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STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]



UNION BUDGET 2024



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**THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान
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STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

February 2024

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PREPARED BY DIRECTORATE OF ACADEMICS

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Important Announcement for Students

The CS course being a professional course, the Students are expected to have a comprehensive knowledge and are therefore, advised to refer to list of further readings / reference books / regulatory websites indicated in the study material apart from the relevant Bare Acts, Rules, Regulations as well and give reference to the Case Laws on the subject wherever applicable while answering questions in the examinations.

Clarification pertaining to 20% case based objective type questions under Executive Programme of ICSI New Syllabus 2022

Under Mode of Examination in ICSI New Syllabus 2022, it is indicated as under:

"Combination of both 20% case based objective type questions and 80% descriptive questions at all papers at Executive Programme except Paper No. 4 i.e. Corporate Accounting and Financial Management which is 100% descriptive."

It is clarified to the students that case based objective type questions means questions which entail specific answer along with the explanation or justification. It may be noted that MCQs will not be covered under case based objective type questions. An indicative example of case based objective type question is provided hereunder for your reference:

"Mr. X an Indian resident had remitted an amount of USD 2,80,000 under Liberalised Remittance Scheme (LRS) for family maintenance in USA during the F.Y. 2021-22 which exceeded the prescribed limit of USD 2,50,000. The Bank had reportedly sought clarification from the Mr. X. Mr. X claimed ignorance stating that he assumed that the LRS limit was unlimited and hence did not declare the transactions done. Mr. X was issued a memorandum of contravention advising him to remit back the excess amount.

In view of the above facts, answer the following with reasons:

- (i) Can remittances be made only in US Dollars? Is Mr. X eligible to compound the contravention of Liberalised Remittance Scheme?*
- (ii) Mr. X had remitted an amount of USD 2,80,000 under Liberalised Remittance Scheme (LRS) for expenses in connection with medical treatment abroad. Will your answer be different in this situation ?"*

It may also be noted that the question paper may include objective type case based questions, case based descriptive questions, Policy and/or concept based questions.

Team ICSI

INFO CAPSULE

<https://www.icsi.edu/infocapsule/>

SUBJECTWISE MONTHLY UPDATES

https://www.icsi.edu/student_pn/academic-portal/subjectwise-monthly-updates/

GUIDELINE ANSWERS

https://www.icsi.edu/student_pn/academic-portal/guideline-answers/

RESEARCH CORNER

https://www.icsi.edu/student_pn/academic-portal/research-corner/

ICSI IS INTRODUCING CENTRALIZED FREE ONLINE CLASSES FROM 1ST DECEMBER 2023

ICSI is introducing free online Centralized classes for the students of Executive Program (New Syllabus) and Professional Programme (New Syllabus) from 1st December 2023 onwards. These Classes will be conducted free of cost for the students. The classes are being conducted for the students eligible to appear in June 2024 examination and the duration of the classes will be 4-5 months. The best faculties in the country will be taking these classes and special sessions of experts will also be conducted. 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.



"The more I read, the more I acquire, the more certain I am that I know nothing."

~ Voltaire

Dear Students,

In an era of WhatsApp, social media and all sorts of speedy, short-hand communications, each Journal, Newsletter and Communique accords a unique opportunity to all of us who have come to hold the Office of President in our own alma mater. It is through these pages that all those before me have fostered lifelong connections with each of the members and students – a legacy I intend to continue with all my heart.

The Student Company Secretary is not just a student's journal but a means for me to share my gathered experiences and expectations with each one of you, standing on the by-lines of carving your career and undertaking a professional journey with the completion of CS Course. As the President, not only do I intend to make your journey smoother and filled with greater knowledge and broader perspective, but also build a two-way relationship, wherein your issues, concerns and challenges reach me directly and not routed through any other via media.

If the month of February is special for me for penning down my first message for all of you, it is for sure special for you as well. With the results of December, 2023 just around the corner, you would be reaping the fruits of the efforts placed in over the past few months. And I firmly believe that each one of you would be coming out with flying colours – making all of us proud.

Friends, one thing that I have come to understand with all these years of experience is that the statement 'Change is the only constant', is not merely a quote, but a way of life. From filling in all the returns on pen and paper and standing in long queues for their timely submission, to having interlinked forms and submitting them at the click of a button, the past decades have given all areas of life a complete transformation. And we as professionals have aced it all. Moving forward, the Institution and all the professionals, expect the same of you – to embrace change and even further to be harbingers of change and good governance.

If the month of January is marked by raising our heads high and saluting the national flag in the celebration of Constitution of India as Republic Day, the month of February finds us bowing our heads in reverence before *Maa Saraswati* on the occasion of 'Vasant Panchami'. May the Goddess enrich your lives with knowledge, wisdom and intellect as you pave your way ahead...!!!

Keep learning, keep growing and keep shining !!!

Regards,

(CS B. Narasimhan)

President

The Institute of Company Secretaries of India



“Knowledge isn’t free. You have to pay attention.”

Dear Students,

The month of February not only brings about a shift in the seasons – from the extremely cold winters to the slight warmth of sun coupled but with winds of change as well where the old leaves of trees make way for new ones. The month also becomes a celebration of intellectual prowess and wisdom over all materialistic comforts.

As citizens of this nation, irrespective of our jobs, business or profession, we all eagerly await the Union Budget for the upcoming Financial Year, which gives us a peep into the thought process and intent of the government so as to align our actions with them and with that also accords us the right guidance of the mannerisms required to be adopted in guiding the corporates and business entities we are connected to.

With thrust being laid upon on key areas like sustainable development, infrastructure and investment, tourism, agriculture and food processing, the Interim Union Budget 2024 holds in its garb, opportunities for all and especially for professionals. Further, the four pillars of the Budget have augmented the concept of social justice, reiterating the fact that growth and governance go hand in hand.

Thus, it may be observed that exemplary initiatives have been announced by the Government for fostering economic growth, thereby providing ocean of opportunities for the professionals. Developments in capital market, corporate arena, foreign trade, government policies etc. exert a significant impact on the business strategies. The businesses which are able to withstand the challenges survive while others perish.

As students, the month of February brings with it, a culmination moment to the ongoing anticipation, on account of the December 2023 Examinations. Having been through the journey myself, it is quite understandable as to how each single day of this 2-month period feels longer than usual. The uncertainty of future although is a much broader thought and perspective, yet it feels way more individualistic during these days.

But, that said, I hope that your efforts bear fruits of your liking and even if they don't, I would expect your preparations for the next session to be in high spirits and on good dozes of morale. Your, passing the examination should not extinguish your learning process, but rather further ignite it, for it is through continuous learning that the pearls of wisdom are attained – wisdom that we all aspire for.

Keep learning, Keep Growing !!!

Regards

(CS Asish Mohan)

Secretary

The Institute of Company Secretaries of India

RECENT INITIATIVES FOR STUDENTS

- The **Student Company Secretary e-journal** for Executive / Professional programme students of ICSI has been released for the month of **January, 2024**. The same is available on the Institute's website at the weblink: https://www.icsi.edu/student_pn/academic-portal/student-company-secretary/
- The **CSEET Communique (e-bulletin)** for the month of **January, 2024** containing the latest updates /concepts through articles /write-ups and sample questions in respect of parts of the CSEET has been placed on the ICSI website. The same is also available at the CSEET Portal at the Institute's website at the weblink: https://www.icsi.edu/student_pn/cseet/cseet-e-bulletin/
- **Info Capsule** is being issued as an update on daily basis for members and students, covering latest amendments on various laws for the benefit of our members and students. The same is available on the ICSI website at the weblink: <https://www.icsi.edu/infocapsule/>
- **Organising Samadhan Diwas:** Samadhan Diwas was launched by the Institute on 27th February, 2021 with the objective of providing "on-the-spot" resolution to issues/grievances of trainees and trainers. During the Samadhan Diwas, the officials of Directorate of Training interact with the trainees and trainers and provide them the resolution to their grievances.

The 40th Samadhan Diwas was organised on 14th February, 2024 through virtual mode.

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.

- **Extension of Compulsory Switchover to New Training Structure for a period of 3 months i.e. upto 31st March, 2024.**

The Institute has decided to provide one last opportunity to its students to complete the requirement of short term training under earlier/modified training structure till 31st March, 2024. The Compulsory Switchover to New Training Structure shall now be applicable w.e.f. 1st April, 2024

- **Launch of New Training Guidelines 2024 in Yuvotsav- 2024**

The Institute has launched its Student Training Guidelines 2024 during Yuvotsav-2024 (National Conference of Student Company Secretaries) organized by ICSI on 11th - 12th January 2024. The link for these Guidelines are available on the website of the Institute at: [ICSISStudentTainingGuidelines15012024.pdf](#)

- **Extension of conducting 15 days CLDP on non- residential basis for a period up to 31st March, 2025.**

The Institute has decided to extend conducting of 15 days class room mode Corporate Leadership Development Programme (CLDP) on non- residential basis by Regional Offices, Diamond and Platinum grade Chapter for a period up to 31st March, 2025. However, CCGRTs will continue to conduct CLDPs in residential mode only.

- **Registration of PCS for the purpose of imparting long -term training to be considered by including the total number of years of experience as CS (both in employment and in practice)**

The registration of PCS for the purpose of imparting long -term training shall now be considered by including the total years of experience as a CS (both in employment and in practice)



Academics



Articles

- **POWER OF CCI - THE MARKET REGULATOR**
- **GOVERNANCE FRAMEWORK OF LARGE UNLISTED COMPANIES**
- **SEBI AND SAT ORDERS IN THE MATTER OF KARVY STOCK BROKING LIMITED
- BRIEF FACTS**

POWER OF CCI - THE MARKET REGULATOR*

Introduction

Regulatory bodies, predominantly established through statutory frameworks, function as distinct entities providing public goods aligned with the public interest, akin to governmental functions. These entities bear responsibilities, encompassing both developmental and regulatory roles, mirroring the duties undertaken by the Government. Possessing legislative, executive, and judicial powers akin to those of the Government, regulators share numerous similarities with the government while maintaining a separate identity. In essence, they operate as quasi-governments, executing governance functions within a predefined framework on behalf of the government. Although formally designated as Authorities, Boards, Commissions, Councils, etc., their primary functions often involve regulatory activities. Regulators generally build expertise matching the complexities of the task and evolve processes to enforce authority rapidly and proactively. They provide the same level playing field to both Government and non-Government participants. Governance through Regulators is still evolving.

Regulators, such as the Securities and Exchange Board of India in the securities market, Insurance Regulatory and Development Authority in insurance, All India Council for Technical Education in education, Central Electricity Regulatory Commission in electricity, Telecom Regulatory Authority of India in telecom, Petroleum & Natural Gas Regulatory Board in petroleum and gas, Airport Economic Regulatory Authority of India in airports, and Warehousing Development and Regulatory Authority in warehousing, Competition Commission of India(CCI) in competition, among others, are now firmly established.

Hon'ble Delhi High Court in its judgment dated 02.06.2023 in the case of *Institute of Chartered Accountants of India v. Competition Commission of India & Ors. W.P.(C) 2815/2014 and CM Nos. 5836/2014 & 15032/2014* inter alia observed that ***it is important to note that the CCI's power is for regulating of markets; it does not extend to addressing any grievance regarding arbitrary action by any statutory authority....."***

* Chittaranjan Pal, Deputy Director, The ICSI

Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.

Duties, Powers and Functions of CCI

The Competition Commission of India ('Commission') has been established to enforce the competition law under the Act. The Commission consists of a chairperson and not more than 6 Members appointed by the Central Government. Chapter IV (Section 18 - 39) of the Competition Act dealing with the duties, powers and functions of CCI. It is the statutory duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India.

For discharging its statutory duties, the Commission inter alia empowers to:

- ***Inquiry into certain agreements and dominant position of enterprise:*** The Commission may inquire into any alleged contravention of the provisions contained in section 3(1) or section 4(1) either on its own motion or on receipt of any information, in such manner and] accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or a reference made to it by the Central Government or a State Government or a statutory authority.
- ***Inquiry into combination by Commission:*** The Commission may, upon its own knowledge or information relating to acquisition referred to in section 5(a) or acquiring of control referred to in section 5(b) or merger or amalgamation referred to in section 5(c), inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India.
- ***Orders by Commission after inquiry into agreements or abuse of dominant position:*** Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders,
- ***Orders of Commission on certain combinations:*** Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under section 6(2).
- ***Power to issue interim orders:*** Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.
- ***Power of Commission to regulate its own procedure:*** In the discharge of its functions, the Commission shall be guided by the principles of natural justice and

shall have the powers to regulate its own procedure. The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit.

- **Commission imposing monetary penalty:** Commission is empowering to imposing penalty including lesser penalty.
- **Undertake Competition Advocacy** Commission empowers to advice on policy issues, create public awareness, training on competition issues etc. (Section 49)

In the case of *Competition Commission of India v SAIL (2010) 10 SCC 744* the Supreme Court, which considered the effect of orders made under Section 26 (1), analysed Sections 3, 4, 19, 26 and various regulations, and ruled on the effect of the enactment: **“Under the scheme of the Act, this Commission is vested with inquisitorial, investigative, regulatory, adjudicatory and to a limited extent even advisory jurisdiction. Vast powers have been given to the Commission to deal with the complaints or information leading to invocation of the provisions of Sections 3 and 4 read with Section 19 of the Act.”** This enunciation of the law binds the courts; furthermore, there can be no other view, given that SAIL (supra) delineated the role of CCI, which decides whether to commence an inquiry or investigation, under Section 26 (1).

In the case of *Mahindra Electric Mobility Limited and Anr(Petitioners) vs. Competition Commission Of India and Anr (Respondents) in W.P.(C) 11467/2018, CM APPL. 44376-44378/2018 judgement dated 10 April, 2019*, Delhi High Court inter alia observed that the powers of the CCI and duties cast upon it include an advisory role, whereby the Central or any State Government can seek its opinion on any aspect of its competition policy and make any reference to its impact; the CCI has to give its opinion within 60 days of receipt of such a reference [Section 49 (1)]. The opinion, however, is not binding. CCI is also invested with the duty of competition advocacy (Section 49 (3)) in the discharge of which, it has to *“take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues”*.

Further, the Hon’ble High Court held that CCI does not perform only or purely adjudicatory functions so as to be characterized as a tribunal solely discharging judicial powers of the state; it is rather, a body that is in parts administrative, expert (having regard to its advisory and advocacy roles) and quasi-judicial -when it proceeds to issue final orders, directions and (or) penalties. (Para 85)

In the case of *Competition Commission of India Vs. Bharti Airtel Limited and Others, Civil Appeals arising out of SLP (C) No. 35574 of 2017 & Ors.* judgement dated December 05, 2018, Hon’ble Supreme Court observed that under the Competition Act, the CCI is constituted as a statutory body which is to ensure healthy competition in markets thereby preventing the practice of having adverse effect on competition; to promote and

sustain the competition in markets; to protect the interest of consumers and to ensure freedom of trade. In that sense, the CCI is also a regulator. But a unique feature of the CCI is that it is not sector based body but has the jurisdiction across which transcends sectoral boundaries, thereby covering all the industries, with focus on the aforesaid object and purpose behind the Competition Act, 2002.

The CCI is specifically entrusted with duties and functions, and in the process empower as well, to deal with the aforesaid three kinds of anti-competitive practices. The purpose is to eliminate such practices which are having adverse effect on the competition, to promote and sustain competition and to protect the interest of the consumers and ensure freedom of trade, carried on by other participants, in India

Moreover, it is within the exclusive domain of the CCI to find out as to whether a particular agreement will have appreciable adverse effect on competition within the relevant market in India. For this purpose, CCI is to take into consideration the provisions contained in the Competition Act, including Section 29 thereof. Sections 45 and 46 also authorise the CCI to impose penalties in certain situations.

Conclusion

The Competition Commission of India (CCI) was established in March 2009 by Government of India under the Competition Act, 2002 for the administration, implementation, and enforcement of the Act., with the objectives to eliminate practices having adverse effect on competition; to promote and sustain competition; to protect the interests of consumers; to ensure freedom of trade in the markets of India and to establish a robust competitive environment through proactive engagement with all stakeholders, including consumers, industry, government and international jurisdictions. CCI being a knowledge intensive Regulator with high competence level imbued with professionalism, transparency, resolve and wisdom in enforcement.

Regulators are endowed with essential powers, expertise, processes, and resources tailored to meet the demands of their respective tasks. Buoyed by the success of this approach, the Government has actively fostered the creation of regulators, sharing governance responsibilities across various domains with them. The ascendancy of regulators as collaborative partners in governance has become an undeniable reality, marking a pivotal era in governance reforms over the past few decades.

Hon'ble Delhi High Court *in the case of Mahindra Electric Mobility Limited and Anr(Petitioners) vs. Competition Commission Of India and Anr(Respondents) in W.P.(C) 11467/2018, CM APPL. 44376-44378/2018 judgement dated 10 April, 2019* noted in conclusion that the Competition Act is an attempt by Parliament to improve – in the light of experience gained from a modern liberalized economy and corresponding state retreat in key areas of economic activities, the prevalent laws governing concentration

of market power. The MRTP Act, 1969 was its first attempt (in a closed economy) to control monopolies and restrictive practices. In the light of experience gained and the felt necessities of the changed times – and having seen the experience gained by other nations, in the course of their legislation with competition, the Act was introduced, with due deliberation. Recent decisions have emphasized the importance of the CCI in imbuing the market place with the culture of competition, and even underlined that sectoral regulator“ decisions or regulations (within the frame works of their parent legislations) cannot foreclose enquiry and consequential action by the CCI in its overarching concerns with respect to market domination and anti-competitive behaviour of erring entities (*Para 209*).

GOVERNANCE FRAMEWORK OF LARGE UNLISTED COMPANIES*

Introduction

Corporate governance is an important topic in all companies, whether listed or unlisted. When it works well it supports the long term success of the business. If we talk about the unlisted companies, they make a major contribution to economic growth and employment. Many unlisted companies are the hidden giants for an economy which are owned and controlled by single individuals or families.

Good corporate governance in this context is not primarily concerned with the relationship between boards and external shareholders (as in listed companies) nor with a focus on compliance with formal rules and regulations. An effective governance framework defines roles, responsibilities and an agreed delegation of power amongst shareholders, the board, management and other stakeholders. It also presents major advantages for them especially when it comes to raising capital at competitive rates.

To ensure that the companies adhere to corporate governance standards and are under supervision, it is very important to frame guidelines for such large unlisted companies including unicorns.

In recent years, many countries have adopted corporate governance codes. The UK introduced its first corporate governance code in 1992 following the publication of the Cadbury Report. The latest edition of Windows the UK Corporate Governance Code was published in June 2010 by the Financial Reporting Council (FRC). However, most of these official codes relate to listed companies. In the absence of their own specific reference point, there is a danger that unlisted companies will refrain from developing an appropriate governance framework, with negative implications for their long-term effectiveness and success. Copying the widely-recognized principles of best practice for listed companies is also not a viable solution, as the corporate governance challenges of listed companies are distinct from those of unlisted companies.

* Mahesh Airan, Assistant Director, The ICSI

Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.

Why Government focuses on Large Unlisted Companies?

The scope of unlisted companies is very wide and encompasses start-ups, single owner-manager companies, family businesses, private equity-owned companies, joint ventures, and subsidiary companies. Unlisted companies are of particular importance in countries with less developed capital markets, where the vast majority of companies are not listed on a stock exchange or regulated market. But in many developed countries, most small and medium-sized enterprises are not publicly listed on regulated equity markets. Furthermore, there exist many notable large corporations that have chosen - for a variety of reasons - to forgo a public listing.

