

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS



Companies (Amendment) Bill, 2014 | Pg-86



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

‘CHARTERED SECRETARY’ GREETES AND CONGRATULATES CS ATUL HASMUKHRAI MEHTA AND CS MAMTA BINANI ON THEIR ELECTION AS PRESIDENT AND VICE PRESIDENT RESPECTIVELY OF THE COUNCIL OF THE INSTITUTE FOR THE YEAR 2015-16



CS Atul Has Mukhrai Mehta, President, The ICSI

CS Atul Has Mukhrai Mehta is B.Com, BGL and a Fellow Member of the Institute of Company Secretaries of India. CS Mehta started his practice as founder of Mehta and Mehta in 1996 and has been in the industry ever since. Initially, he has served the industry for 6 years as Company Secretary, in various industries. Along with Secretarial Department, he also headed various departments like, Legal, Compliance, HR. Thereafter, he laid his pioneering step in the area of consultancy and practice and set up the firm Mehta & Mehta.

Since, past 16 years, he is practicing as company secretary, partner Mehta & Mehta. He was also Chairman of ICSI – CCGRT (2011-2014). He was the Chairman of Western India Regional Council (WIRC of ICSI) in 2009. He was Central Council Member for the 11th Council of the ICSI.

CS Atul Mehta, is actively associated with Western India Regional Council (WIRC) of the Institute of Company Secretaries of India (ICSI) and the activities of the Central Council of the Institute. He is a regular faculty member for seminars, study circle and several training programmes of ICSI. He is also speaker at seminars organized by other institutions like IMC, SME Chambers, etc.



CS Mamta Binani, Vice President, The ICSI

CS Mamta Binani has been elected as Vice President of the Institute of Company Secretaries of India for the year 2015 w.e.f. 19th January, 2015. She is a Commerce graduate and a Fellow Member of the Institute of Company Secretaries of India. She has been a meritorious student throughout her education career. She was an All India Topper in the Intermediate Examinations of The Institute of Company Secretaries of India, amongst all the Lady Candidates in India and had ranked 14th on an All India Basis. In the Final Examinations, she stood all India first in the subject “Company Law”. She is practising as a Company Secretary for over 15 years now. CS Mamta Binani is a facilitator for some very prestigious programmes conducted by the Professional Institutes of India. She is a regular and acclaimed speaker in the professional forums on subjects of academic interest including inter-personal & communication skills. She takes keen interest in delving into corporate and professional issues and is consulted on various contemporary matters by the Industry. She is also an empanelled trainer with ICICI Bank Limited, Mutual Fund Industry, training people in products and processes. She is hugely associated with the financial sector, education sector and is an experienced mentor and counsellor to young professionals & students. She is an Independent Director and Advisor to a Company which is completely into XBRL development and services.

She has been the Chairperson of the Eastern India Regional Council of The Institute of Company Secretaries of India in 2010. She is the first lady to have held the position, amongst all the 3 Institutes, namely The Institute of Chartered Accountants of India, The Institute of Cost Accountants of India and The Institute of Company Secretaries of India, in the Eastern Region. She has been conferred with the “Bharat Nirman Awards” in the year 2010 for “Excellence in Professional Services” and is the first Company Secretary to have received this prestigious award. She also received the “Tejaswini Award” in the year 2010. She writes for leading journals and magazines on a regular basis and contributes articles and papers in various house journals of professional institutes, on topics of varied interests. She is very regular with her informative & academic blogs.

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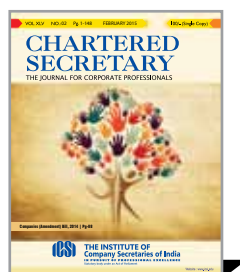


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- 01 >> Outgoing President CS R. Sridharan putting the President's Collar to CS Atul H. Mehta the newly elected President of the Council of the Institute.
- 03 >> Newly elected President Chairing the first Meeting of the Council of the Institute.
- 05 >> CS Sutanu Sinha greeting the newly elected President of the Institute.
- 06 >> CS Alka Kapoor greeting the newly elected Vice President of the Institute.

- 02 >> Newly elected President CS Atul H. Mehta presenting a bouquet to CS Mamta Binani, the newly elected Vice President of the Council of the Institute.
- 04 >> Felicitation Function – Sitting from Left: CS Rajiv Bajaj, CS Ashish C. Doshi, CS Makarand M. Lele, CS Sutanu Sinha, CS Atul H. Mehta, CS Mamta Binani, CS S. K. Agrawala, CS Mahavir Lunawat, CS Ahalada Rao V. and CS Ranjeet Kumar Pandey.
- 7-8 >> Newly elected President and the Vice President addressing Team ICSI.



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- 09 >> CS Atul H. Mehta (newly elected President of the Institute) presenting a bouquet to Naved Masood (Secretary, Ministry of Corporate Affairs).
- 11 >> Meeting of ICSI delegation with Special Secretary, MCA – Standing from Left (clock wise): CS Atul H. Mehta, CS Sutanu Sinha, Anjuly Chib Duggal (Special Secretary, Ministry of Corporate Affairs), CS Alka Kapoor and CS Mamta Binani.
- 13 >> Meeting with delegation of Chartered Alternative Investment Analyst (CAIA) Association, USA – Standing from Left: Joanne Murphy (MD, Asia Pacific, CAIA Association), Keith Black (MD, Curriculum & Exams, CAIA Association), William J. Kelly (CEO, CAIA Association), CS Atul H Mehta (President, ICSI), CS Sutanu Sinha (CE & Officiating Secretary, ICSI), Dr. S. K. Dixit (JS, Professional Development, Perspective Planning and Co-ordination, ICSI), CS A. K. Dixit (Director, Discipline, ICSI) and CS Sonia Bajjal (Director, Academics, ICSI).

- 10 >> Group Photo of ICSI Delegation with Secretary, MCA – Standing from Left: CS Mamta Binani (Newly elected Vice President of the Institute), CS Atul H. Mehta (newly elected President of the Institute), Naved Masood (Secretary, Ministry of Corporate Affairs), CS Sutanu Sinha (Chief Executive and Officiating Secretary, ICSI) and Alka Kapoor (Joint Secretary, ICSI).
- 12 >> Meeting of ICSI delegation with Joint Secretary, MCA – CS Mamta Binani presenting a bouquet to Amardeep Singh Bhatia (Joint Secretary, Ministry of Corporate Affairs). Others standing from Left: CS Sutanu Sinha, CS Atul H. Mehta and CS Alka Kapoor.
- 14 >> Discussion Meeting on Secretarial Audit held at Chennai–Atul H. Mehta Chairing the meeting.



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- 15 >>> SIRC – Coimbatore Chapter – Foundation stone laying ceremony of the Chapter building by R. Sridharan.
- 17 >>> Management Skills Orientation Programme conducted by ICSI HQ – Sitting on the dais from Left: Dr. S. K. Dixit, Dr. Shrirang Altekar(Director, Symbiosis Centre for Management Studies), CS R. Sridharan and CS Sutanu Sinha, addressing.
- 19-22 >>> A view of the Cleanliness Drive (Swachh Bharat Mission) conducted by the Offices of the ICSI – From Left: Coimbatore Chapter, Lucknow Chapter, ICSI-CCGRT and Mangalore Chapter Officers, staff and volunteers seen engaged in the cleanliness drive.

- 16 >>> NIRC – Bhilwara Chapter – Inauguration of Chapter Building by Hon'ble Justice of Rajasthan High Court – Sitting on the dais from Left CS Shyam Agrawal, CS R C Lodha, CS Vikas Y Khare, Dr. Vinod Kothari (Hon'ble Justice, Rajasthan High Court), CS R. Sridharan, CS R. L. Nolkha (Chairman, Nitin Spinners Ltd.), CS P. K. Mittal, CS Sutanu Sinha and CS R. K. Jain.
- 18 >>> EIRC – 10th Regional Conference of Practising Company Secretaries – CS R. Sridharan addressing. Others sitting from Left: CS Ranjeet K. Kanodia, CS Arun K. Khandelia, CS Anil Murarka, R. Bandyopadhyay, S. Gangopadhyay, CS Ashok Kumar Pareek, CS Sutanu Sinha and CS Mukesh Chaturvedi.



Articles

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A Broad Overview of the Companies (Amendment) Bill, 2014

» P-13

Delep Goswami & Anirud Goswami

The article deals with the salient features of the Companies (Amendment) Bill, 2014 and examines the proposed amendments, relating to relaxation in related party transactions; empowering the Audit Committee of the Board to grant omnibus approvals; dilution of the requirement of passing of special resolutions by the non-related shareholders; relaxation of the requirement of passing special resolutions to approve the transactions between the holding and subsidiary companies; and relaxation of the Auditors duty to report frauds/suspected fraud to the Central Government in certain cases.. The Special Courts to be set up under the Companies Act, 2013 will now try offences punishable with imprisonment of 2 years or more. The requirement of "common seal" has been done away with and also, the requirement of minimum paid up share capital requirement of public and private companies have also been deleted. These amendments are intended to allow "ease in doing business" and upgrade India's world ranking in "ease in doing business".

Companies (Amendment) Bill, 2014

» P-19

Komal Pansari

The Companies Act, 2013 was notified on 29th August, 2013. After the commencement of various provisions of the Act, the Government has received numerous representations expressing practical difficulties in complying with some of the requirements laid down. A number of notifications, circulars, and removal of difficulties orders have been issued by the MCA. However, the Act and the related rules still cover many areas of ambiguity. In light of the anomaly between the Act and the Rules and difficulties being faced in application of the provisions thereof, the Companies (Amendment) Bill, 2014 has been introduced. The Bill proposes around 22 amendments to the legislation, for the ease of doing business and to meet corporate demands. Highlights of the proposed amendments are discussed in this Article.

Board Performance Evaluation

» P-28

N. L. Bhatia

Board performance evaluation has been made mandatory effective from financial year 2014-15. It poses a challenge for company boards in general, and independent directors in particular. The law makers have entrusted independent directors with, if not onerous, a delicate responsibility in the matter of transparent and efficient management of companies. Their position is delicate as they have to oversee the performance of the promoters who have not only selected them but their continuance is dependent at the sweet will of the promoters. Their formidable responsibility could be seen in the context of duties, responsibilities and liabilities entrusted on them as part of their code of conduct. The new role underscores the need for determining parameters for evaluation and the manner of evaluation both for independent directors and chairperson. In order to overcome the difficulties the law makers have made changes in the selection process of independent directors and by reducing the number of directorship they can devote more time to the business of the companies.

Criminal Liability in Respect of Prospectus- An Analysis

» P-32

D. K. Prahlada Rao

The most popular method for raising capital from the public is through the issue of prospectus-a document which describes the objects of the company and the purpose for which the capital is being raised and the related issues. On the basis of the disclosures and placing total reliance on the accuracy of disclosures made, the investors may decide to subscribe to the capital of a company. This document is held sacrosanct and it cannot be altered except following the procedure prescribed by law. Such a document fastens civil and criminal liability on the part of those who have issued the prospectus. This article examines the depth of criminal liability with reference to the provisions of the Companies Act, 2013 and the judicial decisions.

Parallel Imports in India: Harvest OR Mitigate!

» P-37

Ashwin D. Rajan & Mohit Porwal

Parallel Imports are now quite commonplace in countries the world over. Generally, the consumers are benefited by such grey-market products, and the manufacturers holding the intellectual property rights over the products, are adversely affected. Most importantly, today there is no international consensus to control parallel imports, and countries handle these on their individual discretion. This article provides useful information about the parallel imports, particularly the parallel imports in India, and explains the doctrines of exhaustion of intellectual property rights adopted by several countries of the world.

Bitcoins: New Buzz in the Currency Market

» P-41

Neha Kalra & Dr. Shaveta Gupta

The recent shutdowns of Mt. Gox (Japan) and Flexcoin (Canada) are putting pressure on the government authorities in Japan, China, Hong Kong, India, United States and other countries to formulate guidelines to regulate virtual currencies. The virtual currency causing this clamor is none other than Bitcoins. A virtual currency which was launched approximately four years ago by an anonymous computer programmer known as "Satoshi Nakamoto". Bitcoin attempts to overcome the weaknesses of gold-based and paper currencies. It has no intrinsic value, not regulated or backed by any real-world commodity, like gold or silver, or any central bank or government or pegged to any real-world currency, rather backed by pure mathematics. Despite, witnessing tremendous price volatility, steady growth of the "bitcoin family" indicates continuing support by enthusiasts who see the benefits and future in virtual currencies. This article throws light on the working of bitcoins, reasons for its widespread appreciation and its status in various countries with special reference to India.

An Overview of the Compounding Provisions Under the Foreign Exchange Management Act (FEMA), 1999

» P-47

Dr. Meghna Chotaliya

Compounding of offence means "making good the loss suffered by a victim". Contravention of law and non compliance leads to penalties



at a Glance

and prosecution and to save oneself from punishment one can opt for compounding. Compounding is a boon under our statutes to save the offender from prosecution and other legal penalties. Contraventions under FERA were treated as Criminal offence punishable as per Criminal Procedure Code, 1973. However offences under FEMA are considered to be civil punishable with monetary penalty. An overview of the procedure for compounding and the enforcement of orders of the Adjudicating Authorities is presented in this article. It also deals with appeals against the orders of the Compounding Authorities, Appeal to Appellate Tribunal and penalties for various offences and throws light on the indicative points which RBI considers while examining the nature of contravention under the provisions of FEMA Act, 1999.

PPP in the Coal Sector in India



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Jatinder (Jay) Cheema

Despite having the fifth largest coal reserves in the World, India's reliance on imported coal is increasing and there is a clear need for innovation, technology and infrastructure in the domestic coal sector. Coal production has consistently been below planned targets and the current model of private participation is clearly not delivering the needed results. There is an urgent need to reinvent the way PPPs are utilized in the coal sector. Harnessing India's entire coal potential is constricted by political and socio-environmental factors and the technological handicap of Coal India Limited in harnessing the complete coal potential. To encourage private investment in coal production arbitrary barriers to private participation need to be removed. Initiatives like boosting investment in development of underground coal mining and incentivizing development of coal transport infrastructure with rail, road, pipeline and shipping enhancements would work to rebalance the supply and demand equation.

Legal World

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▶ LW: 11:02:2015 The appellate remedy available to the respondent prior to the amendment of Section 15Z of the SEBI Act, must continue to be available to the respondent, despite the amendment. We accordingly hold, that all the appeals preferred by the Board, before the High Court, were maintainable in law. [SC] ▶ LW: 12:02:2015 We will be failing in our duty if we do not advert to the issue that the appellant shall remain as a secured creditor, for it was registered as such under the Registrar of Companies. [SC] ▶ LW: 13:02:2015 It would depend on the facts and circumstances of each case whether the debt has got crystallized or not or the matter required evidence and the disputes required adjudication before the Civil Court. [Del] ▶ LW: 14:02:2015 Accordingly, in absence of any mitigating factor, the Commission, in exercise of powers under section 27 (b) of the Act, decides to impose penalty on the Opposite Party No. 1 at the rate of 8% of their average turnover for the last three preceding financial years. [CCI] ▶ LW: 15:02:2015 The Commission concludes that no contravention of the provisions of section 3(4) read with section 3(1) and section 4 of the Act has been established in the present case. [CCI] ▶ LW: 16:02:2015 Though the allegation of negligence can be independently looked into, considering the standard of proof in criminal prosecution, we

are of the view that, in the present case, the continuance of prosecution against the appellant is not tenable in law and the proceedings are liable to be quashed. [SC] ▶ LW: 17:02:2015 Thus, it is only when the stage of proceedings in cases filed under Section 138 of the Act has reached the stage of Section 145(2) of the Act or beyond thereof, such case shall continue to be dealt with by the Court where it is pending trial. [Del] ▶ LW: 18:02:2015 The liability to pay sales tax is borne by the Official Liquidator as a manager or receiver of the property of the company in liquidation. Therefore, we are of the considered opinion that the Official Liquidator would be required to pay the tax payable on the sale of the assets of the company in liquidation. [SC] ▶ LW: 19:02:2015 The High Court committed grave error in holding that although he is not covered under the definition of workman as defined under Section 2(z) of the Act he shall be classified as a workman. The High Court further exceeded its jurisdiction in advising the Government to make an amendment in Section 2(z) of the Act and to exclude some clauses. [SC]

From the Government

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- ▶ The Companies (Accounts) Amendment Rules, 2015 ▶ The Companies (Corporate Social Responsibility Policy Amendment Rules, 2015 ▶ The Companies (Appointment and Qualification of Directors) Amendment Rules, 2015 ▶ The Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2014.
- ▶ Securities and Exchange Board of India (Foreign Venture Capital Investors) (Amendment) Regulations, 2014 ▶ Risk Management Policy at the Depositories ▶ Index based market-wide circuit breaker mechanism ▶ The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ▶ Exit Order in Respect of Gauhati Stock Exchange Ltd (Gse) ▶ New Premises of Securities Exchange Board of India Local Office at Panaji, inaugurated ▶ The Companies (Amendment) Bill, 2014*
- ▶ Guidelines for processing cases of India-specific and regional studies conducted by Multilateral development Banks.- Reg. ▶ Levy of service tax on activities involved in relation to inward remittances from abroad to beneficiaries in India through MTSOs- reg.

Other Highlights

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- ▶ Members Admitted / Restored
- ▶ Certificate of Practice Issued / Cancelled
- ▶ Licentiate ICSI Admitted
- ▶ News From the Regions
- ▶ Company Secretaries Benevolent Fund
- ▶ Our Members

ELECTED MEMBERS OF THE 12TH COUNCIL OF THE ICSI (2015-2018*)

PRESIDENT



CS Atul H. Mehta

VICE PRESIDENT



CS Mamta Binani

COUNCIL MEMBERS (in Alphabetical order)



CS Ahalada Rao V.



CS Ashish C. Doshi



CS Ashish Garg



CS Gopalakrishna Hegde



CS Mahavir Lunawat



CS Makarand M. Lele



CS Rajiv Bajaj



CS Ramasubramaniam C.



CS Ranjeet Kumar Pandey



CS S. K. Agrawala



CS Satwinder Singh



CS Shyam Agrawal



CS Vineet K. Chaudhary

* The tenure of the existing Council will last upto 18-01-2019.



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

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1. I, Shri/Ms./Dr./Professor..... declare that I have read and understood the Guidelines for Authors.
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3. I undertake that I:
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 - b. shall abide by the decision of the Institute, i.e., whether this article will be published and / or will be published with modification / editing.
 - c. shall be liable for any breach of this 'Declaration-cum-Undertaking'.

(Signature)



Dear Professional Colleagues,

I deem it my proud privilege to communicate with you after having assumed the august office of President of the largest statutory setup established to regulate and develop the profession of company secretaries. At the outset, I would like to take this opportunity to express my heartfelt gratitude to all of you and to my colleagues on the Council for reposing confidence in me.

I express my sincere thanks to my illustrious predecessors and particularly my immediate predecessor CS R Sridharan for valuable contribution in promoting the cause of the profession. I also express my thanks to my colleagues of 11th Council whose term expired on January 18, 2015 for their time, energy and untiring efforts for the growth and development of the profession. I also take this opportunity to assure you that I would put my best efforts to carry the flag of the Institute high with unrelenting zeal and indomitable spirit and achieve further commendable heights with confidence and trust of all of you and that of the government, regulators and corporate sector.

Friends, the polling for elections to 12th Council and Regional Councils of the Institute was held on December 12, 2014, December 13, 2014 in Delhi and Mumbai and December 12, 2014 at other places. The elections to Managing Committee of Chapters were held on December

20, 2014. The election results have been notified. I wish to congratulate all newly elected members to Council, Regional Councils and Managing Committee of Chapters and thank my professional brethren for participating in the elections process. The Institute now have a new dynamic team full of energy and ideas at the Central Council, Regional Councils and Chapter level. In this knowledge and information technology driven world with hand held networking devices, I strongly believe that there is need to switch over to e-voting in our polling process too. I will take this agenda with my Council colleagues on a positive note.

Friends, networking, technology, stakeholder engagement are inter-influential and has impacted every sphere of business and profession leading to business dynamism having innovation as basic ingredient. Harnessing of technology and re-engineering of processes in the right time and in the right manner will be my endeavour to provide effective and efficient services to our stakeholders. Smart working is an art of identifying the enablers that makes our lives smoother. We as a leading professional body need to rightly strategise our plans for our stakeholders and to make use of the same at the optimum level. This effort has to happen at individual level as well as the institutional level. In this direction, I feel it is quite important for professionals like us to adapt to new technological and regulatory realities.



From the President

I urge upon you to further strengthen your competencies to shoulder the onerous responsibilities cast upon us by the regulators. Given the new and complex challenges we face, what's needed now more than ever is to provide corporate solutions and value added services.

The year gone by has been a year of strategies and actions setting high goals for the Institute in terms of capitalising on challenges under the Companies Act, 2013 and rules framed thereunder. A number of publications and programmes, technology initiatives have been taken in this direction. Secretarial Audit has given new dimension to our profession and in this direction, the Institute have set in motion the process of preparing list of laws applicable specifically to companies and also background papers on Secretarial Audit for the benefit of members. Nationwide capacity building programs for members both in employment and in practice have also been planned. Meantime, Company Secretaries in various industry segments are being approached to share the lists of laws applicable to their company, which will provide the basic foundation for ICSI to build the database of Industry specific applicable laws. Capacity building to justify our new role has now become of utmost importance and I sincerely request you to participate in all such capacity building programmes.

The Institute has represented to the Ministry of Corporate Affairs to provide for certification of Form AOC-4 (Form for filing financial statement and other documents with the Registrar under section 137 of the Companies Act, 2013 and Rule 12(1) of the Companies (Accounts) Rules, 2014) by Company Secretaries in Practice. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2014 provide for mandatory appointment of Company Secretary as compliance officer except for units of Mutual Funds listed on Stock Exchanges.

Globally, ICSI is amongst the largest professional bodies of Company Secretaries having the most number of members and students. My endeavour will be to build our presence and visibility upon this leadership position at International level. Substantial work has been done towards opening a Chapter formally at Dubai. The Institute had dialogue with counterparts in Malaysia and Bangladesh for mutual

recognition agreements for the benefit of the members and students of respective Institutes and to make the profession of Company Secretaries truly global. It shall be my endeavour to conclude the discussion and the agreements entered into with the respective Institutes at the earliest.

We will be unfolding agenda for the year shortly. We will focus on Capacity Building of our members and students, more recognitions, improvement in quality of knowledge materials and skill enhancement of the students. I understand the expectations of the stakeholders and that the task is enormous which calls for proactive approach, healthy debate and collective wisdom. I seek your guidance, advice, suggestions and support in continuing and building upon the excellent work already done for the growth and development of the profession.

I strongly believe that the Institute need be connected to its members through – emails, sms, new age social media like facebook, linkedin, knowledge portal, etc. and this is all the more important when the whole corporate landscape is undergoing second stage metamorphosis. I have observed that, many of our members and students have not updated their email id, contact numbers, and professional address in the Institute's database. I humbly request all of them to visit ICSI website and update their details, as it will help us in seamless communication.

I am confident that with your support and wisdom, I shall be able to carry out the plans and tasks initiated by my predecessors and devise strategies and action plans for providing new dimensions to the profession of Company Secretaries, in the current business environment evolving, out of highly contestable market dynamics.

With kind regards,

January 30, 2015.

Yours sincerely,

(CS ATUL H MEHTA)
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A Broad Overview of the Companies (Amendment) Bill, 2014

- The amendments proposed in the Companies (Amendment) Bill, 2014 deal with related party transactions, fraud reporting by auditors, public inspection of Board resolution, responsibilities of audit committee, restrictions on bail, making common seal optional, requirement for minimum paid-up share capital, strength of benches for hearing winding up cases, jurisdiction of special courts to try offences. These are examined in brief in this article.

The Companies Act, 2013 (the Act) replaced the earlier Companies Act, 1956 (the old Act) and the Act was notified on 29.8.2013 and out of the 470 sections in the Act, 283 sections and 22 sets of Rules corresponding to such sections have so far been brought into force. However, the working of the provisions of the Act has thrown open newer challenges for the corporate sector and the professionals associated with it. Despite notifications issued by the Government from time to time to amend the Rules under the Act and despite clarifications issued by the Government, some Industry bodies and Professional Institutes had been seeking amendments to many provisions of the Act which were creating impediments in doing business. Further, as per World Bank's ranking for doing business, India ranked 142nd out of 189 countries and in order to attract foreign investments to India, the Central Government has been making serious efforts to remove the difficulties in doing business in India by creating conducive investment climate and India is targeting to improve its ranking within the first 50 from its present 142nd ranking.



In the Statement of Objects and Reasons for introducing the Companies (Amendment) Bill, 2014 (the Amendment Bill) in the Parliament, it is stated thus: "after the commencement of provisions of the Act, Government have received representations from various stakeholders (including Industry Chambers, Professional Institutes, Legal Experts and Ministries/Department) expressing practical



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➤ The Amendment Bill, 2014 provides for addition of a new section, namely, section 76A whereby stringent punishment has now been prescribed for raising illegal deposits and/or failure to return the deposits or interests thereon, and the defaulting company will be liable to fine ranging from Rs.1 crore to Rs.10 crores and the officers of the company who are in default shall be liable for hefty fine and imprisonment as well. Additionally, if an officer of a company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

difficulties in complying with some of the requirements laid down in the commenced provisions. It was noted that some of the issues raised and suggestions made can be addressed only by way of amendment in the Act. Some of the amendments are also required with a view to further facilitate “ease of doing business” and deal with certain difficulties in this behalf voiced by Industry Chambers and other agencies. The proposed amendments deal with related party transactions, fraud reporting by auditors, public inspection of Board resolution, responsibilities of audit committee, restrictions on bail, making common seal optional, requirement for minimum paid-up share capital, strength of benches for hearing winding up cases, jurisdiction of special courts to try offences. Amendments are also being proposed in the Act to incorporate some of the provisions earlier left out inadvertently, setting off of pass losses/depreciation before declaring dividend and exemptions for giving of loans/guarantee/security by holding companies to its subsidiaries. Accordingly, it has been decided to move amendments in the Act through an Amendment Bill.”

The salient features of the Amendment Bill passed by the Lok Sabha on 17th December, 2014 (which is awaiting clearance by the Rajya Sabha) and its likely impact on the companies are being analysed hereunder.

NO MINIMUM PAID-UP SHARE CAPITAL LIMIT

The requirement of minimum paid-up share capital limit of Rs.1 lakh for private limited companies and Rs.5 lakh limit for public limited companies as mentioned in Sections 2(68), 2(71) and Section 11(1)(a) of the Act will stand deleted and this would mean ease in incorporation and operation of companies. This amendment will accelerate company formation and help in commencement of business or exercising borrowing powers, which will no longer be linked to minimum paid-up share capital limit and will facilitate doing business.

REQUIREMENT OF “COMMON SEAL” - OMITTED

Another significant feature of the Amendment Bill is to make the use of “common seal” by companies optional instead of mandatory. Section 9 which deals with “effect of registration” of a company as a body corporate, earlier linked up, inter-alia, with “common seal” shall stand omitted. Affixation of common seal on important documents including Share Certificates and Bills of Exchange has also been made optional. Similarly, Section 12(3)(b) of the Act has been amended to the same effect. In Section 22(2) in addition to making the use of “common seal” optional, a new provision has been inserted which reads :“provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary”. In sub-section (3) of Section 22, the words “and have the effect as if it were made under its common seal” shall be omitted. Again, in section 46 of the Act relating to “Certificate of Shares”, in sub-section (1), for the words “issued under the common seal of the company”, the words “issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary” shall be substituted. Thus, use of common seal by the company has been made optional and helps in ease of doing business.





STRINGENT PUNISHMENT FOR RAISING DEPOSITS ILLEGALLY BY COMPANIES

As per Section 76 of the new Act read with the Rule 2(e) of the Companies (Acceptance of Deposits) Rules, 2014, a public company having a net worth not less than Rs.100 crore or a turnover of not less than Rs.500 crores, may accept deposits from persons other than its members, subject to compliance with the requirements provided in Section 73(2) and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe. The Amendment Bill, 2014 provides for addition of a new section, namely, section 76A whereby stringent punishment has now been prescribed for raising illegal deposits and/or failure to return the deposits or interests thereon, and the defaulting company will be liable to fine ranging from Rs.1 crore to Rs.10 crores and the officers of the company who are in default shall be liable for hefty fine and imprisonment as well. Additionally, if an officer of a company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447. This will deter fraudsters who fraudulently dupe lakhs of investors who, through cumulative investment schemes/ponzischemes, lose their life's savings lured by the prospect of attractive returns. In this regard, the recently introduced "Jan Dhan" scheme by the Central Government which helped nearly eight crore persons to open bank account and also to get insurance coverage, has created a big dent on such illegal chit funds and thus saved common investors from the clutches of the fraudsters.

RESTRICTIONS ON PUBLIC INSPECTION AND OBTAINING COPIES OF BOARD RESOLUTIONS

Section 117 of the Act prescribes requirement of filing of certain specified resolutions to the concerned Registrar of Companies (ROC) and its public inspection and obtaining copies thereof. However, the Industry bodies objected to this requirement on the ground of protecting the confidentiality of Board resolutions. The Amendment Bill incorporates a new proviso to clause (g) of Section 117 of the Act, which states that "provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions". This is a move in the right direction.

DECLARATION OF DIVIDEND AND PROVISIONS RELATING TO UNCLAIMED DIVIDEND

Section 123 of the Act prescribes the procedure to be followed by companies with regard to declaration of dividend. The Amendment

Bill inserts a new provision to Section 123(1) which reads "provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year." This will encourage prudent financial discipline to protect the financial health of the company.

Further, section 124 of the Act which deals with transfer of unpaid dividend to a special account to be opened by the company in that behalf in any scheduled bank to be called "the Unpaid Dividend Account", the Amendment Bill changes the said section whereby "dividend (that) has not been paid or claimed for seven consecutive years or more" shall be liable for transfer to the special account. The Amendment Bill also inserts an explanation clarifying that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund. This will protect the interests of those shareholders who, for some reasons, are unable to en-cash/claim the dividend declared on their shares without going through a tedious process.

RELAXATION IN THE AUDITORS DUTY OF REPORTING "FRAUDS/SUSPECTED FRAUDS"

Section 143(12) of the Act read with Section 134(c) (relating to 'Directors' Responsibility Statement') mandated that notwithstanding anything contained in the said section, if an auditor of a company, in the course of performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he was duty bound to report to the Central Government, every such type of fraud or suspected fraud, and the Central Government could take action thereon as deemed fit and proper.





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➤ The requirement of passing of “special resolution” of non-related shareholders is being diluted for RPTs, and companies will find it rather easy to get ordinary resolutions passed. It is feared that while there is no doubt that it will help in “ease in doing business”, yet it would also adversely impact the healthy practice of adherence of good corporate governance norms by companies.

However, the Amendment Bill dilutes this requirement and existing section 143(12) is being substituted by a new clause which stipulates that if the auditor, during the course of his audit, suspects or finds any fraud committed by the company’s officers or employees, he has to report it to the Central Government, when the amount crosses the threshold limit to be prescribed by the Central Government and in respect of other frauds/suspected frauds below the threshold limit, the same has to be reported to the Audit Committee of the company’s Board of Directors. The Board of Directors report to the shareholders, as mandated in section 134 of the Act, should contain details only in respect of frauds/suspected frauds reported by the auditors to the Audit Committee and not those that are reportable to the Central Government. This can be seen in the substituted sub-section (12) to section 143 of the Act, as per the Amendment Bill.

Ostensibly this amendment may reduce the workload of the Government’s regulatory authorities monitoring corporate functioning, yet it may also be interpreted as diluting the Government’s strictness in dealing with prevention of corporate frauds.

RELAXATION IN APPROVALS REGARDING RELATED PARTY TRANSACTIONS (“RPTS”)

Section 2(76) of the Act defines “related party”, which, inter-alia, means a director or his relative; or a key managerial personnel or his relative; a firm in which a director, manager or his relative is a partner; or a private company in which a director or manager is a member or director; a public company in which a director or manager is a director or holds along with his relatives, more than two percent of its paid-up share capital; and any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager; and any person on whose advice, directions or instructions, a director or manager

is accustomed to act (other than advice given in a professional capacity); any company which is (a) a holding, subsidiary or an associate company of such company; or (ii) a subsidiary of a holding company to which it is also a subsidiary.

Sub-section (1) to section 188 of the Act stipulates that except with the consent of the Board of Directors given by a resolution in a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party in respect of (a) sale, purchase or supply of any goods or materials; (b) selling or otherwise disposing of, or buying, property of any kind; (c) leasing of property of any kind; (d) availing or rendering of any services; (e) appointment of any agent for purchase or sale of goods, materials, services or property; (f) such related party’s appointment to any office or place of profit in the company, its subsidiary company or associate company; and (g) underwriting the subscription of any securities or derivatives thereof, of the company.

However, the provisos to sub-section (1) of Section 188 of the Act contains an enabling provision to enter into RPTs by passing “special resolution” by non-related party shareholders of the company. This meant passing of “special resolution” (75% majority) by non-related shareholders, which was rather a tough call for promoter/interested-parties dominated companies. This restriction on RPTs attempted to plug the loopholes through which the funds of the company could be diverted to relatives or family-owned companies, ostensibly under the garb of legitimate business deals and activities.

Incidentally, section 177 of the Act carves out a significant role for “Audit Committee” of the Board to oversee and curb such misuses of RPTs. Clause (iv) of sub-section (4) of section 177 deals with the power of the Audit Committee with regard to approval/any subsequent modification of RPTs. The Amendment Bill inserts a new proviso to Section 177(4) which stipulates “provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company,





- Since RPTs have the scope of facilitating and benefitting group companies and/or companies in which the relatives of promoters/managing directors are interested, it is felt that relaxation of the stringent requirement of obtaining special resolution (which requires approval by 75% of the non-related shareholders) and relaxation in respect of RPTs between holding and subsidiary companies, could adversely impact the adherence to financial discipline and good corporate governance standards by the companies.

subject to such conditions as may be prescribed.” Thus, for ease in doing business, now the Audit Committee will be empowered to give omnibus approvals for related party transactions. Further, the Amendment Bill proposes that in the first proviso to section 188(1) of the Act, the requirement of passing “special resolution”, is being substituted with “resolution”. In other words, the requirement of passing of “special resolution” of non-related shareholders is being diluted for RPTs, and companies will find it rather easy to get ordinary resolutions passed. It is feared that while there is no doubt that it will help in “ease in doing business”, yet it would also adversely impact the healthy practice of adherence of good corporate governance norms by companies.

Further, with regard to carrying out different transactions enumerated in clauses (a) to (g) of Section 188(1) of the Act, the relevant Rule is 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014 (“CMBP Rules”) prescribes certain specified threshold limits. However, it is worth noting that the earlier paid-up share capital limit of Rs.10 crores of companies for applicability of restrictions on RPTs has been omitted vide Government notification dated 14.8.2014 and in its place, different threshold limits have been specified for different specified transactions linking them to certain percentage limit of the annual turnover or net worth of the company or monetary limit, whichever is lower. Thus, the Government notification dated 14.8.2014 had already relaxed the RTP restrictions. Nonetheless, despite this amendment to the CMBP Rules, the companies were still required to get approval through special resolution for RPTs exceeding the threshold limits. Now, the Amendment Bill stipulates that in sub-sections (1) and (3) of Section 188 of the Act, the requirement of passing of special resolution stands ‘omitted’ and only ordinary resolution will be sufficient.

With regard to business transactions between holding and subsidiary companies, the Amendment Bill inserts a new proviso to sub-section (1) of Section 188 which reads: “provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.” This also eases entering into transactions between holding and subsidiary company.

Since RPTs have the scope of facilitating and benefitting group companies and/or companies in which the relatives of promoters/managing directors are interested, it is felt that relaxation of the stringent requirement of obtaining special resolution (which requires approval by 75% of the non-related shareholders) and relaxation in respect of RPTs between holding and subsidiary companies, could adversely impact the adherence to financial discipline and good corporate governance standards by the companies.

LOANS TO DIRECTORS AND HOLDING-SUBSIDIARY RELATED BUSINESS COMPANY TRANSACTIONS

Sub-section (1) of section 185 of the Act stipulates that except as otherwise provided in the Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to pay other person in whom the director is interested; or give any guarantee or provide any security in connection with any loan taken by him or such other person. Proviso to this sub-section gives the exceptions to the blanket ban and enumerates the circumstances when loans etc. can be given. Provisos (a) and (b) to sub-section (1) of section 185 elaborates exceptions to the aforesaid restrictions. The Amendment Bill, 2014





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inserts two new provisos viz. (c) and (d) to Section 185(1) of the Act, which further eases the restrictions and does not cover any loan by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company, subject to the proviso that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities." These exceptions will ease giving of loans/guarantees by holding company and subsidiary companies and facilitates "ease of doing business".

TRIAL OF OFFENCES BY THE SPECIAL COURTS

For speedy trial of offences committed by companies, section 435 of the Act empowers the Central Government to establish Special Courts. The Amendment Bill brings a changes in sub-section (1) of section 435 and instead of "trial of offences under this Act" it will be substituted with the words "trials of offences punishable under this Act with imprisonment of two years or more" and a new proviso is being inserted in Section 435 which reads "provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law". Consequential changes have also been made in Section 436(1) of the Act whereby the phrase "all offences under this Act" which were to be tried by Special Courts, is being substituted by the words "all offences specified under sub-section (1) of Section 435".

It is felt that this change would dilute the efforts in speedy trial of all offences under the Act and now only the specified offences will be tried by the Special Court and all other trials would continue to go through the existing protracted Court processes.

RELAXATION OF CONDITION FOR OBTAINING "BAIL" FOR OFFENCES UNDER INVESTIGATION

In section 212 of the Act dealing with investigation into affairs of company by Serious Fraud Investigation Office, certain restrictions were imposed on obtaining bail by accused in respect of offences construed as "fraud" and punishable under Section 447 of the Act. The Amendment Bill permits relaxation of the condition for obtaining "bail" by the accused.

HEARING OF WINDING UP CASES BY 2 MEMBER BENCH OF COMPANY LAW

TRIBUNAL (CLT)

As per sub-section (4) of Section 419 of the Act disposal of any case relating to rehabilitation, restructuring, reviving or winding up of companies were to be heard by a 3 member Bench of CLT. The Amendment Bill stipulates that "winding up" cases will now be heard by a 2 Member Bench. Currently, in different High Courts exercising this jurisdiction, cases are generally heard by a single Judge Bench. Therefore the amendment will speed up hearing of winding up cases and seems to be more practical and pragmatic.

CONCLUSION

The fourteen amendments included in the Amendment Bill 2014 passed by the Lok Sabha on 17th December, 2014 aims at easing the norms /restrictions in doing business in India. However, dilution of the restrictions on RTPs and transactions between holding and subsidiary companies, could impact the adherence to good corporate governance practices. The responsibilities and role of Independent Directors and Woman Director on company Boards could provide the necessary checks and balances in protecting the interests of different stakeholders. However, exercise of caution by in-house and outside professionals will help the company steer clear of possible pitfalls and financial frauds etc. Only time will tell how far the amended new Companies Act meets the fresh challenges thrown open by self-governance and lesser regulatory control over companies.

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ANNOUNCEMENT

The Institute of Company Secretaries of India is participating in the NEW DELHI WORLD BOOK FAIR being organised by National Book Trust, India from 14th to 22nd February 2015 at Pragati Maidan, New Delhi. Please visit the ICSI stall (Hall No.14/188) and avail 10% discount on ICSI publications.



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Companies (Amendment) Bill, 2014

- The Companies Act, 2013 has not yet been fully brought into force. There are provisions which are yet to be enforced. Responding to the representations made by professionals, trade associations and others the new Government has come out with an Amendment Bill to remove some inconsistencies and to iron out some difficulties. The proposals *vis-à-vis* the existing provisions have been presented in this article in a tabular format for easy reference.

The Companies Act, 2013 (Act) was notified on 29th August, 2013. Out of 470 sections in the Act, 283 sections and 22 sets of Rules corresponding to such sections have so far been brought into force. Certain provisions relating to compromises, mergers and amalgamations and winding up and certain other provisions relating to setting up of/exercise of powers by National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT); Investor Education and Protection Fund (IEPF); National Financial Reporting Authority (NFRA) and Special Court, have not yet been brought into force.

After the commencement of the provisions of the Act, the Government received representations from various stakeholders expressing practical difficulties in complying with some of the requirements laid down in the new provisions. A number of notifications, circulars, and removal of difficulties orders have been issued by the MCA from 1st April, 2014 till date. However, the Act and the related rules still have many areas which require clarity.

In the light of the anomaly between the Act and the Rules and difficulties being faced by the corporates in the application of the provisions thereof, the Companies (Amendment) Bill, 2014 (Bill)



has been introduced by the new Government in the Lok Sabha and has since been passed by it and is awaiting clearance by the Rajya Sabha.

The Bill proposes around 21 amendments to the Act of 2013, for the ease of doing business and to meet corporate demands. These efforts also appear to be operating in the shadow of doing business rankings (principally those put out by the World Bank group) and the need to demonstrate better environment in India for foreign investors. The proposed amendments deal with related



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party transactions, fraud reporting by auditors, public inspection of Board resolutions, responsibilities of audit committee, restrictions on bail, making common seal optional, removal for requirement of minimum paid-up share capital, strength of benches for hearing winding up cases, jurisdiction of special courts to try offences. Amendments are also being proposed in the Act to incorporate some of the provisions earlier left out inadvertently, for eg., setting off of past losses/depreciation before declaring dividend and exemptions for giving of loans/guarantee/security by holding companies to its subsidiaries. Amendments have also been proposed to align the requirements prescribed under the Act and Clause 49 of the Listing Agreement.

FOLLOWING ARE THE MAJOR HIGHLIGHTS OF THE PROPOSED AMENDMENTS:

A. Amendments for the ease of doing business

S. No.	Section Reference	Existing provision	Proposed provision	Justification
1	Section 2(68) – Definition of private company	<p>“Private company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—</p> <p>(i) restricts the right to transfer its shares;</p> <p>(ii) except in case of One Person Company, limits the number of its members to two hundred:</p> <p>Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:</p> <p>Provided further that—</p> <p>(A) persons who are in the employment of the company; and</p> <p>(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and</p> <p>(iii) prohibits any invitation to the public to subscribe for any securities of the company.</p>	<p>“Private company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—</p> <p>(i) restricts the right to transfer its shares;</p> <p>(ii) except in case of One Person Company, limits the number of its members to two hundred:</p> <p>Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:</p> <p>Provided further that—</p> <p>(A) persons who are in the employment of the company; and</p> <p>(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and</p> <p>(iii) prohibits any invitation to the public to subscribe for any securities of the company.</p>	Proposal to remove the limit of paid-up share capital to determine the company type (i.e. public or private).
2	Section 2(71) – Definition of public company	<p>“Public company” means a company which—</p> <p>(a) is not a private company;</p> <p>(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:</p> <p>Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.</p>	<p>“Public company” means a company which—</p> <p>(a) is not a private company;</p> <p>(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:</p> <p>Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;</p>	Proposal seeks to remove the limit of paid-up share capital to determine the company type (i.e. public or private).



S. No.	Section Reference	Existing provision	Proposed provision	Justification
3	Section 11(1) – Commencement of Business	<p>(1) A company having a share capital shall not commence any business or exercise any borrowing powers unless—</p> <p>(a) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and</p> <p>(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.</p>	<p>(1) A company having a share capital shall not commence any business or exercise any borrowing powers unless—</p> <p>(a) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and</p> <p>(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.</p>	Proposal seeks to remove the limit of paid-up share capital to determine the company type (i.e., public or private).
4	Section 117(3) – Resolution and agreement to be filed	<p>(3) The provisions of this section shall apply to—</p> <p>(a) special resolutions;</p> <p>(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;</p> <p>(c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;</p> <p>(d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;</p> <p>(e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;</p> <p>(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;</p> <p>(g) resolutions passed in pursuance of sub-section (3) of section 179; and</p> <p>(h) any other resolution or agreement as may be prescribed and placed in the public domain.</p>	<p>(3) The provisions of this section shall apply to—</p> <p>(a) special resolutions;</p> <p>(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;</p> <p>(c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;</p> <p>(d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;</p> <p>(e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;</p> <p>(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;</p> <p>(g) resolutions passed in pursuance of sub-section (3) of section 179; and</p> <p>Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and</p> <p>(h) any other resolution or agreement as may be prescribed and placed in the public domain.</p>	<p>Proposal seeks to prevent public inspection of board resolutions filed in Form MGT 14 with the RoC in order to protect confidentiality.</p> <p>[What would be the benefit to stakeholders (except MCA) if they cannot see what the company has resolved and filed?]</p>



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S. No.	Section Reference	Existing provision	Proposed provision	Justification
5	Section 124(6) - Unpaid Dividend Account	All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed: Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.	All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed: Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed. Explanation.—For the removals of doubts it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.	Proposal seeks to rectify the requirement of transferring equity shares for which unclaimed/unpaid dividend has been transferred to the IEPF even though subsequent dividend(s) has been paid or claimed during the said period of 7 consecutive years.
6	Section 143(12) - Powers and duties of auditors and auditing standards	Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.	Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed: Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed. Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.	Proposal seeks to report fraud above mandated threshold to Central Government and fraud below mandated threshold to company's Audit Committee / Board. However, the threshold limit is not specified.
7	Section 177(4) – Audit Committee	Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,— (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company; (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process; (iii) examination of the financial statement and the auditors' report thereon; (iv) approval or any subsequent modification of transactions of the company with related parties; (v) scrutiny of inter-corporate loans and investments; (vi) valuation of undertakings or assets of the company, wherever it is necessary; (vii) evaluation of internal financial controls and risk management systems; (viii) monitoring the end use of funds raised through public offers and related matters.	Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,— (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company; (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process; (iii) examination of the financial statement and the auditors' report thereon; (iv) approval or any subsequent modification of transactions of the company with related parties; Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed; (v) scrutiny of inter-corporate loans and investments; (vi) valuation of undertakings or assets of the company, wherever it is necessary; (vii) evaluation of internal financial controls and risk management systems; (viii) monitoring the end use of funds raised through public offers and related matters.	Proposal empowers the Audit Committee to grant omnibus approvals for related party transactions in a company. The conditions for such omnibus approval are yet to be prescribed. This is to bring the provision in line with Clause 49 of the Listing Agreement.



S. No.	Section Reference	Existing provision	Proposed provision	Justification
8	Section 188(1) and (3)	<p>(1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—</p> <p>(a) sale, purchase or supply of any goods or materials;</p> <p>(b) selling or otherwise disposing of, or buying, property of any kind;</p> <p>(c) leasing of property of any kind;</p> <p>(d) availing or rendering of any services;</p> <p>(e) appointment of any agent for purchase or sale of goods, materials, services or property;</p> <p>(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and</p> <p>(g) underwriting the subscription of any securities or derivatives thereof, of the company:</p> <p>Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution:</p> <p>Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:</p> <p>Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.</p> <p>(3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.</p>	<p>(1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—</p> <p>(a) sale, purchase or supply of any goods or materials;</p> <p>(b) selling or otherwise disposing of, or buying, property of any kind;</p> <p>(c) leasing of property of any kind;</p> <p>(d) availing or rendering of any services;</p> <p>(e) appointment of any agent for purchase or sale of goods, materials, services or property;</p> <p>(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and</p> <p>(g) underwriting the subscription of any securities or derivatives thereof, of the company:</p> <p>Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution:</p> <p>Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:</p> <p>Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.</p> <p>Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.</p> <p>(3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.</p>	<p>Proposal provides for approval of specified related party transactions through ordinary resolution instead of special resolution.</p> <p>Further, for transactions between holding and wholly owned subsidiary companies, no general meeting approval is required by either of the companies. This is to bring the provision in line with Clause 49 of the Listing Agreement.</p> <p>(Earlier, Explanation to Rule 15(3) of Companies (Meetings of Board and its powers) Rules, 2014 provided that in case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company)</p>



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S. No.	Section Reference	Existing provision	Proposed provision	Justification
9	Section 212(6) - Investigation into affairs of Company by Serious Fraud Investigation Office	Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, subsection(1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, subsection(10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs: Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by— (i) the Director, Serious Fraud Investigation Office; or (ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.	Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, subsection(1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, subsection (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs: Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by— (i) the Director, Serious Fraud Investigation Office; or (ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.	Proposal provides for bail restrictions to apply only for offence relating to fraud u/s 447. Section references to section 447 is to be removed.
10	Section 419(4) – Benches of Tribunal	(4) The President shall, for the disposal of any case relating to rehabilitation, restructuring, reviving or winding up, of companies, constitute one or more Special Benches consisting of three or more Members, majority necessarily being of Judicial Members.	(4) The President shall, for the disposal of any case relating to rehabilitation, restructuring, reviving or winding up, of companies, constitute one or more Special Benches consisting of three or more Members, majority necessarily being of Judicial Members.	Proposal provides for winding up cases to be heard by 2-member Bench instead of 3-member Bench
11	Section 435(1) – Establishment of special courts	(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.	(1) The Central Government may, for the purpose of providing speedy trial of offences punishable under this Act with imprisonment of two years or more, by notification, establish or designate as many Special Courts as may be necessary. Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.	Proposal provides for empowering Special Courts to deal with offences which are punishable with imprisonment of 2 years or more under the Act. All other offences to be tried by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction.



S. No.	Section Reference	Existing provision	Proposed provision	Justification
12	Section 436(1) - Offences triable by Special Courts	(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— (a) all offences under this Act shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned	(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— (a) all offences under this Act all offences specified under sub-section (1) of section 435 shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned	Proposal seeks to give effect to the amendment proposed under Section 435 as above.

B. Amendments to remove drafting deficiencies and inadvertent errors

13	Section 76A – Punishment for contravention of section 73 or section 76.	No such provision	Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,— (a) the company shall, in addition to the payment of the amount of depositor part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees; and (b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both: Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.	New Insertion. Proposal seeks to incorporate stringent penalty provisions (amount of penalty upto Rs. 10 crores) for non-compliance with the provisions of Sections 73 and 76 of the Act relating to acceptance of deposits from public.
14	Section 123 (1) – Declaration and payment of dividend	(1) No dividend shall be declared or paid by a company for any financial year except— (a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or (b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government: Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:	(1) No dividend shall be declared or paid by a company for any financial year except— (a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or (b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government: Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company: Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:	Proposal incorporates the provision inadvertently missed out. The relevant provision however appears in Rule 5 of the Companies (Declaration and Payment of Dividend) Rules, 2014.



