

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

► **826**

Securities and
Exchange Board of
India (Mutual Funds)
(Second Amendment)
Regulations, 2013

► **827**

Securities and Exchange
Board of India (Issue
and Listing of
Non-Convertible
Redeemable
Preference Shares)
Regulations, 2013



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament



- 01 >> ICSI National Seminar on Indian Financial Code at Patna - Ramesh Abhishek (Chairman, Forward Markets Commission) addressing. Others sitting on the dais from Left: Ashok Pareek (Council Member, the ICSI), R. K. Nair (Whole Time Member, IRDA), S. N. Ananthasubramanian (President, Council of the ICSI), Dr. K. P. Krishnan (Principal Secretary, Govt. of Karnataka) and Ashish Kumar Chauhan (MD & CEO, BSE Ltd.).
- 02 >> ICSI - CCGRT - Programme on Achieving Excellence in Practice - P. Vijay Bhaskar (Executive Director, RBI) addressing. Others sitting on the dais from Left: Umesh Ved, M. S. Sahoo, Harish K. Vaid, B. Narasimhan and Gopal Chalam.
- 03 >> Signing of MOU between ICSI and Indian Institute of Banking and Finance - Sitting from Left: M.S. Sahoo (Secretary, Council of the ICSI), Dr. K. Ramakrishnan (Chief Executive, Indian Banks' Association), Dr. R. Bhaskaran (Chief Executive Officer, Indian Institute of Banking and Finance) and S. N. Ananthasubramanian (President, Council of the ICSI).

- 04 >> Signing of MOU between ICSI and National Institute of Securities Markets (NISM) - Sitting from Left: S. N. Ananthasubramanian (President, Council of the ICSI), Gopal Chalam (Dean ICSI - CCGRT), Sandip Ghose (Director, NISM) and M. S. Sahoo (Secretary, Council of the ICSI).
- 05 >> SIRC - Chennai South Study Circle - Arvind P Datar (Sr. Advocate) addressing at the Study Circle of SIRC of The ICSI on its 2nd Anniversary.
- 06 >> EIRC - Bhubaneswar Chapter - Talk on Risk Management through Financial Derivatives - Prof (Dr.) P. K. Swain (Principal, ITER, Bhubaneswar) addressing. Others sitting from Left: A. Acharya and D. Mohapatra.
- 07 >> NIRC - Gurgaon Chapter - Full Day Seminar on FEMA - Parvesh Kheterpal addressing. Others sitting on the dais from Left: Vineet Chaudhary, Dhananjay Shukla, Atul Mittal, Nihar Ranjan Sahoo (CFO, Tara Span Solutions Private Limited) and Sameer Chaudhary (Partner, Sastra Legal).

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M. S. Sahoo for The Institute of Company Secretaries of India,
'ICSI House', 22, Institutional Area, Lodi Road, New Delhi- 110 003.
Phones : 41504444, 45341000, Grams : 'COMPSEC'
Fax : 91-11-24626727
E-Mail : info@icsi.edu
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Articles (A 222 - 265)

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Ex Parte Prima Facie Order By The Competition Commission Of India- A Critique

G. R. Bhatia

Prima facie view or opinion as to existence or absence of a case by the Competition Commission of India is an extremely crucial decision. Affirmative decision as to existence of an anti competitive/abusive practice triggers a full fledged Inquiry. Likewise, a prima facie view that there is no case of infringement of provisions of Competition Act results in dropping of further proceedings. It is significant for parties involved. As prima facie decision as to existence or absence of infringement is quite critical in competition law enforcement, it would be advisable for CCI to hear the parties and pass a reasoned order.

» P-768

Are offences of Companies Act, 1956 Compoundable under Code of Criminal Procedure, 1973?

Manjit Singh

Compounding of an offence means settling a matter through money payment by *suo motu* or otherwise. It is also construed as an admission of guilt. This Article discusses the applicability of the provisions related to Compounding of offences under Code of Criminal Procedure, 1973 vis a vis the provisions of the Companies Act, 1956 as also the difference between the two. The major difference in Compounding of an offence under the Companies Act, 1956 and the CrPC, 1973 is that under the Companies Act, 1956 Compounding could be before or after initiation of prosecution but under the CrPC, 1973 it is always after initiation of prosecution. The article discusses in detail the applicability and impact of Section 320 of CrPC, 1973 and Section 621A of the Companies Act, 1956 which deal with compounding of offences.

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Nuances of the Law Relating to Contracts

DR. K. S. Ravichandran

Parties voluntarily entering into a contract are ordinarily bound by it and when they have unreservedly acted up to it for a fairly long time, they must be content with the result, beneficial or otherwise. *Lord Denning in Port Sudan Cotton Co. v. Chettiar* (1977) 2 LR 5 said that the relevant principles of the law of contract are, no doubt, of universal application, but the proper inference to draw may differ widely according to the facts of the particular case. The Master of Rolls said that the Court's task in adjudicating disputes relating to contracts remains essentially the same; to discern and give effect to the objective intentions of the parties. Company Secretaries must necessarily take steps to acquire a fair understanding of the nuances of the law relating to contracts. Every businessman must have at least a working knowledge of the law relating to enforceability of contracts.

» P-777

Companies Bill, 2012 brings focus on Corporate Compliance in the Boards' Report

Ranjan Mukherjee

The Companies Bill 2012 through clause 134(5) (e) and (f) has brought new dimension to the Directors Responsibility Statement (DRS) which is going to provide

» P-785

new responsibility on the compliance professionals once the Bill is enacted into a legislation. This article deals with the impact and opportunity in connection with this clause. The Companies (Amendment) Act, 2000 introduced new Section 217(2AA) under which four important statements were clubbed under a heading 'Directors Responsibility Statement'. After a decade of introduction of DRS, certain interesting questions have been raised in the article from governance and compliance perspective. A director perhaps need to have a full understanding of required technical knowledge and facts relevant for the issues. Otherwise concept of materiality, application of consistency and application of appropriate accounting standards for producing true and fair view and lastly assessment of going concern may not obtain their due justice which these aspects demand from their nature in the DRS. The new responsibilities arising from clause 134(5)(e) and (f) have been dealt with from compliance perspective and practical issues.

Enforceability of Shareholders' Privileged Rights The Position at Law Re-visited

M.M. Jain

The Companies Act, 1956, mandates 'free transferability of shares' in public companies, which raises significant apprehensions on the legality and enforceability of Right of First Refusal (ROFR), Right to First Offer (RTFO), Tag Along, Drag Along, Call Option and Put Option contained in modern day investment agreements. SEBI and RBI have also been taking stance which raises serious concerns about the enforceability of aforesaid Shareholders Privileged Rights particularly with regard to the call & put options in the Investment Agreements. The Courts have also pronounced divergent views making the regulatory signals somewhat unclear. This is not conducive to the investment environment in India because such Shareholders' Privileged Rights are integral to investment and acquisition agreements. In this background, present article tries to take a holistic view of the legal position in India as to whether such Shareholders Privileged Rights are indeed enforceable under the Indian laws.

» P-789

Stamp Laws in India – A Brief Overview

Rajendra Sawant

The Indian Stamp Act, 1899 is the Central legislation enacted by the Parliament under Article 246, Entry 91 of the Union List of the Seventh Schedule of the Constitution of India and lays down the rates of stamp duty with respect to the instruments specified therein. It extends to the whole of India except the State of Jammu and Kashmir. Under Entry 63 of the State List, the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to rates of stamp duty in respect of documents other than those specified in the provisions of Union List with regard to rates of stamp duty. Many States have adopted the Indian Stamp Act and added an extra schedule in the form of Schedule 1A to the Indian Stamp Act to provide for rates of stamp duty with respect to the instruments not specified in the Indian Stamp Act. It is very important to understand the basic provisions of Stamp Laws and the rates of duties as in operation in different States. This article deals with various provisions of Indian Stamp Act, 1899.

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The Indian Income Tax Act and The Theory of Relativity

V. N. Muralidharan

Frequent amendments to the Income Tax Act, with retrospective effect, have resulted in uncertainty in the provisions of this Act. The same section of the Act will read

» P-802



differently at different points of time even if the reference date remains the same. Explanation 5 to Section 9, introduced with retrospective effect from 1. 4.1962, has created lot of confusion as key terms in this provision have not been defined. By a deeming provision, even a foreign company will be treated as a company incorporated in India under certain conditions. This is against the letter and spirit of the Indian Companies Act. When looked at from various angles, the legal validity of this newly introduced provision is highly questionable. Giving retrospective effect to this provision is not constitutionally valid.

“Settlement” under the Industrial Disputes Act, 1947- A Panoramic View P-805

B. S. Sridhara

The Industrial Disputes Act, 1947 marks the culmination of a series of welfare legislation spanning from Bengal Regulations of 1819 to the present Act. Even though the objective of the Act is to ameliorate the plight of the disputants, it is said that the Act shows an overwhelming bias towards the workmen. However, the professed intent is to provide for investigation and settlement of industrial disputes in order to maintain harmony and peace in the industrial environment. The Act prescribes three techniques: voluntary negotiations, conciliation, and adjudication. Settlement may arise out of either voluntary negotiations or conciliation. Settlement arising out of conciliation has wider impact and more recognition as a means of dispute resolution. When neither voluntary negotiation nor the conciliation succeeds, the appropriate government may step in and refer the dispute for adjudication and settlement. The various aspects of settlement revealed from the point of occurrence of a dispute till its resolution and thereafter, make an absorbing study.

Legal World (LW 73 - 85) P-812

- ▶ **LW.59.7.2013** Bombay High Court allows the substitution of heir, in the place of deceased employee, in the proceedings under section 630.
- ▶ **LW.60.7.2013** Rajasthan High Court sanctions the scheme of merger overruling the objections raised by RD.
- ▶ **LW.61.7.2013** Delhi High Court directs the depositor to refund the excess amount received from the company under liquidation.
- ▶ **LW.62.7.2013** Delhi High Court sets aside the clandestine sale of immovable property made during the pendency of winding up proceedings of the sick company.
- ▶ **LW.63.7.2013** SAT reduces the quantum of penalty imposed on the sub-broker.
- ▶ **LW.64.7.2013** The Registrar clearly ignored the principle by tearing the word “Orchid” out the impugned mark as a whole and arrived at the conclusion that the adoption was dishonest.[Mad]
- ▶ **LW.65.7.2013** Where the assessment order has already merged in the first appellate order, then no reassessment can be made pertaining to Entry Tax and no proceedings under Section-21 can be legally initiated.[All]
- ▶ **LW.66.7.2013** When the Revenue has not been able to prove the intention to evade the payment of duty or the fact that the assessee knew or has reason to believe that the goods used are liable to be confiscated under the Act, the Tribunal is right in setting aside the order of imposition of penalty.[P&H]
- ▶ **LW.67.6.2013** Considering the nature of the charges, which stood uncontested and hence proved at the enquiry, we are of the opinion that there is no good ground or eminent reason to interfere with the punishment of dismissal.[Ker]

- ▶ **LW.68.7.2013** The order passed by the learned Single Judge is without any blemish inasmuch as the condition contained in Clause (c) of the Memorandum of Settlement has not been pressed before the Division Bench when the award of the learned Labour Court by which reinstatement with 50% back wages was upheld.[P&H]

From the Government (GN 129 - 154) P-826

- ▶ Power of ROCs to obtain declaration/affidavits from subscribers/ first directors at the time of incorporation
- ▶ Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2013
- ▶ Notification regarding establishment of Local Office of the Board at Chandigarh
- ▶ Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013
- ▶ Enhancement in Foreign Investment limits in Government debt
- ▶ Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement
- ▶ Clarification on SEBI's Circular dated August 13, 2012 providing for the “Manner of Dealing with Audit Reports filed by Listed Companies”
- ▶ Review of the Securities Lending and Borrowing (SLB) framework
- ▶ Comprehensive guidelines on Offer For Sale (OFS) of Shares by Promoters through the Stock Exchange Mechanism.
- ▶ Designated Appellate Authority under the Foreign Trade (Development & Regulation) Act, 1992
- ▶ Foreign Direct Investment Policy - definition of ‘group company’
- ▶ Review of the policy on foreign direct investment in the Multi Brand Retail Trading Sector - amendment of paragraph 6.2.16.5(2) of ‘Circular 10/2013-Consolidated FDI Policy’
- ▶ RBI's Fraud Monitoring Cell to function from Bengaluru from July 01, 2013
- ▶ Foreign investment in India by SEBI registered Long term investors in Government dated Securities
- ▶ Foreign Direct Investment –Reporting of issue / transfer of Shares to/by a FVCI
- ▶ NBFCs not to be Partners in Partnership Firms- Clarifications
- ▶ Ready Forward Contracts in Corporate Debt Securities
- ▶ Foreign Direct Investment (FDI) in India - Issue of equity shares under the FDI scheme allowed under the Government route against pre-operative/pre-incorporation expenses

Other Highlights P-852

- ▶ Members Admitted / Restored
- ▶ Certificate of Practice Issued / Cancelled
- ▶ Licentiate ICSI Admitted
- ▶ News From the Regions
- ▶ Company Secretaries Benevolent Fund
- ▶ Our Members
- ▶ Invitation of Articles for Special Issues of Chartered Secretary
- ▶ Prize Query
- ▶ 14th National Conference of Practising Company Secretaries



From the President



"Everything comes to us that belongs to us if we create the capacity to receive it."

- Rabindranath Tagore



Dear Professional Colleagues,

The difference between being and becoming has fascinated the discerning minds across cultures and continents. This perhaps reflects our ability to observe and absorb those facets of knowledge and expertise which we believe are relevant in our quest to excel. This calls for substantive efforts towards enhancing the capabilities of members as well as of students which has been the constant endeavour of the ICSI. It has been conducting a large variety of continuing professional education programmes in emerging areas, undertaking research and disseminating the outcome, leveraging the strength of partner organisations with similar objectives, etc.

Let me share a few initiatives taken in the last month towards this end. It is gratifying to inform that ICSI Governance Research and Knowledge Foundation has been granted the license to be incorporated under Section 25 of the Companies Act, 1956. This Foundation will engage, among other things, in conducting primary and applied research and serve as a veritable think tank on matters of governance. I am also pleased to inform that the Institute has acquired a piece of land admeasuring 3140 SQM at Hyderabad from APIICL for building a Centre for Excellence. It is equally heartening to inform that the ICSI logo has been registered as a trademark, thus affording us protection of our distinct visual identity.

Creating synergies for enhancing capabilities through collaboration is the proven way for sustained growth and development. With this in mind, ICSI has entered into a Memorandum of Understanding with National Institute of Securities Markets (NISM) to pursue the common goal of promoting Corporate Governance and Public Policy, Financial Reporting and Disclosures, Inclusive Growth and Sustainable Development, Business Environment, Capacity Building, Corporate Social Responsibility, Quality and Assurance Services, etc. The MOU proposes that the Institutes would jointly organise seminars, conferences, workshops, certificate programmes for corporate and securities market professionals and executives, as well as students' exchange programmes. They would also jointly endeavour to develop appreciation

by companies for corporate governance in securities market and build our capabilities for implementation of corporate governance in letter and spirit. The need to marry market governance and corporate governance is more felt now than ever before and this MOU would hopefully facilitate this synthesis in a seamless manner.

It is equally gratifying to inform that on the same day and from the same platform, the ICSI entered into a Memorandum of Understanding with Indian Institute of Banking and Finance (IIBF) which proposes to enable our members to build their capabilities in the arena of banking. This MOU is an outcome of a long felt need for creating a cadre of compliance professionals in banks which has found strong support in many a recommendation made by different Committees appointed at various points of time. This is also borne by recent events necessitating coming together of ICSI and IIBF to make possible this talent pool to the banking community in a time-bound manner. The MOU, among other things, envisages the launch of 'Banking Compliance Professional Certificate' course for our members and consists of online examination on (i) Risk, Regulation and Governance and (ii) Compliance, followed by one-week class room training. The MOU also proposes to jointly offer structured coaching classes for our members pursuing Diploma in Banking and Finance (DB&F) course. I take this opportunity to appeal to our members, young and not so young to seize this initiative with vigour to carve a niche for themselves in banking compliance as a chosen career option.

ICSI has been in the forefront in organising a series of seminars and workshops throughout the country on 'Indian Financial Code' recommended by Financial Sector Legislative Reforms Commission (FSLRC). In this series, ICSI organised a seminar at Patna which was inaugurated by Shri Ramesh Abhishek, Chairman, Forward Markets Commission. While Dr. K. P. Krishnan, Principal Secretary, Government of Karnataka, was the Key Note Speaker, Shri Rameshwar Singh, Principal Secretary, Government of Bihar, Shri R. K. Nair, Whole Time Member, IRDA, Dr. C. K. G. Nair, Secretary, FSLRC and Shri Ashishkumar Chauhan, MD & CEO, BSE Ltd. delivered special addresses. A galaxy of distinguished experts from government, regulators, industry and



academia deliberated on the recommendations of the FSLRC such as Core Finance: Consumer Protection, Micro Prudential, Resolution, Development, Systemic Risk, Securities; and Macro Finance: Monetary Policy, Capital Controls and Debt Management. ICSI has also offered to conduct focused workshops on the Indian Financial Code jointly with Ministry of Finance to follow on the suggestions made by the Hon'ble Finance Minister.

Facilitating students to learn has been uppermost in our policy formulation. The Institute has decided to launch a multi-vendor e-library for its students with subscription to e-library at affordable rates so as to enable maximum number of students to derive benefits from this initiative. With a view to provide flawless and efficient service to them, the Institute is moving towards online registration and online enrolment.

The Regional Councils and / Chapter Management Committees have been playing a stellar role in these endeavours. Given their role in preparing students and members to discharge their obligations, it has been the endeavour to strengthen our chapter offices in terms of infrastructure and human resources. While the infrastructure is being developed at various places, it is noteworthy to mention that Thane Chapter has successfully completed the acquisition of its own premises last month and I express my deep gratitude to all those whose untiring efforts made this happen, more particularly the members of the Building Committee led by Mr. B. Narasimhan, my colleague in the Council.

I am particularly pleased to inform you that the 14th National Conference of Practising Company Secretaries is being held at Vedic Village Spa Resort, Kolkata on July 19-20, 2013 on the Theme "Integrating Growth, Governance and Challenges Beyond". The fascinating theme underscores the eternal challenge between growth and governance felt across the social spectrum - corporate, government, not-for-profit, public etc. - and is expected to leave substantive thoughts and ideas for posterity to ponder. Eminent speakers with comprehensive exposure to practical aspects will address and interact with participants on the three sub-themes -Enhancing Quality of Service; Emerging Areas of Practice in Governance; and Professionals' Responsibility, Accountability and Regulation. As reported, many have already enrolled and I urge upon you to consider joining this annual congregation of practising members and make this event a memorable one. The details of the National Conference are being published elsewhere in this issue.

The CS profile has been witnessing a turnaround over the last few decades and is poised for a complete transformation in the days to come by. From being perceived as a functionary in convening meetings and compiling minutes, the CS is now seen as a credible partner of Directors in making well informed business decisions. Recognising this, the Companies Bill seeks to make the CS the guardian of corporate governance and a dependable advisor to the Board. For this trend to sustain and pervade across the sector, we need to become leaders by developing influencing skills, aligning ourselves to business and strategic imperatives to connect professional growth with corporate goals. The role is evolving; the jury is still out and it is for each one of us to go beyond, to stretch our horizons and to reinvent ourselves and emerge as outstanding exemplars as Governance Professionals.

It is in this backdrop that the Council of the Institute has thought fit to choose

"Transiting from Company Secretary to Governance Professional" as the central theme for the 41st National Convention of Company Secretaries to be held on 7, 8 and 9 November in Chennai. I appeal to you to block these dates to participate in this annual mega event. Your presence among the fraternity of Company Secretaries both domestic and foreign will provide an opportunity to rediscover professional synergies, strengthen bonds and develop new and renew lasting relationships. I also invite you to send well-researched articles on this theme for publication in the Souvenir to be released at the Convention. An announcement in this regard is also published elsewhere in this issue.

In sequence with Annual Convocations held in Eastern, Western and Northern Regions, the Second ICSI Annual Convocation of Southern Region was held in Chennai where Dr. R. Thandavan, Vice-Chancellor, University of Madras and Chief Guest for the Convocation, presented Certificates of Membership to the newly admitted members besides conferring awards to meritorious students from the region. In his brief but pithy address Dr. Thandavan stated: "Increasingly, organisations are seeking CS because they perform the necessary mediation among all the stakeholders. In effect, a CS performs multi-pronged role across the spectrum of responsibilities- from ensuring proper legislation of norms through rational implementation of the same to conflict resolution among stakeholders. This is an important and a sensitive job which requires domain skills, managerial skills, soft skills and people skills". This substantially validates the messages so eloquently delivered to us by the three eminent Chief Guests at the Convocations held in the other regions in May, 2013.