As per research report of Business Standard conducted for the FY2014 and 2015, the top unlisted companies had reported faster revenue and profit growth last fiscal, compared to BS 1000 companies. Unlisted companies also reported superior return on net worth.

(For detailed report, please refer https://bsmedia.business-standard.com/_media/bs/data/general-file-upload/2016-02/bs-1000-03.pdf)



Governance Framework of Unlisted Companies – Global Perspective

a) Corporate Governance Guidance and Principles for Unlisted Companies in Europe as developed by European Confederation of Directors Associations (EcoDa)

European Confederation of Directors Associations (EcoDa) in March 2010 developed the guidance and principles for unlisted companies in Europe. In their first edition, they mentioned that Unlisted companies account for more than 75% of European GDP. They are key providers of current and future employment as well as the source of a large proportion of European economic growth.

In EcoDa document, fourteen principles of good governance were presented on the basis of a dynamic phased approach, which takes into account the degree of openness, size, complexity and level of maturity of individual enterprises. This EcoDa publication created a reflection platform that can be used by EU Member States to develop or update national corporate governance codes for unlisted companies.

Keeping in view the widened scope of Corporate Governance and since the governance of unlisted companies is now attracting more attention from regulators and stakeholders, EcoDa released second edition of guidance and principles for unlisted companies in Europe in March 2021. The fourteen principles are divided in to two phases by EcoDa as under:

Phase-I Principles: Corporate governance principles applicable to all unlisted companies – **Comprising 9 principles**

Phase-II Principles: Corporate governance principles applicable to large and/or more complex unlisted companies (Unlisted companies with significant external financing; and/or those aspiring to a public listing) - **Comprising 5 principles**

Phase-I Principles: Corporate governance principles applicable to all unlisted companies	
Principle 1	Shareholders should establish an appropriate constitutional and governance framework for the company.
Principle 2	Every company should strive to establish an effective board, which is collectively responsible for the long-term success of the company, including the definition of corporate purpose and strategy. However, an interim step on the road to an effective (and independent) board may be the creation of an advisory board.
Principle 3	The size and composition of the board should reflect the scale and complexity of the company's activities, and take into account an appropriate level of diversity in its composition.
Principle 4	The board should meet sufficiently regularly to discharge its duties and be supplied in a timely manner with appropriate information.
Principle 5	Levels of remuneration should be sufficient to attract, retain, and motivate executives and non-executives board members of the quality required to run the company successfully.
Principle 6	The board is responsible for risk oversight and should maintain a sound system of internal control to safeguard the company's assets and the long-term interests of stakeholders.
Principle 7	There should be a dialogue between the board, shareholders and other key stakeholders based on a mutual understanding of objectives. The board as a whole has responsibility for ensuring

	that a satisfactory dialogue with shareholders and stakeholders takes place. The board should not forget that all shareholders have to be treated equally, and that each category of relevant stakeholder should be treated appropriately.
Principle 8	All board members should receive induction on joining the board and should regularly update and refresh their skills and knowledge.
Principle 9	Family-controlled companies should establish family governance mechanisms that promote coordination and mutual understanding amongst family members, as well as organise the relationships between family governance and corporate governance.
Phase-II Principles: Corporate governance principles applicable to large and/or more complex unlisted companies	
Principle 10	There should be a clear division of responsibilities at the head of the company between the running of the board and the running of the company's business. No one individual should have unrestricted powers of decision.
Principle 11	Board structures vary according to national regulatory requirements and business norms. However, all boards should contain members with a sufficient mix of competencies and experiences. No single person (or small group of individuals) should dominate the board's decision-making.
Principle 12	The board should establish appropriate board committees in order to allow a more effective discharge of its duties.
Principle 13	The board should undertake a periodic appraisal of its own performance and that of each individual board member.
Principle 14	The board should present a balanced and understandable assessment of the company's position and prospects for external stakeholders and establish a suitable programme of stakeholder engagement.

b) Corporate Governance Guidance and Principles for Unlisted Companies in United Kingdom as developed by European Confederation of Directors Associations (EcoDa) and Institute of Directors (IoD)

As per the report published by IoD and EcoDa, out of the UK's 2.6 million registered companies, most are not listed or quoted on tradable equity markets. The overwhelming majority are SMEs or start-up companies that remain under the ownership and control of the founder or founding family. They account for a significant proportion of its GDP and employment. Furthermore, they are a key source of dynamism and entrepreneurial spirit. Their potential contribution to any economic recovery should not be underestimated.

Corporate Governance Guidance and Principles for Unlisted Companies as suggested by EcoDa in Europe are almost same as suggested by IoD and EcoDa for United Kingdom.

In UK, the Companies (Miscellaneous Reporting) Regulations 2018 require UK registered large private companies and others that meet the threshold but are not required to adopt a specific corporate governance code to publish a corporate governance statement setting out their corporate governance arrangements. This may include companies registered as public (i.e. unlisted public companies). In fact, many public companies have chosen to adopt Wates Principles to define their corporate governance arrangements.

In January 2018, the government invited Sir James Wates CBE to lead a coalition group, the 'Wates Coalition', with a view to devising a set of principles to guide companies in the reporting of their corporate governance arrangements. This led to the publication of The Wates Corporate Governance Principles (the 'Principles') in December 2018. **The Principles offer companies, even those not subject to the regulation, an opportunity to demonstrate good practice.**

The following are the **six principles** given by Sir James Wates as under:

- **Principle One (Purpose and Leadership)** emphasises the purpose of the company and how this is developed and promoted by the board. It also acknowledges the role of the board in ensuring that the company's values, strategy and culture are aligned with its purpose.
- **Principle Two (Board Composition)** discusses the effectiveness of the board. In particular, it outlines the role of the chair, the importance of diversity within the board in terms of skills, backgrounds, experience and knowledge, and also recognises that the size of a board should be based on the scale and complexity of the company.

- **Principle Three (Director Responsibilities)** focuses on the board and individual directors' understanding of their responsibilities and accountability. It discusses the policies and procedures in place to support effective decision-making and independent challenge.
- **Principle Four (Opportunity and Risk)** discusses how the board should ensure the long-term sustainable success of the company by identifying opportunities and risks.
- **Principle Five (Remuneration)** focuses on the executive remuneration policy and its alignment with the company's long-term sustainable success.
- **Principle Six (Stakeholder Relationships and Engagement)** discusses the importance of stakeholder engagement and the key role of the board in fostering such relationships. Special emphasis is placed on the relationship between the board and the workforce.

The Financial Reporting Council (FRC) has issued the first in-depth assessment of the quality of reporting from private companies who have chosen to follow the Wates Principles. The report, which was conducted with the University of Essex, shows that the Wates Principles are the most widely adopted corporate governance code used by large private companies and that “companies are using the principles as a tool for self-reflection and improvement, and seeing the yearly governance reporting as an opportunity, not a burden.” **As per the research report, information on corporate governance arrangements disclosed by UK large private companies is placed as under:**

- Of the 796 companies that published a corporate governance statement or discussed their corporate governance in other sections of the annual report, 454 had applied a corporate governance code.
- 77% of those adopting one corporate governance code followed the Wates Principles.
- Almost half of the companies (45%) disclosed their stated purpose.
- The highest average level of disclosure was in relation to Principle Four (Opportunity and Risk).
- Companies operating in the professional, scientific and technical activities sector provided the highest level of disclosures.
- Only two companies discussed the processes in place for the board to incorporate shareholders'/ stakeholders' views into its decision making process on the company's purpose.
- More than half of companies (51%) explained their culture.

- Only a few companies explained what their values mean and how information relating to culture is passed to the board.
- Most companies disclosed some general information about the board's size and structure.
- Around 80% of the companies disclosed at least some general information related to the accountability of their directors.
- Analysis suggests that disclosure practices are still in their infancy.

c) **The Corporate Governance Code for Unlisted Companies- Slovenia**

The Corporate Governance Code for Unlisted Companies is intended as a good practice guideline for shareholders and company members as well as to the management and supervisory bodies of companies. The good practices indicated in the Code can assist them in establishing their own system of governance with regard to the size, type, activity and needs of the particular company.

The recommendations of the Code are not additional regulations and are not binding on any company; however, companies that are subject to an audit and have chosen the Code as their code of reference are, in accordance with the principle of “comply or explain”, required to disclose in their corporate governance statement any deviations from individual Code recommendations and to clarify their own alternative practice that they opted for in this area. The Code is also intended to facilitate all stakeholders and the company's wider environment in assessing the quality of corporate governance.

The Code provides good practice recommendations and consists of two levels (basic and advanced). The basic level comprises the basic good practice recommendations for corporate governance, while the advanced level comprises the good practice recommendations for large companies. The basic level comprises the basic good practice recommendations for corporate governance, while the advanced level comprises the good practice recommendations for large companies pertaining to the following parameters.

- Relations between the Company and its Members
- Structure of the Supervisory Body
- Operation and Remuneration of the Supervisory Body
- Structure of the Management Body
- Operation of the Management Body
- Remuneration of the Members of the Management Body

- Training of the Members of the Management and Supervisory Bodies
- Public Reporting
- Auditing and the Internal Control System

The code also provides practical guidelines for quality explanations in corporate governance statements in accordance with the “comply or explain” principle. The purpose of the “comply or explain” principle is neither to ensure full compliance nor to coerce compliance with the Code at the expense of the benefits of own governance, but to provide clear and quality clarification of the grounds for deviations and a presentation of appropriate alternative practices in the field that better suit the needs of the company.

For details, please visit <https://www.gzs.si/Portals/SN-Pravni-Portal/Vsebine/novice-priponke/kodeks-eng.pdf>



d) **Governance gaps in Zilingo- A Singapore based start up**

Singapore-based fashion start-up Zilingo, too, suffered from unfair accounting practices, mistrust and disagreement between founders, and diminishing investor confidence last year. Following complaints of alleged financial misconduct, the company suspended its chief executive officer Ankiti Bose. Thereafter, creditors demanded repayment of loans and more than 100 staff resigned.

Zilingo's turmoil highlights the lenient internal corporate governance culture that could be seen in some startups. For two years, the company failed to file annual financial statements, which is a basic requirement for all businesses of its size in Singapore.

Governance Gaps and Proposed Regulatory Framework for unlisted Companies in India

India has become the world's third-largest hub for startups, after the US and China. As of October 03, 2023, India is home to 111 unicorns with a total valuation of \$349.67 billion and 56 companies world over have achieved the decacorn status out of which India has five startups namely, Flipkart, BYJU's, Nykaa and Swiggy, added in decacorn cohort, according to the Invest India website. As of December 2023, a total of 1,17, 254 startups had been officially recognized by the Department for Promotion of Industry and Internal Trade (DPIIT). (For details: <https://pib.gov.in/PressReleasePage.aspx?PRID=2002100>)

A **decacorn** is company that has attained a valuation of more than \$ 10 Bn.

According to the OECD, improved corporate governance amongst unlisted companies has the potential to significantly boost productivity growth and job creation in both developed and developing economies, as well as benefiting the company itself.

There are some well-known startups which have faced scrutiny due to corporate governance issues, with Byju's being a recent example.

Governance gaps in BYJU

The company's early success could be attributed to its adaptive learning technology and engaging teaching methods, which resonated with a growing market of tech-savvy students. Byju's managed to secure significant investments from prominent investors, such as Chan Zuckerberg Initiative and Sequoia Capital, enabling its expansion and aggressive marketing campaigns.

As a result, the company quickly became a household name in the Indian education sector, boasting millions of users and a valuation of billions of dollars. Despite its soaring success, Byju's journey was blemished by various instances of corporate governance failures stymied by opaque accountability and transparency in the company's financial reporting. Multiple reports and investigations revealed that Byju's indulged in unethical accounting practices, such as, inflating its operational revenue to attract more investments and such fraudulent activities eroded the trust of investors and raised serious concerns about the company's integrity.

Byju's faced allegations of mishandling sensitive users' information, breaching privacy regulations and engaging in aggressive data mining practices. These disclosures not only damaged the company's reputation but also elicited legal action and regulatory scrutiny. The absence of data protection measures and transparency further exposed the weak corporate governance structure within the organization. Deloitte, Byju's Auditor, resigned on the ground that start-up had not provided its financials over a year.

Besides, three independent directors representing investors and lenders also relinquished their positions. The firm has been subject to lawsuits by the investors. It failed to honour the financial covenants and interestingly, Byju's filed counter lawsuits against the creditors and lenders. There has been a considerable number of dismissals and the prevalence of utter-chaos in the corporate governance mechanism which rocked the corporate world.

The case of BYJU is an exemplar of governance collapse. The company went on expanding its wings but amidst this, they failed to diagnose the fault lines that further resulted into a catastrophe. From the aforesaid facts, it may be stated that the company was highly leveraged as it took huge loans and servicing the debt became a nightmare.

The saga of governance gaps does not end with BYJU, there have been numerous instances of corporate mis-governance in other start-ups too. This largely coincided

with lowering of private-capital flow into the Indian start-up milieu as global financial market sentiments have mellowed down over the last one year.

So the million dollar question is that what measures may be initiated to prevent such future governance failures.

Proposal for separate regime for Large Unlisted Companies

While listed entities are subject to comprehensive disclosure requirements, the same levels of disclosures requirements are not applicable to unlisted companies. Therefore, there is a need to identify, monitor and manage the risks introduced into the securities market ecosystem by unlisted companies in a conglomerate with a complex set of listed and unlisted associates.

As per media reports, the Government of India is considering a regulatory framework for large unlisted companies that may have systemic implication. The Government is of the opinion that there is a need for a rigorous regime for large unlisted companies, in contrast with the current “light-touch” regulation. Ideally, the smaller companies should have low compliance burden, but there are several unlisted companies that are relatively large and can have implications on the overall ecosystem. The criteria to define large unlisted companies is ongoing and not decided yet. The issue has gained significance amid recent suspected incidents of corporate governance lapses in various startups including BYJUs.

Conclusion

While the drive for good corporate governance standards and practices is generally directed towards publicly listed companies, a more challenging prospect is the governance of unlisted companies. These companies, comprising not just small and medium-sized businesses, can sometimes constitute very large enterprises. Unlisted companies remain a very significant and important component of both developed markets and emerging economies, often serving as the engine for economic growth given their entrepreneurial nature.

While launching a business, the focus of the organization should be enhancing the revenue income and net income but not on the cost of corporate governance issues. The aspects of good corporate governance which are followed by the organization globally should be followed by the companies in letter and spirit for smooth running of the business organisation as well as ensuring sustainability and growth.

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SEBI AND SAT ORDERS IN THE MATTER OF KARVY STOCK BROKING LIMITED – BRIEF FACTS *

<p>SAT order dated 20.12.2023</p>	<p>Appellants-</p> <ol style="list-style-type: none"> 1. Axis Bank Limited 2. ICICI Bank Limited 3. Bajaj Finance Ltd. 4. HDFC Bank Ltd. 5. IndusInd Bank Limited <p style="text-align: center;">vs.</p> <p>Respondents-</p> <ol style="list-style-type: none"> 1. Securities and Exchange Board of India 2. Karvy Stock Broking Ltd. 3. National Securities Depositories Ltd. 4. Central Depository Services (India) Limited 5. National Stock Exchange of India Ltd. <p><i>(Note: For facility, the facts stated in the appeal of Axis Bank Limited (Appeal no. 35 of 2020) are taken into consideration.)</i></p>	<p>Appeal No. 35, 50, 70, 75, 112 of 2020</p>
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Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.

Background

Karvy Stock Broking Limited (KSBL) incorporated as provider of financial services company in India. It provides the services related to stock broking, depository participant, distribution of financial products (including mutual funds, bonds and fixed deposits), commodities broking, personal finance advisory services, wealth management and alike.

During 2019, many investors complained to SEBI about discrepancies in their Demat accounts held by KSBL. Some of investors complained that the firm had not provided their stipulated payouts.

Following this, the National Stock Exchange of India Limited (NSE) initiated a limited period probe on August 19, 2019 covering a period from January 1, 2019 onwards and provided its preliminary report on the non-compliances observed with respect to the pledging/misuse of client securities by KSBL to the SEBI.

On the basis of this report, SEBI banned KSBL from new client operations in the stock market. Further, the National Stock Exchange (NSE) also initiated the forensic audit of KSBL in order to examine in detail the cases of misuse of client funds and securities.

Facts of the Case

- 1) KSBL has opened a DP account no. 11458979, named KARVY STOCK BROKING LTD (BSE) in December 2000 and categorised it as Beneficiary Client. It didn't report this DP account in the filings made by it in Stock-Exchange from January, 2019 to August, 2019;
- 2) It was found that the KSBL has mishandled its client's securities by misusing the Power of Attorney (PoA) given to it by its clients. It has transferred securities from client's demat accounts to the demat accounts controlled by it;
- 3) KSBL credited the funds raised by pledging of client securities to six of its own bank accounts (Stock Broker-own Account) instead of the "Stock Broker-Client Account" and further has not reported these six own bank accounts ("Stock Broker-own Account") to Exchange which is required to be reported under the provisions of enhanced supervision, as stipulated under SEBI Circular No. SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016;
- 4) The securities lying in the aforesaid Demat account of KSBL actually belong to the clients who are the legitimate owners of those pledged securities. Therefore, KSBL did not have any legal right to create a pledge on these securities and generate funds. If at all the client securities were pledged, it should be only for meeting the obligation of the respective clients.

- 5) Apparently as per report of NSE, KSBL has transferred a net amount of approx. Rs. 1,096 crores of client's money to its group company i.e. Karvy Realty Private Limited over a period of three years. Approximately, around 1 Lakh clients are estimated to be impacted by this scam.

Brief about the Axis Bank's loan to Karvy and shares pledged by Karvy

The appellant Axis Bank is a commercial bank under the Banking Regulations Act, 1949 and, is in the business of issuing credit facilities against securities. In the course of its business Axis Bank has been extending overdraft facilities against shares to Karvy from time to time. This overdraft facility was pursuant to an agreement under which a total sum of Rs. 100 crore had been disbursed. As on December 7, 2019 an aggregate amount of Rs. 80.64 crore along with interest was due from Karvy Stock Broking Ltd. The overdraft facility was secured by shares pledged by Karvy from its demat account. The shares pledged under the overdraft facility agreement was of such clients of Karvy who had debit balance with Karvy as their stock broker.

SEBI vide circular dated June 20, 2019 issued directions to the participants in the securities market, Stock Exchanges, Clearing Corporations, Depositories, Trading Members, Clearing Members and Depository Participants requiring all clients securities which were pledged earlier under the earlier circulars to be either unpledged or returned to the clients upon fulfillment of pay in obligation or dispose of after giving five days notice to the clients. Such unpledging of the clients shares was to be done by August 31, 2019 which was subsequently extended to September 30, 2019.

The appellant Axis Bank vide their letter dated August 20, 2019 intimated Karvy calling upon it to clear the outstanding amount under the overdraft facility so that the pledged securities could be unpledged.

Axis Bank also informed SEBI that it would not be possible for the Bank to unpledge the shares where the broker was not able to clear the outstanding amount by August 31, 2019 and that the shares would be unpledged only when the broker had paid the complete outstanding amount.

SEBI's *ex parte ad Interim Order*

SEBI after examining all the facts and circumstances found gross violations of its rules and regulations on part of KSBL and on *22nd November, 2019*, issued following directions by way of *ex-parte order* under Sections 11(1), 11(4) and 11B read with Section 19 of the SEBI Act, 1992 and Regulation 35 of SEBI (Intermediaries) Regulations, 2008:

- i) KSBL is prohibited from taking new clients in respect of its stock broking activities;
- ii) The Depositories i.e. NSDL and CDSL, in order to prevent further misuse of clients' securities by KSBL, are hereby directed not to act upon any instruction

- given by KSBL in pursuance of power of attorney given to KSBL by its clients, with immediate effect;
- iii) The Depositories shall monitor the movement of securities into and from the DP account of clients of KSBL as DP to ensure that clients operations are not affected;
 - iv) The Depositories shall not allow transfer of securities from DP account no. 11458979, named KARVY STOCK BROKING LTD (BSE) with immediate effect. The transfer of securities from this account shall be permitted only to the respective beneficial owner who has paid in full against these securities, under supervision of NSE; and
 - v) The Depositories and Stock Exchanges shall initiate appropriate disciplinary regulatory proceedings against the Noticee (KSBL) for misuse of clients' funds and securities as per their respective bye laws, rules and regulations.