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		<p>Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:</p> <p>Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.</p>	<p>Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.</p> <p>Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.</p>	
15	Section 185(1) – Loan to directors, etc.	<p>(1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:</p> <p>Provided that nothing contained in this sub-section shall apply to—</p> <p>(a) the giving of any loan to a managing or whole-time director—</p> <p>(i) as a part of the conditions of service extended by the company to all its employees; or</p> <p>(ii) pursuant to any scheme approved by the members by a special resolution; or</p> <p>(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.</p> <p>.....</p>	<p>(1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:</p> <p>Provided that nothing contained in this sub-section shall apply to—</p> <p>(a) the giving of any loan to a managing or whole-time director—</p> <p>(i) as a part of the conditions of service extended by the company to all its employees; or</p> <p>(ii) pursuant to any scheme approved by the members by a special resolution; or</p> <p>(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.</p> <p>(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or</p> <p>(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:</p> <p>Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.</p>	<p>Proposal seeks to incorporate the provision inadvertently missed out. The relevant provision however appears in Rule 10 of the Companies (Meetings of Board and its Powers) Rules, 2014.</p>

C. Other Amendments

S. No.	Section Reference	Existing provision in the Act	Proposed Amendment	Justification
16	Section 9 – Registration of company	From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in theme memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.	From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in theme memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.	Proposal seeks to remove the mandatory requirement of having a common seal
17	Section 12(3)(b) – Registered office of company	Every company shall - (b) have its name engraved in legible characters on its seal	Every company shall - (b) have its name engraved in legible characters on its seal, if any	Proposal seeks to remove the mandatory requirement of having a common seal, as proposed in amendment to Section 9 of the Act.



S. No.	Section Reference	Existing provision in the Act	Proposed Amendment	Justification
18	Section 22 – Execution of bills of exchange, etc.	<p>(1) A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.</p> <p>(2) A company may, by writing under its common seal, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.</p> <p>(3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.</p>	<p>(1) A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.</p> <p>(2) A company may, by writing under its common seal if any, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.</p> <p>Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.</p> <p>(3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.</p>	<p>Proposal seeks to give effect to the amendment proposed under Section 435 as above.</p>
19	Section 46(1) – Share certificates	<p>(1) A certificate, issued under the common seal of the company, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.</p>	<p>(1) A certificate, issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the Company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.</p>	<p>Proposal seeks to remove the mandatory requirement of having a company seal, as proposed in amendment to Section 9 of the Act.</p>
20	Section 134(3) – Financial Statement, Board Report, etc.	No such provision	<p>(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—</p> <p>(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;</p>	<p>New Insertion.</p> <p>Proposal incorporates the disclosure of frauds reported by auditors under Section 143(12) of the Act in the Board's Report.</p> <p>Only frauds which have been reported to the Audit Committee or Board and not to the Central Government needs to be reported here, in line with proposed amendment to Section 143(12) of the Act.</p>
21	Section 223(4) – Inspectors Report	<p>The report of any inspector appointed under this Chapter shall be authenticated either—</p> <p>(a) by the seal of the company whose affairs have been investigated; or</p> <p>(b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.</p>	<p>The report of any inspector appointed under this Chapter shall be authenticated either—</p> <p>(a) by the seal, if any of the company whose affairs have been investigated; or</p> <p>(b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.</p>	<p>Proposal seeks to remove the mandatory requirement of having a common seal, as proposed in amendment to Section 9 of the Act.</p>

These amendments would not ease the doing of business by most of the small and private companies. A lot more needs to be done. CS



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Board Performance Evaluation

- With a view to prevent occurrence of Satyam like financial scams in the corporate sector, the new Companies Act has introduced provisions to make Boards of companies more efficient and accountable and also measures for performance evaluation of the Boards. This article throws light on the concept of Board performance evaluation.

BACKGROUND

The Companies Act, 2013 has introduced the concept of Board performance evaluation effective from Financial Year 2014-15. Some Indian companies were voluntarily carrying out performance evaluation of their Board. Now, “to assess or not to assess” is no longer the question for Boards of Indian companies. As per the new Act, all listed companies and unlisted public companies having paid-up capital of rupees ten crore or more or turnover of rupees one hundred crore or more or having an aggregate outstanding loans, debentures and deposits exceeding Rupees fifty crores are required to have independent directors - minimum three directors in listed companies and two directors in unlisted public companies. [Sec. 149(4) read with rule 4].

The Act has also laid down the procedure for performance evaluation of Board. The code of conduct for independent directors (Schedule IV) prescribes evaluation of independent director by the entire Board except the independent director whose performance is to be evaluated. It also prescribes separate meetings of independent directors at least once a year without the attendance of non-independent directors and members of management to:

- review the performance of non-independent directors and the

- board as a whole;
- review the performance of the Chairperson of the company, taking into account the views of executive and non-executive directors;
- assess the quality, quantity and timeliness of flow of information between the company management and the board that is necessary for the board to effectively and reasonably perform their duties and
- scrutinize the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.





- The need for greater vigilance by independent directors has arisen due to many global financial frauds which surfaced during the recent past, exposing unethical corporate behavior and nexus between executives and auditors.

DELICATE POSITION OF INDEPENDENT DIRECTORS

The law makers have entrusted independent directors with, if not onerous, a delicate responsibility in the matter of transparent and efficient management of companies. Their position is delicate as they have to oversee the performance of the promoters who have not only selected them but their continuance is dependent at the sweet will of the promoters. Their formidable responsibility could be seen in the context of the duties, responsibilities and liabilities entrusted on them as part of their code of conduct.

The huge responsibilities of the independent directors include active deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct. They are required to determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and if found necessary, recommend removal of executive directors, key managerial personnel and senior management. One of the delicate responsibilities is to balance the conflicting interests of stakeholders and to moderate and arbitrate the interest of the company as a whole, in situations of conflicts between management and shareholders. They are required to satisfy themselves on the integrity of financial information and ensure that risk management system is robust and defensible and ensure that the company has proper and adequate vigil mechanism



system and the whistle blowers are properly protected.

In addition to the requirement of attending Board, Committee and General Meetings, they are required to keep themselves updated with the development of the company and the external environment in which it operates.

In order to ensure their active participation, they are required to express concerns on the running of the company and if matters are not resolved, get their concerns recorded in the minutes of the board meeting. They are also required to keep a watch on the related party transactions, with a view to ensuring that interested directors abstain during discussions and the transactions are approved with due deliberations in the interest of the company.

The enhanced codified duties and responsibilities super coated with the requirement of professional conduct means that independent directors have to spend much more time and get deeply involved and closely watch the affairs of the company. Henceforth, merely attending meetings will not suffice for adequate discharge of codified duties.

NEED FOR GREATER VIGILANCE

The need for greater vigilance by independent directors has arisen due to many global financial frauds which surfaced during the recent past, exposing unethical corporate behavior and nexus between executives and auditors. In India, Satyam is a prominent example where, in spite of the presence of national and international celebrities on the Board, the nexus between the promoters and auditors could not be detected. The scam came to light only on the admission by the promoter when he felt that the scam, which came to be perpetuated over a number of years, could not be concealed any longer. In the recent past, the financial fraud by the promoters of MCX-SX and NSEL, resulting in huge loss to investors, came to light and is being investigated. In the hey days of economic growth, many corporates resorted to excessive financial leveraging which due to slow down of global economy resulted in financial crisis for corporates, particularly those engaged in capital goods and infra projects. Bhushan Steel is prime example of excessive financial leveraging, which raised the specter of NPA and in saving the company from growing troubles, drove the promoter and the Chief Banker behind the bars. If independent directors of such companies could have restricted the management from excessive leveraging, the companies and investors would have been protected from financial losses.

At present, once an independent director is appointed in a company, he continues for life and as long as he enjoys the confidence of the promoter. There are examples where independent directors are in a company for more than two decades. It is argued that long association does not impact the impartial view to be taken by the independent directors on matters placed for their consideration. However, human nature being what it is, in such a long association, a high degree of confidence develops and the directors start



approving matters as proposed in the meetings and critical scrutiny takes back seat.

PARAMETERS FOR EVALUATION

1. In order to effectively evaluate the performance, the Board has to decide on the parameters for evaluating the performance of individual directors and the Board as a whole. The following points may help in deciding the parameters for performance evaluation:

- Setting up of annual goals (including financials) and comparing with year-end achievement.
- Periodically reviewing corporate strategy.
- Reviewing risk management system.
- Evaluating whether composition of the board has a right mix of knowledge and skills sufficient to maximize performance in the light of future strategy.
- Whether interaction between independent directors and key managerial personnel and senior management is adequate or needs improvement.
- Is appropriate, timely and unbiased information, of the right length and quality, provided to the Board.
- Whether Board and Committee Meetings of appropriate length, are being held to enable proper consideration of issues.
- Is the Chairman demonstrating effective leadership of the Board.
- Whether relationships and communications with shareholders are well managed.
- Whether Directors are well prepared and informed regarding Board Meetings and their attendance thereat is satisfactory.
- Whether Directors demonstrate a willingness to devote time and effort to understand the company and its business and a readiness to participate in events outside the Boardroom, such as plant visits.
- What has been the contribution of Directors in the development of strategy and risk management and how successfully have they brought their knowledge and experience to bear in the consideration of strategy.
- Whether directors effectively probe the information and assumption presented by the management.
- Whether directors have effective and successful relationships with fellow Board Members, the Company Secretary and Senior Management.
- Whether directors actively and successfully refresh their knowledge and skills and are they up to date with:

- o the latest developments in areas such as Corporate Governance Framework and Financial Reporting;

- o the industry and market conditions;

- Are directors able to present their views convincingly yet diplomatically and do they listen and take on board the views of others.

2. The above points do not comprehensively cover all the parameters. Each company will have to decide the parameters to match its business requirements.

MANNER OF EVALUATION OF INDEPENDENT DIRECTOR

The Code of Conduct for independent director stipulates that performance evaluation of independent directors shall be done by the entire board of directors, excluding the director being evaluated. The board may prepare a comprehensive list of parameters covering areas of directors' responsibility. Then every director will have copy of the list on the basis of which evaluation is made against each criteria with brief supporting comments, which will be sent to the director either anonymously or with comments of individual director. Security, discretion, respect and trust is foundation for such a process to be effective. At the end of the process it is up to each individual director to act upon the views expressed by the peers as he considers appropriate.

EVALUATION OF CHAIRPERSON PERFORMANCE

1. The independent directors shall review the performance of the chairperson of the company by taking into account the views of executive directors and non-executive directors.

2. Commenting on Directors' Evaluation process, Ms. Beverly Behan stated that, providing feedback to Directors on their performance in the Boardroom is not a new idea. However, the Board should keep in mind the following points for drawing up the process plan:

- Be clear about its objectives – Good governance practice; most genuinely want to use it for their Board's professional development – giving directors useful feedback as to which boardroom areas they are most effective at and where they might improve. For this purpose, it is advisable to have an outsider peer to effectively carry out the evaluation process.
- Select a format that will provide a constructive feedback to directors.
- Determine who will collect and deliver the feedback.



➤ Under the Companies Act, 2013, appropriate amendments have been made to improve the role and responsibilities of independent directors with a view to ensuring transparency and improving companies' performance.

- Consider whether the director evaluation will factor into re-nomination decisions.

ROAD MAP AHEAD

Board evaluation has been introduced for the first time under the new Companies Act. Obviously, it is difficult to carry out the same in the present set up. The law makers have understood the predicament of the present day independent directors in effectively discharging the role and responsibilities under the existing system. Therefore, under the Companies Act, 2013, appropriate amendments have been made to improve the role and responsibilities of independent directors with a view to ensuring transparency and improving companies' performance. The Act has made significant changes such as:

- Hereafter, the promoter shall be required to appoint independent directors from a panel of persons willing to be appointed as independent director after exercising due diligence. The panel of directors shall be created by an agency recognized by the Government. The three professional bodies of Chartered Accountants, Cost Accountants and Company Secretaries have agreed to set up the panel.
- After selecting an independent director and briefing him about the company operations, the company is required to issue a letter of appointment which should inter alia, contain guidelines of professional conduct, and role, duties and responsibilities.
- Acknowledging the increased role of the independent directors in the operations of the company and the time required by them to attend to the affairs of the company, the Act has curtailed the number of directorships to 20. Further, directorships of public companies have been restricted to 10 and in respect of listed companies to 7 only.
- Considering that the independent directors shall be required to devote considerable time for the business of the company, the sitting fees for attending board and committee meetings can be paid up to Rupees one lakh for each meeting, in addition to reimbursement of travel and stay expenses. The independent directors shall also be entitled to payment of commission, not exceeding one per cent of the net profit of the company. This is to be shared by all the non-executive directors, as decided by the Board, depending on the time spent and contribution

made towards the company. However, henceforth, they will not be entitled to grant of ESOP.

DISCLOSURES

The Board is required to disclose in its Report to the shareholders, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

ADVANTAGES


1. Well conducted evaluations have the potential to achieve various benefits, helping the board to:

- Confirm that it has a suitable balance of skills and other attributes and focusing attention on the attributes required in any new director.
- Focus on any inadequacies.
- Identify strategic priorities.
- Develop skills knowledge and understanding in the individual directors; Review its practices and procedures and thus to become more efficient and effective.

2. The primary reason to undertake governance assessment is to improve and develop, not to judge or evaluate. An annual evaluation can turn a good board into a great board. If thoroughly conducted, a board evaluation has the potential to significantly enhance board effectiveness, maximize strengths and tackle weaknesses.

To conclude, while meeting regulatory requirements may be a part of the motivation behind this exercise, the primary driver should be the desire to build a high performing board. The quality of a board is a significant factor for institutional investors in making investment decisions.

REFERENCES

1. *Companies Act, 013 –Section 134, 149 and Schedule IV*
2. *Listing Agreement - Revised Clause 49*
3. *Higgs Report Performance Evaluation Guidance*
4. *PWC's 2011 Annual Corporate Directors Study*
5. *Article on "How to conduct the Directors'Evaluation Process" by Ms. Beverly Behan - Business week* 

Corrigendum

Article titled Voting Rights in the e-voting Era: need for a Cautious and Synchronised Approach (Published in January 2015 issue of Chartered Secretary Pp. 27-33) At page 33, first column, last sentence of Para 5 of the article be read as "Thus the system could be full proof and such a system is possible only when the cut-off date is multi-purpose."

The inadvertent error is regretted.



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Criminal Liability in Respect of Prospectus- An Analysis

- The prospectus is an important document released by the company desiring to raise capital from the public containing therein information relating to the company and its management. Failure to disclose material particulars or making mis-statement therein attract civil and criminal liability. The legal implications relating to prospectus are analysed in this article.

BACKGROUND

Raising of capital by a corporates by way of public issue or private placement, as the case may, is an absolute necessity for most of the public companies for financing their business activities. The law recognises the need for capital raising and provides for a comprehensive regulatory mechanism for issue of prospectus.

Prospectus is a detailed corporate document issued by a public company offering its shares, debentures etc(security) to the public for subscription. A company shall not vary the terms of contract referred to in the prospectus or objects for which it is issued without the approval of the shareholders by special resolution and providing exit opportunity to the dissenting shareholders. This shows the sanctity of the prospectus document. It may take the form of a notice, circular, advertisement or other document with an intention to invite the public to subscribe or purchase the securities offered. The manner of issue of such a document is strictly regulated, to protect the interest of the investing public, both under the Companies Act,2013 and the SEBI regulations. However, SEBI has exclusive jurisdiction over the activities relating to issue and raising of of capital from the public.



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➤ Simply by relying the management, a director may not ensure always a robust and adequate compliance and ensure that internal financial controls are in place. So for providing such confirmation in the Directors' Responsibility Statement the directors must be backed up with some regulatory audit, which secretarial audit can provide, with detailed evaluation of non-compliance risks.

Prospectus includes "red herring prospectus", that is, a prospectus which does not include complete particulars of the quantum or price of the security and "shelf prospectus" which means a prospectus in respect of which securities are offered in one or more tranches over a certain period of time without having to make further issue of prospectus. This later document can only be issued by certain class or classes of companies which include banks, financial institutions etc as may be prescribed by SEBI in this behalf.

A public company may also make a private placement of its security provided the offer of security or invitation to subscribe to the same does not exceed such number of persons not exceeding 50 or such higher number as may be prescribed, excluding Qualified Institutional Buyers or employees of the company making the issue. If the letter of offer or invitation, which is normally sent superscribed as "private and confidential" to the addressee and not for circulation to others, exceeds 50, it is deemed as an offer to the public with the consequence that all the regulations as applicable to a public issue will become applicable.

Prospectus is issued generally to the public and not to any section of the public, together with the contents thereof as prescribed under the Companies Act and the ICDR regulations. The correctness of the statements made therein and the disclosures of information made by the company and authorised by those connected with the issue assumes great importance as the members of the investing public place total reliance on such statements and disclosures in the prospectus concerning the company while subscribing to the issue. Consequently if there is any mis-statement or untrue statement in the prospectus, the liability for the same extends to those who have with their consent authorised the issue of prospectus like directors, promoters etc.

EXTENT OF LIABILITY

The liability for mis-statement in prospectus or untrue statement therein takes the form of civil liability or criminal liability as the case may be. In the case of civil liability, the liability extends to

payment of compensation to every person who has sustained loss or damage by subscribing to the public issue, subject to certain exceptions provided therein. However in the case of criminal liability, that is, in respect of untrue statement or misleading statement which is construed as playing fraud on the public, every person who authorised the issue of such a prospectus is liable for punishment by way of imprisonment which is not less than six months but it may extend to ten years and also fine which shall not be less than the amount involved in the fraud but it may extend to three times the amount involved in the fraud.

WHAT IS FRAUD

According to Section 447, "fraud" in relation the affairs of a company includes any act, omission, concealment of any fact or abuse of position committed by any person or with the connivance in any manner with intent to deceive, to gain un-due advantage from or to injure the interests of the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss. Wrongful gain is further defined to mean gaining by unlawful means of property to which the person gaining is not legally entitled. Unlawful loss means the loss by unlawful means of property to which the person losing is legally entitled.

The Act also provides for a defence to a person if he proves that his belief or truth, that such a statement or omission in the prospectus was immaterial or that he had reasonable grounds to believe or did up to the time of issue of the prospectus believe that the statement was true or the inclusion or omission was necessary.

DETERMINATION OF CRIMINAL LIABILITY

The liability is required to be determined in accordance with the procedure laid down in the Criminal Procedure Code, 1973 (Cr P.C). While the Cr P.C lays down the procedural law, the substantive law on criminal aspect of prospectus is laid down in section 63 (criminal liability for misstatement in prospectus), section 68 (penalty for fraudulently inducing persons to invest money), and section 628 (penalty for false statement) of the Companies Act, 1956. The corresponding provisions in the new Companies Act, 2013 are contained in sections 34, 36 and 448. Section 37 provides that a suit may be filed or any other action may be taken under section 34 or 35 or 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

PERIOD OF LIMITATION

Section 468(1) of the Cr P.C. provides that no court shall take cognizance of an offence of the category mentioned in sub-section (2) after the expiry of the period of limitation, except as otherwise provided in the Code. The applicable period of limitation is (a) six months if the offence is punishable with fine only, (b) one year if the offence is punishable with imprisonment for a term exceeding one year, (c)



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➤ The offences under the Companies Act, 2013, particularly relating to issue of prospectus, are triable by the Special Courts for the area in which the registered office of the company is situated and in relation to which the offence is committed. Where there are more than one Special Court for the same area, the High Court will specify the respective jurisdiction of each of them for the purpose of trial.

three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

PUNISHMENT

The punishment for offences under sections 34, 36 and 448 of the 2013 Act are provided in section 447; the punishment for fraud is imprisonment of not less than six months but it may extend to ten years and a monetary fine which will not be less than the amount involved in the fraud but it may extend to three times the amount involved in the fraud. This punishment is more than what is provided in the Cr P.C ;section 468 (2) has no application in the case of offence in respect of prospectus. Section 63 of the Companies Act, 1956 provides for a lesser punishment in the form of imprisonment for a term extending to two years or with fine extending to rupees fifty thousand or with both. In this case section 468(2) of the Cr P.C will be applicable as a defence tool to question the filing of criminal petition.

INVESTIGATION INTO CRIMINAL OFFENCE

The investigation is mandated to be carried out by the Serious Fraud Investigation Office (SFIO). The Central Govt is authorised to establish SFIO by section 211 of the new Act. Till such time, the SFIO already established by a GOI resolution dated 2nd July, 2003 is deemed to be SFIO for the purpose of investigation. SFIO is headed by a Director and consists of such number of experts from various fields as may be appointed by the Central Govt, from amongst persons of ability, integrity and experience. This is a highly structured organisation and fully equipped to undertake investigation into serious offences. The law rightly recognises that the success of prosecution depends largely upon completeness of investigation, more so when public interest is involved.

If the Central Govt is of the opinion that it is necessary to investigate into the affairs of a company, then the SFIO will undertake the

same, inter alia, on receipt of a report of the Registrar or of the Inspector appointed under section 208 or in public interest. The offences are cognisable in nature meaning arrest can be made without warrant. A person accused of a cognisable offence cannot be released on bail or on bond, unless the Public prosecutor is given an opportunity to oppose the application for such release. The Court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The aforesaid limitation on grant of bail is in addition to the limitations prescribed under the Cr P.C. or under any other law for the time being in force.

COGNIZANCE OF THE OFFENCE

Another novel feature of the Companies Act, 2013 is the establishment of Special Courts for speedy trial of offences. The Central Govt is empowered, by a notification, to establish or designate as many Special Courts as may be necessary. Such courts should consist of a single judge appointed by the Central Govt with the concurrence of the Chief Justice of the High Court within whose jurisdiction the Judge to be appointed is working. A person is not qualified to be appointed as a Judge of the Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or Additional Sessions Judge, as such Judges alone can impose punishment by way of imprisonment authorised by law, as per section 28 of the Cr P.C

The offences under the Companies Act, 2013, particularly relating to issue of prospectus, are triable by the Special Courts for the area in which the registered office of the company is situated and in relation to which the offence is committed. Where there are more than one Special Court for the same area, the High Court will specify the respective jurisdiction of each of them for the purpose of trial. As a transitory provision, it is provided that until Special Courts are established, an offence under the above Act is triable by the Court of Sessions exercising jurisdiction over the area, notwithstanding anything contained in the Cr.P.C

The Special Court is prohibited from taking cognizance of an offence under the Companies Act, except upon a complaint in writing by the (i) Director of SFIO, or (ii) any officer of the Central Govt authorised by a general or special order in writing. The officers aforesaid should have in their possession material which makes them believe (the reason for such belief should be recorded) that a person is guilty of the offence. Such a person should be arrested and taken to the jurisdictional Judicial or Metropolitan magistrate within 24 hrs of arrest, excluding journey time.

The Special Court may, if it thinks fit, try an offence in a summary manner, if the offence is not one which will result in punishment of imprisonment for a term exceeding three years. In this event, sentence of imprisonment exceeding one year should be passed. However, during the summary trial, if it appears to the Special Court



➤ Section 63 calls for strict proof of liability on the part of the prosecution to prove the guilt of the accused. *Mensrea*, that is, the criminal intention of those sought to be proceeded against should be proved. This is a safeguard against frivolous and unsubstantiated charges.

that imprisonment exceeding one year may have to be passed or otherwise, it may, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to re-hear the case as a regular trial. The provisions of the CrP.C are applicable to the proceedings before the Special Court and the said Court is deemed to be Court of Sessions and the person conducting the prosecution is deemed to be a Public Prosecutor.

The High Court has all the powers conferred by Chapters XXIX and XXX of the CrP.C as if the Special Court were a Court of Sessions trying cases within the local limits of jurisdiction of the High Court.

CRIMINAL LIABILITY OF DIRECTORS/ OTHERS IN RELATION TO PROSPECTUS

The above aspect came to be examined in an appeal before the Andhra Pradesh High Court in the case of *Dr T.H.Chowdaryv Registrar of Companies & Another*(2014)182 Comp Cas. 33(A.P). The alleged offence related to sections 63,68 and 628 of the Companies Act,1956.In the petition under section 482 of the Cr.P.C (dealing with the inherent powers of the High Court), the petitioner director of the accused company sought quashing of criminal proceedings initiated against him for violation of sections 63,68 & 628 of the 1956 Act. Allowing the petition ,the High Court held as follows:

The petitioner did not raise the question of limitation before the trial court, either under section 63 and 628 of the 1956 Act.

As a policy ,it was not appropriate to entertain a petition on the basis of question of limitation, when such question was not raised before the trial court. Therefore, it would be inappropriate to go into the question of limitation in these petitions.

The punishment provided for the offence under section 68 of the Act was five years with or without fine up to rupees one lakh.

When the maximum punishment provided for the offence was beyond three years, Chapter 36 of the Code(dealing with limitation for taking cognizance of certain offences) would not apply, so much so, the prosecution was not barred by limitation. The contention that the petitions were barred by limitation in all these cases was

to be rejected.

An omnibus allegation was made against all the directors of the company. No specific allegation was made regarding the participation of the petitioner in the commission of the offences.

While 63 of the Act imposed strict liability, mensrea was required for the offences under sections 68 and 628 of the Act. Where omnibus allegations were made against the petitioner, it would not be appropriate to permit the prosecution to proceed with the case.

The Registrar of Companies had failed to show the participation of the petitioner in the issuance of the prospectus and also to show that the contents of the prospectus were violative of section 63,68 and 628 of the Act. It would be abuse of the power of court and it was beyond the scope of these petitions.

The Court referred to the earlier decisions and observations made thereunder:

Gopi Nair(ic) V Ramukutty(K)(2003)115 Comp Cas 59(Ker) -The circumstances in which the court is justified in quashing charges are well settled. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the magistrate or if such a nature that it reveals no offence, it will be open to the court to quash the same.

Hemchandra Prasad Nag Chowdhuryv. Registrar of Companies(2010)158 Comp Cas 21(AP): Under section 469 of the Cr P.C the period of limitation to file complaint commences on the date of offence or where commission of the offence was not known to the person aggrieved by the offences ,the first date on which such offence comes to the knowledge of such person, whichever is earlier

S.M.S Pharmaceuticals Ltd V Neeta Bhalla(2005)127 Comp Cas 563(SC):Sections 203 and 204 of the Cr P.C. which empower





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a Magistrate to dismiss a complaint without issuing a process suggests that the magistrate is required to see the allegations in the complaint and it should make out a case for issue of process.

POINTS TO BE NOTED

Section 63 calls for strict proof of liability on the part of the prosecution to prove the guilt of the accused. *Mensrea*, that is, the criminal intention of those sought to be proceeded against should be proved. This is a safeguard against frivolous and unsubstantiated charges.

The question of limitation, if relevant, should be raised before the trial court. It is fatal if it is not done as such pleas will not be admitted during appeal. Where the punishment for the offence is beyond three years, the plea of limitation is ousted. The allegation of offence against the directors\others must be specific in relation to the issue of prospectus and the manner in which they violated the mandatory of provisions of law.

The above safeguards are relevant not necessarily in the court cases but in relation to matters coming up before the CLB\NCLT.

DIFFERENCE BETWEEN SUBSTANTIVE PROVISIONS OF 1956 AND 2013 ACTS.

Section 63 of 1956 Act provides for criminal liability for mis-statement in prospectus including untrue statement. There is a defence available to the defendant on the basis of truth and belief or that the alleged statement is immaterial. This defence is also available under section 34 of the new Act.

A statement is deemed to be untrue, if the statement is misleading in the form and content in which it is included. Omission to state any matter which is calculated to mis-lead is deemed to be an untrue statement (section 65 of the Act). This provision is in the nature of an explanation for the purpose of construing what is an untrue statement in a prospectus. No provision corresponding to this is available in the Companies Act, 2013.

Section 34 of the Companies Act, 2013, which corresponds to section 63 of the 1956 Act, refers to a prospectus issued, circulated or distributed, including a statement which is untrue or misleading in form and context in which it is included. This includes omission of any matter which is likely to mislead.. The addition relating to a prospectus that it should have been circulated or distributed makes sense as without that there cannot be an offence. This is a useful addition.

A person who authorises the issue of such a prospectus is liable under 2013 Act for an offence of fraud.

Section 36 of the new Act which corresponds to section 68 of the old Act provides for punishment for fraudulently inducing persons

to invest money.

Section 37 which is a new provision provides for filing a suit by any person under section 35-36, group of persons or any association of persons affected by any misleading statement or omission of any matter in a prospectus

CONCLUSION

The provisions relating to prospectus serve a two fold purposes. It alerts the company managements not to take the public for ride by not disclosing fair and reasonable information about the company and its activities. The information disclosed should be factually correct and objective and it should enable the investors to make a reasoned judgement about the economics of investment in securities. From the investors' perspective, they should make investment as a long term investment and not for a quick return on their investment. The legal remedy is available only to those investors who make the investment on the basis of information disclosed in the prospectus. They should not make wild and baseless allegations against the company as it may result in the court dismissing the petition at the threshold and pass strictures against the investor for frivolous and unfounded allegations. It must be based on provable facts to the hilt and those who make such a complaint are put to strict proof of liability. They should also prove that they are misled in making the investment in the securities of a company based on both disclosed and non-disclosure of relevant information about the company and its activities and having been misled they have incurred financial loss or damage. One should be careful in making allegations of criminal complaint as such allegations, if proved, will result in a period of imprisonment and fine.

Looking at what is stated above, it appears that the law on prospectus seeks to create a balancing act, holding the scale evenly between the management of companies and the investors in securities. The ultimate aim is to protect the interest of investors in particular and the public interest in general. This also brings out another cardinal principle of good corporate governance of transparency of operations and self assumed accountability to the public.

It is clear from the above that drafting of prospectus is a highly technical job for the purpose of ensuring adequacy and correctness of information relating to public issue of capital. Needless to say there should not be any mis-statement or untrue statement as also non-disclosure of relevant information relating to the company. In view of these technicalities, SEBI has entrusted this task to the Merchant Bankers who are specialists in issue management and SEBI places reliance on their professional skill and expertise. They assist the companies in preparing the prospectus in accordance with the legal provisions in this regard. This places the companies in a position of responsibility of having to provide true, factual and reliable information to the Merchant Banker about the company and its activities.

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Parallel Imports in India: Harvest OR Mitigate!

- Import of genuine branded non commercial goods or products into any country without the express permission of the IPR holder is termed as 'parallel import', generally called the grey market goods. Such imports have advantages as well as disadvantages. How the law seeks to regulate such a practice is dealt with in this article.

INTRODUCTION

Parallel imports are imports of genuine branded [non-counterfeit] goods or products into any country without the express permission of the IPR holder, where the goods or products have already been launched for sale by the true brand owner. The parallel-imported goods are also termed as the Grey Market Goods. Such imported products are certainly properly patented, copyrighted, or trademarked, necessarily in the exporter country, and may also be recognized in the importer countries. One of the main objectives of parallel importing is Arbitrage, which is taking advantage of the price difference existing between two or more countries or markets, and thus earning profits. To understand this, let's see the following example: Assume that a multinational company named Apple Inc, owns the trademark iPhone in USA, Europe, India, Bangladesh, and many other countries. And, owing to some reasons such as local manufacturing costs, or generic market

competition, the price points of iPhone are kept different in these countries. A wholesaler of India figures out that the price [say P1] of this iPhone is considerably lower in Bangladesh, than the price of this in India [say P2]. This fact encourages him to import iPhones from Bangladesh, and sell the same in the Indian market, at a unit price which lies between P2 and P1, and



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PARALLEL IMPORTS IN INDIA: HARVEST OR MITIGATE!

➤ The legality and legitimacy of parallel imports are decided by the doctrine of exhaustion of intellectual property rights [IPRs], which is followed by the country of the importer. Today, there are three main and distinct forms of the doctrine of exhaustion, the world over.

thus, earn a massive profit. Such an import is called a parallel import, perhaps because of the fact that the distribution channel of the domestic or local importer [or distributor] runs parallel to the authorized distribution or trade channel of the proprietor of the product in the importer's country.

Here, it must be noted that the goods or products of parallel imports are non-counterfeit and genuine branded goods [manufactured by or for, or under proper license from the brand owner], but the importers have imported these without taking any permission from the concerned brand owners. Such products may have been formulated or packaged for a particular jurisdiction; but the importer could import these to another jurisdiction not intended by the brand owner. Generally, the practice of parallel imports is most common in the cases of high-priced branded goods [such as jewellery, cameras, tablets, etc.], electronic products and devices, pharmaceuticals, software, printed texts, etc.

ADVANTAGES & DISADVANTAGES

Some of the most important and outstanding advantages and disadvantages of parallel imports, are enumerated in the following paragraphs.

Advantages

- Consumers get branded and authentic goods or products at relatively lower prices
- Parallel imports minimize the monopolistic effects of multinational companies
- Parallel imports promote healthy competition and free trade, and act as price leveller
- Consumers find a wide range of products for making selection and consumption
- Parallel imports and subsequent sells open new employment avenues.

Disadvantages

- Parallel imports often raise issues like unfair competition and Piggy-Backing [the attempt by importers to harvest the reputation and goodwill of the IPR owners]

- Some believe that the parallel imports tend to facilitate infringements in the Intellectual Property Rights [IPR]
- Parallel imports may discourage the intellectual property owners from making investment in new and innovative products [which could be sold readily and easily anywhere in the world]
- Concerns regarding quality of products may arise, as the grey-market products may have been manufactured for different jurisdictions with varied demands, tastes, and priorities
- The grey-markets force authorized distributors and wholesalers by the IPR holders, to do a better job for enticing local customers, and offering better services for customer care and satisfaction.

ARE PARALLEL IMPORTS LEGAL

The legality and legitimacy of parallel imports are decided by the doctrine of exhaustion of intellectual property rights [IPRs], which is followed by the country of the importer. Today, there are three main and distinct forms of the doctrine of exhaustion, the world over. Information about these doctrines of exhaustion of IPRs, is separately dealt with elsewhere. Here, a brief of information on the Exhaustion Doctrine or the First-Sale Doctrine, is given to make things easier to all readers.

The doctrine of exhaustion dictates that the holder of any intellectual property rights loses his rights to control the subsequent sales of his patented, trademarked, or copyrighted product, after he has made an authorized sale of his product in the national or international jurisdiction. After deriving monetary compensation for the use of his any intellectual property related invention or creation, through an authorized sale of his product, the manufacturer [IPR holder] cannot prevent subsequent selling and reselling of the branded product, in the domestic or foreign jurisdictions. The rationale of this doctrine of exhaustion is to prevent the holders of IP rights from restraining or preventing the free alienability of branded products, after the very first authorized sale of these made by them. Though this first-sale doctrine limits to some extent the distribution right of a copyright holder, it does not limit his/her reproduction right.

DOCTRINES OF EXHAUSTION OF IPRS

The three globally prominent doctrines of exhaustion of the intellectual property rights, are the following.

Doctrine of National Exhaustion

This doctrine advocates that once the IP holder has got economic return from selling his branded product in any country, then he holds no rights to control further selling of his branded product by other people or entities within that country. After the very first sale of his product, he lost completely the rights to prevent further selling of the product, to claim any profit arising from a subsequent sale by other people, or sue somebody for IP infringement caused merely by selling or reselling of his product within the [domestic] country.



➤ Prior to 2007, not much attention was given by the Government of India to regulation of the practices of parallel importation in India. Seeing constant increase in the practices of parallel importation in India, the first law promulgated in this connection was the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

Doctrine of Regional Exhaustion

This regime dictates that once the IP right holder sold his product in any specific regional area comprising many countries, and gained economic profit, then he is not entitled to control further selling of his branded product by other entities, in any country of the specific region. Such goods or products originated and sold in the region by the IP right holders, however, cannot be sold in countries outside the region by any other people or entity located in this region, according to this regional doctrine of exhaustion. The European Union [EU] has adopted this doctrine of regional exhaustion, in connection with parallel imports.

Doctrine of International Exhaustion

This doctrine stipulates that once the holder of IP rights sold any of his branded product in any country of the world for the first time, then he lost his rights to prevent reselling of his products by the purchasers, in every country of the whole world, essentially including the domestic country [where the product was launched first]. This doctrine with largest scope, works on the assumption that the whole world is one market. As per the Resource Book on TRIPS and Development, the countries which follow this doctrine of international exhaustion of IPRs [subject to certain qualifications], are USA, Switzerland, Australia, Japan, Latin America, South Africa, etc.



INTERNATIONAL CONSENSUS ON EXHAUSTION OF IPRS

At present, there is no international consensus on the exhaustion of IPRs; different countries use different doctrines for regulating parallel importation. The debate as to which doctrine of exhaustion is preferable and most beneficial, has been highly controversial. Some countries follow a hybrid approach of exhaustion of the intellectual property rights. For instance, a country does follow the doctrine of international exhaustion, but places some limits on the products or goods which may be imported. Again, different doctrines are applied for different products by some countries. But it is fortified universally that the international exhaustion seeks to favor the consumers, while the national exhaustion tends to favor the manufacturers.

As far as the rights of the trademark owners are concerned, today there is no international treaty dictating a standard of national or international exhaustion. Article-6 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement clearly states that parallel imports cannot be challenged under the Dispute Settlement System of the World Trade Organization [WTO], and is therefore, a matter of national discretion. Besides the neutral stance of TRIPS Agreement regarding the legality of parallel imports, the Berne and Paris Conventions have also been reticent about provisions for prohibition of parallel importation. The International Trademark Association [INTA] supports the national [or regional] exhaustion of trademark rights in connection with the parallel importation of products and goods.

PARALLEL IMPORTS INTO INDIA

Prior to 2007, not much attention was given by the Government of India to regulation of the practices of parallel importation in India. Seeing constant increase in the practices of parallel importation in India, the first law promulgated in this connection was the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The judicial pronouncements which have been significant and noteworthy in relation to legality of parallel imports in India, are related with the cases such as *Penguin Case* [1985]; *Warner Bros. Case* [2009]; *Kapil Wadwa v. Samsung Electronics Ltd.* [2012]; and the *Marlboro Trademark Case* [2014]. The judgment in the last two of these cases concluded and fortified that India follows the doctrine of International Exhaustion of IPRs, and thus, parallel imports in India are legal, provided that the impugned goods must be purchased lawfully [i.e. purchased in accordance with the laws of the country of purchase, and from the authorized agencies of the brand owner] from any country of the world, and the genuine products of the brand owners must not be altered or impaired materially by the importers. Again, the imports must



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be carried out lawfully to India, without cutting down on any legitimate kind of taxes or duties.

In this connection, the following points stated in Circular No.-13/2012, Dated May 08, 2012 issued by the Central Board of Excise and Customs (CBEC) [Ministry of Finance], are undoubtedly notable, which have also been duly approved by Department of Industrial Policy and Promotion (DIPP) [Ministry of Commerce]: ---

- Only those consignments of goods [to be imported to India] will be approved which strictly conform to the provisions and regulations given in the Trade Marks Act of 1999; the Patents Act of 1970; the Designs Act of 2000; the Copyright Act of 1957; and the Geographical Indication of Goods Act of 1999, and also to amendments made thereto so far; to ensure that the imported goods do not infringe upon the legitimate rights of the IPR holders
- Again, since these Acts on IPRs are broad and do not deal extensively and exclusively with the imported goods and products, necessary support of the provisions given in the Intellectual Property (Imported Goods) Enforcement Rules of 2007, will also be taken into account, together with the notifications issued so far related with these Enforcement Rules. In relation to the parallel imports of trademarked products, two most significant provisions given in the Enforcement Rules of 2007 are --- Section 102 (goods bearing a false trademark) and 2(i) (goods bearing a false trade description), which enforce seizure of the consignments
- The DIPP [the nodal authority primarily responsible for the operational and policy matters related with the Trademark and Patents Offices of India] held that the Section 30(3) of the Trademarks Act of 1999 provides for the doctrine of international exhaustion of IPRs, and permits parallel imports in India. The Section 107A(b) of the Indian Patents Act of 1970 facilitates parallel importation related with patented products. And, in connection with designs, the parallel imports to India are rigorously prohibited under the Section 22(1)(b) of the Indian Designs Act of 2000.

MEASURES TO MITIGATE PARALLEL IMPORTS IN INDIA

Some elegant and effective measures for mitigating parallel imports in India and abroad, are the following: ---

- If possible, the manufacturing companies should keep minor differences in the price points charged for their products in different countries
- Manufacturing companies [IP rights holders] should keep up a strong, stable, and reliable business supply chain, and all documents related with this chain, such as licenses, distributor agreements, etc., must contain language to address parallel imports
- Companies may make provisions like the manufacturer's

warranties are accessible or obtainable only when the purchasers of the branded products return the products to the place of original purchase

- Companies should educate their customers or consumers on the possible risks involved in making purchase of the grey-market products, such as different formulation of the products, different packaging, lack of the original manufacturer's warranty, etc. These can certainly create negative consumer experiences
- If a company holding any IP rights over a product, agrees to sell the product at lower price point in any specific jurisdiction, then the company must seek some solid and strict assurances from the concerned government that the cheaply-priced product will not be exported to other rich countries, by any person or entity located in the entire jurisdiction
- It will be of help to know what doctrine of exhaustion is currently being followed by the individual countries of your business priority listing
- The manufacturing companies may organize policing programs, for collecting information on the sources of grey-market activities and magnitude of parallel imports, through both the internal and external sources, such as sales personnel, vendors, associated people and entities located in other countries, etc. Such compilation of business related information can help them in seeking possible solutions under [arbitrage](#), [anti-dumping](#), etc. CS

Appointment

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Bitcoins: New Buzz in the Currency Market

- Bitcoin has the characteristics of money (durability, portability, fungibility and scarcity) based on the properties of mathematics rather than relying on physical properties (like gold and silver) or trust in central authorities (like fiat currencies). With these attributes, all that is required is trust and adoption. However it remains a speculative and high-risk investment from an Indian's perspective. Despite gaining popularity, Bitcoin is still in a nascent stage and will face many challenges ahead. The RBI has stated that it is presently examining the issues associated with the usage, holding and trading of virtual currencies and also cautioned the users, holders and traders of VCs including Bitcoins about the potential risks associated with it.

INTRODUCTION

Bitcoin is credited with the status of the world's first completely decentralized digital currency. The knowledge of Bitcoins was available only on Internet forums that too four years ago. The Bitcoin economy is considered to be the larger than the economies of some of the world's smaller nations (Brito and Castillo, 2013). It was during later months of 2013, when the U.S. Dollar exchange rate for one Bitcoin rose more than fivefold, and the value of one Bitcoin, which had begun trading at less than five cents in 2010, exceeded \$1,200.00. With approximately 12 million Bitcoins circulating, the worldwide value of the currency exceeded \$14 billion, equal to the market capitalization of a mid-range S&P500 company (Yermack, 2013). Until the 20th century, most of the world's economies were using gold standard monetary system in which currencies were convertible into fixed amounts of gold. The promise of convertibility by the government or the central banks, created public confidence in a currency's





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value. However, gold standard collapsed due to the pressures of financing two World Wars. Since then, nearly every major economy has issued paper currency, the value of which relies on public belief that a nation's government or central bank will not increase the supply of new notes too rapidly.

Bitcoin as a currency attempts to overcome the weaknesses of gold-based and paper currencies. It originated in a nine page proposal for a "peer-to-peer electronic cash system" by Satoshi Nakamoto (2008). His invention is an open source as its controlling computer code is open to public view, peer to peer and digital currency with no physical movement. Bitcoin as a currency is neither legal tender nor is it backed by any government. Neither is the supply determined by a central bank, nor are there any traditional financial institutions involved in transactions. Unlike earlier digital currencies that had some central controlling entity, the Bitcoin network is completely decentralized and private, with all parts of transactions being performed by the users of the system (Elwell, 2013). Like with a cash transaction, Bitcoin transactions do not identify the payer or the payee, rather a transaction is a cryptographically signed transfer of funds from one public key to another, which is irreversible. However, in order to validate and certify all transactions, third party mediation is required. Such a system requires each network participant to maintain the entire transaction history of the system. Bitcoin identities are not tied to real-world organizations and all transactions are completely transparent. It is because of all these unique set of features that Bitcoins are becoming more popular. In particular, there is a concern that the combination of scalable, irrevocable, anonymous payments would prove highly attractive for criminals engaged in

fraud or money laundering (Meiklejohn, et al, 2013).

HOW DOES THE BITCOIN SYSTEM WORK

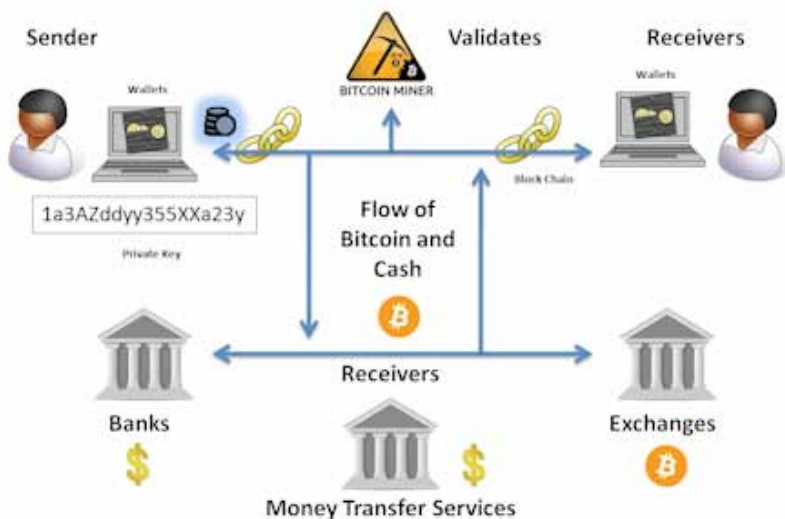
To interact on the Bitcoin network, users first need to download the free and open-source software. When one runs the open source client, it connects to the Internet and links the user to a decentralized peer-to-peer network of all Bitcoin users. The user has to create a Bitcoin wallet in order to start doing business with Bitcoins, just like an online account or e-cart. The program generates a pair of keys, a public and a private key, which is a long string of numbers and letters, that are linked through the mathematical encryption algorithm that are used while sending and receiving Bitcoins over the network. The public key (like a bank account number) serves as the address to identify the key holder which is published to the world and to which others may send Bitcoin. The private key is always hidden and used only to authorize Bitcoin transmissions. Private keys are used to sign transactions, providing a mathematical proof that they have come from the owner of the addresses. There are no physical Bitcoins, only balances associated with these public and private keys. These balances are kept on a public ledger, along with all Bitcoin transactions, that is verified by a massive amount of computing power. Each Bitcoin address has its own Bitcoin balance. Every time a transaction is made, the public address of each user is made public to the entire network. Because of this reason, Bitcoin transactions are thought to be pseudonymous, not anonymous.

HOW ARE BITCOINS OBTAINED

There are three ways to obtain Bitcoins. First, a user can exchange any currency for a fee on an online Bitcoin exchange. The exchange fee depends on the size of the transaction, ranging from 0.5% for small transactions down to 0.2% for large transactions.

The price of Bitcoin relative to other currencies is determined by supply and demand. Second, a user can obtain Bitcoins in exchange for the sale of goods or services. Third, a user can generate Bitcoins through a process called mining, which involves applying the user's computer's processing power to solve a complex maths problem to discover new Bitcoins. The probability of an individual discovering Bitcoins through mining is proportional to the amount of computer processing power that can be applied. This prospect is likely to be very small for the typical office or home computer. The difficulty of the math problem is such that Bitcoins will be discovered at a limited and predictable rate system (Elwell, 2013).

Whenever the Bitcoins are acquired either through purchase or mining, they are stored in a digital wallet on the user's computer or at an online wallet service. Each Bitcoin is subdivided down to eight decimal places, forming 100,000,000 smaller units called satoshis.





➤ Bitcoins reside in an encrypted format on their owner's computer, making it difficult, though not impossible, for hackers to access and steal electronically. Bitcoins are much easier to carry than cash, which could be a particular benefit in economies where large scale transactions are conducted in cash. It also offers the benefit of being easier to track than cash given that each coin contains an electronic record of each transaction about where coin has been moving since it was created.

Bitcoins can be transferred online without an intermediate financial institution. The processing of Bitcoin transactions is secured by servers called Bitcoin "miners". Each and every transaction is logged digitally on a transaction log that tracks the time of purchase and who owns how many Bitcoins. This digital transaction log is called 'block chain', which records every single transaction and the ownership of every single Bitcoin in circulation. Each new ledger update creates some newly-minted Bitcoins besides archiving transactions. Every year, the number of new Bitcoins created in each update is halved every 4 years. This will continue till the year 2140 when this number will be brought down to zero as the total number of Bitcoins will have reached a maximum of 21 million Bitcoins by that time. Therefore, the supply of Bitcoins does not depend on the monetary policy of a central bank. Currently, about 12 million Bitcoins are in circulation. Making payments with Bitcoins is easier than using credit cards. If one has a wallet, one only has to enter the recipient's address, the amount of Bitcoins to be sent, and click OK. The recipient will then simply receive the request for Bitcoins in exchange for what he is offering in return. Thus, a Bitcoin can be considered as a chain of transactions from one owner to the next, where owners are identified by a public key. In each transaction, the previous owner signs—using the secret signing key corresponding to his public key—a hash of the transaction in which he received the Bitcoins and the public key of the next owner. This signature can then be added to the set of transactions that constitutes the Bitcoin; because each of these transactions references the previous transaction, thus, the transactions ultimately form a chain structure. To verify the validity of a Bitcoin, a user can check the validity of each of the signature in this chain (Meiklejohn, et al, 2013).

HOW TO TRADE BITCOINS

Just like securities trading, exchanges provide a place for people to trade Bitcoins for other types of currency. Payments to a merchant who accepts Bitcoins are made from the Bitcoin wallet by entering

the recipient's address and the payment amount.

WHAT GIVES A BITCOIN ITS VALUE

This is one question that puzzles a lot of people – after all, why is it that some intangible and obscure currency is presently worth more than \$600?

Bitcoins have value because they are useful as a form of money. Bitcoin has the characteristics of money (durability, portability, fungibility and scarcity) based on the properties of mathematics rather than relying on physical properties (like gold and silver) or trust in central authorities (like fiat currencies). With these attributes, all that is required is trust and adoption. In the case of Bitcoin, this can be measured by its growing base of users, merchants, and startups. The value of Bitcoin comes only from people willing to accept them. Though, the value can appreciate or depreciate with changes in the expectation of investors, buyers, sellers and speculators. Pure demand and supply for Bitcoins is what determines its price. Additionally, frequency of transactions is independent from the total value of the supply. The value of a Bitcoin is constantly changing.

AN APPRAISAL OF THE BITCOIN SYSTEM

Currencies, in general, play three varied roles: a unit of account, medium of exchange, and store of value. It possesses some fundamental value that may increase over time as it gains wider user base. However, it has few shortcomings which may hinder it from gaining an international currency status.

REASONS FOR WIDESPREAD APPRECIATION

Low transaction costs

The transaction involving Bitcoins carries less cost as it does not require a central clearing house to act as a third party to financial transactions. Using a decentralized, peer-to-peer network, transactions are verified independently by network users who are rewarded with newly minted Bitcoins.

An alternative to cash

Bitcoins reside in an encrypted format on their owner's computer, making it difficult, though not impossible, for hackers to access and steal electronically. Bitcoins are much easier to carry than cash, which could be a particular benefit in economies where large scale transactions are conducted in cash. It also offers the benefit of being easier to track than cash given that each coin contains an electronic record of each transaction about where coin has been moving since it was created. Each transaction is recorded in an online public ledger, offering a level of transparency that is not available with cash. Such transparency offers regulators means



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➤ Bitcoin has managed to come somewhat clean within a short span of time, yet its potential of being misused and unstable nature has resulted in many countries remaining skeptical of it. While few developed economies like Sweden, Germany and Finland have warmed up to it, some like China, France and Russia and Indonesia have imposed ban on trading denominated in Bitcoins.

to track potentially illicit activity.