Amidst this reportage of capacity building of our members and increasing the building capacity of ICSI was the sudden, stealthy, severe and unannounced arrival of unprecedented floods in Uttarakhand resulting in loss of livelihood, destruction and devastation. A national disaster it has been described; the rehabilitation and restoration calls for enormous efforts and immense resources and it is only appropriate that each of us contribute our mite towards this mammoth task. The ICSI is considering contributing an appropriate amount to the Prime Minister's National Relief Fund and the employees of ICSI have voluntarily donated a day's salary towards the same. It's our turn now and may I through this column appeal to you to consider giving as much as you can to the Prime Minister's National Relief Fund.

It has well and truly been a journey of challenging the status quo so far without a pause, as one is constantly reminded of the famous words of Sir Winston Churchill: "Never never never never give up."

With kind regards,

Yours sincerely,

Thane

July 01, 2013.

(CS S N ANANTHASUBRAMANIAN)
president@icsi.edu

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1. Articles on subjects of interest to the profession of company secretaries are published in the Journal.
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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.
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ATTENTION MEMBERS!!!

41st National Convention of Company Secretaries

Theme : Transiting from Company Secretary to Governance Professional

Dates: November 7-8-9, 2013 Place: Chennai



INTRODUCING SX40 THE NEW INDEX OF INDIA

**An index that assigns weightages based on global best practices,
so that it is powered to perform**

MCX-SX proudly presents SX40 – India's only index powered by the high performance standards of the ICB® (the globally acknowledged industry classification benchmark of FTSE, London). SX40 is a free float-based index of 40 large cap liquid stocks, that knows when to grow, when to play it safe and the true value of never compromising on transparency. It protects investors from industry bias by following an

industry capping of 20% and always keeps an investor's interest at the heart of things by strictly adhering to the world's best practices and guidelines. And this is why it outshone India's leading indices in returns* and risk adjusted returns over a one year period. What this shows, is an ability to recognise the true growth potential and dynamism of the Indian economy and the sense to maximize opportunities.

Index Performance

Index	1 Year Returns (Apr 2012- Mar 2013)	Return per unit of Risk*
SX40	8.31%	0.56
Nifty#	7.31%	0.47
Sensex#	8.23%	0.54

*Figures are indicative and based on back-testing of historical data.

#Based on data sourced from websites of respective exchanges.

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G.R. Bhatia*

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Competition Law Practice Group
Luthra & Luthra Law Office
New Delhi

gghatia@luthra.com

Ex Parte Prima Facie Order By The Competition Commission Of India— A Critique

➤ The Competition Commission is focussing on aggressive enforcement of Competition Act and sending strong signals to economic actors to follow the mandate of law. However, before passing any adverse sanction including a direction to 'cease and desist' from the anti-competitive conduct including imposition of penalty on the delinquent, there is a mandate on the CCI to institute an 'Inquiry' in relation to alleged infringement of Sections 3 and 4; and after 'Inquiry', arrive at a finding that the parties have in fact contravened the provisions of the Act.

If all men were angels, no Government would be necessary. If angels were to govern men, neither external nor internal controls on Government would be necessary.¹

Likewise, had all economic actors followed fair and ethical business practices in markets, neither competition law much less the competition law umpire was needed. Global reality is that markets are by and large infected with the anti competitive virus and therefore, competition laws are everywhere in over 120 countries across all the continents.

In line with the global trend, India also welcomed the developed competition regime by bidding good bye to the erstwhile Monopolies & Restrictive Trade Practices Act, 1969 and put in its place the Competition Act, 2002. The Act mandates the Competition Commission of India (Commission or CCI) *inter-alia* to eliminate

anti competitive business practices/conducts in India. The trident enforcement/regulatory dimensions of the Competition regime are (a) prohibition of anti competitive agreement, (b) prohibition of abuse of dominance and (c) regulation of combination (covering acquisition by one or another, merger/amalgamation between or amongst enterprises). Sections 3 & 4 of the Act contain provisions in relation to anti competitive agreements and abuse of dominance respectively. While the first two dimensions of law are enforced *ex post*, however, merger and acquisitions falling within the purview of the Act are regulated *ex ante*.

The twin enforcement provisions namely prohibition of anti competitive agreements and abuse of dominance are in force from 20th May, 2009. In response to a Parliament Question, the Hon'ble Minister of Corporate Affairs, Government of India reportedly informed the House that as on 31st March, 2013, the Commission had received 347 cases of violations of anti competitive practices of which the CCI had closed 262 cases and in 28 cases it had passed a 'Cease & Desist' Order, while in 19 cases, it had imposed Rs. 8013 crores as penalties.² Thus, the CCI is focussing

* Former ADG, Competition Commission of India (CCI)/ Monopolies and Restrictive Trade Practices Commission (MRTPC), New Delhi. Member, Corporate Affairs Committee, PHD Chamber of Commerce and Industry. Views expressed in this article are the personal views of the author.

¹ James Madison, 4th President of US and also hailed as Father of Constitution being instrumental in the drafting of US Constitution.

² Business Line of 22nd April, 2013.



on aggressive enforcement of Act and sending strong signals to economic actors to follow the mandate of law. Before passing, however, any adverse sanction including a direction to 'cease and desist' from the anti-competitive conduct besides imposition of penalty on the delinquent, there is a mandate on the CCI to

- (a) institute an 'Inquiry' in relation to alleged infringement of Sections 3 and 4; and
- (b) after 'Inquiry', arrive at a finding that the parties have in fact contravened the provisions of the Act.

Thus, simply stated, 'institution of an Inquiry' and 'after inquiry findings of contravention', are mandatory conditions precedent to passing of an adverse order.

The CCI may institute an Inquiry on its own motion also known as *suo motu* cognizance of a matter and it may also institute an Inquiry on:

- (a) receipt of any information from any person, consumer or their association or trade association; or
- (b) a reference made to it by the Central Government or a statutory authority.

The details of sources on the basis of which enquiries emanated upto March, 2013 are as under:

Years	<i>Suo motu</i> enquiries	References received from Central/State Government/ Statutory Authorities	Information received under section 19(1)
2009-10	0	0	32
2010-11	5	1	77
2011-12	0	4	93
2012-13	6	2	76

The table provided above clearly indicates that until the end of March, 2013, the CCI had initiated only 11 enquiries *suo motu*. This could possibly be due to the fact that the CCI in the beginning, intended to focus on the cases where there is a formal grievance by someone. Of late, few more enquiries have been initiated *suo motu*.

In a spate of over 46 months, hardly 7 references for initiation of Inquiries were received from the Government/Public Authorities. This lackadaisical attitude on the part of Government is unfortunate. This gives an impression, of course erroneous, that the Government Department and its arms are not facing serious anti competitive or abusive practices from its suppliers in its procurement. Incidentally, in the MRTP regime of over 39 years, hardly 12 to 15 references were received from Government Departments. Government is a big economic actor both as buyer as well seller in markets of Indian economy. Extensive and intensive advocacy seems to be the only answer to correct this lack of interest on the part of State functionaries in making use of the platform of the CCI.

Interestingly, most of the Inquiries have been initiated in the wake

of information from aggrieved persons or association of consumers or trade association. While there has been an upward trend in the number of informations that have been filed until March, 2012, however, from the newsletter published by the CCI, it appears that of late the number of information filed before CCI have decreased.³ Information based Inquiries has been the major source of Initiation of Inquiries before the Commission.

An Enquiry has three compartments namely (i) formation of a *prima facie* opinion by the CCI that there exists a case of infringement of the Act; (ii) the carrying out of investigation by the Director General and filing of investigation report recommending either to proceed with the enquiry or suggesting quashing of the enquiry as no infringement of Section 3 or 4 has been made out; and (iii) inviting comments/objections of parties by the CCI and later hearing parties before taking a final decision in the Inquiry.

A *prima facie* opinion or view as to existence or absence of a case by the CCI (either on its own motion or on an information/reference as to existence or absence of a case under section 3 and/or 4 of the Act) is an extremely crucial decision by the CCI. It is equally significant for the parties involved. The formation of a *prima facie* opinion as to existence of a case of infringement triggers an institution of Inquiry. On the contrary, the CCI taking a *prima facie* opinion as to absence of case of infringement gives a clean chit to alleged contravening party. In the premises, it is imperative to analyse the trend in regard to *prima facie* opinion and the learning there from.

The following table (containing data until March 31, 2013) describes the number of cases considered, number of cases in which *prima facie* opinion is formed under sub section (2), number of Inquiries instituted and referred to DG for investigation, number of cases where DG gave adverse findings, number of cases where the DG did not find any contravention and number of cases where adverse orders/penalties are imposed on delinquent enterprises/ persons:

Total number of cases considered	Number of cases in which an opinion is formed under Section 26(2)	Number of cases in which an opinion is formed under Section 26(1) and the matter is referred to the DG	Number of cases in which the DG gave an adverse finding	Number of cases in which the DG did not find any Contravention	Number of cases in which orders were passed under Section 27
223	147	76	57	19	19

³ Fairplay, Volume – IV – January to March 2013, p.8-Newsletter of the Competition Commission of India.



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As per the information available in public domain by the CCI, it is gathered that out of the 223 cases considered, in 146 cases it formed a *prima facie* opinion that there is no case of infringement and no case has been made out to institute an Inquiry and accordingly it closed the cases in terms of Section 26 (2) of the Act. Thus, it is clear about 66% cases have been rejected. Disheartened with the rejection, only a few of the aggrieved informants knock at the door of Competition Appellate Tribunal in appeal and till date, there is hardly an example to cite where the Appellate Tribunal has directed the CCI to reconsider its dismissal of the case. While agreeing that most of the Information that have been filed have failed to make out a case under the Act but there have been several cases where the CCI in its dismissal orders have observed that the Informant has failed to supply data to establish the case. It would be relevant to state that Informant does not have statutory right to requisition an information/document. It is CCI or the DG which are empowered to summon and enforce the attendance of any person and to require the discovery and production of documents. In few cases, information is rejected without giving an opportunity of being heard to the Informant or there are instances where reasons for rejection are conspicuously absent.

All these seem to have dissuaded filing of information and the impact is demonstrable as the number of information filed has already dwindled. An informant is not expected to understand the nuances of market and intricate competition concepts. The Informant is already under the obligation to furnish/file the information in a form prescribed and that the information has to be accompanied by a requisite fee as laid down in the Competition Commission of India (General) Regulations, 2009. The need is to nurture and encourage the Informant who is a critical source of information for eliminating anti competitive practices. This manner of functioning of the Commission would lead to the decay of the Informant race in the event the Commission continues to only rely on the information supplied and discourages the Informant and makes itself unapproachable. Further, the essence of the Act of only having the system of providing information as opposed to a complaint would be diluted completely if the Informant has to have in place concrete evidence at the *prima facie* stage and is treated as a complainant instead of an assisting body to eliminate anti-competitive conduct and practices.

Out of the 223 cases considered by the CCI, in 76 cases, it formed a *prima facie* opinion that there exists a suitable case for referring the matter to the DG for investigation and instituted an Inquiry for the furnishing of a detailed report. Generally, the CCI in the order of investigation makes it clear that

‘ nothing stated in this order shall tantamount to a final expression of opinion on merit of the case and the DG shall conduct investigation without being swayed in any manner whatsoever by the observation made herein’.

It is noticed that out of 76 investigations referred, in 57 reports, the



DG has given its adverse findings and in 19 cases it has found no violation of law. This clearly reflects that the DG in giving its report is not swayed by the *prima facie* opinion of the CCI which triggered the initiation of Inquiry.

Further, out of 76 Inquiries, post receipt of detailed investigation report, the CCI directed the parties to ‘cease and desist’ from the anti-competitive practices only in 28 cases and out of these, it is only in 19 cases it had imposed a monetary penalty on delinquent enterprises/persons. The statistics reveal that only in 40% of Inquiries, the CCI has passed remedial directions and in 25% cases, it imposed penalties. This clearly sends a message that in 60% enquiries, the alleged charged parties/noticees have either during the course of investigation by the DG and later, i.e., before the CCI established that there is a jurisdictional lack or that the evidence is absent or insufficient to conclude that there is a violation of law. It is vital that these parties (both informants and defendants) are given an opportunity of being heard at the stage of formation of a *prima facie* opinion. While there is no mandate upon the CCI in terms of the law as it stands today and the jurisprudence that has developed, it will be inadvisable to proceed with a matter and institute an Inquiry without hearing the defendant or dismiss a matter without giving an opportunity of being heard to the Informant. Keeping in view the principles of natural justice and fairplay and the fact that 26 (1) orders are neither appealable nor subject to review⁴, it is advisable that the parties are heard prior to the formation of a *prima facie* view by the CCI to institute an Inquiry and referring the case for investigation to the Director General under Section 26 (1) of the Act.

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⁴ Competition Commission of India v. Steel Authority of India Limited. (2010) 10SCC 744.



Manjit Singh*, FCS

Assistant Director
Ministry of Corporate Affairs
Government of India, New Delhi

manjitsinghcs@gmail.com

Are offences of Companies Act, 1956 Compoundable under Code of Criminal Procedure, 1973?

- Section 621A(6) of the Companies Act, 1956 provides for composition of offences under the Act. The composition provision will be attracted only after institution of the prosecution proceedings. The criminal court cannot direct composition before launching of criminal proceedings for offences under the Companies Act.

Introduction

As per the Black's Law Dictionary, Compounding means to settle a matter by a money payment, in lieu of other liability. The meaning of word compounding of offence is not defined under the Companies Act, 1956. We can draw a clear interpretation i.e. "It's nothing but admission of guilt" In the process of compounding, the person may either *suo motu* or on receipt of notice of default/initiation of prosecution, admits the commission of default and make an application for compounding of the concerned offence.

Extracts from a commentary [K.N.C. Pillai, R.V. Kelkar's Criminal Procedure, 5th Edn. (Lucknow: Eastern Book Company, 2008) at p. 444]:- A crime is essentially a wrong against the society and the State. Therefore, any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognize some of them as compoundable offences and some others as

compoundable only with the permission of the court.

Compounding of offences under the Companies Act, 1956

Provisions and procedure for compounding of offences, which are punishable under the Companies Act, 1956 are stipulated under section 621A of the Act. Only those offences which are punishable with either penalty or imprisonment i.e. where it is at discretion of the court to impose penalty or imprisonment, are compoundable under section 621A. In other words offence which is specifically punishable with imprisonment only or imprisonment plus fine is non-compoundable. The power of compounding of offence is conferred upon Company Law Board, Regional Director (Central Government has delegated its power to CLB and RDs) and presidency magistrate or a Magistrate of the First Class.

Provisions of the Companies Act, 1956 relevant for compounding of offences

621A Composition of certain offences.

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» The exercise of powers by the Company Law Board under 621A (1) is independent of exercise of powers by the court under sub-section (6), and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine, can be compounded by the Company Law Board without any reference to sub-section (6), even in cases where the prosecution is pending in a criminal court."

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a 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 by the Central Government on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sums as that the Government may prescribe :

Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in prescribing the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 611 shall be taken into account.

The procedure for compounding such offences by the Regional Director or the Company Law Board is provided for under sub-section (3) to sub-section (5) of the Companies Act, 1956.

621A (6) of the Companies Act, 1956, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

- (a) Any offence which is punishable under this Act with imprisonment or with fine, or with both, shall be compoundable with the permission of the Court, in accordance with the procedure laid down in that Act for compounding of offences;
- (b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.



(7) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.

Sub-section (1) and sub-section (6) are independent of each other and they provide for parallel powers as sub-section (1) confers jurisdiction on the Company Law Board and the Regional Director, as the case may be whereas sub-section (6) confers parallel power and concurrent jurisdiction upon the criminal court to deal with matters relating to compounding of offences.

Sub-section (6), however, is attracted only after the institution of the prosecution, for a Court can compound an offence only when the prosecution is launched and a criminal case is instituted. A criminal court does not enjoy any power under the Companies Act to order for composition of an offence committed under the Companies Act before the institution of the proceeding. Both the provisions of sub-section (1) and sub-section (6) start with a non-obstante clause as "notwithstanding anything contained in the Code of Criminal Procedure".

When these provisions are read harmoniously, it is crystal clear that the Company Law Board has been invested with the power to compound an offence of the nature prescribed in the said provision and when the said Board is satisfied that it is a fit case for compounding, it could order for compounding of the said offence prior to launching of prosecution and even thereafter irrespective of the fact that the prosecution has been launched in respect of the said offence and is pending trial before the criminal court. The only requirement that is provided for is to give a notice of the said composition of the offence to the criminal Court by the Registrar upon which the accused would stand discharged from the offence.

The Company Law Board in *Hoffland Finance Limited*, reported in



1997 Comp. Cas. (Vol. 90) 38, held that the exercise of powers by the Company Law Board under 621A (1) is independent of exercise of powers by the court under sub-section (6), and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine, can be compounded by the Company Law Board without any reference to sub-section (6), even in cases where the prosecution is pending in a criminal court."

Are offences of the Companies Act, 1956 Compoundable under Code of Criminal Procedure, 1973?

The Code of Criminal Procedure, 1973 (the CrPC) is the procedural law providing the machinery for punishment of offenders under the substantive criminal law, be it the Indian Penal Code, 1860 or any other penal statute. The CrPC contains elaborate details about the procedure to be followed in every investigation, inquiry and trial, for every offence under the Indian Penal Code or under any other law.

The offences which are allowed to be compounded (Compromised) are described under Section 320 of the Code of criminal Procedure, 1973. These are the offences which are simple and not grave in nature and can be compounded.

Section 320 of code of Criminal Procedure deals with compounding of offences. Certain offences may be compounded even without the permission of the Court and some can be compounded only with the permission of the Court.

In the case of offences which are compoundable without the permission of the Court a single petition signed by the accused and the person competent to compound is sufficient and the

order that should be passed is merely that the petition is allowed. But, in the case of offences which are compoundable only with the permission of the Court two petitions have to be filed, one for permitting the offence to be compounded and the other regarding the fact that the offence has been compounded.

On the first petition the order to be passed is "permitted" and on the second petition the order to be passed is "petition allowed" or "recorded". Thereupon on the docket sheet of the main case record an order should be passed referring to the fact that the offence has been compounded as per orders of Cr.M.P.No..... and that the accused is therefore discharged (if the compounding takes place in a warrant case before the framing of the charge) or acquitted.

The consideration which weighs with the Court when its permission is sought for compounding an offence is the restoration of cordial relations between the complainant and the accused and the general interest of the public.

Provisions of Section 320 under Code of Criminal Procedure, 1973

320. Compounding of offences.

- (1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table.

Offence	Section of the Indian Penal Code Applicable	Person by whom offence may be compounded.
1	2	3
Uttering words, etc., with deliberate intent to wound the religious feeling of any person	298	The person whose religious feelings are intended to be wounded
Causing Hurt.	323, 334	The person to whom the hurt is caused. .
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of Criminal force	352, 355, 358	The person assaulted or to whom criminal force is used.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The Person to whom loss or damage is caused.
Criminal trespass.	447	The Person in possession of property trespassed upon.
House trespass	448	Ditto
Criminal breach of contract of service	491	The person with whom the offender has contracted
Adultery.	497	The husband of the woman
Enticing or taking away or detaining with criminal intent a married woman	498	Ditto.





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[Defamation, except such case as are specified against section 500 of the Indian Penal Code in column 1 of the table under sub section (2).]	500	The person defamed.
Printing or engraving matter, knowing it to be defamatory.	501	Ditto.
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	Ditto.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation except when the offence is punishable with imprisonment for seven years.	506	The person intimidated
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

- (2) The offences punishable under the section of the Indian Penal Code (45 of 1860) specified in the first two columns of the following table may, with the permission of the court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table.

TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Voluntarily causing grievous hurt.	325	[The person to whom hurt is caused]
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Ditto.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining for ten or more days.	344	Ditto.
Assault or criminal force to woman with intent to outrage her modesty.	354	The woman assaulted to whom the criminal force was used.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted to whom the force was used.
Theft, where the value of property stolen does not exceed [two thousand rupees].	379	The owner of the property stolen.
Theft by clerk or servant of property in possession of master, where the value of the property stolen does not exceed [two thousand rupees].	381	Ditto

Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Criminal breach of trust, where the value of the property does not exceed [two thousand rupees].	406	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a carrier, wharfinger, etc. value of property does not exceed [two thousand rupees].	407	Ditto
Criminal breach of trust by a clerk or servant, where the value of the property does not exceed [two thousand rupees].	408	Ditto.
Dishonestly receiving stolen property, knowing it to be stolen, when the value of the stolen property does not exceed [two thousand rupees].	411	The owner of the property stolen.
Assisting in the concealment or disposal of stolen property, knowing it to be stolen, where the value of the stolen property does not exceed [two thousand rupees].	414	The owner of the property stolen.
Cheating.	417	The person cheated.
Cheating a person whose interest the offender was bound. Either by law or by legal contract, to protect.	418	Ditto.
Cheating by personation:	419	Ditto.
Cheating and dishonestly including delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
Fraudulent removal or concealment of property, etc. to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debit or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.
Mischief by killing or maiming animal of the value of ten rupees or up wards.	428	The owner of the animal.
Mischief by killing or maiming cattle, etc. of any value or of any other animal of the value of fifty rupees or up wards.	429	The owner of the cattle or animal.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house-trespassed upon.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.