Appeal filed by Axis Bank Limited before the Securities Appellate Tribunal (SAT), against SEBI, National Stock Exchange of India Limited, Central Depository Services (India) Limited, National Securities Depository Limited and Karvy Stock Broking Limited.

Pursuant to the ex parte ad interim order passed by the WTM, National Securities Depositories Ltd. (NSDL) issued a communication dated November 23, 2019 which states that NSDL has put the DP account number- 19502787 of Karvy in abeyance and hence the Axis Bank is prevented from accessing the securities pledged with it by Karvy Stock Broking Limited (KSBL). Aggrieved by the aforesaid communication, the Bank has challenged this order in SAT, stating that it was illegal and without jurisdiction.

Axis Bank contended that its position *viz-a-viz* other lenders who appealed before this Tribunal earlier is different in the sense while the other lenders/ appellants were directly impacted by direction no. (iv) of the SEBI ex-parte order dated 22nd November, 2019, it's illegal extension of that order by NSDL that has impacted it. This is because vide direction no. (iv) only a particular account of no. 11458979, named KARVY STOCK BROKING LTD (BSE) of KSBL was frozen; there is no such direction relating to freezing or restricting in any manner the DP account number- 19502787 relevant to the lender.

The Axis Bank has claimed that an aggregate amount of about Rs. 81 crores and further interest etc. are due from KSBL which was given to it in the form of overdraft against shares ("OAS") from time to time. It was contended that under the provisions of the Depositories Act, 1996 the pledgee has rights over the securities pledged and such rights could not be arbitrarily kept in abeyance or extinguished without following the due process.

Hence, Axis Bank sought the quashing and setting aside of NSDL's move to keep the pledged securities in abeyance. It also demanded quashing of directions given by SEBI

order dated 22nd November, 2019 particularly those which were preventing it from exercising its right over pledged securities. Further, it requested SAT to issue a restraining order against NSDL, SEBI, and CDSL from taking any action against the bank, if it exercises its rights over pledged securities.

After hearing all the parties the Securities Appellate Tribunal on 17th December, 2019 (later modified its order on 20th December, 2019) directed SEBI to pass an order by 15th January, 2020 on Axis Bank's plea and pass appropriate directions. Meanwhile the status quo shall be maintained in respect of the securities in Account No. 19502787 named "Karvy Stock Broking Limited- Client Account-NSE CM".

Securities and Exchange Board of India in respect of representation made pursuant to order of Hon'ble SAT, by Axis Bank Limited

In view of the aforesaid order passed by the Hon'ble SAT, SEBI provided an opportunity of being heard to the Axis Bank Limited along with other concerned entities like National Stock Exchange of India Limited (NSE), Karvy Stock Broking Ltd. (KSBL), National Securities Depository Limited (NSDL) and Central Depositories Services Limited (CDSL). As per the data provided by NSE, securities pledged by KSBL in favour of Axis Bank belonged to its fully paid as well as partly or unpaid clients. The value of securities belonging to fully paid client is Rs 171.74 crore and the value of securities of other than fully paid clients is Rs 13.69 crore.

The Axis Bank contended that the pledge created by KSBL on the securities was in accordance with the provisions of SEBI circular dated 26th September, 2016 and was a valid pledge. It has further been argued that such a validly created pledge has not been rendered invalid by SEBI circular dated 20th June, 2019 which merely casts obligation on the stock brokers to unpledge all the securities belonging to their client and does not declare pledges so created as invalid.

Further, Axis Bank contended that prior to the enforcement of SEBI circular dated 20th June, 2019, in terms of SEBI circular dated 26th September, 2016, with regard to pledging of securities belonging to partly paid/unpaid clients, stock broker was entitled to have a lien on client's securities only to the extent of indebtedness of the client and the stock broker could pledge securities of indebted clients with the "explicit authorization" of the client. Further, they have urged that the PoA given by the client was sufficient authorization to create such a pledge.

Accordingly, SEBI after assessing all the facts and circumstances held that regarding pledging of securities of fully paid clients, a stock broker has no authority to pledge the securities of its fully paid clients. If a stock broker pledges securities of its fully paid clients, it amounts to misappropriation of clients' securities by the stock broker. Even if securities belong to fully paid clients are pledged by the stock broker, such pledge does not pass any title to the pledgee, as the stock broker in such case himself/itself does not possess any title/right over such securities. Thus, pledge of securities, belonging to fully paid client, is not treated as valid pledge in law.

Further, SEBI disagreed with such interpretation given to the scope of PoA. The SEBI circular dated 23rd April, 2010, makes it clear that the PoA given by the client to the broker can be used for the purpose of pledging in favour of the stock broker, “only” for the purposes of meeting the margin requirements. The authorization claimed under said PoA by the Axis Bank is not the “explicit authorization” of the client, as referred to under SEBI circular dated 26th September, 2016.

The bank in its representation to SEBI also prayed that in respect of partly or unpaid clients, KSBL be directed to issue five days’ notice to the clients or the bank be allowed to issue five days’ notice to clients to enable the clients redeem the pledged shares by making payment of the corresponding outstanding indebtedness, failing which the lender be permitted to invoke the pledge on shares. SEBI rejected Axis Bank’s plea. It ascertain that if the bank is able to show proof of authorisation in respect of securities having value of Rs. 13.69 crore belong to unpaid clients, such securities can be released to it after following the procedure under supervision of NSE.

Later, SEBI also rejected the relief sought by the other four lenders i.e. (Bajaj Finance Limited, HDFC Bank Limited, ICICI Bank Limited, IndusInd Bank Limited) urging it as not tenable.

After rejection of the Axis bank’s plea by SEBI, it has filed an appeal before SAT against the SEBI order dated 14th January, 2020. The SAT granted interim relief to Axis Bank by directing *status quo* to be maintained on the SEBI order till further hearing on the matter.

SAT Observations

SAT said that, SEBI’s finding that there was lack of due diligence on the part of the appellants during the creation of the pledge and they were not entitled to invoke the invalid pledge, is patently erroneous.

The appellants were not acting as a depositor participant but were participating in the capacity of an ordinary lender. The register and index of beneficial owners maintained by the Depository under the Depositories Act indicated that Karvy was the beneficial owner. For the purpose of creation of the pledge the persons whose name is recorded in the depository system as beneficial owner is legally empowered under the Depositories Act to create a pledge.

Based on the entries in the register, due diligence was done by the appellants and a valid pledge was created since Karvy was shown as beneficial owner. The pledge was created in accordance with the provisions of the Depositories Act and Regulation 58 of the SEBI (Depositories and Participants) Regulation, 2018 (“DP Regulations”). Nothing has come on record to show that the securities pledged by Karvy were not in accordance with Regulation 58 of the DP Regulations. In this regard Section 88(3) of the Companies Act provides the register and index of beneficial owners maintained by a depository under

section 11 of the Depositories Act, 1996 shall be deemed to be the corresponding register and index for the purposes of this Act.

In view of the above, it can be concluded that the register and index of beneficial owners maintained by a depository is *prima facie* evidence of who the beneficial owner is.

Once a valid pledge has been created and an entry has been made in this regard in the records of the depository, the Depositories Act does not envisage a situation wherein persons whose names are not recorded in the depository could be regarded as the beneficial owner of the pledged securities and such pledges could be rendered invalid subsequently.

As per the Pledge Master Report, the securities pledged in favour of the appellant were in the account named “Karvy Stock Broking Limited (BSE)” and the same implied that Karvy was authorized to pledge such securities as the “beneficial owner” of such securities.

SAT also found that the action of SEBI and NSDL to unilaterally transfer pledge shares to the clients of Karvy was wholly illegal and without jurisdiction. Such unilateral transfer of the shares without revoking the pledge is *per se* illegal and against the provisions of the Depositories Act and Regulation 58 of the DP Regulations. Regulation 58(6) of the DP Regulations states that **no transfer of securities which is pledged shall be effected by a participant without the concurrence of the pledgee.**

In view of the aforesaid provisions, neither NSDL nor SEBI could release or transfer a pledged share without the approval of consent from the pledgee which in the instant case are the appellants.

The press release issued by NSDL on December 2, 2019 indicates that the pledge shares were transferred as per the directions of SEBI and under supervision of NSE. In this regard, SAT opined that SEBI had no power to transfer a pledged shares in contravention of the Depositories Act, DP Regulations and the Indian Contract Act, 1872. The pledge, namely, the appellants are entitled to retain possession of the pledge till such time their liabilities are not cleared by the pledgor as held by the Supreme Court in India in PTC India Financial Services Ltd. (*supra*). It was, thus, arbitrary on the part of SEBI to direct NSDL to transfer the pledge securities to the clients of the brokers without considering that the shares were pledged in favour of the appellants and who had a right of possession. When a third-party right is created SEBI could not intervene and remove the shares arbitrarily. Further, SAT opined that SEBI has acted arbitrarily in directing NSDL to transfer the pledge shares without revoking the pledge. Unless and until the pledge was revoked, the shares could not be transferred to the clients of Karvy. Thus, the action of NSDL under the directions of SEBI were wholly illegal and invalid and had unlawfully deprived the appellants of its statutory rights as a pledgee. SAT is of the view that so long as the pledge is created under the Depositories Act read with DP Regulations until and unless the pledge is revoked the shares cannot be transferred under the directions of SEBI through NSDL. Such action is patently illegal and without jurisdiction.

SAT Order

SAT held that, once a pledge is validly created by a broker in favour of the appellants and the appellants are recorded as a beneficial owner in the records maintained by the Depository, the beneficial owner becomes the registered owner. Consequently, if a default is committed by the broker the appellant gets a right to invoke the pledge under the agreement.

SAT further opined that once a valid pledge is created in favour of a third party then a third-party right is created in the attached property and the same cannot be sold or distributed to discharge the liabilities of the broker.

SAT held that the action of the respondents in not allowing the appellants to revoke the pledge under the Depositories Act and in removing the pledged shares without the appellant's consent was wholly illegal and without any authority of law. The shares so removed and transferred by NSDL under the directions of SEBI are liable to be restituted.

Hence, the appellant Axis Bank is permitted to invoke the shares pledged in its favour in accordance with the provisions of the Depositories Act read with the DP Regulations.

In the alternative SEBI, NSE and NSDL are directed to compensate the appellants with the value of the underlined securities pledged in their favour along with interest @ 10% p.a.

SEBI's appeal to Supreme Court against SAT

SEBI filed appeal before Supreme Court against the order of SAT which had favoured major lenders such as Axis Bank, ICICI Bank, HDFC Bank, IndusInd Bank, and Bajaj Finance. The Supreme Court has provided interim relief to SEBI staying the order of the Securities Appellate Tribunal (SAT) which directed the SEBI to return the shares pledged by Karvy Stock Broking to the brokerage's lenders.

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https://sat.gov.in/english/pdf/E2023_J0202035_18.PDF

<https://www.businesstoday.in/markets/top-story/story/supreme-court-breather-for-sebi-on-sat-ruling-in-karvy-pledge-case-414963-2024-01-26>

https://main.sci.gov.in/supremecourt/2024/301/301_2024_1_26_49834_Order_25-Jan-2024.pdf

Regulatory Updates

COMPANY LAW & PRACTICE

- **Notice Inviting Comments on the review of Rules prescribed under the Companies Act, 2013 and Limited Liability Partnership Act, 2008 (January 15, 2024)**

The Ministry of Corporate Affairs (MCA) has issued notice dated January 15, 2024 stating that, pursuant to the announcement made in Para 99 & 100 of the Budget Speech (2023-24) the MCA has released a Policy for Pre-Legislative consultation and comprehensive review of existing Rules and Regulations prescribed under various legislations administered by it. Accordingly, it has been decided to invite comments/suggestions on the Rules issued under such legislations from all the stakeholders through e-Consultation Platform on the MCA website.

It is requested that comments/suggestions on the Rules may be provided through such facility within 30 days of posting of the rules on e-Consultation module. In the first phase, rules relating to Companies Act, 2013 and LLP Act, 2008 shall be posted on e-consultation module for inviting comments / suggestions with effect from 25.01.2024.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=6hps1VR8FPMqNId82rZxVw%253D%253D&type=open>

- **The Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 (January 24, 2024)**

The Ministry of Corporate Affairs (MCA) vide its notification dated January 24, 2023 has notified “the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024” which has come into force on the date of its publication in the Official Gazette. The new rules prescribes the provisions related to applicability, listing on permitted stock exchanges in permissible jurisdictions, certain companies not eligible etc.

Further, the Ministry has launched the Form LEAP-1 under the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 for compliance related filings.

This policy initiative, to enable listing of Indian companies in GIFT-IFSC, will reshape the Indian capital market landscape and offers Indian companies, especially start-ups and companies in the sunrise and technology sectors, an alternative avenue to access global capital beyond the domestic exchanges. This is expected to lead to better valuation of Indian companies in line with global standards of scale and performance, boost foreign investment flows, unlock growth opportunities and broaden the investor base. The public Indian companies will have the flexibility to access both markets i.e. domestic market for raising capital in INR and the international market at IFSC for raising capital in foreign currency from the global investors. This initiative will particularly benefit Indian companies going global and having ambitions to look at opportunities for expanding their presence in other markets. It is also expected to provide a boost to the capital market ecosystem at GIFT IFSC by provision of new investment opportunities for investors, diversification of financial products and by enhancing liquidity.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=qcIDsiX0Le%252F2EMv7m1iyEw%253D%253D&type=open>

<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1999154>

BANKING & INSURANCE LAWS

- **Inoperative Accounts /Unclaimed Deposits in Banks- Revised Instructions (Notification no. RBI/2023-24/105DOR.SOG (LEG).REC/64/ 09.08.024/2023-24 dated January 01, 2024)**

As per extant instructions, the credit balance in any deposit account maintained with banks, which have not been operated upon for ten years or more, or any amount remaining unclaimed for ten years or more, as mentioned in paragraph 3(iii) of the “Depositor Education and Awareness” (DEA) Fund Scheme, 2014, are required to be transferred by banks to DEA Fund maintained by the Reserve Bank of India. As a measure to assist the account holders and with a view to consolidating and rationalising the extant instructions on inoperative accounts, a review was carried out in consultation with all stakeholders. Based on the review, it has been decided to issue comprehensive guidelines on the measures to be put in place by the banks covering various aspects of classifying accounts and deposits as inoperative accounts and unclaimed deposits, as the case may be, periodic review of such accounts and deposits, measures to prevent fraud in such accounts/deposits, grievance redressal mechanism for expeditious resolution of complaints, steps to be taken for tracing the customers of inoperative accounts/ unclaimed deposits including their nominees/ legal heirs for re-activation of accounts, settlement of claims or closure and the process to be followed by them. The revised instructions shall come into effect from April 1, 2024.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12589&Mode=0>

- **Master Direction - Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024 (Notification no. RBI/FMRD/2023-24/109 FMRD.DIRD.09/14.02.001/2023-24 dated January 03, 2024)**

The draft Directions on Call, Notice and Term Money, Certificate of Deposit and the Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year markets were released for market feedback on December 04, 2020. The Master Direction - Reserve Bank of India (Call, Notice and Term Money Markets) Directions, 2021 and the Master Direction - Reserve Bank of India (Certificate of Deposit) Directions, 2021 were issued on April 01, 2021 and June 04, 2021 respectively. The Master Direction - Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024 have been reviewed based on market feedback and are being issued herewith.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12592&Mode=0>

- **Amendment to the Master Direction (MD) on KYC (Notification no. RBI/2023-24/107DOR.AML.REC.66/14.01.001/2023-24 dated January 04, 2024)**

In order to provide better clarity, it has been decided to include the definition of PEPs as an explanation to Section 41 of the Master Direction. The definition of PEPs is: “Politically Exposed Persons” (PEPs) are individuals who are or have been entrusted with prominent public functions by a foreign country, including the Heads of States/Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials.”

For details: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12593&Mode=0>

- **Risk Management and Inter-Bank Dealings – Hedging of foreign exchange risk (Notification no. RBI/2023-24/108A. P. (DIR Series) Circular No. 13 dated January 05, 2024)**

The foreign exchange risk management facilities have been reviewed based on the feedback received from market participants and experience gained since the revised framework came into force. Also, the Directions in respect of all types of foreign exchange transactions (including cash, tom and spot) have been consolidated and some of the existing directions are suspended by the RBI. The revised Directions shall come into effect from April 05, 2024, replacing the existing Directions in Part A (Section I) of the Master Direction – Risk Management and Interbank Dealings dated July 5, 2016.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12594&Mode=0>

- **Submission of Advance Reinsurance Programme (Circular Ref: IRDAI/REIN/CIR/RISF/4/1/2024 dated January 05, 2024)**

The Insurance Regulatory and Development Authority of India (IRDAI) has issued the IRDAI (Re-Insurance) Regulations, 2018 which deal with the operational aspects of placement of reinsurance. As per the Regulation 3(A) of the above Regulations an advance reinsurance programme shall be submitted by every insurer in a specified summary format, to the Authority, at least 45 days before the commencement of the financial year.

For details: <https://irdai.gov.in/document-detail?documentId=4297326>

- **Investments in Infrastructure Debt Funds-NBFC (Circular Ref: IRDAI/F&I/INV/CIR/003/01/2024 dated January 05, 2024)**

Reference is drawn to Note 2 of Regulation 9 of IRDAI(Investment) Regulations 2016 which stipulates that "Investment in Infrastructure Debt Fund (IDF), backed by Central Government as approved by the Authority, on a case to case basis shall be reckoned for "investments in infrastructure. Accordingly, the Authority had allowed insurers' investments in certain IDFs on case to case basis.

For details: <https://irdai.gov.in/document-detail?documentId=4296416>

- **Credit/Investment Concentration Norms – Credit Risk Transfer (Notification no. RBI/2023-24/112 DOR.CRE.REC.70/21.01.003/2023-24 dated January 15, 2024)**

The guidelines on Large Exposures Framework (LEF) are applicable to NBFC-Upper Layer (NBFC-UL) in terms of paragraph 110 of the MD on NBFC. The NBFC-Base Layer (NBFC-BL) and NBFC-Middle Layer (NBFC-ML) are, however, governed by the credit/investment concentration norms prescribed at paragraphs 32 and 91 of the MD on NBFC, paragraph 20 of MD on HFC and circular on Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs dated October 22, 2021. In order to ensure uniformity and consistency in computation of concentration norms among NBFCs, a review of the extant concentration norms has been carried out and regulations for NBFC- ML, BL & UL has been issued.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12598&Mode=0>

- **Guidelines on Appointment / Re-appointment of Statutory Auditors of State Co-operative Banks and Central Co-operative Banks (Notification no. RBI/2023-24/113Ref.No.DOS.ARG/SEC.8/08.91.001/2023-24 dated January 15, 2024)**

The Banking Regulation (Amendment) Act, 2020, notified in the Gazette of India on September 29, 2020, has come into force with effect from April 01, 2021, for Rural Co-operative Banks i.e., State Co-operative Banks (StCBs) and Central Co-operative Banks (CCBs). Accordingly, Reserve Bank of India (RBI), in exercise of its powers conferred under Section 30(1A) of the Banking Regulation Act, 1949, has framed the guidelines which shall be applicable to StCBs and CCBs for seeking prior approval of RBI for appointment, re-appointment or removal of Statutory Auditor (SA), and other related matters. These guidelines shall come into effect from April 1, 2024.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12599&Mode=0>

- **Master Circular- Exposure Norms and Statutory / Other Restrictions – UCBs (Notification no. RBI/2023-24/114DoR.CRE.REC.71/07.10.002 /2023-24 dated January 16, 2024)**

The Reserve Bank of India has issued the Master Circular- Exposure Norms and Statutory / Other Restrictions – UCBs. As a prudential measure aimed at better risk management and avoidance of concentration of credit risk, primary (Urban) Co-operative Banks (UCBs) have been advised to fix limits on their exposure. In addition, these banks are also required to observe certain statutory and regulatory restrictions in respect of advances against shares, debentures and bonds and investments in shares, debentures and bonds.