Time bound supply

The design of Bitcoin seeks to mimic the supply of gold in that the system will create a finite supply of the currency, which is considered to be a way to protect its value from central banks. The system is designed in such a way that the supply of Bitcoins will increase over time until it reaches a total supply of 21 million.

REASONS TO REFRAIN FROM USING BITCOINS PRICE VOLATILITY

The dollar price of Bitcoin has moved 10% on a daily basis since its inception including days when the price moved 190% from that day's highs to lows. These movements reflect shift in estimates about the fundamental value of Bitcoin. The traders accepting it now are effectively internalizing the costs of this volatility and not passing it on to consumers, but such likely unprofitable practices are not expected to be long lasting.

Waiting time in getting confirmation

Fifty minutes is the time needed for enough additional blocks to be added to the chain to protect against double spending. This is not an issue for two parties that know each other because they trust that the other will not double spend, but when dealing with an anonymous counter party this creates a high level of risk that cannot be hedged.

Not a legal tender

Unlike fiat money, nobody is under any obligation to accept Bitcoins as a mean of payment. Therefore, its value is only as good as the perception of its worth by its users. Bitcoin could disappear very quickly if perception of its usefulness decline. Some aspects like Bitcoin is not centrally cleared and the confirmation delays in the Bitcoin transaction creates a doubt about its potential in the OTC market that accounts for major foreign exchange trading turnover.

Less Secured

If people are not careful, they may by chance end up deleting or misplacing their Bitcoins. Once the digital file is lost, the money is lost. If people do not protect their private Bitcoin addresses, they can leave themselves open to theft. Bitcoin wallets can now be protected by encryption, but users must choose to activate the encryption. If a user does not encrypt his or her wallet, Bitcoins could be stolen through malware. Bitcoin exchanges, too, have at times struggled with security;

hackers successfully stole 24,000 BTC (\$250,000) from a Bitcoin exchange called Bitfloor in 2012 and mounted a massive series of distributed denial-of-service (DDoS) attacks against the most popular Bitcoin exchange, Mt.Gox, in 2013. The situation, however, is different as Bitfloor eventually repaid the stolen funds to its customers, and Mt.Gox ultimately recovered from the DDoS attacks. If compared with traditional currencies, many of the risks are common. Dollar bills can be destroyed or lost, personal financial information can be stolen, and banks can be robbed or targeted by DDoS attacks. Thus, Bitcoin users should take care to learn about and prepare for security concerns (Brito and Castillo, 2013).

Criminal Aspects

The question arises as to whether criminals can use it to launder money and accept payment for illicit goods and services. Indeed, like cash, it can be used for both good and bad (Woo, Gordon and Iaralov, 2013).

COUNTRIES' PERSPECTIVE ON BITCOINS: IS BITCOIN LEGAL, ILLEGAL, A CURRENCY OR COMMODITY

Bitcoin has managed to come somewhat clean within a short span of time, yet its potential of being misused and unstable nature has resulted in many countries remaining skeptical of it. While few developed economies like Sweden, Germany and Finland have warmed up to it, some like China, France and Russia and Indonesia have imposed ban on trading denominated in Bitcoins. Most regulators, however, have decided to remain cautious, and India is no exception. The creation, trading or usage of Bitcoins, as a medium for payment are not authorised by any central bank or monetary authority. No regulatory approvals, registration or authorisation is stated to have been obtained by the entities concerned for carrying on such activities. RBI has not yet formulated regulations to govern trading or profits generated from Bitcoins. RBI does not consider Bitcoin legal tender and, therefore trading in Bitcoin is not legal.

But as regards as its status as a currency or a commodity is concerned, major economies like EU and UK have decided that Bitcoin is not a Currency. Indian laws define the term currency in section 2(h) of the Foreign Exchange Management Act, 1999



("FEMA") in the following words: "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank". This means that if any instrument which is being used as a currency is not covered by the definition as it stands, then the RBI is free to notify it and include it in the definition of currency. All "currency" other than Indian currency is considered by the FEMA as "foreign currency" which would have to then comply with various rules and regulations under FEMA. This means that if Bitcoin is classified as a "currency", it would have to come under the definition of "foreign currency" and Bitcoin transactions would therefore have to comply with the entire foreign exchange rules under FEMA. It is clear that Bitcoin is not similar to any of the instruments mentioned in the definition. On May 3, 2000, the RBI notified "debit cards, ATM cards or any other instrument that can be used to create a financial liability" as "currency" under the FEMA (by Notification No. FEMA 15/2000/RB dated May 3, 2001). Since Bitcoin is not really backed by any institution and because most of the transactions involving acceptance of Bitcoin are voluntary in nature, therefore it Bitcoin is not an instrument that can be used to create a financial liability.

CONTROVERSIES OVER VIRTUAL CURRENCIES

Virtual currencies are full of controversies. They are often associated with being a monetary alternative for illegal activities, as well as with users claiming loss through cyber-attacks or fraud. Recent cases include the following:

- In October 2013, Silk Road, an online marketplace, ceased to operate due to allegations that it allowed more than a billion U.S. dollars of illegal drugs and illicit services to be bought using Bitcoin.
- Another website, Sheep Marketplace, used Bitcoin and the browser Tor1 to enable online sales of illicit goods, similar to Silk Road.
- Bitcoin was featured in the news on a cyber attack of the database belonging to the Japan-based Bitcoin exchange Mt. Gox in June 2011. This news managed to knock the value of the currency down from US\$17.50 to US\$0.01 within minutes. Around 400,000 Bitcoins (worth almost US\$9 million) were affected. In addition, the perpetrator hacked into the Mt. Gox database, gaining access to user names, e-mail addresses and passwords of thousands of users. Mt. Gox responded by closing down the system for a few days, promising that the transactions carried out by the hacker would be reversed. Bitcoin defenders claim that the Bitcoin system did not fail, and that the problem was related to a particular Bitcoin trading platform – Mt. Gox – which did not have sufficient security measures in place.
- Another similar case occurred in May 2012, when Bitcoinica,

a Bitcoin exchange platform, lost 18,547 Bitcoins from its deposits following a cyber attack, in which sensitive customer data might also have been misappropriated.

- In early November 2013, Inputs. io, a website owned by Bitcoin payment processor Trade Fortress, was attacked. Hackers allegedly stole more than US\$1 million worth of Bitcoins belonging to Trade Fortress users, adding to the concerns about the security of the Bitcoin system.
- In late October 2013, the Hong Kong-registered Global Bond Limited, a Bitcoin trading platform, simply disappeared overnight, allegedly taking around US\$4.1 million of investor money along with it.

BITCOINS - IS INDIA READY

The Reserve Bank of India has stated that it is presently examining the issues associated with the usage, holding and trading of Virtual currencies (VCs) under the legal and regulatory framework of the country, including Foreign Exchange and Payment Systems laws and regulations. RBI has also cautioned the users, holders and traders of Virtual currencies (VCs), including Bitcoins, about the potential risks that they are exposing themselves to.

The main points raised by RBI were:

VCs being in digital form are stored in digital/electronic media that are called electronic wallets. Therefore, they are prone to losses arising out of hacking, loss of password, malware attack etc. Since they are not created by or traded through any authorised central agency, the loss of the e-wallet could result in the permanent loss of the VCs.

- Payments by VCs, such as Bitcoins, take place on a peer-to-peer basis without an authorised central agency which regulates such payments. As such, there is no standard framework for recourse to customer disputes.
- There is no backing of any asset for VCs. Huge volatility in the value of VCs has been noticed in the recent past, which may result in potential losses.
- VCs, such as Bitcoins, are being traded on exchange platforms set up in various jurisdictions whose legal status is also unclear. Hence, the traders of VCs on such platforms are exposed to legal as well as financial risks.
- There have been several media reports of the usage of VCs, including Bitcoins, for illegal activities. The absence of information of counterparties in such peer-to-peer anonymous systems could subject the users to unintentional breaches of anti-money laundering and combating the financing of terrorism (AML/CFT) laws (Prasad, 2013).

But the biggest fear of the RBI and the income tax department is that Bitcoins will be used to move around black money internationally because of the ease with which the virtual currency can be sold as opposed to doing it via banks.



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BITCOINS: NEW BUZZ IN THE CURRENCY MARKET

The main points raised by the Bitcoin community are:

- Bitcoin is still in initial stages.
- All Bitcoin transactions are stored in a public ledger called the Blockchain that cannot be manipulated without the agreement of the majority of the network.
- Bitcoin network has never been hacked, proving that the security of Bitcoin is better than conventional systems.
- However, Bitcoins can be stolen if users do not protect their wallets on their computer.
- The community acknowledges that it can be used for money laundering, much like cash.
- The Bitcoin community has and will always want government oversight and it has been ready to open a dialogue with the government.
- Bitcoin exchanges should be the point where user data is collected, using KYC.
- It is a vital point for providing traceable user information to tax authorities, and a point where regulation on the Bitcoin environment in India can be properly maintained.

The Bitcoin community has formed an association called Bitcoin Alliance India (BAI) and second, websites such as Madovercoins.com and Bitquick.in have started operations too. Madovercoins.in is an Indian e-commerce website that accepts only Bitcoins and is targeted mainly at NRIs who want to buy Indian products. A new entrant, Bitquick.in, is claiming to help connect Bitcoin buyers and sellers in India directly to their banks. "Buy Bitcoins in India instantly with NEFT/RTGS, IMPS or cash deposit from sellers with Bitcoin already in escrow for a low 1 per cent fee. Sell Bitcoins in India for cash deposited directly into your bank account for zero per cent fee," says a message on the Bitquick.in website. However, large operators such as Ahmedabad-based Buysellbitco.in and Inrbtc.com continue to remain suspended for want of a clearer regulatory framework. Newly formed body BAI wants to work closely with the government to create a proper legal framework for the virtual currency in India.

It is expected that longer the uncertainty regarding the legal aspects stays, the sooner Bitcoins in India will move into unfavorable domains. Working closely with law enforcement agencies will help the Bitcoin ecosystem become cleaner and safer. In a broader scenario, the Bitcoin community want the RBI to step in, not only to create policies to improve safety at the consumer's end and enforce a strict KYC system to avoid its use for black money but also to set up its own exchange and force all Bitcoin traders to make payments through its own setup. Now, the bigger fear within the investigative agency is that Indian black money will start flowing into Bitcoin trading, which is unacceptable and unregulated in Indian financial system as of now. Therefore, it will be interesting to see how the Bitcoin community in India really takes on regulators and agencies on this issue.

FAME AND FALL WILL CONTINUE

While Bitcoin had been steadily gaining popularity over the past year, it really turned heads when its value skyrocketed to more than \$1,200 in November 2013, making it almost as valuable as an ounce of gold and certainly the most expensive currency. However, this jump in its price also caused financial regulators across the world to give it a serious thought. When the 'Silk Road' drug-racket got busted in late 2013, the role of Bitcoin in the same severely damaged its reputation. Its value crashed across the world, and many people and regulators became wary of its role as a virtual currency. The huge volatility in its price also scared off many investors who were earlier eyeing it as an investment opportunity. Further, since a clear standpoint is lacking from the Indian officials on this issue, Bitcoins remain a speculative and high-risk investment from an Indian's perspective. Despite gaining popularity, Bitcoin is still in a nascent stage and will face many challenges ahead.

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An Overview of the Compounding Provisions Under the Foreign Exchange Management Act (FEMA), 1999

- Compounding is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the Act] by minimizing transaction costs. Willful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.

INTRODUCTION

In India, all transactions that involve foreign exchange were regulated by Foreign Exchange Regulations Act (FERA) 1973, whose main objective was conservation and ensure proper utilization of the foreign exchange resources of the country. At the same time, it also sought to control certain aspects of the conduct of business outside the country by Indian companies and in India by foreign companies. In the light of economic reforms and the liberalized scenario, FERA was replaced by a new Act called the Foreign Exchange Management Act (FEMA), 1999. The Act applies to all branches, offices and agencies outside India, owned or controlled by a person resident in India. FEMA emerged as an investor friendly legislation which is purely a civil legislation in the sense that its violation implies only payment of monetary penalties and fines. However, under the new Act, a person will be liable to civil imprisonment only if he does not pay the prescribed fine within 90



days from the date of notice but that too happens after formalities of show cause notice and personal hearing. FEMA also provides for a two year sunset clause for offences committed under FERA which may be taken as the transition period granted for moving from one 'harsh' law to the other 'industry friendly' legislation.

Among the various objectives of the Foreign Exchange Management Act (FEMA), an important one is to unite and revise



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➤ **Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contraventions as defined under section 13 of FEMA, 1999 except the contravention under section 3(a), for a specified sum after offering an opportunity of personal hearing to the contravener.**

all the laws that relate to foreign exchange.

The Foreign Exchange Management ACT (FEMA) has the following objectives :

- (i) To promote foreign payments and trade in the country
- (ii) To facilitate external trade and payments; and
- (iii) To promote the orderly development and maintenance of foreign exchange market.

The Act has assigned an important role to the Reserve Bank of India (RBI) in the administration of FEMA. The rules, regulations and norms pertaining to several sections of the Act are laid down by the Reserve Bank of India, in consultation with the Central Government. The Act requires the Central Government to appoint as many officers of the Central Government as Adjudicating Authorities for holding inquiries pertaining to contravention of the Act. There is also a provision for appointing one or more Special Directors (Appeals) to hear appeals against the order of the Adjudicating authorities. The Central Government also needs to establish an Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals). The FEMA provides for the establishment, by the Central Government, of a Director of Enforcement with a Director and such other officers or class of officers as it thinks fit for taking up for investigation of the contraventions under this Act.

CONTRAVENTION AND COMPOUNDING OF OFFENCES UNDER FEMA, 1999

Compounding of offence means “making good the loss suffered by a victim”. Contravention of law and non compliance leads to penalties and prosecution and to save ourselves from punishment, we resort to compounding. Compounding is a boon under our statute to save the offender from prosecution and other legal penalties. The term ‘compounding’ has not been defined either in

the Foreign Exchange Management Act, 1999 or the rules issued there under. However, inference can be drawn from the definition given in the Companies Act, 1956. It defines compounding as ‘any offence punishable under the Act (whether committed by the company or any officer thereof), not being an offence punishable with imprisonment only or with imprisonment and also with fine may, either before or after the institution of any prosecution, be compounded’.

“The Foreign Exchange (Compounding Proceedings) Rules, 2000.” contain detailed provisions on compounding. The compounding of the contravention under FEMA was implemented by the Reserve Bank of India (RBI) by putting in place the simplified procedures for compounding with effect from 1.2.2005 with the following views enshrining the motto of enhancing transparency and effect smooth implementation of the compounding process. Compounding of contraventions is aimed at: i. minimization of transaction costs; and ii. Taking a serious view of the willful, mala fide and fraudulent transactions.

It should be noted that FEMA is not a revenue law. The compounding proceedings have the intention of deterring people from making repetitive lapses. Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/ regulations/ notification/ orders/ directions/ circulars issued there under. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contraventions as defined under section 13 of FEMA, 1999 except the contravention under section 3(a) *ibid*, for a specified sum after offering an opportunity of personal hearing to the contravener. It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the Act] by minimizing transaction costs. Willful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.





Any person who contravenes any provision of the FEMA, 1999 [except section 3(a)] or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank. Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement. When a person is made aware of the contravention of the provisions of FEMA, 1999 by the Reserve Bank or the Foreign Investment Promotion Board (FIPB) or any other statutory authority or the auditors or by any other means, she/he may apply for compounding. One can also make an application for compounding, *suo moto*, on becoming aware of the contravention.

PROCEDURE FOR APPLYING FOR COMPOUNDING

The procedure prescribed for compounding as per the provisions of FEMA, 1999 are summarized as under:

- i. The form issued by the Reserve Bank of India (Circular No. 56 dated June 28, 2010), can be used for applying for compounding.
- ii. The application in the prescribed format along with necessary documents and a demand draft for Rs. 5000/- (Rupees five thousand only) drawn in favour of the "Reserve Bank of India" should be sent to the Reserve Bank of India while sending the request for compounding.
- iii. Along with the application in the prescribed format, the applicant may also furnish the details as per the Annexes-relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as applicable, (Circular No. 57 dated December 13, 2011) along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc., a copy of the Memorandum of Association and latest audited balance sheet while applying for compounding of contraventions under FEMA, 1999.
- iv. Regional Offices of the Reserve Bank of India mentioned below are authorised to compound the contraventions of FEMA involving (a) delay in reporting of inward remittance, (ii) delay in filing of form FC-GPR after allotment of shares and (iii) delay in issue of shares beyond 180 days (viz. paragraphs 9(1)(A), 9(1)(B) and 8, respectively, of the Schedule I to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide Notification to time No. FEMA 20/2000-RB dated 3rd May 2000 and as amended from time to time.
- v. Jurisdiction: Paragraphs 9 (1) (A) and 9 (1) (B) of Schedule

I to FEMA 20/2000-RB dated May 3, 2000 -Bhopal, Bhubaneswar, Chandigarh, Guwahati, Jaipur, Jammu, Kanpur, Kochi, Patna and Panaji for amount of contravention below Rupees One hundred lakh only (Rs.1,00,00,000 /-).

Paragraphs 9 (1) (A), 9 (1) (B) and 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000 -Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and New Delhi for amount of contravention without any limit.

Accordingly, all applications for compounding whether received on the advice of the Regional Office concerned or *suo-moto*, relating to the contraventions mentioned at (a) and (b) above may be submitted by the companies falling under the jurisdiction of the aforesaid Regional Offices directly to the Regional Office concerned, together with the prescribed fee and other relevant documents. All other applications may be submitted to the Compounding Authority, Cell for Effective implementation of FEMA (CEFA), alongwith the prescribed application fee.

- vi. It is to be noted that all requisite approvals should be obtained and compliances should be completed before seeking compounding of contravention. Compounding can be done only after rectifying the records by way of obtaining *post-facto* approvals or unwinding the transactions in cases where such transactions are not permissible under FEMA, 1999. Copies of approvals and other compliances should be enclosed along with the application.
- vii. The Reserve Bank makes a scrutiny of the application to verify whether the required details and documents furnished by the applicant are *prima-facie* in order. Applications with incomplete details or where the contravention is not admitted will be returned to the applicant. On the admission of applications, the Reserve Bank will examine and decide if the contravention is technical, material or sensitive in nature. If it is technical, the applicant will be issued a cautionary advice. If the





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contravention is material, it will be compounded by imposing a penalty after giving an opportunity to the contravener to appear before the compounding authority for a personal hearing. If the contravention is sensitive in nature requiring further investigations, the same would be referred to the Directorate of Enforcement (DOE) for further investigation/ action.

- viii. Classification of Contravention as technical, material or sensitive: Whether contravention under the Foreign Exchange Management Act (FEMA) is to be treated as technical and/or minor or serious would be decided by the Reserve Bank on the merits of the case. The application will be disposed of keeping in view the procedure notified in this regard. Persons who have contravened the provisions of FEMA should not take upon themselves *suo moto*, or on the basis of external advice to decide whether a particular contravention is technical or minor in nature and, hence, no compounding application need be submitted to the Reserve Bank. If such applications for compounding are not made, the person concerned shall expose himself/herself to such action under the provisions of FEMA as the authorities may deem appropriate. The persons concerned should, therefore, in their own interest submit their applications for compounding of contravention under FEMA to the Reserve Bank at the earliest opportunity.
- ix. Hearing of the case: It is not mandatory to attend the personal hearing. In case a person opts not to attend the personal hearing he may indicate his preference in writing. The application would be disposed of on the basis of documents submitted to the Compounding Authority. If required, other person may be authorized by the applicant to attend the personal hearing on his behalf but only with proper written authority. It has to be ensured that the person appearing on behalf of the applicant is conversant with the nature of contravention and the related matters.
- x. Concluding the Compounding Process: The Compounding Authority passes an order indicating details of the contravention

and the provisions of FEMA, 1999 that have been contravened. The sum payable for compounding the contravention is indicated in the compounding order. The contravention is compounded by payment of the penalty imposed. The amount should be paid within 15 days from the date of the order by way of a demand draft drawn on "Reserve Bank of India" and payable at the Regional office which has issued the compounding order and at Mumbai if the order is issued by CEFA, Mumbai.

- xi. Disposing of the Compounding: On realization of the sum for which contravention is compounded, a certificate shall be issued by the Reserve Bank indicating that the applicant has complied with the order passed by the Compounding Authority. There cannot be a second adjudication by any authority on the contravention compounded. In terms of FEMA, 1999, where a contravention has been compounded, no proceeding or further proceeding, as the case may be, can be initiated or continued, against the person committing such contravention under that section, in respect of the contravention compounded.

In case of non-payment of the amount indicated in the compounding order within 15 days of the order, it will be treated as if the applicant has not made any compounding application to the Reserve Bank and the other provisions of FEMA, 1999 regarding contraventions will apply. Such cases will be referred to the Directorate of Enforcement for necessary action.

ENFORCEMENT OF THE ORDERS OF ADJUDICATING AUTHORITY (SECTION 14)

“(1) Subject to the provisions of sub-section (2) of section 19 (dealing with Appeal to Appellate Tribunal), if any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.

(2) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied:

- (a) that the defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property, or
- (b) that the defaulter has, or has had since the issue of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects





or has refused or neglected to pay the same.

- (3) Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if the Adjudicating Authority is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.
- (4) Where appearance is not made pursuant to a notice issued and served under sub-section (1), the Adjudicating Authority may issue a warrant for the arrest of the defaulter.
- (5) A warrant of arrest issued by the Adjudicating Authority under sub-section (3) or sub-section(4) may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.
- (6) Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him such officer shall at once release him.

Explanation.—For the purpose of this section, where the defaulter is a Hindu undivided family, the Karta thereof shall be deemed to be the defaulter.

- (7) When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this section, the Adjudicating Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison.
- (8) Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority may think fit or release him on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance as and when required.
- (9) Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him

on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied.

- (10) When the Adjudicating Authority does not make an order of detention under sub-section (9), he shall, if the defaulter is under arrest, direct his release.
- (11) Every person detained in the civil prison in execution of the certificate may be so detained-
 - (a) Where the certificate is for a demand of an amount exceeding rupees one crore - up to three years, and
 - (b) in any other case — up to six months: Provided that, he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison.
- (12) A defaulter released from detention under this section shall not, merely by reason of his release, be discharged from his liability for the arrears but he shall not be liable to be arrested under the certificate in execution of which he was detained in the civil prison.
- (13) A detention order may be executed at any place in India in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).





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APPEAL AGAINST THE ORDER OF THE COMPOUNDING AUTHORITY

As compounding is based on voluntary admissions and disclosures, there cannot be an appeal against the order of the Compounding Authority. The Compounding process is normally completed within 180 days from the date of receipt of the application complete in all aspects, by the Reserve Bank.

PENALTIES UNDER THE FEMA, 1999

- On adjudication, if it is proved that the person has contravened the provisions of Foreign Exchange Management Act, 1999 and the rules, regulations, notifications made there under, he shall be liable to a penalty of thrice the sum involved in the contravention, where the amount is quantifiable or upto rupees two lakhs where the amount is not quantifiable. And in case of continuing offence with a further penalty which may extend up to Rs. 5000 every day during which the default continues. In addition to the above, the adjudicating authority may direct that any currency, security or other money or property shall be confiscated
- The provision for penalty under FEMA 1999 makes it clear that the contravention leads to payment of huge sum of money, rendering it difficult for the offender to revive his business or make good the monetary loss
- Section 15 deals with the power to compound contravention. It states that any contravention under Section 13 may be compounded within 180 days of submitting an application to the Directorate of Enforcement or its officers and officers of the RBI as may be prescribed. Once an offence has been compounded, no further proceeding shall be initiated or continued against the offender in respect of the compounded contravention.

From the above it is clear that the compounding of contravention is a Voluntary process on the part of the person committing such contravention. i.e., the offender can proceed to be adjudged and pay the necessary penalties or he can compound his offences.

An application for compounding can be made on being advised of a contravention under FEMA 1999 either through Memorandum or *suo moto* or on becoming aware of the contravention. Section 13 of the FEMA, 1999 dealing with Penalties, provides as under-

- (1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which

may extend to five thousand rupees for every day after the first day during which the contravention continues.

- (2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation. - For the purposes of this sub-section, "property" in respect of which contravention has taken place, shall include-

- (a) deposits in a bank, where the said property is converted into such deposits;
- (b) Indian currency, where the said property is converted into that currency; and
- (c) any other property which has resulted out of the conversion of that property.

APPEAL TO APPELLATE TRIBUNAL (SECTION 14)

1. If any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.
2. No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued





and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied

- (a) that the defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property, or
 - (b) that the defaulter has, or has had since the issuing of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.
3. Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if the Adjudicating Authority is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.
 4. Where appearance is not made pursuant to a notice issued and served under sub-section (1), the Adjudicating Authority may issue a warrant for the arrest of the defaulter.
 5. A warrant of arrest issued by the Adjudicating Authority under sub-section (3) or sub-section (4) may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.
 6. Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him such officer shall at once release him.

Explanation.—For the purpose of this section, where the defaulter is a Hindu undivided family, the karta thereof shall be deemed to be the defaulter.

7. When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this

section, the Adjudicating Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison.

8. Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority may think fit or release him on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance as and when required.
9. Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied.

10. When the Adjudicating Authority does not make an order of detention under sub-section (9), he shall, if the defaulter is under arrest, direct his release.
11. Every person detained in the civil prison in execution of the certificate may be so detained,—
 - (a) where the certificate is for a demand of an amount exceeding rupees one crore — up to three years, and





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- (b) in any other case — up to six months: Provided that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison.
- 12. A defaulter released from detention under this section shall not, merely by reason of his release, be discharged from his liability for the arrears but he shall not be liable to be arrested under the certificate in execution of which he was detained in the civil prison.
- 13. A detention order may be executed at any place in India in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

INDICATIVE POINTS RBI CONSIDERS WHILE COMPOUNDING

The RBI considers the following indicative points while examining the nature of contravention under FEMA and Rules and Regulations made thereunder:

- i. whether the contravention is technical and/ or minor in nature and need only an administrative cautionary advice;
- ii. whether the contravention is serious and warrants compounding of the contravention; and
- iii. whether the contravention, *prima facie*, involves money laundering, national and security concerns involving serious infringements of the regulatory framework.

If, before disposal of the compounding application by issue of a compounding order the RBI finds that there is sufficient cause for further investigation, it may recommend the matter to Directorate of Enforcement (DOE) for further investigation and necessary action under FEMA, by them or to the Anti-Money Laundering Authority instituted under PMLA, 2002 or to any other agencies, as deemed fit. Since the compounding application will have to be disposed of within 180 days, the application will be disposed of by returning the application to the applicant in view of investigation required to be conducted. The FEMA lapses may be either the procedural lapses or innocent lapses or serious lapses or violations. Under the Compounding Rules, the contraventions are compounded considering the following factors:

- 1. the amount of gain or unfair advantage, wherever quantifiable, made as a result of the contraventions;
- 2. the amount of loss caused to any authority or agency or exchequer as a result of the contravention;
- 3. economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- 4. the repetitive nature of the contravention, the track record and/

- or the history of non-compliance of the contravener;
- 5. contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and
- 6. any other factor as considered relevant and appropriate.

It should be reiterated here that the contraventions which are willful, intentional or having *mala fide* and fraudulent intention shall not be considered for compounding in terms of the Compounding Rules issued by the RBI.

CONCLUSION

If a law imposes sanction and does not have repercussion for violation of such law, it amounts to granting immunity and would defeat the very purpose of making law. But, when it comes to foreign exchange related offences, the Indian law makers have made certain that the lawbreakers cannot escape punishments. Only those contraventions that do not attract imprisonment as a mandatory penalty are compoundable. In other words, offences that are specifically punishable with imprisonment only or imprisonment and fine are not compoundable. Further, if the amount involved in the contravention is not quantifiable, then the contravention shall not be compounded. CS

Appointment

REQUIRED

A COMPANY SECRETARY

Company Secretary required for **VFC INDUSTRIES PRIVATE LIMITED**, a Company having office at Halol, Gujarat. The applicant should be an ACS with a LLB qualification, with 3-5 years of relevant working experience.

Please apply in confidence within 15 days stating, age, qualifications, experience and details of salary drawn and expected, to:-

Mr. Alpesh Shah,

VFC INDUSTRIES PRIVATE LIMITED

Survey No 3, Village Baska, Taluka Halol
Dist, Panchmahal, Gujarat - 389350



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PPP in the Coal Sector in India

- Harnessing the entire coal potential is constricted due to geo-political-socio-environmental considerations of the coal rich provinces in India. This makes it imperative that the effective exploitation of the coal reserves is balanced with socio-environmental impact with an inclusive and effective policy framework. This article examines the problems relating to coal shortage and how it can be got over through public private partnership.

INTRODUCTION

Today one of the biggest issues plaguing the power sector in India is that of shortfall of coal supply which is leading to grave electricity shortages. Despite sitting on the World's 5th largest coal reserves, India's reliance on imported coal is increasing by the day, which clearly indicates the country's inability to harness its complete coal potential. This raises several questions about worthiness of continued monopoly of the public enterprises in this sector; the need for infusion of innovation; technology and supporting infrastructure through engagement with the private sector.

This protracted electricity shortage is increasingly being viewed internationally as one of the gravest threats to India's growth. Indian power sector is heavily dependent on coal with its share being 53.54% in India's energy basket and currently coal supply shortage has crippled the power sector like never before.

Since the coal production has consistently been below the planned production level, it is clear that the current model of private



participation is not delivering adequate results. Therefore, there is an urgent need to reinvent the way private sector efficiencies are utilized in the coal mining sector. It is about time that innovative public private partnership (PPP) be used to unlock value in the coal sector in India as has been done in other sectors like Airport, Highways and Ports.

*He heads the Projects, Energy and Natural Resources practice at the firm. He was assisted by Parul Kashyap, Associate, Clasis Law, New Delhi, India in research for this article.



REGULATORY STRUCTURE AND LEGAL FRAMEWORK

The Ministry of Coal has the overall responsibility of determining policies and strategies in respect of exploration and development of coal and lignite reserves, sanctioning of important projects of high value and for deciding all related issues. Under the administrative control of the Ministry, these key functions are exercised through the Public Sector Undertakings, namely, Coal India Ltd. which is the single largest coal producing company in the World, its subsidiaries and Neyveli Lignite Corporation Limited. Besides Coal India Ltd. and Neyveli Lignite Corporation Ltd., the Ministry of Coal also has a joint venture with Government of Andhra Pradesh called Singareni Collieries Company Limited in which the Government of Andhra Pradesh holds 51% equity while the Government of India (the "Government") holds 49 % equity. The coal sector is regulated primarily by the Mines and Minerals (Regulation and Development) Act 1957 (MMRDA) and the Coal Mines (Nationalisation) Act 1973.

Prior to the nationalization of Coal Mines in 1973 under the Coal Mines (Nationalisation) Act, the coal mines were largely owned by the private sector. Through this legislation, the coal mining was brought under the ambit and the control of the public sector. This Act was amended in 1976 permitting captive mining by private companies involved in the production of iron and steel, thereby, permitting sub-lease for coal mining to private parties in isolated small pockets not amenable to economic development and not requiring rail transport. Thereafter, the 1993 and 1996 Amendments to the Coal Mines Nationalisation Act expanded the list of permitted activities by both Government and private sector to cover coal washing and cement sector, respectively.

More recently the Auction by Competitive Bidding of Coal Mines Rules enacted in 2012 lays down rules for allocation of coal mines to government and private companies. It enlists procedure and guidelines for Central Government to be followed while allocating area containing coal through the Government dispensation, End-Use and Tariff Based Competitive bidding routes.

THE ISSUE OF COAL SUPPLY SHORTAGE

As mentioned in the introduction, India ranks fifth in coal reserves (293 BT) and is also the fifth largest coal-producing country in the World and accounts for nearly 10 % of global coal deposits. Despite the impressive statistics, each year the demand for coal has been outstripping the indigenous production and the gap between demand and availability of coal

in India has been progressively rising. As per the 12th Plan¹, the estimated demand for coal is likely to rise to 980 MT by 2016-17 and according to an industry report² this demand is further likely to rise to 1373 MT by 2021-22, while the supply of domestic coal is expected to be 795 MT by 2016-17 and 1102 MT by 2021-22. Presently about 60% of India's total installed power capacity of 2,09,276 MW is generated using coal. Going forward, the impact of coal shortage on power generation is likely to be tremendous as 85 % of the new capacity coming up by 2016-17 too, is going to be coal based.

The state of affairs at the end of September 2012 was such that 35 coal-based power plants had less than seven days of coal stocks. The situation of coal supply shortage continues unabated as according to a recent statement of the Minister of Power, Government of India, several large coal based projects have at best four days of coal reserves. This condition has been precipitated either due to inadequate or delayed receipt from Coal India or one of its subsidiaries and further due to insufficient import of coal. Therefore the generation shortfall has been largely attributed to the shortage of coal. It is pertinent to mention that 74% of the coal that is produced each year is consumed by the power sector.

The situation came to its head when Indonesia, mindful of the surging demand brought about a drastic change in their regulations that increased landed price of imported coal manifold from \$36 per metric ton to \$102 per metric ton. The hiked imported fuel cost almost made several competitive tariff based Power Purchase Agreements³ unviable forcing the owners of two Ultra Mega Power Projects to approach the Central Electricity Regulatory Authority (CERC) requesting termination of the Power Purchase



1 http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol2.pdf
2 http://www.pwc.in/en_IN/in/assets/pdfs/industries/power-mining/coal-mining-icc-report-v2-300613.pdf
3 Mundra UMPPs of Adani Power - <http://www.cercind.gov.in/2014/orders/SO155N.pdf> and TATA Power-http://www.cercind.gov.in/2013/orders/159_mp_2012.pdf



Agreements on the grounds that selling power on the quoted tariff had become unviable given the increase in the cost of imported coal. This situation was avoidable only if the government had ensured that the coal production increased in proportion to the addition of generation capacity.

LACK OF ENERGY SECURITY- A MAJOR IMPEDIMENT IN GROWTH

The coal sector has been a victim of more than one cause for its stunted growth over the years. First and foremost being the monopolistic position of Coal India and other public sector mining companies. Despite sitting on the world's 5th largest reserves of coal it can't secure affordable coal supplies simply because the CIL can't mine coal fast enough, and the country has failed to develop adequate transportation infrastructure especially railways to move coal freights. This situation is further exacerbated by the fact that substantial coal deposits lie under the already shrinking forest cover which houses endangered species and is also home to a large tribal population.

Therefore, harnessing the entire coal potential is constricted due to geo-political-socio-environmental considerations of the coal rich provinces in India. This makes it imperative that the effective exploitation of the coal reserves is balanced with socio-environmental impact with an inclusive and effective policy framework.

No doubt the government needs to give a serious thought towards exploiting and mainstreaming other sources of energy like hydro, renewables, LNG and Shale, but considering India's dependence on coal in the foreseeable future, it is time that the much needed efficiency and speed is infused in ramping up the coal production. The Public Private Partnerships in the coal sector could be one of the more viable solutions to bring in the private sector expertise, technical know-how and inherent efficiencies in not just the coal mining but the entire coal supply chain.

EXISTING METHODS OF COAL ALLOCATION AND MODELS OF PRIVATE PARTICIPATION IN COAL SECTOR

As per Sub-rule 3(A)A of the Auction by Competitive Bidding of Coal Mines (Amendment) Rules, 2012 ("Rules") the allocation of coal blocks is done by an inter-Ministerial inter-Governmental body called the Screening Committee. The Screening Committee is chaired by the Secretary (Coal) and may have representations from the Ministry of Steel, Ministry of Industry and Commerce, Ministry of Power, Ministry of Railways, Coal India Limited (CIL), Ministry of Environment & Forests, Central Mine Planning & Design Institute Ltd., Central Mine Planning & Design Institute Limited (CMPDIL) and the concerned State Governments. The applications

submitted to the Ministry of Coal in accordance with the Sub-rule 2 are assessed on the basis of the comparative evaluation of their technical and commercial bids. Rules for allocation of coal blocks are as follows:

1. Sub-rule 4 of the Rules provides for Allocation through the Government dispensation Route⁴- Through this route the coal block is allocated to the Central and State Government mining companies for the purpose of mining or other specified end use. As per the terms of allocation, the Government companies that are allocated coal through this route are prohibited from entering into any joint venture with any other company for development of the coal bearing areas.
2. Sub-rule 3-of the Rules provides for Allocation through Auction by Competitive Bidding (For Captive Consumption)-Under this route, a government or a private company engaged in the business of specified end uses as mentioned in Section 11A⁵ of the Mines and Minerals Development Act 1957 ("Act") can apply for
3. Sub-Rule 5- Tariff based competitive Bidding- The blocks identified for UMPPs in accordance with Clause b of proviso to Section 11A of the Act are earmarked for the selected state government/Ministry of Power for allocation to the company awarded a power project on the basis of tariff based competitive bidding.

PRIVATE SECTOR PARTICIPATION

- a) Miner Developer Operator Model⁶- Miner Developer cum Operator Model is an arrangement where the MDO undertakes all the activities related to Coal Mining including mine development, mining operations, among other things. The responsibility of seeking approvals, land acquisition, and R&R is passed on to the MDO and all this while the mine owner retains the ownership of the mine. Since the MDO is selected through competitive bidding, the mine owner derives the advantage of the lowest price. The agreement is based on fixed output and fixed revenue. Pre-approved contracts where the major issues such as land acquisition, approvals and clearances were sought in advance have been more successful under the MDO model in India.
- b) Joint Venture⁷- Mining under a joint venture is permitted in

4 Under this route, the block is allocated to a government company, which has the right to use the block for a specific end-use such as power, steel and cement.

5 Section 11A. The Central Government may, for the purpose of granting reconnaissance permit, prospecting license or mining lease in respect of an area containing coal or lignite, select through auction by competitive bidding on such terms and conditions as may be prescribed, a company engaged in - (i) production of iron and steel; (ii) generation of power; allocation of a coal block. Allocation of coal blocks for end use sector requirements is based on the developers' technical capabilities and readiness in establishing end-use projects. The captive consumers including the government companies who have been allocated blocks under this route are permitted to set up Associated Coal Companies for the purpose of efficient mining.

6 Condition 12 of Part-I of the 'Terms and Conditions for Allocation of Area Containing Coal for the Purpose of Mining' of the Auction by Competitive Bidding of Coal Mines (Amendment) Rules, 2012

7 Guideline no. 7 of the "Guidelines For Allocation Of Captive Blocks & Conditions Of Allotment



Article

PPP IN THE COAL SECTOR IN INDIA

➤ The fundamental principle of PPP is that of ownership and equal participation. While the MDO model that is being currently used is just a mining contract which is based on fixed fee per ton formula. As a result, there is no in-built incentive for the contractor as against in a PPP model where the contractor takes an equity position along with the Government and has due incentive to improvise and scale-up the production for revenue and profit maximization. The PPP route will result in faster development of the coal block without any delay as starting commercial production of coal at the earliest will be in the best interest of the private sector party who has invested upfront equity in the mining project.

Case Of Allotment of a Coal Block to a Consortium of more than one eligible company; the said companies are required to hold equity in the joint venture company in proportion to their assessed requirement of coal. The coal thus produced must be distributed amongst the companies in proportion to their respective assessed requirements to be used exclusively for their respective end use projects.

- c) Self-Mining for Captive Use⁸ –The allottee company engaged in the business of iron, cement and power sector are permitted to mine the allocated coal blocks only for the designated end use purpose. In case of washing, the middlings can be utilized for captive power generation only upon the approval of the Central government.

ESSENTIAL ELEMENTS FOR A SUCCESSFUL PPP IN COAL MINING

Coal mining is a highly specialized and capital intensive business

8 Through The Screening Committee⁸- <http://www.coal.nic.in/capguide1.htm>
Condition 1 of Part II of Terms and Conditions for Allocation of Area Containing Coal for the Purpose of Specified End Use⁹ of the Auction by Competitive Bidding of Coal Mines (Amendment) Rules, 2012

with long gestational period and is presently peppered with regulatory hindrances. In order for the government to be able to attract private capital it is imperative that adequate sweeteners are weaved (iii) washing of coal obtained from a mine; or(iv) such other end-use as the Central Government may, by notification in the Official Gazette, specify, and the State Government shall grant such reconnaissance permit, prospecting license or mining lease in respect of coal or lignite to such company as selected through auction by competitive bidding under this section into the model so that there is enough incentive for the private sector to engage with the Government in this sector. A PPP venture in the coal sector to be successful requires the following changes:

- a) Fair and Transparent Bidding- The summer of 2012 saw the unearthing of amassive Coal Allocation Scam brought to light by Comptroller and Auditor General of India (CAG) which accused the Government of India of allocating 194 coal blocks to public and private enterprises for captive use in a non-transparent and ad hoc manner between 2004 and 2009 causing huge loss to the exchequer and windfall gains to the public and private entities. The aftermath of the scam resulted in cancellation of a number of coal blocks thereby resulting in economic pandemonium and a negative investor sentiment around India.

One of the main reasons behind above controversy is the present method of allocation through the Screening Committee which lacks transparency and objectivity and further gives a whole lot of discretionary powers to the Government.

Therefore, the first step towards attracting investors especially in the background of the coal scam is to have a fair and transparent mechanism for allocation of coal which is above board.

- b) Transfer Ownership of the Mine

The fundamental principle of PPP is that of ownership and equal participation. While the MDO model that is being currently used is just a mining contract which is based on fixed





fee per ton formula. As a result, there is no in-built incentive for the contractor as against in a PPP model where the contractor takes an equity position along with the Government and has due incentive to improvise and scale-up the production for revenue and profit maximization. The PPP route will result in faster development of the coal block without any delay as starting commercial production of coal at the earliest will be in the best interest of the private sector party who has invested upfront equity in the mining project.

- c) **Land Acquisition and Regulatory Approvals-** In many cases the mine owners pass on the obligations relating to land acquisition and securing regulatory approvals to the MDO contractor. This practice though common, consumes substantial time and cost causing long delays in the production of coal. It has been seen that those mines where the ground had been prepared with the land acquisition cleared and all approvals tied up, started production faster than the ones where all the obligations were passed on to the MDO contractor. Therefore, the mine owners in the interest of faster turn-around of mines must sort out the land acquisition issue and seek regulatory approvals before inviting bids from MDO contractors.
- d) **Doing Away with the End-Use Clause** Sometimes a well-meaning policy restriction could have bizarre consequences, like in the case of Tata Power's 1,050 Megawatt Maithon power stations in the state of Jharkhand which faced coal supply shortfall and hence, sought permission to divert coal from its Mandakini mine that was ready for production in the neighbouring Odisha. The permission was not forthcoming primarily because the Mandakini mine was strictly allocated only for the end use of Naraj Marthapur power plant and the allocation terms restrict its use for any

purpose other than the one it has been allocated for. As a result despite of coal being right next door, Tata Power had to import much more expensive coal from Indonesia, thereby adding to the already burgeoning CAD.

No country allocates minerals based on an end-use, even though end users who are located close to the mines have the logistical advantage for using it. While tying down a mine to an end use project does guarantee security of supply for the project, it, however, also restricts the freedom of full exploitation of the quality and quantity of the mine. Therefore, it is advisable to rethink the end-use clause under a well-considered policy framework.

- e) **Permit sale of surplus coal in the open market-** Sale of surplus coal in open market by captive consumers is prohibited under the current regime. However, the right to sell surplus coal in the market has the potential to turn the PPP model in coal mining a lot more attractive for the investors. Taking steps in the right direction, the Government has formulated a draft policy on

usage of surplus coal including middlings, and rejects, which is under finalization in consultation with the concerned Ministries/ Departments. Presently, coal banking and direct sale to CIL are the two options being proposed.

- f) **Infrastructure Status to Coal Mining-** Coal Mining needs to be given infrastructure status so as to attract more players into this industry. The infrastructure status to the coal sector would help the power companies the most as fiscal concessions available to the infrastructure sector would economize coal production. Further coal companies engaged in mining would be able to import equipment and machinery at concessional duties.

g) Permit Joint Venture with the Government Companies for

Mining-The present set of conditions⁹ prohibit the formation of a joint venture with any private company for developing areas containing coal. This condition is particularly damaging in the context of promoting PPP's in coal mining. According to coal ministry's statistics many projects did not progress and several coal blocks have since been de-allocated for the lack of mining skill and technical know-how. On the other hand private sector mining companies come armed with the desired technical capability, modern equipment, safety procedures and efficient human resource practices that the Government companies could hugely benefit from. Such arbitrary barriers



⁹ 9 Condition no. 5 of Part II of Terms and Conditions for Allocation of Area Containing Coal for the Purpose of Specified End Use' of the Auction by Competitive Bidding of Coal Mines (Amendment) Rules, 2012



to private participation should be done away with if the foreign investment needs to be attracted in its true spirit.

ACTIVITIES THAT COULD BENEFIT FROM PUBLIC PRIVATE PARTNERSHIP

- a) **Exploration and Reconnaissance**-The FDI policy allows 100% FDI in Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalization) Act, 1973. However, exploration of coal reserves in the country is primarily carried out by Geological Survey of India at the first stage and detailed exploration is carried out by the Central Mine Planning and Design Institute Ltd. (the "CMPDI"), Mineral Exploration Corporation Ltd (the "MECL"), Singareni

Collieries Company Ltd (SCCL) and Directorates of Mines and Geology of the States. It is well known that these entities have limited drilling capacities and are currently operating on their full capacity. With the drilling target for the 12th Plan set at 63.6 lakh meters against 27.2 lakh meters achieved over the 11th Plan there is still a long way to go. The 12th Plan targets cannot be achieved without induction of cutting edge technology, modern exploration methods, use of state of the art equipment and modern mine planning techniques. Clearly, the targets require the strengthening of the existing organisations or bringing on-board the private investment and entities that have the experience and established track record in exploration activities. Private participation in the exploration segment should be encouraged with a part of GSI and CMPDI's target being outsourced to the private sector on a pilot basis with clearly laid out contractual obligations to effectively convert the coal from resources to reserves. The Government needs to catalyse a surge in exploration activity to have access to better geological information. Once the reserves have been established authoritatively the private sector would be a lot more comfortable in investing in the coal mining venture.

In other mining jurisdictions in case the coal reserves are established through exploration efforts of a private player, then the prospecting license gets seamlessly transferred into a prospecting or exploration license as the case may be, which on successful execution, gets converted into a mining license. Therefore, in future if the private sector is to be attracted to take up exploration, then the seamless transfer from exploration to mining will be a game changer to attract the World's finest players in the sector.

- b) **Tapping the Underground Mine Potential**
Ratio of open cast and under-ground coal production

in India is 90:10 as against the global average of 60:40. In the clamor to meet the coal production targets, Miners have over-exploited open cast mining which essentially means mining of shallow reserves. Although it met the desired objective of increasing coal production but the down-side of it was the neglect of under-ground mining. There has been little or no advancement in the underground mining technology that has made it difficult to access coal located at depths beyond 150 meters. With the increasing depletion of coal located at shallow depths and absence of any long term plans to develop underground mining, the dependency on imported coal is set to increase. This would also lead to redundancy of an asset which is still productive and exploitable.

The government may consider partnering with the private sector to develop these under-ground mines and bridge the coal supply deficit through ramping up domestic production.

- c) **Rail Linkages**- With new government's focus on Public Private Partnership in railways, rail linkages from mine head to the power plant should be taken up on priority. Close to 70% of coal is moved through railways, hence the Public Private Partnership model can be utilized to build rail linkages to augment the efforts of the railways.

Expansion of Coal Transportation Network-The mining companies have traditionally relied on railways for transporting coal to the end-use facility, however with the demand outpacing supply there is a mounting pressure on the railways to build linkages from the mines to increase the coal availability. In a welcome move, the Finance Minister in his last year's budget speech proposed to speed up construction of three critical railway lines that may improve coal availability by about 300 million tonne, however, these projects will take at least five years to complete and only a small fraction of the total 590





km will be completed by 2016. In view of the long gestation period of rail linkages alternate transport solutions must be explored.

- Truck- Till the time the required railway linkages are in place, evacuation by trucks has to continue. With improved highways network transporting coal has become easier with trucks having 15 to 30 tons capacity and large off-road trucks having capacities ranging from 100 to 200 net tons, moving coal to its desired location is though expensive but less challenging.
- Pipeline-Slurry pipelines have the advantages of being able to move large amounts of coal over long distances cost-effectively with a minimum potential for en-route environmental disruption. Operating costs for labor are relatively low and energy consumption is somewhat lower for moving the same amount of coal as a railroad unit train.
- Barge or ship- the use of inland waterways is increasingly been seen as a cost effective, cleanest and efficient mode of transport of coal to industrial users. One Indian company¹⁰ has shown the way by being the first company in India to initiate bulk movement of coal to NTPC's Farraka Plant in West Bengal through National Waterways.

A CASE FOR PUBLIC PRIVATE PARTNERSHIP

PPP model is being utilized the world over to augment public spending on infrastructure and other core sectors for speedy, efficient and cost effective delivery of projects that create value for money through the integration and cross transfer of public and private sector skills, knowledge and expertise coupled with optimal risk transfer and risk management. The PPP concept has also been lauded for alleviation of capacity constraints and bottlenecks in the sector by way of higher productivity of labour and capital resources involved in the delivery of projects. PPP is a vehicle to foster competition and accountability in delivery of quality public services through performance incentives, benchmark standards and regulatory checks. Further it aids in effective utilization of state assets to the benefit of public at large.

Of the many benefits of PPP in the coal sector some are as follows:

1. Cutting down of the Import Bill
2. Introduction of Cutting edge Technology in a sector that has been mired by inefficient mining techniques used by the state miner.
3. Ramping up Production without letting the Cost of domestic

¹⁰ Jindal ITF Limited, a subsidiary of Jindal SAW Limited has made substantial investment in inland waterways transport development and has signed a tripartite contract with Inland Waterways Authority of India and NTPC for bulk movement of coal through national waterways.

coal advantage slip away

4. Utilizing the full exploitable potential
5. Other core sectors will benefit from the efficiency in coal production
6. Coal will retain its place as the primary fuel in view of slow pace of nuclear plants and volatile gas prices and supply constraints.

CONCLUSION

The significance of coal in the energy basket of India originates from the belief of its relative abundance in comparison to other energy sources and current non- viability of large scale implementation of alternate sources of energy. Introduction of Public Private Partnership in the Coal Sector is a long awaited move which if executed with precision and control has the ability to clear the impasse that has been created by the demand outpacing the supply of coal.

CS

Appointment

REQUIRED A COMPANY SECRETARY

Company Secretary is required by a renowned auto dealer at Nagpur engaged in sales and service of foreign brand cars. The applicant should be at least ACS with 3 years relevant post qualification working experience. LLB qualification shall be added advantage. Salary will be commensurate with experience and qualification.

Please apply in confidence within 7 days stating, age, qualifications, experience, 2 references and details of salary drawn and expected to:☐

Jaika Vehicle Trade Private Limited
Jaika Building, Commercial Road, Civil Lines,
Post Box 1, Nagpur - 440001.