Knowingly selling or exposing or possessing for sale or for manufacturing purpose. Good marked with a counterfeited property mark.	486	Ditto.
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the public prosecutor.	500	The person defamed.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it was intended to insult or whose privacy was intruded upon.

- (3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (When such attempt is itself an offence) may be compounded in like manner.
- (4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court compound such offence. (b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil procedure, 1908 (5 of 1908) of such person may, with the consent of the court compound such offence.
- (5) When the accused has been committed for trial or when he has been convicted and an appeal is pending no composition for the offence shall be allowed without the leave of the court to which he is committed, or as the case may be, before which the appeal is to be heard.
- (6) A High Court or Court of session acting in the exercise of its power of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.
- (7) No offence shall be compounded if the accused is, by reason of previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.
- (8) The Composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.
- (9) No offence shall be compounded except as provided by this section.

Is section 320 of Code of Criminal Procedure, 1973 applicable only to offences committed under Indian Penal Code ?

This has been discussed in the following cases and it was held that offences committed under other laws can also be compounded under Code of Criminal Procedure, 1973 if power has been given in other laws.

R. Rajeshwari v. H.N. Jagadish, (2008) 4 SCC 82 and *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.* (2008) 2 SCC 305.

Section 147 of Negotiable Instruments Act, Offences to be compoundable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable. In view of the non-obstante clause, the compounding of offences under the Negotiable Instruments Act, 1881 is controlled by Section 147. The scheme contemplated by Section 320 of the Code of Criminal Procedure [Hereinafter 'CrPC'] will not be applicable in the strict sense since the latter is meant for the specified offences under the Indian Penal Code. Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the Court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the Court, while sub-section (2) of the said section specifies the offences which are compoundable with the leave of the Court.

Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-section (9) of Section 320 of the CrPC which states that 'No offence shall be compounded except as provided by this Section'. A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Indian Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) of the CrPC, especially keeping in mind that Section 147 carries a non-obstante clause.

V.L.S. Finance Ltd. v. Union of India (UOI) And Ors. 5 November, 2003

When the criminal court proceeds to compound an offence committed under the Companies Act, the same could be compounded with the permission of the Court but the same is required to be so compounded according to the procedure laid down in the Code of Criminal Procedure for compounding of



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offences. The procedure that has to be followed for composition of an offence under the provisions of sub-section (6) of the Companies Act, 1956 is the procedure prescribed under the code of Criminal Procedure and, therefore, the procedures for compounding of offences as set out in sub-section (1) and sub-section (6) of the Companies Act, 1956 are different. They are apparently independent and parallel provisions and have no bearing with each other.

It is held that the person seeking compounding of an offence in accordance with the procedure laid down in the Criminal Procedure Code can do so before the criminal Court with the permission of the Court under sub-section (6) of 621A of the Companies Act, which normally cannot be done under the provisions of the Criminal Procedure Code. Such compounding of offence would always be relatable to the offence punishable with imprisonment or with fine or with both as is made clear under clauses (a) and (b) of sub-section (6) of the Companies Act, 1956. Under the aforesaid sub-section the offence punishable with imprisonment or with fine or both shall be compoundable with the permission of the Court and for such compounding the procedure laid down under the Criminal Procedure Code is to be followed in that regard provided the prosecution is pending in that Court. It is also held that Company Law Board can compound an offence of the nature prescribed under sub-section (1) of section 621A of the Companies Act, either before the institution of the criminal proceeding or even after institution of the criminal proceeding and the said power is not subject to the provisions of sub-section (6). Both are parallel powers to be exercised by the prescribed authorities who have been empowered under the statute and one power is not dependent on the other.

Power of High Court/Supreme Court of Quashing of proceeding relating to non Compoundable offences

Shiji @ Pappu & Ors. v. Radhika & Anr. [(2011) 10 SCC 705]: The question of quashing of proceedings relating to non-compoundable offences after a compromise had been arrived at between the rival parties, was under consideration. It was decided that in the facts and circumstances of the case, the continuance of proceedings would be nothing but an empty formality and that Section 482 Cr.P.C. in such circumstances could be justifiably invoked by the High Court to prevent the abuse of the process of law.

Central Bureau of Investigation v. Ravi Shankar Prasad & Ors. [(2009) 6 SCC 351]: This Court observed that the High Court can exercise power under Section 482 Cr.P.C. to do real and substantial justice and to prevent abuse of the process of Court when exceptional circumstances warranted the exercise of such



power. Once the circumstances in a given case were held to be such as to attract the provisions of Article 142 or Articles 32 and 226 of the Constitution, it would be open to the Supreme Court to exercise its extraordinary powers under Article 142 of the Constitution to quash the proceedings, the continuance whereof would only amount to abuse of the process of Court. In the instant case the dispute between the petitioners and the Banks having been compromised, court have to examine whether the continuance of the criminal proceeding could turn out to be an exercise in futility without anything positive being ultimately achieved.

In *O.P. Dholakia v. State of Haryana*, (2000) 1 SCC 672, the Court had permitted compounding of the offence even though the petitioner's conviction had been upheld by all the three designated forums. After noting that the petitioner had already entered into a compromise with the complainant. The bench had observed: - Taking into consideration the nature of the offence in question and the fact that the complainant and the accused have already entered into a compromise, we think it appropriate to grant permission in the peculiar facts and circumstances of the present case, to compound.

Conclusion

Section 621A (6) of the Companies Act is attracted only after the institution of the prosecution before the court of Law. The Court can compound an offence only when the prosecution is launched and a criminal case is instituted. A criminal court does not enjoy any power under the Companies Act to order for composition of an offence committed under the Companies Act before the institution of the proceeding.

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DR. K. S. Ravichandran, FCS

Partner
KSR & Co. Company
Secretaries LLP
Coimbatore

rirs@eth.net

Nuances of the Law Relating to Contracts

➤ A contract is an agreement by which the rights and obligations are created and not one by which they are destroyed. It is an agreement whereby the parties become bound together by a bond of legal obligation and not one which releases them from such bond. Basic aspects of the law relating to the law of contracts have been discussed in this article.

Parties voluntarily entering into a contract are ordinarily bound by it and when they have unreservedly acted upon it for a fairly long time, they must be content with the result, beneficial or otherwise. Lord Denning in *Port Sudan Cotton Co. v Chettiar* (1977) 2 LR 5 said that the relevant principles of the law of contract are, no doubt, of universal application, but the proper inference to draw may differ widely according to the facts of the particular case. The Master of Rolls said that the Court's task in adjudicating disputes relating to contracts remains essentially the same; to discern and give effect to the objective intentions of the parties. Company Secretaries must necessarily take steps to acquire a fair understanding of the nuances of the law relating to contracts. In fact every businessman must have a working knowledge of this law.

Ingredients of Valid Contracts [Section 10 of the ICA]

Under the Indian Contract Act, 1872 [ICA], an agreement enforceable by law is a contract. An agreement not enforceable by law is said to be void. All agreements are contracts if they are made (a) by the free consent of parties (b) who are competent to contract and (c) the contract is intended to achieve a lawful object (d) for a lawful consideration. Hence all contracts are agreements but all agreements are not contracts.

Capacity to contract [Section 11 of the ICA]

The following persons are not competent to contract:

- who is not of age of majority;
- who is not of sound mind; and
- who is disqualified from contracting by any law.

Minors:

Under Section 3 of the Indian Majority Act, 1875, a person is said to be a minor until he attains the age of 18 years; but if before he attains that age, a guardian is appointed by the Court to take care of him, he will be regarded as a minor until he attains the age of 21 years. Under the Hindu Minority and Guardianship Act, 1956, a minor is a person who has not completed the age of 18 years. Thus a minor cannot be a party to a contract. For instance, a minor cannot be admitted as a partner. However Section 30 of the Indian Partnership Act, 1932 contains an exception to the general rule and states that though a person who is a minor may not be admitted as a partner in a firm, he may be admitted to the benefits of partnership with the consent of all the partners of the firm.

Persons of Unsound Mind:

Under Section 12 of the ICA a person is considered as a person of sound mind if at the time of making the contract he is able to understand the terms thereof and he is able to form a rational



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judgment of the effect of the contract upon his interest.

Disqualification:

An insolvent is not competent to contract until he is discharged by a competent Court. This is a disqualification. A person may incur disqualification by operation of law from being eligible to be appointed/re-appointed as a director of a company. Several events have been enumerated under Section 274 of the Companies Act, 1956, the occurrence of which creates a disqualification upon a person from being eligible to be appointed a director of a company. If a company enters into a service contract with such a person and appoints him as a director, such contract is not valid in view of the provisions of ICA and such appointment is not valid in terms of the provisions of Companies Act, 1956.

Free Consent [Section 13 and 14 of the ICA]

If Parties agree upon the same thing in the same sense, it could be safely said that they have “Consensus ad idem”. It signifies means “meeting of minds”. It is the basis for the enforceability of contractual obligations undertaken by parties. For constituting valid consent, knowledge of what is being agreed to and knowledge of its effect are essential ingredients. That is why the ICA requires that the person contracting must have a sound mind. A “consent” obtained by “coercion” or “undue influence” or “fraud” or “misrepresentation” or “mistake” cannot be termed as a “free consent”. Each of the above terms has been carefully defined under the ICA and therefore they have to be understood in a legal connotation.

Coercion [Section 15 of the ICA]

Coercion as defined under Section 15 of the ICA, is the committing, or threatening to commit, any act forbidden by the Indian Penal Code(45 of 1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Undue influence [Section 16 of the ICA]

A contract is said to be induced by ‘undue influence’ where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

In particular, sub-section (2) of Section 16 of the ICA states when a person is deemed to be in a position to dominate the will of another. It says that if a person holds real or apparent authority or if he stands in a fiduciary relation to the other or if he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress, it could be said that he is in a position to dominate the will of the other.

According to sub-section (3) of Section 16 of the ICA, if a person who is in a position to dominate the will of another enters into a contract with that another, and if the transaction appears, on the face of it, or on the evidence adduced, to be unconscionable, the burden of proving that the contract was not induced by undue influence lies on



the person who is allegedly in a position to dominate the will of another.

Duress

Though in litigations the expression ‘duress’ is widely used, the ICA does not define this expression. It is usually interchangeably used with the words “coercion” or “undue influence”. In addition to ‘duress’, the expression ‘economic duress’ is also widely used in litigations so as to disown obligations arising from a contract in which the consent allegedly suffers from ‘economic duress’.

Misrepresentation [Section 18 of the ICA]

Misrepresentation includes a positive assertion of that which is not true though the person making the representation believes it to be true. Therefore, if a party enters into a contract on the basis of certain representations made by the other party, the validity of the consent accorded to that contract is subject to the validity and truthfulness of such representations. For instance, if B creates an opportunity for a meeting between P and F, as a result of which P and F join to acquire equal stake through a joint venture agreement in which B claims to play a neutral part and is offered a minority stake for his role as a mediator and later on if F and B act in concert with each other and puts P in a minority position *vis-à-vis* the aggregate holdings of B and F due to fact that P was actually a loyal long time executive of F, it is nothing but a misrepresentation on the part of B and the contract is voidable at the option of P.

When a contract lacks free consent due to the fact that the consent was vitiated by fraud, misrepresentation, coercion, such a contract is voidable at the option of the party who has given his consent without being aware of the fraud or misrepresentation or under coercion. Similarly when consent granted by a party to a contract had been



caused by 'undue influence', the contract is voidable at the option of the party who had granted his consent due to "undue influence".

A plea of coercion or undue influence must be specifically raised and pleaded as a fact. Such pleas cannot be added by way of additional or subsequent pleadings or through rejoinders as such pleas if not raised at the earliest point of time are likely to be dismissed as afterthought.

It must be remembered that Order VI, Rule 4 of the Code of Civil Procedure, 1908 [CPC] provides that "in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms, provided in CPC, particulars (with dates and items if necessary) shall be stated in the pleading".

The Supreme Court, in *Kale and Others v. Deputy Director of Consolidation and others*, [1976] 3 SCC 119, held that allegations of fraud or undue influence must be first clearly pleaded and then proved by clear and cogent evidence.

In *Satgur Prasad v. Har Narain Das*, AIR 1932 PC 89, the Privy Council had, in relation to the rights of a party who has avoided a voidable contract, held: "But apart from either of these statutory provisions, their Lordships think that the plaintiff is entitled to succeed in his claim upon general principles of equity. So it is stated in Kerr on Fraud and Mistake (6th Edn., 469), dealing with the doctrine of restitutio in integrum, that a party exercising his option to rescind is entitled to be restored as far as possible to his former position."

"For this proposition there is ample authority. In *Queen v. Saddlers' Co*, [1863] 10 H. L. C. 404 at p. 420, Lord Blackburn said: Fraud as I think, renders any transaction voidable at the election of the party defrauded; and if, when it is avoided, nothing has occurred to alter the position of affairs, the rights and remedies of the parties are the same as if it had been void from the beginning."

Lawful Consideration and Lawful Object [Section 23 of the ICA]

If the consideration or the object of an agreement is unlawful, then the agreement is not enforceable by law and hence it is void. If the consideration or the object of an agreement is forbidden by law or if it is of such nature which if permitted would defeat the provisions of any law or if it is fraudulent or if it involves injury to the person or property of another or if the Court regards it as immoral or opposed to public policy, then such consideration or object of the agreement will be unlawful and consequently the agreement is void.

Sections 26, 27, 28 and 30 of the ICA are illustrations of contracts that are forbidden by law. Under Section 26 of the ICA, every agreement in restraint of the marriage of any person, other than a minor, is void. Under Section 27 of the ICA, every agreement by which any person

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is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. Under Section 28 of the ICA, any agreement by which a party to a contract is restrained from taking out usual legal proceedings to enforce his rights under the contract or which limits the time within which he is entitled to enforce his rights is to that extent void. Similarly any agreement which extinguishes the rights of any party or discharges any party from any liability, under a contract on the expiry of a specified period so as to restrict any party from enforcing his rights is void to that extent. One of the essential features of the law contained in Sections 27 and 28 is that the contract in its entirety does not become void; only to the extent the contract in question is hit by those provisions, are void. Under Section 30 of the ICA, any agreement by way of wager is void. Section 30 further states that no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. Recently there were a lot of litigations arising from future contracts on forex in which a lot of companies and banks were involved. One of the contentions raised by companies which suffered huge losses due to these transactions is that the contract is in the nature of a wager and hence it is void.

One of the important declarations of law enshrined in Section 23 of the ICA is that the consideration or object of an agreement will be lawful unless the contract is of such nature, which if permitted, would defeat the provisions of any law.

For instance, let us consider the statutory requirements under certain laws (the list is illustrative and not exhaustive):

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 [Repealed by the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999]



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In *Raptakos Brett and Co. Pvt. Ltd. v. Modi Business Centre (Pvt.) Ltd.* AIR 2006 Mad 236, the case before the Madras High Court involved an immovable property which was in excess of the limit prescribed under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. There was allegedly an oral agreement by which it was agreed to sell the property. The Court observed that at the time when the agreement was entered into between the parties, even at the inception, it was under the clutches of the above enactment. The above enactment was repealed subsequent to the entering into of the alleged oral agreement between the Parties in 1995 for the sale of the property. The question was whether in view of subsequent repeal a specific performance could be ordered. The Court observed that Section 6 prohibits transfer by a person holding land in excess of ceiling limits. The prohibition under Section 6 is for transferring the land and consequently declares that any violation of law shall be deemed to be null and void. Section 6 contemplates both proposed transfer and completed transfer. An agreement of sale is also affected by Section 6 of the Act. Under the above facts and circumstances, the Court categorically held that an agreement which originally stood void, cannot be made a legal one by a subsequent enactment or an order of the Court. In view of the same, the agreement originally entered into between the parties in the year 1995 which is the basis for the suit, was void at its commencement, and hence, on the basis of such agreement, no relief could be granted.

Sick Industrial Companies (Special Provisions) Act, 1985 [SICA]

In the case of a Sick Industrial Company which has been referred to and registered as such by the Board for Industrial and Financial Reconstruction (BIFR) under SICA, prior approval of BIFR is absolutely essential to sell or otherwise dispose of a property of such Sick Industrial Company. Any sale of any property without such prior approval will defeat the provisions of the law and consequently any such contract envisaging such sale is void. However an agreement wherein parties agree to buy or sell subject to receiving necessary approval of BIFR does not fall within the description of an agreement defeating the provisions of SICA nor is it an agreement which is expressly forbidden by SICA.

Companies Act, 1956

Under Section 294 of the Companies Act, 1956, a contract for the appointment of sole selling agents [which applies to sole buying agents too] entered into by a Company is subject to approval by the shareholders of the Company in a general meeting and if the contract is not approved by the shareholders in the first general meeting held after entering into of such contract, the appointment shall cease to be valid. If the general meeting disapproves the contract, the contract shall cease to be valid with effect from the date of that general meeting.

Under Section 294AA of the Companies Act, 1956, a contract for the appointment of a sole selling agent or sole buying agent, which has

substantial interest in the company, cannot be entered into by a company unless such contract is previously approved [before entering into the contract] by the Central Government.

Under Section 294AA of the Companies Act, 1956, a contract for the appointment of a sole selling agent or sole buying agent, cannot be entered into by a Company having a paid up share capital of Rs.50 Lakhs and above, unless such contract has the consent of shareholders of the company, by a special resolution, and further approval [not previous approval] of the Central Government.

Under Section 295 of the Companies Act, 1956, a transaction involving the granting of a loan or providing any guarantee or security, the benefit whereof is intended to be received by specified related parties, cannot be undertaken by a public company unless it has been previously approved by the Central Government.

Entering into a contract by a Company, having a paid up share capital of Rs.1 Crore and above, with any specified related party in whom a director or directors of the Company are interested, requires the previous approval [before entering into the contract] of the Central Government under Section 297 of the Companies Act, 1956. If no such approval is obtained, the contract will be void.

Banking Regulation Act, 1949 [BR Act]

A banking company cannot enter into any contract or arrangement for payment, directly or indirectly, of commission, brokerage, discount or remuneration in any form in respect of any shares issued by it of any amount exceeding in the aggregate 2½% of the paid up value of the said shares in view of the prohibition contained in Section 13 of the BR Act, which operates notwithstanding anything contained in Section 76 and 79 of the Companies Act, 1956.

Under Section 19 of the BR Act, a banking company cannot hold shares of any company beyond 30% of the paid up capital of that company or 30% of its own paid up capital and reserves, whichever is less, whether as a pledgee or mortgagee or absolute owner. Therefore any agreement pledging the shares of a company to a bank as security for loans granted to a company or for any other reason, in excess of the abovementioned limit will not be enforceable in view of the above provision.

SARFAESI Act, 2002

Under Section 13(13) of the SARFAESI Act, after receipt of a demand notice under sub-section (2) of Section 13 of the said Act, a borrower cannot enter into any transaction involving the transfer of any of his secured assets referred to in the said demand notice by way of sale or lease or otherwise (other than in the ordinary course of his business), without prior written consent of the secured creditor.

Obligation of Parties to Contract [Section 37 of the ICA]

Under Section 37 of the ICA, an important but rudimentary rule has



been incorporated stating that the parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of the ICA, or of any other law. This simple rule conveys the obligation of a party who has undertaken to do something or refrain from doing something under a contract.

Effect of Memorandum of Understanding

We often come across parties entering into 'memorandum of understanding'. They might not stop by setting out a memorandum or a minute of the points in relation to which they have reached an understanding. They would in fact proceed to take steps as per the 'memorandum of understanding' and create rights and obligations. A 'memorandum of understanding' is supposed to be a contract to enter into a contract. Once Parties go about of performing obligations, it transforms into an enforceable contract even if Parties continue to call it as a memorandum of understanding only. Thus a memorandum of understanding too acquires all trappings of a contract.

Effect of refusal to accept offer of performance [Section 38 of the ICA]

Under Section 38 of the ICA, if a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his right under the contract. This is yet another most important aspect of the contract law. If a person is ready and willing to perform and communicates to the promisee his readiness and willingness and the promisee only does not accept the same, not only the situation helps the promisor by saying he cannot be held liable for any breach on that count but also the law further fortifies his position by saying that the promisor who has been prevented from performing his part does not lose his right under the contract. His right would essentially include right to claim compensation by way of damages; right to specifically enforce the contract; and even right to terminate the contract.

Effect of refusal of party to perform promise wholly [Section 39 of the ICA]

When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance. The essential feature of this law is that the party who is aggrieved due to failure of the other party to perform his part, is entitled to put an end to the contract without being liable for wrongful termination. It goes without saying that the party who is aggrieved due to any breach by any other party to the contract is entitled to remedies even though the aggrieved party had put an end to the contract.

Anticipatory Breach of Contract

In *Jawahar Lal Wadhwa and Anr. v. Haripada Chakroberty*, [1989]1 SCC 76, the Supreme Court, in its decision dated 14th October 1988,

held that it is settled in law that where a party to a contract commits an anticipatory breach of the contract, the other party to the contract may treat the breach as putting an end to the contract and sue for damages, but in that event he cannot ask for specific performance. The other option open to the other party, namely, the aggrieved party, is that he may choose to keep the contract alive till the time for performance and claim specific performance but, in that event, he cannot claim specific performance of the contract unless he shows his readiness and willingness to perform the contract.