For details: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12600&Mode=0>

- **Second Schedule to the Reserve Bank of India Act, 1934 – Norms for inclusion (Notification no. RBI/2023-24/115 DoR.REG/LIC.No. 72/16.05.000/2023-24 dated January 17, 2024)**

Subsequent to release of the Revised Regulatory Framework for Urban Co-operative Banks (UCBs) on July 19, 2022, revised categorization norms for UCBs for regulatory purposes was notified vide circular DOR.REG.No.84/07.01.000/2022-23 dated December 01, 2022 and the criteria for classifying a UCB as Financially Sound and Well Managed (FSWM) have been revised vide circular DOR.REG.No.85/07.01.000/2022-23 dated December 01, 2022. It has now been decided to revise the eligibility norms for inclusion of UCBs in the Second Schedule to the Reserve Bank of India Act, 1934 to bring them in conformity with the Revised Regulatory Framework.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12601&Mode=0>

- **Finances of Panchayati Raj Institutions (Press release dated January 24, 2024)**

The Reserve Bank of India (RBI) released its Report titled “Finances of Panchayati Raj Institutions”. Drawing upon data on 2.58 lakh Panchayats for the years 2020-21 to 2022-23, it presents an assessment of their finances and their role in India’s socio-economic development.

For details: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=57182

DIRECT TAX

Notifications

- **'Bellary Urban Development Authority' notify u/s 10(46) [Notification No. 1 Dated January 2, 2024]**

The Central Government notifies 'Bellary Urban Development Authority' (PAN AAALB0037A), an Authority constituted by the State Government of Karnataka, for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961, in respect of certain specified income arising to that authority, subject to fulfilment of certain conditions.

Accordingly, Bellary Urban Development Authority can claim exemption u/s 10(46) subject to fulfilment of certain conditions.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-1-2024.pdf>

- **'Karnataka State Rural Livelihood Promotion Society' notify u/s 10(46) [Notification No. 2 Dated January 2, 2024]**

The Central Government notifies 'Karnataka State Rural Livelihood Promotion Society' (PAN AACAK0581H), a body constituted by the Government of Karnataka, for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961, in respect of certain specified income arising to that body, subject to fulfilment of certain conditions.

Accordingly, 'Karnataka State Rural Livelihood Promotion Society' can claim exemption u/s 10(46) subject to fulfilment of certain conditions.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-2-2024.pdf>

- **'Madhya Pradesh Professional Examination Board', Bhopal notify u/s 10(46) [Notification No. 3 Dated January 2, 2024]**

The Central Government notifies Madhya Pradesh Professional Examination Board, Bhopal (PAN- AAAGP1792B), a Board constituted by the Madhya Pradesh Government, for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961, in respect of certain specified income arising to that body, subject to fulfilment of certain conditions.

Accordingly, 'Madhya Pradesh Professional Examination Board' can claim exemption u/s 10(46) subject to fulfilment of certain conditions.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-3-2024.pdf>

- **Central Government notifies Investment in Financial Product by Non Resident with 'IFSC Capital Market Intermediary' for Section 10(4G) Exemption [Notification No. 4 Dated January 4, 2024]**

Section 10(4G) exempts income earned by a non-resident from its portfolio subject to certain conditions. With effect from Assessment Year 2024-25, the Finance Act 2023

has extended the scope of this exemption to any income received by a non-resident from the specified activity carried out by the specified person. The Central Government is empowered to notify the activity and the person who can carry out such activity.

Exercising such power, the Central Government has notified the non-resident's activity of investment in a financial product, in accordance with the contract with such non-resident entered into by a capital market intermediary, being a Unit of an International Financial Services Centre.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-4-2024.pdf>

- **'District Legal Service Authority Union Territory Chandigarh' notify u/s 10(46) [Notification No. 6 Dated January 5, 2024]**

The Central Government notifies 'District Legal Service Authority Union Territory Chandigarh' (PAN: AAAGD1545A), an Authority constituted by the Administrator, Union Territory, Chandigarh under the Legal Services Authority Act, 1987, for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961, in respect of certain specified income arising to that authority, subject to fulfilment of certain conditions.

Accordingly, 'District Legal Service Authority Union Territory Chandigarh' can claim exemption u/s 10(46) subject to fulfilment of certain conditions.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-6-2024.pdf>

- **Karmayogi Bharat notify u/s 10(46) [Notification No. 7 Dated January 5, 2024]**

The Central Government notifies 'Karmayogi Bharat (PAN: AAJCK2949L), a Company incorporated under Section 8 of the Companies Act, 2013 with 100% equity shared owned by the President of India i.e. Government of India, for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961, in respect of certain specified income arising to that company, subject to fulfilment of certain conditions.

Accordingly, Karmayogi Bharat can claim exemption u/s 10(46) subject to fulfilment of certain conditions.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-7-2024.pdf>

- **'Haryana State Board of Technical Education, Panchkula' notify u/s 10(46) [Notification No. 8 Dated January 5, 2024]**

The Central Government notifies 'Haryana State Board of Technical Education, Panchkula' (PAN: AAAGT0008A), a Board constituted by Government of Haryana, for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961, in respect of certain specified income arising to that Board, subject to fulfilment of certain conditions.

Accordingly, 'Haryana State Board of Technical Education' can claim exemption u/s 10(46) subject to fulfilment of certain conditions.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-8-2024.pdf>

- **'Polavaram Project Authority, Hyderabad notify u/s 10(46) [Notification No. 9 Dated January 5, 2024]**

The Central Government notifies 'Polavaram Project Authority, Hyderabad (PAN: AAAGP0436N), an Authority constituted by the Central Government, for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961, in respect of certain specified income arising to that Authority, subject to fulfilment of certain conditions.

Accordingly, 'Polavaram Project Authority' can claim exemption u/s 10(46) subject to fulfilment of certain conditions.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-9-2024.pdf>

- **'Chennai Metropolitan Water Supply and Sewerage Board' notify u/s 10(46) [Notification No. 10 Dated January 8, 2024]**

The Central Government notifies 'Chennai Metropolitan Water Supply and Sewerage Board' (PAN: AAALM0037B), a Board constituted by the Government of Tamil Nadu, for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961, in respect of certain specified income arising to that Board, subject to fulfilment of certain conditions.

Accordingly, 'Chennai Metropolitan Water Supply and Sewerage Board' can claim exemption u/s 10(46) subject to fulfilment of certain conditions.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-10-2024.pdf>

- **'Punjab State Faculty of Ayurvedic and Unani Systems of Medicine' notify u/s 10(46) [Notification No. 11 Dated January 8, 2024]**

The Central Government notifies 'Punjab State Faculty of Ayurvedic and Unani Systems of Medicine' (PAN: AAALT1669E), a body constituted by the Punjab Government for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961, in respect of certain specified income arising to that Body, subject to fulfilment of certain conditions.

Accordingly, 'Punjab State Faculty of Ayurvedic and Unani Systems of Medicine' can claim exemption u/s 10(46) subject to fulfilment of certain conditions.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-11-2024.pdf>

- **'State Legal Service Authority Union Territory Chandigarh' notify u/s 10(46) [Notification No. 15 Dated January 23, 2024]**

The Central Government notifies 'State Legal Service Authority Union Territory Chandigarh' (PAN: AAAGS1716A), an Authority constituted by the Administrator, Union Territory, Chandigarh under the Legal Services Authority Act, 1987 (Central Act 39 of 1987), for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961 in respect of the certain specified income arising to the said Authority subject to fulfilment of certain conditions.

Accordingly, 'State Legal Service Authority Union Territory Chandigarh' can claim exemption u/s 10(46) subject to fulfilment of certain conditions.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-15-2024.pdf>

Circulars

- **Explanatory Circular Explaining the Provisions of the Finance Act, 2023 [Circular No. 1 Dated January 23, 2024]**

The Finance Act, 2023 as passed by the Parliament, received the assent of the President on 31st March, 2023 and has been enacted as Act No. 8 of 2023. This circular explains substance of the provisions of the Finance Act, 2023 relating to direct taxes.

For details:

<https://incometaxindia.gov.in/communications/circular/circular-1-2024.pdf>

INDIRECT TAX**Goods & Services Tax (GST)**

Special procedure to be followed by a registered person engaged in manufacturing of some specified goods (e.g., Pan masala, Unmanufactured tobacco, hookah etc.) (Notification no. 04/2024 Central Tax dated January 05, 2024)

The Central Government, on the recommendations of the GST Council, notified the special procedure to be followed by a registered person engaged in manufacturing of the goods, the description of which is specified in the corresponding entry in column (3) of the Schedule and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule.

For details: <https://taxinformation.cbic.gov.in/view-pdf/1009983/ENG/Notifications>



Legal Maxims

S. No.	Legal Maxim	Meaning	Example
1.	<i>Fiat justitia ruat caelum</i>	Let justice be done though the heavens fall	Also sometimes a motto, a legal maxim that justice must be done regardless of the result otherwise. <i>Example</i> : The applicability of legal maxim <i>Fiat justitia ruat caelum</i> can be discussed at various forums.
2.	<i>Fieri facias</i>	May you cause to be done	A writ ordering the local law enforcement to ensure that damages awarded by the court are properly recovered. A writ of execution. <i>Example</i> : Appropriate <i>Fieri Facias</i> orders were made by the Court.
3.	<i>Forum non conveniens</i>	Disagreeable forum	A concept wherein a court refuses to hear a particular matter, citing a more appropriate forum for the issue to be decided. <i>Example</i> : The principle of legal maxim <i>Forum non conveniens</i> should be considered before filing a suit.
4.	<i>Gravamen</i>	Things weighing down	The basic element or complaint of a lawsuit. <i>Example</i> : finding out the <i>Gravamen</i> is important for deciding a matter in dispute.
5.	<i>Imprimatur</i>	Let it be printed	An authorization for a document to be printed. Used in the context of approval by a religious body or other censoring authority. <i>Example</i> : <i>Imprimatur</i> copies were preferred by the adjudicating authority over oral submissions.



Legal World

CORPORATE LAWS

Landmark Judgement

LALITA JALAN & ANR v. BOMBAY GAS CO. LTD & ORS [SC]

Appeal (Crl) No.774 of 2003

S. Rajendra Babu, Ar. Lakshmanan & b G.P. Mathur, JJ. [Decided on 16/04/2003]

Equivalent citations: AIR 2003 SC 3157; 2003 AIR SCW 2175; (2003) 4 JT 64 ; 2003 (6) SCC 107; (2003) 114 Comp Cas 515.

Companies Act,1956-section 630- Recovery of company property- legal heirs of the deceased director withholding the property- whether they are coming within the ambit of the section- Held, Yes.

Brief facts : The appellants are legal heirs of the deceased director of the respondent company. The deceased director was allotted a company flat which the appellants continued to retain and occupied the death of the director and they refused to vacate the flat. The respondent company initiated proceedings under section 630 of the Companies Act,1956 The appellants contended that they are not officers of the company and the said provision is not applicable to them. The trial court and the High Court rejected this contention. Aggrieved they approached then Supreme Court.

Decision : Dismissed.

Reason : The question which requires consideration is whether the appellants having not vacated the flat after the death of Shri N.K. Jalan to whom it was allotted in his capacity as Director of the Company, come within the ambit of Section 630 of the Act. The main ingredient of the Section is wrongful withholding of the property of the company or knowingly applying it to purposes other than those expressed or directed in the articles and authorised by the Act. The dictionary meaning of the word "withholding" is to hold back; to keep back; to restrain or decline to grant. The holding back or keeping back is not an isolated act but is a continuous process by which the property is not returned or restored to the company and the company is deprived of its possession. If the officer or employee of the company does any such act by which the property given to him is wrongfully withheld and is not restored back to the company, it will clearly amount to an offence within the meaning of Section 630 of the Act. The object of enacting the Section is that property of the company is preserved and is not used for purposes other than those expressed or directed in the Articles of Association of the company or as authorised by the provisions of the Act. On a literal interpretation of Section 630 of the Act the wrongful withholding of the property of the company by a person who has ceased to be an officer or employee thereof may not come within the ambit of the provision as he is no longer an officer or employee of the company.

The view expressed in J.K. (Bombay) Ltd. (supra) runs counter to the view expressed in Abilash Vinodkumar Jain (supra) wherein it has been clearly held that the object of Section 630 of the Act is to retrieve the property of the company where wrongful holding of the property is done by an employee, present or past, or heirs of the deceased employees or officer or anyone claiming the occupancy through such employee or officer. The view expressed in Abilash Vinodkumar Jain (supra) clearly subserves the object of the Act which

is to the effect of recovering the possession of the property belonging to the company. If it is held that other members of the family of the employee or officer or any person not connected with the family who came into possession through such employee would not be covered by Section 630 of the Act, such a view will defeat the quick and expeditious remedy provided therein. The basic objections to this view is that the aforesaid provision contained in Section 630 of the Act is penal in nature and must be strictly construed and therefore the actual words used should not be given any expansive meaning. A provision of this nature is for the purpose of recovery of the property and if, in spite of demand or subsequent order of the court, the possession of the property is not returned to the company, the question of imposing penalty will arise. Similar provisions are available even under the Code of Civil Procedure. In execution of a decree for recovery of money or enforcement of an injunction, the judgment-debtor can be committed to a prison. Such a provision by itself will not convert the civil proceeding into a criminal one. Even assuming that the said provision is criminal in nature, the penalty will be attracted in the event of not complying with the demand of the recovery of the possession or pursuant to an order made thereof. The possession of the property by an employee or anyone claiming through him of such property is unlawful and recovery of the same on the pain of being committed to a prison or payment of fine cannot be stated to be unreasonable or irrational or unfair so as to attract the rigour of Article 21 of the Constitution. If the object of the provision of Section 630 of the Act is borne in mind, the expansive meaning given to the expression 'employee or anyone claiming through him' will not be unrelated to the object of the provision nor is it so farfetched as to become unconstitutional. Therefore, with profound respects the view expressed in J.K. (Bombay) Ltd. (supra) in our opinion is not correct and the view expressed in Abilash Vinodkumar Jain (supra) is justified and should be accepted in interpreting the provision of Section 630 of the Act.

If an erstwhile or former employee is prosecuted under Section 630 of the Act on account of the fact that he has not vacated the premises and continues to remain in occupation of the same even after termination of his employment, in normal circumstances it may not be very proper to prosecute his wife and dependent children also as they are bound to stay with him in the same premises. The position will be different where the erstwhile or former employee is himself not in occupation of the premises either on account of the fact that he is dead or he is living elsewhere. In such cases all those who have come in possession of the premises with the express or implied consent of the employee and have not vacated the premises would be withholding the delivery of the property to the company and, therefore, they are liable to be prosecuted under Section 630 of the Act. This will include anyone else who has been inducted in possession of the property by such persons who continue to withhold the possession of the premises as such person is equally responsible for withholding and non- delivery of the property of the company.

In view of the discussions made above, we are of the opinion that the plea taken by the appellants for recall of the process issued against them has no substance. The fact that the appellant no.2 Siddharth Jalan was born subsequent to the death of N.K. Jalan, would make no difference as his occupation of the flat in question clearly amounts to withholding of the property of the company. The appeal is accordingly dismissed.

BHARTI AIRTEL LTD & ANR v. VIJAYKUMAR V. IYER & ORS [SC]

Civil Appeal Nos. 3088-3089 of 2020

Sanjiv Khanna & S.V.N. Bhatti, JJ.[Decided on 03/01/2024]

Insolvency and Bankruptcy Code,2016- CIRP- section 25- right to claim set off-whether the appellant entitled to claim set-off- Held,No.

Brief facts: The present appeals raise an interesting question on the right to claim set-off in the Corporate Insolvency Resolution Process, when the Resolution Professional proceeds in terms of clause (a) to sub-section (2) of Section 25 of the Insolvency and Bankruptcy Code, 2016 to take custody and control of all the assets of the corporate debtor.

The dispute emanates from the 8 spectrum trading agreements entered into by Bharti Airtel Ltd and Bharti Hexacom Ltd (Airtel entities) with Airtel Ltd and Dishnet wireless Ltd(Airtel entities) for purchase of the right to use the spectrum allocated to the latter in the 2300 MHz band. Corporate Insolvency Resolution Process was initiated against Airtel entities. Airtel filed its claim and RP of the Airtel adjusted certain claim owed by airtel to Airtel.

Decision : Dismissed.

Reason : In the present case we are examining and concerned with the provisions as applicable to the Corporate Insolvency Resolution Process in Chapter II Part II of the IBC.

Having examined the different concepts of set-off including insolvency set-off, we would now like to examine the contentions raised by the parties with reference to the provisions of the Corporate Insolvency Resolution Process under the IBC. Further, the provisions relating to Chapter II Part II being explicit and not ambiguous, do not require purposive interpretation. We should, however, take on record that the UNCITRAL guide does distinguish between the set-off obligations maturing prior to the commencement of the insolvency proceedings and set-off obligations after the commencement of the insolvency proceedings.

On the aspect of mutual dealings and also equity, it is to be noted that adjustment of the inter-connect charges are under a separate and distinct agreement. The telephone service providers use each other's facilities as the caller or the receiver may be using a different service provider. Accordingly, adjustments of set-off are made on the basis of contractual set-off. These are also justified on the ground of equitable set-off. The set-off to this extent has been permitted and allowed by the Resolution Professional. The transaction for purchase of the right to use the spectrum is an entirely different and unconnected transaction. The agreement to purchase the spectrum encountered obstacles because the DoT had required bank guarantees to be furnished. Accordingly, Airtel entities, on the request of Airtel entities had furnished bank guarantees on their behalf. The bank guarantees were returned and accordingly Airtel entities became liable to pay the balance amount in terms of the letters of understanding. The amounts have become payable post the commencement of the Corporate Insolvency Resolution Process. For the same reason, we will also reject the argument that by not allowing set-off, new rights are being created and, therefore, Section 14 of the IBC will not be operative and applicable. Moratorium under Section 14 is to grant protection and prevent a scramble and dissipation of the assets

of the corporate debtor. The contention that the “amount” to be set-off is not part of the corporate debtor’s assets in the present facts is misconceived and must be rejected.

Having considered the contentions raised by the appellant Airtel entities in detail, and in light of the provisions of the IBC relating to the Corporate Insolvency Resolution Process, we do not find any merit in the present appeals and the same are dismissed. There will be no order as to costs.

DBS BANK LTD SINGAPORE v. RUCHI SOYA INDUSTRIES LTD & ANR [SC]

Civil Appeal No. 9133 of 2019 with Civil Appeal No. 787 of 2020

Sanjiv Khanna & S.V.N. Bhatti, JJ. [Decided on 03/01/2024]

Insolvency and bankruptcy code, 2016- section 30- right of dissenting financial creditor to receive minimum value of secured interest- conflict of opinion- referred to larger bench.