Email: shrikantk@nagpur.jaika.com



Corporate Laws

LW: 11:02:2015

VIDEOCON INTERNATIONAL LTD v. SEBI [SC]

Civil Appeal No. 117 of 2005

Jagdish Singh Khehar & M.Y. Eqbal, JJ [Decided on 13/01/2015]

SEBI Act – section 15Z – remedy of second appeal to High Court – amended to the effect of appeal to Supreme Court w.e.f 2002 – whether appeals filed in the High Court before the amendment became effective are maintainable before the High court – Held, Yes.

Brief facts:

Section 15Z of the SEBI Act, as originally enacted, provided for the remedy of second appeal to the High Court from the orders passed by the Securities Appellate Tribunal on questions of fact, as also, questions of law. Section 15Z was amended, with retrospective effect, from 29.10.2002. Under the amended provision second appeal would lie to the Supreme Court on question of law.

Through the present Civil Appeal no. 117 of 2005 (arising out of Special Leave Petition (Civil) no. 3221 of 2004), the appellant has impugned the order passed by the High Court of Judicature at Bombay (hereinafter referred to as, the High Court), on 13.10.2003. The High Court, through the impugned order had examined Section 15Z of the SEBI Act (as amended by the Securities and Exchange Board of India (Amendment) Act, 2002). The issue for determination before the High Court was, whether the aforesaid amendment to Section 15Z of the SEBI Act, would operate prospectively or retrospectively. Appeals had been preferred by the Board, before the High Court assailing the orders passed by the Securities Appellate Tribunal. All the orders under challenge, had been passed by the Securities Appellate Tribunal before 29.10.2002. Some appeals were preferred before 29.10.2002, and one of the appeals was preferred after 29.10.2002. The question which had arisen for adjudication before the High Court was, whether an appeal would

lie to the High Court, after the amendment of Section 15Z of the SEBI Act. The Board which had preferred the appeals, asserted, that all the appeals were maintainable.

The High Court by the impugned order arrived at the conclusion, that such of the appeals as had been filed before the coming into force of the amended Section 15Z, would not be affected by the amendment, and the High Court had the jurisdiction to hear and dispose of the same. The High Court also concluded, that such of the appeals as had been filed after the coming into force of the amended Section 15Z, would not be maintainable.

The instant appeal has arisen with reference to the appeals which have been held as maintainable by the High Court.

Decision: Appeals dismissed.

Reason:

In the facts and circumstances of this case, it is apparent that Section 15Z of the SEBI Act prior to the amendment, postulated that the appellate remedy would extend to "...any question of fact or law arising out of such order.". Whereas, the appellate remedy was curtailed consequent upon the amendment, whereunder the appellate right was limited to, "...any question of law arising out of such order.". Accordingly, by the amendment, the earlier appellate package stands reduced, because under the amended Section 15Z, it is not open to an appellant, to agitate an appeal on facts. That being the position, it is not possible for us to accept the contention advanced at the hands of the learned counsel for the appellant, that the amendment to Section 15Z of the SEBI Act, envisages only an amendment of the forum, where the second appeal would lie. In our considered view, the amendment to Section 15Z of the SEBI Act, having reduced the appellate package, adversely affected the appellate right vested of the concerned litigant. The right of appeal being a vested right, the appellate package, as was available at the commencement of the proceedings, would continue to vest in the parties engaged in a lis, till the eventual culmination of the proceedings. Obviously, that would be subject to an amendment expressly or impliedly, providing to the contrary. Section 32 of the Securities and Exchange Board of India (Amendment) Act, 2002, which has been extracted in paragraph 12 hereinabove reveals, that the 'repeal and saving' clause, neither expressly nor impliedly, so provides. Thus viewed, we are constrained to conclude, that the assertion advanced at the hands of the learned counsel for the appellant, that the instant amendment to Section 15Z of the SEBI Act, does not affect the second appellate remedy, but merely alters the forum where the second appellate remedy would lie, is not acceptable.

Having concluded, that the remedy of second appeal vested in the respondent has not been preserved, in the same format as it was available to the respondent, at the time of initiation of the lis between the parties; and also having concluded, that the scope of the appellate remedy has been diminished by the amendment, we are



satisfied in holding, that amendment to Section 15Z of the SEBI Act adversely affected the respondent, of a vested substantive appellate right, as was available to the respondent, at the commencement of the lis or dispute between the rival parties. Having recorded the aforesaid conclusion, based on the judgments relied upon by the learned counsel for the appellant, as also, by the learned counsel for the respondent, it is inevitable to conclude, that the appellate remedy available to the respondent prior to the amendment of Section 15Z of the SEBI Act, must continue to be available to the respondent, despite the amendment. We accordingly hold, that all the appeals preferred by the Board, before the High Court, were maintainable in law.

Having recorded our conclusion, as has been noticed in the foregoing paragraph, it is apparent, that insofar as the vesting of the second appellate remedy is concerned, neither the date of filing of the second appeal, nor the date of hearing thereof, is of any relevance. Legal pursuit of a remedy, suit, appeal and second appeal, are steps in a singular proceeding. All these steps are deemingly connected by an intrinsic unity, which are treated as one singular proceeding. Therefore, the relevant date when the appellate remedy (including the second appellate remedy) becomes vested in the parties to the lis, is the date when the dispute/lis is initiated. Insofar as the present controversy is concerned, it is not a matter of dispute, that the Securities Appellate Tribunal had passed the impugned order (which was assailed by the Board), well before 29.10.2002. This singular fact itself, would lead to the conclusion, that the lis between the parties, out of which the second appellate remedy was availed of by the Board before the High Court, came to be initiated well before the amendment to Section 15Z by the Securities and Exchange Board of India (Amendment) Act, 2002. Undisputedly, the unamended Section 15Z of the SEBI Act, constituted the appellate package and the forum of appeal, for the parties herein. It is, therefore, not possible for us to accept, the contention advanced at the hands of the learned counsel for the appellant, premised on the date of filing or hearing of the appeal, preferred by the Board, before the High Court. We accordingly reiterate the position expressed above, that all the appeals preferred by the Board, before the High Court, were maintainable in law.

For the reasons recorded hereinabove, we find no merit in this appeal and the same is accordingly dismissed. It is, however, necessary for us to record, that the impugned order was passed with reference to a number of appeals, which were preferred by the Board, as against a common order passed by the Securities Appellate Tribunal. In the impugned order, some of the appeals preferred by the Board were held as maintainable before the High Court, whilst a different view was expressed with reference to the appeals preferred by the Board after 29.10.2002. We have concluded, that all appeals preferred by the respondent herein, before the High Court, were maintainable. In exercise of our jurisdiction under Article 142 of the Constitution of India, we direct, that the instant order passed by us would govern all cases which were disposed of by the High Court through the impugned order

dated 13.10.2003.

LW: 12:02:2015

INFRASTRUCTURE LEASING & FINANCIAL SERVICES LTD v. B.P.L. LTD [SC]

Civil Appeal No. 2701 of 2006

Anil R. Dave & Dipak Misra, JJ. [Decided on 09/01/2015]

Companies Act, 1956 – sections 391– 394 & section 124 – hypothecation in favour of secured creditor– charge registered with ROC – arbitral award passed in favour of the secured creditor – whether this results in he becoming unsecured creditor – Held, No.

Brief facts:

The appellant is the one of the secured creditors of the respondent company. The respondent company had executed a hypothecation deed in favour of the appellant and had also registered the charge with the registrar of companies. During the course, an arbitration award was passed in favour of the appellant. Meanwhile, the Respondent Company proposed a scheme of arrangement whereunder the existing CTV business undertaking of the respondent would be transferred to a new joint venture company.

The scheme was approved by the shareholders and the creditors of the respondent company. The appellant herein opposed the scheme and contented that it is not a secured creditor of the respondent company as the passing of the arbitration award had robbed the security created in its favour and rendered it a mere unsecured creditor. However, the company court rejected the contention and passed the scheme. On appeal the DB also concurred with the company court. Against this order of the DB, the appellant appealed to the Supreme Court.

Decision: Appeal dismissed.

Reason:

From the narration of facts and the contentions which have been highlighted, it is clear that two facts are beyond dispute. First, the appellant stands registered as a secured creditor of the respondent company on the record of the Registrar of Companies under the Act; and second, the arbitral tribunal has passed an award on the basis of consent and it has the status of a decree which is executable in law. Keeping in view these two undisputed facts, we have to appreciate the rival submissions raised at the Bar.



The purpose of the classification of creditors has its significance. It is with this object that when a class has to be restricted, the principle has to be founded on homogeneity and commonality of interest. It is to be seen that dissimilar classes with conflicting interest are not put in one compartment to avoid any kind of injustice. For example, an unsecured creditor who has filed a suit and obtained a decree would not become a secured creditor. He has to be put in the same class as other unsecured creditors (See Halsbury's Laws of India, 2007, Vol. 27). The aforesaid being the position relating to the status of a class, at this juncture, it is necessary to appreciate the basic facts which are determinative in the case at hand.

Keeping in view the factual backdrop, we have to appreciate the principal contentions. The seminal contention of the appellant is that it does not fall into the class of secured creditors, for it had initiated the arbitration proceeding and an award has been passed on consent which is a simple money decree and, therefore, the deed of hypothecation, even if assumed to be executed at one point of time, has become irrelevant. To elaborate, the status of the appellant had changed from a secured creditor to that of an unsecured creditor. On this foundation, a stance has been taken that the principles of Order II, Rule 2, C.P.C. would be applicable as the appellant would be debarred to issue on the basis of the charge of hypothecation. Emphasis has been laid on the factum that there having been a change of status, the appellant company cannot be clubbed with the secured creditors as a class and even if it is kept in homogenous category of secured creditors, it should still fall under a separate class, regard being had to the fact it has obtained an award from the arbitral tribunal. In this context, it is to be seen that whether the arbitration award has the effect of obliterating or nullifying the status of the appellant and making him an unsecured creditor as a consequence of which it would not be able to sue on the basis of a charge created in its favour.

We will be failing in our duty if we do not advert to the issue that the appellant shall remain as a secured creditor, for it was registered as such under the Registrar of Companies. The formalities for creating the charge having duly followed, the Division Bench has referred to the Form No. 8 and 13 and also adverted to the power of Registrar to make entries of satisfaction and release, as provided under Sections 138 and 139 of the Act. It has also expressed the view that in the absence of any proceeding, the status of the company as a secured creditor continues. After registration of the deed of hypothecation, if a condition subsequent is not satisfied, that would be in a different realm altogether. In any case, the finding has been recorded that the respondent was not at fault and, in any case, that would not change the status of the appellant as a secured creditor.

In view of the aforesaid analysis, we are of the considered opinion that the appellant cannot be treated as an unsecured creditor and it is not permissible for him to put forth a stand that it would not be bound by the Scheme that has been approved by the learned Company Judge. The aforesaid conclusion of ours leads to the inevitable dismissal of the appeal, which we direct. However, in the factum and circumstances of the case, there shall be no order

as to costs.

LW: 13:02:2015

SHAHIREALTECH PVT LTD v. CELEBRATION CITY PROJECTS PVT LTD [DEL]

Co. Pet. 148 of 2014

Sanjeev Sachdeva, J. [Decided on 13/01/2015]

Companies Act, 1956 – section 433 – winding up petition based on liquidated damages – whether maintainable – Held, Yes.

Brief facts:

The present petition has been filed by the Petitioner seeking winding up of the Respondent for the alleged failure to pay a sum of Rs. 17,26,41,591/-. The contention of the Petitioner was that the Respondent under the agreement was responsible for finding the tenants and for renting out the space allocated to the Petitioner. The Collaboration Agreement stipulated that the Respondent has represented that space in the project has already been committed by the renowned companies as lessees as mentioned in the annexure annexed to the Collaboration Agreement. The agreement further stipulated that the sum that the Respondent is obliged to pay to the Petitioner shall be deemed to be a liquidated sum.

The Respondent has filed a short reply taking only a preliminary objection that since the petition has been filed on account of alleged recovery of liquidated damages, such a petition is not maintainable till such time the damages were adjudicated finally by a court of law. Leading counsel for the Respondent submitted that the Respondent reserved its liberty to file a detailed reply to the petition in case the preliminary objection was held against the Respondent.

Decision: Petition held to be maintainable.

Reason:

Since the preliminary objection was raised that the petition was not maintainable, the arguments were heard only on the preliminary objection.

Respondent has relied on the decision of the Division Bench of this Court titled Tower Vision India Pvt Ltd v. Procall Private Limited 2014(183) Comp Cas 364 to contend that where the claim is for damages even though liquidated, no winding up petition would lie as there is no debt and the issue of damages is yet to be determined by the court.

In my view, the judgment does not lay down a general proposition



that in every case where the claim is for damages the petition would not be maintainable. It would depend on the facts and circumstances of each case whether the debt has got crystallized or not or the matter required evidence and the disputes required adjudication before the Civil Court.

In the present case, the contention of the Petitioner is that the Petitioner had invested a substantial amount of money in the project and the Respondent had undertaken to complete the project by a particular date. Thereafter, the Respondent itself was responsible for renting out the portion falling to the share of the Petitioner at a minimum rental. As per the Petitioner, the Petitioner had invested in the project with a guarantee from the Respondent that the Petitioner would be assured a specified return on the investment.

Since the Petitioner was only to contribute a particular sum of money, the obligation on the Petitioner was duly fulfilled when the Petitioner had contributed the amounts that the Petitioner had agreed to contribute. The Respondent had undertaken to complete the project within a specified period and thereafter the Respondent was to rent out the space falling to the share of the Petitioner at a minimum guaranteed rental.

The representation made by the Respondent was that the Respondent had prospective tenants who had shown an inclination in taking on rent the specified spaces. The agreement between the parties also stipulated the minimum amount at which the premises would be rented out by the Respondent. The agreement further stipulated that in case the Respondent was not able to rent of the premises and the specified rate the Respondent would pay to the Petitioner the said rate of rent, however, in case the premises were rented out at a rate higher than the amount stipulated between the parties the Petitioner would be liable to proportionately pay a higher amount as sale consideration for the space allocated to the Petitioner. The Respondent had even annexed with the agreement the list of tenants who had shown inclination to take on rent the spaces.

As noticed hereinbefore, the Respondent has chosen to file only a short reply raising the issue of maintainability and has not filed a detailed reply on merits. The Respondent has filed a short reply and chosen not to reply to the contentions on merits on its own volition and without seeking leave and liberty of the court. The Respondent has done so at its own risk.

However, in the interest of justice, subject to payment of costs of Rs. 10,000/- the Respondent is granted three weeks time to file a parawise reply to the petition.



Competition Laws

LW: 14:02:2015

SWASTIK STEVEDORES PRIVATE LIMITED
v. DUMPER OWNER'S ASSOCIATION & ORS [CCI]

Case No. 42 of 2012

Ashok Chawla, S. L. Bunker, Sudhir Mital, Augustine Peter & U. C. Nahta.

[Decided on 21/01/2015]

Competition Act, 2002 – section 3&4 – Port trust & port activities – abuse of dominance and restrictive agreements – CCI imposes penalty on the OPs.

Brief facts:

The Opposite Party No. 1 is stated to be the only association inside the Paradip Port for making available dumpers and hywas of its members to the registered stevedores for intra-port transportation of cargo. It is stated that because of its monopoly position, stevedores are fully dependent on the Opposite Party No. 1 for supply of dumpers and hywas. It is averred that taking advantage of its monopoly position, the Opposite Party No. 1 in connivance with the Opposite Party No. 2, has been refusing to provide dumpers and hywas to the Informant and enlisting the Informant for availing the services of dumpers and hywas. As per the Informant, the said acts of the Opposite Parties are in violation of the provisions of sections 3 and section 4 of the Act.

Decision: Penalty imposed on the Opposite Parties

Reason:

Having perused the facts of the matter; DG investigation report; objections filed by the Opposite Parties, the office bearers of the Opposite Party No. 1 and Opposite Party No. 3 in response to the DG report; other materials available on record and hearing the arguments of the learned counsel appearing on behalf of the Informant, the Opposite Parties, the Commission feels that the following issues need to be determined to arrive at a decision in



the matter:

(i) Whether there is contravention of the provisions of section 4 of the Act by the Opposite Party No. 1?

The Commission is of the view that, as per the scheme of the Act, to qualify as an 'enterprise', any person or department of government has to be engaged in the activity specified under section 2(h) of the Act. It is noted that the Opposite Party No. 1 is an association of dumper owners and in itself it is only a facilitator of the services of dumpers and allocates dumpers of its constituent members. It is further observed that the Opposite Party No. 1 though engaged in allocating dumpers owned by its members amongst users/stevedores, it neither owns any dumpers nor receives consideration for the services of dumpers owned by its members. Its activity therefore, cannot be considered as the activity of an enterprise as reported by DG. It may be noted that, in a number of cases such as in Case No. 52 of 2010, Eros International Media Limited v. Central Circuit Cine Association & others and Case No. 56 of 2010 Sunshine Pictures Private Limited v. Motion Pictures Association & others the Commission has taken a view that trade associations which are not directly involved in economic activity cannot be termed as an "enterprise" under section 2(h) of the Act. Accordingly, the Commission is of the view that the Opposite Party No. 1 is not an enterprise in terms of section 2(h) of the Act. Therefore, its conduct cannot be examined under the provisions of section 4 of the Act. The Issue No. 1 is decided accordingly.

(ii) Whether the Opposite Parties have contravened provisions of section 3 of the Act? If so, whether the office bearers of Opposite Party No. 1 and Opposite Party No. 3 are also liable for the same?

From the facts of the case it emerges that inside the Paradip Port prohibited area for the provision of dumper services the permission of the Opposite Party No. 2 in terms of issuing gate pass is a sine-qua-non. The Opposite Party No. 2 has also capped the number of dumpers which can operate inside the Port restricted area. Seemingly, the Opposite Party No. 2 provides gate pass to the dumpers for security reasons and has restricted the number of dumpers due to space constraints and other operational reasons. It is also observed that the Opposite Party No. 2 had given the responsibility of issuing the gate pass of dumpers to the Opposite Party No. 1. Apparently, by issuing the gate pass only to the dumpers of its members, the Opposite Party No. 1 used this responsibility in its favour with a view to control the services of dumpers inside the Paradip Port prohibited area.

From the sequence of events, circumstances of the case and findings of DG in this regard, it is amply clear that the Opposite Party No. 1 is not only controlling the services of the provision of dumper inside Paradip Port restricted area but also limiting

the said services by denying it to the Informant and other stevedores who are not enlisted with it for the said service and who are dependent on it because of limited availability of the other sources of supply of dumpers. Accordingly, the Commission is in agreement with the findings of DG in this regard and is of the view that the above said acts of the Opposite Party No. 1 amount to limiting and controlling the provision of the services of dumpers inside the Paradip Port prohibited area which is in contravention of the provisions of section 3(1) read with section 3(3)(b) of the Act.

Thus, in consonance with the findings of DG in this regard and the facts and circumstances of the case, the Commission is of the view that the Opposite Party No. 1 has indulged in the practice of determining the rates of the provision of dumper services for intra-port transport operations within the Paradip Port restricted area which amounts to determination of sale price of the services of dumpers which is in violation of the provisions of section 3 (1) read with 3(3)(a) of the Act. Accordingly, the Commission concludes that the Opposite Party No. 1 is found to have infringed the provisions of section 3(1) read with 3(3)(a) of the Act.

The Commission is of the considered view that the said anti-competitive conduct requires to be penalized to cause deterrence in future among the erring entities engaged in such activities. Therefore, it is imperative that the penalty imposed is adequate enough to create desired level of deterrence. Accordingly, in absence of any mitigating factor, the Commission, in exercise of powers under section 27 (b) of the Act, decides to impose penalty on the Opposite Party No. 1 at the rate of 8% of their average turnover for the last three preceding financial years.

LW: 15:02:2015

**FINANCIAL SOFTWARE AND SYSTEMS PVT LTD
v. ACI WORLDWIDE SOLUTIONS PVT LTD & ORS
[CCI]**

Case No. 52 of 2013

Ashok Chawla, S. L. Bunker, Sudhir Mital, Augustine Peter & U. C. Nahta

[Decided on 13/01/2015]

Competition Act, 2002 – section 3&4 – ATM activities – abuse of dominance and restrictive agreements – CCI dismisses the complaint.

Brief Facts:



The Informant caters to the specific needs of the banks through its two business divisions i.e., FSS Technologies and FSSNeT. FSS Technologies provides services to the clients including systems integration, offshore development, product sustenance, project management and implementation, upgrade and migration services, product testing and certification, application testing, onsite technical support and 24/7 global helpdesk support. FSSNeT offers payment processing services across all delivery channels including Automated Teller Machine ('ATM'), Point of Sale ('POS') terminals, internet and mobile with authorization by the banks. It provides services such as card management, merchant management, internet payment gateway, mobile banking & mobile payment, reconciliation & settlement, financial inclusion, a bouquet of value added services and ATM management services on a pay-per-use model including leasing ATM and site management.

The Opposite Parties are stated to be engaged in the business of developing BASE24, a transaction processing switch software ('Electronic Fund Transfer (EFT) Switch'), which according to the informant enables an ATM or POS terminal to communicate with the relevant bank's core banking network.

As per the information, all banks and financial institutions which desire to provide ATM, POS, mobile banking and internet banking services require EFT Switch/ switch software and at present about 77% of ATMs and about 80% of POS terminals in India operate on BASE24 software. It is further submitted that BASE24 software (and other comparable software) requires modifications to enable banks to offer additional value added services through ATMs and POS devices. It is stated that the relationship between ACI and the banks which are using BASE24 software ('ACI Banks') is governed by a license agreement that provides the right to ACI Banks to use and to customize the modules of the BASE24 software.

The Informant provides software modification and customization services to ACI Banks. Pursuant to the terms of the SRA, FSS and ACI made a joint presentation to all ACI Banks whereby FSS transitioned from a distributor to a system integrator; ACI continues to provide support on the core product i.e., BASE24 software through its helpdesk services and on-site documentation; FSS continues to provide support on such customization; BASE24 software and the services around the software are two different products/ services; and if a module license requires customization, then ACI Banks would have the 'option to ask ACI or FSS to do it.

It is the case of the Informant that during the period 2010-11, ACI took the position that it would not allow FSS to continue to provide system integration/ other services in respect of the BASE24 software. However, this was sorted out and ACI allowed FSS to continue to provide the services to ACI banks. But, in February, 2013 ACI made a presentation before ACI Banks stating that after 13.07.2013 it would not provide consent to any third party to access, modify or customize the existing BASE24 application as it had launched ACI enhanced support program ('ACI ESP') under which it would provide services to ACI Banks similar to those being

provided by FSS. In May, 2013, ACI sent letters to each ACI Banks communicating its decision that it would not allow to banks to use FSS or any other third party to provide customizations services on BASE24 software beyond July, 2013.

Based on the above averments and allegations, the Informant has alleged that ACI has abused its dominant position under section 4 of the Act by not allowing ACI Banks to choose a service provider of their choice; imposing unfair condition in the purchase or sale of goods or services through exclusive supply arrangements with ACI Banks; directing ACI Banks not to avail the integration services of FSS, thereby restricting the provision of services of customization and modification in respect of software for electronic payment systems i.e., the downstream market; using its dominance in the upstream market of software for electronic payment systems to gain entry in the downstream market of provision for services of customization and modification in respect of software for electronic payment systems; and limiting and restricting the technical or scientific development in the market.

The Informant has also alleged contravention of the provisions of section 3(4) of the Act by ACI. As per the Informant, ACI is restricting its customer banks from dealing with any third party in respect of providing services of customization and modification of ACI products amounting to refusal to deal. It is alleged that the restriction imposed by ACI causes or is likely to cause an appreciable adverse effect on competition ('AAEC') in the downstream market in India as it would lead to foreclosure of competition in the downstream market and also result in creation of entry barriers and driving existing competitors out of the downstream market. It is also alleged that ACI seeks to impose tie-in arrangements with ACI Banks by tying the upstream market of software with the downstream market of services. Hence, this arrangement by ACI causes or is likely to cause AAEC in the market.

Decision: Complaint dismissed.

Reason:

The Commission has considered the submissions of both the Informant and ACI as well as the findings of the DG on the issue of ACI's dominance. As mentioned above, the Commission is of the view that although the DG has delineated the relevant upstream market as the market for EFT Switch/ switch software in India it has failed to take into account the presence of other buyers of EFT Switch/ switch software in the relevant market for different transaction operations other than for core banking transaction requirements of the issuing bank, while examining ACI's dominance in the market. The DG has assessed dominance only with respect to EFT Switch/ switch software used by banks for the purpose of authentication, which is largely the segment of the market in which ACI has a presence. Further, by narrowing the market to EFT Switches used by banks' core banking network to authenticate alone in the assessment of dominance the DG has further sliced the market and pigeonholed it to the segment of the market in



which the Opposite Parties operate. The Commission is of the view that the relevant market defined is wider than EFT Switch/ switch software used by banks alone. It is the market for EFT Switch/ switch software in India irrespective of the features of the EFT Switch that are used by the customer. The Commission believes that assessing dominance in such a narrow understanding of the relevant market, would be fallacious and lead to incorrect results.

The DG while assessing the market share of ACI has limited itself to the volume of transactions processed through an EFT Switch using frontend devices such as ATMs, POS terminals, internet payment gateways. In doing so, the DG has not taken into account the various users of EFT Switch/ switch software thereby limiting itself to a segment of the relevant market. Further, the DG has failed to recognize that in an Off-Us/ Remote-On-Us transaction, multiple switches get activated for one transaction i.e. of the acquiring bank, the ATM Network/ Interchange and the issuing bank. Therefore, a market share analysis based on the volume of transactions, as captured in the RBI data, would not give a true picture of the number of times a switch gets activated.

Taking cognizance of the aforesaid discussion, the Commission observes that the material on record does not sufficiently establish that ACI operates independently of competitive forces prevailing in the relevant market or can affect competitors or consumers or the relevant market in its favour. As the dominance of ACI has not been established, the issue of abuse of dominant position does not arise.

Resultantly, the Commission finds that based on the factual matrix of this case, the conduct of ACI need not be examined. Accordingly, no case of contravention of the provisions of section 4 of the Act is made out against ACI in the present matter.

The Commission examines each the violations found by the DG against ACI under section 3(4) below:

? Refusal to deal under section 3(4)(d): The DG has found that a combined reading of clauses of the agreement (between ACI and ACI Banks) with ACI's decision to not grant consent to third parties including FSS beyond July 2013 amounted to a refusal to deal agreement within the meaning of section 3(4)(d) of the Act.

The Commission is of the view that the DG has examined the agreement between ACI and ACI Banks wherein ACI Banks are the buyers/ consumers and would not be part of the production chain. Accordingly, this agreement does not fall within the purview of section 3(4) of the Act.

? Exclusive supply agreement under section 3(4)(b): The DG has found that ACI's stipulation to its BASE24 customers to obtain professional services only from it or entities authorized by it amounted to a exclusive supply agreement as provided under section 3(4)(b) of the Act.

As noted above, since ACI Banks are the buyers/ consumers and are part not of the production chain, this agreement also does not

fall within the purview of section 3(4) of the Act.

? Tie-in arrangement under section 3(4)(a): The DG has found that the agreement between ACI and its customers de facto amounted to a tie- in arrangement since it put a condition on the licensee to avail professional services from ACI along with the license for BASE24 software and this fell within the ambit of section 3(4)(a) of the Act.

Given that ACI Banks are the buyers/ consumers and are not part of the production chain, the Commission is of the view that this agreement also does not fall within the purview of section 3(4) of the Act.

In view of the above, the Commission finds no contravention of section 3(4) read with section 3(1) of the Act is made out against ACI in the present matter.

Accordingly, the Commission concludes that no contravention of the provisions of section 3(4) read with section 3(1) and section 4 of the Act has been established in the present case.



LW: 16:02:2015

K.K KUDA v. CHIEF ENFORCEMENT OFFICER, ENFORCEMENT DIRECTORATE & ANR [SC]

Crl. Appeal No. 14 of 2015 [Arising out of SLP (Crl.) No.7067 of 2014]

V. Gopala Gowda & C. Nagappan, JJ. [Decided on 06/01/2015]

FERA – charge of connivance and consent deleted – yet adjudication proceedings considered these dropped charges – whether conviction correct – Held, No.

Brief fact:

The first respondent herein issued Show Cause Notice dated 21.01.1994 under Section 51 of FERA, 1973 against ANZ Grindlays Bank, the Account Holder and three bank officials for having credited Non-convertible Rupee Funds of Rs.1,15,00,000/- (Rupees



One Crore and Fifteen Lakhs only) during the period August to December, 1991 received from Moscow, into the Non- Resident (External) Account of Dr. P.K. Ramakrishnan in contravention of Section 6(4), 6(5) read with Section 49 of FERA, alleging that it had taken place with the consent, connivance of and attributable to the negligence on the part of the said Officials. However, by letter dated 10.7.2001 addressed to the appellant, the respondent ordered that charges relating to 'consent' and 'connivance' shall stand deleted from the Show Cause Notice dated 21.01.1994.

In the meanwhile, Opportunity Notice, dated 12.5.2002, followed by Complaint dated 29.5.2002, was filed under Section 56 of FERA, 1973 against the persons abovenamed for having credited Non-convertible Rupee Funds into the Non-Resident (External) Account of the person concerned, alleging contravention of Section 6(4), 6(5) read with S.49 of FERA having taken place with the consent, connivance of and attributable to the negligence of the Officials and the Additional Chief Metropolitan Magistrate, New Delhi, took cognizance of the complaint for the offence under Section 56 of FERA on 29.5.2002 itself and issued summons to the accused. Challenging the same, the appellant herein and other Officials sought for quashing the complaint proceedings in their petition in Crl.M.C.No.5096/2006, on the file of the High Court, Delhi. While the matter stood thus, the adjudicating authority passed the final Order dated 14.5.2010 holding that the Officials of the Bank have not consented or connived in the performance of the official duties and they were negligent. The High Court by the impugned order held that the prosecution of the accused persons shall be confined to the negligence on their part and not for they having consented or connived in the commission of the said offence. The said order is under challenge before us.

Decision: Appeal allowed.

Reason:

The crediting of Non-Convertible Rupee Funds in the Non-Resident (External) Account of Dr.P.K.Ramakrishnan happened during the period August to December, 1991. Three officials of ANZ Grindlays Bank were involved in it and Show Cause Notice was issued by Respondent No.1 on 21.1.1994 to the Bank as well as the Officials for contravention of Section 6(4), 6(5) read with Section 49 of FERA, alleging that it had taken place with the consent, connivance of and attributable to the negligence on the part of the Officials. It is true that the respondent by letter dated 10.7.2001 ordered that the charges relating to 'consent' and 'connivance' shall stand deleted from the Show Cause Notice. Though FEMA came into force on 1.6.2000, Sunset clause under Section 49 of the said Act provided for filing of complaints under the FERA, 1973 till 31.5.2002. Taking advantage of it, the Respondent No.1 issued Opportunity Notice to all the three officials on 12.5.2002 and lodged the complaint on 29.5.2002. The Additional Chief Metropolitan Magistrate, New Delhi, on the same day took cognizance of the complaint for the offence under Section 56 of FERA and issued summons.

In spite of having dropped the allegations of 'consent' and 'connivance', the respondent in their complaint levelled allegations of all the three components, namely, consent, connivance and negligence. The contention of the appellant that the cognizance was taken on irrelevant consideration, is to be countenanced. There was suppression and also material omission in non-mentioning of reply sent by the appellant to the Opportunity Notice, in the complaint. Further, to substantiate the averments in the complaint, not even a single original document was enclosed. It is not known as to, on what material the Additional Chief Metropolitan Magistrate applied his mind, while taking cognizance of the statutory offence. Though the allegation of negligence can be independently looked into, considering the standard of proof in criminal prosecution, we are of the view that, in the present case, the continuance of prosecution against the appellant is not tenable in law and the proceedings are liable to be quashed.

LW: 17:02:2015

**CISCO SYSTEMS CAPITAL (INDIA) PVT LTD
v. NEW DELHI TELE TECH PVT LTD & ORS [DEL]**

Crl. M.C. 5027 of 2014

V.P. Vaish, J. [Decided on 13/01/2015]

Negotiable Instruments Act, 1881 – dishonour of cheque – territorial jurisdiction of court – Delhi High Court clarifies the impact of 'DashrathRupsinghRathod case'.

Brief facts:

In pursuant to the judgement rendered in DashrathRupsinghRathod v. State of Maharashtra &Anr, 2014 (9) SCC129, the learned trial court came to the conclusion that Delhi Courts have no jurisdiction in the matter and returned the complaint to the complainant for filing the same in the court having proper jurisdiction. Feeling aggrieved by the said order the petitioner has filed the present petition.

Decision: Petitions dismissed.

Reason:

I have bestowed my thoughtful consideration to the submissions made by learned counsel for both the parties and have also perused the material on record.

The first contention raised on behalf of petitioner does not hold water. In M/s. Goyal MG Gases Pvt Ltd. v. State &Ors,Crl. M.C. No.4407/2014 decided on 16.12.2014, this Court after considering provisions of Section 138 of the Act and judgment of Hon'ble Supreme Court in DashrathRupsinghRathod's case (supra) as well as the guidelines issued by Reserve Bank of India vide circular



dated 10.08.2012, has observed that where the cheque in question is payable at par and the case has not reached at the stage of Section 145(2) of the Act, Delhi Courts will have no territorial jurisdiction to entertain and try the complaint.

In view of the directions issued by the Supreme Court in *Indian Bank Association & Ors v. UOI & Ors*, (2014) 5 SCC 590, there is no scope of doubt that after serving notice in terms of Section 251 of Cr.P.C. upon an accused, the Magistrate shall fix the case for defence evidence, unless an application is made by an accused under Section 145(2) of the Act for recalling a witness for cross-examination. At the same time, it has been further directed that the concerned Magistrate must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case.

There may be three situations when notice in terms of Section 251 of Cr.P.C. is served upon an accused;

- (i) After framing of notice in terms of Section 251 of Cr.P.C. the matter is fixed for DE as no application as envisaged in Section 145(2) of the Act is moved by the accused;
- (ii) After framing of notice in terms of Section 251 of Cr.P.C., an application under Section 145(2) of the Act is moved by an accused but it is yet to be allowed by a Magistrate; and
- (iii) After serving notice under Section 251 Cr.P.C., the application moved under Section 145(2) of the Act by an accused for cross-examination of the complainant, has been allowed by the Magistrate.

The question arises as to whether trial would be said to have commenced in all the aforesaid three situations or not. The answer has to be in negative in first two situations. It is only in the third situation when the application under Section 145(2) of the Act has been allowed by the Magistrate only then trial would be said to have commenced within the meaning of Section 145(2) of the Act.

The Apex Court in *Dashrath Rupsingh Rathod's case* (supra) observed in para 22 that the category of complaint cases where proceedings have gone to the stage of Section 145(2) of the Act or beyond shall be deemed to have been transferred from the Court ordinarily possessing territorial jurisdiction, as clarified therein, to the Court where it is presently pending. Thus, it is only when the stage of proceedings in cases filed under Section 138 of the Act has reached the stage of Section 145(2) of the Act or beyond thereof, such case shall continue to be dealt with by the Court where it is pending trial.

In the instant case, request of the accused to cross-examine the complainant in terms of Section 145(2) of Cr.P.C. has not been allowed. Even the notice under Section 251 of Cr.P.C. has not been served on accused no.1, 3 and 5. Thus, it cannot be said that the complaint has reached at the stage of Section 145(2) of the Act or beyond thereof. There is no illegality or infirmity in the impugned order passed by the learned trial court.

In the light of the aforesaid discussion, all the petitions deserve to be dismissed and the same are hereby dismissed.



LW: 18:02:2015

ASST. COMMISSIONER (ASSESSMENT), ERNAKULAM v. HINDUSTAN URBAN INFRASTRUCTURE LTD & ORS [SC]

Civil Appeal Nos.354 – 355 of 2015.[Arising out of SLP(C) NOS.7939 – 7940 OF 2004]

H.L. Dattu (CJI) & S.A. Bobde, JJ. [Decided on 13/01/2015]

Kerala General Sales Tax Act, 1963 read with Companies Act,1956 – sale of goods of the company in liquidation by the Official Liquidator through auction – whether he is liable to collect and pay the sales tax – Held, Yes.

Brief facts:

The issue that arises in the present appeals is whether an "Official Liquidator" is a "dealer" within the meaning of section 2 (viii) of the Kerala General Sales Tax Act, 1963 (for short, "the Act, 1963"), and therefore would be required to collect sales tax in respect of the sales effected by him pursuant to winding up proceedings of a company in liquidation.

By the impugned judgment(s) and order(s) passed in Review Petition No.191 of 2003, dated 21.03.2003, the High Court held that the Official Liquidator cannot be treated as a dealer under the Act, 1963, and therefore it is not exigible for payment of sales tax. However, the Court was of the view that the auction purchaser is liable to pay purchase tax under section 5A of the Act, 1963.

Decision: Appeal allowed.



Reason:

The issues that arise for the consideration in the present appeals are firstly, whether the Official Liquidator is a "dealer" within the meaning of the Act, 1963, and secondly, whether the Official Liquidator would be required to pay sales tax in respect of sales effected pursuant to a winding up proceedings.

Having glanced through the settled principles of law, we would revert back to the controversy in the present appeals. The first issue canvassed before this Court by the learned counsel for the parties to the lis, is whether the Official Liquidator herein would fall under the purview of a "dealer" as defined under the Act, 1963. And secondly, whether the Official Liquidator would be liable to pay sales tax in respect of sales effected by him pursuant to winding up proceedings.

In the present case, the Official Liquidator had issued a notice inviting tenders for the sale of the assets of the Company. The offer of the auction purchaser was accepted and duly confirmed by the High Court. However, the dispute herein arose in respect to determination of which party would be exigible to sales tax.

From the discussion in the preceding paragraphs, we can conclude an Official Liquidator is an officer of the Court and that for the purpose of discharging statutory obligations imposed under the Act, 1956, the Official Liquidator merely steps into the shoes of the company in liquidation. By virtue of the notice issued by the Official Liquidator for inviting tenders, dated 26.11.2001, it is amply evident that the liquidator intended to conduct a transfer of the said goods in liquidation. Since the conduct of an auctioned sale involved transfer of goods, it falls within the wide ambit of section 2(viii)(f) of the Act, 1963.

The observation of the Court of Appeals in the *Mesco Properties*, (1980) 1 All ER 117, would appear to be squarely applicable to be present factual matrix, that is, during a winding up proceedings, if tax requires to be collected from the Company in liquidation, the liquidator would be the proper officer to pay the same.

This Court has noticed hereinabove that the Company in liquidation is a "dealer" with regard to the sale of its assets by way of an auction under a winding up order. Further, we have noticed the settled law that an Official Liquidator steps into the shoes of the Director of the company in liquidation and performs his statutory functions in accordance with the directives of the Court. Furthermore, Rule 54 of the Rules, 1963 contemplates a situation where a business owned by a dealer, is under the control of a receiver or manager or any other person, irrespective of his designation, who manages the business on behalf of the said dealer. In the said scenario, the said person, in-charge of the business on behalf of the dealer, would be exigible to sales tax in the same manner as it would have been leviable upon and recoverable from the dealer itself. Therefore, it can be concluded that the liability to pay sales tax, in the present case, would be on the Official Liquidator in the same manner as

the dealer, that is, the Company in liquidation.

Pursuant to section 5 of the Act, 1963, the Company in liquidation, as a dealer, will incur liability to pay sales tax at the point of first sale as incurred by any other dealer under the said Act. By placing reliance upon Rule 54 of the Rules, 1963, the liability to pay sales tax is borne by the Official Liquidator as a manager or receiver of the property of the company in liquidation. Therefore, we are of the considered opinion that the Official Liquidator would be required to pay the tax payable on the sale of the assets of the company in liquidation.

As regards the liability of the auction purchaser, this Court, in an order passed in Civil Appeal No.5048 of 2003, has observed that in view of facts and circumstances of the case, the auction purchaser would not be liable to pay sales tax. The offer of the auction purchaser, as accepted by the Official Liquidator and confirmed by the High Court, was inclusive of all taxes. It would have been the bounden duty of the Official Liquidator to have separated an amount for the payment of taxes under the Act, 1963 to avoid any liability. It would be gainsaid in repeating that the Special Government Pleader (Taxes), on behalf of the Revenue, before the learned Single Judge of the High Court had clearly stated that the liability to pay sales tax would be on the Official Liquidator.

In the result, we allow these appeals and set aside the impugned judgments and orders passed by the High Court.



Industrial & Labour Laws

LW: 19:02:2015

PEPSICO INDIA HOLDING PVT LTD v. KRISHNA KANT PANDEY [SC]

Civil Appeal No. 28 of 2015 [Arising out of SLP(C) No.32616 of 2013]

M.Y. Eqbal & Shiva Kirti Singh, JJ. [Decided on 06/01/2015]

Uttar Pradesh Industrial Disputes Act, 1947 – section 2(z) – workman – respondent workman was discharging the duties of supervising fleet movement – he was held



to be workman – whether correct – Held, No.

Brief facts:

The admitted facts are that at the relevant time, the respondent was working as a Fleet Supervisor and drawing a salary of Rs. 7716/-. Initially, he was appointed as a technician Grade-III in 1995 on the salary of Rs. 2600/- per month and after getting increment his salary was increased. By giving one month's salary, in lieu of the notice, his services were terminated.

Aggrieved by the said termination, respondent preferred a reference before the Conciliation Officer, Lucknow alleging that he is a 'workman' within the meaning of the Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') and termination of his services by the Company is contrary to Section 6 of the Act. The appellant Company pleaded that the respondent did not satisfy the criteria of a workman as defined under Section 2(z) of the Act. The Industrial Tribunal dismissed the reference stating that the respondent is not a workman under Section 2(z) of the Act and, therefore, no challenge to the termination is maintainable before the Tribunal.

Respondent, being aggrieved, moved the High Court by way of a writ petition challenging the order of the Tribunal and also for his re- instatement to the post of Fleet Executive with continuity of service and for payment of full back wages.

The learned Single Judge of the High Court allowed writ petition of the respondent, quashed order of the Tribunal and directed it to proceed with the adjudication of the respondent's case on merit. Hence, the present appeal by special leave by the appellant-Company.

Decision: Appeal allowed.

Reason:

On the basis of the findings based on elaborate discussions and analyzing the evidence, the Labour Court came to the conclusion that at the relevant time the respondent was working as a Fleet Executive which is supervisory in nature and does not fall within the definition of 'labour' as defined under Section 2(z) of the Act. Hence, he is not entitled to any relief. The respondent challenged the aforesaid award passed by the Labour Court in a writ petition before the High Court. After considering the definition contained in Section 2(z) of the Act and the nature of work assigned to the respondent, the High Court arrived at a conclusion that the nature of work prevalent on the date of termination was as that of a workman. Curiously enough, though the respondent did not come under the definition of workman under Section 2(z) of the Act, the High Court proceeded on the basis that the U.P. Industrial Disputes Act was enacted in 1947 and although the respondent cannot be held to be a workman under the said definition, held that he shall have to be classified as a workman and directed the Government to make amendment in Section 2(z) of the Act excluding some of the clauses.

Considering the entire facts of the case and the findings recorded by the Labour Court, prima facie we are of the view that the High Court has exceeded in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India in interfering with the finding of facts recorded by the Labour Court. It is well settled that the High Court in the guise of exercising its jurisdiction normally should not interfere under Article 227 of the Constitution and convert itself into a court of appeal.

The order of the Tribunal would show that the respondent-workman accepted different works assigned to him which were purely of supervisory and managerial nature. The details of 15 managerial/ supervisory works assigned to the respondent have been analyzed by the Tribunal which finally came to the conclusion that the respondent is not a workman within the meaning of Section 2(z) of the Act.

In exercise of its writ jurisdiction, the High Court proceeded initially on the basis that the appellant had entered into service on the post of Operator/Technician Grade-III, which is a technical post and from there he was promoted to different posts including Fleet Executive. The High Court committed grave error in holding that although he is not covered under the definition of workman as defined under Section 2(z) of the Act he shall be classified as a workman. The High Court further exceeded its jurisdiction in advising the Government to make an amendment in Section 2(z) of the Act and to exclude some clauses. The order passed by the High Court cannot be sustained in law.

Appointment

WANTED

A COMPANY SECRETARY

We require a Qualified Company Secretary to look after day to day secretarial and Legal work and to deal with appropriate authorities.

We are a BSE Listed Public Company engaged in manufacturing of polyethylene films for various applications.

We offer a good compensation to a deserving candidate.

Send your application with in 7 days to:

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Corporate Laws

01 The Companies (Accounts) Amendment Rules, 2015

[Issued by the Ministry of Corporate Affairs F. No. 1/19/2013-CL-V-Part, dated 16.01.2015. To be published in the Gazette of India, Extraordinary, Part II, Section-3, Sub-section (i).]

In exercise of the powers conferred by section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:

1. (1) These rules may be called the Companies (Accounts) Amendment Rules, 2015.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Accounts) Rules, 2014,-
 - (i) after rule 2, following rule shall be inserted, namely:-

"2A. Notice of address at which books of account are to be maintained.- For the purposes of the first proviso to sub-section (l) of section 128, the notice regarding address at which books of account may be kept shall be in Form AOC-5."
 - (ii) in rule 6, after the third proviso, the following proviso shall be inserted, namely :-

"Provided also that nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014."
 - (iii) in the Annexure, after Form AOC-4, the following Form shall be inserted. namely:-

FORM NO. AOC-5 **Notice of address at which books of account are to be maintained**

[Pursuant to first proviso to sub-section (l) of section 128 of the Companies Act, 2013 and Rule 2A of Companies(Accounts) Rules, 2014]

Form language English Hindi

Refer the instruction kit for filing the form.

1.(a) *Corporate identity number (CIN) of company

(b) Global location number (GLN) of company

2.(a) Name of the company

(b) Address of the registered office of the company

3. *Date of board resolution wherein a decision regarding address at which books of account are to be maintained has been taken: (DDMM/YYYY)

4. Address at which the books of account are to be maintained

(a) *Address Line I
Line II

(b) *City

(c) *State

(d) Country

(e) *Pin code

5. Details pertaining to police station under whose jurisdiction the place of the address at which the books of account are to be maintained falls

(a) *Police station name

(b) *Address Line I
Line II

(c) *City

(d) State

(e) Country

(f) *Pin code

Attachments

1. *Copy of board resolution

2. Optional attachment(s) - if any

Declaration

I am authorized by the Board of Directors of the Company vide *resolution number dated to sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed.

*To be digitally signed by

*Designation

*Director identification number of the director or membership number of the company secretary or DIN/PAN of Manager or CEO or CFO

Note: Attention is also drawn to provisions of Section 448 and 449 which provide for punishment for false statement and false evidence.

For office use only:

eForm Service request number (SRN) eForm filing date (DDMM/YYYY)

This e-Form is hereby registered

Digital signature of the authorising officer

Date of signing (DDMM/YYYY)

Amardeep Singh Bhatia
Joint Secretary



02 The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2015

[Issued by the Ministry of Corporate Affairs F. No. 1/18/2013-CL-V-Part, dated 19.01.2015. To be published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i).]

In exercise of the powers conferred under section 135 and sub sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2015.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, in sub-rule (2),-
 - (i) for the words "established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise", the words "established under section 8 of the Act by the company, either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company, or otherwise" shall be substituted;
 - (ii) in the proviso, in clause (i). for the words "not established by the company or its holding or subsidiary or associate company, it", the words "not established by the company, either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company" shall be substituted.

Amardeep Singh Bhatia
Joint Secretary

03 The Companies (Appointment and Qualification of Directors) Amendment Rules, 2015

[Issued by the Ministry of Corporate Affairs F.No. 01/9/2013-CL.V (Part-II), dated 19.01.2015. To be published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i).]

In exercise of the powers conferred by the second proviso to sub section (1), sub-section (4) and clause (f of sub-section (6) of section 149, sub-sections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160,

sub-section (1) of section 168 and section 170 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Amendment Rules, 2015.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 16, the following proviso shall be inserted, namely:-

Provided that in case a company has already filed **Form DIR-12** with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign **Form DIR-11** and file the same on his behalf intimating the reasons for the resignation/.

Amardeep Singh Bhatia
Joint Secretary

04 The Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2014.

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/2014-15/20/1973, dated 30.12.2014. Published in the Gazette of India, Extraordinary, Part-III, Section 4, dated 30.12.2014.]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, namely:-

1. These Regulations may be called the Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2014.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, in regulation 21, in sub-regulation (1), in clause (f),
 - (a) in the first proviso, the words "these regulations" shall be substituted with the words "Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2014";
 - (b) after the third proviso, the following proviso shall be inserted, namely, -

"Provided further that in cases where the Board is satisfied that an asset management company is taking steps to meet the networth requirement within the specified time, the asset management company may be allowed to launch upto two new schemes per year."

U.K. Sinha
Chairman



Chairman

05 Securities and Exchange Board of India (Foreign Venture Capital Investors) (Amendment) Regulations, 2014

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/2014-15/20/1972, dated 30.12.2014. Published in the Gazette of India, Extraordinary, Part-III, Section 4, dated 30.12.2014.]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000, namely:—

1. These Regulations may be called the Securities and Exchange Board of India (Foreign Venture Capital Investors) (Amendment) Regulations, 2014.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000, in regulation 2, in sub-regulation (1), -
 - (i). clause (j) and the corresponding Third Schedule shall be omitted;
 - (ii). clause (m) shall be substituted with the following:-

"(m) "venture capital undertaking" means a domestic company:

 - (i) which is not listed on a recognised stock exchange in India at the time of making investment; and
 - (ii) which is engaged in the business for providing services, production or manufacture of article or things and does not include following activities or sectors:
 - (1) non-banking financial companies, other than Core Investment Companies (CICs) in the infrastructure sector, Asset Finance Companies (AFCs), and Infrastructure Finance Companies (IFCs) registered with Reserve Bank of India;
 - (2) gold financing;
 - (3) activities not permitted under industrial policy of Government of India;
 - (4) any other activity which may be specified by the Board in consultation with Government of India from time to time. "

U.K. Sinha

06 Risk Management Policy at the Depositories

[Issued by the Securities and Exchange Board of India vide Circular CIR/MRD/DP/ 1 /2015, dated 12.01.2015]

1. The Depository System was reviewed by the Depository Systems Review Committee(DSRC) inter alia in the context of Principles for Financial Market Infrastructures(PFMI) laid down by the Committee on Payment and Settlement Systems (CPSS) and International Organization of Securities Commissions(IOSCO).
2. The FMI principles lay emphasis on the need to have a robust risk management framework to identify, monitor and manage various risks emanating from multiple sources to its operations. The principles also emphasize that as the Board of the FMI is ultimately responsible for managing the FMI's risks, it should establish a clear, documented risk-management framework that includes the FMI's risk- tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies.
3. The Depository Systems Review Committee(DSRC) has therefore recommended the following:

"There should be a Board approved policy providing for a well documented comprehensive risk management framework at both depositories. The risk management group/ committee should be active and meet periodically to continuously identify, evaluate and assess applicable risks in depository system through various sources such as investors complaints, inspections, system audit etc. and suggest measures to mitigate risk wherever applicable. A Chief Risk officer should be made responsible, accountable, accessible & answerable to the board on overall risk management issues."

