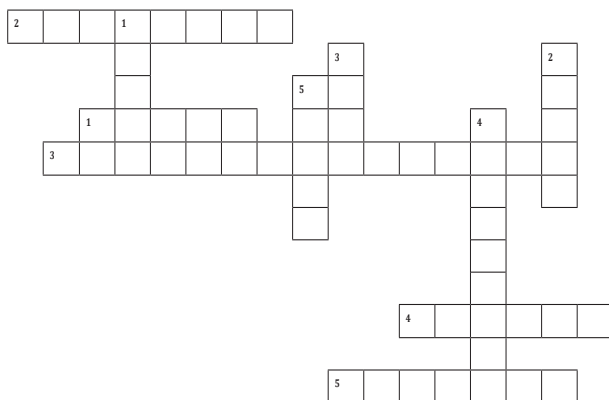
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CROSSWORD PUZZLE – COMPANY LAW - OCTOBER 2024



ACROSS

- Under the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 The liquidator shall file the Status Report with the Board within _____ days of the meeting of contributories.
- Under Companies Act, 2013, where not less than _____ of the total number of Directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.
- Under companies having turnover of _____ rupees or above, shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL.
- Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, The public announcement shall provide the last date for submission or updation of claims, which shall be _____ days from the liquidation commencement date.
- Under the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, The bankruptcy trustee shall submit progress reports to the Adjudicating Authority and to the committee within _____ days after the end of every quarter.

DOWNWARDS

- Under Companies Act, 2013, A dormant company shall have a minimum number of _____ directors in case of a public company.
- Under the SEBI LODR, 2015, the listed entity shall ensure that approval of shareholders for appointment or reappointment of a person on the Board of Directors or as a manager is taken at

the next general meeting or within a time period of _____ months from the date of appointment, whichever is earlier.

- Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, the liquidator shall not appoint a professional under sub-regulation (1) who is his relative, is a related party of the corporate debtor or has served as an auditor to the corporate debtor in the _____ years preceding the liquidation commencement date.
- Under Companies Act, 2013, A company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate _____ days in each year, but not exceeding thirty days at any one time, subject to giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board for listed companies.
- Under the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, An insolvency professional, other than who has filed an application under section 122 or 123 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in _____ to the Adjudicating Authority before his appointment as bankruptcy trustee in a bankruptcy process.

Winners - Crossword September 2024

1ST CS Heena Bagaria ACS-64756

2ND CS Meenu Gupta ACS-34932

3RD CS Sunu Thomas ACS-62295

Crossword Puzzle – September 2024 Answers

ACROSS

- SEVEN
- FIFTY THOUSAND
- TEN
- SPECIAL RESOLUTION
- FORTY-FIVE

DOWNWARDS

- CAA.2
- TWENTY-FOUR
- BEN-4
- FORTY-EIGHT
- SIXTY-SIX



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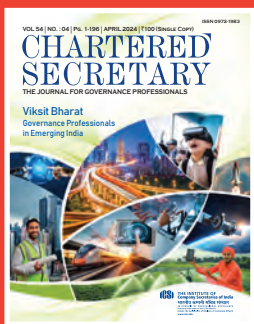
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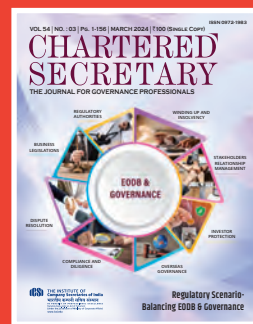
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