Brief facts: The issue that arises for consideration in the present appeals is whether Section 30(2)(b)(ii) of the Insolvency and Bankruptcy Code, 2016, as amended in 2019, entitles the dissenting financial creditor to be paid the minimum value of its security interest?

Decision: Referred to larger bench as there was conflict of opinion.

Reason: We would, for the above reasons, reject the submission on behalf of the respondents that Section 30(2)(b)(ii) is unworkable because it involves deeming fiction relating to liquidation, which is inapplicable during the CIRP period. This would be contrary to the legislative intent and is unacceptable.

Respondent no. 2 – CoC has submitted that the appellant has dissented because it did not approve the manner of distribution of the proceeds under the resolution plan. The appellant did not dispute the resolution plan itself. Accordingly, Section 30(2)(b)(ii) is not applicable. The argument is fallacious and must be rejected. Section 30(2)(b)(ii) relates to the proportion of the proceeds mentioned in the resolution plan or the amount which the dissenting financial creditor would be entitled to in terms of the waterfall mechanism provided in Section 53(1), if the corporate debtor goes into liquidation. The dissenting financial creditor does not have any say when the resolution plan is approved by a two-third majority of the CoC. The resolution plan will be accepted when approved by the specified majority in the CoC. The dissenting financial creditor cannot object to the resolution plan, but can object to the distribution of the proceeds under the resolution plan, when the proceeds are less than what the dissenting financial creditor would be entitled to in terms of Section 53(1) if the corporate debtor had gone into liquidation. This is the statutory option or choice given by law to the dissenting financial creditor. The option/choice should be respected.

Respondent no. 2 – CoC had referred to the objections referred to in the CoC meetings dated 15.04.2019 and 23.04.2019. We are of the view that the objections raised by the appellant relate to the distribution of the proceeds in terms of the liquidation plan. According to them, they were entitled to money of value not less than the amount that they would have received under Section 53(1) of the Code.

It is also argued that the NCLAT had rejected the first appeal on the ground that the appellant had only challenged the distribution of the pay-out under the plan inter se the financial creditors of the corporate debtor and not the resolution plan. Accordingly, the amendment to Section 30(2)(b) vide the Amendment Act of 2019 was not applicable. We

have already rejected this argument, for the reasons set out above. In our opinion, the contention that the appellant is not the dissenting financial creditor is to be rejected.

The contention on behalf of the respondent that there is conflict between sub-section (4), as amended in 2019, and the amended clause (b) to sub-section (2) to Section 30 of the Code does not merit a different ratio and conclusion. Section 30(4) states that the CoC may approve the resolution plan by a vote not less than 66% of the voting share of the financial creditor. It states that the CoC shall consider the feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors under sub-section (1) to Section 53, including the priority and value of the security interest of the secured creditors, and other requirements as may be specified by the Board. These are the aspects that the CoC has to consider. It is not necessary for the CoC to provide each assenting party with liquidation value. However, a secured creditor not satisfied with the proposed pay-out can vote against the resolution plan or the distribution of proceeds, in which case it is entitled to full liquidation value of the security payable in terms of Section 53(1) on liquidation of the corporate debtor. The conflict with sub-clause (ii) to clause (b) to sub-section (2) to Section 30 does not arise as it relates to the minimum payment which is to be made to an operational creditor or a dissenting financial creditor. A dissenting financial creditor does not vote in favour of the scheme. Operational creditors do not have the right to vote.

In view of the aforesaid discussion, and as we are taking a different view and ratio from *India Resurgence ARC Private Limited (supra)* on interpretation of Section 30(2)(b)(ii) of the IBC, we feel that it would be appropriate and proper if the question framed at the beginning of this judgment is referred to a larger Bench. The matter be, accordingly, placed before the Hon'ble the Chief Justice for appropriate orders.

TAX LAWS

M/S K.P. MOZIKA v. OIL AND NATURAL GAS CORPORATION LTD [SC]

Civil Appeal No.3548 of 2017

Abhay S. Oka & Rajesh Bindal, JJ. [Decided on 09/01/2024]

Assam General Sales tax Act and VAT Act - hiring of vehicles, cranes etc- whether taxable as transfer of right to use goods- Held, No.

Brief facts: This group of appeals concerns the liability to pay tax under the Assam General Sales Tax Act, 1993 (for short, 'the Sales Tax Act') and the Assam Value Added Tax Act, 2003 (for short, 'the VAT Act'), respectively. In some cases, in this group of appeals, the assessee has, under a contract, agreed to provide different categories of motor vehicles, such as trucks, trailers, tankers, buses, scrapping winch chassis, and cranes, to the Oil and Natural Gas Corporation Limited (for short, 'ONGC'). There are other cases where Indian Oil Corporation Limited (for short, 'IOCL') has entered into agreements with transporters to provide tank trucks to deliver its petroleum products.

These cases have been clubbed together as similar questions of law and fact arise. Broadly, the question is whether, by hiring these motor vehicles/cranes, there is a transfer of the right to use any goods. If there is a transfer of the right to use the goods, it will amount to a sale in terms of Clause 29A(d) of Article 366 of the Constitution of India. In short, if the transactions do not fall in the definition of 'Sale' in Clause 29A(d), the same may not attract

tax under the Sales Tax Act or the VAT Act. As a result, there will be other questions about whether the transactions will amount to service, thereby attracting liability to pay service tax.

Decision : Allowed.

Reason: In our opinion, the essence of the right under Article 366(29A)(d) is that it relates to user of goods. It may be that the actual delivery of the goods is not necessary for effecting the transfer of the right to use the goods but the goods must be available at the time of transfer, must be deliverable and delivered at some stage. It is assumed, at the time of execution of any agreement to transfer the right to use, that the goods are available and deliverable. If the goods, or what is claimed to be goods by the respondents, are not deliverable at all by the service providers to the subscribers, the question of the right to use those goods, would not arise." (underline supplied) Thus, this Court held that to attract subclause (d) of Clause 29A of Article 366, the goods must be available at the time of transfer, must be deliverable and delivered at some stage. If the goods are not deliverable at all by the service provider to the subscriber, the question of the right to use those goods would not arise.

Essentially, the transfer of the right to use will involve not only possession, which may be granted at some stage (after execution of the contract), but also the control of the goods by the user. When the substantial control remains with the contractor and is not handed over to the user, there is no transfer of the right to use the vehicles, cranes, tankers, etc. Whenever there is no such control on the goods vested in the person to whom the supply is made, the transaction will be of rendering service within the meaning of Section 65(105) (zzzzj) of the Finance Act after the said provision came into force.

To conclude, all the appeals preferred by the assesseees will have to be allowed. Accordingly, we allow all the appeals of the assesseees by holding that the contracts are not covered by the relevant provisions of the Sales Tax Act and of the VAT Act, as the contracts do not provide for the transfer of the right to use the goods made available to the person who is allowed to use the same.

M/S ABHISHEK TRADING CORPORATION v. COMMISSIONER (APPEALS) & ANR [ALL]

Writ Tax No. 1394 of 2023

Shekhar B. Saraf, J. [Decided on 19/01/2024]

Central Goods and Services Act, 2017- Section 107- first appeal- limitation of 3 months plus 30 days for condonation of delay- appeal filed after 120 days- whether barred by limitation-Held, Yes.

Brief facts : The petitioner is aggrieved by the order dated August 28, 2023 passed by the appellate authority being the Commissioner (Appeals), CGST and Central Appeal Commissionerate, Allahabad under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act"). By the aforesaid order, the appellate authority dismissed the appeal filed by the petitioner on the ground that the same was time barred as it was filed beyond the period of four months.

Decision : Dismissed.

Reason : Upon perusal of the memo of appeal filed by the petitioner, it is clear that the order was communicated on October 13, 2021, as admitted by the petitioner itself. It is further to be noted that the order cancelling the registration was passed even earlier on January 22, 2021 and had been uploaded on the portal. As there is no dispute with regard

to communication of the order and the fact that the appeal was filed beyond the time prescribed, this Court under the extraordinary jurisdiction cannot interfere with the appellate authority's order as the application of Limitation Act, 1963 does not apply to Section 107 of the Act.

The Supreme Court in *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Others* reported in (2008) 3 SCC 70, while dealing with a similar issue as in the present case, has held as under:

"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short 'the Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

In *Commissioner of Customs and Central Excise v. Hongo India Private Limited and Another* reported in (2009) 5 SCC 791, the Supreme Court has reiterated its stand and held as under:

"31. In this regard, it is useful to refer to a recent decision of this Court in *Punjab Fibres Ltd.* [(2008) 3 SCC 73] The Commissioner of Customs, Central Excise, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35-H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following *Singh Enterprises v. CCE* [(2008) 3 SCC 70] and *Punjab Fibres Ltd.* case [(2008) 3 SCC 73] concluded that the High Court was justified in holding that there was no power for condonation of delay in filing reference application.

As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High

Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

The Central Goods and Services Act is a special statute and a self-contained code by itself. Section 107 of the Act has an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite law that Section 5 of the Limitation Act, 1963 will apply only if it is extended to the special statute. Section 107 of the Act specifically provides for the limitation and in the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. Accordingly, one cannot apply Section 5 of the Limitation Act, 1963 to the aforesaid provision. In light of the above, no interference is required in this petition and the same is, accordingly, dismissed.

GENERAL LAWS

RELIANCE LIFE INSURANCE COMPANY LTD & ANR v. JAYA WADHWANI [SC]

Civil Appeal No.....of 2024 [@ SLP(C) No.10954 of 2019] with Civil Appeal No.....of 2024 [@ SLP(C) No.15888 of 2021]

Vikram Nath & Rajesh Bindal, JJ. [Decided on 03/01/2024]

Insurance policy - from what date the policy becomes effective- Supreme court explains the law.

Brief facts: The sole question involved in these appeals is as to what would be the date from which the policy becomes effective; whether it would be the date on which the policy is issued or the date of the commencement mentioned in the policy or it would be the date of the issuance of the deposit receipt or cover note. The District Consumer Disputes Redressal Forum, the State Consumer Disputes Redressal Commission and the National Commission have proceeded on the basis that the date of issuance of the initial deposit receipt of premium is the date of commencement of the Policy and have accordingly allowed the complaint filed by the respondent.

Decision : Allowed.

Reason : We may also refer to the two judgments relied upon by the counsel for the appellants, in support of his submission that the terms and conditions of the contract as contained in the policy should be strictly adhered to. Otherwise mentioning of the terms and conditions would be a futile exercise, if any other interpretation is given or terms and conditions are relaxed.

In this connection, it would be useful to reproduce the extract which form part of paragraph 6 in the case of Life Insurance Corporation of India and Another vs. Dharam Vir Anand. It reads as follows:

"6. Having examined the rival submissions and having examined the policy of insurance which is nothing but a contract between the parties and having considered the expressions used in Clause 4-B of the terms of the policy, we are persuaded to accept the submissions made by Mr. Salve, the learned Senior Counsel appearing for the appellant. In construing a particular Clause of the Contract, it is only reasonable to construe that the words and the terms used therein must be given effect to. In other words, one part of the Contract cannot be made otiose by giving a meaning to the policy of the contract. Then again, when the same Clause of a contract (1998) 7 SCC 348 uses two different expressions, ordinarily those

different expressions convey different meanings and both the expressions cannot be held to be conveying one and the same meaning.

Bearing in mind the aforesaid principle of construction, if Clause 4- B of the terms of policy is scrutinized, it become crystal clear that the date on which the risk under the policy has commenced is different from the date of the policy. In the case in hand, undoubtedly the date on which the risk under the policy has commenced is 10.5.89 but the date of the policy is 31.03.1990 on which date the policy had been issued. Even though the Insurer had given the option to the Insured to indicate as to whether the policy is to be dated back and the insured indicated that the policy should be dated back to 10.05.1989 and did pay the premium for that period, thereby the risk under the policy can be said to have commenced with effect from 10.5.1989 but the date of the policy still remains the date on which the policy was issued i.e. 31.03.1990. The death of the life assured having occurred as a result of suicide committed by the assured before the expiry of three years from the date of the policy, the terms contained in Clause 4-B of the policy would be attracted and, therefore, the liability of the Corporation would be limited to the sum equal to the total amount of premium paid under the policy without interest and not the entire sum for which the life had been insured. The Forums under the Consumer Protection Act committed gross error in construing Clause 4-B of the policy and giving the same meaning to the two expressions in the aforesaid Clause 4-B namely "the date on which the risk under the policy has commenced" and "the date of the policy".

The construction given by us to the provisions contained in Clause 4-B get support, if the proviso to Clause 4-B is looked into. Under the proviso, if the life assured commits suicide before expiry of one year reckoned from the date of the policy, then the provisions of the Clause under the heading "suicide" printed on the back of the policy would apply. In a case therefore where a policy is dated back for one year prior to the date of the issue of the policy, the proviso contained in Clause 4-B cannot be operated at all. When parties had agreed to the terms of the contract, it is impermissible to hold that a particular term was never intended to be acted upon. The proviso to Clause 4-B will have its full play if the expression "the date of the policy" is interpreted to mean the date on which the policy was issued and not the date on which the risk under the policy has commenced. In the aforesaid premises, we are of the considered opinion that under Clause 4-B of the policy the date of the policy is the date on which the policy had been issued and not the date on which the risk under the policy had commenced by way of allowing it to be dated back. In view of our aforesaid construction to Clause 4-B, in the case in hand, the respondent in law would be entitled to only the sum equal to the total amount of premium paid under the policy without any interest inasmuch as the death of the life assured has occurred before the expiry of three years from the date of the policy, i.e., 31.3.1990... .."

Relying upon the above judgment in the case of Dharam Vir Anand (supra), this Court again in the case of Life Insurance Corpn. of India vs. Mani Ram, reiterated the same view and held that the date of issue of policy would be the relevant date even if there was backdating as has been done in the case of Dharam Vir Anand (supra).

In the present appeals, we do not find any such issue of back dating but the date of issuance of the policy would be the relevant date for all the purposes and not the date of proposal or the date of issuance of the receipt. In view of the above, the stand taken by the appellant is approved. The impugned orders are thus liable to be set aside. Accordingly, the orders passed by the District Forum, the State Commission, and the National Commission are set aside and the claims of the respondent are rejected. The appeals are, accordingly, allowed as above.

SUSHMA SHIVKUMAR DAGA & ANR v. MADHURKUMAR RAMKRISHNAJI BAJAJ[SC]

Civil Appeal No.1854 of 2023

Aniruddha Bose & Sudhanshu Dhulia, JJ. [Decided on 15/12/2023]

Arbitration and Conciliation Act, 1996- section 8- Conveyance deed based on several tri-partite agreements- tripartite agreement contained arbitration clause- plaintiff filed suit on the basis of conveyance deed- defendants filed application filed to refer the case to arbitration- whether tenable-Held Yes.

Brief facts : The appellants/Plaintiffs filed a civil suit seeking declaration that the Conveyance Deed dated 17.12.2019 to be declared null and void, and that the registered Development Agreements dated 17.09.2007, 20.11.2007, 30.11.2007, 03.12.2007 and 27.02.2008 stand validly terminated. The respondents/defendants moved an application under Section 8 of the Arbitration & Conciliation Act, 1996 for referring the matter to arbitration by relying upon the arbitral clause in the two agreements dated 31.03.2007 and 25.07.2008. It was contended that the aforesaid agreements formed the basis of the Conveyance Deed and the Development Agreements which are subject matter of the suit. The Trial Court allowed the application of the defendant and referred the matter for arbitration. This order was challenged by the appellants / plaintiffs before the Bombay High Court, which was dismissed vide order dated 10.12.2021. Aggrieved by these two orders, the appellants / plaintiffs are now before the Supreme Court.

The only question to be decided by the Court was whether the Trial Court and the High Court have rightly referred the matter to arbitration or the dispute is of such a nature that it is not liable to be referred to arbitration, as there was no arbitration clause in the Conveyance Deed dated 17.12.2019 or if there was, yet the matter in any case is such that it is not arbitrable.

Decision : Dismissed.

Reason : After the 2015 amendment, primarily the court only has to see whether a valid arbitration agreement exists. Additionally, the clear non-arbitrability of cases, such as where a party to the agreement is statutorily protected, such as a consumer “has also to be seen by the Court” (Booz Allen supra). Short of the narrow field stated above, the scope of judicial scrutiny at the stage of Section 11 (6) or Section 8 is extremely limited.

Objections will nevertheless be raised both on Section 8 and Section 11 applications. These objections can be genuine, such as where there is no arbitration clause or where the matter is itself non-arbitrable, but often these objections could be only to wriggle out of the statutory commitment of parties to a defined process of redressal mechanism.

In the present case there are broadly three objections of the appellants on the Section 8 application moved by the respondents which has already been allowed by the two courts below. The first objection regarding the absence of an arbitration clause in the Conveyance

Deed dated 17.12.2019 and the development agreements has already been discussed in detail in the preceding paragraphs.

The second is that the suit filed by the appellants is for cancellation of a document relating to immovable property i.e. land and it therefore amounts to an action in rem and hence arbitration is not the remedy. This question, however, is no more res integra. Elaborate analysis on this aspect has been done by this Court in the case of *Deccan Paper Mills v. Regency Mahavir Properties*, (2021) 4 SCC 786, therein this court after referring to all the relevant precedents and the case laws has held that whether it is a suit for cancellation of a deed or a declaration of rights rising from the deed, it would only be an action in personam and not in rem. The decision of the Division Bench of Andhra Pradesh High Court in *Aliens Developers (P) Ltd. v. Janardhan Reddy*, 2015 SCC Online Hyd 370, was held to be wrong wherein it was held that a suit under Section 31 of Specific Relief Act amounts to an action in rem and this adjudicatory function can only be done by the Competent Civil Court and the powers cannot be exercised by an Arbitrator. The basic foundation of the Court for holding that a Section 31 suit for cancellation of a document amounts to an action in rem was held to be wrong. The entire scope and ambit of the Specific Relief Act, 1963 was considered and in *Deccan Paper Mills* (supra), the anomalies in law for holding such to be an action in rem were discussed and it was held that a relief sought under the Specific Relief Act is nothing but an action in personam.

The third objection is regarding fraud. The plea of fraud raised by the appellants in their objection to the Section 8 application has never been substantiated. Except for making a bald allegation of fraud there is nothing else. This Court has consistently held that a plea of fraud must be serious in nature in order to oust the jurisdiction of an Arbitrator. In *Rashid Raza v. Sadaf Akhtar*, (2019) 8 SCC 710, this Court laid down two conditions which must be satisfied before the Court can refuse to refer the matter to the Arbitrator, a forum consciously decided by parties in an agreement. The first is whether the plea permeates the entire contract and above all, the arbitration agreement, rendering it void or secondly, whether the allegation of fraud touches upon the internal affairs of the parties inter se having no implication in the public domain. The allegations must have some implication in public domain to oust the jurisdiction of an Arbitrator, if an allegation of fraud exists strictly between the parties concerned, the same will not be termed to be as a serious nature of fraud and hence would not be barred for arbitration.

In the present case, therefore there is absolutely no ambiguity that both the Tripartite Agreements dated 31.03.2007 and 25.07.2008 contain an arbitration clause, which forms the basis of all subsequent agreements including the agreements sought to be declared as validly terminated by the appellants and the conveyance deed sought to be declared as null and void. Both the trial court as well as the High Court have given a correct finding on facts as well as on law. We find no scope for interference in the matter. This appeal hence has no force, and is hereby dismissed.

COMPETITION LAWS

YOGESH PRATAP SINGH v. PVR Ltd [CCI]

Case No. 40 of 2022

Ravneet Kaur, Anil Agrawal & Deepak Anurag.[Decided on 03/01/2024]

Competition Act,2002- sections 3&4- film exhibition in multiplexes- screening of film- allocation of screens- most screens allotted to large production houses and less screens to small production houses- whether discriminatory treatment- whether amounts to abuse of dominance-Held,No.