Fundamental Breach – Remedies

A 'fundamental breach' is such that it goes to the root of the contract such that it prevents a party from performing his part of the contract though he is ready and willing.

The Bombay High Court, in *Maharashtra State Electricity Distribution v. DSL Enterprises Private Limited**, 2009(4) Bom CR 843, in its decision dated 18th March 2009, had observed that a fundamental breach is breach of a basic, main term of the contract, so primary that upon such a breach the other reciprocal promises cannot be performed by the other party to the contract. Referring extensively to the decision of Lord Reid in *Suisse Atlantique Societe d'armement Maritime S A v. N V Rotterdamsche Kolen Centrale* 1966 AC 361 [HL] and also the Lord Denning's opinion in the case of *Karsales (Harrow) Ltd. v. Wallis* 1956 1 WLR 936, the High Court held that the law does not permit contracting out of common law liability for a fundamental breach.

The Bombay High Court further observed that the following two principles follow from the rule of law:

- A fundamental breach is a breach of the most basic and essential term of the contract, which goes to the root of the contract.
- A breach of the fundamental term enables the aggrieved party to repudiate the contract and sue for damages.

Distinguishing the decision in *Suisse Atlantique case* [1967] 1 A.C. 361, Lord Wilberforce leading the speeches of the House of Lords, in *Photo Production Ltd. Respondents v. Securicor Transport Ltd.*, [1980] AC 827, [1980] 2 WLR 283, [1980] 1 All ER 556, held that there is no rule of law that the guilty party cannot invoke an exclusion clause to escape from liability if the innocent party puts an end to the contract itself when a fundamental breach of a contract occurs.

Frustration or Impossibility of Performance [Section 56 of the ICA]

Section 56 of the ICA states that a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

In *Satyabrata Ghose v. Mugneeram Bangur and Company and Anr.*

←
[*Appeal against this decision was dismissed by Supreme Court (MANU/SC/1213/2011)]



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The party who is aggrieved due to failure of the other party to perform his part, is entitled to put an end to the contract without being liable for wrongful termination. It goes without saying that the party who is aggrieved due to any breach by any other party to the contract is entitled to remedies even though the aggrieved party had put an end to the contract.

AIR 1954 SC 44, the Supreme Court held that it is well settled and not disputed before us that if and when there is frustration the dissolution of the contract occurs automatically. The Supreme Court further held that the doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of Section 56 of the Indian Contract Act. It would be incorrect to say that Section 56 of the Contract Act applies only to cases of physical impossibility and that where this section is not applicable, recourse can be had to the principles of English law on the subject of frustration. It must be held also that to the extent that the Indian Contract Act deals with a particular subject, it is exhaustive upon the same and it is not permissible to import the principles of English law *dehors* these statutory provisions. The decisions of the English Courts possess only a persuasive value and may be helpful in showing how the Courts in England have decided cases under circumstances similar to those which have come before our Courts.

In *Sushila Devi and Another v. Hari Singh and Others*, AIR 1971 SC 1756, the Supreme Court, in its decision dated 05th May 1971, held Section 56 of the Indian Contract Act lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties. The impossibility contemplated by Section 56 of the Contract Act is not confined to something which is not humanly possible. If the performance of a contract becomes impracticable or useless having regard to the object and purpose the parties had in view then it must be held that the performance of the contract has become impossible. But the supervening events should take away the basis of the contract and it should be of such a character that it strikes at the root of the contract.

Usual Modes of Termination of Contracts

- By mutual consent.
- By notice as per terms of contract.
- By exercising the option to terminate as per terms of contract.
- Terminating a contract as a sequel to repudiation or breach by the other party.
- Frustration or impossibility of performance.
- Accord and satisfaction.

All contracts are capable of being terminated

In *Hill Oils & Sales Ltd.* 1987 LRC 468, it was held that the contract could not be terminated immediately without cause since there was no provision for immediate termination without cause. The Court further held that the rule requiring reasonable notice of termination should be implied as a reasonable term of contract.

In *Classic Motors Ltd. v. Maruti Udyog Ltd.*, 65 (1997) DLT 166, the Delhi High Court held that “in private commercial transaction the parties could terminate a contract even without assigning any reasons with a reasonable period of notice in terms of such a clause in the agreement. The Court further held that the submission that there could be no termination of an agreement even in the realm of private law without there being a cause or the said cause has to be valid strong cause going to the root of the matter, therefore, is apparently fallacious and is accordingly, rejected.”

In *Rajasthan Breweries Ltd. v. The Stroh Brewery Company*, AIR 2000 Delhi 450, a division bench of the Delhi High Court held as follows:

“Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement; Such an injunction is statutorily prohibited with respect to a contract, which is determinable in nature.”

Restitution

Apart from the remedies discussed herein above, in certain cases, a party may seek restitution as a remedy. Section 72 of the ICA provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. Section 72 of the ICA obliges a person to refund, what has been received by him by mistake or under coercion.

The Doctrine of Restitution will apply only when there is an unjust enrichment. If one of the parties is able to establish that the other had got unjustly enriched, due to a mistake or due to coercion of that other, it may be possible to invoke the Doctrine of Restitution.

Rescission

It is possible to seek rescission of a contract only in certain extraordinary circumstances. If the contract is vitiated by fraud or misrepresentation, the affected party could have the contract



rescinded on the ground of want of real consent. The affected party may assert to avoid the contract stating that he had relied upon the representations of the other party which had subsequently turned out to be a misrepresentation. Rescission is an equitable remedy and therefore the party should approach the Court as soon as he discovers the fraud or misrepresentation. If third parties have acquired enforceable rights, such a relief may not be possible to the affected party. Section 19 of the ICA states that if consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Breach of Contract – Remedies under the Specific Relief Act, 1963 and / or the ICA

The remedies available for the non-performance of an obligation in a contract are (1) specific (2) compensatory. The law on this issue is dealt with in two statutes viz., The Specific Relief Act, 1963 and the ICA.

In *Pagnan S.P.A. v. Feed Products Ltd.* 1987 (2) LLR 601, the UK Court of Appeal observed “the parties are to be regarded as masters of their contractual fate. It is their intentions which matter and to which the Court must strive to give effect.”

It is important to consider the consequences of breach of a contract and whether it is possible to seek specific performance of the contract. It is not necessary that the moment a breach occurs, the other party to the contract must necessarily rescind the contract. If the breach is a material breach affecting the very consideration for the contract, it would be advisable to notify the defaulting party in clear language about the breach and to give an opportunity to the defaulting party to remedy the breach. In spite of such notice and reasonable time, if the defaulting party continues to remain in default, it could be taken as a willful neglect on the part of the defaulting party. If circumstances would permit, another notice cautioning the defaulting party of the consequences thereof could be issued. If default continues to persist without the defaulting party taking any remedial steps, it is necessary to chalk out the next course of action as to whether it is possible to seek specific performance or to terminate the contract and claim compensation by way of damages. If the contract is of such nature where an order of a Court imposing specific performance on the defaulting party is not possible, a notice terminating the contract should be issued and if thought fit a suit for claiming compensation by way of damages could be instituted. A party who terminates a contract cannot seek an order for specific performance. A defaulting party cannot seek any equitable remedy and ask for an order of specific performance. A contract which cannot be specifically enforced as per law cannot be specifically enforced.

In *Adhunik Steels Ltd v. Orissa Manganese & Minerals P Ltd.* [2007] 21 CLA-BL Supp 240 (SC) / (2007)7SCC125, the Supreme Court held that “injunction is a form of specific relief. It is an order of a Court requiring a party either to do a specific act or acts or to

refrain from doing a specific act or acts either for a limited period or without limit of time.”

Sections 36 to 39 of The Specific Relief Act, 1963 contain the provisions with regard to the nature and scope of the powers of Courts to grant injunctions. Under the Specific Relief Act, it is possible to obtain an order from the Court for the specific performance of the obligations under the Contract. However it is not possible to obtain specific performance in respect of all contracts. Certain contracts as specified in Section 14 of The Specific Relief Act, 1963 are not specifically enforceable. Where a contract is not specifically enforceable, it is also not possible to obtain an injunction to prevent the breach of such a contract. [Clause (e) of Section 41 of The Specific Relief Act, 1963]. For instance, a contract which by its nature determinable cannot be specifically enforced.

Injunction with / without damages

The right to relief of injunctions is contained in Part III of The Specific Relief Act, 1963. Section 36 provides that preventive relief may be granted at the discretion of the Court by injunction, temporary or perpetual. Section 38 indicates when perpetual injunctions are granted and Section 39 indicates when mandatory injunctions are granted. Section 40 provides that damages may be awarded either in addition to or in substitution of injunctions. Section 41 provides for grant of other relief if an injunction cannot be granted. Clause (e) of Section 41 specifically provides that no injunction can be granted to prevent the breach of contract the performance of which would not be specifically enforced. Section 42 states where a contract contains a positive covenant to do a certain act and also a negative covenant not to do a certain act, if the Court is unable to compel specific performance of the positive covenant, it does not mean it cannot grant an injunction to directing the performance of the negative covenant. Thus, when there is an unenforceable positive covenant along with an enforceable negative covenant in the very same contract, the Court can very well direct the performance of the negative covenant under this provision.

Damages

The aggrieved party may seek compensation from the party who breaches the contract. Section 73 of the ICA covers this aspect. Section 73 reads as follows:

“Compensation for loss or damage caused by breach of contract:- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.”

Thus, if one of the parties to a contract commits breach, the party who suffers any loss or damage as a result of such breach is entitled to receive compensation from the party who causes the breach. It is also to be understood that if one alleges breach of contract on the



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part of the other and if the other has a proper justification for the breach, which is satisfactory, then that can be used as a defence against the claim for damages.

When Penalty could be imposed on the Defaulting Party?

Where the contract itself addresses the issue of consequences of a breach and stipulates a penalty, Section 74 of the ICA will come into play. When such a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

In a decision rendered by the five Judge Bench of the Supreme Court in *Fateh Chand v. Balkishan Das*, AIR 1963 SC 1405, it was held that "Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties pre-determined, or where there is a stipulation by way of penalty. But the application of the enactment is not restricted to cases where the aggrieved party claims relief as a plaintiff. The section does not confer a special benefit upon any party; it merely declares the law that notwithstanding any term in the contract predetermining damages or providing for forfeiture of any property by way of penalty, the Court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. The jurisdiction of the Court is not determined by the accidental circumstance of the party in default being a plaintiff or a defendant in a suit. Use of the expression "to receive from the party who has broken the contract" does not predicate that the jurisdiction of the Court to adjust amounts which have been paid by the party in default cannot be exercised in dealing with the claim of the party complaining of breach of contract. The Court has to adjudge in every case reasonable compensation to which the plaintiff is entitled from the defendant on breach of the contract. Such compensation has to be ascertained having regard to the conditions existing on the date of the breach."

In the said case, the Supreme Court further held that "Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of "actual loss or damages"; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew



when they made the contract, to be likely to result from the breach." In *Oil and Natural Gas Corporation Ltd. v. SAW Pipes Ltd.*, AIR 2003 SC 2629, the Supreme Court laid down the guiding rules (Para 69) as follows:

"Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same; If the terms are clear and unambiguous stipulating liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act."

"Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The Court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequences of the breach of a contract."

In *Dwaraka Das v. State of Madhya Pradesh and Another*, AIR 1999 SC 1031; (1999) 3 SCC 500, in its decision dated 10th February 1999, the Supreme Court held that claim of expected profits is legally admissible on proof of the breach of contract by the erring party. It was further observed that "the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid. The Supreme Court had observed that in its earlier decision in *A.T. Brij Pal Singh and Ors. v. State of Gujarat* AIR 1984 SC 1703, while interpreting the provisions of Section 73 of the ICA, it was held that for estimating the amount of damages Court should make a broad evaluation instead of going into minute details.

Conclusion

As Salmond had put [Law of Contracts by Salmond & Winfield 1927 Ed. page 315], a contract is an agreement by which rights and obligations are created, not one by which they are destroyed; it is an agreement whereby the parties become bound together by a bond of legal obligation, not one which releases them from such a bond. CS



Ranjan Mukherjee, FCS

Tata Consultancy Services Ltd.
Kolkata

ranjan.m@tcs.com

Companies Bill, 2012 brings focus on Corporate Compliance in the Boards' Report

➤ The Companies Bill, 2012 has brought a new dimension to the Directors' Responsibility Statement which is going to place a new responsibility on compliance professionals, namely the company secretaries once the Bill gets through the Parliament and gets converted into an Act. The impact of the proposal contained in clause 134(5) of the Bill and the opportunity it is going to provide have been examined here.

BACKGROUND

The Companies Bill, 2012 through clause 134(5) (e) and (f) has brought new dimension to the Directors Responsibility Statement (DRS) which is going to provide new responsibility on the compliance professionals once the Bill is enacted into a legislation. This article deals with the impact and opportunity in connection with this new clause.

At this juncture let us roll back to 2000 when for the first time DRS was introduced in the Board's report. The Companies (Amendment) Act 2000 brought a new section – Section 217 (2AA) under which four important statements were clubbed under the heading 'Directors Responsibility Statement'. These were:

- Materiality aspect in accounts,
- Consistency aspect how applied resulting true and fair view of the state of affairs in the profit and loss account
- Sufficient care about asset protection of the company
- A declaration that the annual accounts of the company has been drawn on the basis of going concern concept.

An interesting question that arises after a decade of introduction of DRS is "How many directors have personally felt satisfied before signing the Board's report or at the time of reading the Board's report of their company that the statements relating to the above

four aspects are satisfactory and authentic from their mind? No data is available in this regard right now to draw any inference. But even after a decade of introduction of DRS there are instances of systematic fabrication of financial results leading to collapse of even listed entities.

It would be pertinent to mention that to review and draw a conclusion on the above four aspects in the DRS a director perhaps need to have a full understanding of required technical knowledge and facts relevant for the issues. Otherwise the concept of materiality, application of consistency and application of appropriate accounting standards for producing true and fair view and lastly assessment of going concern may not realise the intended objective. Again no data is available to know how many of the directors have relied on external professionals to ascertain such factors independently before signing the Board's report.

Compliance Realities

Risk management forced the corporates to pay attention on better compliance in recent past particularly across the globe, keeping so many corporate debacles on the background on Indian soil and abroad. There cannot be multiple views about the necessity of corporate compliance which is the foundation stone of good governance. A company is expected to comply fully, timely and continuously with the applicable laws, regulations, standards,



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➤ Introduction of clause 134 (5) (e) and (f) are collectively an awakening call to the companies and to the professional institutions to bring appropriate infrastructure and environment to bring better compliance regime by engaging appropriate number of professionals, technology and best practices to ensure better compliance beside safety net for the whistleblowers. Dodd Frank Act of the US could be examined for thought process for a meaningful whistleblower protection policy and practice.

codes of conduct and should also assess continuously the functional parameters to ensure continuous value creation for the stakeholders of the company.

It will not be improper to say that boardrooms mostly give importance on strategic issues and witness analytical deliberation of directors. But in many boardrooms compliances as a subject are taken in the form of a report indicating check marks on the boxes and denote a comfort feeling in the boardroom showing the company is complying with all that what should be complied with!

This laying down of comfort statement in the form of compliance certificate goes on (in many companies from the pen of company secretaries) and companies claim fulfillment of requirement of applicable laws, policies, standards, codes of conduct etc, and publish satisfactory statement in corporate governance report accordingly through directors report. Unless something earth-shattering happens in the company this rigmarole continues with the stakeholders through the annual report without any bankable back up verification process of such statements. This creates a false conviction and bravery image that nothing much to be worried about particularly when the company is on a growth path touching new revenue picks in every quarter, besides profit, dividend rate, employee strength all collectively showing an upward-moving-healthy graph and this mind-set about compliance on right path continues because corporate debacle doesn't come with an advance notice to the stakeholders!

It is interesting to note from the 55th Annual Report of the Ministry of Corporate Affairs as on 31 March 2011 (page 8) that the Registrar of Companies across the country has received 20.77 lakh balance sheets. Board's report being an attachment to the balance sheet obviously carries equal legal importance that of a balance sheet. It is further interesting to note that the website of

the Ministry of Corporate Affairs maintains a list of only 53 individuals who are debarred so far to be a director of Indian companies. The list is too short at present. Isn't it? Considering the volume of DRS filed and debacles that have happened.

Companies Bill 2012 on DRS

The Companies Bill 2012 has inserted two new sub-clauses relating to DRS - 134(5)(e) and (f)

The directors of listed companies under clause 134(5)(e) must satisfy that they have laid down "Internal Financial Controls" and the same are followed by their companies and an assessment to be carried out by the directors that such internal financial controls are adequate and were operating satisfactorily. In the "Explanation" – the phrase "Internal Financial Controls" has been narrated. Internal Financial Control means the policies, procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information. Though the word 'corruption' has not been used it seems to be implied to include corruption as well.

Clause 134(5)(e) has cast a huge responsibility on the directors of 5000 Indian listed companies, because few of the listed companies today perhaps can claim that they have a corporate compliance policy and practice in place to take care of all the stakeholders, like, policies in relation to functions like human resource, accounting and finance, procurement, marketing, legal and secretarial, anti-bribery and corruption and so on.

If the Bill is enacted into a legislation, the listed companies have to ensure not only document relating to policy but have to create a structure internally with appropriate efficiency for practicing the policy with the support of appropriate professionals, appropriate technology and global standards to cope up the responsibilities given in clause 134(5)(e) and within the meaning of "internal financial control".

Introduction of clauses 134(5) (e) and (f) would lead to increase in the cost of governance, but quality improvement of DRS is an essential necessity for better governance and that is possible only with robust corporate compliances.

Clause 134(5) (f)

This clause is meant for all companies. Through this clause it has been desired that the directors shall make statement in the DRS to the effect that they have devised proper systems to ensure compliance with the provisions of all applicable laws and such systems were found adequate and operating effectively.

It is a difficult proposition, but once enacted the directors have to devise a proper system to ensure compliance of applicable laws



concerning their companies. In a real-life situation a company today struggle in a competitive market to fetch growth continuously following the rule of the game and law on competition. The companies do struggle to deal with compliance of multiple applicable laws, regulation, rules, standards, codes of conduct and most importantly all companies carry a responsibility to cater to the expectation of all stakeholders and to remain on the continuous growth path.

There is a common myth that a compliance certificate should not contain anything which is in contravention or a non-compliance. Compliance certificate should be taken as a snap shot of a day and non-compliance if any should be examined to know the cause behind such incidence and should be rectified. It is the responsibility of the compliance officer to provide impact of non-compliance in financial terms and the likely-hood of occurrence of such non-compliance and should provide an index on compliance.

Two important aspects of Corporate Compliance

(i) Asset Safeguarding

To safeguard the assets and for prevention and detection of frauds and other irregularities it is essential to exercise better control on all assets (tangible, intangible and capital work in progress), irrespective of their nature and location. The directors may approve a control procedure and check its effectiveness in a periodic manner. The directors may govern the non-current assets in the following manner:

Acquisition or disposal of non-current assets (immovable property) should be through a policy on asset management with appropriate control net purchase /lease/ or through tenancy/ or licensee or in relation to disposal with an objective to bring transparency in the deals. The policy on asset management should also specify the method and span of verification of the assets and assess the damages caused if any, whether due to normal usage or for any abnormal situation. The insurance of the assets should be covered under the policy.

A continuous monitoring on the agreements pertaining to various modes of acquisition and disposal should be carried out with an eye on the changes in the legislation, i.e., stamp-duty, taxation, state laws etc, and such monitoring should be reviewed under the asset management policy. Depending upon the volume the asset management monitoring should be done in consultation with the internal audit team to ensure the effectiveness of the internal control on non-current assets and also benchmarking of the efficiency level of control.

The policy on asset management should also state clearly the preservation procedure of the original documents relating to all assets and custodian concept should be reviewed to check its effectiveness. The policy should also specifically cover the



involvement of employees or promoter group in the transaction with the company or their subsidiaries or associates and its impact on the company.

For current assets the directors should ensure appropriate control system to reflect its real quantity and value beside their adequate security. Matters pertaining to inflationary effect, abnormal losses, normal losses are few of the important aspects which directors should make sure and certain before writing DRS.

(ii) Mitigating Internal Risks

The reverse of compliance is risk. It will not be incorrect to say that internal risks arise from

- (1) non-monitoring of executed contracts and
- (2) non-adherence to applicable laws, regulation, standards.

Monitoring of executed contracts is given least importance by and large. The signing parties to any contract normally burn mid-night oil at the drafting stage and fight with every word and phrases but once the contract is signed, sealed and delivered it takes shelter in a file. During the currency of the contract parties to the contract don't look at the clauses whether those are being actually honoured, whether the other side to the contract is discharging obligations as per the clauses, etc. But when non adherence to the clauses reach a height then as a *post-facto* measure parties refer the matter to arbitration or approach the judiciary for resolution of the dispute. The parties to the agreement without monitoring the contracts on a continuous basis do certain acts which have a bearing on true and fair view like ascertaining liability or accrual of benefits without knowing the facts or without evaluation of the contract on continuous basis through a structured monitoring



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process. These non-actions bring a set of internal risks.