4. In view of the above, the depositories are advised to establish a clear, comprehensive and well documented risk management framework which shall include the following:
 - a. an integrated and comprehensive view of risks to the depository including those emanating from participants, participants' clients and third parties to whom activities are outsourced etc.;
 - b. list out all relevant risks, including technological, legal, operational, custody and general business risks and the ways and means to address the same;
 - c. the systems, policies and procedures to identify, assess, monitor and manage the risks that arise in or are borne by the depository ;



From the Government

- d. the depository's risk-tolerance policy;
 - e. responsibilities and accountability for risk decisions and decision making process in crises and emergencies.
5. The Depositories shall put in place mechanism to implement the Risk Management Framework through a Risk Management Group/ Committee which shall be headed by a Chief Risk Officer(CRO). The responsibilities of the said Committee shall include the following:
 - a. It shall meet periodically in order to continuously identify, evaluate and assess applicable risks in depository system through various sources such as investor complaints, inspections, system audit etc.;
 - b. It shall suggest measures to mitigate risk wherever applicable;
 - c. It shall monitor and assess the adequacy and effectiveness of the risk management framework and the system of internal control;
 - d. It shall review and update the risk management framework periodically.
 6. The Board of the depository shall approve the Risk Management Framework. The Chief Risk Officer shall have access to the Board and shall be responsible, accountable and answerable to the board on overall risk management issues.
 7. The depositories shall implement the provisions of this circular within three months from the date of this circular.
 8. The Depositories are advised to:-
 - a) make amendments to the relevant bye laws, rules and regulations for the implementation of the above decision as may be applicable / necessary; and
 - b) communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report.
 9. This circular is being issued in exercise of the powers conferred by Section 11(1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

Maninder Cheema
Deputy General Manager

07 Index based market-wide circuit breaker mechanism

[Issued by the Securities and Exchange Board of India vide Circular CIR/MRD/DP/02/2015, dated 12.01.2015]

SEBI had issued circulars SMDRPD/Policy/Cir-37/2001 dated June 28, 2001 and CIR/MRD/DP/25/2013 dated September 03, 2013 advising stock exchanges to implement an index based market wide circuit breaker system to bring about a coordinated trading halt in all equity and equity derivative markets nationwide on 10%, 15% and 20% movement either way of BSE SENSEX or NSE NIFTY.

2. The mechanism implemented by the stock exchanges for 'Index based market-wide circuit breakers' was discussed with SEBI's Technical Advisory Committee (TAC) and Secondary Market Advisory Committee (SMAC). Based on the recommendations of TAC and SMAC, it has been decided to further strengthen the mechanism of index based market-wide circuit breaker as under:
 - (a) NSE and BSE shall compute their market-wide index (NIFTY and SENSEX respectively) after every trade in the index constituent stocks and shall check for breach of market-wide circuit breaker limits after every such computation of the market-wide index.
 - (b) In the event of breach of market-wide circuit breaker limit, stock exchange shall stop matching of orders in order to bring about a trading halt as mandated vide SEBI circular dated June 28, 2001. All unmatched orders present in the system shall thereupon be purged by the stock exchange.
 - (c) BSE and NSE shall implement suitable mechanism to ensure that all messages related to market wide index circuit breakers are given higher priority over other messages. Further, the systems (including the network) for computation of market-wide index, checking for breach of circuit breaker limits and initiating message to stop matching of executable order and acceptance of fresh orders, shall not be used for any other purposes.
 - (d) BSE and NSE shall include in the scope of their annual system audit a review of its index based market-wide circuit breaker mechanism with the view to identify improvements.
3. All other conditions shall be as per SEBI circular SMDRPD/Policy/ Cir- 37/2001 dated June 28, 2001 and SEBI circular dated CIR/ MRD/DP/25/2013 dated September 03, 2013.
4. BSE and NSE are directed to make necessary amendments to the relevant bye-laws, rules and regulations and take necessary steps to put in place necessary systems for implementation of the provisions of this circular. All stock exchanges are directed to bring provisions of this circular to the notice of their stock brokers and also disseminate the same on their website.
5. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Maninder Cheema
Deputy General Manager



08 The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/2014-15/21/85., dated 15.01.2015. Published in the Gazette of India, Extraordinary, Part-III, Section 4, dated 15.01.2015.]

In exercise of the powers conferred by section 30 read with clause (g) of sub-section (2) of section 11 and clause (d) and clause (e) of section 12A of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, to put in place a framework for prohibition of insider trading in securities and to strengthen the legal framework thereof, namely:—

CHAPTER -I PRELIMINARY

Short title and commencement.

1. (1) These regulations may be called the SEBI (Prohibition of Insider Trading) Regulations, 2015.
- (2) These regulations shall come into force on the one hundred and twentieth day from the date of its publication in the Official Gazette.

Definitions.

2. (1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under:-
 - (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (b) "Board" means the Securities and Exchange Board of India;
 - (c) "compliance officer" means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be;
 - (d) "connected person" means,-

- (i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.
- (ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, -
 - (a). an immediate relative of connected persons specified in clause (i); or
 - (b). a holding company or associate company or subsidiary company; or
 - (c). an intermediary as specified in section 12 of the Act or an employee or director thereof; or
 - (d). an investment company, trustee company, asset management company or an employee or director thereof; or
 - (e). an official of a stock exchange or of clearing house or corporation; or
 - (f). a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
 - (g). a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
 - (h). an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
 - (i). a banker of the company; or
 - (j). a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable.



From the Government

This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.

- (e) "generally available information" means information that is accessible to the public on a non-discriminatory basis;

NOTE: It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. Information published on the website of a stock exchange, would ordinarily be considered generally available.

- (f) "immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;

NOTE: It is intended that the immediate relatives of a "connected person" too become connected persons for purposes of these regulations. Indeed, this is a rebuttable presumption.

- (g) "insider" means any person who is:
 - i) a connected person; or
 - ii) in possession of or having access to unpublished price sensitive information;

NOTE: Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession

of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

- (h) "promoter" shall have the meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 or any modification thereof;
- (i) "securities" shall have the meaning assigned to it under the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or any modification thereof except units of a mutual fund;
- (j) "specified" means specified by the Board in writing;
- (k) "takeover regulations" means the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and any amendments thereto;
- (l) "trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly;

NOTE: Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the Act employs the term 'dealing in securities', it is intended to widely define the term "trading" to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc when in possession of unpublished price sensitive information.

- (m) "trading day" means a day on which the recognized stock exchanges are open for trading;
- (n) "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: -
 - (i) financial results;
 - (ii) dividends;
 - (iii) change in capital structure;
 - (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
 - (v) changes in key managerial personnel; and
 - (vi) material events in accordance with the listing



agreement.

NOTE: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.

- (2) Words and expressions used and not defined in these regulations but defined in the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Depositories Act, 1996 (22 of 1996) or the Companies Act, 2013 (18 of 2013) and rules and regulations made thereunder shall have the meanings respectively assigned to them in those legislation.

CHAPTER -II

RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS

Communication or procurement of unpublished price sensitive information.

3. (1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.

- (2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE: This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.

- (3) Notwithstanding anything contained in this regulation, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:-

- (i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the company is of informed opinion that the proposed transaction is in the best interests of the company;

NOTE: It is intended to acknowledge the necessity of communicating, providing, allowing access to or procuring UPSI for substantial transactions such as takeovers, mergers and acquisitions involving trading in securities and change of control to assess a potential investment. In an open offer under the takeover regulations, not only would the same price be made available to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.

- (ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the company is of informed opinion that the proposed transaction is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine.

NOTE: It is intended to permit communicating, providing, allowing access to or procuring UPSI also in transactions that do not entail an open offer obligation under the takeover regulations if it is in the best interests of the company. The board of directors, however, would cause public disclosures of such unpublished price sensitive information well before the proposed transaction to rule out any information asymmetry in the market.

- (4) For purposes of sub-regulation (3), the board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential, except for the purpose of sub-regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

Trading when in possession of unpublished price sensitive information.

4. (1) No insider shall trade in securities that are listed or proposed



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to be listed on a stock exchange when in possession of unpublished price sensitive information:

Provided that the insider may prove his innocence by demonstrating the circumstances including the following :-

- (i) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;
- (ii) in the case of non-individual insiders: -
 - (a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and
 - (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;
- (iii) the trades were pursuant to a trading plan set up in accordance with regulation 5.

NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

- (2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the

Board.

- (3) The Board may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

Trading Plans.

5. (1) An insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.

NOTE: This provision intends to give an option to persons who may be perpetually in possession of unpublished price sensitive information and enabling them to trade in securities in a compliant manner. This provision would enable the formulation of a trading plan by an insider to enable him to plan for trades to be executed in future. By doing so, the possession of unpublished price sensitive information when a trade under a trading plan is actually executed would not prohibit the execution of such trades that he had pre-decided even before the unpublished price sensitive information came into being.

- (2) Such trading plan shall:-

- (i) not entail commencement of trading on behalf of the insider earlier than six months from the public disclosure of the plan;

NOTE: It is intended that to get the benefit of a trading plan, a cool-off period of six months is necessary. Such a period is considered reasonably long for unpublished price sensitive information that is in possession of the insider when formulating the trading plan, to become generally available. It is also considered to be a reasonable period for a time lag in which new unpublished price sensitive information may come into being without adversely affecting the trading plan formulated earlier. In any case, it should be remembered that this is only a statutory cool-off period and would not grant immunity from action if the insider were to be in possession of the same unpublished price sensitive information both at the time of formulation of the plan and implementation of the same.

- (ii) not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results;

NOTE: Since the trading plan is envisaged to be an exception to the general rule prohibiting trading by insiders when in possession of unpublished price



sensitive information, it is important that the trading plan does not entail trading for a reasonable period around the declaration of financial results as that would generate unpublished price sensitive information.

- (iii) entail trading for a period of not less than twelve months;

NOTE: *It is intended that it would be undesirable to have frequent announcements of trading plans for short periods of time rendering meaningless the defence of a reasonable time gap between the decision to trade and the actual trade. Hence it is felt that a reasonable time would be twelve months.*

- (iv) not entail overlap of any period for which another trading plan is already in existence;

NOTE: *It is intended that it would be undesirable to have multiple trading plans operating during the same time period. Since it would be possible for an insider to time the publication of the unpublished price sensitive information to make it generally available instead of timing the trades, it is important not to have the ability to initiate more than one plan covering the same time period.*

- (v) set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and

NOTE: *It is intended that while regulations should not be too prescriptive and rigid about what a trading plan should entail, they should stipulate certain basic parameters that a trading plan should conform to and within which, the plan may be formulated with full flexibility. The nature of the trades entailed in the trading plan i.e. acquisition or disposal should be set out. The trading plan may set out the value of securities or the number of securities to be invested or divested. Specific dates or specific time intervals may be set out in the plan.*

- (vi) not entail trading in securities for market abuse.

NOTE: *Trading on the basis of such a trading plan would not grant absolute immunity from bringing proceedings for market abuse. For instance, in the event of manipulative timing of the release of unpublished price sensitive information to ensure that trading under a trading plan becomes lucrative in circumvention of regulation 4 being detected, it would be open to initiate proceedings for alleged breach of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003.*

- (3) The compliance officer shall review the trading plan to assess

whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.

NOTE: *It is intended that the compliance officer would have to review and approve the plan. For doing so, he may need the insider to declare that he is not in possession of unpublished price sensitive information or that he would ensure that any unpublished price sensitive information in his possession becomes generally available before he commences executing his trades. Once satisfied, he may approve the trading plan, which would then have to be implemented in accordance with these regulations.*

- (4) The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan.

Provided that the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of sub-regulation (1) of regulation 4.

NOTE: *It is intended that since the trading plan is an exception to the general rule that an insider should not trade when in possession of unpublished price sensitive information, changing the plan or trading outside the same would negate the intent behind the exception. Other investors in the market, too, would factor the impact of the trading plan on their own trading decisions and in price discovery. Therefore, it is not fair or desirable to permit the insider to deviate from the trading plan based on which others in the market have assessed their views on the securities.*

The proviso is intended to address the prospect that despite the six-month gap between the formulation of the trading plan and its commencement, the unpublished price sensitive information in possession of the insider is still not generally available. In such a situation, commencement of the plan would conflict with the over-riding principle that trades should not be executed when in possession of such information. If the very same unpublished price sensitive information is still in the insider's possession, the commencement of execution of the trading plan ought to be deferred.

- (5) Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities



are listed.

NOTE: It is intended that given the material exception to the prohibitory rule in regulation 4, a trading plan is required to be publicly disseminated. Investors in the market at large would also factor the potential pointers in the trading plan in their own assessment of the securities and price discovery for them on the premise of how the insiders perceive the prospects or approach the securities in their trading plan.

CHAPTER - III

DISCLOSURES OF TRADING BY INSIDERS

General provisions.

6. (1) Every public disclosure under this Chapter shall be made in such form as may be specified.
- (2) The disclosures to be made by any person under this Chapter shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.

NOTE: It is intended that disclosure of trades would need to be of not only those executed by the person concerned but also by the immediate relatives and of other persons for whom the person concerned takes trading decisions. These regulations are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information and therefore, what matters is whether the person who takes trading decisions is in possession of such information rather than whether the person who has title to the trades is in such possession.

- (3) The disclosures of trading in securities shall also include trading in derivatives of securities and the traded value of the derivatives shall be taken into account for purposes of this Chapter:

Provided that trading in derivatives of securities is permitted by any law for the time being in force.

- (4) The disclosures made under this Chapter shall be maintained by the company, for a minimum period of five years, in such form as may be specified.

Disclosures by certain persons.

7. (1) *Initial Disclosures.*
 - (a). Every promoter, key managerial personnel and director of every company whose securities are listed on any recognised stock exchange shall disclose his holding of securities of the company as on the date of these regulations taking effect, to the company within thirty days of these regulations taking effect;

- (b). Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

(2) Continual Disclosures.

- (a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;
- (b). Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

Explanation. — It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).

Disclosures by other connected persons.

- (3) Any company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.

NOTE: This is an enabling provision for listed companies to seek information from those to whom it has to provide unpublished price sensitive information. This provision confers discretion on any company to seek such information. For example, a listed company may ask that a management consultant who would advise it on corporate strategy and would need to review unpublished price sensitive information, should make disclosures of his trades to the company.

CHAPTER -IV

CODES OF FAIR DISCLOSURE AND CONDUCT

Code of Fair Disclosure.

8. (1) The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish



on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: This provision intends to require every company whose securities are listed on stock exchanges to formulate a stated framework and policy for fair disclosure of events and occurrences that could impact price discovery in the market for its securities. Principles such as, equality of access to information, publication of policies such as those on dividend, inorganic growth pursuits, calls and meetings with analysts, publication of transcripts of such calls and meetings, and the like are set out in the schedule.

- (2) Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

NOTE: This provision is aimed at requiring transparent disclosure of the policy formulated in sub-regulation (1).

Code of Conduct.

9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: It is intended that every company whose securities are listed on stock exchanges and every market intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by its employees. The standards set out in the schedule are required to be addressed by such code of conduct.

- (2) Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: This provision is intended to mandate persons other than listed companies and market intermediaries that are required to handle unpublished price sensitive information to formulate a code of conduct governing trading in securities by their employees. These entities include professional firms such as auditors, accountancy firms, law firms, analysts,

consultants etc., assisting or advising listed companies, market intermediaries and other capital market participants. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct.

- (3) Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

NOTE: This provision is intended to designate a senior officer as the compliance officer with the responsibility to administer the code of conduct and monitor compliance with these regulations.

CHAPTER - V MISCELLANEOUS

Sanction for violations.

10. Any contravention of these regulations shall be dealt with by the Board in accordance with the Act.

Power to remove difficulties.

11. In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars:

Provided that where any direction is issued by the Board in a specific case relating to interpretation or application of any provision of these regulations, it shall be done only after affording a reasonable opportunity of being heard to the concerned persons and after recording reasons for the direction.

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

- (2) Notwithstanding such repeal,—

- (a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and
- (b) anything done or any action taken or purported to have



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been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

- (3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

SCHEDULE A

[See sub-regulation (1) of regulation 8]

Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information

1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.
2. Uniform and universal dissemination of unpublished price sensitive unpublished price sensitive information to avoid selective disclosure.
3. Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.
4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.
5. Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.
6. Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.
7. Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.
8. Handling of all unpublished price sensitive information on a need-to-know basis.

SCHEDULE B

[See sub-regulation (1) and sub-regulation (2) of regulation 9]

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

1. The compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at

such frequency as may be stipulated by the board of directors.

2. All information shall be handled within the organisation on a need-to-know basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of the insider's legitimate purposes, performance of duties or discharge of his legal obligations. The code of conduct shall contain norms for appropriate Chinese Walls procedures, and processes for permitting any designated person to "cross the wall".
3. Employees and connected persons designated on the basis of their functional role ("designated persons") in the organisation shall be governed by an internal code of conduct governing dealing in securities. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation.
4. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.
5. The timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available. The trading window shall also be applicable to any person having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising the company.
6. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.
7. The compliance officer shall confidentially maintain a list of such securities as a "restricted list" which shall be used as the basis for approving or rejecting applications for pre-clearance of trades.



8. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.
9. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.
10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contratrade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.
11. The code of conduct shall stipulate such formats as the board of directors deems necessary for making applications for pre-clearance, reporting of trades executed, reporting of decisions not to trade after securing pre clearance, recording of reasons for such decisions and for reporting level of holdings in securities at such intervals as may be determined as being necessary to monitor compliance with these regulations.
12. Without prejudice to the power of the Board under the Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension etc., that may be imposed, by the persons required to formulate a code of conduct under sub-regulation (1) and sub-regulation (2) of regulation 9, for the contravention of the code of conduct.
13. The code of conduct shall specify that in case it is observed by the persons required to formulate a code of conduct under sub-regulation (1) and sub-regulation (2) of regulation 9, that there has been a violation of these regulations, they shall inform the Board promptly.

U. K. Sinha
Chairman

09 Exit Order in Respect of Gauhati Stock Exchange Ltd (GSE)

[Issued by Ministry of Corporate Affairs vide PR No. 21/2015, dated 27.01.2015.]

Whole Time Member, SEBI, has passed an Order on January 27,

2015 providing the exit to Gauhati Stock Exchange Limited ("GSE"). GSE is the ninth Stock Exchange to exit under this policy.

SEBI vide Circular dated May 30, 2012 had issued the Guidelines for exit of stock exchanges. This contained details of the conditions for exit of de-recognised/non-operational stock exchanges interalia including treatment of assets of de-recognised/non-operational exchanges and a facility of Dissemination Board for companies listed exclusively on such exchanges, while taking care of the interest of Investors.

Further, the Income Tax Authorities, Ministry of Corporate Affairs and the State Government of Assam are being intimated about the exit of GSE, for appropriate action at their end.

The full text of the order is available on the website: www.sebi.gov.in

10 New Premises of Securities Exchange Board of India Local Office at Panaji, inaugurated

[Issued by the Securities Exchange Board of India vide PR No. 22/2015, dated 29.01.2015.]

Shri Prashat Saran, Whole Time Member, Securities and Exchange Board of India, inaugurated the new premises of the Local Office of SEBI at Panaji on 29.01.2015, in the presence of Shri Piyooch Gupta, Regional Director, SEBI, Ahmedabad.

The Panaji Local office of SEBI is located at 6th Floor, EDC House, Dr Atamaram Borkar Road, Panaji - 403 001, Goa (Ph. 0832-2423110).

The mandate entrusted to SEBI by the Parliament is threefold - protection of the interests of the investors in securities, regulation of the securities market and development of the securities market.

For promoting a balanced pan India Securities market and in order to bring physical proximity of SEBI Offices to the investors and intermediaries, SEBI has decided to open Local Offices in various parts of the country. SEBI has already opened Local Offices at Bengaluru, Hyderabad, Kochi, Guwahati, Bhubaneswar, Patna, Ranchi, Chandigarh, Lucknow, Dehradun, Jaipur, Indore and Raipur. The jurisdiction of the Local Office at Panaji whose new premises was inaugurated today extends to the State of Goa. The Local office of Panaji is under the administrative control and jurisdiction of SEBI's Regional Office at Ahmedabad.

The functions of the Panaji Local Office includes facilitating the redressal of investor grievances against listed companies and market intermediaries, to spread investor education and financial literacy, processing the applications for Investment Advisors within its jurisdiction and such other functions as may be delegated from time to time to the Local Offices.



11 The Companies (Amendment) Bill, 2014*

A
BILL

to amend the Companies Act, 2013.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2014.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

18 of 2013. 2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act),—

Amendment of section 2.

(i) in clause (68), the words “of one lakh rupees or such higher paid-up share capital” shall be omitted;

(ii) in clause (71), in sub-clause (b), the words “of five lakh rupees or such higher paid-up capital,” shall be omitted.

3. In section 9 of the principal Act, the words “and a common seal” shall be omitted.

Amendment of section 9.

15 4. In section 11 of the principal Act, in sub-section (1), in clause (a), the words “and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company” shall be omitted.

Amendment of section 11.

Amendment of section 12.

5. In section 12 of the principal Act, in sub-section (3), for clause (b), the following clause shall be substituted, namely:—

“(b) have its name engraved in legible characters on its seal, if any;”.

Amendment of section 22.

6. In section 22 of the principal Act,—

(i) in sub-section (2),—

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(a) for the words “under its common seal”, the words “under its common seal, if any,” shall be substituted;

(b) the following proviso shall be inserted, namely:—

“Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.”;

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(ii) in sub-section (3), the words “and have the effect as if it were made under its common seal”, shall be omitted.

Amendment of section 46.

7. In section 46 of the principal Act, in sub-section (1), for the words “issued under the common seal of the company”, the words “issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary” shall be substituted.

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Insertion of new section 76A.

8. After section 76 of the principal Act, the following section shall be inserted, namely:—

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*Bill No. 185-C of 2014. The Bill was passed by Lok Sabha on 17.12.2014.



Punishment
for contra-
vention of
section 73 or
section 76.

“76A. Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,— 25

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees; and

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both: 30

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.”. 35

Amendment
of section
117.

9. In section 117 of the principal Act, in sub-section (3),

(i) in clause (g), the word “and” occurring at the end shall be omitted;

(ii) after clause (g), the following proviso shall be inserted, namely:— 40

“Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and”.

Amendment
of section
123.

10. In section 123 of the principal Act, in sub-section (1), after the third proviso, the following proviso shall be inserted, namely:—

“Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.”. 45

11. In section 124 of the principal Act, in sub-section (6),—

(i) for the words, brackets and figure “unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be”, the words “dividend has not been paid or claimed for seven consecutive years or more shall be” shall be substituted;

(ii) after the proviso, the following explanation shall be inserted, namely:— 5

“Explanation.—For the removals of doubts it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.”.

12. In section 134 of the principal Act, in sub-section (3), after clause (c), the following clause shall be inserted, namely:— 10

“(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;”.

13. In section 143 of the principal Act, for sub-section (12), the following sub-section shall be substituted, namely:— 15

Amendment
of section
124.

Amendment
of section
134.

Amendment
of section
143.



From the Government

20 “(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

25 Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.”

30 **14.** In section 177 of the principal Act, in sub-section (4), in clause (iv), the following proviso shall be inserted, namely:—

Amendment of section 177.

"Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;"

35 **15.** In section 185 of the principal Act, in sub-section (1), in the proviso, after clause (b), the following clauses and proviso shall be inserted, namely:—

Amendment of section 185.

"(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

40 (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities."

16. In section 188 of the principal Act,

45 (a) in sub-section (1),—

Amendment of section 188.

(i) for the words "special resolution", at both the places where they occur, the word "resolution" shall be substituted;



(ii) after the third proviso, the following proviso shall be inserted, namely:—

"Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.";

(b) in sub-section (3), for the words "special resolution", the word "resolution" shall be substituted.

Amendment
of section
212.

17. In section 212 of the principal Act, in sub-section (6), for the words, brackets and figures "the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447", the words and figures "offence covered under section 447" shall be substituted.

Amendment
of section
223.

18. In section 223 of the principal Act, in sub-section (4), in clause (a), for the words "by the seal", the words "by the seal, if any," shall be substituted.

Amendment
of section
419.

19. In section 419 of the principal Act, in sub-section (4), the words "or winding up" shall be omitted.

Amendment
of section
435.

20. In section 435 of the principal Act, in sub-section (1),—

(i) for the words "trial of offences under this Act" the words "trial of offences punishable under this Act with imprisonment of two years or more" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law."

Amendment
of section
436.

21. In section 436 of the principal Act, in sub-section (1), in clause (a), for the words "all offences under this Act", the words, brackets and figures "all offences specified under sub-section (1) of section 435" shall be substituted.



Banking Laws

12 Guidelines for processing cases of India-specific and regional studies conducted by Multilateral development Banks.- Reg.

[Issued by the Ministry of Finance, Department of Economic Affairs vide Office Memorandum No. 7/4/2014-FB-V, dated 01.01.2015]

Multilateral Development Banks like World Bank, Asian Development Bank, International Fund for Agricultural Development (IFAD), International Finance Corporation (IFC) etc. conduct India-specific bilateral and regional studies covering one or more countries from time to time on various subjects / sectors. At present such studies are processed in terms of the Standard protocol issued vide DEA Office Memorandum No. 03/01/2013-FB VII dated February 4, 2013.

- The extant protocol has been revised with the approval of Finance Secretary, with an objective to ensure time-bound and structured consultation/ engagement with .-. sectoral-line ministries at each stage from concept stage to preparation of the final report. The revised protocol, which will be applicable both to India-specific and regional studies conducted by MDBs, is attached. The revised protocol, inter alia, stipulates that concerned line Ministry/ Department will nominate a nodal officer, not below the level of Director/ Deputy Secretary, for intra-departmental co-ordination and to act as a focal point to deal with all references on the subject. The opinion of line Ministries will also be sought specifically on the desirability to undertake such studies. The revised protocol also stipulates clear timelines within which all agencies involved are expected to respond.
- All Ministries/ Departments of Government of India are requested to take note the revised protocol.

Bhaskar Dasgupta
Director

GUIDELINES FOR PROCESSING CASES OF INDIA-SPECIFIC AND REGIONAL STUDIES CONDUCTED BY MULTILATERAL DEVELOPMENT BANKS

Multilateral Development Banks (MDBs) like World Bank, Asian Development Bank, IFAD and IFC etc. conduct India-specific bilateral and regional studies covering one or more neighboring countries from time to time on various subjects / sectors. Standard protocol for dealing With such studies was issued vide Office Memorandum No. 03/01/2013-FB VII dated February A, 2013. Now, with the approval of the Finance Secretary, it has been decided to revise the protocol for India-specific and regional studies conducted by the MDBs, except for the studies having separate protocol of their own. The revised protocol will be as below: -

- Specific approval of Government, of India will be required for both India -specific and regional studies covering India conducted by the MDBs.
- Although there could be some variations depending on the context / subject of study, the broad protocol will be as under:-

Concept Stage

- The 'concerned MDB will send a concept note and Terms of Reference (TOR) for the proposed study to the DEA at the inception stage. The concept note will include objective, origin / motivation of the study, envisaged benefits, funding source, proposed data sources to be used in the study, etc. It will also clearly state whether any primary survey is proposed to be undertaken, and if so where.
- DEA will refer the concept note and TOR to sectoral line Ministries / Department within one week of receiving the same from the MDB.
- Each line Ministry Will nominate a nodal officer, not below the level of Director/ Deputy Secretary, for intra-Departmental co-ordination and as a focal point to deal with all references on the subject within one week of receiving the reference from the DEA.
- Line Ministries & Departments .Will send their comments receiving the draft report from the DEA. Their comments will include desirability/ relevance of the study in Indian context (i.e., whether the study should at all be undertaken), methodology or any other suggestion to further improve the outcome of the study.

After Preparation of the Draft Report and before dissemination

- The draft report will be shared with the DEA at least 10 weeks before the planned dissemination of the Report.
- Following timelines shall be applicable for processing the draft report-



Activity	Timelines
Sharing of the draft findings with sectoral line Ministries (and also MELA in case regional studies) by the DEA	Within 1 week from the receipt of the draft report from the MDB.
Comments of Sectoral line Ministries	Within 3 weeks from the date of receipt of the draft report from DEA
Presentation to be organized by the DEA with line Ministries and MDB, if required. (This will be done in case of objection to the findings in the report or in case of difference of opinion amongst sectoral line Ministries)	Within two weeks of receiving comments from line ministries.



13 Levy of service tax on activities involved in relation to inward remittances from abroad to beneficiaries in India through MTSOs- reg.

[Issued by the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, Tax Research Unit vide Circular No. 180/06/2014 – ST, F. No 354/105/2012-TRU (Pt.), dated 14.10.2014]

Vide circular No. 163/14/2012–ST, dated 10th July, 2012, on the issue of levy of service tax on the activities involved in the inward remittance it was clarified that there is no service tax per se on the foreign exchange remitted to India from outside for the reason that money does not constitute a service and that conversion charges or fee levied for sending such money would also not be liable to service tax as the person sending money and the company conducting the remittance are both located outside India. It was also clarified that the Indian bank or financial institution who provides service to the foreign bank or any other entity is not liable to service tax as the place of provision of service shall be the location of the recipient of service. This clarification covers the scenario where the Indian bank or financial institution provides services on principal to principal basis to the foreign bank/entity, on its own account, and thus the service is covered by the general rule, i.e. rule 3 of the Place of Provision of Service Rules, 2012.

- The remaining Window of 4 weeks is meant to enable the MDB to examine the comments of sectoral line Ministries on draft report and their incorporation in the final report.
- Final dissemination of the report will be only after approval of Government of India.
- In case of regional studies covering countries other than India, the India-part of the Report will not be disseminated/ released in any country without specific approval of the Government of India.
- All Regional reports / study by the MDB will carry a disclaimer on the following line: the study reflects the views of the World Bank/ADB (as the case may be) and does not necessarily reflect the views of the Governments of the countries covered by the study. The findings of the study would, thus, not be binding on the countries covered by the study.
- In case of India-specific studies, the same would be worded as "the study reflects the views of the World Bank/ADB (as the case may be) and does not necessarily reflect the views of the Government of India and the findings of the study are not binding on the Government of India.

2. However, subsequently, it had been brought to the notice of the Board that the foreign money transfer service operator (MTSO), conducting remittances to beneficiaries in India, have appointed Indian Banks/financial entities as their agents in India who provide agency /representation service to such MTSO for furtherance of their service to a beneficiary in India. The agents are paid a commission or fee by the MTSO for their services. The entire sequence of transactions in remittances of money from overseas through the MTSO route is as under:

Step 1: Remitter located outside India (say 'A') approaches a Money Transfer Service Operator (MTSO)/bank (say B) located outside India for remitting the money to a beneficiary in India; 'B'



From the Government

charges a fee from 'A'.

Step 2: 'B' avails the services of an Indian entity (agent) (say 'C') for delivery of money to the ultimate recipient of money in India (say 'E'); 'C' is paid a commission/fee by 'B'.

Step 3: 'C' may avail service of a sub-agent (D). 'D' charges fee/ commission from 'C'.

Step 4: 'C' or 'D', as the case may be, delivers the money to 'E' and may charge a fee from 'E'.

- Clarifications have been sought as to whether such agents (referred in Step 2 above) would fall in the category of intermediary, and if so, whether service tax would be leviable on the commission/ fee amount charged by such agents. Clarifications have also been sought as to whether the services provided by sub agent (referred in step 3 & 4 above) are leviable to service tax and on certain other related issues.
- The issues discussed above have been examined and it is clarified as follows,-

S. No.	Issues	Clarification
1	Whether service tax is payable on remittance received in India from abroad?	No service tax is payable per se on the amount of foreign currency remitted to India from overseas. As the remittance comprises money, it does not in itself constitute any service in terms of the definition of 'service' as contained in clause (44) of section 65B of the Finance Act 1994.
2	Whether the service of an agent or the representation service provided by an Indian entity/ bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service?	Yes. The Indian bank or other entity acting as an agent to MTSO in relation to money transfer, facilitates in the delivery of the remittance to the beneficiary in India. In performing this service, the Indian Bank/entity facilitates the provision of Money transfer Service by the MTSO to a beneficiary in India. For their service, agent receives commission or fee. Hence, the agent falls in the category of intermediary as defined in rule 2(f) of the Place of Provision of Service Rules, 2012.

3	Whether service tax is leviable on the service provided, as mentioned in point 2 above, by an intermediary/agent located in India (in taxable territory) to MTSOs located outside India?	Service provided by an intermediary is covered by rule 9 (c) of the Place of Provision of Service Rules, 2012. As per this rule, the place of provision of service is the location of service provider. Hence, service provided by an agent, located in India (in taxable territory), to MTSO is liable to service tax. The value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee.
4.	Whether service tax would apply on the amount charged separately, if any, by the Indian bank/entity/ agent/sub-agent from the person who receives remittance in the taxable territory, for the service provided by such Indian bank/entity/agent/sub-agent	Yes. As the service is provided by Indian bank/entity/agent/sub-agent to a person located in taxable territory, the Place of Provision is in the taxable territory. Therefore, service tax is payable on amount charged separately, if any.
5.	Whether service tax would apply on the services provided by way of currency conversion by a bank /entity located in India (in the taxable territory) to the recipient of remittance in India?	Any activity of money changing comprises an independent taxable activity. Therefore, service tax applies on currency conversion in such cases in terms of the Service Tax (Determination of Value) Rules. Service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of the Service Tax Rules 1994.
6.	Whether services provided by sub-agents to such Indian Bank/entity located in the taxable territory in relation to money transfer is leviable to service tax?	Sub-agents also fall in the category of intermediary. Therefore, service tax is payable on commission received by sub-agents from Indian bank/entity.

5. Accordingly, Circular No. 163/14/2012-ST, dated 10.7.2012 stands superceded.

6. Trade Notice/Public Notice may be issued accordingly.

Dr. Abhishek Chandra Gupta
Technical Officer



Institute News

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116	MR. VINAYAK NAGESH HEGDE	ACS - 38155	SIRC	172	MS. PRATIBHA SHARMA	ACS - 38211	NIRC
117	MR. SHANTANU BANSAL	ACS - 38156	NIRC	173	MR. KARNI DAN KAVIYA	ACS - 38212	NIRC
118	MS. SHEEBA THEYIAM VEETIL	ACS - 38157	SIRC	174	MR. HANSRAJ SINGH	ACS - 38213	SIRC
119	MR. RITESH SHRIVASTAVE	ACS - 38158	NIRC	175	MS. PRIYANKA SHRIVASTAVA	ACS - 38214	WIRC
120	MS. SWATHI S	ACS - 38159	SIRC	176	MS. RINKY PANDEY	ACS - 38215	WIRC
121	MS. M SHUBANGI	ACS - 38160	SIRC	177	MS. MANJULA RANI MALLEPALLI	ACS - 38216	SIRC
122	MR. VISHAL SHARMA	ACS - 38161	EIRC	178	MR. AMIT SHARMA	ACS - 38217	NIRC
123	MR. NAGARAJ SHETTY	ACS - 38162	SIRC	179	MS. NEHA AGARWAL	ACS - 38218	EIRC
124	MS. THANKAM JOHN	ACS - 38163	SIRC	180	MR. PRADEEP KUMAR JALUKA	ACS - 38219	EIRC
125	MS. K N SHUGANYA	ACS - 38164	SIRC	181	MS. RADHIKA DAGA	ACS - 38220	EIRC
126	MR. AMIT AJIT CHOUGULE	ACS - 38165	SIRC	182	MR. RAHUL HARSH	ACS - 38221	EIRC
127	MS. KARUNA K	ACS - 38166	SIRC	183	MS. NOMITA VERMA	ACS - 38222	EIRC
128	MR. SOWRABH S RAO	ACS - 38167	SIRC	184	MR. MD TANWEER ALAM SUNNY	ACS - 38223	EIRC
129	MS. PRIYANKA RAJORA	ACS - 38168	SIRC	185	MS. POOJA JAIN	ACS - 38224	SIRC



186	MS. ANJU	ACS - 38225	NIRC	242	MR. RAMPRASAD P	ACS - 38281	SIRC
187	MS. POOJA SACHDEVA	ACS - 38226	NIRC	243	MS. APOORVA SHARMA	ACS - 38282	NIRC
188	MS. NEHA JAIN	ACS - 38227	NIRC	244	MR. ROHIT KOTHARI	ACS - 38283	EIRC
189	MR. SANJEEV	ACS - 38228	NIRC	245	MS. SNEHA AGARWAL	ACS - 38284	EIRC
190	MS. SAMRITI GABA	ACS - 38229	NIRC	246	MS. LAXMI CHANDRA DEY	ACS - 38285	EIRC
191	MS. LAKSHITA SUBNANI	ACS - 38230	NIRC	247	MR. AYUSH KUMAR SINGH	ACS - 38286	NIRC
192	MR. VIJAY SRIVASTAVA	ACS - 38231	NIRC	248	MS. PRAGATI MOUR	ACS - 38287	EIRC
193	MS. PREETI GOYAL	ACS - 38232	NIRC	249	MS. SHRUTI SRIVASTAVA	ACS - 38288	EIRC
194	MS. SIMRANJIT KAUR	ACS - 38233	NIRC	250	MS. DEVIKA PANDA	ACS - 38289	EIRC
195	MS. DEEPTI BANSAL	ACS - 38234	NIRC	251	MR. JAIDEEP SINGH SETHI	ACS - 38290	NIRC
196	MS. NIKITA AGARWAL	ACS - 38235	EIRC	252	MR. LALIT KUMAR	ACS - 38291	NIRC
197	MS. AMRUTA PRAVEEN SOHONI	ACS - 38236	WIRC	253	MS. SAKSHI JINDAL	ACS - 38292	NIRC
198	MS. BHARTI KALURAM BHANSALI	ACS - 38237	WIRC	254	MR. VINAY GARG	ACS - 38293	NIRC
199	MS. DHANASHRI SATISH SABLE	ACS - 38238	WIRC	255	MR. DHURUV SWAMI	ACS - 38294	NIRC
200	MR. ANAND KUMAR PANDEY	ACS - 38239	EIRC	256	MS. SONALI AGGARWAL	ACS - 38295	NIRC
201	MRS. DIMPAL TOSHNIWAL	ACS - 38240	NIRC	257	MR. DENNIS AUGUSTINE	ACS - 38296	SIRC
202	MS. RITU MALIK	ACS - 38241	NIRC	258	MR. SREENATH P	ACS - 38297	SIRC
203	MS. YAMINI BANKA	ACS - 38242	NIRC	259	MR. GUNJAN KUMAR KARN	ACS - 38298	EIRC
204	MS. PRIYA CHAKRABORTI	ACS - 38243	NIRC	260	MR. P VENKATACHALAM	ACS - 38299	SIRC
205	MS. HARPREET KAUR	ACS - 38244	NIRC	261	MR. PRASHANT PARASCHANDJI LUNAWAT	ACS - 38300	WIRC
206	MS. KANCHAN	ACS - 38245	NIRC	262	MR. PRASANNA KUMAR ACHARYA	ACS - 38301	WIRC
207	MS. YAMINI AGGARWAL	ACS - 38246	NIRC	263	MR. R ARUL MOZHI	ACS - 38302	SIRC
208	MR. MOHD NOMAAN MAHMOOD	ACS - 38247	NIRC	264	MR. RAJIV JAIN	ACS - 38303	EIRC
209	MR. TEJOMURTULA RAVI KIRAN	ACS - 38248	SIRC	265	MS. ARPITA DHAR	ACS - 38304	EIRC
210	MS. JOTHI J	ACS - 38249	SIRC	266	MR. MITESH NAVINCHANDRA DOSHI	ACS - 38305	WIRC
211	MR. DARA CHAKRADHAR	ACS - 38250	SIRC	267	MS. ANCHAL GUPTA	ACS - 38306	EIRC
212	MR. SANTOSH DATTATRAYA HEGDE	ACS - 38251	SIRC	268	MS. RADHIKA TOSNIWAL	ACS - 38307	EIRC
213	MR. SHELTON M JOSEPH	ACS - 38252	SIRC	269	MS. POOJA SINGH	ACS - 38308	EIRC
214	MR. ABHISHEK MODI	ACS - 38253	WIRC	270	MS. SURBHI SHAH	ACS - 38309	EIRC
215	MS. AMRUTA ASHOK PILIVKAR	ACS - 38254	WIRC	271	MS. PRIYANKA AGARWAL	ACS - 38310	EIRC
216	MS. SHRADDHA RAJESH PANCHAMIA	ACS - 38255	WIRC	272	MS. VARSHA KANKANI	ACS - 38311	EIRC
217	MS. VIDHI HEMANT GALA	ACS - 38256	WIRC	273	MS. GARIMA SMRITI	ACS - 38312	EIRC
218	MS. KRISHNA KETANKUMAR BHAVSAR	ACS - 38257	WIRC	274	MR. MANISH SINGH	ACS - 38313	NIRC
219	MR. SHREYAS SATISH MOKASHI	ACS - 38258	WIRC	275	MS. MONIKA YADAV	ACS - 38314	NIRC
220	MS. SHILPA PRAMOD WALUNJ	ACS - 38259	WIRC	276	MR. DHEERAJ KUMAR	ACS - 38315	NIRC
221	MS. PALLAVI BHASKAR BHORE	ACS - 38260	WIRC	277	MS. PRITIKA SURANA	ACS - 38316	NIRC
222	MS. SWATI ASHOK KANKARIYA	ACS - 38261	WIRC	278	MR. SHARAD PANWAR	ACS - 38317	NIRC
223	MR. NITIN RAMESH SHETTY	ACS - 38262	WIRC	279	MS. RITU NAGPAL	ACS - 38318	NIRC
224	MS. MADHU RAMAKISHAN THANVI	ACS - 38263	WIRC	280	MS. PRIYANKA RAJPAL	ACS - 38319	NIRC
225	MS. SHRUTI DINESH SHAH	ACS - 38264	WIRC	281	MR. SUNNY GULATI	ACS - 38320	NIRC
226	MS. ARNIKA ANIL DOSI	ACS - 38265	WIRC	282	MR. HARSHIT GARG	ACS - 38321	NIRC
227	MS. SHIKHA BINOD TIBREWAL	ACS - 38266	WIRC	283	MR. NAVEEN SHANKAR JAIN	ACS - 38322	NIRC
228	MS. POOJA DILIP PANVELKAR	ACS - 38267	WIRC	284	MS. AISHWARYA SINGH	ACS - 38323	NIRC
229	MR. SHELDON JULIUS DSOUZA	ACS - 38268	WIRC	285	MS. NIKITA ARYA	ACS - 38324	NIRC
230	MS. REENA SUNIL HATISKAR	ACS - 38269	WIRC	286	MR. KETAN GUPTA	ACS - 38325	NIRC
231	MS. NIVETA SHARMA	ACS - 38270	NIRC	287	MR. KETAN GUPTA	ACS - 38325	NIRC
232	MR. UMESH MANSUKHBHAI BHIMANI	ACS - 38271	WIRC	288	MS. MUKTI CHAPLOT	ACS - 38326	NIRC
233	MS. BHANUSALI KRISHNA JAYANTILAL	ACS - 38272	WIRC	289	MS. AYUSHI SHARMA	ACS - 38327	NIRC
234	MS. DARJI DEEPALIBEN HASMUKH	ACS - 38273	WIRC	290	MS. RITIKA SONI	ACS - 38328	NIRC
235	MS. MANIKA DIKSHIT	ACS - 38274	WIRC	291	MS. KRITIKA GUPTA	ACS - 38329	NIRC
236	MR. MANDAR JAYESH PATEL	ACS - 38275	WIRC	292	MS. GEETANJALI DUA	ACS - 38330	NIRC
237	MR. ABHIJEET DEEPAK SHITOLE	ACS - 38276	WIRC	293	MS. DEEPIKA KHURANA	ACS - 38331	NIRC
238	MR. R SUNDARAVADHANAN	ACS - 38277	WIRC	294	MS. PRIYANKA HIRAWAT	ACS - 38332	NIRC
239	MR. DEBANJAN BANERJEE	ACS - 38278	EIRC	295	MR. ANKIT BOHARA	ACS - 38333	NIRC
240	MS. NISHI VERMA	ACS - 38279	NIRC	296	MS. KIRTI DUREJA	ACS - 38334	NIRC
241	MR. AMIT KUMAR AGARWAL	ACS - 38280	EIRC	297	MS. KANIKA SABHERWAL	ACS - 38335	NIRC



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298	MS. DIVYA	ACS - 38336	NIRC	7	MR. ABHAY ACHYUT JOSHI	ACS - 19785	WIRC
299	MR. SAURABH BHATIA	ACS - 38337	NIRC	8	MS. RENU AGGARWAL	ACS - 24336	NIRC
300	MS. TANYA VAIDYA	ACS - 38338	NIRC	9	MR. NAGARIMADUGN CHANDRA REDDY	ACS - 10196	SIRC
301	MS. DIMPLE BANSAL	ACS - 38339	NIRC	10	MR. SIDDHARTHA GHOSH	ACS - 26376	EIRC
302	MS. ASTHA NEBHANI	ACS - 38340	NIRC	11	MR. L SRIRAM	ACS - 13621	SIRC
303	MS. MONIKA MAHESHWARI	ACS - 38341	NIRC	12	MS. VINITA SITHAPATHY	ACS - 23388	WIRC
304	MS. ADITI UPADHYAY	ACS - 38342	NIRC	13	MR VINOD PHILIP	ACS - 12055	WIRC
305	MS. AKANSHA GOEL	ACS - 38343	NIRC	14	MS. SHILPA SUBRAMANIAN	ACS - 22723	WIRC
306	MR. SUNIT JAIN	ACS - 38344	NIRC	15	MS. MADHURI RAJENDRA MORE	ACS - 27540	WIRC
307	MS. PREKSHA JAIN	ACS - 38345	NIRC	16	MR. VIJAY INDUKUMAR JOSHI	ACS - 7298	WIRC
308	MS. RICHA	ACS - 38346	NIRC	17	MR. NIMIT M SANGHVI	ACS - 16745	WIRC
309	MS. CHARU GULATI	ACS - 38347	NIRC	18	MR. AMIT BHUPENDRA SHAH	ACS - 16720	WIRC
310	MS. ANKITA GERA	ACS - 38348	NIRC	19	MS. MANJEETA CHOWDHARY	ACS - 23891	EIRC
311	MS. MINI CHOUDHARY	ACS - 38349	NIRC	20	MR. RAVI DEEP JHAMB	ACS - 32317	NIRC
312	MS. MEGHA CHANDAK	ACS - 38350	NIRC	21	MS. NEHA DHEMAN	ACS - 32397	NIRC
313	MS. GARIMA SONI	ACS - 38351	NIRC	22	MR. ANKITKUMAR KANTILAL THAKKER	ACS - 34530	WIRC
314	MS. SHALU SARAF	ACS - 38352	NIRC	23	MS. TAPASYA GUPTA	ACS - 29266	NIRC
315	MR. SHARAD KUMAR S	ACS - 38353	SIRC	24	MR. RAJESH KUMAR JAIN	FCS - 7227	EIRC
316	MS. SEEMA PAI	ACS - 38354	SIRC	25	MR. NATARAJAN RAMAKRISHNAN	ACS - 15792	SIRC
317	MR. NARENDRA MEKA	ACS - 38355	SIRC	26	MR. PANKAJ GOYAL	FCS - 6509	NIRC
318	MS. SATRASALA SRUTHI	ACS - 38356	SIRC	27	MR. DEEPAK KUMAR CHITKARA	ACS - 19565	NIRC
319	MS. SUREKHA M R	ACS - 38357	SIRC	28	MS. MONIKA CHAWLA	ACS - 33618	NIRC
320	MR. SANDEEP MOHAN K	ACS - 38358	SIRC	29	MS. GIRIJA DEEPAK PALAYE	ACS - 23517	WIRC
321	MS. MADHAVILATHA LOKIREDDY	ACS - 38359	SIRC	30	MR. ATINDRA NATH BASU	ACS - 32389	NIRC
322	MR. MAHESH N	ACS - 38360	SIRC	31	MR. NADEEM PASHA	FCS - 6770	NIRC
323	MR. VINAYAK NARASIMHA BHAT	ACS - 38361	SIRC	32	MR H I BHATT	FCS - 1594	WIRC
324	MS. EKTA AGRAWAL	ACS - 38362	EIRC	33	MR VIJAY GOVIND ANGANE	FCS - 3959	WIRC
325	MS. GAYATRI JOSHI	ACS - 38363	WIRC	34	MS PRIYANKA GUPTA	ACS - 34488	NIRC
326	MS. UMA OMKAR SHENDE	ACS - 38364	WIRC	35	MR VINOD KUMAR AGRAWAL	FCS - 1366	EIRC
327	MS. APEKSHA NIKHIL RAICHURA	ACS - 38365	WIRC	36	MR. SANJAY SHARMA	ACS - 14676	NIRC
328	MS. RUPAL JAIN	ACS - 38366	WIRC	37	MS. KRUTI R SHAH	ACS - 27085	WIRC
329	MRS. PRIYESHA HARISHCHANDRA SALIAN	ACS - 38367	WIRC	38	MS. GEETIKA GUPTA	ACS - 14416	WIRC
330	MS. NAZIA KHALIL SAYYED	ACS - 38368	WIRC	39	MR S RAGHAVAN	ACS - 18673	SIRC
331	MR. AMIT ANANT CHAVAN	ACS - 38369	WIRC	40	MR AMAR KUMAR DORA	ACS - 15339	SIRC
332	MR. PRITAM SURESHRAO KATARMAL	ACS - 38370	WIRC	41	MR K S REDDY	ACS - 10504	SIRC
333	MS. MUSARRAT SHAKIL KHAN	ACS - 38371	WIRC	42	MS ANITA NAIR	ACS - 13119	SIRC
334	MR. JEEVAN SANTOSH KUMAR INNANI	ACS - 38372	WIRC	43	MR VISHAL ALMAL	ACS - 14260	SIRC
335	MS. ANSHITA JHAWAR	ACS - 38373	WIRC	44	MR K SURESH	ACS - 12571	SIRC
336	MS. MAITRI ASHOK PAREKH	ACS - 38374	WIRC	45	MS SHOBHITA SHUKLA	ACS - 21574	SIRC
337	MS. AHANA ELIZEBETH PARDHE	ACS - 38375	WIRC	46	MR N RAJKUMAR	ACS - 9875	WIRC
338	MR. PAVAN SRIVALLABH VYAS	ACS - 38376	WIRC	47	MR A V RAMALINGAM	ACS - 5245	SIRC
339	MR. HARSH VIJAY GOR	ACS - 38377	WIRC	48	MR APARNA K V	ACS - 26156	SIRC
340	MR. VISHANT NARAYAN SHETTY	ACS - 38378	WIRC	49	MS PURTI KATHPALIA	ACS - 22395	NIRC
341	MS. PREETI JUGRAJ TATER	ACS - 38379	WIRC	50	MR TARUN JINDAL	FCS - 5753	NIRC
342	MS. AKANKSHA SINGHAL	ACS - 38380	WIRC	51	MR BALASUBRAMANIAN N. IYER	FCS - 2561	WIRC
343	MS. POOJA RAMNATH KINI	ACS - 38381	WIRC	52	MR SHIVATOSH CHAKRABORTY	FCS - 4987	WIRC
				53	MS PARINA NIRAV SHAH	ACS - 18061	WIRC
				54	MR AJAY KALRA	ACS - 15736	NIRC
				55	MR NIHAR RANJAN MOHANTY	FCS - 5089	NIRC
				56	MR UMESH ANILBHAI PATEL	ACS - 24563	WIRC
				57	MR ABHISHEK GOENKA	ACS - 18127	EIRC
				58	MR NARESH KUMAR MUNJAL	ACS - 5313	NIRC
				59	MR SANDEEP CHOUDHARY	ACS - 33439	NIRC
				60	MR DEVESH KUMAR	ACS - 34929	NIRC
				61	MR BAL CHAND JAIN	ACS - 14742	WIRC
				62	MR ABHIJIT MUKHOPADHYAY	FCS - 1219	WIRC
				63	MR P KARPAGAM	ACS - 7303	SIRC

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Sl.No.	Name	ACS/FCS No.	Region
1	MS. NEHA MENGI	ACS - 25486	NIRC
2	MR. ABHAY SINGH	ACS - 25389	NIRC
3	MR. MANISH SINHA	ACS - 16333	NIRC
4	MS. M BHANU REKHA	ACS - 13999	SIRC
5	Mr. G RAJAGOPALAN	ACS - 5296	SIRC
6	MR S SRINIVASAN	FCS - 2049	SIRC

*Restored from 21.12.2014 to 20.01.2015.