Brief facts : The Informant alleged that the OP, by virtue of controlling more than half of the upscale multiplex screens in India, is in a dominant position in the film exhibition market and has abused its dominance by according special treatment to films of powerful and monetarily affluent production houses and constraining the entry of films by independent filmmakers. It is also stated that OP has indulged in cartelization and vertical integration by entering into business of film production, film distribution and film exhibition with the big production houses.

Decision: Dismissed.

Reason: The Commission notes that the primary grievance of the Informant stems from the alleged discriminatory treatment by OP in allocation of screens for exhibition of movies. It has been alleged that OP allocates almost all of its screens to films produced by large production houses which leaves no place for films produced by independent filmmakers. Furthermore, vertical integration by OP in the film exhibition industry which may squeeze out competition has also been alleged by the Informant.

With regard to the allegation of allocating almost all its screens to films produced by large production houses, the Commission notes that OP has submitted evidence of exhibiting Informant's film titled as 'Kya Yahi Sach Hai' alongside blockbuster commercial movie 'Don 2'. Further, it has been submitted that the Informant's film earned a collection of merely Rs. 3 lakhs in 90 allocated shows across 11 different locations.

With regard to the allegation that the OP has vertically integrated itself with production, distribution and also exhibition of films, the Commission notes that the vertical integration per se is not prohibited under the provisions of the Act. Furthermore, the Informant has not adduced any evidence in this regard to substantiate the allegations. On the other hand, OP has submitted that films produced by independent filmmakers were exhibited alongside exhibition of films produced by large production houses. It has also been submitted that in FY 2022-23, majority of the films exhibited at the OP's theatre as well as revenue earned from them were produced or distributed by third-party. Accordingly, OP has submitted that there can be no question of foreclosure to the films produced or distributed by the third- party. The Commission finds force in the argument of OP.

With regard to the allegation of preferential treatment being afforded to the large production houses, the Commission notes that OP has stated that most of the terms including the revenue sharing terms, agreed to with all producers/distributors are largely the same, regardless of whether they are independent filmmakers or large production houses. Further, OP has submitted that the agreement for exhibition of movies at OP's multiplexes is prepared by the producers/distributors of the films themselves and not the exhibitors like the OP.

As far as allegations of discriminatory screen allocations, the Commission notes that the OP has submitted that the allocation of screens is being done following criteria such as revenue generating potential of the movie, excitement/buzz around the film, marketing, advertising and promotions done, historical data (admission/box office revenue) of films of similar genres, previous review of the film maker, selection team's estimate of box office collection, language of the film and cast & crew etc. It has further been submitted that the guiding factor for selection of films and screen allocation is maximization of footfalls and revenue.

The Commission is of the view that the commercial wisdom of the exhibitors is largely governed by consumer demand and unless harm to competition is apparent, any intervention will only lead to undesirable consequence by taking away the autonomy of such undertaking and substituting the decision of such entity by the decision of the regulator. In the realm of competition law, it is widely understood that firms have an autonomy to choose their trading partners as long as the exercise of such autonomy does not affect the fair functioning of the markets. The Commission in its various orders has upheld the freedom enjoyed by the enterprises in the market subject to compliance of the provisions of the Act.

Based on the justifications provided in preceding paragraphs, the Commission is of the view that there must be autonomy available to the exhibitors to deal with movies the way they want, in alignment with their business requirements and subject to provisions of the Act. In this vein, nobody can ask for an absolute right to deal with a particular business. Similarly, there is no absolute right of refusal. This will depend upon the facts and circumstances of each case. Thus, the right to choose a movie for exhibition lies with OP and this freedom cannot be curtailed by compelling it to exhibit the movie of the Informant unless and until it causes any harm to competition.

Against the aforesaid backdrop, the Commission is of the opinion that, prima facie, as there appears no discernible competition concern in the matter.

JARNAIL SINGH v. MADHAV KRG LTD & ANR [CCI]

Case No. 29 of 2023

Ravneet Kaur, Anil Agrawal & Deepak Anurag. [Decided on 16/01/2024]

Competition Act, 2002- sections 3&4- treatment of zinc dust- price variation- allegation of connivance between OP 1 and OP 2 -whether amounts to abuse of dominance-Held,No.

Brief facts: The Informant has alleged that OP-1 by virtue of its dominant position, used to purchase pollution dust at Rs. 8 per kg when zinc was priced at Rs. 325 per kg. Later, with the entry of two other entities, namely, M/s Jogindra Castings Pvt. Ltd. and R.P. Multimetals Pvt. Ltd., OP-1 and few other units started purchasing it at Rs. 20 per kg and later, at Rs. 25 per kg. The Informant states that given the content of zinc in the pollution dust, market value of the pollution dust is estimated to be around Rs. 40 per kg, which is significantly higher than what is offered to the induction furnaces. The Informant has alleged that OP-1, with the connivance of OP-2 [Pollution Control Board], is abusing its dominant position, in contravention of Section 4 of the Act.

The Informant has prayed for the Commission's directions to the relevant authorities to remove pollution dust from the category of hazardous waste, so that the prices can be determined by market forces rather than certain business entities. It has also prayed for fixation of lower limit at which the commodity can be traded and criminal action be taken, along with imposition of penalties, against OP-1 for violating the law.

Decision : Dismissed.

Reason : The Commission notes that the Informant has alleged abuse of dominance by the OPs in the market for purchase of pollution dust from the induction furnaces, wherein OP-1, in connivance with OP-2, is making undue profits by extracting zinc from the pollution dust, procured from induction furnaces at low prices vis-à-vis market rate of zinc.

From the Information, it appears that OP-2, being a state pollution board, allows only certain entities to purchase pollution dust from the induction furnaces. The Commission further observes that there has been entry of at least two entities that purchase pollution dust. Further, the bills/invoices provided along with the Information indicate that the procurement price of pollution dust has increased from Rs. 8 per kg to Rs. 25 per kg. Accordingly, the Commission notes that in the facts and circumstances of the present case, more players coming into the market and increase in procurement prices are indicative of greater competition.

The Commission also notes that there is no specific allegation against OP-2 in respect of violation of provisions of Section 4 of the Act. Thus, the Commission is of the prima facie view that there is no competition concern arising in the present matter and therefore, the matter be closed forthwith under Section 26(2) of the Act.



Case Snippets

JURISPRUDENCE, INTERPRETATION AND GENERAL LAWS

<i>Case Title</i>	<i>Judgment / Conclusion</i>
<p><i>Ajitsinh Chehuji Rathod v. State of Gujarat & Anr.</i> <i>Supreme Court</i> <i>29.01.2024</i></p>	<p>Certified copy of the specimen signature maintained by the Bank can be procured with a request to the Court</p> <p>This case can be referred to for understanding the legal position relating to presumption of genuineness and right of obtaining of copy of signatures maintained by the Bank.</p> <p>The court in the judgement has further stated that certified copy of a document issued by a Bank is itself admissible under the Bankers' Books Evidence Act, 1891 without any formal proof thereof. Hence, in an appropriate case, the certified copy of the specimen signature maintained by the Bank can be procured with a request to the Court to compare the same with the signature appearing on the cheque by exercising powers under Section 73 of the Indian Evidence Act, 1872.</p> <p><i>For details:</i> http://scourtapp.nic.in/supremecourt/2023/50878/50878_2023_3_1501_49957_Judgement_29-Jan-2024.pdf</p>
<p><i>Shama Sharma v. Kishan Kumar</i> <i>Supreme Court</i> <i>10.01.2024</i></p>	<p>No reason for mentioning the caste/religion of any litigant before Court</p> <p>In this case after deciding the matter in dispute, the Hon'ble Supreme Court has directed the Courts, Bars and registry regarding the non-mentioning of Caste or Religion of Litigants.</p> <p>The Supreme Court has said that before parting with this matter, we have noted with surprise that the caste of both the parties has been mentioned in the memo of parties, besides their other details. Learned counsel for the petitioner submits that if the memo of parties as filed before the courts below is changed in any manner, the Registry raises an objection and in the present case as the caste of both the parties was mentioned before the court below, he had no option but to mention their caste in the Transfer Petition.</p> <p>The court further said that we see no reason for mentioning the caste/religion of any litigant either before this Court or the courts below. Such a practice is to be shunned and must be ceased forthwith. It is therefore deemed appropriate to pass a general order directing that henceforth the caste or religion of parties shall not be mentioned in the memo of parties of a</p>

	<p>petition/proceeding filed before this Court, irrespective of whether any such details have been furnished before the courts below. A direction is also issued to all the High Courts to ensure that the caste/religion of a litigant does not appear in the memo of parties in any petition/suit/proceeding filed before the High Court or the Subordinate Courts under their respective jurisdictions.</p> <p><i>For details:</i> https://main.sci.gov.in/pdf/cir/07022024_102854.pdf https://main.sci.gov.in/supremecourt/2023/27353/27353_2023_11_9_49365_Order_10-Jan-2024.pdf</p>
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COMPANY LAW & PRACTICE

Case Title	Judgment / Conclusion
<p><i>RD Adjudication Order no. 9/32/ADJ/Sec 134 of 2013/karnataka/RD (SER)/5821 in the matter of CEETA Industries Ltd. (Regional Director, South East Region, Hyderabad, December 13, 2023)</i></p>	<p>Default in compliance of section 134(3) of the Companies Act, 2013</p> <p>The RoC during the course of inquiry conducted u/s 206(4) has noticed that Board's Report as on 31.03.2019 and 31.03.2020 did not disclose that the has company complied with provisions relating to constitution of internal complaints committee (ICC) under the Sexual Harassment of Woman at Workplace (Prevention, Prohibition, Redressal) Act, 2013 (POSH, Act) and therefore violated the provisions of section 134(3) and liable for action u/s 134(8). Consequently, the RoC has levied a total penalty of Rs. 9 Lacs on the company and its directors.</p> <p>An appeal u/s 454(5) of the Act was filed by appellants against the RoC adjudication order to the Regional Director. Considering the facts:</p> <ul style="list-style-type: none"> • The company has less than 10 employees and therefore not required to constitute an ICC as per the provisions of law. • The non-disclosure of statement in Board's Report relating to constitution of ICC was not deliberate and the company later started to mention the disclosure in succeeding years. • During the period of default there was no woman employee in the company. <p>The regional director in order to meet the end of justice has reduced the penalty to 20% of the penalty imposed by RoC i.e. amounting to Rs. 1,80,000/-</p> <p><i>For details:</i> https://www.mca.gov.in/bin/dms/getdocument?mds=vx2ZWpkSyTjW%252Bje0GV%252BGOQ%253D%253D&type=open</p>

CAPITAL MARKET & SECURITIES LAWS

<i>Case Title</i>	<i>Judgment / Conclusion</i>
<p><i>Mr. Nishaan Singh (Noticee) In the matter of Unregistered Portfolio Management Services by Mr. Nishaan Singh, Proprietor of Sanbun Investments dated January 30, 2024, SEBI</i></p>	<p>A person cannot offer Portfolio Management Services without obtaining the relevant registration from SEBI.</p> <p>BACKGROUND OF THE CASE</p> <p>SEBI had received a complaint vide email dated October 6, 2022 from Mr. Kaif Khan (“Complainant”) against M/s. Sanbun Investments, which is the sole proprietorship concern of Mr. Nishaan Singh (“Sanbun/ Nishaan / Noticee”). The Complaint inter alia alleged the following:</p> <ol style="list-style-type: none"> (a) Mr. Nishaan Singh, approached him (Mr. Kaif Khan) and introduced himself as founder of Sanbun Investments, further he was informed that Sanbun, is a registered Investment Advisory and Portfolio Management firm. Mr. Nishaan Singh falsely and fraudulently represented himself as registered with SEBI and National Stock Exchange of India Ltd. and duped him of Rs. 1.21 Crore. (b) Mr. Nishaan Singh informed that he, through Sanbun Investments, manages Investment Portfolio of the clients and the minimum funds for securities required to avail such services is Rs. 1 cr. Further, he was informed that Mr. Nishaan Singh would charge 50% of profit as professional fees. Mr. Nishaan Singh sought login details of demat accounts of complainant to execute trade as part of its services. The said details were shared by him on March 9, 2022. (c) He has been duped by Sanbun Investments and Mr. Nishaan Singh by making false and fraudulent representation that they are SEBI registered Portfolio Manager. He has become a victim of the fraudulent activities of the Noticee. (d) On April 24, 2022, an agreement was executed with Mr. Nishaan Singh. The said agreement mentions Mr. Nishaan Singh as a registered portfolio manager regulated by SEBI. Around May 2022, his holdings amounting to Rs.1.2 Cr., were reduced to approximately 20% of initial holdings.

SEBI Directions

SEBI issue the following directions:

- (a) The Noticee shall cease and desist from acting as or holding himself out to be a Portfolio Manager, whether using 'Sanbun Investment' or otherwise. He shall cease to solicit or undertake such activity or any other unregistered activity in the securities market, directly or indirectly, in any manner whatsoever;
- (b) The Noticee shall within a period of three months from the date of coming into force of this order refund Rs. 16,19,83,314.61/- received from clients and/or investors, as fees or consideration or in any other form, in respect of their unregistered portfolio management activities;
- (c) The Noticee shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as name(s), address(es) and contact detail(s) of person(s) to be approached for refund, within 15 days from the date of receipt of this order;
- (d) The repayments to the complainants and/or investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trail to identify the beneficiaries of repayments;
- (e) The Noticee is prevented from selling their assets, properties and holding of mutual funds/shares/ securities held by him in demat and physical form except for the sole purpose of making the refunds as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/ investors/ complainants who were availing the portfolio management services from the Noticee, as directed in this Order, from the bank accounts of the Noticee;
- (f) After completing the aforesaid repayments, the Noticee shall file a report of such completion with SEBI;
- (g) The remaining balance amount shall be deposited with SEBI which shall be kept in an interest bearing escrow account for a period of 1 (one) year for distribution to clients/investors who were availing the portfolio manager

	<p>services from the Noticee. Thereafter, the remaining amount, if any, shall be deposited in the Investors Protection and Education Fund, maintained by SEBI;</p> <p>(h) The Noticee is debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of two (2) years from the date of this order or till the expiry of two (2) years from the date of completion of refunds to complainants/ investors as directed above, whichever is later;</p> <p>(i) The Noticee shall not undertake, either during or after the expiry of the period of debarment/restraint, either directly or indirectly, portfolio management services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.</p> <p><i>For details:</i> https://www.sebi.gov.in/enforcement/orders/jan-2024/order-in-the-matter-of-mr-nishaan-singh-proprietor-of-sanbun-investments_80937.html</p>
<p><i>Mr. Kishan Vishram Nanda, Kishan Vishram Nanda HUF and six family members (Noticees)</i></p> <p><i>In the matter of Front-Running of the Trades of Sanctum Wealth Management Private Limited (now known as Sanctum Wealth Private Limited) dated January 31, 2024, SEBI</i></p>	<p>Front-running as a practice in the securities market is prohibited.</p> <p>Facts of the Case:</p> <p>Pursuant to the receipt of the alert, SEBI carried out an investigation into the matter to verify the veracity of the information brought out in the alert and ascertain whether there had been any violation of the provisions of the SEBI Act, 1992 and any other Regulations or provisions of securities laws. Consequent to the completion of investigation in the matter, a common Show Cause Notice dated May 20, 2021 (“SCN”) was issued to the entities, i.e., Kishan Vishram Nanda and entities related to him, based on the findings of the said investigation. In this regard, the following facts have inter alia been brought out in the SCN with respect to the conduct of the Noticees:</p> <p>a. Kishan Vishram Nanda worked as an equity dealer in the broking arm of Sanctum (“Sanctum-Broker”) for the Big Client, which was the PMS arm of Sanctum i.e., Sanctum-PMS. Owing to this position, he was privy to the information regarding the</p>

	<p>impending trade orders of the Big Client, information that was not publicly available.</p> <p>b. Kishan Vishram Nanda opened a trading account in the name of Kishan Vishram Nanda HUF and also opened six additional trading accounts in the name of his family members.</p> <p>c. Kishan Vishram Nanda traded through these accounts to front run the impending trade orders of the Big Client i.e., Sanctum PMS.</p> <p>d. Kishan Vishram Nanda was the Information Carrier(“IC”) as he was in possession of non-public information regarding impending trade orders of Sanctum PMS and the main front runner who traded through his HUF account (Kishan Vishram Nanda HUF) and through his proxy trading accounts in the names of his six family members. The accounts of these family members were used as Mule Accounts to front run the impending trade orders of the Big Client.</p> <p>SEBI has defined front-running in one of its circular (CIR/EFD/1/2012 dated May 25, 2012) in the following manner-</p> <p><i>“Front-running; for the purpose of this circular, front running means usage of non-public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change.”</i></p> <p>Thus, from the above, any trading activity to be considered as front-running should satisfy the following:</p> <p>a. information regarding an impending substantial large order of an investor in a particular security that is not publicly available; and</p> <p>b. order placed by the alleged front-runner in securities prior to the large order of the Big Client, while possessing the aforesaid non-public information.</p> <p>Based on the above, it has been alleged that the Noticees have violated Section 12A (a), (b), (c) & (e) of SEBI Act, 1992 (“SEBI Act”) read with Regulations 3(a), 3(b), 3(c), 3(d), 4 (1) and 4 (2)(q) of the Prohibition of Fraudulent and Unfair Trade Practice Regulations (“PFUTP Regulations”).</p>
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Penalty for fraudulent and unfair trade practices. Section 15HA of SEBI Act, 1992:

"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

SEBI Directions and Monetary Penalties–

1. Kishan Vishram Nanda is restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 3 years.
2. Kishan Vishram Nanda is restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI, in any capacity, for a period of 3 years.
3. Kishan Vishram Nanda is imposed with monetary penalty of Rs. 5 lakh.
4. Kishan Vishram Nanda HUF and other family members are restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 1 year and restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI, in any capacity, for a period of 1 year.
5. Noticees are directed, jointly and severally, to disgorge a sum of Rs. 34,84,605.26 along with an interest at the rate of 12% simple interest per annum (computed from the last front-running date i.e., October 16, 2020 till the date of actual payment) within a period of 45 days from the date of receipt of this Order.