The silver-lining

The other cause of internal risks is non-compliance of applicable laws and regulations. Companies start accumulating these risks gradually over time and likely liability arising out of such non-compliance remain unreported in the balance sheet. Induction of necessary compliance mechanism would help report through DRS as specified in clause 134(5)(f) of the Companies Bill, 2012.

Listing agreement has made it mandatory that the Board should carry out a periodic review of compliance of applicable laws, but would it be prudent for the stakeholders to simply assume that all listed companies have a back up support and structure of compliance behind such review to insulate the internal risks?

Introduction of Clause 134 (5) (f) is definitely a silver lining.

The following document from Deloitte website reflects the thoughts of large consulting firms in relation to the role of the Board and Audit Committee.

Corporate Governance Monthly – Stay Connected – a publication of Deloitte Development LLC* has touched upon the role of the Board and Audit Committee with specific compliance and ethics responsibilities. The write up pin points what the Board can oversee through its appointed committees in this regard. Like promulgating a compliance charter, focusing attention on critical risk areas, owning the compliance agenda with clarity on selection, evaluation and termination of CEO and chief ethics and compliance officer.

The above write up also gives special emphasis on whistleblower helpline process and expects action from the Board and its Committees whenever needed beside examining protocols for investigating complaints, helpline statistics, and internal reporting.

To strengthen the tone the Board should review metrics and key performance indicators with company's published policies and maintain a proper understanding of the compliance monitoring, testing processes, and resolution methods adopted, with a special attention on adequacy of management response on specific issues of areas of weak control points.

The need of the hour

If someone wants to look at the present scenario, following questions arise

- whether the board approves a budget for compliance?
- How much fund the Board allocate to deploy appropriate

technology, people and best practices?

- What would be the safeguard to a company secretary if such infrastructure is not provided by the company for compliance?

There is an urgent need to create awareness and generate huge institutional support from all professional institutions, corporate governance bodies and chambers in relation to the requirements depicted in clause 134 (5) (e) and (f).

There is no institutional safety net for the company secretaries for non-compliance by their companies or clients. It is always assumed that the company secretary is solely responsible for non-compliance of any kind. Is it fair? A concerted institutional effort is the call of the day, which shall ensure better performance of the compliance professionals.

Introduction of clause 134 (5) (e) and (f) are collectively an awakening call to the companies and to the professional institutions to bring appropriate infrastructure and environment to bring better compliance regime by engaging appropriate number of professionals, technology and best practices to ensure better compliance beside safety net for the whistleblowers. Dodd Frank Act of the US could be examined for thought process for a meaningful whistleblower protection policy and practice.

But how all these should start? The compliance office should draw up policies relating to Procurement, HR, Finance, Sales and Marketing, Company Secretarial, Dealing with the Government, Anti-bribery and Corruption etc for Board's approval. These respective policies should state how the internal professionals shall comply with the relevant laws, rules, regulation, standard and code of conduct. The compliance office should also conduct series of audits of such implementation of policies and impart knowledge and awareness to the employees and other stakeholders of the organization. Last but not the least, such action plans should be tagged with the role and responsibility of the employees and should be reviewed with the appraisal process.

Better compliance is expected as a result of insertion of Clause 134(5)(e) and (f) of the Companies Bill, 2012. Perhaps this effort will collectively improve India's rank in the corporate governance in future, which is currently 7th as per CLSA Corporate Governance Asia-Pacific Watch 2012. This list was produced in collaboration with the Asian Corporate Governance Association. The report analysed 864 listed companies across Asia-Pacific markets, including Japanese and Australian firms. Infosys was the only Indian Company that featured in the top 20 corporate governance large caps. Moreover, there were just 5 Indian listed companies (out of about 5000 listed companies) which got featured in the top 50 league table. Besides, Infosys the other four include HUL, Wipro, Titan and Yes Bank. The list will grow with many other Indian listed companies after induction of clause 134(5) (e) and (f) of the Companies Bill, 2012.

* (http://www.corpgov.deloitte.com/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/USEng/Documents/Deloitte%20Periodicals/Hot%20Topics/Ethics%20and%20Compliance_Deloitte%20Hot%20Topics_March%202012.pdf)



M.M. Jain, ACS

Group Manager - Secretarial
Apollo Tyres Ltd., Gurgaon

mrleemanoharjain@yahoo.co.in

Enforceability of Shareholders' Privileged Rights

The Position at Law Re-visited

➤ The decision of the Bombay High Court in Messer Holdings' case provides guidance to all parties to an investment agreement on the implications and consequences of incorporating a public limited company in India and addresses directly and forcefully the question of enforceability of shareholders' privileged rights. However the divergent views expressed by Regulators does not appear to be conducive to the investment environment because shareholders' privileged rights are integral to investment and acquisition agreements.

Post liberalization, India has steadily encouraged a very investor-friendly environment in the country. However, the corporate sector in the country still faces an immense challenge in entering into investor-friendly investment agreements which are in consonance with the prevalent legal framework.

Modern day investment agreements contain a number of legal jargons such as Right of First Refusal (ROFR), Right to First Offer (RTFO), Tag Along, Drag Along, Call Option and Put Option ("Shareholders Privileged Rights"). Such Shareholders Privileged Rights are very useful and popular in investment agreements and are a very common feature in shareholder agreements, share subscription agreements and many other investment related agreements ("Investment Agreements"). However, in view of the fact that Companies Act, 1956, ("Act") mandates 'free transferability of shares' in public companies, there are significant apprehensions on the legality and enforceability of such Shareholders Privileged Rights.

Though, the Act does not specifically restrict these Shareholders

Privileged Rights *inter-se* shareholders such arrangements have been questioned, from time to time, on the ground of being violative of the sacrosanct principle of 'free transferability of shares' enshrined under the provisions of section 111A read with Section 82 of the Companies Act.

Further, the Securities and Exchange Board of India ("SEBI") and Reserve Bank of India ("RBI") have also been taking stance which raises serious concerns about the enforceability of such Shareholders Privileged Rights particularly with regard to the call & put options in the Investment Agreements. SEBI, last year, in its informal guidance Letter No. CFD/DCR/16403/11 dated 23-05-2011 in *Vulcan Engineers Ltd.* matter, stated that call and put options in Investment Agreements are in the nature of forward contracts and are not valid as they are neither traded on a stock exchange nor settled on the clearing house of a recognized stock exchange and thus, had directed the parties to drop the call and put option arrangement from share acquisition agreement. At the same time, RBI has been objecting to such options on the ground that inbound investments with a put option to the investor are foreign currency loans disguised as foreign equity. Infact,



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the RBI had even stated earlier that a put option is similar to an over-the-counter equity derivative deal which is not backed by the law of the land.

In this background, this article tries to take a holistic view of the legal position in India as to whether such Shareholders Privileged Rights are indeed enforceable under the Indian laws.

The position at law on the subject matter can be discussed with reference to (a) private limited companies and (b) public limited companies – listed and unlisted.

A. Private Limited Companies

One of the essential requirements for defining a company as a private limited company is that there must be some restriction on the transferability of shares. It is a well settled principle of law, reaffirmed by the Courts, that any such restriction on transfer of shares means - any restriction which will give some control to the concerned company over transferability, meaning thereby that any such restriction must apply to all shares and to all classes of shares and not to some shares or classes of shares only.

Thus, the only permissible restrictions on transferability of shares are those which are contained in the company's Articles of Association ("AoA"). Any additional restriction, not contained in the AoA, but in a private agreement between two shareholders is not binding on either the company or on the other shareholders of the company. Whether an agreement, between shareholders and an outsider, for issuance of further shares is binding on the company even if the terms of such agreement have not been incorporated in AoA was the main issue in *S. P. Jain v. Kalinga Tubes Ltd.* 1965 AIR 1535, (Kalinga Tubes was a private company at the time of agreement). The Supreme Court observed that the company was not a party to the agreement and the terms of the agreement were also not incorporated in the AoA and therefore the company was not bound by the agreement. Again, in the landmark case of *V B Rangaraj v. V B Gopalkrishnan* (1992) 1 SCC 160, the main issue was whether an oral agreement as to restriction on transfer of shares of a private company, held by two shareholders belonging to same family, but which was not incorporated in AoA of the company was enforceable. The Apex Court referring its earlier decision in *Kalinga Tubes (supra)*, held that the shares are "freely transferable" and a private agreement, imposing restriction on transfer of shares, which is not stipulated in AoA is neither binding on the company nor on the shareholders. This means that such kind of additional restrictions on transfer of shares contained in private agreements between shareholders are void in *toto* unless they are incorporated in the AoA of the company. Therefore, one thing very clearly established in the aforesaid cases is that any restriction on share transfers must be incorporated in the AoA of the company otherwise it will not have any effect and aggrieved shareholder cannot have any legal remedy against violation of such restrictive provisions of agreement.

The Supreme Court again dealt with a similar issue in *Madhusoodhan*

v. Kerala Kaumudi Pvt. Ltd., 2003 117 Comp. Cas. 19 SC where there were 9 shareholders (all family members) in a private company. Five shareholders entered into a karar (agreement) that on death of the chairman (also a shareholder) her shares would be divided in the ratio of 50:25:25 between the three shareholders. 50% was to be held by Madhusoodhan. The karar was not embodied in the AoA. On the death of the Chairman, 50% shares were not transferred to Madhusoodhan in terms of karar forcing Madhusoodhan to file a suit for specific performance. It was contended by the defendants that this was a restriction on transfer of shares in contravention of AoA and therefore, unenforceable both against company and shareholders and no suit for specific performance would lie. However, the Supreme Court took a different view and distinguished the case from cases of *V.B. Rangaraj* and *Kalinga Tubes*. The Supreme Court held that this restriction was not on shares as a class, but on specific, identified shares between specific and identified members to which the company need not be a party, so suit for specific performance would lie.

Thus, on the basis of the above decisions of the Supreme Court, it can be inferred that a shareholder can be restricted from transferring his shares in a private limited company by way of a private agreement which contains restrictive clauses in the form of Shareholders Privileged Rights. However, where a private agreement between two shareholders is sought to be enforced against the Company or any restriction on transfer of shares is proposed to be made applicable to the entire class of shares, the provisions of any such private agreement should be duly incorporated in the AoA of the company to be enforceable.

Talking particularly with reference to the Call and Put Options in Investment Agreements, being challenged on the ground of these being forward contracts and thus violative of Securities Contract (Regulation) Act, 1956 ("SCRA"), it may be stated that the contention does not hold good as SCRA does not apply to Private Limited Companies. In *Dahiben Umedbhai Patel and others v. Norman James Hamilton and others* 1985 57 Comp. Cas. 700 Bom it was held





that shares of a private limited company were not marketable securities as defined in Section 2(h) of the SCRA. The learned Judge observed that a marketable security is one which enjoys a higher degree of liquidity and must, therefore, be such that it can be readily sold in the market. Since, the shares of a private limited company cannot be so sold and also cannot be listed in the stock exchanges because the shares of private limited company are not freely transferable, it does not come under the purview of SCRA as it has been enacted to control securities which were normally dealt on the stock exchanges, in other words to the securities of Public Limited Companies.

Thus, since SCRA has no application to the Private Limited Companies, shareholders of a private company can enter into forward transactions of shares. In other words, they can validly include Call & Put Options in any shareholders agreement they wish to enter into.

B. Public Limited Companies

1. Listed Companies

In the case of public limited companies free transferability of shares is a great beneficial feature of incorporation. The shares of public limited companies have been made freely transferable without there being any need for taking permission from the company or any other agency. To facilitate this, vide section 82 of the Act the shares or any other interest of a shareholder in a company have been declared by law as a movable property, transferable in the manner provided by the AoA of the company.

Thus, while the Act does not restrict the grounds on which a company could refuse to register a transfer of shares, it was common for the companies to provide in their AoA that the Directors could, at their absolute and uncontrolled discretion, decline to register any transfer of shares. However, in the case of listed companies, the Board of Directors could refuse to register a transfer on only one or more of the four grounds mentioned in section 22A of the SCRA.

» A shareholder can be restricted from transferring his shares in a private limited company by way of a private agreement which contains restrictive clauses in the form of Shareholders Privileged Rights. However, where a private agreement between two shareholders is sought to be enforced against the Company or any restriction on transfer of shares is proposed to be made applicable to the entire class of shares, the provisions of any such private agreement should be duly incorporated in the AoA of the company to be enforceable.

Till 1996 the legal position was that while shares of a listed public company were generally transferable freely, the companies were allowed to provide in their AoA power to their Boards to refuse the registration of the transfer of shares on the grounds mentioned in section 22A of SCRA. However, the Depositories Act, 1996 inserted a new section 111A in the Act, declaring that the shares or debentures and any interest therein, shall be freely transferable and simultaneously deleted section 22A of SCRA besides making some other consequential changes in the Act.

In view of the aforesaid changes in the laws, now the situation is that a public company cannot refuse to register transfer of shares. Any existing provision in the AoA of a public company empowering its Board to refuse registration of transfer of shares on any ground, whatsoever, is void.

Now, despite the position at law being what it is, some restrictions on the transferability of shares are still very much required for strategic reasons. When two or more persons come together for doing some business, it is essential to have a clear understanding about the control and rights of management in the business venture and transfer of the same in future. Due to these business reasons, parties to Investment Agreements want some kind of privileged rights with respect to restrictions on share transfer. The purpose of such restrictive privileged rights on share transfer is to protect the party who is willing to continue the venture on exit of other party as well as to have some understanding in advance to meet the contingency which may arise in between. If one of the parties wants to exit and wants to dispose off its shares, then what about the other partner who





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wants to continue, and what is more important, is 'what about the new incoming partner' and whether existing operations or a project of company can be continued smoothly with new shareholders. The very purpose of share transfer restrictions is to meet such kind of contingencies and above all to set a mechanism in advance to avoid any business and management deadlock.

However, the legal enforceability of these restrictions contained in the Investment Agreements between the parties has come into question due to varying decisions from judiciary. In *Mafatlal Industries Ltd. v. Gujarat Gas Co. Ltd.* 1999 97 Comp. Cas. 301 Guj., the main issue was whether an agreement for pre-emption can be enforced in view of the concept of free transferability of shares. The agreement for pre-emption was not incorporated in the AoA. It was very interestingly and rightly argued that "free transferability" refers to absence of restriction which may be imposed by the third parties, but it cannot exclude the right of a shareholder to impose restrictions on himself in the matter of transfer of shares to another person. This argument was however rejected and it was held that the ratio laid down in the case of *V.B. Rangaraj - (Supra)* (Case dealt with a Private Company) by the Supreme Court is having much greater force and the same can be applied to a public company also. Similarly, in *Pushpa Katoch v. Manu Maharani*; (2006) 131 Comp. Cas. 42 Delhi, the issue considered by the Delhi High Court was whether the right of pre-emption in a family agreement entered into between 4 sisters was breached by transferring the shares to outsiders without offering them first to the other shareholder. The High Court held that there can be no fetters on the right of the shareholders of a public company to transfer his shares and even if AoA provides for such restrictions it would have been *ultra vires* the Act.

Further, in the famous case of *Western Maharashtra Development Corporation Ltd. v. Bajaj Auto Limited*, Arbitration Petition No. 174 of 2006 (Bombay) an agreement was entered into between the parties pursuant to which a public company was incorporated. The agreement provided a ROFR at a price to be mutually agreed or as may be decided by an arbitrator appointed for the purpose. The term was incorporated in the AoA. Western Maharashtra offered its shares to Bajaj Auto however parties could not agree on the price and hence arbitrator was appointed. Western Maharashtra challenged the price determined by the Arbitrator on the ground that agreement was void in the light of section 9 and section 111A of the Act. Bajaj Auto contended that restriction is contained in the AoA and Section 111A does not prohibit agreements between specific shareholders regarding specific shares especially when incorporated in AoA. The Bombay High Court observed that the effect of a clause of pre-emption is to impose a restriction on the free transferability of the shares and the same is impermissible. The court further observed that Section 9 of the Act has overriding effect on the AoA or any agreement and held that in view of the same even if the AoA provided for such restriction it would have been *ultra vires* the Act.

The Bombay High Court again dealt with a similar issue in *Messer Holdings Limited v. Shyam Madanmohan Ruia*, Appeal No. 285 of

2003. In this case, for the first time, the Court went into the legislative history of Section 111A of the Act. The Court noted that the intention behind introducing Section 22A in 1986 was to regulate the right of the Board of Directors to refuse transfer of shares and it was not to impose restriction on the right of shareholders to deal with his shares by entering into consensual arrangement with the third party to which the company need not be a party. Section 22A was introduced to curtail the arbitrary power exercised by the board of directors in refusing the request for transfer and transmission of shares. The court noted that Section 22A was deleted by Depositories Act 1996 and at the same time Section 111A of the Act came into picture. The proviso to sub-section (2) reinforces the position that Section 111A is to regulate the powers of the Board of Directors of the company regarding transfer of shares or debentures and any interest therein of a company.

In rendering the decision in *Messer Holdings' Case (supra)*, the court relied on the decision of the Supreme Court in *Byram Pestonji Gariwala v. Union Bank of India* AIR 1991 SC 2234, wherein the Apex Court stated that the freedom of contract generally exists and the legislature does not interfere except when warranted by public policy and the legislative intent is expressly made manifest. The court observed that intrinsic to the concept of free transferability is the right of a shareholder to deal with the shares in the manner that it deems fit, including the right to pledge, mortgage or grant rights of pre-emption regarding his shares, as in the case of any other movable or immovable property. That means, it is open to the shareholders to enter into consensual agreements which are not in conflict with the AoA, the Act and the Rules, in relation to the specific shares held by them; and such agreement can be enforced like any other agreement as they do not impede the free transferability of shares at all. It is not required to be embodied in the AoA. In respect of Section 9 of the Act, the Court noted that Clause (a) thereof, which refers to any agreement executed, is in respect of an agreement executed by the company; and not by the shareholder with a third party which is a private agreement to which the company is not a party.

The above judgment also conforms to the legal position in US where state laws, such as the New York Business Corporation Law, recognize and validate pre-emptive rights of shareholders if the Company's charter or constitution documents do not provide otherwise. Similarly, in England too, a shareholder's pre-emption rights are valid and enforceable.

In view of the decision of the Bombay High Court in *Messer Holdings' case* it can be inferred that shareholders can enter into consensual agreements putting restrictions on transfer of shares. Thus, the only condition for such shareholders privileged rights to be legally enforceable in a public limited company is that the contract for transfer of shares must not be a "Forward Contract".

Forward contracts are contracts under which the parties agree for performance of their obligations at a future date. Forward contracts are in the nature of derivatives. In June 1969, the Central Government



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issued a notification under Section 16 of SCRA prohibiting all contracts for sale or purchase of securities other than spot delivery contracts or contracts for cash or hand delivery or special delivery.

A "spot delivery contract" means a contract which provides for, (a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day; (b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

The 1969 Notification was rescinded on 1st March 2000 and the power to regulate contracts in securities was demarcated between SEBI and the RBI. By the notification No. SO 184(E) dated 1 March 2000, SEBI issued directions under Section 16 of SCRA, which had the same effect as the 1969 Notification.

SEBI is of the view that the ROFR and the Call and Put option arrangements do not conform to the requirements of a spot delivery contract nor with a contract of derivatives under Section 18A of the SCRA. SEBI has been taking this stance since long and re-affirmed its position on the issue last year in respect of proposed acquisition by UK based Vedanta Resources Plc. of a majority stake in Cairn India Limited vide its unpublished letter no. CD/DCR/TO/BV/OW/9093/2011, dated March 18, 2011 to the acquirers communicating that in its view the put option and call option arrangements and the ROFR do not conform to the requirements of a spot delivery contract nor with that of a contract of Derivatives as provided under section 18A of the SCRA. Therefore, SEBI is of the view that the put option and call option arrangement along with the ROFR are in violation of Notification No. SO 184(E) dated March 1, 2000 issued by SEBI. In view of this, the acquirers and sellers had to agree that the call and put option arrangement and the ROFR shall not be exercised or enforced by them.

Again, in an informal guidance to Vulcan Engineers Limited vide Informal Guidance Letter No. CFD/DCR/16403/11, dated 23-5-2011, SEBI opined that a pre agreed purchase of shares of a listed company through call/put option is not valid under the SCRA. SEBI opined that as the option is exercisable on a future date, the transaction would not qualify as spot delivery contract as defined under section 2(i) of SCRA. Further, the aforesaid put/call option would not qualify as a legal and valid derivative-contract in terms of section 18A of SCRA as it is exclusively entered between two parties and is not a contract traded on stock exchanges and settled on the clearing house of the recognized stock exchange.