64	MR T V GANESAN	FCS - 2632	WIRC	23	MR. NITIN GUPTA	ACS - 35299	14087	NIRC
65	MR NITIN LAVANIA	ACS - 25493	NIRC	24	MS. MEHAK ARORA	ACS - 31977	14088	NIRC
66	MR SAURABH VIJAY JOSHI	ACS - 18855	NIRC	25	MS. AMI DEEPAK PARIKH	ACS - 27703	14089	WIRC
67	SH SHERVYN R ESSEX	ACS - 25091	WIRC	26	MS. NIVYA MANDAWAT	ACS - 27566	14090	WIRC
68	MR ANURAG ARORA	ACS - 30737	NIRC	27	MS. DIPIKA SAHU	ACS - 36284	14091	EIRC
69	MR ARUN VASHISTA	ACS - 32004	NIRC	28	MR. VASU TAKKAR	ACS - 33553	14092	NIRC
70	MR ROHIT NAYAR	ACS - 14397	NIRC	29	MR. KSHITIJ JAINENDRA LUNKAD	ACS - 36030	14093	WIRC
71	MR SUNDER LAL	FCS - 3268	NIRC	30	SH. ANANTHA PADMANABHA P N	ACS - 18873	14094	SIRC
72	MR PRITAM VARTAK	ACS - 22916	WIRC	31	MR. ASHISH THARD	ACS - 37079	14095	EIRC
73	MS MONIKA CHALOTRA	ACS - 15291	SIRC	32	MR. DHIRENDRA DINESH SHASTRI	ACS - 32740	14096	WIRC
74	MR G MANOHARAN	FCS - 4325	SIRC	33	SH. AMIT LOONKER	ACS - 25075	14097	WIRC
75	MR V S NAMJOSHI	ACS - 2405	WIRC	34	MS. SUSMITA SEN	ACS - 34368	14098	EIRC
76	MR KALLATH MADHAVAN	FCS - 1181	WIRC	35	MS. ASTHA MAHESHWARI	ACS - 23428	14099	WIRC
77	MS NEHA BAJPAI	ACS - 23768	SIRC	36	MS. RITIKA KHARBANDA	ACS - 37524	14100	NIRC
78	MR. C PURUSHOTHAM	ACS - 7749	SIRC	37	MR. SANKALP PODDAR	ACS - 32535	14101	EIRC
79	MS. ANJULI SIVARAMAKRISHNAN	ACS - 13383	NIRC	38	MR. SANJAY MALHOTRA	ACS - 37836	14102	NIRC
80	MS. NOOPUR SARIN	ACS - 13252	NIRC	39	MS. VINUTA NIKHIL DHADD	ACS - 37458	14103	WIRC
81	MS POOJA JOSHI	ACS - 29816	NIRC	40	MR. VIVEK KHOSLA	ACS - 26608	14104	NIRC
82	MR GHANSHYAM DASS SAINI	FCS - 5847	SIRC	41	MR. DHAVAL GOVINDBHAI RAMANI	ACS - 37496	14105	WIRC
83	MR V K GOENKA	ACS - 4875	WIRC	42	MR. AMIT PALIWAL	ACS - 37729	14106	NIRC
84	MS SHIKHA SHARMA BUDHIRAJA	ACS - 21854	NIRC	43	MS. NIYATI KEDIA	ACS - 31105	14107	NIRC
85	MS KUMUD BATRA	ACS - 8578	SIRC	44	MRS. PURVI BHAVIN CHANDARANA	ACS - 37702	14108	WIRC
86	MS BHAVIKA DHANSUKH GOHIL	ACS - 27847	WIRC	45	MS. BHAGCHAND HARSHA BHURAT	ACS - 37683	14109	SIRC
87	MR VILAS P UNAVANE	ACS - 3859	WIRC	46	MR. AMIT AGARWAL	ACS - 37843	14110	EIRC
88	MR PANKAJ AGARWAL	FCS - 3448	NIRC	47	MR. KAPIL SINGH DANGI	ACS - 37835	14111	NIRC
89	MR S R BALASUBRAMANIAN	ACS - 7438	NIRC	48	MR. ANKUR JAIN	ACS - 37788	14112	NIRC

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SL. No.	NAME	MEMB NO	COP NO.	REGION
1	MS. KHYATI KISHORKUMAR ADHIYA	ACS - 33666	14065	WIRC
2	MS. BAISAKHI JAIN	ACS - 36085	14066	WIRC
3	MS. CHAITALI UTKARSH JANI	ACS - 35974	14067	WIRC
4	MS. PARISA SHARMA	ACS - 37193	14068	NIRC
5	MRS. PURVI PRASHANT VASHA	ACS - 17123	14069	WIRC
6	MS. VIDYA UDAYSINGH SIKARWAR	ACS - 35895	14070	WIRC
7	MS. KUMUD SHARMA	ACS - 35301	14071	NIRC
8	MS. SHANU AGRAWAL	ACS - 36257	14072	NIRC
9	MR. VIKAS GUPTA	ACS - 34246	14073	NIRC
10	MR. DATLA VENKATESH	ACS - 36504	14074	SIRC
11	MR. SANTOSH JAGTAP	ACS - 37570	14075	SIRC
12	MR. NARESH KUMAR SEJVANI	ACS - 37538	14076	NIRC
13	MR. VIMAL BHAILAL DATTANI	ACS - 37591	14077	WIRC
14	MR. ARVIND KUMAR YADAV	ACS - 37695	14078	NIRC
15	MR. SHUBHAM GANDHI	ACS - 37363	14079	WIRC
16	MR. SUNIL SINGH BARTWAL	ACS - 35194	14080	NIRC
17	SH. M C JOSHI	FCS - 3917	14081	NIRC
18	MR. MANOJ KUMAR GURJAR	ACS - 37637	14082	NIRC
19	MR. VIKRAM K MADDENAVAR	ACS - 35458	14083	SIRC
20	SH. SWATANTRA KUMAR SETHI	FCS - 7836	14084	NIRC
21	MR. SAMIR DINESHBHAI RUPARELIYA	ACS - 34089	14085	WIRC
22	MS. KUKKADAPU SIVA KOTESWARI	ACS - 37362	14086	SIRC
23	MR. NITIN GUPTA	ACS - 35299	14087	NIRC
24	MS. MEHAK ARORA	ACS - 31977	14088	NIRC
25	MS. AMI DEEPAK PARIKH	ACS - 27703	14089	WIRC
26	MS. NIVYA MANDAWAT	ACS - 27566	14090	WIRC
27	MS. DIPIKA SAHU	ACS - 36284	14091	EIRC
28	MR. VASU TAKKAR	ACS - 33553	14092	NIRC
29	MR. KSHITIJ JAINENDRA LUNKAD	ACS - 36030	14093	WIRC
30	SH. ANANTHA PADMANABHA P N	ACS - 18873	14094	SIRC
31	MR. ASHISH THARD	ACS - 37079	14095	EIRC
32	MR. DHIRENDRA DINESH SHASTRI	ACS - 32740	14096	WIRC
33	SH. AMIT LOONKER	ACS - 25075	14097	WIRC
34	MS. SUSMITA SEN	ACS - 34368	14098	EIRC
35	MS. ASTHA MAHESHWARI	ACS - 23428	14099	WIRC
36	MS. RITIKA KHARBANDA	ACS - 37524	14100	NIRC
37	MR. SANKALP PODDAR	ACS - 32535	14101	EIRC
38	MR. SANJAY MALHOTRA	ACS - 37836	14102	NIRC
39	MS. VINUTA NIKHIL DHADD	ACS - 37458	14103	WIRC
40	MR. VIVEK KHOSLA	ACS - 26608	14104	NIRC
41	MR. DHAVAL GOVINDBHAI RAMANI	ACS - 37496	14105	WIRC
42	MR. AMIT PALIWAL	ACS - 37729	14106	NIRC
43	MS. NIYATI KEDIA	ACS - 31105	14107	NIRC
44	MRS. PURVI BHAVIN CHANDARANA	ACS - 37702	14108	WIRC
45	MS. BHAGCHAND HARSHA BHURAT	ACS - 37683	14109	SIRC
46	MR. AMIT AGARWAL	ACS - 37843	14110	EIRC
47	MR. KAPIL SINGH DANGI	ACS - 37835	14111	NIRC
48	MR. ANKUR JAIN	ACS - 37788	14112	NIRC
49	MS. SONALI SHARMA	ACS - 29972	14113	NIRC
50	MR. SRI BALA ADITYA YANAMANDRA	ACS - 31759	14114	SIRC
51	MR. AMITKUMAR DHANPAL BHAVE	ACS - 37742	14115	WIRC
52	MR. NITIN KUMAR	ACS - 34148	14116	NIRC
53	MS. HIMADRI	ACS - 26577	14117	NIRC
54	MS. PRAJAKTA RAJENDRA DESHMUKH	ACS - 27973	14118	WIRC
55	SH. ABHISHEK AGARWAL	ACS - 25215	14119	EIRC
56	MS. RUBY SINGH	ACS - 34414	14120	NIRC
57	MS. JAYALAKSHMI S	ACS - 33876	14121	SIRC
58	MS. MAMTA RAJENDRA KASAT	ACS - 37497	14122	WIRC
59	MR. PRASHANT SINGH	ACS - 37717	14123	NIRC
60	MR. SAJEEV S	ACS - 37649	14124	SIRC
61	MR. SANJOG VITTHAL NARAVANKAR	ACS - 37746	14125	WIRC
62	MS. ROZEENA BHUDAR ALI RAYANI	ACS - 28013	14126	WIRC
63	MS. NIHARIKA GINOTRA	ACS - 37765	14127	NIRC
64	MS. GADEPALLI S HIMABINDU	ACS - 16175	14128	SIRC
65	MS. SHIKHA GOEL	ACS - 31970	14129	NIRC
66	SH. ANIL KUMAR GUPTA	ACS - 10148	14130	NIRC
67	MR. NILAKANTHA SAMAL	ACS - 35692	14131	EIRC
68	SH. SATYANARAYAN G PALIWAL	FCS - 3511	14132	WIRC
69	MS. SARITA KUMAR LEELARAMANI	ACS - 35587	14133	WIRC
70	MRS. PRITY RATHI	ACS - 37392	14134	EIRC
71	MS. SNEHA WILSON PETER	ACS - 36432	14135	WIRC
72	SH. PRAWIN CHARAN DWARY	FCS - 6088	14136	WIRC
73	MR. DHIRENDRA SHARMA	ACS - 33592	14137	NIRC
74	MS. SONU SARAF	ACS - 27093	14138	EIRC

*Issued during the Month of December, 2014.





News From the Institute

75	MS. VRISHTI KHARE	ACS - 34164	14139	NIRC
76	MS. VORA BANSI TUSHAR	ACS - 37821	14140	WIRC
77	MR. ASHISH NAYAK	ACS - 36967	14141	WIRC
78	MS. BHAWANA KAUSHIK	ACS - 25180	14142	NIRC
79	MS. SHUBHAM SHARMA	ACS - 29592	14143	SIRC
80	MR. DEEPAK KUMAR SINGHAL	ACS - 37129	14144	NIRC
81	MR. SHASHI SHEKHAR	ACS - 37987	14145	NIRC
82	MR. PATEL HITESHKUMAR MANUBHAI	ACS - 37935	14147	WIRC
83	MR. MD SOHEB ALAM	ACS - 36672	14148	NIRC
84	MR. T N RAMESH	ACS - 37937	14149	SIRC
85	MR. V SRINIVASAN	ACS - 34649	14150	SIRC
86	MR. RAHUL RATNAKAR KANDHARKAR	ACS - 36618	14151	WIRC
87	MR. ASHISH YASHPAL CHAWLA	ACS - 37376	14152	WIRC
88	MR. SADANAND MOHANLAL YADAVACS	ACS - 37012	14153	WIRC
89	MR. SACHIN KUMAR	ACS - 37957	14154	EIRC
90	MS. BHARTI MAKHIJA	ACS - 34871	14155	NIRC
91	MS. NIDHI KISHORKUMAR YOGI	ACS - 37484	14156	WIRC
92	MS. HARSHA PUGALIA	ACS - 37893	14157	EIRC
93	MS. SWATI GARG	ACS - 32807	14158	NIRC
94	MRS. VARALAKSHMI SURAVARAPU	ACS - 37747	14159	SIRC
95	MS. MEGHA AGGARWAL	ACS - 32398	14160	NIRC
96	MS. ANJALI KALRA	ACS - 30734	14161	NIRC
97	MS. SHUBHICA AGRAWAL	ACS - 35167	14162	NIRC
98	MS. SARBARI BANDYOPADHYAY	ACS - 12962	14163	EIRC
99	MS. PURNIMA SRIVASTAVA	ACS - 34480	14164	NIRC
100	MS. SHOBHA J	ACS - 30198	14165	SIRC
101	MS. SHIKHA CHADHA	ACS - 24734	14166	NIRC
102	MS. LEENA RANI	ACS - 28688	14167	NIRC
103	MS. KIRAN	ACS - 37306	14168	NIRC
104	MS. BABITA KHAITAN	ACS - 33455	14169	NIRC
105	MS. DAPINDER KAUR	ACS - 27308	14170	NIRC
106	MS. NANDINI AGARWAL	ACS - 37617	14171	EIRC
107	MS. ROSHNI NAKUL SHAH	ACS - 37035	14172	WIRC
108	MRS. SHWETA KHANDELWAL	ACS - 16046	14173	WIRC
109	MS. SUMONA DAS	ACS - 30665	14174	EIRC
110	MS. RITU TIWARI	ACS - 35342	14175	WIRC
111	MS. DIPTI JAIN	ACS - 37824	14176	EIRC
112	MS. MEENAKSHI SARASWAT	ACS - 37529	14177	SIRC
113	MS. RIDDHI GOVIND KHANEJA	ACS - 35651	14178	WIRC
114	MS. KAVITA LALIT KUMAR BIHANI	ACS - 36865	14179	EIRC
115	MS. ANURADHA GUPTA	ACS - 36639	14180	NIRC
116	SH. TEK CHAND SAINI	ACS - 23022	14181	NIRC
117	MR. SUYOG SURESH KABRA	ACS - 35338	14182	WIRC
118	SH. T R RAMABHADHRAN	FCS - 7833	14183	SIRC
119	MS. ANNAPURNA PERI	ACS - 37502	14184	SIRC
120	MR. PRAKASH CHOUHDARY	ACS - 38043	14185	EIRC
121	SH. MOHAN S RAO	FCS - 5850	14186	SIRC
122	MS. RAFAT AQIL	ACS - 38132	14187	NIRC
123	MR. ANIL XAVIER	ACS - 29393	14188	SIRC
124	MS. NEETI AGRAWAL	ACS - 35209	14189	NIRC

CANCELLED*

SL. No.	NAME	MEMB NO	COP NO.	REGION
1	MS. JYOTI MAHENDRA SHARMA	ACS 36431	13517	WIRC
2	MRS. SWATI PANDEY	ACS 23906	8696	NIRC
3	MS. SEEMA CHOWDHURY	ACS 21224	11129	EIRC
4	MR. VIVEK JAIN	ACS 36946	13864	EIRC
5	MR. SAHIL GUPTA	ACS 34548	13048	NIRC
6	MR. AJAY KUMAR JAIN	FCS 5826	13303	NIRC
7	MS. SWETA SINHA	ACS 34907	13891	EIRC
8	MS. VIVIDHA SKAMPURIA	ACS 35074	13667	EIRC
9	MR. NEERAJ KUMAR KHATRI	ACS 36858	13730	WIRC
10	MR. CHINTAN HARENDRAKUMAR VAKIL	ACS 36074	13359	WIRC
11	MR. YOGENDRA DWIVEDI	FCS 6751	13995	NIRC
12	MS. PRINCI KAPOOR	ACS 32214	12843	NIRC
13	MR. SURESH KUMAR AGARWAL	ACS 5371	10174	NIRC
14	MS. SHALAKA PRASHANT KOPARKAR	ACS 25314	9881	WIRC
15	MS. DEEPA MALIK	ACS 35664	13735	NIRC
16	MS. PRIYANKA JAIN	ACS 27706	11763	NIRC
17	MS. REKHA KEJRIWAL	FCS 5978	13843	NIRC
18	MR. KAMLESH SHETH	FCS 2780	2630	WIRC
19	MS. GAURI GUPTA	ACS 26193	11699	NIRC
20	MS. NIRUPAMA VIRADARAJAN	ACS 24628	11869	WIRC
21	MS. PREETI AGARWAL	ACS 33465	13055	EIRC
22	MS. RITIKA SOOD	ACS 28560	10636	NIRC
23	MS. AMIT KALRA	ACS 22241	12549	NIRC
24	MR. SOUMITRA SUHAS DOLE	ACS 27385	9811	WIRC
25	MR. SWAPNEEL SHRIKANT KUBER	ACS 29707	11914	WIRC
26	MS. ARPITA	ACS 31219	13142	SIRC
27	MS. SONAL SINGHAL	ACS 36107	13984	NIRC
28	MS. AYUSHI ABHAY	ACS 28674	11018	NIRC
29	MS. KIRAN KUMARI	ACS 32855	12813	NIRC
30	MR. SATYANANDA NAYAK	ACS 21997	13516	NIRC
31	MR. SANDEEP YADAV	ACS 36449	13497	NIRC
32	MS. RAJNI KOHLI	ACS 35298	13313	NIRC
33	MS. KHUNJAMBH RAKESH SINGH	ACS 33268	12394	EIRC
34	MR. ASHISH AGGARWAL	ACS 34807	13501	NIRC
35	MR. BIPUL KUMAR	ACS 23315	11564	NIRC
36	MR. MOHAMMAD TAUSIF SHAMIM	ACS 32291	11995	EIRC
37	MRS. PAYAL CHOWDHARY	ACS 18029	10839	NIRC
38	MR. BHUPENDRA KUMAR JAIN	ACS 29242	10544	WIRC
39	MR. C N RAMACHANDRAN	FCS 5052	13282	SIRC
40	MS. MEGHA CHHABRA	ACS 13106	13677	NIRC
41	MR. S S ARUNACHALAM	ACS 17626	13173	SIRC
42	MS. TANNUSHREE	ACS 32039	12821	NIRC

LICENTIATE ICSI**

S.No.	NAME	NUMBER	Region
1	MR. P RAJA	6716	SIRC
2	MR. VIVEK AGARWAL	6717	EIRC
3	MS. A RABECCA ROSLIN	6718	SIRC
4	MR. SARTHAK RAJVANSHI	6719	NIRC
5	MS. ANKITA BANSAL	6720	NIRC

*Cancelled during the Month of December, 2014.

**Admitted during the Month of December, 2014.



Company Secretaries Benevolent Fund



MEMBERS ENROLLED
REGIONWISE AS LIFE
MEMBERS OF THE
COMPANY SECRETARIES
BENEVOLENT FUND*

Region	LM No.	Name	Membership No.	City
NIRC				
1	10697	MS. PRABHJOT KAUR GANDHI	ACS - 36665	PANIPAT
2	10698	SH. MANISH GUPTA	ACS - 16079	GURGAON
3	10701	MS. SHWETA GUPTA	ACS - 36881	VARANASI
4	10702	MS. SURBHI GOYAL	ACS - 37055	DELHI
5	10714	MR. SHASHI BHUSHAN PRASAD	ACS - 34536	NEW DELHI
6	10715	MS. MAMTA JOLLY	ACS - 18574	FARIDABAD
7	10717	MR. LOKESH MUNDRA	ACS - 29524	BHILWARA
8	10718	MR. JAIDEEP SINGH SETHI	ACS - 38290	MOHALI
SIRC				
9	10683	MS. MANISHA BAID	ACS - 37471	HYDERABAD
10	10687	MR. YUVARAJ G	ACS - 32616	COIMBATORE
11	10688	MS. MANIMEKALA V RAJ	FCS - 5163	COIMBATORE
12	10689	MS. RAMYA P	ACS - 34597	COIMBATORE
13	10690	SH. LAKSHMIKANTH M JOSHI	ACS - 14273	COIMBATORE
14	10691	MR. VENKATESH RANGANATH P	ACS - 37567	COIMBATORE
15	10692	MS. SUPRAJA R	ACS - 37316	COIMBATORE
16	10693	MR. RAJESH KUMAR RAMAMOORTHY	ACS - 27574	COIMBATORE
17	10694	MR. R RAMCHANDAR	ACS - 33068	COIMBATORE
18	10695	MS. SHALINI B	ACS - 28817	OOTY

Region	LM No.	Name	Membership No.	City
19	10696	MR. KARTHIK G	ACS - 34054	COIMBATORE
20	10699	SH. M KIRAN KUMAR	ACS - 14196	HYDERABAD
21	10711	MS SAIMATHY S	ACS - 20466	CHENNAI
22	10712	MR. AFZAL HUSSAIN	ACS - 33434	TIRUCHIRAPALLI
23	10716	MR. V VENKATESWARAN	ACS - 37439	CHENNAI
WIRC				
24	10684	MS. HEMAL MAHESH BHAVSAR	ACS - 38100	MUMBAI
25	10685	MS. SHWETA MANOJ KUMAR MUNDRA	ACS - 38115	BHAYANDER
26	10686	SH. SANJAY JAIN	ACS - 7249	MUMBAI
27	10700	MR. SURESH MAHALINGAM	ACS - 37941	MUMBAI
28	10703	SH. LALIT PATNI	FCS - 4625	VALSAD
29	10704	MR. PRIYANK GATTANI	ACS - 33403	INDORE
30	10705	MS. NEHA SHUKLA	ACS - 35830	INDORE
31	10706	MRS. DIPIKA KATARIA	ACS - 24502	RATLAM
32	10707	MR. DEEPAK PRAJAPAT	ACS - 33402	INDORE
33	10708	MS. PRIYANKA SARAF	ACS - 26836	INDORE
34	10709	SH. ANURAG GANGRADE	ACS - 29651	INDORE
35	10710	MR. VARUN BHOMIA	ACS - 28617	INDORE
36	10713	MR. VIKASH AGARWAL	ACS - 38034	AHMEDABAD
37	10719	SH. HASMUKH KANUBHAI MODI	ACS - 18383	AHMEDABAD

*Enrolled during the period from 21.12.2014 to 20.01.2015.



News From the Institute



List of Practising Members Registered For The Purpose of Imparting Training During The Month of December, 2014

CS PRIYANKA JAIN COMPANY SECRETARY IN PRACTICE 401, ANMOL SAGAR DARSHAN INDORE	PCSA- 4318	CS SURESH KUMAR THAKRAL COMPANY SECRETARY IN PRACTICE H. NO. 1121, SECTOR – 13 HISAR – 125 001	PCSA- 4324
CS SATISH SHIDGONDA PATIL COMPANY SECRETARY IN PRACTICE FLAT NO 7, 487/A SUYASH APT, NARAYAN PETH, PUNE – 411 030	PCSA- 4319	CS C RADHAKRISHNAN COMPANY SECRETARY IN PRACTICE NP TOWER, 1ST FLOOR (WEST SIDE) WEST FORT PO THRISSUR – 680 020	PCSA- 4325
CS A C SARAVAN COMPANY SECRETARY IN PRACTICE 17 B, SECOND FLOOR VENKATARAMANA ROAD R S PURAM COIMBATORE – 641 002	PCSA- 4320	CS KAMRAN KHAN COMPANY SECRETARY IN PRACTICE FLAT NO. 304, MIRZA APPARTMENT ABRAR NAGAR, LUCKNOW – 226 022	PCSA- 4326
CS DEEPAK GUPTA COMPANY SECRETARY IN PRACTICE A-59, TRIVENT NAGAR GOPAL PURA BY PASS JAIPUR – 302 018	PCSA- 4321	CS SHREEVATHSA G P COMPANY SECRETARY IN PRACTICE NO. 63/B, 4TH FLOOR MANJUNATHA LAYOUT, AREKERE BHANNERGHATTA ROAD BANGALORE – 560 076	PCSA- 4327
CS AARTI MAHENDRA KUMAR JAIN COMPANY SECRETARY IN PRACTICE 73/1248 SHIVANAND NAGAR NAGARVEL HANUMAN ROAD AMRAIWADI AHMEDABAD – 380 026	PCSA- 4322	CS REECHA BHAGVANJIBHIA BOPALIYA COMPANY SECRETARY IN PRACTICE B-6, MATRIKUNJ APARTMENT NEAR ALKAPURI POST OFFICE VODADARA -390 007	PCSA- 4328
CS RAKHI BHATTACHARYA COMPANY SECRETARY IN PRACTICE 3029, SANT NAGAR RANI BAGH PITAMPURA NEW DELHI – 110 034	PCSA- 4323	CS ALOK KHAIRWAR COMPANY SECRETARY IN PRACTICE 101, SAPPHIRE, KURAR VILLAGE MALAD (EAST)	PCSA- 4329
		CS RIDDHI KANODIA COMPANY SECRETARY IN PRACTICE 85, BLOCK –B BANGUR AVENUE TOP FLOOR KOLKATA – 700 055	PCSA- 4330
		CS PRADEEP KUMAR COMPANY SECRETARY IN PRACTICE KAIMASI KOH BANS BAZAR PATRANA – 800 008	PCSA- 4331
		CS AMIT PALIWAL	PCSA- 4332



COMPANY SECRETARY IN PRACTICE BE-196, F.F, GALI NO.2 HARI NAGAR NEW DELHI – 110 064		IMPEX Metal & Ferro Alloys Limited 35 Chittaranjan Avenue KOLKATA 700 012	15 Months	5000
CS PRADEEP KUMAR M COMPANY SECRETARY IN PRACTICE 12/3, SATHYASAI KRUPA , 2ND FLOOR VANIVILAS ROAD, V V PURAM BANGALORE – 560 004	PCSA- 4333	SHREE KRISHNA PAPER MILLS & INDUSTRIES LIMITED 16 INDIA EXCHANGE PLACE KOLKATA : 700001	15 Months	10000
CS SHIPRA MISHRA COMPANY SECRETARY IN PRACTICE N6/456, IRC VILLAGE BHUBANESWAR – 751 015	PCSA- 4334	JKS Infrastructure Pvt. Ltd. P-4 BLACK BURN LANE III Floor KOLKATA 700 012 WEST BENGAL	15/3 Months	8000
CS VINU THOMAS COMPANY SECRETARY IN PRACTICE 3E, METRO PLAZA, MARKET ROAD NORTH END, ERNAKULAM KERALA -682 018	PCSA- 4335	PoddarUdyog Limited HONGKONG HOUSE 31 B.B.D. BAGH [S] KOLKATA 700 001	15 Months	4000
CS MAYUR MALU MORE COMPANY SECRETARY IN PRACTICE 18, PREM KUTIR, 177, BABU BHAI CHINAI ROAD MUMBAI – 400 020	PCSA- 4336	Northern Healthfore Technologies Limited D3, P38 District Centre Saket NEW DELHI 110 017	15 Months	8000
CS SHRUTI GUPTA COMPANY SECRETARY IN PRACTICE 180, VIVEKANAND PURI SARAI ROHILLA DELHI – 110 007	PCSA- 4337	Mikuni India Private Limited SP 2. 20/2 [A] New Industrial Complex, Majrakath NeemranaBehror District Alwar 301705	15 Months	5000
		MM AUTO INDUSTRIES LTD. PLOT NO. 192-A, Sector-4, IMT Manesar, Gurgaon Haryana : 122050	15/3 Months	5000
		Quintillion Media Private Limited 403 Prabhat Kiran 17 Rajendra Place New Delhi 110 008	15 Months	5000
		NV Distilleries & Breweries Private Limited 10th Floor, Vandana Building 11 Tolstoy Marg NEW DELHI 110 001	15 Months	5000
		MICHELIN INDIA PRIVATE LIMITED UNIT 1120 21 11TH FLOOR TOWER A DLF TOWERS JASOLA DISTRICT CENTER NEW DELHI : 110025	15 Months	10000
		Greentech Mega Food Park Pvt. Ltd. A-6 Royal Ensign Prithvi Raj Road C-Scheme JAIPUR – 01 [Raj.]	15 Months	5000



List of Companies Registered for Imparting Training during the month of December 2014

Eastern

Trimurti Flour Mill Pvt. Ltd. Shahdara, Ramdhani Road Patna City PATNA 800 001 BIHAR	15/3 Months	5000
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News From the Institute & Regions

FortumAmrit Energy Private Limited Unit No.8-12 Ground Floor World Trade Centre, Baber Road NEW DELHI 110 001	15 Months	5000	Elitecore Technologies Pvt. Ltd. 904 Silicon Tower Off C G Road AHMEDABAD 380 006	15 Months	5000
R.K. Marble Pvt. Ltd. Makrana Road, Madanganj – Kishagarh Distt. Ajmer [Rajasthan]	15/3 Months	5000	GSEC Limited 2nd Floor, Gujarat Chamber's Building Ashram Road AHMEDABAD 380 009	15 Months	5000
ESTEE ADVISORS PRIVATE LIMITED 8th Floor, Block I, Vatika Business Park Sohna Road, Sector 49 GURGAON 122 001	15 Months	12000	Pitney Bowes Software Plot No.43/1, 43/2 & 44/2, 5th Floor Panchshil Tech Park, Viman Nagar Pune Maharashtra 410014	15 Months	5000
Southern PNB Metlife India Insurance Co. Ltd. Brigade Seshamahal No.5 Vani Vilas Road Basavanagudi, BANGALORE 560 004	15 Months	5000	Ganesh Laxmi Processors Pvt. Ltd. Plot No.176-P, Behind Ajanta Cinema Kododara Char Rasta KADODARA, Surat 394 327	15/3 Months	5000
The Pharmaceutical Corporation [J.M.] Kerala Ltd. [A Govt. of Kerala Undertaking] KUTTANELLUR P.O. THRISSUR 680 014	15 Months	4000			
KORA SHOES PVT. LTD. No.70 Kundrathur Main Road Moonramkattalai Kundrathur, CHENNAI 600 122	15 Months	5000			
Deshak& Associates 45 & 46 First Floor Maharaj's Shopping Complex BANGALORE-NILGIRI Road Opp. KSRTC Bus Terminal MYSORE 570 001, KARNATAKA	15 Months	4000			
Chennai Metro Rail Limited CMRL Depot, Admin Building Poonamallee High Road Koyambedu, CHENNAI 600 107	15 Months	5000			
Western Bennett Property Holdings Company Limited 5th Floor Times Tower Kamala Mills Compound S.B. Marg, Lower Parel (West), Mumbai : 400013	15 Months	5000			
Vodafone India Limited Peninsula Corporate Park GanpatraoKadamMarg Lower Parel, MUMBAI 400 013	15 Months	10000			
Pioneer Investcorp Limited 1218 Maker Chambes V 12TH Floor, Nariman Point MUMBAI 400 021	15 Months	7500			

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- Vyavsaik Parbandh, Niti Shaster Avem Sanchar—Sharma 320.00
- Vyavsaik Arthshaster Part I Arthshaster—Dr. M.D. Agarwal 250.00
- Vyavsaik Arthshaster Part II Sankhyki—Dr. S.C. Sharma 180.00
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—Gupta & Chaturvedi 360.00

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- Prabandh Lekhankan—Agarwal & Agarwal 200.00
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- Adhunik Bhartiya Company Adhinyam—Kuchhal 240.00
- Audyogik, Sharam Avem Samanya Vidhi—Jain & Gupta 250.00
- Pratibhuti Sanniyam Avem Anupalan—Jain Gupta 260.00
- **Cost Accounting—Maheshwari & Mittal 520.00**
- **Modern Indian Company Law—M.C. Kuchhal 280.00**

FOR PROFESSIONAL PROGRAMME

- Prarupan (Drafting), Upasthiti Avem Vakalat—Jain 200.00

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News From the Regions

EASTERN INDIA REGIONAL COUNCIL

25th Regional Conference of Company Secretaries on Company Law and Beyond

On 17.1.2015 EIRC of the ICSI organised its 25th Regional Conference of Company Secretaries on “Company Law and Beyond” at Kolkata.

Inaugural Session: CS Sunita Mohanty, then Vice-Chairperson, EIRC of ICSI, in her address, gave the mantra of 3E's – Expand, Extend and Excel in our career.

CS Anil Murarka, then Council Member - ICSI said that Company Law provided ample opportunities to the members but at the same time gave enormous responsibilities also.

N. K. Bhola, Regional Director (Eastern Region), Ministry of Corporate Affairs, was the Guest of Honour who in his address said that the profession of Company Secretaries is an extended arm of Ministry of Corporate Affairs and the Ministry expects Company Secretaries to spread more awareness about good governance to their clients in true letter and spirit. He said that the new and budding Company Secretaries should always strive for 3Cs i.e. Confidence, Capability & Character all these are important to achieve success.

A. C. Chakrabortti, Chairman, La Opala RG Limited was the Chief Guest who in his address advised that companies should self-regulate themselves by way of good governance. He added that for good governance there should be good code of conduct and strict compliance of disciplinary system. Chakrabortti said that with advanced technologies, paperless offices would soon become a reality; so one should keep, himself, abreast of updated technologies.

First Session: CS Manoj Banthia (Past Chairman, EIRC of ICSI), Practising Company Secretary, was the Chairman of the Session. The topic for discussion was “The Companies Act, 2013 – A Rule Based Legislations”. Banthia said that though rule based legislations were not new to India, however, new Companies Act had again opened the discussion regarding its need and usefulness.

CS Nesar Ahmad (Past President & the then Council Member – ICSI)

Practising Company Secretary, expressed his views against the need of rule based legislations. He said that some of the provisions in Rules at times are inconsistent with the provisions of the Act such as Loan to Directors, Related Party Transactions & CSR. Ahmad said that frequent changes are affecting the long term planning by the stakeholders. Too much of compliances which could lead to duplicity of work was another core area deliberated upon by him.

CA Bhaswar Sarkar, Senior Partner, Ernst & Young, expressed his views in favour of rule based legislations and said that rule based legislations eliminate the scope of judgement, which helps to understand the rules and regulations in a better way. He said that rules are necessary to pace and to align with the world market, that too in an era, when we are sure to witness plethora of opportunities in coming years.

Concluding the session, Banthia said that rule based legislations are the order of the day and he demanded that there should be a right to “Know the Law” in the same way as there is “Right To Information” and “Right To Education”.

Second Session: CA P. R. Ramesh, Chairman, Deloitte Haskins & Sells, deliberated on the topic “Indian Accounting Standards to IFRS (International Financial Reporting Standards)”. He said that Indian Accounting Standards are named and numbered in the same way as the corresponding IFRS. Though MCA has notified 35 Accounting Standards, it has not notified the date of implementation of the same. Ramesh added that the basic objective of this is to harmonize the diverse accounting policies followed in preparation and presentation of financial statements by different reporting enterprises so as to facilitate intra-firm and inter-firm comparison.

Third Session: Dr. G. C. Dutt, IPS, Inspector General of Police, Police Directorate, West Bengal was the Guest Speaker on the topic “How to be a Successful Corporate Leader following Lord Krishna Consciousness”. Quoting Sir Winston Churchill, he said that the graveyards are full of such people who used to feel that they were indispensable during their heydays, however, the world didn't cease to work after them. He said that lust for power; money or anything can be controlled by spiritual intelligence only. Dutt said that Constant Name Chanting and practice of detachment are the ways to be happy, content and successful.

Panel Discussion: CS Amit Kumar Sen (Past Vice-President, the ICSI), Managing Director, East India Pharmaceutical Works Limited, was the Chairman of the Session. CS Barun Das, Chairman, Mydia 100 Communications, said that right from Pandit Nehru's famous address of “Tryst with the Destiny” to present day, democracy has come a long way. He was of the view that democracy had always promoted merit not the clout.

CS Vinod Kothari (Past Chairman, EIRC of the ICSI), Practising Company Secretary, said that there might be some problems or incidences when democracy might have promoted clout for some time but it would correct automatically and would always promote



News From the Institute & Regions

merit at the end. He compared India with China and showed how India had fared well on many parameters due to strong democracy only.

CA Bharat Baid, Practicing Chartered Accountant, compared state of democracy as a mix of different forms of dance. He said that over a period of time as we expect better results; same is the case with democracy. He further added that the main anchor of democracy is people's will which would ultimately disapprove clout. Baid said that clout would always be there but as it is short lived, merit would prevail at the end.

Prof. (Dr.) Suman Mukerjee, Dean & Principal, Bhartiya Vidya Bhavan Institute of Management Science, said that democracy did promote clout over quality. He said that we are suffering from the myth that democracy is helping us; however, it is the clout which rules over quality. He stressed that we have had a habit of bowing our head to clout which was evident from the dynastic rule in the name of democracy.

Amit Kumar Sen, Chairman of the Session, summed up the discussion and said that there are many instances when clout can hide merit but ultimately the system of democracy is such that it will promote quality only.

10th Regional Conference of PCS on PCS – Transformational Corporate Leader

On 3.1.2015 EIRC of the ICSI organised its 10th Regional Conference of Practicing Company Secretaries on "PCS – Transformational Corporate Leader" at Kolkata.

Inaugural Session: CS Ranjeet Kumar Kanodia, then Chairman, PCS Committee of EIRC, in his address said that the conference would discuss Secretarial Audit, Annual Return, Corporate Social Responsibility (CSR), Internal Audit which would be very useful for the delegates. CS Sutanu Sinha, Chief Executive & Officiating Secretary, ICSI, said that the concept of leadership has changed with changing time. He discussed "Make in India" Campaign and said that we, the Governance Professionals, should gear ourselves to take this challenge given by the Corporate World.

CS Ashok Pareek, then Council Member, the ICSI, discussed the challenges that usually any Company Secretary would face in his practice/job. He said that it is the right time to demonstrate and convince the corporate world that we add value to the professionals through our knowledge, capabilities, expertise and acumen.

CS Anil Murarka, Past President & the then Council Member, the ICSI, said that in the current scenario effective leadership is the need of the hour. He advised the members that before transforming ourselves as corporate leader we should transform ourselves as a leader in our family, office and our profession.

Addressing the delegates CS R. Sridharan, the then President, ICSI,

said that we should try to expand ourselves in terms of professional development and members should always try to add value to the company and profession. He emphasised on "Capacity Building" and said that ICSI had released many new publications which the member would find useful. Sridharan also discussed establishing Centre of Excellence at new places to further the cause of learning and capacity building.

CS S. Gangopadhyay, Past President, the ICSI and Guest of Honour at the programme said, "A Transformational Leader has the traits of Serving Leader and Charismatic Leader, both". He discussed the qualities like Integrity, Emotional Intelligence and Empathy that a leader should possess. Gangopadhyay said that the company secretaries should discharge the role of leader in the evolution process from Compliance Officer to Governance Professionals.

R. Bandyopadhyay, IAS (Retd.), Member, Central Administrative Tribunal, Calcutta Bench, was the Chief Guest who in his address said that the CS fraternity is the youngest and most active profession amongst the three professional bodies under MCA viz. Chartered Accountants, Company Secretaries and Cost Accountants. He shared his experience about the herculean task of drafting and finalizing the new Companies Act as the Secretary of the Ministry of Corporate Affairs. He cautioned the members to equip themselves to discharge the huge responsibility bestowed upon them by the Companies Act, 2013. Bandyopadhyay motivated the members to expand their horizon in order to capture and seize the opportunity and be ready to shoulder the responsibility.

CS Mohit Shaw, Member coordinated the inaugural session.

First Technical Session: CS Mahesh Shah, Past President, the ICSI was the Chairman of the Session. CS Vinod Kothari (Past Chairman, EIRC of the ICSI), Practicing Company Secretary, was the speaker on "Secretarial Audit". He said that India is the only country in the world which had introduced mandatory secretarial audit. Kothari deliberated upon various aspects related to the secretarial audit, cost audit and statutory audit in a comparative statement. He discussed the scope of secretarial audit and its limitations.

CS Subrata Kumar Roy (Past Chairman, EIRC of the ICSI), Company Secretary, MSTC Limited, was the Guest Speaker on "Corporate Social Responsibility (CSR)". He said that CSR is not only related with Section 135 but goes beyond that as it covers human values, social values and corporate values. He emphasised that the values of Individuals would be nurtured by the whole world, remembered by the future generation and the same is true with the organisations. He said that we, as a Company Secretary, should shoulder this responsibility and requested the delegates to be good corporate citizen.

CS R. Sridharan, was the speaker on "Peer Review". He opined that Peer Review should be made mandatory for Secretarial Audit. He said that if you do not understand the law completely, how you could do justice with its proper compliance. He once again motivated the



members not to limit themselves by challenges rather they should challenge the limits.

Second Technical Session:The Session was chaired by CS H. M. Choraria, Past President, the ICSI. CS Savithri Parekh, Chief – Legal & Secretarial, Pidilite Industries Limited, was the Speaker on “Annual Return & Board Meeting Procedures and Related Party Transactions”. She emphasised that the main crux of the new Companies Act is Corporate Governance and we as members of ICSI have the responsibility; not only to comply with but also to pass-on a message to all the stakeholders that it has been complied in letter and spirit. She discussed in detail the topics ranging from remuneration of independent directors, filing of annual returns and related party transactions.

CA Debashis Mitra, Practicing Chartered Accountant, was the Speaker on “Internal Audit & Company Secretary”. He discussed Section 138 which said that Internal Auditor can be a CA, Cost Accountant or such other professionals as may be decided by the Board to conduct Internal Audit of the functions and activities of the company. He emphasised that this has opened a big opportunity for the Company Secretaries.

CA P. R. Ramesh, Chairman, Deloitte India, was the Speaker on “Multidisciplinary Partnership and Enhancing Skill Power”. He said that one as a professional and his profession, should be relevant and for that he has to withstand changes. He emphasised on acquiring new skill sets and enhancing the exiting skills to face the winds of changes with full determination. Ramesh said that convergence of services is the need of the hour and as a professional we are bound to offer multidisciplinary skills in order to sustain.

The last session was an Interaction Session with President and Chief Executive & Officiating Secretary of the ICSI where CS R. Sridharan and CS Sutanu Sinha, Chief Executive & Officiating Secretary, replied the queries raised by the delegates. More than 186 participants attended the Conference.

Campus Placement

EIRC of the ICSI organised Campus Placement for Members seeking employment and Students seeking Management Training at ICSI- EIRC House on 6.1.2015. It was a golden opportunity for the students and members to get a chance to interact with the companies/Firms and try to match their requirements and aspirations. This was equally a good opportunity for the recruiters to meet and select the budding and deserving professionals. Many big companies like CESC Limited, India Power Corporation Limited, The Orissa Minerals Development Corporation Limited, Eastern Investments Limited, Polar India Limited, SREI Equipment Finance Limited, Simplex Projects Limited, Jai Balaji Industries Limited, Marshal Sons & Co. (India) Limited, Eureka Stock & Share Broking Services Limited; and firms like M/s. Vinod Kothari & Co.; M/s. S. M. Gupta & Co.; M/s M. R. & Associates; M/s. Jayshree & Associates; M/s. Santosh Tibrewala & Co.; K. Arun & Co.; Sanjay Gupta & Associates, participated as recruiters in the placement

programme. The programme provided an opportunity to around 120 members and 150 students. More than 85 students were shortlisted for Management Training and 12 members were shortlisted for the post of Company Secretary during the day. While some of them were confirmed on the spot, rest were called for next round of interview by the respective Companies/Firms.

BHUBANESWAR CHAPTER Career Awareness Programme

On 10.01.2015, Bhubaneswar Chapter organised 5 career awareness programmes in Khurdha, Nayagarh & Cuttack District of Odisha. The Programmes were conducted at “Pranath (Autonomous) College, Khurdha, “Hatakeswar Mahila Jr. Mahavidyalaya, Baghamari”, “KDAM Jr. Mahavidyalaya, Kalapathara”, “Kalapathar Dhalapathar (Degree) College, Kalapathar, Cuttack” and “Pathani Samanta College, Khandapara, Nayagarh”. Leaflets, posters, brochures were distributed amongst the students and also displayed during the programme. Rabindranath Mallick, AB-I, Pranath (A) College, Mr. Bhagaban Sahoo, Principal, Hatakeswar Mahila Jr. Mahavidyalaya, Mr. Harinath Mohapatra, Principal, KDA (Jr) Mahavidyalaya, Binodini Mohapatra, principal, Kalapathar Dhalapathar (Degree) College and Prof. P.K. Panda, Principal, PS College were participated in this programme and briefed the students about the CS course. Mr. U.C. Mishra, In charge of the Chapter addressed in all the above programmes and explained about the procedure for admission, fee structure, examination patten, coaching facility, library and other activities of the ICSI for the students. ICSI Kits were presented to the Principals of each of the Institutions during the programme. During the programmes it was suggested by the Principals of the Institutions that similar programme may kindly be organised in their colleges during August-September, 2015 wherein a large number of students can be benefited from such programme.

Interactive Session with Principals

Bhubaneswar Chapter organised 5 interactive sessions with the Principals, HOD's & Administrative Bursars of the colleges covering 3 districts of Odisha on 10/01/2015. The details of such interaction are given below:-

SI No	Date of the Programme	Name of the College/ Institutions	Faculty/ HoDs attended
1	10/01/2015	Prananath College (Autonomous), Khurdha	3
2	10/01/2015	Hatakeswar Mahila Jr. Mahavidyalaya, Baghamari	4
3	10/01/2015	KDA (Jr) Mahavidyalaya, Kalapathara	2
4	10/01/2015	Kalapathar Dhalapathar (Degree) College, Kalapathara, Cuttack	5
5	10/01/2015	Pathani Samanta College, Khandapara, Nayagarh	3



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During the interactive session, representatives of the ICSI, Bhubaneswar Chapter apprised them about the opportunities available after passing CS course and various activities of the Institute and its course contents and other programmes. Principals, Administrative Bursars, faculties of various disciplines of the institutions were actively participated in this meeting. ICSI Kits and diary and brochures were presented to the Principals during the programme.

Swachh Bharat Mission

Bhubaneswar Chapter observed Swachh Bharat Mission on 12th January, 2015 being the birth anniversary of Swami Vivekananda at its office premises. On that day the Chapter with its students, members and employees observing cleanliness drive for cleaning the surroundings of Chapter at 3.00 pm. During the programme, standees & banner on Swachh Bharat Mission were displayed throughout the day in the office premises. Students, members and the employees cleaned the boundary wall, the entire office premises and all attended took oath that the Chapter will be remain clean throughout the year.

Further, it was suggested that each member and students will encourage at least 4-5 other members and students to join this cleanliness drive of the ICSI. The report of the programme was published in the local newspapers also. About 40 students and members participated in this programme.

Training Activities

Bhubaneswar Chapter undertook training activities in the month of January, 2015. The Chapter apprised the students about the vacancy of 2 management trainees at "M/s. Mayfair Resorts and Hotels, Bhubaneswar". The resumes received from the students were forwarded to the concerned organization for consideration and accordingly two students of the Chapter got Management Training in the organization. CS Sujata Sarkar, Company Secretary, M/s. Mayfair Resorts and Hotels, Bhubaneswar contributed a lot for organizing such a training activity of the students. In addition to the above, request received from M/s. Prabhat Nayak & Associates, Company Secretaries for sending two trainees to their firms. Resumes were also sent to the respective firms for considerations.

Image Building Activity

During January, 2015, Bhubaneswar Chapter makes an effort for media and image building activity. During the month, the Chapter contacted with various media personnel and apprised them about the CS course and its various programmes being organized by the Bhubaneswar Chapter to apprise the students mass in Odisha. Press release of the National Best Chapter Award – 2013 on 1/1/2015 at Chennai, Swachh Bharat Mission on 12/01/2015, ICSI Press conference held on 16/01/2014 at Bhubaneswar & new President and Vice President, the ICSI for the year 2015 were published in local newspapers including online newspapers also. Further, the Chairman of the Chapter for the year 2014 visited various Department of the Govt. of Odisha to apprise the Officers

about the ICSI.

TV Interview

Bhubaneswar Chapter arranged a TV interview on 16/01/2015 at its office premises. OTV, Bhubaneswar was took interview of CS R Sridharan, President, 2014 the ICSI, & CS A Acharya, Chairman, 2014 of the Bhubaneswar Chapter. The interview was telecasted in the TV channel next day for about 5-7 minutes by showing the career prospects of CS course, various students programmes, seminars, workshops, National Programmes held during 2013 & 2014. The entire interview was focused on the bright future of the course and its requirement for the economy, its training and placement facilities and other activities.

Press Conference

On 16/01/2015, Bhubaneswar Chapter organized a press conference at its premises. CS R. Sridharan, President, the ICSI, 2014 while addressing the media people briefed them about the ICSI, its members, students and stated that the Institute is in constant endeavor towards the transitioning of Company Secretaries as Governance Professionals." He also briefed about the various students & members related initiatives taken by the Institute, professional development programmes, programme on capacity building, IEPF in coordination with the RD/ROC, MCA, role of Company Secretaries under the new Companies Act, placement facilities, MOU with various banks and other authorized for facilitating development of the profession, career awareness programmes in various schools and colleges throughout the Country. He also highlighted the infrastructural facilities of the Institute, Swachh Bharat Mission programmes in ICSI etc. Various queries asked by the media people were nicely replied by CS R Sridharan. CS A. Acharya, Chairman, 2014 of the Chapter highlighted the activities of the Chapter. He stated that Bhubaneswar Chapter is a vibrant Chapter in the Country. It organizes various programmes for the development of the profession. Bhubaneswar Chapter has been adjudged as the National Best Chapter in the Country.

Inauguration of Renovated Managing Committee Room

On 16.01.2015, CS R Sridharan, then President, the ICSI inaugurated the renovated Managing Committee Room of the Chapter amidst presence of the Members, Students, oral coaching faculties, invited dignitaries, office bearers of the Managing Committee, Past Chairmen & Team ICSI of the Chapter. During the inauguration, the 1st Chairman and Secretary of the Chapter, 1981 were also present. While appreciating the activities and the building of the Chapter, Sridharan thanked the members and students of the Chapter for their active participation for the overall development of the profession in the state.