For details:

<https://www.sebi.gov.in/enforcement/orders/jan-2024/order-in-the-matter-of-front-running-of-the-trades-of-sanctum-wealth->






	<i>management-private-limited-now-known-as-sanctum-wealth-private-limited_80981.html</i>
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ARBITRATION, MEDIATION & CONCILIATION

<i>Case Title</i>	<i>Judgment / Conclusion</i>
<p><i>Sushil Kumar Mishra v. State Of U.P. and Another</i></p> <p><i>High Court of Allahabad</i></p> <p>19.01.2024</p>	<p>Reduction of interest is a modification of the original arbitration award</p> <p>This was an appeal filed by the claimant/award holder against the order passed by the District Judge, wherein the appeal was partly allowed and the rate of interest awarded by the Arbitrator was reduced from 14% to 6% per annum.</p> <p>This case can be referred for understanding the law on the issue of reducing the interest by Award by the courts.</p> <p>The court <i>inter alia</i> held that reduction of interest is nothing but a modification of the original arbitration award, and accordingly, the same is illegal and against the principles established by the Supreme Court.</p> <p><i>For details:</i> https://elegalix.allahabadhighcourt.in/elegalix/StartWebSearch.do</p>

INTELLECTUAL PROPERTY LAW AND PRACTICE

Case Title	Judgment / Conclusion
<p><i>Kamal Kant and Company LLP V. Raashee Fragrances India Pvt Ltd. Delhi High Court</i></p> <p><i>CS (COMM) 580/2022, I.A. 13422/2022, I.A. 13425/2022, dated 23rd Jan 2024</i></p>	<p>A Case of Infringement of Trade Mark of tobacco products.</p> <p>Brief facts:</p> <p>The Plaintiff in the present case is engaged in the business of manufacturing and marketing of pan masala, chewing tobacco, supari mixture, Zaffrani Patti, Zarda and other allied and cognate items since the year 1965. These products are sold in the market under the trade mark/name 'RAJSHREE' bearing various registrations in classes 6,29,31 and 34. The case of the Plaintiff is that it came across the trademark application by the Defendant bearing no.1895418 & 1895423 in classes 34 & 31 respectively for the mark 'RAASHEE' label. The mark is used in respect of similar business as that of the Plaintiff <i>i.e.</i>, zarda mix, pan masala including gutkha, zarda, safrani, khaini, mouth freshners, scented supari, betel nuts, agricultural and other cognate and allied goods. The Defendants have been claiming user since 2009. The Plaintiff upon coming across these trademark applications opposed the said marks and the marks have been abandoned by the Defendant, as on the date of filing of the suit.</p> <p>The Plaintiff, however, felt a reasonable apprehension in the use of the mark 'RAASHEE' by the Defendant and hence, filed the present suit.</p> <p>Judgement :</p> <p>Court stated that -</p> <p>"The Plaintiff placed on record documents showing payments made by the Plaintiff to certain advertising agencies for advertising the mark in 1984 (page 552 to 595 PW-1/10 and PW-1/15). He further submits that the Plaintiff has reasonable business of earning royalty by licensing its seven brands.</p> <p>The Defendant shall stand restrained from using the trademark 'RAASHEE' or any other mark which is identical or deceptively similar to the Plaintiff's mark 'RAJSHREE' in respect of pan masala, mouth freshners, scented supari, betel nuts of zarda mix, pan masala like gutka, zarda, safrani and other chewing tobacco, khaini, tobacco products, tobacco raw or any other cognate and</p>

	<p>allied goods or services. The Defendant is, however, free to use the two proposed marks set out above so long as the said marks are used in a manner where the words 'MY' or 'मेरी' are of the same font, colour and size as the word 'RAASHEE'. The Defendant while adopting the above two proposed marks shall, however, ensure that the packaging, get up and lay out is not in any manner imitative of the Plaintiff's 'RAJSHREE' paan masala packaging."</p> <p><i>For details</i> https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/PM S/judgement/30-01-2024/&name=PMS23012024SC6802017_114022.pdf</p>
<p><i>Cable News Network Inc. vs. City News Network & Ors, Delhi High Court</i></p> <p><i>CS (COMM) 272/2021 & I.A. 7235/2021 dated 4th December 2023</i></p>	<p>Trademark Conflict of two News Channels</p> <p>Brief Facts :</p> <p>The plaintiff runs a news channel and has registrations for the device mark , which is an acronym for cable news network under classes 9, 16, 38 and 41 since 1991. The marks  and , and "CNN" ("the CNN marks") are prominently displayed whenever the plaintiff's news channel is on air and have become source identifiers of the plaintiff and are indelibly associated with the services provided by the plaintiff. It is declared as a well-known trademark within the meaning of Section 2(1) (zg) of the Trade Marks Act, 1999 by this Court in Cable News Network, Inc. v. Anshu Jain.</p> <p>Defendant is an entity located in Lucknow. It operates a website under the marks  and . It also operates the website https://citynewsnetworks.in/ for news broadcasting services.</p> <p>The plaintiff alleges that Defendant marks and infringe the plaintiff's registered trademarks as they are identical to the plaintiff's registered trademarks, there is every likelihood of confusion in the minds of the viewing public between the marks of the plaintiff and Defendant and sought a decree of permanent injunction restraining the defendant of further use of impugned mark or any other mark which is deceptively similar to the plaintiff's registered CNN marks, either as a word mark or as a logo.</p> <p>Judgement ;</p> <p>Court observed that-</p> <p>"The use, by the Defendant, of the expanded form "CITY NEWS NETWORK" would actually exacerbate the possibility of confusion. The aspect of likelihood of confusion has to be examined from the perspective of the consumer of average intelligence and imperfect recollection. All that is needed for the Defendant's mark to be treated</p>

	<p>as infringing is likelihood of confusion. Actual confusion need not be shown to exist. Applying these principles, the identity of the textual components of the plaintiff's and Defendants' marks, i.e. "CNN", when coupled with the similarity in the expanded forms of the acronyms – "CABLE NEWS NETWORK" and "CITY NEWS NETWORK" – is bound to result in confusion and the viewer may be led to believe that the services are in fact being provided by the plaintiff, and that, possibly, the plaintiff may have changed its logo.</p> <p>The facts, therefore, also make out a clear case of passing off by Defendant. It is well settled that proof of mala fide intent is not necessary for passing off to be found to exist, even though, classically, passing off is regarded as a "tort of deceit".</p> <p>Defendant is restrained from using the impugned marks or the mark "CNN" or any other mark which may be deceptively similar to the registered device mark of the plaintiff, either for providing news services or in connection with any other goods or services which may be allied or cognate thereto. Defendant to remove/disband its related websites/social media web pages/ channels along with the costs of ₹ 7 lakhs to the plaintiff."</p> <p><i>For details</i> https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/CHS/judgement/06-12-2023/&name=CHS04122023SC2722021_122904.pdf</p>
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Student Services

IMPORTANT ALERTS / ANNOUNCEMENTS FOR STUDENTS

PRE-EXAM TEST IS EXEMPTED FOR STUDENTS WHO UNDERGO CLASSES AT REGIONAL AND CHAPTER OFFICES (SUBJECT TO MEETING THE CONDITIONS)

DOWNLOADING OF THE PROFESSIONAL PROGRAMME PASS CERTIFICATE THROUGH DIGILOCKER

<https://www.icsi.edu/media/webmodules/DigilockerAnnouncement31012024.pdf>

ANNOUNCEMENT ON PAPERWISE EXEMPTION

https://www.icsi.edu/media/webmodules/Paperwise_exemption_announcement_for_students_09052023.pdf

ANNOUNCEMENT ON PROFESSIONAL NEW SYLLABUS 2022

<https://www.icsi.edu/media/webmodules/AnnouncementProfessionalNewSyllabus22082023.pdf>

FAQ on the Switchover Scheme for Professional Programme 2017 (Old) Syllabus to Professional Programme 2022 (New) Syllabus

https://www.icsi.edu/media/webmodules/Executive_FAQ_SW_23022023.pdf

How to Download E-Professional Programme Certificate from Digi locker

https://www.icsi.edu/media/webmodules/How_to_Download_Professional_Pass_Certificate_from_Digilocker.pdf

Cut-Off Dates for the year 2023

https://www.icsi.edu/media/webmodules/CUT_off.pdf

Schedule of fee applicable for CS Course

https://www.icsi.edu/media/webmodules/student/FeeDetails_Concession.pdf

ICSI Study Centres

https://www.icsi.edu/media/webmodules/Study_Centre.pdf

Join CSEET classes at ICSI Regional/Chapter Offices

<https://www.icsi.edu/crt/>

Details Regarding Class-Room Teaching Centres at Regional /Chapters Offices

<https://www.icsi.edu/crt/>

Number of Class-Room Teaching Centres at Regional /Chapters Offices

<https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>

Chartered Secretary Journal

(Up-gradation of the knowledge of the Members and students)

<https://www.icsi.edu/cs-journal/>

Donate for the Noble Initiative of the Institute - "SHAHEED KI BETI SCHEME"

https://www.icsi.edu/media/webmodules/Shahheed_ki_beti.jpg

REGISTRATION

1. Registration for CS Executive Entrance Test (CSEET):

- ✓ Information in detail: https://www.icsi.edu/media/webmodules/Flyer_2023_01.jpg
- ✓ Link to register: https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx

2. Registration for CS Executive Programme:

- ✓ Information in detail:
https://www.icsi.edu/media/webmodules/11112022_ICSI_Students_leaflet.pdf

3. Renewal of Registration/Registration Denovo (for Executive Programme & Professional Programme Students)

Registration of students registered upto and including February 2019 stands terminated on expiry of five-year period on 31st January, 2024. All such students whose registration has been expired are advised to seek Registration De novo follow:

- ✓ Registration De novo link: <https://smash.icsi.edu/Scripts/login.aspx>
- ✓ Process of Denovo:
https://www.icsi.edu/media/webmodules/user_manual_for_reg_denovo.pdf

4. Opportunity for students to validate their registration three months prior to Expiry of Registration

- ✓ Follow:
https://www.icsi.edu/media/webmodules/14112022_Denovo3monthspriortoexpiryofRegistration.pdf

5. Continuation of Registration w.e.f. 3rd February 2020

Students will have to keep their registration renewed from time to time even after passing Professional Programme Stage till completion of all the training requirements to become entitled to be enrolled as member of the Institute. Guidelines and process are available at the following url:

- ✓ Follow:
https://www.icsi.edu/media/webmodules/student/Guidelines_ContinuationRegistration.pdf
https://www.icsi.edu/media/webmodules/Detailed_notification_continuation_of_reg_profpass_stud.pdf



!!ATTENTION STUDENTS!!

Cut- off- Date for Acceptance of Applications for Admission to Executive/ Professional Programme is 31.05.2024 (for appearing in both Groups in December 2024 Examination)

Register online through <https://smash.icsi.edu>

6. Registration to Professional Programme:

Students who have passed/completed both modules of the Executive examination are advised to seek registration to Professional Programme through online mode.

The prescribed registration fee is Rs. 12,000/-. Students are also required to remit Rs. 1000/- towards Pre-exam test at the time of registration. Eligibility of students for appearing in the Examinations shall be as under: -

<i>Session</i>	<i>Modules</i>	<i>Cut-off date for Registration</i>	<i>Illustrative Example</i>
June	Both	30th November (Previous Year)	All students registered upto 30th November 2023 shall be eligible to appear in examination of Both Groups in June 2024 Session.
	One	31st January (Same Year)	All students registered upto 31st January 2024 shall be eligible to appear in examination of any One Group in June 2024 Session.
December	Both	31st May (Same Year)	All students registered upto 31stMay 2024 are eligible to appear in examination of Both Groups in December 2024 Session

	One	31st July (Same year)	All students registered upto 31st July 2024 are eligible to appear in examination of any One Group in December 2024 Session.
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While registering for the Professional Programme, students are required to submit their option for the Elective Subject. Notwithstanding the original option of Elective Subject, student has the option to change elective subject & enroll for any other elective subject, if he/she wishes. The study material if needed will have to be purchased by them against requisite payment. Soft copies of the study materials are available on the website of the Institute.

Process to change the Elective Subject: Login with user ID and password at <https://smash.icsi.edu/Scripts/login.aspx>

->Click on Module->Student Services->Change Optional Subject->Select new optional subject->Save

Important: The students shall also be required to pass the online pre-exam test in such manner and mode as may be determined by the Council.

7. Re-Registration to Professional Programme:

Students who have passed Intermediate Course/ Executive Programme under old syllabus and are not eligible for seeking Registration Denovo may resume CS Course from Professional Programme Stage. Detailed FAQ, Prescribed Application Form, etc. may be seen at:

<https://www.icsi.edu/media/webmodules/REREGISTRATION.pdf>

EXEMPTIONS AND SWITCHOVER

1. Clarification Regarding Paper wise Exemption:

- Students enrolling on the Company Secretary (CS) Course shall be eligible for paper-wise exemption (s) based on the higher qualifications (ICAI (cost)/LLB) acquired by them. Such students' needs to apply for paper wise exemption in desired subject through 'Online Smash Portal complying all the requirements. There is a one-time payment of Rs. 1000/- (per subject). For details and Process please visit:
 - ✓ https://www.icsi.edu/media/webmodules/Paperwise_exemption_syllabus17.pdf
 - ✓ https://www.icsi.edu/media/webmodules/ATTENTION_STUDENTS_RECIPROCAL_EXEMPTION_NEW_SYLLABUS_2022.pdf
- The last date for submission of requests for exemption, complete in all respects, is 9th April for June Session of examinations and 10th October for December session of Examinations. Requests, if any, received after the said cut-off dates will be considered for the purpose of subsequent sessions of examinations onl
- The paper wise exemption once granted holds good during the validity period of registration or passing/completing the examination, whichever is earlier.

- (d) Paper-wise exemptions based on scoring 60% marks in the examinations are being granted to the students automatically and in case the students are not interested in availing the exemption they may seek cancellation of the same by submitting request through the Online facility available at <https://smash.icsi.edu/scripts/login.aspx> 30 days before commencement of examination.

Session	Cut-off date for Cancellation of Exemption/ Re-submitting the Call-For Documents for Granting Exemption
June Session	1st May
December Session	20th November

User manual for cancellation of Exemption:

- ✓ https://smash.icsi.edu/Documents/Qualification_Based_Subject_ExemptionandCancellation_Student.pdf

If any student appears in the examinations disregarding the exemption granted on the basis of 60% marks and shown in the Admit Card, the appearance will be treated as valid, and the exemption will be cancelled.

- (e) It may be noted that candidates who apply for grant of paper wise exemption or seek cancellation of paper wise exemption already granted, must see and ensure that the exemption has been granted/cancelled accordingly. Candidates who would presume automatic grant or cancellation of paper wise exemption without obtaining written confirmation on time and absent themselves in any paper(s) of examination and/or appear in the exempted paper(s) would do so at their own risk and responsibility and the matter will be dealt with as per the above guidelines.
- (f) Exemption once cancelled on request in writing shall not be granted again under any circumstances.
- (g) Candidates who have passed either module of the Executive/Professional examination under the old syllabus shall be granted the paper wise exemption in the corresponding subject(s) on switchover to the new/latest syllabus.
- (h) No exemption fee is payable for availing paper wise exemption on the basis of switchover or on the basis of securing 60% or more marks in previous sessions of examinations.

2. Syllabus Switchover:

Revision of syllabus is a constant exercise by the Institute to ensure up-gradation of knowledge amongst the student community.

Please Note: -

- a) All switchover students are eligible to appear in the Online Pre-Examination Test which is compulsory under the new syllabus before enrolling for any examinations. Process For Remitting the Fee for Pre-Examination Test is available in the link:
<https://www.icsi.edu/media/webmodules/PreExamTestProcess.pdf>
<https://www.icsi.edu/media/webmodules/ProcessRemitPretestFeeUnderSyllabus2022.pdf>
- b) Study material is not issued free of cost to the switchover students. Therefore, the student needs to obtain study material, at a requisite cost.
- c) Revert Switchover is not Permissible.
- d) Other details regarding Exemptions and Switchover are available on the student page at the website of the Institute.

PROCESS/ USER MANUAL TO SWITCHOVER:

- ✓ Login with user ID and password (<https://smash.icsi.edu/Scripts/login.aspx>)
- ✓ Click on Module > Switchover > Apply for Switchover
- ✓ Click on the tab "Request for switchover."
- ✓ click on the checkbox at the bottom and submit your request. (Successful message will reflect on your Screen.)

IMPORTANT LINKS

- https://www.icsi.edu/media/webmodules/switchover_process.pdf
- https://www.icsi.edu/media/webmodules/Correspondingexemptionafterswitchover%20-Fnd_ExePrg.pdf
- https://www.icsi.edu/media/webmodules/Switchover_17092016.pdf
- <https://www.icsi.edu/media/webmodules/ICSI%20New%20Syllabus%202022.pdf>

ENROLLMENT TO EXECUTIVE & PROFESSIONAL PROGRAMME EXAMINATION (REGULATION 35)

- (i) The examinations for the Executive & Professional Programme Stage of CS Course are conducted in June and December every year.
- (ii) The schedule for submission of online application along with the prescribed examination fee for enrolment to June and December Sessions of Examinations are as under:

Session	Period during which the students can submit examination form and fee	Period during which the students can submit examination form and fee (with prescribed fee)
June	The online examination enrollment window is opened tentatively on 26th February and the students may submit the forms upto 25th March without late fee	Students may submit the examination form during 26th March to 9th April with Late Fee.
December	The online examination enrollment window is opened tentatively on 26th August and the students may submit the forms upto 25th September without late fee	Students may submit the examination form during 26th September to 10th October with Late Fee.

The eligibility conditions for seeking enrollment to Executive & Professional Programme Examination are as per the cut off available at https://www.icsi.edu/media/webmodules/CUT_off.pdf

- (iii) Students who have registered for the Executive Programme on or after 1st June 2019 are required to complete a One Day Orientation Programme in order to become eligible for enrollment on the June/December Examinations.
- (iv) Students who have registered in the Executive/Professional Programme are required to complete Pre-Examination Test to become eligible for enrolment to June/December Examinations.

PROCEDURAL COMPLIANCE

CHANGE OF ADDRESS/CONTACT DETAILS/CREATION OF PASSWORD

Process 1: Manual for Change of Mobile number, Email Id

Step 1: Log in with valid credentials at <https://smash.icsi.edu/scripts/login.aspx>

Step 2: Change Mobile Number and Email address.

Process 2: Process to change correspondence /permanent address.

Step 1: Log in with valid credentials at <https://smash.icsi.edu/scripts/login.aspx>

Step 2: To change Correspondence address

Step 3: Click on Save Button

Process 3: Change/Reset Password

Step 1: Log in with valid credentials on smash.icsi.edu

Step 2: Click on Profile > Change Password or

Forget password/Reset Password:

<https://smash.icsi.edu/scripts/GetPassword.aspx>

Process 4: Change Name/Photograph/Signature

https://www.icsi.edu/media/webmodules/Change_of_name_photograph_signature_requests_for_students_are_payable_now.pdf

STUDENT IDENTITY CARD

Identity Card can be downloaded after logging into the Student Portal at:

www.icsi.edu.

Step 1: Log in with valid credentials on smash.icsi.edu

Step 2: Click on Module > Student Services > Identity Card

DEDUCTION OF 30% OF THE TOTAL FEE REMITTED BY THE APPLICANT IN RESPECT OF REGISTRATIONS LYING PENDING FOR MORE THAN A YEAR

Visit for details:

https://www.icsi.edu/media/webmodules/Fees_Refund_Guidelines_Admission_Fees.pdf

Revision of Syllabus for Candidates appearing in CSEET from November 2023 Session onwards!

The Syllabus of Company Secretary Executive Entrance Test (CSEET) has been revised and applicable from November 2023 CSEET Session onwards. It shall be comprised of four papers and the nomenclature of the papers is as under:

Part	Subject	Sub Part	Total Marks
1	Business Communication	--	50
2	Legal Aptitude and Logical Reasoning	A - Legal Aptitude (30 Marks) B - Logical Reasoning (20 Marks)	50
3	Economic and Business Environment	A – Economics (25 Marks) B – Business Environment (25 Mark)	50
4	Current Affairs and Quantitative	A – Current Affairs (30 Marks) B – Quantitative Aptitude (20 Marks)	50
Total Marks			200

Join online classes at the Regional/Chapter Offices/Study Centres of The ICSI and excel in Examination

Pre-exam test is exempted for Class-Room Teaching Students (Condition apply)

Dear Student,

As you are aware, the CS Course allows the flexibility of undergoing professional education as per the convenience of the students through distance learning mode.

However, keeping in view the requests of the students, the institute has been arranging Class-Room Teaching facilities as its Regional Offices and many of the Chapter Offices and Study Centres. A list of Offices presently providing the Class-Room Teaching facility may be seen at the following link of the Institute's website: <https://www.icsi.edu/crt>

We recommend the students of the Institute to join the classes conducted by the Regional & Chapter Offices and Study Centres for quality education at nominal fee.