Here, it would be interesting to note that under its power to exempt the application of the SCRA to a specified class of contracts pursuant to Section 28(2) of SCRA, the Central Government by its Notification No. SO 1490 dated 27 June 1961, in the interest of trade and commerce or the economic development of the country, specified contracts for pre-emption (right of first refusal) or similar rights contained in the promotion or collaboration agreements or in the AoA of limited companies as contracts to which SCRA would not apply.

Reserve Bank of India's position

Any investment from abroad in Indian companies is subject to the Foreign Exchange Management Act, 1999 and the Regulations issued by RBI thereunder. While RBI, in the recent past, had been issuing show cause notices to investors seeking to exercise their put option exit right in the Investee companies, the department of Industrial Policy & Promotion (DIPP), through its Consolidated FDI Policy released on September 30, 2011 stated that:

"Only equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares, with no in-built options of any type, would qualify as eligible instruments for FDI. Equity instruments issued/transferred to non-residents having in-built options or supported by options sold by third parties would lose their equity character and such instruments would have to comply with the extant External Commercial Borrowing (ECB) guidelines."

The main purpose of aforesaid clause was to plug in the exit mechanism available to foreign investors in the form of said shareholders' privileged rights incorporated in the Investment Agreements with the Investee Indian Company. However, paying heed to the unprecedented opposition from the various stakeholders and industry players, as to the negative impact the provision would have made on foreign investment and M&A activity in India, the DIPP deleted the same within a period of one month from the date of its introduction.

The introduction and then deletion of such a provision in the FDI policy indicates that the regulator has still not taken a conclusive stand on this issue. However, keeping in mind that RBI has had a negative attitude towards such options under Investment Agreements particularly in view of the belief that a number of investors in Indian companies have received show cause notices from the RBI while attempting to exercise their put and call options, it may be presumed



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that RBI does not favour such Options. In the opinion of RBI since all FDI should come in the form of equity shares or fully and compulsorily convertible debentures or fully and compulsorily convertible preference shares in the Indian companies and because such options provide flexibility to the option holder to not exercise his option, any investment subject to such options can not be strictly called FDI.

The RBI's position is that under the provisions of FEMA no other class of foreign investor other than SEBI-registered FIIs and NRIs are allowed to enter into any derivative contract where the underlying asset is any equity share of an Indian company. Accordingly, RBI feels that these options fail on two counts:

- (i) **Options are derivative contracts:** RBI conforms to the views of SEBI on put and call options and perceives them as 'derivative contracts', which are not valid and legal under Indian securities law unless and until they are traded on a recognized stock exchange. Again, because only SEBI registered FIIs and NRIs are allowed to invest in stock-traded derivative contracts any other category of foreign investor entering into derivatives contracts is not in compliance of law.
- (ii) **Investment to be treated as ECB:** RBI feels that FDI is always meant to be strategic in nature and hence any investments with a put option to the investor are foreign currency loans disguised as foreign equity as a put option diverts a foreign investor's interest from the company, providing an assured exit gateway with no commitment in the risk capital of the company.

The corrective measure by DIPP does not provide a complete respite to potential acquirers of Indian companies, as RBI may serve notices on the exercise of such options. Such simultaneous events provide an unstable picture of the Indian regulatory framework. Until the RBI clarifies its stand, investors must exercise caution and carefully weigh the use of such provisions given the probability of challenge and assess alternative routes to ensure a risk-free exit mechanism.

2. Unlisted Companies

Keeping in mind the objectives of SCRA i.e. recognition of stock exchanges, conditions for listing and delisting of securities and so on, in mind it should only apply to listed companies or companies that are about to be listed. However, the view of the courts is that SCRA also applies to unlisted public companies. In *Mysore Fruit Products Ltd. and Others v. The Custodian and Others*; (2005) 107 Bom.L.R. 955 it was held that since the shares of unlisted companies are "marketable" in nature therefore SCRA will be applicable to unlisted public companies. The Court in the above case conclusively opined that forward sale of shares even of the unlisted public limited companies is prohibited by the SCRA.

Thus all the consequences applicable to listed public limited company will follow in respect of an unlisted public company.

In a nutshell:

- Shareholders are free to enter into consensual agreements for transfer of specific shares. This proposition would be applicable to both private as well as public companies.
- Any blanket restriction on the shareholders, present and future, on transfer of shares would be invalid in case of private companies unless incorporated in Articles. In case agreement has been incorporated in AOA, the company may refuse to register any transfer in contravention of such agreement. In case the agreement is for transfer of specific shares and the same has not been incorporated in AOA, the only remedy available is to file a suit for specific relief against the defaulting party to the agreement and/or injunction against company to restrain it from registering the transfer. Even if the transfer has been registered, a petition under section 155 of the Act can be filed for rectification of register.
- In case of public companies the blanket restriction would be invalid and the same should not be incorporated in AoA as it would violate provisions of Section 9 of the Act. If restriction is on transfer of specific shares, the agreement containing such restriction on specific shares will continue to be binding. In case of a breach of any such agreement, the same remedies are available as given in respect of a private company above.

Conclusion

The judgement of the Bombay High Court in *Messer Holdings'* case provides guidance to all parties to an Investment Agreement on the implications and consequences of incorporating a public limited company in India and addresses, directly and forcefully, the question of enforceability of Shareholders' Privileged Rights. However, in view of the above divergent views taken by various Regulators the signals are somewhat unclear. This is not conducive to the investment environment in India because such Shareholders' Privileged Rights are integral to investment and acquisition agreements. This gains special significance in the context of the current turbulent economic climate, where investors are looking for stability and uniformity. The Regulators should take a uniform view so that investors can structure their investments accordingly.

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Rajendra Sawant, FCS

Company Secretary
Welspun Projects Limited
Mumbai

rajendra_sawant@welspun.com

Stamp Laws in India – A Brief Overview

➤ Stamp duty is payable on every instrument and though non-payment or insufficient payment does not render the instrument invalid between the parties it makes the document inadmissible in evidence and renders the instrument ineligible for registration. Therefore it is all the more important to understand the basic provisions of the stamp law and the rates in operation in different States.

CONSTITUTION OF INDIA- STAMP DUTY

Article 246 of the Constitution of India states- .

- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any matters enumerated in List I in the Seventh Schedule (the Union List).
- (2) Notwithstanding anything in Clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any matters enumerated in List III in the Seventh Schedule (the Concurrent List).
- (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any matters enumerated in List II in the Seventh Schedule (State List).
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Relevant Entries in List I, List II and List III of the Seventh Schedule

Entry 91 of Union List- Rates of stamp duty in respect of bills of exchange, promissory notes, bills of lading, letters of credit,

policies of insurance, transfer of shares, debentures, proxies and receipts.

Entry 63 of State List- Rates of stamp duty in respect of documents other than those specified in the provisions of Union List with regard to rates of stamp duty.

Entry 44 of the Concurrent list- Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty. This entry deals with the general subject of stamps. Provisions other than those relating to rates of duty are, thus within the legislative power both the Union and the States. Thus, the power of the Union extends to the whole field of Stamp duties, except that as regards rates of Stamp duty in the States, it is confined to the specified documents. It is plenary as regards machinery provisions. Thus both Union and the State have concurrent powers with respect to the substantive law relating to stamps but the rates with respect to documents specified in Entry 91 of the Union List can be prescribed only by the Union which is also applicable to all States and the rates in respect of other documents can be specified by the respective States which is to apply in those states only.

The *non obstante* clause in Article 246(1) operates in case of



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inevitable conflict between Union and State powers, the Union powers as enumerated in List I shall prevail over the state powers as enumerated in Lists II and III. Article 254 gives the remedy in case there is an inconsistency between laws made by Parliament and laws made by the Legislatures of States. Such a situation can arise with respect to the general provisions of stamp law which falls within the purview of both Union and the Legislature under entry 44 of the Concurrent List. Article 254(1) thus states that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Collection of Stamp Duty

Article 268 of the Constitution of India states that

- (1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected-
 - (a) In the case where such duties are leviable within any Union Territory by the Government of India
 - (b) In other cases, by the states within which such duties are respectively leviable.
- (2) The proceeds in any financial year of any such duty leviable within any state shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

INDIAN STAMP ACT, 1899

The Indian Stamp Act, 1899 is the Central legislation enacted by the Parliament under Article 246, Entry 91 and lays down the rates of stamp duty with respect to the instruments specified therein. It extends to the whole of India except the State of Jammu and Kashmir. Many states have adopted the Indian Stamp Act and added an extra schedule in the form of Schedule 1A to the Act to provide for rates of stamp duty with respect to the instruments not specified in the Indian Stamp Act.

Stamp Duty- It's a duty that is levied on any Instrument. Section 2(14) of the Indian Stamp Act defines Instrument as "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

Section 2(11) says that "Duly stamped", as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with law for time being in force in India.

Judicial and Non judicial Stamps -

Stamp papers impressed with the desired amount of stamp duty are used both for judicial and non-judicial purposes.

Judicial Stamps (Court Fee Stamps) -Stamps used in courts i.e. for applications, petitions etc., are judicial stamp papers and in normal parlance are called court fee stamps. Section 77 of the Indian Stamp Act says that nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fee. Court fees are also excluded as subject matter of the Act under Section 73 of the Bombay Stamp Act.

Non-Judicial Stamp- Non-judicial stamp is the most common form of stamp used throughout the country to register deeds, contracts and other instruments. The Stamp Act deals only with non judicial stamps.

Principles for the Application of the Act -

1. For charging stamp duty, the instrument is not to be treated by the name it bears but by the substance or real nature of the transaction recorded therein.
2. Stamp duty is imposed upon the instrument and not upon the transaction.
3. The instruments or documents have to be read as they are i.e. as they are worded or drafted.
4. A document which is not stamped, though required to be stamped or is understamped, is not by that reason, invalid as between the parties.



The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under section 31. If it is not properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under section 32 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning.

Charging Section of the Indian Stamp Act

Section 3 of the Indian Stamp Act is the charging section which says that the instruments as given in the Section –

- 1) Instruments mentioned in Schedule I executed on or after 1st July, 1899.
- 2) Every Bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after 1st July, 1899 and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and
- 3) every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day relates to any property situate, or to any matter or thing done or to be done, in India and is received in India

shall be chargeable with duty which is specified in Schedule I as the proper duty thereof. Thus, if an instrument is not listed in the schedule, no stamp duty is payable.

Exception –

- 1) any instrument executed by, or on behalf of, or in favour of, the government in cases where, but for this exemption, the government would be liable to pay the duty chargeable in respect of such instrument;
- 2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act 19 of 1938, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts.

Instruments relating to several distinct matters

Section 5 says that an instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments coming within several descriptions in Schedule I

Section 6 says that subject to section 5, an instrument so

framed as to come within two or more of the descriptions in Schedule I, shall be chargeable with the highest of such duties.

PROVIDED that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

Instruments stamped with impressed stamps - How to be written

Section 13 states that every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

“Impressed stamp” includes-

- (a) labels affixed and impressed by the proper officer, and
- (b) stamps embossed or engraved on stamped paper;

Only one instrument can be drawn on one stamp

Section 14 says that no second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written:

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Instrument written contrary to section 13 or 14 deemed unstamped

Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

Mode of Payment of Duty- Stamp duty can be paid either by means of impressed stamps or adhesive stamps.

TIME OF STAMPING

Instruments executed in India

Section 17 states that all instruments chargeable with duty and



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executed by any person in India shall be stamped before or at the time of execution.

Instruments other than bills and notes executed out of India

Section 18 states that every instrument chargeable with duty executed only out of India and not being a bill of exchange or promissory note, may be stamped within three months after it has been first received in India. Where any such instrument cannot, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the State Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Bills and notes drawn out of India

Section 19 states that the first holder in India of any bill of exchange payable otherwise than on demand or promissory note drawn or made out of India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in India, affix thereto the proper stamp and cancel the same.

Who Is Liable To Pay Stamp Duty?

Section 29 says that the parties to any Instrument can determine by mutual consent the person by whom the duty is payable. In the absence of any agreement to the contrary the Section lists down the persons by whom the duty is payable.

- (1) in the case of any instrument described in any of the following Articles of Schedule I, by the person drawing, making or executing such instrument:
- (2) in the case of a policy of insurance other than fire-

- insurance – by the person effecting the insurance:
- (3) in the case of a policy of fire-insurance – by the person issuing the policy
- (4) in the case of a conveyance (including a reconveyance of mortgaged property) by the grantee: in the case of a lease or agreement to lease- by the lessee or intended lessee:
- (5) in the case of a counterpart of a lease – by the lessor:
- (6) in the case of an instrument of exchange – by the parties in equal shares:
- (7) in the case of a certificate of sale – by the purchaser of the property to which such certificate relates: and,
- (8) in the case of an instrument of partition – by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue-authority or civil court or arbitrator, in such proportion as such authority, court or arbitrator directs.

INSUFFICIENT STAMPING – CONSEQUENCES

Two consequences follow if an Instrument has not been stamped or has been insufficiently stamped-

- Examination and impounding of Instruments
- Inadmissible as evidence

Examination and impounding of Instruments

Section 33 provides for the examination of documents for impounding them if they are not duly stamped. It empowers every person having by law or consent of parties has authority to receive evidence, and every person in charge of a public office, except an officer of police, to impound an instrument if it comes before them and it appears to him that such instrument is not duly stamped which in his opinion is required to be stamped. Section 33 is applicable only when a document is either produced for purposes of evidence or comes before Court or authority when it is performing its normal functions. The word “produce” has a technical meaning and means either produce in response to a summons or produced voluntarily for some judicial purpose. (*Lal Uttam Chand v. Perman*, AIR 1942 Lah 265). In case such a person receives the instrument in evidence on payment of duty or penalty as the case may be, he shall send an authenticated copy of the instrument to the Collector and in other cases send the original to the Collector who shall deal with it in the manner provided in section 40.

Inadmissible as Evidence

Section 35 makes an unstamped/insufficiently stamped document inadmissible in evidence, and unable to be acted upon by persons having authority to receive or by any public officer. It does not affect the validity of the document, but its admissibility in evidence. A plain reading of section would show that it creates a three-fold bar in respect of unstamped and insufficiently stamped document - (a) that it shall not be



» The Indian Stamp Act, 1899 nowhere prescribes any expiry date for use of a stamp paper. Section 54 merely provides that a person possessing a stamp paper for which he has no immediate use (which is not spoiled or rendered unfit or useless), can seek refund of the value thereof by surrendering such stamp paper to the Collector provided it was purchased within the period of six months next preceding the date on which it was so surrendered.

received in evidence; (b) that it shall not be acted upon; and (c) that it shall not be registered or authenticated.

Admissible on payment of Penalty and Duty- Any such instrument shall, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion.

ADJUDICATION AS TO PROPER STAMP

Adjudication means determining the chargeability of stamp duty on instruments. A person has the option to determine the stamp duty payable on the instrument either himself or take the instrument for adjudication to the proper authority who is the Collector. Section 31 provides that any person can, before executing an instrument, claim adjudication as to the amount of duty to which such instrument would be liable. Adjudication can be claimed in respect of any instrument, whether executed or not on payment of a nominal fee which shall not exceed five rupees and shall not be less than fifty paise as may be prescribed. When a document is brought to the Collector for adjudication, he may require to be furnished with an abstract of the instrument. He may also require an affidavit or other evidence to enable him to determine the proper duty. The Collector alone is authorised to decide as to the duty chargeable under this section and his decision is final. But if in doubt he should refer under section 66 to the Chief Controlling Revenue Authority.

Determination of stamp duty by means of Adjudication is

advantageous for the person who is liable to pay the duty. The Proviso to section 31(2) provides on payment of the full duty with which the instrument to which it relates is chargeable, the person who is bound to pay the duty shall be relieved from any penalty which he may have incurred under the Stamp Act by reason of the omission to state truly in the instrument chargeable to duty any of the facts or circumstances affecting the chargeability of the instrument. Moreover, no penalty for insufficient stamping, beyond the deficient duty and the adjudication fee is leviable when the document is unstamped or insufficiently stamped and is taken to the Collector under section 31. Further, on a reading of sections 31 and 33 of the Act it is clear that when an instrument is presented to the Collector for his opinion as to the duty chargeable upon it, he is not authorised to impound the document forthwith if he comes to the conclusion that the instrument is not sufficiently stamped. His duty is to determine the stamp duty payable upon the instrument. If the applicant pays the deficiency, if any, and if the conditions mentioned in section 32 are fulfilled, the Collector is bound to make an endorsement on the document that it is sufficiently stamped. He cannot impound the document and cannot impose a penalty as he is bound to do under section 33 read with the subsequent sections. Under section 32 the Collector has to certify by endorsement on the instrument brought to him under section 31 that full duty has been paid, if the instrument is duly stamped, or it is unstamped and the duty is made up, is not chargeable to duty. The endorsement can be made only if the instrument is presented within a month of its execution in case of an instrument executed in India and within 3 months, in case of an instrument executed outside India and brought to India. Once the procedure is followed under sections 31 and 32 of the Stamp Act and the Collector issues a certificate under section 32 of the Act, that becomes conclusive and by virtue of clause (e) of proviso to section 35, the admissibility to that document cannot be challenged on the ground that it is liable to be impounded for want of proper stamp duty and penalty.

The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under section 31. If it is not properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under section 32 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning.

Under the Indian Stamp Act there is no provision of revision of order of Adjudication passed by the Collector and hence once an instrument has been adjudicated it is deemed to be final for all terms and purpose. However the Bombay Stamp act makes a departure in this respect from the Indian Stamp Act and makes a provision under section 32 C for the Revision of the orders passed under Chapter 3 relating to 'Adjudication as to



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Stamp Laws in India – A Brief Overview

stamps'. The Chief Controlling authority may, *suo motu*, call for and examine the record of any order passed (including an order passed in appeal) under the Act or the rules made thereunder, by any officer and pass such order thereon as he thinks just and proper; and the order so passed shall be final and shall not be called in question in any Court or before any authority. This means even an order of adjudication passed by the collector cannot be taken as final. However the section also provides a time limit within which such record can be called for and an order of revision can be passed. No notice calling for the record under this section shall be served by the Chief Controlling Revenue Authority after the expiry of three years from the date of communication of the order sought to be revised and no order of revision, shall be made by the said Authority hereunder after the expiry of five years from such date.

VALIDITY PERIOD OF STAMPS

The Indian Stamp Act, 1899 nowhere prescribes any expiry date for use of a stamp paper. Section 54 merely provides that a person possessing a stamp paper for which he has no immediate use (which is not spoiled or rendered unfit or useless), can seek refund of the value thereof by surrendering such stamp paper to the Collector provided it was purchased within the period of six months next preceding the date on which it was so surrendered.

In the case of *Thiruvengada Pillai v. Navneethammal and Anr.* (AIR 2008 SC 1541), the Supreme Court held: "The stipulation of the period of six months prescribed in Section 54 is only for the purpose of seeking refund of the value of the unused stamp paper, and not for use of the stamp paper. Section 54 does not require the person who has purchased a stamp paper, to use it within six months. Therefore, there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for a document." "The fact that very old stamp papers of different dates have been used, may certainly be a circumstance that can be used as a piece of evidence to cast doubt on the authenticity of the agreement. But that cannot be clinching evidence".

Thus, Section 54 deals with a case where a person is possessed of stamps either by himself or in the hands of the Collector, but for which stamps he has no immediate use; that is, it contemplates a position where the stamps would be usable on a future occasion. What the section says is that if stamps bought within six months are without use they can be presented to the Collector and their value obtained. It does not say that stamps bought more than six months back cannot be used if necessity arises. The use of such stamps is valid, though money cannot be got back from the Collector by presenting them to him.



The Bombay Stamp Act vide section 52 makes a similar provision as that of the Indian Stamp Act. However, section 52 B of the Bombay Stamp Act makes a provision with respect to invalidation of stamps. It states that any stamps which have been purchased on or after the commencement of Amendment Act of 1989 but have not been used, or no allowance has been claimed in respect thereof, within a period of six months from the date of purchase thereof, shall be rendered invalid.

ALLOWANCE IN CASE OF SPOILED STAMPS

Section 49 provides that the Collector may, on application made with the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

- (a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person - Clause (a) applies only to cases of accidental spoiling of the paper of which the stamp is made, and does not cover cases in which a person has used the paper in the ordinary way, but has made some mistake in using it.
- (b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto - This clause contains a provision similar to clause (a), but applies to documents written but not executed.
- (d) the stamp used for an instrument executed by any party thereto which—
 - (1) has been afterwards found to be absolutely void in law from the beginning;
 - (2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;



- (3) by reasons of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;
- (4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;
- (5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails to be intended purpose;
- (6) become useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value;
- (7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;
- (8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

The section makes provision only for impressed stamps and not for adhesive stamps. Sections 52 and 54 refer to all kinds of stamps. In case of adhesive stamps refunds are granted only when they are misused or when they are not used, but not

when they are spoiled or obliterated.