President's Meeting with All the Past Chairmen of the Chapter

On 16.01.2015, Bhubaneswar Chapter arranged a meeting with all



the past chairmen of the Chapter in the newly renovated Managing Committee room. While interacting with the chairmen since 1981, CS R Sridharan, then President congratulated the Chapter for support of all its students, members, office bearers for their continuous support to the Institute for which the Chapter is able to carve a niche in the Country. CS A. Acharya, Chairman, 2014 also briefed the President about the infrastructural facilities of the Chapter.

Half Day Seminar on Role of Company Secretary in Good Governance

On 16.01.2015, CS R. Sridharan, then President, the ICSI inaugurated the half day seminar of the Chapter. In his presidential address, CS R Sridharan outlined the major initiatives of ICSI during the year for the students and the members and the steps being taken by the ICSI in proper coordination with the Govt & Statutory authorities. He talked about the current students and members position, code of conduct for the members, role of a CS as a Governance Professional, ethics to be followed, capacity building measures, various ICSI programmes, placement activities etc. CS Narottam Das, 1st Chairman while speaking on the occasion, advised the students and members for making efforts for all round development of the profession. CS H Natarajan, 1st Secretary of the Chapter stated that senior members should help the young members and he is always available for any consulting services. CS K.N. Ravindra, Past Chairman expressed his views about knowledge sharing and young members in practice may be provided with support, guidance and facilities by the Chapter at the initial stage. CS J.B. Das, past Chairman, narrated the steps taken for acquiring the land for the building. CS A. Acharya, Chairman, 2014 of the Chapter addressed the gathering and also shared their memorable events with all the activities of the Chapter. He explained the activities undertaken by the Managing Committee during last four years. He suggested that ICSI should consider Bhubaneswar Chapter as a model Chapter as it has the potential to become one of the best Chapter in the Country. He further suggested that small Chapter should be provided with more funds for infrastructural development and professional development programmes. Around 120 students and members of the Chapter were present during the programme. CS Priyadarshi Nayak, then Secretary highlighted the activities during the four year term. Students also spoke on the occasion. Amrita and Aditi, professional programme students anchored the entire function.

Celebration of National Best Chapter Award

On 16/01/2015, Bhubaneswar Chapter organised a programme to celebrate the National Best Chapter Award Rolling Shield for the year 2013. The celebration was took place in the office premises wherein around 100 members, students, past Office Bearers of the Chapter were present. The celebration started with the address by CS R Sridharan, then President, the ICSI who thanked all the stake holders of the Chapter for this achievement. During the celebration, founder Chairman CS Narottam Das and founder Secretary, CS H

Nataran of the Chapter were honoured.

Celebration of 66th Republic Day of the Nation

On 26.01.2015 Bhubaneswar Chapter joined the nation in celebrating its 66th Republic Day at its premises in presence of students, members, office bearers of the Managing Committee, oral coaching faculty & Team ICSI of the Chapter. While CS D Mohapatra, then Chairman of the Chapter unfurled the National Flag, CS A Acharya, past Chairman unfurled the ICSI flag followed by the recital of National anthem by all. At the end of the programme all participants took pledge to follow Swachh Bharat Mission at ICSI. Members and students addressed during the programme.

Rashtriya Ekta Diwas (National Unity Day)

Bhubaneswar Chapter observed the birth anniversary of Late Sardar Vallabhbhai Patel as Rashtriya Ekta Diwas (National Unity Day) on 31.10.2014 at its premises. While observing Rashtriya Ekta Diwas, students, faculty members and all the employees of the ICSI, Bhubaneswar Chapter administered pledge of "Rashtriya Ekta Diwas" to preserve the unity, integrity and security of the Nation. The ceremony concluded with the collective rendition of the National Anthem by the students, faculties and employees of the Chapter. Reports along with photographs of the programme were published in newspapers.

Celebration of CSBF Week & Members Meet on CSBF

Bhubaneswar Chapter celebrated CSBF week from 24/11/2014 to 29/11/2014. During the week long period, posters, Standees, Backdrop and brochures on CSBF were displayed at the Chapter premises including the entrance gate. To mark the celebration a grand success, on 28/11/2014, a members' meet on "Company Secretaries Benevolent Fund (CSBF)" was also organised to apprise the members about the features of becoming a life member of CSBF. During the programme, CSBF Film was screened and brochures & forms were also distributed to the non-members of the fund. During the week long programme, the Chapter Office contacted almost all the non-members of the fund residing in Odisha to become life member of CSBF.

Image Building Activities

During November, 2014, Bhubaneswar Chapter visited various Central & State Government offices for apprising the authorities and the officials about the ICSI. On 14/11/2014, the Chapter delegation met A.K. Patnaik, Dy. Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar. On 29/11/2014, the delegation met P.K. Das, Joint Secretary to Govt., Department of Industries, Odisha. During the interaction, the dignitaries were appraised about the course contents and the role of Company Secretaries both in employment and practice. The dignitaries were happy to meet the Chapter delegates who in turn were also invited to visit the Chapter Office.



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Placement & Training Related Activities

Bhubaneswar Chapter during October, November & December, 2014 undertook various initiatives for placement of the members and training facilities to the students. In placement services, the Chapter organised campus interview for “Paradeep Haridaspur Railways” a joint venture company of Indian Railways & Govt. Of Odisha on 20/10/2014 for which one of the members got the placement. The Chapter also informed the other members who were looking for placement, for opening of post in (1) M/s. ITI Limited, Bangalore (information extracted from newspaper advt (2) M/s. Alpha Transformer, Bhubaneswar (information over telephone from the organisation) (3) M/s. Visa Steel Limited for its office at Kolkata (Information from one FCS member of the Chapter) (4) M/s. ARSS Infrastructure Limited, Bhubaneswar (Information from one PCS member) and (4) Two PCS Firms at Bhubaneswar. After informing the members two members got the placement. Further, in addition to the above, the Chapter also informed the aspirant PCS firms for appointment of Secretarial Auditor in “M/s. Paradeep Phosphates Limited, Bhubaneswar”. With respect to training of students, the Chapter also intimated the students about vacancy of training in three PCS firms and one corporation for which students were getting training at the respective firms and corporate house.

Evening Talk

On 26/12/2014, Bhubaneswar Chapter organised an evening talk on “Good Governance for Prevention of Fraud and Corruption in Indian Corporate and Public Sector” at its premises where in Dr. D.C. Mohapatra, Retd. Professor, Utkal University of Law, Bhubaneswar was the chief speaker of the programme. While addressing a good gathering of members and students of the Chapter, Prof. Mohapatra talked about ethics, morality, good governance and how decisions can be made and implemented in a way to ensure the maintenance of a system free from corruption and mismanagement. While elaborating broadly the topic he said that ‘good governance’ refers to the management of government in such a way that it is free from abuse and corruption and there exists due regard for the various laws of the corporate sector. Good governance includes participation, transparency, and accountability, effectiveness and bad governance can contribute to the rise and persistence of corruption, he cited. He also very nicely defined the conduct and misconduct as per the Conduct Rules of the Corporate Houses. A large number of members and students of the Chapter were present in the meeting. The meeting was presided by CS A Acharya, Chairman of the Chapter.

Series of Career Awareness Programmes

Bhubaneswar Chapter organised a series of 19-career awareness programme in the month of September & December, 2014 in Balasore, Bargarh, Bhadrak & Keonjhar district of Odisha, the details of which are as under:

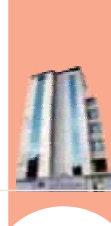
Sl No	Date of the Programme	Name of the Colleges
1	09/09/2014	Balikhhand (Jr) College, Balikhhand, Balasore
2	09/09/2014	Balikhhand Degree College, Balasore
3	10/09/2014	Simulia College, Markona, Balasore
4	10/09/2014	U.N. College, Soro, Balasore
5	05/12/2014	Anchalika College, Dist. Bargarh
6	06/12/2014	Bhukta College, Dist. Bargarh
7	08/12/2014	Gandhi Memorial College, Dist. Bargarh
8	09/12/2014	Lakhmora College, Dist. Bargarh
9	10/12/2014	Larambha College, Dist. Bargarh
10	16/12/2014	Kamgaon College, Dist. Bargarh
11	16/12/2014	Salandi Mohavidyalaya, Uttar Bahini, Bhadrak
12	16/12/2014	Salandi Degree Mahavidyalaya
13	17/12/2014	Remunda College, Dist. Bargarh
14	18/12/2014	Pallishree College, Dist. Bargarh
15	18/12/2014	Anchalika Mahavidyalaya, Hatadihi, Keonjhar
16	18/12/2014	B.T. Women’s Degree College, Keonjhar
17	19/12/2014	Dahita College, Dist. Bargarh
18	22/12/2014	Anchal College, Dist. Bargarh
19	23/12/2014	Bant Anchalika College, Bant, Bhadrak

CS Amar Kumar Nayak and CS Susanta Kumar Pradhan, Both Practising Company Secretaries extensively travelled in their respective colleges wherein they addressed the students and faculties about the CS course and its career prospects, syllabus, examination pattern, placement & training facilities and other programmes for the students. Leaflets, posters were distributed amongst the students during the programmes. ICSI Teachers kits were presented to the HODs and Principals of the respective colleges. Bhubaneswar Chapter provided all the logistic and administrative support to the above programmes.

Meeting with Principals and HODs

Bhubaneswar Chapter organised 11 interactive sessions with the Principals, HOD’s of Arts, Science & Commerce. The details of such interaction are given below:-

Sl No	Date of the Programme	Name of the College/ Institutions	Faculty/ HoDs attended
1	09/09/2014	Balikhhand (Jr) College, Balikhhand, Balasore	4
2	09/09/2014	Balikhhand Degree College, Balasore	6
3	10/09/2014	U.N. College, Soro, Balasore	3



4	08/12/2014	Gandhi Memorial College, Dist. Bargarh	7
5	16/12/2014	Salandi Mohavidyalaya, Uttar Bahini, Bhadrak	5
6	17/12/2014	Remunda College, Dist. Bargarh	5
7	19/12/2014	Dahita College, Dist. Bargarh	8
8	22/12/2014	Anchal College, Dist. Bargarh	10
9	23/12/2014	Bant Anchalika College, Bant, Bhadrak	9

During the interactive session, representatives of the ICSI, Bhubaneswar Chapter apprised them about the opportunities available after passing CS course and various activities of the Institute and its course contents and other programmes. The faculties of various disciplines, HOD of arts, science and commerce departments and principals of the institutions participated in these programmes. CS Amar Nayak & CS Susanta Pradhan, both PCS members arranged these meetings and presented CS brochures and kits to the faculties. Bhubaneswar Chapter provided administrative support to these programmes.

Celebration of “Udai Divas”

On 1/1/2015, Bhubaneswar Chapter joined the Institute in celebrating “Udai Divas” in presence of members, students and the employees of the Chapter. During the daylong activities, the Chapter Office was well decorated with lights, posters, banners. Members and students of the Chapter were apprised about the programme during the day’s celebration. In the evening hours, the Chapter arranged a members meet on “Make in India” and a study circle meeting on “Industrial Growth & Role of Company Secretaries”. During the programme, various activities of the Institute and the Chapter were apprised so that each member/student can contribute a lot for the development of the profession.

NORTH EASTERN (GUWAHATI) CHAPTER Republic Day Celebration

On 26.01.2015 the Chapter celebrated republic day at its premises. The Indian Flag was hoisted at the Chapter premises. The Chapter was decorated with flowers, balloons, ribbons & colors. Arrangements were also made for Members & Students to watch live the telecast of the Republic Day Celebration by the Govt. of India at New Delhi. The managing committee members and past chairmen of the Chapter were present on the occasion. A large number of Members & Students from Guwahati also participated in the programme.

NORTHERN INDIA REGIONAL COUNCIL

One Day Seminar

NIRC-ICSI organized One Day Seminar on “E-Business: Prospects & Challenges for Company Secretaries” on 27.12.2014. CS R Sridharan, the then President, ICSI, Adv. Pavan Duggal Advocate, Supreme Court of India, CS Vinod Jain, FCS & FCA & CS Pavan Kumar Vijay, Past President, the ICSI, Managing Director, Corporate Professionals Capital Pvt. Ltd. were the speakers for the Seminar. Speakers shared their rich knowledge on the topic. A large gathering was present for the seminar and participants were able to update their knowledge from the sessions conducted in the seminar.

4th Convocation of Northern Region

NIRC-ICSI organized its 4th Convocation for members of Northern Region on 5.1.2015. Satish Kumar Agarwal, CMD, Kamdhenu Ispat Limited was Chief Guest for the Convocation. CS R Sridharan, then President, the ICSI, CS Shyam Agrawal & CS Sutanu Sinha were also present.

Regional PCS Conference – Host Jaipur Chapter

NIRC-ICSI organized Regional PCS Conference on the theme “Road Ahead” on 10.01.2015 at Jaipur. Janga Srinivas Rao, IPS, Commissioner of Police, Jaipur, CS P K Mittal, CS S K Jain, CS T R Ramamurthy, CS Jitesh Gupta were the speakers for the Conference. CS R Sridharan, then President, the ICSI, CS Shyam Agrawal & CS Girish Goyal were also present.

Saraswati Moorti Sthapana Ceremony at NIRO

NIRC-ICSI organized Saraswati Moorti Sthapana Ceremony at NIRO on 12.01.2015. CS R Sridharan, then President, the ICSI, CS Vikas Khare, then Vice President, the ICSI, CS Shyam Agrawal, CS Ranjeet Pandey and CS Sutanu Sinha were present during the ceremony.

Swachh Bharat Mission – ICSI Cleanliness Drive

NIRC-ICSI organized Swachh Bharat Mission – ICSI Cleanliness drive on 12.01.2015. CS Shyam Agrawal, other members & staff were also present. On this occasion NIRC also organized students’ programmes like essay writing, Debate, Drawing & Slogan Writing Competitions, etc.

Inauguration of Bikaner Chapter of NIRC-ICSI

Bikaner Chapter of NIRC-ICSI was inaugurated on 13.01.2015.



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Gopal Krishan Joshi, MLA, Bikaner (West), CS R Sridharan, the then President, the ICSI and CS Shyam Agrawal were present on the occasion.

UP State Conference – Host Lucknow Chapter

NIRC-ICSI organized UP State Conference on the theme “Convergence of ‘Make in India’ mission through small & medium enterprises – opportunities and challenges” on 14.01.2015 at Lucknow. Narender Kumar, Past President, Reliance Industries Ltd, Barabanki Complex, was the Chief Guest. CS Rupendra Kumar Porwal, Rajesh Kumar Verma, Deputy Director(IMT) Kanpur and Anil Kumar Tripathi, Joint Director (IMT) Kanpur were the speakers for the Conference.

One Day Seminar

NIRC-ICSI organized a One Day Seminar on “Contentious Issues under Companies Act, 2013” on 17.01.2015. CS R Sridharan, then President, the ICSI, CS Ilam C Kamboj, A.V.P. - Legal & Company Secretary, Hero MotoCorp Ltd, CA Ravindra Vadalli, Managing Director, Rhapsody Accounting & Advisory Services Pvt. Ltd. and Vijay Batra, Internationally Renowned Inspirational and Motivational Speaker were the speakers for the Seminar who shared their rich knowledge on the topic. A large gathering was present for the seminar and participants were able to update their knowledge from the sessions conducted in the seminar.

GHAZIABAD CHAPTER

One Day Seminar

On 31.01.2015 Ghaziabad Chapter of NIRC of the ICSI conducted one day Seminar/Professional Development Programme (PDP) on “Management Audit, Internal Audit, Forensic Audit – Role of Company Secretary”. J K Teotia, graced the session with his presence as Chief Guest and Speaker. CA Piyush Garg addressed the 2nd Technical session on “Service Tax-Point of Taxation”. He gave in-depth knowledge on Service Tax. The session was well attended by students and members. The Seminar concluded after the valedictory session.

Career Awareness Programme

On 19.01.2015, Ghaziabad Chapter of NIRC of the ICSI organized a Career Awareness Programme on “Role of Company Secretary” at DLF Public School, Ghaziabad. CS Mukul Tyagi spoke on issues that help students to be a successful professional. He stressed that students need to be self-disciplined, consider knowledge as an investment, instill hard work as a habit, perseverance, disciplined attire and importantly right attitude in the right direction.

He briefly informed about various initiatives taken by the Institute for its students and informed the recent changes in emerging Role of Company Secretary in Corporate World.

The programme was followed by an interactive Q&A session where the students asked about the prospects of the profession in employment and also in practice, avenues available under the new Companies Act, 2013, etc.

JAIPUR CHAPTER

Udai Divas Celebrations

The Jaipur Chapter of NIRC of the ICSI celebrated “Udai Divas” on 01.01.2015 at the Chapter premises. On the occasion of “Udai Divas” various programmes were organized for members & students including Slogan Completion, Poster Competition, Painting Competition and activities like planting of tree saplings, etc. Apart from the above a motivation talk was also organized for members and students.

Regional PCS Conference

The Jaipur Chapter of NIRC of the ICSI hosted the Regional PCS Conference organized by NIRC of the ICSI on “PCS-Road Ahead” on 10-01-2015 at Jaipur. R Sridharan, then President, ICSI was the Chief Guest of the programme and Shyam Agrawal, then Chairman NIRC was the guest of honor for the programme. R Sridharan in his address emphasized on the elevated role of Company Secretary in current scenario. He said that from a glorified Clerk to Record Keeper to Company Secretary to Compliance Officer to Governance Professional, the profession of Company Secretary has evolved with time and now it is the time to go for specialization in a particular area such as Service tax, Corporate Governance, Insurance etc. He further added that Company Secretaries are not only KMP but they should focus for AMP (as may be prescribed), in around 400 places in Companies Act, 2013 and Companies Rules, 2014, the reference of AMP has been given. Therefore now it is more challenging for CS to not only refers the Act & Rules wherever required but also its interpretation in consonance with spirit of the Act which should be made with harmony. He also cautioned the members & students to update their knowledge with the latest developments else they would be outdated.

Press Meet

The Jaipur Chapter of NIRC of the ICSI also organized a Press Meet during the visit of R Sridharan, on 10-01-2015 at Jaipur. Reporter from the leading daily newspapers, TV Channels attended the press meet.

R Sridharan in his interaction with reporters, outlined the various initiatives of ICSI which included online examination system, OMR based examination for selective subjects of Executive Programme, open book examination in professional programme, introduction of computer based examination for CS foundation programme. He also mentioned that the study materials of ICSI have been revised in accordance with the Companies Act, 2013 and revised modules have been updated on Institute’s website for easy access and for the benefit of CS fraternity at large. He also apprised the gathering about the CS course which included stages for completion of CS



Course, Fee details, time duration, training requirements, etc. He further highlighted requirement of Company Secretary and key managerial person and that there are enormous opportunities in employment as well as in practice for Company Secretaries under the New Companies Act. The media people raised many queries which were aptly replied by the President of the Institute.

Swachh Bharat Mission - ICSI Cleanliness Drive

The Jaipur Chapter of NIRC of the ICSI organized Swachh Bharat Mission - ICSI Cleanliness Drive on 12.01.2015. A large number of Members and Students participated in cleanliness drive and cleaned the road and surroundings of the Chapter premises.

LUCKNOW CHAPTER Swachh Bharat Mission - ICSI Cleanliness Drive

Lucknow Chapter of NIRC of the ICSI organised on 12.01.2015 Swachh Bharat Mission - ICSI Cleanliness Drive at the Gomti Nagar railway station, the places near to railway station and at the Chapter premises. On the occasion there were about 20 members, students and staff members of ICSI who participated in the Swachh Bharat mission. The programme began with a foot march from Lucknow Chapter to Gomti Nagar Railway Station, Lucknow with swachh bharat abhiyan, slogans. Caps were distributed and banners and standees were placed. Thereafter with the permission of Arun Sen Gupta (Station Superintendent) and senior members of Lucknow Chapter, cleanliness drive was initiated on the station platform along with adjacent places. The participants took part with great enthusiasm in the cleanliness drive which was appreciated by Station Superintendent, railway staff, passengers, shop keepers and other people. At the end awareness about the Prime Minister's "Swachh Bharat Abhiyan" and ICSI initiative were spread among passengers, shop keepers and other people.

➤ SOUTHERN INDIA REGIONAL COUNCIL

Convocation 2014 – Southern Region

On 1.12.2014, the Institute organised ICSI Convocation 2014 – Southern Region at Chennai. CS R. Sridharan, then President, ICSI was the Chief Guest and he awarded the Associate Membership of the Institute to newly qualified members at the ICSI Convocation – Southern Region 2014, held at D.G.Vaishnav College, Chennai. Earlier, CS Sutanu Sinha, Chief Executive and Officiating Secretary, the ICSI declared the Convocation open. CS C Sudhir Babu, then Council Member, the ICSI in his welcome address congratulated the young Professionals and said that clearly defined goals, positive

attitude and faith in one's capabilities, supported by an untiring commitment and toil could create wonders. He said that as per the Companies Act, 2013, CS as Key Managerial Personnel is placed as No.2 in a Company and therefore the professionals should have complete knowledge of all commercial laws in addition to being an expert in Company Law. He said that whenever corporates look at the Company Secretaries, they should be looked at by them as an expert in all laws facilitating their Corporate's growth.

CS R. Sridharan, then President, the ICSI, Chief Guest at the Convocation in his address congratulated the new members and said that, each new member should try to become a true professional in a highly competitive world of Corporates where he/she should meet their objective with an eye for excellence. He said that Companies Act, 2013 has strengthened the Role of CS in Corporates and with position comes a lot of responsibility and accountability as now professionals are subject to legal action under various provisions in case of non-compliance. He mentioned that Companies Act, 2013 now recognises CS as Key Managerial Personnel and Secretarial Auditors, and for the first time Functions of a Company Secretary have been defined under the new law.

He said that the need to remain credible is the most critical challenge for CS today as their words hold out for them, their employers, clients etc. Being credible is nothing else but doing what he says and saying what he does. The ability to distinguish between right and wrong has always been the most challenging assignment in life. He motivated the New Members and concluded his address by saying that All Dreams come true if there is courage to pursue them and Professional Excellence is what should be the driving force of the young CS professionals.

CS Sutanu Sinha in his concluding remarks advised the new members that they should take care of performance and reiterated the fact that, "the path to success is through hard work and perseverance".

Video Discussion Programme

SIRC of the ICSI in association with Madras Management Association organized a Video Discussion Programme on Lessons on Courage and Self-Confidence from the Movie 'Miracle Man' on 5.12.2014 at ICSI – SIRC House. S.N. Padmaja, Founder, Victory Insights, Chennai was the facilitator for the programme.

Padmaja explained how the video discussion would enable the members to build their courage and self-confidence to success. Then an edited version of the movie 'Miracle Man' was screened. Thereafter the participants of the programme discussed and interacted with the facilitator on the main character of the film to bring forth the struggles and efforts taken for achieving his goal.

Study Circle Meeting

On 6.12.2014, ICSI – SIRC organized a Study Circle Meeting on 'Maintain Good Health of a Professional without Strain: Practical Issues & Solutions' at ICSI-SIRC House, Chennai. CS R.S.



News From the Institute & Regions

Shanmugam, Company Secretary, Sambandam Spinning Mills Ltd, Salem was the speaker. CS Shanmugam in his address listed out the dos & don'ts and shared his personnel experience to maintain Good Health of a Professional without Strain.

Half Day Seminar

SIRC of the ICSI organized a Half Day Seminar on 'New Regulations and Amendments in Securities Laws' on 7.12.2014 at "ICSI-SIRC House", Chennai. CS Rajendran S, Corp Law Consultant, Chennai and CS Pradeep R, AGM (SR), SEBI, Chennai were the speakers.

First speaker CS Rajendran in his presentation elaborated the origin of corporate governance in India as well as Global and also highlighted the Amendment to Clause 49 of Listing Agreement on Corporate Governance.

Second speaker CS Pradeep spoke on origin of Collective Investment Schemes (CSI), what is CSI and gave an overview of Collective Investment Schemes and also highlighted the new SEBI (Share Based Employee Benefits) Regulations, 2014.

There was a lively interaction by the members present.

Professional Development Programme

ICSI – SIRC jointly with ICSI - Thrissur Chapter organized a Professional Development Programme on "An Overview of Intellectual Property Rights in Corporate Perspective & Professional Opportunities" on 15.12.2014 at Thrissur. CS R. Sridharan, then President, The ICSI was the Chief Guest. S. Venugopalan Nair, Senior IPR Attorney and Former Examiner of Trade Marks was the speaker who in his address gave an overview of Intellectual Property Rights in Corporate Perspective and highlighted the professional opportunities in Intellectual Property Rights.

Investor Awareness Programmes

On 16.12.2014, SIRC of the ICSI conducted Investor Awareness Programmes at the following Colleges: Kanchi Shri Krishna College of Arts & Science, Kilambi, Kanchipuram and Thirumalai Engineering College, Kilambi, Kanchipuram. Ravi G, Vice President & Head – Sales, Ambalal Shares & Stocks Pvt. Ltd., Vellore was the speaker for the above programmes and explained various steps to be taken by the investors before investing in a Company. There was a good gathering of persons who attended these programmes.

Meet the Regulator Programme

On 20.12.2014, the ICSI-SIRC organized a Meet the Regulator Programme with S. Ramachandran, Regional Joint Director of Industries and Commerce, Govt. of Tamil Nadu, Chennai on "MSME Registration and Compliances". S. Ramachandran, Regional Joint Director of Industries and Commerce, Govt. of Tamil Nadu in his address gave an overview of Department of Industries and Commerce. He then highlighted the types of schemes available to Micro, Small and Medium Enterprises in the Tamil Nadu and also explained in detail the various schemes viz. eligibility criteria,

subsidy, promoter's contribution, etc.

There was a lively interaction by members present.

Workshop on Export – Import Procedures & Documentation

SIRC of the ICSI jointly with Federation of Indian Export Organisations (FIEO) organized a Workshop on Export – Import: Procedures & Documentation on 21.12.2014 at ICSI-SIRC House, Chennai. Prof. K. Raveendra Nath, Trainer in the field of International Trade was the speaker who started his session with the introductory note on the Fundamental Concepts of Export & Import business and other organisations involved in framing legislation. He then highlighted the current Foreign Trade Policy ranging from Chapter 1B & 3 of various promotion schemes. He also explained in detail the account on incoterms followed by Foreign Trade procedures and documentation.

Post lunch session, he covered cost reduction through shipping, logistics and other multi-modal transportation with a view to optimizing the logistics cost, etc.

It was a very interactive session, participants expressed that they benefited immensely from the programme and got lot of insight on availing exemption benefits from export and learnt the intricacies on export documentation and procedures.

National Consumer Rights Day - Special Programme

On 24.12.2014, SIRC of the ICSI observed the "National Consumer Rights Day", since the Consumer Protection Act, 1986 was enacted on this day by organizing a Special Programme on "Understanding of Consumer Protection Act and Professional Opportunities". V. Shankar, Advocate, Chennai was the speaker. Shankar in his address explained in detail the ceiling limits of filing case before District, State & National Consumer Courts. He also highlighted the changes/amendments proposed in the next session of the Parliament. He also dealt on tenability, monetary aspects on filing cases, qualifications and representative of forum level (District, State & National), possibility of filing complaint by post and time period taken for a case/complaint, etc. There was lively interaction by the members present.

Half Day Seminar

SIRC of the ICSI organised a Half Day Seminar on "Contributions from Abroad: Applicable Laws & Compliances - Role and Opportunities for Professionals" on 28.12.2014 at ICSI-SIRC House, Chennai. CA Gopala Krishna Raju, (Council Member, SIRC of the ICAI) Partner - Taxation & Assurance, K.Gopal Rao & Co. Chartered Accountants, Chennai was the Speaker who started his presentation with background of Foreign Contribution Regulation Act, 2010 (FCRA), eligible entities under FCRA and organizational chart of Ministry of Home Affairs. He then highlighted the significant changes in the FCRA, 2010 and what are the forms in Foreign Contributions



(Regulations) Rules, 2011 [FCRR]. He also explained in detail the procedural aspects of Foreign Contribution Regulation Act, 2010 and Foreign Contributions (Regulations) Rules 2011. CA Gopala Krishna Raju dealt with Check list and penalty for delay in filing of FC-6 and role of professionals.

Joint Two Day Conference

SIRC of the ICSI jointly with ICSI – Kochi Chapter organized a Two Day Conference on “Incubating New Horizon: Achieving Excellent through Constant Reinvention” on 26 and 27.12.2014 at Kochi.

Day – 1

The Conference was inaugurated by CS R. Sridharan, the then President of the institute.

The First Session was handled by guest speaker CS Prashant Mohan, Practising Chartered Accountant, Kochi on “Impact of Proposed Amendments to the Companies Act, 2013 and Foreign Direct Investment v. Companies Act 2013.” He highlighted various amendments/updates on Companies Act, 2013 and revised FDI Policies with changes to the New Companies Act 2013. He also explained how the new Act had its impact on different sectors of economy.

Deepak Vaid and Venkatesh Vishwanath, Surana & Surana, Chennai were the speakers for Second Technical Session on “IPR Laws - Latest Developments”. Various updation on IPR Laws process and different stages of registering for IPR, Technical sides on the IPR process etc. were wonderfully explained by the Speakers.

Third Technical Session was on the topic “Recent Changes in PF, ESI, Factories Act etc.” Adv. C B Mukundhan, Thrissur was the speaker. He highlighted the all new changes relating to PF, ESI, Factories Act and case laws in references and all were discussed excellently in the session.

Day – 2

Fourth Technical Session was handled by CS K. Rajiv, Practising Company Secretary, Kochi on the topic “Updates on Foreign Exchange Laws”. He explained in detail the restrictions Limit, new regulations and policies imposed, new rules of Foreign Exchange Laws.

The Fifth and Sixth Technical Sessions was addressed by CS R Prakash, Company Secretary, H C Kothari Group, Chennai on “Appointment & Remuneration of Managerial Personnel, Related Party Transactions and Revised Clause 49 of the Listing Agreement”. He spoke on various sectors of Related Party Transactions, reliance on disclosure norms, one of such section -188 relating to 'Related Party transaction' which combines the provisions of Sections - 297 and 314 along with some more provisions, and various disclosures norms. He then touched upon Revised Clause 49 of the Listing Agreement, various disclosures, SEBI circulars. He also spoke on Appointment and remuneration of Managerial Personnel. Various slab rates of remuneration, and procedures for appointing Directors,

etc.

Seventh Technical Session was handled by CA Arun K Vasu, Practising Chartered Accountant, Kochi on the topic “Recent Amendments in Service Tax”. He listed out various amendments on Service Tax, Effective Dates of Applicability, changes in valuation of Export and Import of Service, Amendment in Rule 12AAA of Cenvat Credit Rules, etc.

BANGALORE CHAPTER

Joint Seminar on Funding Options For Fuelling SME Growth – Opportunities & Way Forward

The Bangalore Chapter of SIRC of the ICSI in association with BCIC organized a Seminar on “Funding options for fuelling SME growth – opportunities & way forward” on 06.12. 2014 at Bangalore. The programme witnessed participants from various SMEs, Corporates apart from Members of ICSI, BCIC and FKCCI.

The Inaugural Session was presided over by the following dignitaries: Chief Guest Rajni Mishra, Chief General Manager, SBI,LHO; Charan Singh, RBI Chair Professor, IIMB; K.Satyanandan, General Manager & Regional Head, SIDBI;S.C.Sharada, then Chairman, Bangalore Chapter of ICSI; N.V.Nagaraja Rao, Partner, Dawn Consulting.

The programme was inaugurated by the Chief Guest. Guest of Honor Charan Singh in his address to the gathering stated that India's MSME sector has recorded more than 10 per cent growth in recent years despite the economic slowdown, and said that MSMEs contribute nearly eight per cent to the national GDP, employing over eight crore people in nearly four crore enterprises and accounting for 45 per cent of manufactured output and 40 per cent of exports from India. He then emphasized that government has to consider dedicating specialized financial schemes for addressing difficulties in assessing and providing credit for the MSMEs, and also providing line of credit to firms which are under financial stress and expressed that this kind of initiatives will create maximum employment and growth with minimum difficulty to the entrepreneur and will help in creating more opportunities for youth in our country.

Chief Guest Rajni Mishra, in her address acknowledged the initiative taken by Bangalore chapter of ICSI jointly with BCIC, and informed that State Bank of India has also been playing a vital role in the development of small scale industries since 1956 & informed that the Bank has developed a wide array of products to meet the changing needs of the industry for providing end-to-end solutions for the financial needs of the industry. She then apprised that to serve the specific credit needs of small and medium enterprises (SMEs) SBI has established the Small & Medium Enterprise business unit in 2004. SBI has benefited various SMEs with different schemes, but also stated that the SMEs should maintain healthy balance sheet for easy credit approvals from banks.



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Special invitee K.Satyanandan during his address also congratulated Bangalore Chapter of ICSI & BCIC for organizing the seminar for the benefit of SMEs.

FIRST TECHNICAL SESSION: In the first technical session Ajay Thakur, Head BSE SME, Mumbai in his presentation on “Raising capital on SME stock exchange” informed the gathering that SMEs provide employment to about 7.5 cr. people through 4 cr. Enterprises. He also informed that micro, Small and Medium Enterprises (MSME) sector forms the largest generator of employment in the Indian economy. He explained that SME exchange Provide the SMEs with equity financing opportunities for business growth resulting in lower financing cost, healthy balance sheet, increase in investors base and enhancement in the company’s visibility.

Explaining on SME – SEBI guidelines Ajay Thakur, informed that issuer with post issue face value capital up to Rs.10 crores shall be covered under the SME Platform, Issuer with post issue face value capital between Rs.10 – 25 crores may get listed at SME Platform and Issuer with post issue face value capital above Rs.25 crores has to necessarily be listed at main board of the Exchanges. Explaining the eligibility criteria it was informed that SMEs should have Net Tangible assets of at least Rs. 1 crore & Net worth (excluding revaluation reserves) of at least Rs. 1 crore as per the latest audited financial results and distributable profit track record for at least 2years. Further the SMEs supposed to have a Certificate from the applicant company/promoting companies stating the “The Company has not been referred to the Board for Industrial and Financial Reconstruction (BIFR), and there is no winding up petition against the company that has been accepted by a court”.

The second part of the 1st technical session was taken by Vidya Krishnan, Sr.Vice President & Head SBI Capital Markets Ltd, wherein she explained that India has more than 48 million SMEs which contribute more than 45% of industrial output. She then explained the participants on the advantages of listing which provides an opportunity to the corporates and entrepreneurs to raise capital to fund new projects, undertake expansions & diversifications and also helps in providing liquidity to shareholders of the entities. She further explained on various schemes available with SBI capital markets limited, before addressing queries along with Ajay Thakur, from the participants.

SECOND TECHNICAL SESSION: The Second technical session was taken by S.N.Rangaprasad, Director, MSME Development Institute, who informed that MSME-Development Institute, Bangalore is a field office under MSMEDO-Micro, Small & Medium Enterprises Development Organization, the Ministry of Micro, Small & Medium Enterprises, Govt. of India.

Rangaprasad giving an overview of MSMEs in India stated that the enterprises have been classified broadly into two categories: (i) Manufacturing; and (ii) Those engaged in providing/rendering of services. Both categories of enterprises have been further classified into micro, small and medium enterprises based on their investment

in plant and machinery (for manufacturing enterprises) or on equipment (in case of enterprises providing or rendering services).

He also explained the participants about their policy frame work and their prime focus areas such as:- Micro and Small Enterprises Cluster Development Programme is implemented for holistic development of clusters of MSEs. He explained that the programme envisages measures for capacity building, skill development, technology upgradation of the enterprises, improved credit delivery, marketing support, setting up of common facility centres, etc., Which is based on diagnostic studies carried out in consultation with cluster units and their collectives and management of cluster-wide facilities by the cluster collectives.

Credit Linked Capital Subsidy Scheme: The Credit Linked Capital Subsidy Scheme (CLCSS) aims at facilitating technology upgradation by providing 15% upfront capital subsidy to manufacturing MSEs.

THIRD TECHNICAL SESSION: The Third Technical Session was addressed by CS A.Sekar, Practicing Company Secretary from Mumbai who made his presentation on “Transition Management & Due Diligence” wherein he stated that Due Diligence and Transition Management go hand in hand. He emphasised that Due Diligence is a comprehensive exercise involving an in-depth study and examination of all relevant aspects of the functioning whether past, present or predictable future business of the entity. The speaker then explained the organizations with the objective of Due Diligence will review the organization structure as existing vis a vis the perceptions and expectations of management and employees at all levels. It helps in Allocation of functions & duties, Understanding the flow of authority and responsibility/accountability and reporting vis a vis the work flow, Identification of deviations based on such reporting and the promptness in taking corrective actions, HR policies and Procedures, etc.

A.Sekar then explained that “transition management” is a change process in moving from the present state to the desired state. For identifying the desired state the organizations must review and analyze the present state, opportunities and challenges for achieving success.

PANEL DISCUSSION: Panel Discussion on Raising Debt Capital – Key Provisions & practical aspects of Companies Act, 2013, Overview of SIDBI Schemes, SME focused banking facilities was presided over by K.Sathianandan, General Manager & Regional Head, SIDBI, G.Madhusudhanreddy, DGM, SBI, SME, LHO, and CS G.V.Srinivasamurthy, Past Chairman, Bangalore Chapter of ICSI who moderated the Panel Discussion.

The Session started with presentation by K.Sathianandan who explained the participants on the various schemes available with SIDBI for SMEs such as:

Direct Credit Scheme: Sathianandan informed that the scheme is for New or Existing MSMEs who are looking to expand and diversify



their business enterprises. The Scheme offers term Loan and other forms of assistance such as bill discounting, inland letter of credit, foreign letter of credit, bank guarantee, etc.

Start Up Assistance Scheme: For providing structured financing for startups in sectors like technology, biotech, asset light service sector businesses, web/mobile based businesses, clean technologies, social ventures, etc. and also explained the eligibility and the quantum of assistance provided for in the scheme. The various other schemes from SIDBI for SMEs before were also explained in detail.

G.Madhusudhan Reddy explained the participants on the various schemes available with SBI such as Asset Backed loan, SBI Fleet finance, SBI term Loan, etc. and their eligibility criteria for providing assistance for SMEs. The speakers then addressed the queries raised by the participants.

Special General Meeting Followed by Study Circle Meeting on Leadership and Management Talk on Reinventing the Leader in You

The Bangalore Chapter of SIRC of the ICSI organised the Special General Meeting to announce the Chapter Election results which was followed by a Talk on “Reinventing the leader in you” by Dr. Rajdeep Manwani, Academician, Trainer and Quizmaster.

CS S. C Sharada, then Chairman, Bangalore Chapter of the ICSI delivered the welcome address and announce the List of Members Elected to the Managing Committee of Bangalore Chapter of the ICSI for a period of 4 years effective from January 19th, 2015.

Further Rajdeep Manawani delivered his address on “Reinventing the leader in you”. The programme was very well attended by 40 delegates.

COIMBATORE CHAPTER Joint Programme on Limited Liability Partnership – An Overview

On 29.12.2014, a Joint Programme on “Limited Liability Partnership – An Overview”, organising by O/o RoC, Tamilnadu, Coimbatore, ICAI [CMA] - Coimbatore Chapter & ICSI-Coimbatore Chapter was organised at Coimbatore.

N.Ramanathan, Registrar of Companies, Tamilnadu, Coimbatore, Ministry of Corporate Affairs was the Chief Guest. V. E. Jose Kutty, Deputy Registrar of Companies, Tamilnadu, Coimbatore, Ministry of Corporate Affairs also addressed the gathering.

CS Dr.K.S.Ravichandran, Partner, KSR & Co Company Secretaries LLP was the Speaker. The session was very informative and appreciated by the gathering at large. The queries raised by the participants were well addressed by the Speaker. The programme was well attended by 34 CS members.

Udai Divas

To commemorate the ‘Udai Divas’, the Coimbatore Chapter of SIRC of the ICSI organized the followings programmes on 1.1.2015. Special Programme on Self Motivation [Address by Leo Arun Kumar, Training Lead [HR], PRICOL Group] and Group Discussion on “Are Leaders born or made”. The programme was very useful for the participants including students. The students present were motivated and very much impressed by the programme and thanked the speaker and the Institute.

Foundation Stone Laying Ceremony of the Chapter Building

The Foundation stone of “ICSI Building- Coimbatore” was laid at the hands of CS R. Sridharan, then President, The ICSI, on 7.01.2015 at S.F No. 542/1, Kalapatti Village, Civil Aerodrome Post, Coimbatore.

CS Vikas Y Khare, then Vice – President, The ICSI, CS Sudhir Babu C., then Council Member, The ICSI & Chairman, Infrastructure Committee of Coimbatore Chapter of ICSI, CS Sutanu Sinha, Chief Executive and Officiating Secretary, The ICSI, CS Baiju Ramachandran, then Chairman, SIRC of ICSI and CS R Dhanasekaran then Chairman of Coimbatore Chapter of SIRC of the ICSI, were also present on the occasion.

Swachh Bharat Mission

On the occasion of Birth Anniversary of Swami Vivekananda the Coimbatore Chapter of the ICSI actively participated in the endeavour of Swachh Bharath Mission and had undertaken the responsibility of Cleanliness Drive with the following programmes on 12.01.2015 at Coimbatore. Special Talk for ICSI students on “Visions of Swami Vivekananda” & “Importance of Swachh Bharath Mission to realize Gandhiji’s dream”. Cleaning drive jointly with Suburban Matriculation School, Coimbatore at school premises and Chapter premises. Plantation of Saplings at School Premises. Special Talk for school students on “Importance of Swachh Bharath Mission” and “Pledge Taking Ceremony”.

CS R Dhanasekaran, then Chairman, Coimbatore Chapter welcomed the gatherings and gave an appeal to students to be a part of cleanliness drive for supporting Swachh Bharath Mission, a massive movement that seeks to create a clean India. He remarked the speech of Hon’ble Prime Minister, “Cleanliness was very close to Mahatma Gandhi’s heart and a clean India is the best tribute we can pay to Babu when we celebrate his 150th birth anniversary in 2019”.

CS Ramasubramania Raja, Past Chairman, (newly elected Vice-Chairman, Coimbatore Chapter of ICSI), explained the story of Swami Vivekananda and his vision and also motivated students with Vivekananda’s famous quotes.

As part of Swachh Bharath Mission, Coimbatore Chapter of ICSI organised a foot march from Chapter to Suburban Matriculation School. A mega cleanliness drive initiated by CS members, students, ICSI staff members, school students and authorities at school



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premises. All participants took part with great enthusiasm in the cleanliness drive.

After the cleanliness drive CS members, students, ICSI staff members, school students and school authorities planted six saplings at school premises and spread the message to save the environment by planting trees, making India green and thereby reducing the effects of global warming.

A special talk on importance of Swachh Bharath Mission was organised for school students and CS students followed by Pledge Taking Ceremony administered by CS Ramasubramania Raja, Past Chairman, Coimbatore Chapter of ICSI to make Swachh Bharath. While addressing the students, he said that Children can play a very important role in achieving a Swachh Bharath. He said that students can become ambassadors of cleanliness and motivate others to keep their homes, schools and surroundings clean.

The message about the Prime Minister "Swachh Bharat Abhiyan" and ICSI initiative were spread amongst CS members, students, school students and school authorities who attended the cleanliness drive.

KOCHI CHAPTER Joint Professional Development Programme on Service Tax Recent Issues

On 10.1.2015 Kochi Chapter of SIRC of the ICSI in association with the Institute of Cost Accountants of India, Cochin Chapter organized a PDP on Service Tax – Recent Issues at Kaloor, Kochi. The Speaker of the seminar was Adv. K. Vaitheeswaran, Advocate & Tax Consultant, Chennai. The speaker conveyed the relevance of recent changes in Service Tax. He also spoke on the salient provisions relating to matters where changes have been brought about in Service Tax in recent Budgets. He dealt with various topics namely, point of taxation, negative list, service tax on works contract services and various Supreme Court decisions on these topics. He also pointed out the importance of the upcoming GST and the possible changes it may bring about in the current scenario. The session ended with an open interaction between the speaker and the members.

Joint Professional Development Programme on Critical issues in Cenvat Credit Rules 2004

On 23.1.2015 the Chapter in association with Cochin Chapter of Institute of Cost Accountants of India organized a Professional Development Programme on Critical issues in Cenvat Credit Rules 2004 at Kaloor, Kochi. CA K. R. Ramankutty, Practising Chartered Accountant, earlier associated with Reliance Industries Ltd. led the session. The PDP served as a brief description of the

practical aspects in Cenvat. The eligibility part, time limit for taking credit, compliance aspect, importance of documents, precautions in accepting supplementary invoice, wrong credit recovery, demand the dept. weapon etc. were dealt with professionally by the Speaker. Senior professionals, members and students of the Institute participated actively in the programme.

Republic Day Celebrations

Kochi Chapter of ICSI in association with ICSI Students Forum (Kochi) celebrated Republic day on 26.01.2015 at the Chapter premises. CS S.P. Kamath, Chairman hoisted the National Flag. Both members and students cleaned the entire office building. It was well attended by the members and students and turned out to be a memorable celebration for all.

MADURAI CHAPTER UDAI - Diwas Celebrations

On 01.01.2015 ICSI-Madurai Chapter organised Uday Divas programme at Madurai. Welcome address was given by S.Paramasivan, then Chairman, Madurai Chapter of ICSI. T.S Venkataramana, Ex MLA from Tamil Nadu Assembly participated and presented the key-note address on that day. Also CA S.Thirunavukarasu handled a session on Capital Gains Taxation with specific reference to Real Estate Transactions. The programme was well attended by around 70 members including students.

Half Day Seminar On Companies Act 2013

On 07.01.2015 ICSI-Madurai Chapter organised a Half day seminar on Companies Act, 2013 with special reference to lending to corporates, which was inaugurated by CS R.Sridharan, then President, the ICSI. In his Presidential address CS R.Sridharan explained in detail various avenues that are thrown open in the new Companies Act, besides other opportunities available in other legislations. CS Sutanu Sinha, CEO of the ICSI-New Delhi elaborated in his special address about the systematic approach and efforts that are essential to complete the CS course in a short time. CS S.Srinivasan PCS from Chennai also handled a full-fledged session on salient features with particular reference to lending to Corporates which was arranged by ICSI-Madurai Chapter. The session was very useful for members who participated in the programme. The Programme was well attended by around 60 members including students.

Swachh Bharat Programme of the ICSI

On 12.01.2015 ICSI-Madurai Chapter arranged for and organised a Gathering as a part of the Swachh Bharat initiative of ICSI and Govt. of India. The clean initiative was inaugurated by the then Chairman of the Chapter CS S.Paramasivan. Nearly 40 members and students of the ICSI participated with all enthusiasm in the Swachh Bharat programme of the ICSI and made it a grand success.



MANGALORE CHAPTER Swachh Bharat Mission

On 12.1.2015 the Chapter conducted the cleanliness drive to make Swachh Bharat and Swachh ICSI on the birth anniversary of Swami Vivekananda by cleaning the surrounding areas of the Chapter. CS Ullas Kumar Melinamogaru, then Chairman of the Chapter along with Chapter Office In-charge Shankar Rao Badi and students of the ICSI participated in the programme. CS Narasimha Pai, the newly elected Chairman also graced the occasion. The cleanliness drive was carried out with great zeal and enthusiasm by the members and students imbuing and emitting the ardour towards the Swachh Bharat, a mass movement. A peripheral area around the Chapter was covered and sweeping mobs were picked by all, from the Chairman to the students of the ICSI and everyone contributed in making the drive a successful one. The Chapter expresses its privilege and honour to participate in Swachh ICSI and believes in the motto "Be the change you want to see in the world" as laid down by Father of the Nation, thus contributing towards the dream of a clean India.

SALEM CHAPTER Career Awareness Programmes

A Career Awareness programme was conducted by the Salem Chapter of SIRC of the ICSI for the students of B.Com (CA), BBA & M. Com (CA) at Dr. Umayal Ramanathan College for Women, Alagappa Puram, Sivagangai District on 16.12.2014. Around 315 students participated in the programme.

Again a Career Awareness programme was conducted by the Chapter for the students of MBA – Corporate Secretaryship at School of Management, Alagappa University, Karaikudi on the same day. Around 100 students participated.

In both the institutions CS Solaiyappan S, then Chapter Chairman explained about the Institute, Vision & Mission of the Institute and its functions. In addition, he briefly explained about the structure of the Company Secretaryship course, duration, employment opportunities and scope of the Company Secretaries in Practice.

Sundar Swamy S, Chapter In – Charge explained in both the institutions various online processes implemented by the Institute and the e-learning & e-library facilities available at the Institute's website, training structure of the course and also Library & Oral Coaching facilities at the Chapter. The queries raised were also clarified.

Investor Awareness Programme

The Salem Chapter of SIRC of the ICSI and National Stock Exchange of India Ltd. jointly organized an Investor Awareness Programme on 16.12.2014 at Dr. Umayal Ramanathan College

for Women, Alagappapuram, Karaikudi, Sivagangai District. Dr. A. Hemamalini, Principal, Dr. Umayal Ramanathan College for Women in her welcome address explained the purpose of the Investor Awareness Programme and the investment habits of Indians and the investment opportunities in capital market.

In his Presidential address Dr. V. Balachandran, Professor & Head, Department of Corporate Secretaryship, Alagappa University, Karaikudi explained various investment alternatives and opportunities available in the capital market, dematerialization, significant role being played by market intermediaries in primary and secondary market, the role of Ministry of Corporate Affairs in promoting investor education and protection through various agencies, the latest regulatory changes in capital market, etc.

Ashish Srivas, Assistant Manager, National Stock Exchange of India Ltd., Chennai explained the recent innovations in capital market particularly mobile trading, screen based trading and the need for financial planning required for investors of different age groups. More than 300 persons participated in the programme. Queries raised by the participants were clarified by the resource person.

Another Investor awareness programme was held by the Chapter in association with National Stock Exchange of India Ltd. and School of Management, Alagappa University, Karaikudi on 16.12.2014. In his welcome address Dr. V. Balachandran, Professor & Head, Department of Corporate Secretaryship, Alagappa University, Karaikudi explained the significance of Investor Awareness Programme, new financial instruments available in the capital market, various risks involved in the investments, initiatives of SEBI towards investors' protection and the role of Ministry of Corporate Affairs in promoting investor education & Protection.

Dr. S. Kaliyamoorthy, Convener, Vice-Chancellor Officiating Committee, Alagappa University, Karaikudi in his Presidential address explained the purpose of the Investor Awareness Programme, the changes happening in capital market and the various investment opportunities available in the capital market.

Ashish Srivas, Assistant Manager from National Stock Exchange of India Ltd., Chennai in his special address explained the objectives and role of NSE, the features of derivatives, stock market trading mechanism and SEBI's role in monitoring capital market.

About 100 persons including students and faculty members from MBA (Corporate Secretaryship) Department participated in the programme. The session was interactive and the queries raised were clarified by the resource person.

Signing of MOU

The Institute of Company Secretaries of India, New Delhi



News From the Institute & Regions

had signed MOU with Shri Sakthikailash Women's College, Ammapet, Salem. The Career Guidance programme and Signing of MoU was organized by the Salem Chapter of the ICSI and the Department of Commerce (CA) and PG and Research Department of Commerce of the College on 6.01.2015.