Most of the Regional Chapter offices conduct these classes. Kindly contact your nearest Regional/Chapter Office/ Study Centre. The contact details are available at the following link: <https://www.icsi.edu/media/webmodules/websiteClassroom.pdf>

Besides regular classes, the Institute is also conducting demo classes, mock tests, revision classes, and classes on individual subjects which help students in preparing for the main examination.

The Coaching Classes are organized throughout the year corresponding with each session of CS Examination held in June and December every year.

As you are aware the Pre-Examination Test is compulsory for all students of Executive and Professional Programme under new syllabus. The students undergoing the Class-Room Teaching and pass the requisite tests forming part of the coaching are exempted from appearing in the Pre-Exam Test. The standard procedure for joining the coaching classes at the Regional/Chapter Offices is as under:

Step – 1	Contact the nearest Regional/Chapter Office of the Institute from the list given at the link. https://www.icsi.edu/media/webmodules/websiteClassroom.pdf
Step – 2	Ascertain the Date of Commencement of Coaching Class and the timings of the classes
Step – 3	Enquire about the availability Demo Classes and if available attend the same as per the schedule

Step – 4	Remit the applicable fess at the Regional/Chapter Office
Step - 5	Attend the Coaching Classes as per the schedule and appear in the CS Main examinations

The Institute shall be able to commence Class-Room Teaching facility at the remaining Chapter Offices also subject to the participation of students.



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

Vision

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

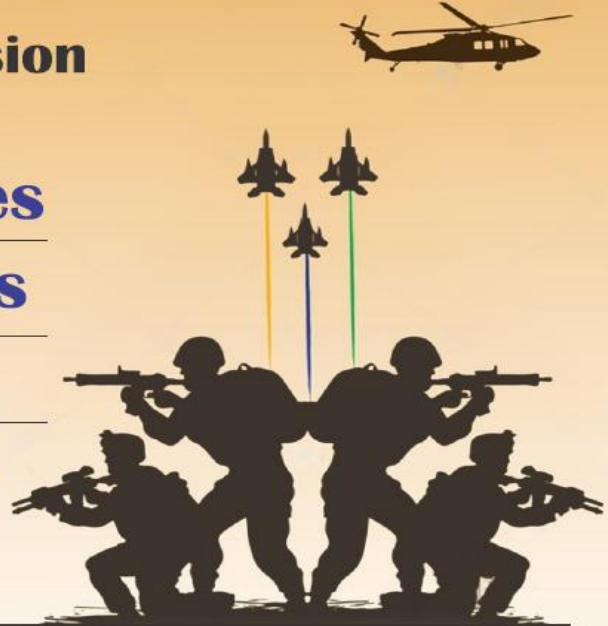
Motto

सत्यं वद। धर्मं चर। इच्छते ते त्वापैः क्रोधेते हेतु तेऽलाजः

Mission

"To develop high calibre professionals facilitating good corporate governance"

ICSI fee waiver/Concession scheme for Indian Armed Forces Para Military Forces Agniveers and Families of Martyrs



The sacrifice of the personnel of Indian Armed Forces and Para Military Forces for maintaining the Security and Sovereignty of the Country is Commendable.

A humble endeavor of the Institute in recognizing the contribution of the serving and retired personnel of Indian Armed forces, all Para Military forces, Agniveers and a goodwill gesture to the families of martyrs.

CS B.Narasimhan
President, The ICSI

CS Dhananjay Shukla
Vice President, The ICSI

CS Asish Mohan
Secretary, The ICSI



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Online Helpdesk : <http://support.icsi.edu>



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Mission

"To develop high calibre professionals facilitating good corporate governance"

"UGC Recognises CS Qualification as Equivalent to a Post Graduate Degree."

**COMPANY SECRETARY
EXECUTIVE
ENTRANCE TEST
(CSEET)**

**FREE ACCESS
TO CSEET
ONLINE/VIRTUAL
TEACHING
FOR ALL
REGISTERED
CANDIDATES**

HURRY UP

Last date of registration
for the CSEET is
15th April 2024

MINIMUM ELIGIBILITY

Passed or appearing in the Senior Secondary (10+2) Examination or equivalent.

EXEMPTED FROM CSEET

(Eligible to Take Direct Admission in CS Executive Programme)

Foundation passed of ICSI/Final passed of ICAI/Final passed of ICMAI/Graduates (having minimum 50% marks)/Post Graduates

Link to Join CSEET Online/Virtual Teaching will be sent to all registered candidates Separately

May 2024 session of CSEET

is proposed to be held on 04th May 2024



Register Now: https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx

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Golden Opportunity to Become a Company Secretary

For Economically weaker and / or Academically Bright Students
To avail financial assistance from
STUDENTS EDUCATION FUND TRUST

ELIGIBILITY CRITERIA

Economically Backward Students with Good Academic Record (having family income not more than 3 Lakh per annum)	65% (or equivalent CGPA) in Class XII OR 60% (or equivalent CGPA) in Graduation
Academically Bright Students (without any limit on family income)	85% (or equivalent CGPA) in Class XII OR 70% (or equivalent CGPA) in Graduation

Please refer to the detailed guidelines available on the website regarding refund under Student Education Fund Trust (SEFT) @ https://www.icsi.edu/media/webmodules/28072022_guidelines.pdf or write to seft@icsi.edu

To download the SEFT Form click here :

https://www.icsi.edu/media/webmodules/SEFT_ApplicationForm.pdf

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Vice-President, The ICSI

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इष्टं कुरु। त्वां कुरु। अशुभं न कुरु।

Mission
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**ICSI has introduced free online Centralised
Classes for Executive & Professional
Programme
(New Syllabus 2022)
(For June 2024 Session of CS Exam)**

**Subject:
Tax Laws & Practice**



Schedule of Executive Programme Classes

**Executive Programme (NS)
Group – II**
(Monday to Friday)
(19.02.2024 to 21.03.2024)
(Timing: 06:30 pm to 09:00 pm)

Attractions:

- Exemption from Pre-Exam Test Subject to clearing tests conducted by the ICSI of respective group/s.
- Special session by experts.
- Free access to Online Doubt Clearing Session conducted by ICSI
- Experienced faculties

Link for online centralised classes shall be shared with the students registered for the classes at their registered email Id.
For further details please contact: centralisedclasses@icsi.edu

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ICSI has introduced free online Centralised Classes for Executive & Professional Programme (New Syllabus 2022) (For June 2024 Session of CS Exam)

Subject:

Setting Up of Business, Industrial & Labour Laws

Attractions:

- Exemption from Pre-Exam Test Subject to clearing tests conducted by the ICSI of respective group/s.
- Special session by experts.
- Free access to Online Doubt Clearing Session conducted by ICSI
- Experienced faculties

Schedule of Executive Programme Classes

**Executive Programme (NS)
Group – I**

(Monday to Friday)

(19.02.2024 to 21.03.2024)

(Timing: 07:00 am to 09:30 am)

Link for online centralised classes shall be shared with the students registered for the classes at their registered email Id.

For further details please contact: centralisedclasses@icsi.edu

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Mission
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ICSI has introduced
**CENTRALIZED ONLINE
CLASSES FOR
EXECUTIVE AND PROFESSIONAL
PROGRAMME
(NEW SYLLABUS 2022)**
(For June 2024 Session of CS Exam)



KEY FEATURES

Best & Experienced Faculties

No fees for students of Executive and Professional

Special doubt solving sessions

Exam oriented

Special sessions by experts

Practical and case-based study methodology

Frequent Quizzes and tests

Evaluation and feedback

Interactive learning

Assignment based learning

Exemption from Pre-Exam test subject to clearing tests of the respective group/s

Free access to online doubt clearing classes conducted by the Institute

TIMINGS OF THE CLASSES

10:00 am to 12:30 noon

02:00 pm to 04:30 pm

Monday to Friday

**FREE
CLASSES
(NO FEES)**

Classes have commenced from 1st December 2023

Duration of the classes - (4-5 months)

Note 1. Students are required to register at the following link to join the classes

<https://tinyurl.com/478ee6es>

Note 2. After registration, link for online classes shall be shared with the students

For further details please contact : centralisedclasses@icsi.edu

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Mission

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ICSI has introduced free
Online Centralised Classes for Executive
& Professional Programme
(New Syllabus 2022)
(For June 2024 Session of CS Exam)

Subject:
**Compliance Management,
Audit & Due Diligence**

Schedule of Professional Programme Classes

Professional Programme (NS)

Group – I

(Monday to Friday)

(19.02.2024 to 21.03.2024)

(Timing: 07:00 am to 09:30 am)

Attractions:

- Exemption from Pre-Exam Test Subject to clearing tests conducted by the ICSI of respective group/s.
- Special session by experts.
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Mission

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ICSI has introduced free
Online Centralised Classes for Executive
& Professional Programme
(New Syllabus 2022)
(For June 2024 Session of CS Exam)



Schedule of Professional Programme Classes

Subject:

Intellectual Property Rights - Law and Practice

Professional Programme (NS) Group – I

(Elective Paper)

(Monday to Friday)

(19.02.2024 to 21.03.2024)

(Timing: 06:30 pm to 09:00 pm)

Attractions:

- Exemption from Pre-Exam Test Subject to clearing tests conducted by the ICSI of respective group/s.
- Special session by experts.
- Free access to Online Doubt Clearing Session conducted by ICSI
- Experienced faculties

Link for online centralised classes shall be shared with the students registered for the classes at their registered email Id.

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Examination



ALL INDIA MERIT LIST

LIST OF RANK HOLDERS WHO HAVE PASSED ALL PAPERS OF EXECUTIVE PROGRAMME EXAMINATIONS WITHOUT EXEMPTION IN ANY PAPER, IN ONE SITTING, IN JUNE , 2023 :

EXAMINATION: EXECUTIVE PROGRAMME

S. NO.	RANK	NAME OF THE CANDIDATE	ROLL NO
1	1	BHUMIKA SINGH	323373
2	2	SALONI BHAVIN KHANT	349175
3	3	ROHAN DINESH PANJWANI	339979
4	4	ANUSH PADMAKAR SHETTY	342027
5	5	MAYANK LODHA	307768
6	6	SAHIL PATEL	339671
7	7	K BALASUBRAMANIAN	304392
8	8	ASMI KAILASH AGRAWAL	345462
9	9	KUNAL	307393
10	10	AASHLESHA SHAILESHKUMAR PRAJAPATI	340003
11	11	KRUSHNA MOTIRAM PHAD	346994
12	12	MAYANK KUMAR RAGHUWANSHI	343098

ALL INDIA MERIT LIST

LIST OF RANK HOLDERS WHO HAVE PASSED ALL PAPERS OF PROFESSIONAL PROGRAMME EXAMINATIONS WITHOUT EXEMPTION IN ANY PAPER, IN ONE SITTING, IN JUNE , 2023 :

EXAMINATION: PROFESSIONAL PROGRAMME

S. NO.	RANK	NAME OF THE CANDIDATE	ROLL NO
1	1	RASHI AMRUT PARAKH	427410
2	2	JENNY DIPEN PANCHMATIA	423680
3	3	MANYA SHRIVASTAVA	425171
4	4	NIRALI LAKHUBHAI CHAVDA	425681
5	5	KRISHNA KUMARI PAL	400325
6	6	DODHIA MOHAMMED SHEZAAN SHABBIR ALI	434338
7	7	RAJANI RAJENDRA JHA	409331
8	8	RITIKA	404309
9	9	ANSHIKA PAL	431883
10	10	AARYA SANDEEP NAGARKAR	431865
11	10	PALAK RAI	435044





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ICSI SECRETARIAL EXECUTIVE CERTIFICATE

The ICSI Secretarial Executive Certificate is a unique initiative of the Institute of Company Secretaries of India (ICSI) for the CS Students to create a pool of semi qualified professionals.

ELIGIBILITY

A student who has:-

- passed the Executive Programme;
- completed EDP or any other equivalent programme;
- completed Practical Training as prescribed or exempted therefrom; and
- made an application along with such fee as applicable.

VALIDITY OF CERTIFICATE

- One calendar year from the date of issue
- Renewable on completion of 4 PDP Hours and payment of annual renewal fee of Rs.1000/-.
- The certificate will be renewed for a maximum period of two years only.

BENEFITS



Entitled to use the description "ICSI Secretarial Executive".



Seek employment with Practising Company Secretaries



Gain relevant experience with India Inc.



Serve the nation while preparing to become a full-fledged professional.



Eligible to receive the coveted ICSI Journal 'Chartered Secretary'.

Procedure to apply shall be available at <http://bit.do/secicsi>

For queries, please write to member@icsi.edu or contact on Phone No.: **0120-4522000**

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**LAUNCHING OF
ONLINE
LICENTIATE
ENROLLMENT**



ELIGIBILITY

A student who has:-

- (i) A person who has completed the Final examination or Professional Programme examination of the Institute may, within six months from the date of declaration of results in which he has passed the Final examination or Professional Programme examination can apply for enrolment as a licentiate.
- (ii) An Online application for enrolment as a Licentiate is to be made along with annual subscription of **Rs. 1180/-** (Rs. 1000/- Licentiate subscription + Rs. 180/- towards GST @18% applicable w.e.f. 1st July, 2017)

VALIDITY OF CERTIFICATE

- (i) A licentiate shall not ordinarily be allowed to renew his enrolment for more than five years after passing the Final examination or Professional Programme examination.
- (ii) The annual subscription of a licentiate shall become due and payable on the first date of April every year
- (iii) Non-payment of annual subscription on or before the thirtieth of June of a year shall disentitle the person to use the descriptive letters Licentiate ICSI & from 1st July of that year, until his annual subscription for the year is received by the Institute. The name of the person so disentitled shall be published in the Journal

The Institute of Company Secretaries of India launches the online module of Licentiate enrollment as a Licentiate of The Institute of Company Secretaries of India in accordance with Regulation 29 of the Company Secretaries Regulations, 1982.

BENEFITS

Recognition as 'Licentiate ICSI or entitled to use the descriptive letters Licentiate ICSI

Subscription of Chartered Secretary Journal

Participate in the activities of the Institute, its Regional Council or Chapter as the case may be, subject to such conditions as may be imposed by the Council, Regional Council or Chapter, as the case may be

Entitled to use Library facilities of the Institute, Regional Council or Chapter

Procedure to apply shall be available at <http://stimulate.icsi.edu/>

For queries, please write to member@icsi.edu or contact on phone number 0120-4522000

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News From Regions

SIRC



**THE INSTITUTE OF
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SOUTHERN
INDIA
REGIONAL
COUNCIL

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

सत्यं वद। धर्मं चर।

Motto

spread the truth; abide by the law

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

Announces

The Institute of Company Secretaries of India –Southern India Regional Council is conducting Online Classes for CSEET May, 2024 Examination. Students who have registered for CSEET from 16.12.2023 to 15.04.2024 may join the Online Classes. So far 27 batches completed successfully with 1253 students.



28th

Batch of Online Classes for CSEET

(Company Secretary Executive Entrance Test)
for May, 2024 Examination)

**Experienced
Faculties**



Date of Commencement

Friday, 1st March, 2024
(Classes may end by Thursday, 4th April, 2024)



Fees: Rs. 3,500/-

(Fees once paid, will not be refunded)

Timing of Classes

7.00 A.M. to 9.00 A.M.

&

06.00 P.M. to 08.00 P.M.

(Monday to Saturday)

(Subject to Minimum 15 Students)

Above registered students will be provided the log in ID & Password for online classes separately by email.

Mode of Payment (Online Transfer)

HDFC Bank:Poonamallee High Road Branch
Account Name:SIRC of the ICSI
SB Account No:04921110000013-IFSC Code : HDFC0000492

Students are required to enter their details in the link after making the payment.

Google Form Link: <https://forms.gle/hXGACqrFSmbftCtf7>

For further details contact :

Mr. C Murugan, Executive (Admin), Southern India Regional Office, The Institute of Company Secretaries of India
ICSI-SIRC House, No.9, Wheat Crofts Road, Nungambakkam, Chennai – 600034.
Phone: 044-28268685/28222212 / Email ID : siro@icsi.edu; chelliah.murugan@icsi.edu

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SOUTHERN
INDIA
REGIONAL
COUNCIL

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

MOTTO
सर्वो वरः सर्वं दत्तम्।
Surrender thou thyself wholly to thy duty.

MISSION
"To develop high calibre
professionals exhibiting
good corporate governance."

Announces

2nd Batch of Class Room Teaching for Executive Programme Group-I & II for June 2024 examination (New Syllabus)

Date of Commencement:

Monday, 29th January 2024 for Both Groups
(Classes may end by 3rd Week of May, 2024)

Venue:
ICSI-SIRC House,
No.9, Wheat Crofts Road,
Nungambakkam, Chennai – 600 034

Fees:
Rs.10,000/- (Per Group)

Complimentary Backpack Bag

Fees will not be refunded, once classes commenced

Group-II:
Morning 06.30 a.m. to 08.30 a.m.

Group-I:
Evening 06.00 p.m. to 08.00 p.m.

(Monday to Saturday)

Mode of Payment (Online Transfer): HDFC Bank: Poonamallee High Road Branch
Account Name: SIRC of the ICSI SB Account No: 0492111000013
IFSC Code: HDFC0000492

Students attending the physical classes conducted by SIRC are exempted from pre-exam test. Students have to pass the test to be conducted by SIRC.

Students are required to enter the details in the link after making the payment.
Google Form Link: <https://forms.gle/SVJee2ktGFYBg2Qa7>

For further details contact:

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Study Circle Meeting

SIRC of the ICSI conducted Study Circle Meeting for the students of ICSI on 31st January, 2024 at ICSI-SIRC House, Chennai on the topic, “Indian Stamp Law”.

CS Subha Sriram, Practising Company Secretary, Chennai handled the session.

ICSI Latest Publication 2023 Onwards

1	Charter of Audit Committee - January 2023
2	Corporate Governance from Compliance to Excellence (Handbook on Best Practices) Version 2.0 - March 2023
3	FAQS on SEBI (Real Estate Investment Trusts) Regulations, 2014 - March 2023
4	FAQs on SEBI (Infrastructure Investment Trusts) Regulations, 2014 - March 2023
5	Handbook on IFSCA - April 2023
6	Handbook on Business Responsibility and Sustainability - May 2023
7	FAQs on Section 8 Companies 2 nd Edition - June 2023
8	Ready Reckoner for Private Companies (Revised Edition) - June 2023
9	One Person Company - A Referencer - July 2023
10	Chartered Secretary Collector's Series (First Edition) - September 2023
11	Handbook on Producer Companies - November 2023
12	NBFC - A Quick Referencer - November 2023
13	CHARTERED SECRETARY COLLECTOR'S SERIES (Second Edition) - November 2023
14	ICSI (Management and Development of Company Secretaries in Practice) Guidelines, 2023 – November 2023
15	Company Law Exploring Procedural Dimensions VOL I / II / III - December 2023
16	Charter of Board of Directors - January 2024
17	Charter of Nomination and Remuneration Committee - January 2024
18	Guidance Note on Annual Secretarial Compliance Report (Revised Edition) - January 2024
19	SS-1 (Secretarial Standard on Meeting of the Board of Directors) - February 2024
20	SS-2 (Secretarial Standard on General Meetings) - February 2024

Weblink for Purchase: <https://www.icsi.edu/home/icsipublications/>

Study Materials 2024 (Updated Version) and Model Question Paper

The updated version of study material of each subjects of Executive Programme under New Syllabus are available at the following weblink:

https://www.icsi.edu/student_pn/academic-portal/new-syllabus-2022/executive-programme/

An indicative Sample Question Paper is also annexed at the end of each study for reference purpose.

Reading References

The Law and Practice Relating to Company Meetings

Third Edition

Author - Ramaswami Kalidas

Publisher - Bloomsbury Professional India

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Professional Programme - Compliance Management, Audit & Due Diligence**

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