Application for Relief

The application for relief under section 49 shall be made within the following periods, that is to say,--

- (1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument;
- (2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled;
- (3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

Provided that,--

- (a) when the spoiled instrument has been for sufficient reasons sent out of India, the application may be made within six months after it has been received back in India ;
- (b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

Consequences of Non stamping or Insufficient Stamping

Section 34 of the Bombay Stamp Act also declares that an instrument which is chargeable to duty shall not be received in evidence or acted upon, registered or authenticated by any person having the authority to receive such documents or any public officer unless the instrument is duly stamped or if it is written on a piece of paper with impressed stamp, such stamp paper is purchased in the name of one of the parties to the instrument. The penalty provided under the Bombay Stamp Act is different and provides that an instrument shall be admitted in case of an instrument which is not stamped on the payment of the requisite amount of duty and in case of an instrument which is insufficiently stamped on payment of the deficient duty and in both cases a penalty at the rate of 2 per cent of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument so that in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty.

Conclusion

Stamp duty is payable on every Instrument and though non payment or insufficient payment does not render the instrument invalid between the parties but makes it inadmissible in evidence and also the same cannot be registered by the concerned authority and hence it is very important to understand the basic provisions of Stamp Laws and the rates of duties as in operation in different states.

CS



V. N. Muralidharan, FCS
Chennai

vnuralidharan@yahoo.com

The Indian Income Tax Act and The Theory of Relativity

➤ Newly inserted Explanation 5 to section 9(1) of the Income tax Act 1961 is loosely worded and lacks clarity relating to the taxable event, the person on whom the tax is to be imposed and the measure or value on which the rate of tax is to be applied. The retrospective effect given to this amendment is open to Constitutional challenge and the deeming provision when carried to its logical conclusion required in law will lead to results which will go beyond the limits of comprehension.

"The hardest thing in the world to understand is the Income Tax"
- ALBERT EINSTEIN

INTRODUCTION

All of us are expected to know the law of the land, and ignorance of law cannot be an excuse. We are aware of these principles, which are accepted without any question. But, can anyone convincingly say, without any fear of contradiction, what are the provisions of THE INDIAN INCOME TAX ACT, as on any particular day. I am not addressing this question to the "aam aadmi", but to the tax experts. If you want to test your expertise, can you answer the following question?

Can you reproduce, word for word, the text of sections 9 and 195 as they existed on 1.4.1962? Please do not rush to your bookshelf and try to look for the 1962 Edition of the Income tax Act. You will be disappointed!

The reply will vary according to the day on which the reply is given. If this question was answered on 1.4.1962, there will be one version, and if it is answered today there will be another version. Remember, these sections, have been amended with retrospective effect from 1.4.1962, by the Finance Act, 2012! Even the Honorable Judges, will find it difficult to answer this

question as before the ink on their signature dries up, the law would have been amended with retrospective effect!

The Theory of Relativity says that 'time' is not a fixed concept, but can mean different values, varying according to the observer. If you cannot understand this simple theory of Einstein, I don't think, you should proceed further! Our Income Tax Act can be understood only if you know the Theory of Relativity!

THE PUZZLE

Let me throw another puzzle to the tax experts. First, read the following provision introduced by the Finance Act 2012;

"Section 9(1(i))—Explanation 5: "For the removal of doubts, it is hereby clarified that an asset or a capital asset, being any share or interest in a company or entity registered or incorporated outside India, shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives directly or indirectly its value substantially from the assets located in India."

It looks deceptively simple! But, it is a puzzle wrapped in a riddle!

INTERPRETATION OF TAXING STATUTES

Over a period of time, courts across the world have laid down



certain principles on 'Interpretation of Statutes', particularly 'Taxing Statutes', and these principles have been well accepted by the courts in India, Great Britain and other advanced countries. It would be useful to go through some of these principles, to find out what is wrong with the clause recited above.

In the case of *Govind Saran Ganga Saran v. CST* (1985) AIR 1041 SC, the Supreme Court, laid down the following principles for taxing statutes:

"The components which enter into the concept of a tax are well known. The first is the character of imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is to be imposed, and the fourth is the measure or value to which the rate will be applied for computing the liability. If these components are not and definitely ascertainable, it is difficult to say that the levy exists in point of Law. Any uncertainty or vagueness in the legislative scheme defining any of these components of the levy will be fatal to its validity".

Let us apply these guidelines to understand Explanation 5 referred to above:

- (i) The term "Substantially" is not defined in the Act. This term can mean many things to many people. It is seen from media reports, that the govt., is thinking of a figure of 51% as 'substantial'. If we look into SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, these regulations get attracted, the moment someone acquires 25% or more of shares or voting rights. Further, the new clause does not contemplate any delegation of powers to the Govt., to define the term. Such a delegation of power, even if it exists, will be considered as 'excessive delegation', as this clause forms part of the charging provisions of the Act.
- (ii) Let us look in to another provision in this clause. The Explanation lays down that if an asset like the share of a company incorporated outside India, derives its value substantially from assets located in India, such a company shall be deemed to be situated in India. How do we value the contribution of Indian assets to overseas company's shares? The overseas company may have investments in different companies in different geographies. Is it possible to work out the contribution of the Indian assets to the value of such shares? This clause is silent on this aspect. This Explanation does not provide for any method of computation of the value. It would be useful to recall the observations of the Supreme Court in the case of *CIT v. B.C. Srinivasa Setty* (1981) AIR 972 SC, an extract from which is given below:

"The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus, the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation



provisions cannot be applied at all, it is evident that such a case was not intended to fall within the charging section".

These principles were reiterated in *CIT v. Official Liquidator, Palai Central Bank Ltd* (1984) 150 ITR 539 SC. The Supreme Court, has, in the *Vodafone* case has pointed out about the issue of the overseas company having multiple sources of income and this issue was one of the reasons for the judgment going in favour of Vodafone.

Further, matters relating to Indian companies are decided by The Companies Act, 1956, which is a special Statute governing incorporation and regulation of companies.

By introducing a 'Deeming provision', in the Income Tax Act, an overseas company cannot be considered as an Indian company. The provisions of the special Act (in company matters) i.e. the Companies Act shall prevail over the Income Tax Act. This is the law of the land as laid down by the various Judicial decisions. This situation could have been avoided, if, the words "for the purpose of this Act", have been added in the Explanation referred to above.

There are innumerable decisions of various courts concerning the interpretation of clauses like these. An illustrative list of such cases, with brief notes against each of them is given below:

Delegated Legislation

In the following cases certain principles have been laid down by the courts on this topic;

- (a) In *Re, Delhi Laws Act* [1951] AIR SC 332
- (b) *Vasantlal v. State of Bombay* [1961] AIR SC 4



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(c) *Hindhustan Times v. State of UP* - 258 ITR 469 SC
Parliament cannot abdicate itself, by creating a parallel authority; Only ancillary powers can be delegated; Legislature cannot delegate the essential function of laying down policy; Parliament cannot confer arbitrary powers on the Executive to change or modify the policy, without reserving for itself any control over subordinate legislation; Only powers incidental to the execution of the policy can be delegated, that too with suitable policy guide lines specifying the limits within which such delegated powers can be exercised.

Deeming Clauses

In *East End Dwellings Co. Ltd. v. Finsbury Borough Council* [1952] AC 109, it was pointed out that if we are expected to treat an imaginary state of affairs as real, we should certainly, unless prohibited from doing so, also imagine as real the consequences and incidents which must inevitably follow from it.

The Supreme Court of India also expressed a similar opinion in *CIT v. Godavari Sugar Mills Ltd.* [1967] 63 ITR 310, 315 (SC).

Explanation Clauses

In *CIT v. Masmeijer Aromatics (India) Ltd.* [1995] 214 ITR 22(MAD), the Court observed that there are a catena of decisions which lay down that the "Explanation" clause in a statute is not substantive law or rule but explains the matter contained in the rule or a provision and that it does not stand either by itself or go beyond the particular rule. This principle has been reiterated in decisions of various High courts and also the SC.

Interpretation of Statutes

There are innumerable cases on this subject. It is too vast a

subject to be dealt within the confines of an article like this. However, a few principles relevant to this article can be considered here:

For instance in *CIT v. J. V. Kolte* [1999] 235 ITR 239(BOM) / *Fernandez A.V. v. State of Kerala* [1957] AIR SC 657, the following principles were laid down;

- i) While interpreting fiscal statutes, one must have regard to the strict letter of the law and not merely the spirit of the statute or the substance of the law.
- ii) If the case is not covered within the four corners of the provisions of the statute, no tax can be imposed by inference or by analogy or trying to probe into the intention of the legislature and by considering what is the substance of the matter.
- iii) If a provision in a taxing statute is of doubtful and ambiguous meaning, it is not possible out of that ambiguity, to extract a new and added obligation not formerly cast upon the tax payer.

Similarly in *CIT v. Kasturi & Sons Ltd* [1999] 237 ITR 29 SC, the court observed that in a taxing statute there is room for intendment, and that there is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied.

Similar views were expressed in *CWT v. Ellis Bridge Gymkhana etc.*, [1998] 229 ITR 1 (SC).

Constitutional Validity of Extra Territorial Legislation

In *G.V.K. Industries v. ITO* [2011] 332 ITR 130 SC, the Apex Court dealt with this topic in the light of Art. 245 of the Constitution in great detail and observed that Parliament has no power to legislate 'for' any territory other than the Indian territory or part thereof. Acts with extra territorial 'application' will be valid only if there is clear nexus between the object of such legislation and the Indian Territory.

CONCLUSION

- The newly introduced Explanation 5, under section 9(1) (i), is loosely worded and lacks clarity relating to the taxable event, the person on whom the tax is to be imposed and the measure or value on which the rate of tax is to be applied – the three essential ingredients that are required to validate a taxing provision.
- Retrospective effect given to this provision from 1.4.1962, is open to challenge under Articles 14 and 19(1)(g) of the Constitution – vide - *National Agricultural Co-operative Marketing Federation of India Ltd v. UOI* [2003/260 ITR 548 SC / *Manekha Gandhi's case*-AIR 1978 SC 597.
- "The Deeming provision", when carried to its logical conclusion, as required in law, will lead to results which will go beyond the limits of comprehension. CS



B. S. Sridhara, FCS

Managing Director
Phil Corporation Ltd.
Goa

bssridhara@nvi.co.in

"Settlement" under the Industrial Disputes Act, 1947 - A Panoramic View

➤ An industrial dispute could be settled by the employer and employee in the course of conciliation proceedings or even otherwise than in the course of conciliation proceedings but the former mode carries more weight and greater legal sanctity. Various important aspects relating to settlement of Industrial disputes have been outlined in this article.

INTRODUCTION

Whenever we talk of a 'settlement', *albeit* in various contexts, the factors that instantly come to our mind are: (i) the pre-existence of a dispute; (ii) a claim arising out of the dispute; (iii) negotiation or adjudication in the course of resolving the dispute; and (iv) the resolution of the dispute – of course, not necessarily in that order! In fact, we often speak about settlements in relation to one or the other of a variety of issues such as consumer disputes, matrimonial matters, motor accident claims, civil, criminal and labour cases, etc., and whenever we do so, we invariably think of the above elements of a settlement.

The Industrial Disputes Act, 1947 ("ID Act"), was enacted to provide for the investigation and settlement of industrial disputes and for certain other purposes (like providing for lay-off, retrenchment, closure, etc). According to the Statement of Objects and Reasons, the Act *inter alia* provides for the machinery and procedure for the investigation and settlement of industrial disputes. In fact the Act is a social welfare legislation with primary emphasis upon the investigation and settlement of industrial disputes and maintenance of industrial harmony.

The word 'settlement' is used in the Act sometimes to indicate the 'process' of settling a dispute, and sometimes the 'instrument' of

official agreement entered into by the disputing parties whereby a dispute or conflict is resolved.

However, a reading of the different meanings attributed to the word 'settlement' and its various derivatives will reveal that the ID Act has aptly selected the word 'settlement' and employed it in various provisions in the Act to denote reaching of the final stage in the process of negotiation, investigation, and resolution of industrial disputes. Is it not a fact that after "a decisive agreement is reached" and a settlement is arrived at, the parties involved in the dispute will "conclude or resolve the dispute" and become "less disturbed or agitated", and "calmness or quiet is restored" in the industrial atmosphere!

However, it is also a fact that sometimes the parties finally 'settle for' certain terms and conditions and arrive at an agreement, but there is a likelihood that either of the parties, or worse still, both the parties, has or have accepted the settlement "in spite of incomplete satisfaction", probably in order to save the situation or break the deadlock! In such situations, time will tell whether the settlement has served its purpose or not.

The ID Act covers all factories and establishments regardless of the number of employees on the rolls, and applies to every business, trade, undertaking, service, avocation, etc., which is considered as an 'Industry' under the Act. It is the declared endeavour of the Act



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to promote the investigation and settlement of industrial disputes, and for this purpose, it prescribes the following three techniques, viz: (i) voluntary negotiations; (ii) mediation or conciliation; and (iii) arbitration or adjudication.

MACHINERIES FOR INVESTIGATION

Works Committee

The formation of a Works Committee is the first means provided in the ID Act for the investigation and settlement of industrial disputes by the direct method of negotiations.

Industrial establishments employing one hundred or more workmen may be directed by the appropriate Government by a general or special order, to constitute a Works Committee in the prescribed manner. A Works Committee is required to be constituted in such a way that the number of representatives of the workmen on the Committee shall not be less than the number of representatives of the employer.

The role of the Works Committee is to promote measures for securing and preserving amity and good relations between the employer and workmen and to that end, to comment upon matters of their common interest, and also endeavour to compose any material difference of opinion between them in respect of such matters (vide Section 3 of the Act).

Conciliation Officers, Board for Conciliation, and Court of Inquiry

As a further means of achieving amicable resolution of industrial disputes, the ID Act empowers the appropriate Government to appoint Conciliation Officers, and constitute Boards of Conciliation and Courts of Inquiry, to investigate, mediate in and promote the settlement of industrial disputes.

The Conciliation Officers are appointed by the appropriate Government and charged with the duty of mediating in and promoting the settlement of industrial disputes.

A Board of Conciliation may be constituted by the appropriate Government as and when an occasion arises, by a notification in the official gazette, for promoting the settlement of an industrial dispute. A Board so constituted shall consist of a Chairman and two or four other members, as the appropriate Government thinks fit.

A Court of Inquiry may be constituted by the appropriate Government as and when an occasion arises, by a notification in the official gazette, for enquiring into any matter appearing to be connected with or relevant to an industrial dispute. A Court so constituted may consist of one independent person or such number of independent persons as the appropriate Government may think fit and where a court consists of two or more members, one of them shall be appointed as the Chairman. As per Section 14 of the Act, a Court



shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

Labour Courts, Industrial Tribunals and National Industrial Tribunals

As a measure aimed at enabling compulsory adjudication of industrial disputes, the ID Act empowers the appropriate Government to constitute Labour Courts and Industrial Tribunals for adjudicating on industrial disputes referred to them.

One or more Labour Courts may be constituted by the appropriate Government by notification in the official gazette for adjudication of industrial disputes relating to any matter specified in the Second Schedule to the ID Act, and for performing such other functions as may be assigned to them under the Act. A Labour Court shall consist of one person only to be appointed by the appropriate Government, with the qualifications, and without the disqualifications, as specified under the Act.

Similarly, one or more Industrial Tribunals may be constituted by the appropriate Government by notification in the official gazette for adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule to the Act, and for performing such other functions as may be assigned to them under the Act. A Tribunal shall consist of one person only to be appointed by the appropriate Government, who has the qualifications, and is not having the disqualifications, as specified under the Act. Two persons may be appointed by the appropriate Government, if it so thinks fit, as assessors to advise the Tribunal in the proceedings before it.

One or more National Industrial Tribunals may be constituted by the Central Government by notification in the official gazette, for adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance, or are of such a nature as to likely to involve industrial establishments



situated in more than one State. A National Tribunal shall consist of one person only to be appointed by the Central Government, with the prescribed qualifications, and without the disqualifications as specified in the Act. Two persons may be appointed by the Central Government, if it so thinks fit, as assessors to advise the National Tribunal in the proceedings before it.

Arbitrators

The Act also provides that in cases where the employer and the workmen agree to make a voluntary reference of a dispute, which is either existing or apprehended, for arbitration, they may by a written agreement refer the dispute for arbitration. They may also specify in the agreement such person or persons, including the presiding officer of a Labour Court or Tribunal or National Tribunal, as the arbitrator or arbitrators.

THE SETTLEMENT OF DISPUTES

The successful conclusion of voluntary negotiations, mediation or conciliation by arriving at an amicable agreement gives rise to a 'settlement' signed by the parties to the dispute. And the outcome of adjudication in the form of an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal, is the passing of an 'award' by the Court or the Tribunal, as the case may be. If the award is made in conclusion of an arbitration under a voluntary reference by the parties to the dispute, it is termed as an 'arbitration award'.

Categories of Settlement

To understand the different categories of settlement dealt with in the ID Act, it is necessary to look at the definition of the word 'settlement' given in the Act. Section 2(p) defines "Settlement" as under: "Settlement means a settlement arrived at in the course of conciliation proceeding, and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed, and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer."

The two categories of settlement contemplated in the above definition are:

- one which is arrived at in the course of conciliation proceedings, i.e. with the active assistance and mediation of the conciliation officer who shall do everything he can to bring about a fair and amicable settlement of the dispute; and
- the other, which is arrived at between the employer and the workmen otherwise than in the course of conciliation proceedings.

Ingredients of the two Categories of Settlements

A settlement under the former category has the following essential ingredients:

➤ In terms of Section 10(2-A), the appropriate Government is required to specify in the order of reference of the dispute, the period within which the Labour Court, the Tribunal or the National Tribunal shall submit its award to the appropriate Government. It is thus implied that the appropriate Government has the discretion to fix the period of adjudication in each case. However, the first proviso to Section 10(2-A) states that no such period shall exceed three months if the industrial dispute is connected with an individual workman.

- ◆ there is an industrial dispute;
- ◆ the dispute is between the employer and the workmen;
- ◆ the dispute has been admitted in conciliation and mediated upon by the conciliation officer;
- ◆ an agreement is arrived at between the employer and the workmen during the course of the conciliation proceedings;
- ◆ the settlement is signed pursuant to the agreement so arrived at;
- ◆ a report thereof is sent by the conciliation officer to the appropriate Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

And a settlement under the latter category has the following essential ingredients :

- ◆ there is an industrial dispute;
- ◆ the dispute is between the employer and the workmen;
- ◆ the dispute has not been referred to or admitted in conciliation;
- ◆ an agreement is arrived at between the employer and the workmen otherwise than in the course of conciliation proceedings;
- ◆ the settlement is signed pursuant to the agreement so arrived at;
- ◆ a copy of the memorandum of settlement is sent by the parties jointly to the appropriate Government and the authorities concerned, as prescribed.

Reference of an Industrial Dispute for Settlement

In case a settlement could not be arrived at in spite of the efforts of



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the conciliation officer to settle the industrial dispute by mutual negotiations, mediation and conciliation, he shall send a report of the same (known as "failure report") to the appropriate Government in the prescribed manner.

If the appropriate Government, on consideration of the report, is satisfied that there is a case for reference, it may make a reference of the industrial dispute: (i) to the Board for fresh investigation and amicable settlement; or (ii) to the Labour Court, Industrial Tribunal or the National Tribunal, as the case may be, for adjudication (vide Section 12(4) and 12(5) of the Act).

As per Section 10(1) of the Act, if the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, at any time, refer: (i) the dispute to the Board for promoting a settlement; (ii) any matter appearing to be connected with or relevant to the dispute, to a court for inquiry; (iii) the dispute or any such connected/relevant matter, if it pertains to matters specified in Second Schedule to the Act, to the Labour Court for adjudication; (iv) the dispute or any such connected/relevant matter, if it pertains to matters specified in Third Schedule to the Act and if it is not likely to affect more than one hundred workmen, to the Labour Court for adjudication; (v) the dispute or any such connected/relevant matter, if it pertains to matters specified in Second or Third Schedule to the Act, to the Industrial Tribunal for adjudication.

The phrase, "... if the appropriate Government is of the opinion that..." appearing in Section 10(1) implies that the Government, before making a reference, should form an opinion that an industrial dispute either exists or is apprehended, based on the material placed before it. Apart from this, it is not relevant as to how or in what manner the Government is apprised of the dispute.

In the normal course, a reference under Section 10(1) arises after receipt of the failure report of the conciliation officer by the appropriate Government under Section 12(4) of the ID Act.

But the words, "it may at any time....refer the dispute" mentioned in Section 10(1) would imply that the conciliation officer's report is not a condition precedent for making a reference by the Government, and it can decide to make the reference even before the commencement or conclusion of the conciliation proceedings, if the other conditions of Section 10(1) are satisfied.

According to Section 10(2) of the ID Act, where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly. This means if the persons apply in the prescribed manner, and represent the majority of each party to the dispute, the Government would be bound to make the reference in such cases.

The ID Act also provides for voluntary reference of an industrial dispute for arbitration, where the employer and the workmen agree, by a written agreement, to make such a reference of the dispute, which is either existing or apprehended (vide Section 10-A).