Again on the same day the Institute had signed an MoU with Vivekanandha College of Arts and Sciences for Women (Autonomous), Tiruchengode, Namakkal District. The Career Guidance programme and Signing of MoU was organized by the Salem Chapter of the ICSI and the Department of Commerce and Management of the College. The programme in the first event was presided over by Prof. Dr. M. Karunanithi, Chairman & Secretary, Vivekanandha Educational Institutions, Tiruchengode, Namakkal and in the second event by K. Kailasam, then Chairman and K. Senthilkumar, Correspondent of AVS and Shakthikailash Group of Institutions. CS Sutanu Sinha, Chief Executive & Officiating Secretary of the ICSI in his special address, in both the events highlighted the corporate planning, finance International trade and other allied areas in MNC/PSUs and also specified corporate governance, sustainability, Banking and enterprise Resource planning.

The programme started with signing of MOU and thereafter in both the events CS R. Sridharan, then President, the ICSI, New Delhi inspired the gathering with his energetic speech on the career opportunities in Company Secretaryship. In his address he specified that recent upheavals in the corporate world have shaken the confidence of shareholders. There is a greater demand for displaying corporate credibility and transparency by organizations in managing their internal affairs. There is also a need to retain the confidence of various stakeholders. Since, the top management is too busy managing the general working of an organization this new challenge can only be shouldered by some highly qualified and competent professionals where ultimately the role of Company Secretary is necessary. He also explained about the exciting career prospects coupled with innumerable challenging situations and also insisted the students that they would have a wide exposure spectrum of subjects such as law, accountancy, administration, secretarial practice and many others. This automatically qualifies them for a vast range of positions within a company from the very early days of their career.

The seminar was enlightened by the thought provoking speech of CS S. Solaiyappan, then Chairman, Salem Chapter in both the events insisted on promoting excellence in common areas of interest, imparting practical knowledge and skills required to operate in the area of education and also specified the development of the profession of Company Secretaries.

In the first event more than 550 students participated and clarified their doubts regarding the course structure and its career opportunities. This seminar would be a thought provoking for the students to choose their professional career. In the second event more than 700 students participated and clarified their doubts

regarding the course structure and its career opportunities. M. Chokkalingam, Administrative Officer, Vivekanandha Educational Institutions in his address stressed the students and faculties to make us of this MoU between two institutes and at the end of his speech, MoU was signed.

Meeting with the then President and the Chief Executive & Officiating Secretary of the ICSI

On 6.1.2015, Salem Chapter of the ICSI organised Members and Students Meet with CS R. Sridharan, then President and CS Sutanu Sinha, Chief Executive & Officiating Secretary of the ICSI at the Chapter premises.

CS Sutanu Sinha, Chief Executive & Officiating Secretary addressing the Members and Students appreciated the efforts taken by the Chapter in conducting various activities including the Seminars and Workshops for the betterment of the Students and also appreciated the role of the Members and Students in conducting several programmes. He also explained the opportunities available under the new Companies Act for the Company Secretaries and advised the Chapter to improve the strength of the Students.

CS R. Sridharan in his address explained the efforts taken by the Central Council Members and the Institute with the Ministry of Corporate Affairs to regain the deserved recognitions and reclaimed the rightful place for the Company Secretaries in respect of turbulences relating to the notifications including the appointment of Company Secretaries, Secretarial Audit, Pre – Certification of e – forms and especially amendment of Rule 8. He narrated various representations taken by the Institute with the Ministry to relook at the rules with regard to the appointment of KMP, Secretarial Audit for bigger companies, Certification of Annual Returns and to restore Pre – Certification of e – forms. He also stressed to create awareness among the students community about the CS Course and to see that more students join the CS Course and also use the opportunity with the Vivekanandha Educational Institutions and Shri Sakthikailash Women's College to mobilise the students to pursue the CS course and the MoU signed will help the Chapter to improve the students strength.

Swachh Bharat Mission

To mark the Birth Anniversary of Swami Vivekananda on 12.1.2015, the Salem Chapter of the ICSI observed the Swachh Bharat Mission. CS S. Solaiyappan, then Chairman and CS N. Santhanam, then Secretary of the Chapter apart from members and student members numbering 20 participated in the cleanliness drive at the surroundings of Salem Chapter Office premises at Alagapuram, Salem. The members and student members evinced interest in the cleanliness drive. The Banner was also displayed at the venue where cleanliness took place. This has created greater awareness in the surroundings and the neighbours also appreciated the efforts of the Chapter in the Swachh Bharat Mission of the Prime Minister of India.



VISAKHAPATNAM CHAPTER

Study Circle meeting on Accounting Standards

On 30.11.2014 a Study Circle Meeting on Accounting Standards was organized by Visakhapatnam Chapter of SIRC of the ICSI at the Chapter premises. FCA D Venkat Raj, PCA was the speaker. The Speaker explained Accounting Standards and updated in connection with the Companies Act, 2013. The session was lively, interactive and well received by the Members present and their doubts were also clarified.

Half day Seminar on Personality Development

A Half Day Seminar on "Personality Development" was organised by the Chapter on 20.12.2014 at its Premises. Dhananjay, Head of Marketing – IOCL Coastal Andhra was the speaker who in his address started with his IOCL Experience and combined with other profession and before to Personality Development take a movement ask yourself like who you are? How well do you know yourself? What are you good at? What are your Strengths, weaknesses, fears, desires? And personality is thoughts action, behavior and explained good personality and approach for good personality, goal setting, communication skills, including leadership qualities ended with food habits, yoga meditation, tuning of mind. The session was interactive and well received by the Members present and their doubts were clarified.

Special Programme - Udai Divas

On 1.1.2015 the Chapter organised a Special Programme "UDAI DIVAS" at its premises. Senior Member CS Y V Subbarao was the speaker. The speaker started with the growth of the profession in all its aspects like registration, examination, training, employment and also avenues of the profession in the Companies Act, 2013.

Study Circle Meeting on Change Management

On 1.1.2015 a Study Circle Meeting was organized by the Chapter Change Management. Senior Member CS Y V Subbarao was the speaker who explained How to adapt oneself to change and Change Management Strategy and also explained Change Management Process. The session was lively interactive and well received by the Members present.

Special Programme on "Swachh Bharat"

On 12.1.2015, the Chapter celebrated the day by participating in Swachh Bharat programme at its premises and surrounding areas. D V Subbarao, then Chairman Suman C, then Secretary, CS students and others participated in the programme.

WESTERN INDIA REGIONAL COUNCIL

BHAYANDER CHAPTER Republic Day Celebration

On 26.1.2015 the Chapter celebrated Republic Day in front of the Chapter office. Chief Guests on the occasion were CS Atul Mehta, president, the ICSI and CS Rishikesh Vyas, Chairman, WIRC of the ICSI. Around thirty-five Members & Students, 6 Managing Committee Members and 2 Staff of the Chapter attended the celebration.

CS Atul Mehta hosted the National Flag. CS Atul Mehta & CS Rishikesh Vyas spoke on ICSI's achievements and Future plan of the Institute. They also spoke as to how ICSI is playing a vital role in developing India through Corporate Governance.

Full Day Seminar on Selected Provisions of Companies Act, 2013

On 28.12.2014 a full day Seminar on the above topic was organised by the Bhayander Chapter of WIRC of the ICSI at Bhayander West. The day was also celebrated as the foundation day of the Chapter. The faculties of the programme were CA Ramesh Prabhu (Practicing CA), CS Surendra Kanstiya (Practicing CS) & CS Atul Mehta (Practicing CS). Around ninety delegates including members and students of the Chapter participated. The speakers and the topics discussed at various technical sessions were as under: Session 1: This session was delivered by CA Vimal Punmiya on Audit & Auditors: Roles, Obligations and responsibilities of Professionals. Session 2: This Session was addressed by CS Surendra Kanstiya on Related Party Transactions – Challenge in Compliance. Session 3 discussed the topic Secretarial Audit and Challenges.

At the end all the participants celebrated the "Foundation Day" of the Bhayander Chapter.

PUNE CHAPTER Two Day Seminar on Practical Aspects Under FEMA

On 16 and 17.1.2015 Pune Chapter of WIRC of the ICSI organized a seminar on Practical Aspects under FEMA at Pune. The programme was attended by 80 delegates. K. Parmeswaran, K Ramasubramanian, A Salvi, Mistry all Retired GMs RBI were the faculties for the programme. The sessions were very informative and well appreciated by the gathering. Eight (8) PCH was awarded to members attending the same & students were awarded sixteen (16) PDP for the same.



ICSI - CCGRT

The Mesmerizing Educational Tour of Chennai

The students of Integrated Company Secretary course ICSI-CCGRT visited Chennai to participate in the first Uday Divas which was commemorated as ICSI's day of statutory recognition, received on 1.1.1981. There was a participation of 14 persons comprising eleven students, two teachers and one staff from ICSI - CCGRT. The teachers accompanied were Dr. Rajesh Kumar Agrawal, Director ICSI-CCGRT and Akhinchan B. Sinha, Assistant Director, ICSI-CCGRT and Shivaji.

The programme was held at ITC Grand Chola, Chennai. The students of Integrated Company Secretary had the opportunity to serve as volunteers in the programme. The cultural performance by Naina Bhatnagar and Shadma Khan were impeccable. The programme was anchored by Geet Shikhar.

Dr. J. Saddakadullah, Regional Director, RBI, Chennai, was the Chief Guest on the occasion. While addressing the gathering, he said that it was being increasingly realized all over the world that economic wellbeing and productive efficiencies could be realized with higher intellectual and professional capabilities of human beings. He further added that, the Companies Act, 2013 has opened doors for Company Secretaries in a number of areas such as insolvency, winding up, valuation, corporate restructuring etc., in addition to the areas such as, Secretarial Audit and other related attestation services. He mentioned that opportunities for company secretaries have widened in such a way that one would not have imagined the profile of company secretaries, probably even a couple of decades ago.

K. Pandiarajan, CMD, MAFOI, Guest of Honor on the occasion, in his address said that today, India is one of the top emerging economies of the world, thanks to the deep roots in democratic beliefs of the people of the country, entrepreneurial talent, strong and skilled pool of human resources, well defined regulatory mechanism and the robust domestic demand.

CS R Sridharan, then President, the ICSI, while giving the Presidential Address on the 34th anniversary of the ICSI's statutory recognition, said that, Statutory Recognition Day has a significant role in every organization and for an organization like ICSI it is all the more important. As it depicts the journey from a shop floor to a launch pad and

that the moment is to rejoice with the memories which made the organization to reach at this point.

CS Sudhir Babu C., then Council Member and Programme Director of ICSI Uday Divas also addressed the gathering. CS Vikas Y Khare, then Vice-President, ICSI, and CS Gopalkrishna Hegde, then Council Member, ICSI also graced the occasion. CS Sutanu Sinha, Chief Executive and Officiating Secretary, proposed the vote of thanks.

The event was followed by an award giving ceremony and cultural programme. The ICSI Bhubaneswar Chapter received the ICSI National Best Chapter Award. The award was presented to CS Arabinda Acharya, The then Chairman of the Chapter.

On 2.1.2015 the second day of the trip the students headed for Mahabalipuram also known as Mamallapuram - a town in Kancheepuram district in the Indian state of Tamil Nadu. The third and the last day of the trip was industrial visit to Kothari Petrochemicals Limited. Ashok kumar the plant head assisted the visitors throughout the visit. It was an extremely learning oriented visit, as one can practically observe the compliance of Factories Act, 1948, Contract Labour Act, 1970 and many important provisions of Safety Act.

OBITUARIES

“Chartered Secretary” deeply regrets to record the sad demise of the following members:

Shri DEBDAS GANGULY, (01.08.1935 – 31.01.2011), a Fellow Member of the Institute from Kolkata.

Shri VINODRAI C MODI (19.06.1936 – 27.07.2013), a Fellow Member of the Institute from Vadodara.

Shri JAYANT M PAREKH (15.10.1927 – 12.08.2014), a Fellow Member of the Institute from Mumbai.

Shri RAGHAVAN NAGANDI (01.05.1937 – 23.01.2015), a Fellow Member of the Institute from Palakkad.

Shri SIDDHARTH SHASHANK VAIDYA (22.06.1985 – 31.08.2013), an Associate Member of the Institute from Pune.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.



STOP PRESS

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 7262/2014

PRINCE KUMAR & ORS.

Through: Mr. Anil Sapra, Sr. Adv. with Mr. Tarun Kumar Tiwari, Mr. Mukesh Sukhija, Ms. Rupali Kapoor, Advs.

Pronounced on: 03.02.2015

.....Appellant

Versus

THE INSTITUTE OF COMPANY
SECRETARIES OF INDIA & ANR.

Through: Mr. Sudhir Nandrajog, Sr. Adv. with

Mr. R.D. Makheeja, Adv. for R-I.

Ms. Monika Arora, CGSC with

Mr. Abhishek Choudhary, Mr. Rajeev Kumar Yadav, Advs.
for R-2/UOI.

.....Respondents

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT :

Ms. G. ROHINI, CJ

1. The petitioners claim to be the registered Associate Members of the Institute of Company Secretaries of India (hereinafter referred to as 'the Institute') constituted under the Company Secretaries Act, 1980.
2. This petition is filed with a prayer to quash Regulation 114 of the Company Secretaries Regulations, 1982 read with Rule 7 of the Company Secretaries (Election to the Council) Rules, 2006 declaring the same as arbitrary, illegal and discriminatory. The petitioners also sought a direction to provide an opportunity to the Associate Members of the Institute to stand for election to the Council of the Institute proposed to be held under the election notification dated 09.09.2014 on par with the Fellow Members of the Institute.
3. The Company Secretaries Act, 1980 has been enacted to make provision for the regulation and development of the profession of Company Secretaries. Section 3(2) of the Act provides for incorporation of the Institute of Company Secretaries of India and states that the Institute shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of property movable or immovable and shall by its name sue or be sued.
4. The Company Secretaries Act, 1980 came into force w.e.f. 01.01.1981. In terms of Section 31, on commencement of the said Act the Company known as the Institute of Company Secretaries of India registered under the Companies Act, 1956 stood dissolved and as per Section 32 all the assets and liabilities of the said dissolved company stood transferred to and vested in the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980. Section 31(b) further made it clear that the right of every member to or in respect of the dissolved company shall be extinguished and thereafter no member of that company shall make any claims or demands in respect of that company except as provided in the Company Secretaries Act, 1980.
5. As per sub-section (1) of Section 3 of the Company Secretaries Act, 1980, all persons whose names are entered in the Register of the dissolved company immediately before the commencement of the Act and all persons who may hereinafter have their names entered in the Register maintained under the Company Secretaries Act, 1980 are constituted a body corporate by the name of the Institute of Company Secretaries of India and all such persons shall be known as members of the Institute.
6. Section 5(1) provides that the members of the Institute shall be divided into two classes designated respectively as Associates and Fellows. Section 5(3) further provides that a person being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of such fees, as



may be determined, by notification, by the Council, which shall not exceed rupees five thousand, and on application made and granted in the prescribed manner, be entered in the Register as a Fellow.

7. As per Section 9(1) of the Company Secretaries Act, 1980, there shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it by or under the Act. Section 9(2) provides that such Council shall be comprised of not more than 15 persons who are elected by the members of the Institute from amongst the Fellows of the Institute chosen from Regional Constituencies and not more than five persons nominated by the Central Government.
8. Section 23 of the Act provides for constitution and functions of the Regional Councils according to which for the purpose of advising and assisting the Council on matters concerning its functions, the Council may constitute such Regional Councils as and when it deems fit for one or more of the Regional Constituencies that may be notified by the Central Government under Section 9(2)(a) of the Act.
9. In exercise of the powers conferred by Section 38A(2)(a) read with Section 9(2)(a) of the Act, the Central Government made the Rules called the Company Secretaries (Election to the Council) Rules, 2006 (for short 'the Rules'). As per Rule 3 of the said Rules, the Regional Constituencies shall comprise of such States or Union Territories as listed out in Schedule 1 to the Rules and in turn Schedule 1 provides that the electorate for the purpose of election to the Council shall be constituted into four Regional Constituencies, namely, Western India Regional Constituency, Southern India Regional Constituency, Eastern India Regional Constituency and Northern India Regional Constituency comprising the States specified therein.
10. Rule 4 of the Rules provides that the election to the Council shall be held on a date to be determined by the Council which shall not be less than one month before the expiry of the term of the existing Council. Rule 5 provides for the members eligible to vote and Rule 6 read with Schedule-2 provides for preparation and publication of a list of members eligible to vote separately for each Regional Constituency. As per Rule 7, only such a member who is a Fellow on the first day of April of the Financial Year in which an election is to take place and whose name continues to be borne on the Register on the last date of scrutiny of nominations shall be eligible to stand for election to the Council from the Regional Constituency in which he is eligible to vote.
11. Section 39(1) of the Act empowers the council to make regulation for the purpose of carrying out the provisions of the Act and in exercise of the said power, the Council made the Company Secretaries Regulations, 1982 (hereinafter referred to as 'the Regulations').
12. Chapter III of the said Regulations (consisting of Regulations 111 to 141) specifically deals with Regional Councils. Regulation 111 provides that the regional council for every regional constituency shall *inter alia* consist of such number of members elected from the region as provided in Regulation 115(1) & (2). So far as the conduct of the elections to the Regional Councils are concerned, Regulation 114(1) provides that the same shall be held by the Council and the Company Secretaries (Election to the Council) Rules, 2006 shall apply to elections to the Regional Councils *mutatis mutandis*.
13. In terms of the above noticed provisions of the Act, Rules and the Regulations, the Council issued the Notification dated 09.09.2014 fixing the schedule for conduct of elections to the Council and Regional Councils in the year 2014 since the duration of the 11th Council and Regional Councils would expire on 18.01.2015. As per the said Notification, only the Fellow Members of the Institute are eligible to stand for election to the Regional Councils.
14. Aggrieved by the same, the present petition is filed contending *inter alia* that the action of the respondents in barring the 'Associate Members' from contesting and getting elected to the Regional Councils is arbitrary, illegal and violative of Article 14 of the Constitution of India.
15. It is to be noticed that there was an amendment to the Regulations of 1982 by the Company Secretaries (Amendment) Regulations, 2010 vide Notification dated 26.07.2010. Prior to the said amendment dated 26.07.2010, the Regulations of 1982 contained Chapter VIII dealing with constitution of the Council and Chapter IX dealing with election to the Council. That apart, Regulation 116 in Chapter XII provided that every Associate or Fellow shall be entitled to vote in and stand for election to the Regional Council. Regulation 114 (1) as it stood prior to the amendment dated 26.07.2010, provided that the elections to the Regional Councils shall be held by the Council and the Regulations in Chapter IX relating to elections to the Council shall apply *mutatis mutandis*. In terms of the above provisions, prior to Amendment dated 26.07.2010, the Associate Members were also eligible on par with Fellow Members to vote in and stand for election to the Regional Councils.
16. However, by virtue of the Amendment dated 26.07.2010, Regulation 116 in Chapter XII was omitted. That apart, Chapters VIII and IX in entirety were omitted and there was a corresponding amendment to Regulation 114(1) to the effect that the elections to the Regional Councils shall be held by the Council and that the Company Secretaries (Election to the Council) Rules, 2006 shall apply *mutatis mutandis*.
17. The vires of Regulation 114(1) as substituted by Amendment dated 26.07.2010 and Rule 7 of the Rules, which provides for members who are eligible to contest, is questioned in this petition. The said provisions are reproduced hereunder for ready reference:



114. Conduct of Elections:-

- (1) Except to the extent provided in this Chapter, the elections to the Regional Councils shall be held by the Council and the Company Secretaries (Election to the Council) Rules, 2006 shall apply to elections to the regional Councils *mutatis mutandis*.
- (2) Notwithstanding anything....."

"Rule 7. Members eligible to stand for election

Subject to other provisions of these Rules, a Member who is a fellow on the first day of April of the financial year in which an election is to take place and whose name continues to be borne on the Register on the last date of scrutiny of nominations under sub-rule (2) of Rule 4, shall be eligible to stand for election to the Council from the regional constituency in which he is eligible to vote.

Provided that....."

18. As a result of the above said amendments to the Regulations by Notification dated 26.07.2010 and in terms of Rule 7 of the Rules, only Fellow Members are made eligible to stand for election to the Regional Councils and the Associate Members are made ineligible. Accordingly, pursuant to the election Notification dated 09.09.2014, the nominations are accepted only from the Fellow Members.
19. The said action of the respondents is assailed contending, *inter alia*, that the distinction sought to be drawn between the Fellow Members and the Associate Members under the Act is only for the purpose of eligibility for appointment as Members of the Council and that no such distinction can be drawn so far as the Regional Councils are concerned since the Regional Councils are only advisory bodies under the scheme of the Act.
20. It is further contended that the amendment to Regulation 114(1) of the Regulations thereby making applicable to the Regional Councils the provisions of the Company Secretaries (Election to the Council) Rules, 2006, particularly Rule 7 is in defiance of the express provisions of the Company Secretaries Act, 1980. The further contention is that the impugned action of the respondents resulted in violation of the fundamental rights of the petitioners/Associate Members to have equality of status and class to contest the elections to the Regional Councils. It is also contended that since all the members of the Institute, i.e., both Fellow members and Associate members are eligible to cast their votes in the elections for the Regional Councils, there is no justifiable reason to disentitle the Associate members to stand for election.
21. Having heard the learned counsel for both the parties and having given our thoughtful consideration to the issues raised, we find it difficult to grant any of the reliefs sought in the petition for the following reasons:
 - (i) The right to contest the election to the Regional Councils, being a statutory right created by the Companies Secretaries Act, 1980 and the Rules and Regulations made thereunder, it is subject to qualifications and disqualifications prescribed therein. The law in this regard is well settled and has been reiterated in ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency & Ors.***, AIR 1952 SC 64, ***Jagan Nath v. Jaswant Singh & Ors.*** AIR 1954 SC 210, ***Jyoti Basu v. Debi Ghosal & Ors.***, (1982) 1 SCC 691 and ***Javed v. State of Haryana & Ors.***, (2003) 8 SCC 369, as under:

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

The learned Senior Counsel for the respondent No.1 in this regard has also drawn our attention to the judgment of the Division Bench of this Court in ***Ashish Maddha vs. Institute of Company Secretaries of India*** AIR 2011 Delhi 126. We may also refer to ***Supreme Court Bar Association Vs. B.D. Kaushik*** (2011) 13 SCC 774 wherein it was reiterated that the right to vote is not an absolute right and the right to vote or to contest elections is neither a fundamental right nor a common law right, but it is a purely statutory right governed by the statute, rules or regulations. It was further held by the Supreme Court in the said decision that the right to contest an election and to vote can always be restricted or abridged, if statute, rules or regulations prescribe so. Following the said principle, the challenge to the amendment of the rules of the Supreme Court Bar Association prohibiting non-active members and associate members i.e. members who were not regularly practicing in the Supreme Court from contesting the election to the office of the office bearers of the association or from voting therein, was negated. A Division Bench of this Court also followed the said view in ***Apparel Export Promotion Council Vs. All India Garment Exporters Common Cause Guild*** 186 (2012) DLT 783.

In the light of the above-noticed settled principle of law, the petitioners can neither claim an absolute right to stand for election to the Regional Councils nor contend that their right to contest the election is defeated by stipulating that the Fellow Members alone are eligible to stand for election to the Regional Councils.



- (ii) Admittedly, Associate Members and Fellow Members belong to two different classes. Even according to the petitioners, the Fellow Members stand on a higher footing than the Associate Members. As stipulated in Section 5(3) of the Act, an Associate Member who has been in continuous practice as a Company Secretary for at least five years or an Associate Member who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as Company Secretary are only entitled to be entered in the Register as Fellow Members. Thus, it is clear that the Fellow Members and Associate Members constitute two different classes. The concept of equality and equal protection under Article 14 of the Constitution of India is that persons who are in fact equals cannot be treated as unequals except where the classification is reasonable classification. In other words, the principle is that there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same. Having regard to the admitted fact that the Fellow Members belong to a different class and that even according to the petitioners the Fellow Members are more experienced and knowledgeable, the impugned provisions in making only the Fellow Members eligible to stand for election to Regional Councils cannot be held to be discriminatory and violative of Article 14 of the Constitution of India.
- (iii) Section 9(2) of the Act provides for election of 15 persons from amongst the Fellows chosen from the Regional Constituencies. Thus, the legislative intent is clear that the Council shall be composed of only the Fellow Members. However, Regulation 116 of the Regulations (as it stood prior to Amendment dated 26.07.2010) while dealing with the Regional Councils provided that both Associate Members and Fellow Members are entitled to stand for election to the Regional Councils. The same being contrary to the intent of the Act, the Regulation 116 was rightly omitted by amendment dated 26.07.2010. The omission of Chapters VIII & IX and the substitution of Regulation 114(1) are only corresponding amendments that have been made to remove the inconsistency between the Act and the Regulations. May be that petitioners are made ineligible to contest the election as a result of the impugned amendment, however, while testing the vires of such statutory provision, the Court cannot proceed on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed.
- (iv) There is always a presumption in favour of the Constitutionality of an enactment and the burden is upon the person who attacks it to show that there has been a clear transgression of the Constitutional principles. In the case on hand, the petitioners failed to discharge the said burden and no case could be made out to show that Regulation 114(1) is violative of Article 14 or Article 19 of the Constitution of India.
- (v) In fact, all the provisions of the Act and the Regulations have consistently drawn a distinction between the Fellow Members and Associate Members. The fact that they belong to two different classes is not disputed even by the petitioners. It is also clear from Section 9(1) of the Act that only those Associate Members who have been in continuous practice in India for at least five years and who have been the Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary are entitled to be enrolled as Fellow Members. That being so, the elimination of the Associate Members from contesting and getting elected to the Regional Councils cannot be held to be arbitrary, unreasonable or discriminatory on any ground whatsoever.
- (vi) It may also be added that the Institute of Company Secretaries is a body corporate with persons holding a diploma in company secretaryship awarded by the Government of India or having other qualifications as prescribed in Section 4 of the Act as members thereof. The law is well settled that no citizen has a fundamental right under Article 19(l)(c) to become a member of a cooperative society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfilment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and bye-laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules and bye-laws and is subject to its operation. The stream cannot rise higher than the source (vide **State of U.P. & Another Vs. C.O.D. Chheoki Employees Cooperative Society Ltd. and Others (1997) 3 SCC 681**). Reiterating the said legal position, it was further held in **Supreme Court Bar Association's** case (supra):

"52. In matters of internal management of an association, the Courts normally do not interfere, leaving it open to the association and its members to frame a particular bye-law, rule or regulation which may provide for eligibility and or qualification for the membership and/or providing for limitations/restrictions on the exercise of any right by and as a member of the said association. It is well-settled legal proposition that once a person becomes a member of the association, such a person loses his individuality qua the association and he has no individual rights except those given to him by the rules and regulations and/or bye-laws of the association."

22. For the aforesaid reasons, there is no merit in any of the contentions of the petitioners. The writ petition is, therefore, devoid of any merit and the same is accordingly dismissed. There shall be no order as to costs.



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226	6324	AMIT KARANSINH	TOMAR
227	6326	AMIT KUMAR	AGARWAL
228	6328	AISHWARYA	RAMANI
229	6332	R	CHANDRASHEKARA
230	6335	PARUL	MEHRA
231	6339	SOURABH KUMAR	
232	6340	SANA	BAQAI
233	6341	VINILKUMAR TARUNBHAI	PATEL
234	6342	RAHUL SHRIPAD	KATAKKAR
235	6345	SHYAM SUNDAR	S
236	6346	JAGDISH HEMANTKUMAR	TRIVEDI
237	6350	PUSHPA S	V
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239	6353	ALPESH CHANDUBHAI	LODHIYA
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244	6360	VIKRAM	U
245	6363	ANANT	KASHLIWAL
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256	6401	RITUL HARESHBHAI	KANSARA
257	6403	VIJAY RAJ SINGH	RATHORE
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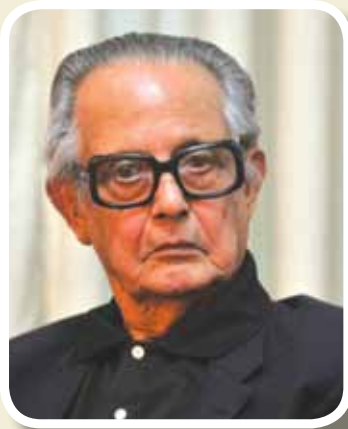
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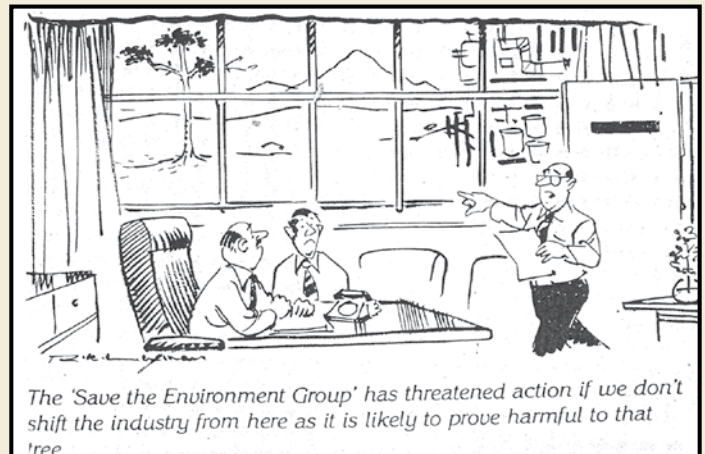
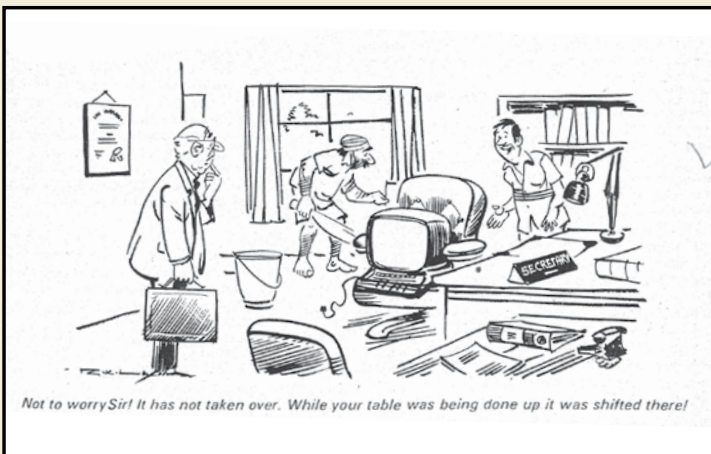
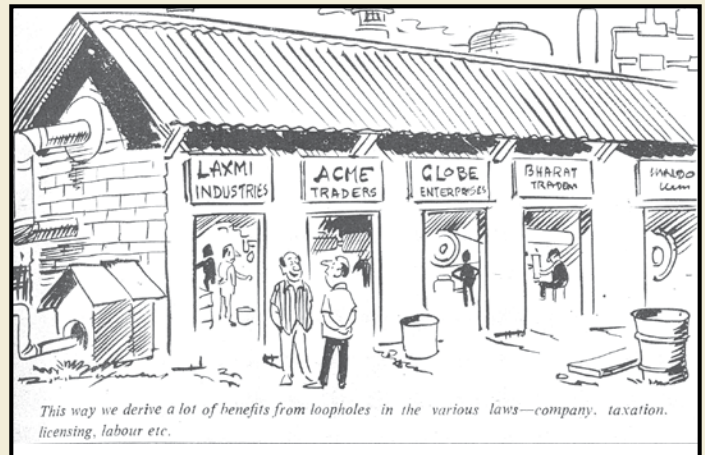
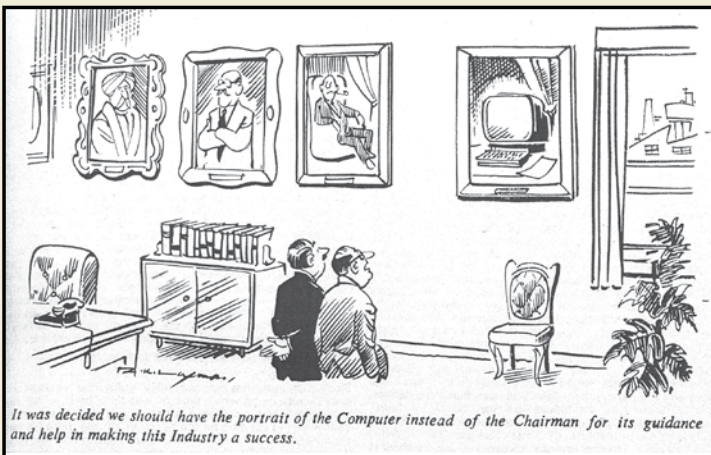
PEARSON





Tribute to SHRI R K LAXMAN

Chartered Secretary deeply regrets to record the sad demise of iconic cartoonist Shri R K Laxman on 26.1.2015 at Pune. He was associated with Chartered Secretary for nearly two decades contributing intellectually humorous and thought provoking messages for the readers of the Journal. As a tribute to his legendary spell, we give a few of his masterful strokes from the archives of the Institute.



COMPANY SECRETARIES BENEVOLENT FUND



CULTURAL EVENING ON 14TH MARCH, 2015 FROM 6.00 P.M. AT AIR FORCE AUDITORIUM, SUBROTO PARK, NEW DELHI.

The Institute has set up the Company Secretaries Benevolent Fund (CSBF) with an objective of extending financial assistance to its members and their families and educational expenses for their children in times of distress. The members are also provided reimbursement of medical expenses in accordance with the guidelines in place.

In order to maintain the fund sustainable, to provide better financial assistance, it is considered necessary to strengthen the financial position of the fund.

With a view to achieve this righteous objective, spread the awareness and to undertake Membership Campaign, the CSBF is organizing a Cultural Evening on Saturday, the 14th March, 2015 from 6.00 P.M onwards at Air Force Auditorium, Subroto Park, New Delhi, which will be followed by Dinner.

There will be a mono act musical play 'Vivekananda' by Padma Shri award winner Shri Shekhar Sen, renowned singer, music composer, lyricist, actor and Chairman of the Sangeet Natak Akademi.

The Managing Committee of CSBF cordially invites all the members to attend and participate in the programme. Entry shall be free for all the Members of CSBF and those who intend to get themselves enrolled as Members of the Fund at the venue, besides the invitees including Sponsors/Advertisers and Donors.

The glimpses of the previous CSBF cultural evenings organized on 9th January, 2010 and 12th January, 2013, which were a grand success, may be viewed at web link – <http://www.icsi.edu/csbf/VideoClippings.aspx>

For this event, resources are being mobilised through Corporate Sponsorships/Advertisements, Donor Invitation cards and Advertisement in Souvenir as detailed below:

Category of Sponsor	Amount of Donation	Advertisement in Souvenir	Advertisement Tariff
Principal Sponsor	Rs. 11 lacs	Back Cover (reserved for Principal Sponsor)	Rs. 30,000/-
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Golden Sponsor (upto eight)	Rs. 3 lacs each	Full Page (Coloured)	Rs. 20,000/-
Silver Sponsor (upto ten)	Rs. 1 lac each	Full Page (B/W)	Rs. 10,000/-
		Half Page (B/W)	Rs. 7,500/-

Donor's Card denomination: Rs.1000/-, Rs.2000/- & Rs.5000/-

For further details please contact Mrs. Meenakshi Gupta, Director (Membership, Training & Placement) at 011-45341047 (O), email id; meenakshi.gupta@icsi.edu or Mr. Subhashis Bagchi, Dy. Director (Membership) at 011-45341096(O), Mob.-8527820116, email id: subhashis.bagchi@icsi.edu



ATTENTION MEMBERS!

PMQ Course in Corporate Governance (Modified)

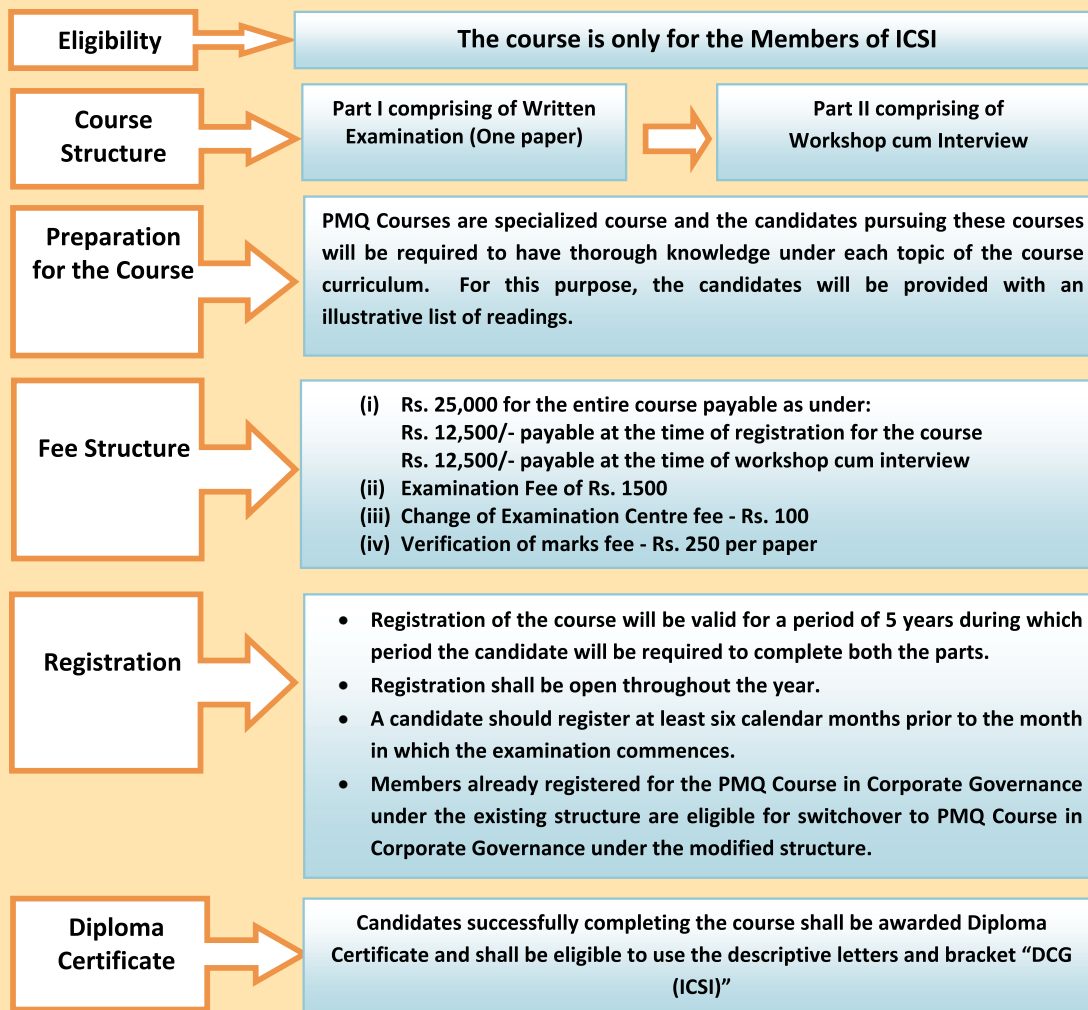
The Institute has modified its existing Post Membership Qualification Course in Corporate Governance.

The modified structure comprises of:

Part I: Written Examination in one paper and Part II: Workshop cum Interview

PMQ COURSE IN CORPORATE GOVERNANCE (Modified) –

A Snapshot



We invite the members to register for PMQ Course in Corporate Governance under the modified structure.

Further, the members already registered for the PMQ Course in Corporate Governance under the existing structure may apply for switchover to PMQ Course in Corporate Governance under the modified structure.

For details, please visit www.icsi.edu or contact Director (Academics), ICSI at 011-45341014/39 or email at pmq@icsi.edu.



(With Effect from 1st April 2012)

BACK COVER (COLOURED)		COVER II/III (COLOURED)	
Non - Appointment		Non - Appointment	
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Per Insertion	₹ 40,000	₹ 10,000	Per Insertion	₹ 20,000	₹ 5,000
4 Insertions	₹ 1,44,000	₹ 36,000	4 Insertions	₹ 72,000	₹ 18,000
6 Insertions	₹ 2,11,200	₹ 52,800	6 Insertions	₹ 1,05,600	₹ 26,400
12 Insertions	₹ 4,08,000	₹ 1,02,000	12 Insertions	₹ 2,04,000	₹ 51,000

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(Subject to availability of space)			For Others	₹ 100

MECHANICAL DATA

- Full Page - 18 x 24 cm
- Half Page - 9 x 24 cm or 18 x 12 cm
- Quarter page - 9 x 12 cm

- The Institute reserves the right not to accept order for any particular advertisement.
- The journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information write to:
The Editor,
"CHARTERED SECRETARY",



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Tel: 011-45341024, 41504444. Fax: + 91-11-24626727, 24645045
Email : ak.sil@icsi.edu website : www.icsi.edu

Committees/Boards

THE STANDING AND OTHER COMMITTEES/BOARDS OF THE COUNCIL FOR THE YEAR 2015-2016

Sl. No.	Name	Designation	Place
Executive Committee			
1	1. Atul H Mehta	Chairman	Mumbai
	2. Mamta Binani (Ms.)	Member	Kolkata
	3. Ahalada Rao V	Member	Hyderabad
	4. Ashish C Doshi	Member	Ahmedabad
	5. Ramasubramaniam C	Member	Chennai
	6. Vineet K Chaudhary	Member	Noida
Finance Committee			
2	1. Atul H Mehta	Chairman	Mumbai
	2. Mamta Binani (Ms.)	Member	Kolkata
	3. Ashish Garg	Member	Indore
	4. Makarand M Lele	Member	Pune
	5. Ramasubramaniam C	Member	Chennai
	6. Shyam Agrawal	Member	Jaipur
Examination Committee			
3	1. Atul H Mehta	Chairman	Mumbai
	2. Mamta Binani (Ms.)	Member	Kolkata
	3. Ahalada Rao V	Member	Hyderabad
	4. Ashish Garg	Member	Indore
	5. Mahavir Lunawat	Member	Pune
	6. Satwinder Singh	Member	Delhi
Disciplinary Committee			
4	1. Atul H Mehta	Presiding Officer	Mumbai
	2. Ashish C Doshi	Member	Ahmedabad
	3. S K Agrawala	Member	Kolkata
	4. S Balasubramanian	Govt. Nominee	Gurgaon
	5. S K Tuteja	Govt. Nominee	Delhi
Financial Services Committee			
5	1. Makarand M Lele	Chairman	Pune
	2. Ashish Garg	Member	Indore
	3. Gopalakrishna Hegde	Member	Bangalore
	4. Ramasubramaniam C	Member	Chennai
	5. Shyam Agrawal	Member	Jaipur
Corporate Laws and Governance Committee			
6	1. Vineet K Chaudhary	Chairman	Noida
	2. Ahalada Rao V	Member	Hyderabad
	3. Ashish C Doshi	Member	Ahmedabad
	4. Ashish Garg	Member	Indore
	5. S K Agrawala	Member	Kolkata
	6. Satwinder Singh	Member	Delhi

Sl. No.	Name	Designation	Place
Professional Development Committee			
7	1. Atul H Mehta	Chairman	Mumbai
	2. Ahalada Rao V	Member	Hyderabad
	3. Ashish C Doshi	Member	Indore
	4. Mahavir Lunawat	Member	Mumbai
	5. Rajiv Bajaj	Member	Noida
	6. Ramasubramaniam C	Member	Chennai
	7. Satwinder Singh	Member	Delhi
	8. Shyam Agrawal	Member	Jaipur
Training & Educational Facilities Committee			
8	1. Mamta Binani (Ms.)	Chairperson	Kolkata
	2. Ashish Garg	Member	Indore
	3. Gopalakrishna Hegde	Member	Bangalore
	4. Makarand M Lele	Member	Pune
	5. Ranjeet Kumar Pandey	Member	Delhi
	6. S K Agrawala	Member	Kolkata
	7. Vineet K Chaudhary	Member	Noida
Practising Company Secretaries Committee			
9	1. Ashish Garg	Chairman	Indore
	2. Ahalada Rao V	Member	Hyderabad
	3. Ashish C Doshi	Member	Ahmedabad
	4. Makarand M Lele	Member	Pune
	5. Rajiv Bajaj	Member	Noida
	6. Ramasubramaniam C	Member	Chennai
	7. Ranjeet Kumar Pandey	Member	Delhi
	8. Vineet K Chaudhary	Member	Noida
Information Technology Committee			
10	1. Ramasubramaniam C	Chairman	Chennai
	2. Mahavir Lunawat	Member	Mumbai
	3. Makarand M Lele	Member	Pune
	4. Rajiv Bajaj	Member	Noida
	5. Ranjeet Kumar Pandey	Member	Delhi
	6. Shyam Agrawal	Member	Jaipur
Peer Review Board			
11	1. Mamta Binani (Ms.)	Chairperson	Kolkata
	2. Gopalakrishna Hegde	Member	Bangalore
	3. Rajiv Bajaj	Member	Noida
	4. S K Agrawala	Member	Kolkata
	5. Milind B Kasodekar	Member	Pune
	6. Savitri Parekh (Ms.)	Member	Mumbai
	7. Sudhir Babu C	Member	Hyderabad

Committees/Boards

Sl. No.	Name	Designation	Place
12	Placement Committee		
	1. S K Agrawala	Chairman	Kolkata
	2. Ashish C Doshi	Member	Ahmedabad
	3. Mahavir Lunawat	Member	Mumbai
	4. Satwinder Singh	Member	Delhi
13	PMQ Course Committee		
	1. Shyam Agrawal	Chairman	Jaipur
	2. Ashish Garg	Member	Indore
	3. Gopalakrishna Hegde	Member	Bangalore
	4. Makarand M Lele	Member	Pune
	5. Ramasubramaniam C	Member	Chennai
14	Board of Discipline		
	1. Ahalada Rao V	Presiding Officer	Hyderabad
	2. Vineet K Chaudhary	Member	Noida
15	Secretarial Standards Board		
	1. Pavan Kumar Vijay	Chairman	Delhi
	2. Ahalada Rao V	Member	Hyderabad
	3. Anil Murarka	Member	Kolkata
	4. Dipti Mehta (Ms.)	Member	Mumbai
	5. Geetika Anand (Ms.)	Member	Mumbai
	6. Lalit Jain	Member	Noida
	7. Lalit Kumar	Member	Delhi
	8. Milind B Kasodekar	Member	Pune
	9. Ranjeet Kumar Pandey	Member	Delhi
	10. Ravichandran K S (Dr.)	Member	Coimbatore
	11. Sanjay Grover	Member	Delhi
	12. Savitri Parekh (Ms.)	Member	Mumbai
	13. S. C. Vasudeva	Member	Delhi
	14. S Chandrasekharan (Dr.)	Member	Delhi
	15. S H Rajadhyaksha	Member	Mumbai
	16. Subhash C Setia	Member	Delhi
17. Subhasis Mitra	Member	Kolkata	
	Representatives of MCA, SEBI, RBI, NSE, BSE, CII, FICCI & ASSOCHAM		

Sl. No.	Name	Designation	Place
16	Expert Advisory Board		
	1. R Sridharan	Chairman	Chennai
	2. Amitabha Guha Sarkar	Member	Kolkata
	3. Anupam Malik	Member	Delhi
	4. Avinash Bagul	Member	Mumbai
	5. Bina Chandarana (Ms.)	Member	Mumbai
	6. Girish Sharma	Member	Kolkata
	7. G R Bhatia	Member	Delhi
	8. Narayan Shankar	Member	Mumbai
	9. Sanjeev Agarwal (Dr.)	Member	Jaipur
	10. Sanjeev Kumar (Dr.)	Member	Noida
	11. S D Israni (Dr.)	Member	Mumbai
	12. S M Gupta	Member	Kolkata
	13. Tushar Gunderia	Member	Mumbai
	14. T V Narayanswamy	Member	Delhi
	15. U K Chaudhary	Member	Delhi
16. Vikas Y Khare	Member	Pune	
17	Editorial Advisory Board		
	1. S. Balasubramanian	Chairman	Gurgaon
	2. Ashutosh Naik	Member	Mumbai
	3. Deepak Kukreja	Member	Delhi
	4. Jayesh Trivedi	Member	Mumbai
	5. Kapil Taneja	Member	Delhi
	6. Manish Ghia	Member	Mumbai
	7. N K Jain	Member	Noida
	8. Pradeep K Mittal	Member	Delhi
	9. Preeti Malhotra (Ms.)	Member	Delhi
	10. R Ravi	Member	Chennai
	11. Sanjeev Kapoor	Member	Mumbai
12. S K Dixit (Dr.)	Member	Delhi	
18	ICSI- CCGRT		
	1. Ashish C Doshi	Chairman	Ahmedabad
	2. Ahalada Rao V	Member	Hyderabad
	3. Ashish Garg	Member	Indore
	4. Makarand M Lele	Member	Pune
	5. Ramasubramaniam C	Member	Chennai
	6. Shyam Agrawal	Member	Jaipur
	7. Abhijeet Jain	Member	Kolkata
	8. Kaushik Jhaveri	Member	Mumbai
9. Manoj Sonawala	Member	Mumbai	

COMPANY SECRETARIES BENEVOLENT FUND



The Company Secretaries Benevolent Fund (CSBF) provides safety net to Company Secretaries who are members of the Fund and their family members in distress.

CSBF

- Registered under the Societies Registration Act, 1860
- Recognised under Section 12A of the Income Tax Act, 1961
- Subscription / Contribution to Fund qualifies for the deduction under section 80G of the Income Tax Act, 1961
- Has a membership of about 10,000

Eligibility

A member of the Institute of Company Secretaries of India is eligible for the membership of the CSBF.

How to join

- By making an application in Form A (available at www.icsi.edu/csbf) along with one time subscription of ₹ 7,500/-.
- One can submit Form A and also the subscription amount of ₹ 7500 ONLINE through Institute's web portal: www.icsi.edu. Alternatively, he can submit Form A, along with a Demand Draft or Cheque for ₹ 7500 drawn in favour of 'Company Secretaries Benevolent Fund', at any of the Offices of the Institute/ Regional Offices/Chapters.

Benefits

- ₹ 5,00,000 in the event of death of a member under the age of 60 years
- Upto ₹ 2,00,000 in the event of death of a member above the age of 60 years in deserving cases
- Upto ₹ 40,000 per child (upto two children) for education of minor children of a deceased member in deserving cases
- Upto ₹ 60,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

Contact

For further information/ clarification, please write at email id csbf@icsi.edu or contact Ms. Anita Mehra, Assistant Director on telephone no. 011-45341049.

For more details please visit www.icsi.edu/csbf

I KEEP MINUTES, BUT GUARD EVERY SECOND.

Over one million companies in the country are custodians of huge resources of the society and public. They drive the growth of the economy. It is, therefore, imperative that their operations should be so carried out that they exist forever to contribute to prosperity of the society and the economy even as they balance the interests of various stakeholders. This requires care for and adherence to law and justice, ethics, compliance, governance, risk management, conflict resolution etc. A Company Secretary, who is a regulated professional, ensures just that.

I am a .
Only I do what I do.



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Company Secretaries of India**

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