DURATION OF CONCILIATION/ ADJUDICATION PROCEEDINGS

Duration of conciliation proceedings

Where a settlement is arrived at, the conciliation proceedings shall be deemed to have concluded when the memorandum of settlement is signed by the parties to the dispute (vide Section 20(2)(a) of the Act).

Where no settlement is arrived at, the conciliation proceedings shall be deemed to have concluded when the report of the conciliation officer is received by the appropriate Government, or when the report of the Board is published under Section 17, as the case may be (vide Section 20 (2)(b) of the Act).

Section 12(6) of the ID Act specifies the period within which the Conciliation Officer has to submit: (i) the report of settlement of the dispute under Section 12(3), or (ii) the failure report under Section 12(4). It states that a report under Section 12 shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government; however, subject to the approval of the Conciliation Officer, the time for submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

Section 13(5) of the ID Act requires the Board of Conciliation to submit: (i) the report of settlement of the dispute under Section 13(2), or (ii) the failure report under Section 13(3), within two months of the date on which the dispute was referred to it, or within such shorter period as may be fixed by the appropriate Government. The appropriate Government may also extend from time to time the period for submission of the report by such further periods not exceeding two months in the aggregate.

It is further provided by the Section that the time for submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

The above provisions indicate that the prescribing of period for submission of the report of the Conciliation Officer or the Board is merely directory and not mandatory.

It may be noted that no settlement arrived at in the course of conciliation proceedings shall be invalid by reason only of the fact that such a settlement was arrived at after the expiry of the period prescribed under the provisions of Sections 12(6) and 13(5) of the Act (vide Section 9(2) of the Act).



Duration of Adjudication Proceedings

Section 15 of the ID Act specifies that the Labour Court, or the Tribunal or the National Tribunal to which an industrial dispute has been referred for adjudication, shall hold its proceedings expeditiously and submit its award to the appropriate Government within the period specified in the order of reference of the dispute, or within such further period extended under the second proviso to Section 10(2-A).

In terms of Section 10(2-A), the appropriate Government is required to specify in the order of reference of the dispute, the period within which the Labour Court, the Tribunal or the National Tribunal shall submit its award to the appropriate Government. It is thus implied that the appropriate Government has the discretion to fix the period of adjudication in each case. However, the first proviso to Section 10(2-A) states that no such period shall exceed three months if the industrial dispute is connected with an individual workman.

The second proviso to Section 10(2-A) provides that the period fixed by the appropriate Government may be extended by the adjudicating authority: (i) where the parties to the dispute apply for such extension; or (ii) for any other reason. The adjudicating authority may grant such extension as he may think fit, if he considers it necessary or expedient to extend such period.

The above provisions indicate that prescribing of period for submission of the award by the adjudicating authority is merely directory and not mandatory.

The third proviso to Section 10(2-A) stipulates that in computing any period specified in this Section, the period for which the adjudication proceedings had been stayed by any injunction or order of a civil court shall be excluded.

The fourth proviso to Section 10(2-A) provides that no proceedings before an adjudicating authority shall lapse merely on the ground that any period specified under this Section had expired without such proceedings being completed.

HOW A SETTLEMENT IS SIGNED AND BY WHOM

Rule 58 of the Industrial Disputes (Central) Rules, 1957 prescribes the format and the manner in which a settlement is signed. Sub-rule (1) of Rule 58 states that a settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form 'H'.

Sub-rule (2) of this Rule mentions in detail about the parties who shall sign the settlement. It states that:

- ◆ in the case of an employer, the settlement shall be signed by the employer himself or his authorised agent; if the employer is a company or other body corporate, by its agent, manager

or other principal officer;

- ◆ in the case of workmen, the settlement shall be signed by an officer of a trade union of the workmen, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for that purpose;
- ◆ in the case of a workman in an industrial dispute under Section 2-A of the Act (i.e. where an individual dispute related to his dismissal etc., is deemed to be an industrial dispute), the settlement shall be signed by the workman concerned.

Sub-rule (3) provides that where the settlement is arrived at in the course of conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

Sub-rule (4) provides that where the settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings, the parties to the dispute shall jointly send a copy of the memorandum of settlement to the Central Government, the Chief Labour Commissioner (Central), New Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned.

However, the Rules framed by the respective State Governments may provide that where the settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings, the parties to the dispute shall jointly send a copy of the memorandum of settlement to the State Government, the Labour Commissioner of the State, and the Assistant Labour Commissioner concerned, and also to the conciliation officer concerned.





Article

"Settlement" under the Industrial Disputes Act, 1947 - A Panoramic View

PARTIES ON WHOM A SETTLEMENT IS BINDING

The circumstances in which a settlement is signed, i.e. whether it is signed in the course of conciliation proceedings or otherwise than in the course of conciliation proceedings, will determine the parties on which it is binding. A reading of Section 18 of the ID Act reproduced below will help us understand the binding nature of a settlement:

"18. Persons on whom settlements and awards are binding:

- (1) A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.
- (2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.
- (3) A settlement arrived at in the course of conciliation proceedings under this Act, or an arbitration award in a case where a notification has been issued under sub-section (3-A) of Section 10-A, or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable, shall be binding on:
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently become employed in that establishment or part."

Thus while the settlement signed otherwise than in the course of conciliation proceedings has a simple legal impact, and is binding only on the parties to the agreement, the settlement signed in the course of conciliation proceedings has a wider legal impact. It binds not only the parties to the dispute, but also the following:

- ◆ all other parties summoned to appear in the proceedings as parties to the dispute, unless the presiding authority at the proceedings records the opinion that they were so summoned without proper cause;
- ◆ the employer's heirs, successors in business or assigns in respect of the establishment to which the dispute relates;
- ◆ all persons who were employed in the establishment, or part

thereof, to which the dispute relates on the date of the dispute, and all persons who subsequently become employed in that establishment or part.

Thus, a settlement signed in the course of conciliation proceedings binds even persons who did not actually participate in the proceedings, like successors to the business establishment and future employees of the establishment.

PERIOD OF OPERATION OF A SETTLEMENT

Section 19 of the ID Act contains provisions regarding the period of operation of a settlement and related matters. Sub-section (1) of this Section states that a settlement shall come into operation on such date as is agreed upon by the parties to the dispute. If no date is so agreed upon, the settlement shall come into operation on the date on which the memorandum of settlement is signed by the parties to the dispute. Sub-section (2) stipulates that such settlement shall be binding for such period as is agreed upon by the parties. If no such period is agreed upon, the sub-section provides that the settlement shall be binding for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute. The sub-section further provides that a settlement shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

Sub-section (7) provides that no notice of termination given under sub-section (2) shall have effect unless it is given by a party representing the majority of persons bound by the settlement.

SOME MISCELLANEOUS PROVISIONS

- (a) No report of any settlement arrived at in the course of conciliation proceedings before a Board and signed by the Chairman and all the other members of the Board shall be invalid by reason only of the casual or unforeseen absence of any of them during any stage of the proceedings (vide Section 9(3) of the Act).
- (b) Where any money is due to a workman from an employer under a settlement, the workman, or a person authorised by him in writing, or his legal heirs in case of his death, may make an application to the appropriate Government for recovery of such money. If the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as arrears of land revenue. This right of recovery available to the workman is without prejudice to any other mode of recovery (vide Section 33-C(1) of the Act).
- (c) If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of a settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit. The Labour Court, Tribunal or National Tribunal shall, after giving the



parties an opportunity of being heard, decide such question, and its decision shall be final and binding on all such parties (vide Section 36-A of the Act).

- (d) A Labour Court or Tribunal or National Tribunal shall be deemed to be a civil court and it shall transmit every award made, order issued, or settlement arrived at by or before it, to a civil court having jurisdiction and such civil court shall execute the award, order or settlement as if it were a decree passed by it (vide Section 11 (8), (9) and (10) of the Act).
- (e) Any person who commits a breach of any term of any settlement or award binding on him under this Act, shall be punishable with imprisonment or with fine or with both as prescribed. The court imposing the fine may direct that the whole or any part of the amount realised as fine shall be paid as compensation to the person who, in its opinion, has been injured by such breach (vide Section 29 of the Act).

CONCLUSION

The predominant intent of the ID Act is to achieve the ultimate objective of providing for the investigation and settlement of industrial disputes, thereby ameliorating the plight of the disputing parties, so as to bring about harmony and peace in the industrial environment. Towards this end, it prescribes three different processes, namely: (i) voluntary negotiations; (ii) mediation or conciliation; and (iii) arbitration or adjudication. Even though all these three processes may successfully conclude in a similar fashion, the resulting legal effects are different in each case.

A settlement arising out of voluntary negotiations has a limited impact, binding only the parties to it. A further limitation associated with such settlements is the absence of the conciliation officer whose mediation and intervention in the negotiations would have made a difference or resulted in certain value addition to the settlement.

On the other hand, a settlement which is arrived at in the course of conciliation proceedings carries more weight, greater legal sanctity and significance. It is arrived at with the mediation of the conciliation officer and is presumed to be just and fair, and binds not only the parties to it but also reaches out to others like the successors of the employer, and the future workmen, who actually were not parties to the conciliation.

It may be noted that Section 18(3) of the Act with respect to binding effect, places a settlement arrived at in the course of conciliation proceedings at par with an award of the adjudicating authorities like the Labour Court or the Tribunal. Even though a large number of cases of conciliation may end up in 'failure' and get referred to adjudicating authorities, it appears that either the settlement after conciliation, or the award after adjudication, is the most appropriate remedy for an industrial dispute.

Now let us look at the downside. There are frequent shortages of staff in the offices of the conciliation officers and the Courts and

Tribunals. The Presiding Officers of the Courts and Tribunals are normally assisted by a stenographer, a clerk and a peon. If there is a vacancy even among this minimum number, it affects speedy disposal of the cases. There are occasions when one Presiding Officer is placed in charge of two or more Courts or Tribunals, which is even more pathetic, considering the fact that in some industrial cities one case on an average is filed every day.

According to a release dated 21st May 2012 issued by the Press Information Bureau, Government of India, the total number of cases and applications pending before all the Central Government Industrial Tribunal-cum-Labour Courts in the country was 18,452 and 18,295 as at the end of the financial years 2010-11 and 2011-12 respectively.

Also, on an average, about 3,000 cases and applications are filed every year before these authorities, and almost a similar number of cases and applications are disposed of by them each year. The release, however, states that the statistics pertaining to the Industrial Tribunals and Labour Courts falling in the State jurisdiction are not maintained centrally.

These facts point to a situation where the authorities are brimming with backlog of cases. The disputes may consume a few years in the conciliation round. Thereafter, if there is a failure and hence, further reference for adjudication, some of them may languish for about a decade or even more in the Labour Courts and Tribunals.

Protracted proceedings, in many instances, may also be the result of dilatory tactics adopted by either of the parties to the dispute, sometimes with a deliberate intention of causing frustration and compelling the other party to a settlement.

Presuming that the service span of a disputant workman with the employer is about 15 to 20 years on an average, the cases remaining undecided for about a decade may truly reflect the proverbial "justice delayed, justice denied" syndrome.

The onus of fair play, therefore, may be not merely on the parties seeking the remedy, but also on the appropriate Governments which have the responsibility of ensuring that the parties do get the remedy. While the parties to the dispute should "come with clean hands" and participate sincerely in the litigation, the appropriate Governments should make all-out and sincere efforts to ensure that the existing Courts and Tribunals become - and stay - fully functional, and the number of Courts and Tribunals are increased wherever and whenever required. The fillip given by the Eleventh Five Year Plan to the scheme of holding of Lok Adalat, as an Alternative Grievance Redressal Mechanism for speedy resolution of industrial disputes, by making the scheme an indispensable part of the adjudication system, needs to be vigorously pursued. Ultimately the fulfilment of the principal objective of the ID Act should not suffer or lag behind. CS



Corporate Laws

LW.59.07.2013

KOMAL MANU SAHANI v. PURE DRINKS LTD & ANR [BOM]

Criminal Writ Petition No.4316 of 2012

R.P. Sondurbaldota, J.
[Decided on 14/06/2013]

Companies Act, 1956 - Sections 630, 630(1) - employee's heir occupying the house - employee died during the proceedings - whether proceedings could be continued against the heir by substituting her in the place of the deceased accused employee - Held, yes.

Brief facts

The Petitioner is the daughter of one Mrs. Ranjit Charles Singh, the accused in C.C. No.353/SS/2011 filed by Respondent No.1/ company under Section 630 of the Companies Act, 1956, (for short "the Act"), for continued unauthorized occupation of the residential premises owned by the company. The original accused expired on 30th January, 2012, after issuance of process by the Court against her. A few days prior to her death, the petitioner herein, her married daughter, came to the disputed premises for the purpose of looking after her. The petitioner, however, continued to occupy the premises even after the death of the mother. Therefore, on 2nd May, 2012, the company filed application at Exhibit-3 to bring the petitioner on record as the accused in the case. That application came to be allowed by the learned Magistrate by his order dated 5th November, 2012, which order is under challenge in the present Petition.

The order has been impugned essentially on three grounds. Firstly, that the application for substitution of the original accused filed by the company was not maintainable since there is no provision made in the Cr.P.C or the Companies Act, 1956 for substitution of an accused. Secondly, that the proceedings based on the facts to prosecute the original accused cannot be used to prosecute the substituted accused i.e. the petitioner. Thirdly, that if at all anything the company may file an independent complaint

against the petitioner for the offence under Section 630 of the Act.

The short question that arises for consideration of the Court in this petition is whether on the death of accused, the proceedings under Section 630 of the Companies Act, 1956 abate, or, the same can be continued by substituting him with his heirs?

Decision: Petition dismissed.

Reason

To sum up the law stated in various judicial pronouncements noted above, the provision of Section 630 of the Act is a beneficial provision enacted by the Legislature with a specific purpose. The purpose of declaring the wrongful withholding of the property of the company to be an offence is to provide speedy and summary procedure for retrieval of the company's property. The provision has been made by the Legislature keeping in view the present position in the corporate sector - private or public enterprise - that the employee or officer is often provided residential accommodation for use and occupation during the course of his employment. More often than not, it is a part of service conditions of the employee that the employer shall provide him residential accommodation during the course of his employment. Therefore, if such employee were to continue to hold the property belonging to the company after his right to be in occupation has been ceased for one reason or the other, it would create difficulties for the company in allotting the property to its other employees. It would also cause hardship for the employees awaiting allotment. Therefore, the Courts are obliged to place a broader, liberal and purposeful construction on the provision of Section 630 of the Act in furtherance of the object and purpose of the Legislation and construe it in a wider sense to effectuate the intendment of the provision. A restrictive interpretation of the provision would defeat the object of the provision. Though the provision is penal in the nature, the normal attributes of crime and punishment are not present therein. In the circumstances, the principle of interpretation relating to Criminal Statutes that the same should be strictly construed will not be applicable to the provision. It takes into its fold not just the present employees of the company but also its past employees, the legal heirs or family members, who are continuing in possession of the property of the company by virtue of their relationship with the employee and not on any independent account and any person claiming the right of occupancy under an employee. The offence under Section 630 of the Act is a continuing offence. The offence continues until the property wrongfully obtained or wrongfully withheld or knowingly misapplied is delivered up or refunded to the company.

Coming to the facts of the present case, the petitioner herein, being the legal heir of the deceased past employee of the company and withholding the property of the company would undoubtedly come within the ambit of Section 630 of the Act. The question that remains to be considered is whether she can be proceeded against through the pending proceedings or must be



proceeded against by independent proceedings. Although the question to be considered would not strictly relate to interpretation of Section 630 of the Act, it has to be decided in the context of the provision. It has already been noted above that it is the duty of the Court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the Legislation of providing speedy and summary procedure for retrieving the property of the company. The Court must endeavour to suppress the mischief and advance the remedy.

The petitioner has expressed serious concern about adopting a procedure which is alien to Cr.P.C. He apprehends that any departure from the procedure prescribed in Cr.P.C. even by way of exception for specific type of proceedings, is bound to create difficulties for criminal justice administration system. It would encourage filing of similar applications for various other purposes in various types of proceedings. In my considered opinion, the apprehension expressed need not deter the Court in considering the question on merit. A bare future possibility of the inroad made into the procedure for special cases, being used for other proceedings as well can never be a ground or consideration, for deciding the question. Any similar application filed in future in other proceedings will have to be attended to as and when filed, in accordance with the law and the fact situation at the relevant time. The law is never static. It is continuously evolving to meet the fact situations.

It is next submitted that an application of the nature filed by the company would amount to amendment of the criminal complaint, which is not permissible under Cr.P.C. However, the application filed herein has been in completely different set of circumstances. There is neither any doubt nor question about the original accused being the person liable to be prosecuted under Section 630 of the Act. There is also no dispute about the petitioner herein being the legal heir of the original accused and being in possession of the property of the company. It is also seen that the offence under Section 630 of the Act is a continuing offence and that it continues to be an offence until delivery of the property to the company. The petitioner had come in possession of the property during the lifetime of the original accused. She has continued her occupation even after the death of the original accused and not delivered the property to the company. She has, thus, wrongfully withheld it during the course of the continuing offence. In such circumstances, keeping in view the object and purpose of Section 630 of the Act, an exception will have to be made as regards the proceedings under Section 630 of the Act. Otherwise the object and purpose of the provision would get defeated. Besides in the facts of the case bringing the petitioner on record will not amount to amendment of the complaint.

Thus for the reasons stated above, I hold that the application for substitution filed by the company is maintainable and that there is no need to drive the company to separate proceedings. CS

LW.60.07.2013

LLOYD ELECTRIC & ENGINEERING LTD v. DARPEET RADATION [RAJ]

S. B. Company Petition No.35/2012

Ajay Rastogi, J.
[Decided on 31/05/2013]

Companies Act, 1956 - Sections 391(2) & 394 - Objections of RD - Rajasthan HC sanctions the scheme

Brief facts

Instant Company 2nd motion petition has been filed under Sections 391(2) and 394 of the Companies Act, 1956 on behalf of the Lloyd Electric And Engineering Limited of (applicant transferee company) for seeking sanction of the Scheme of Arrangement of applicant-transferee Co. with Perfect Radiators & Oil Coolers (P) Ltd. (transferor Co.)

Notices of the present company petition of the transferee Co. were issued. The Regional Director had raised the following objections;

- (a) as per clause 1.2. of the Scheme, the appointed date referred to is 1.4.2011 and the financial positions of the petitioner company has been mentioned in the petition as well as in the Scheme on the basis of the latest audited balance sheets for the year ended 31.3.2012 and by that time the petitioner transferee company also filed balance sheet for the year 31.3.2012 with the Registrar of Companies as such there is no justification in keeping the 'Appointed Date' as 01.04.2011 more so when the latest subsequent balance sheets for the year 31.3.2012 of petitioner company is available;
- b) further objection raised is as per the Scheme, Heat Exchanger Business is to be transferred to the petitioner transferee company. The Heat Exchanger Business is not provided in the object clause in the memorandum of association of the transferee company;
- c) the further objection raised is if holding of pre-merger is 38.36% whereas the holding of promoters will increase up to 45.85% after the implementation of the said Scheme and if that change is given effect to, the shareholding of the public will be affected since their shareholdings will be reduced accordingly.
- d) it has been further pointed out that the transferee company is listed company at BSE and NSE and nothing has been placed on record, the documentary evidence which can indicate that the contents of the aforesaid BSE letter was ever brought to the notice of shareholders and all relevant authorities as per condition of NOC of BSE.

Decision: Scheme sanctioned.



Reason

In meeting out the objections filed by the Regional Director, counsel for the petitioner submits that the appointed date as considered by the transferor company (Perfect Radiators & Oil Coolers Pvt. Ltd.) in connection with the scheme of arrangement by Delhi High Court remain 1st April, 2011 and that has been approved in company petition no.596/2012 by the High Court of Delhi in second motion petition filed under Sections 391 and 394 of the Companies Act, 1956 vide order dt.8.4.2013, as such it was otherwise not be possible to have two different appointed dates for approval of scheme which is applicable for transferee & transferor company as such appointed date may be allowed to be deemed as 1.4.2011 and it is otherwise in no manner defeating the rights of the shareholders.

In the opinion of this Court once the Scheme has been approved and the appointed date is 1.4.2011 there appears no justification to have any date other than the appointed date which has been referred to in the Scheme dt.1.4.2011.

As regards further objections raised that whether the transferee company is a listed company at BSE and NSE and there is no documentary evidence available regarding the contents of BSE letter was brought to the notice of shareholders, it has been brought to the notice of the Court that when the meeting was convened of the shareholders held on 24.11.2012 it was clearly notified in Para 20 that the inspection can be made of the documents carried out at the registered office of the transferee company on the working day and clause (iv) is regarding copy of the no objection dt.11.5.2012 obtained from the National Stock Exchange under Section 24(f) of the listing agreement and clause (v) is copy of the no objection certificate dt.1.6.2012 obtained from the Bombay Stock Exchange under Section 24(f) of the listing agreement and in the opinion of the Court the mandate of law was sufficiently complied with.

As regards other objections raised by the Regional Director in its reply referred to *supra* it has been informed that sufficient undertaking has been furnished by the transferee company to meet out the same and it no more remains to be examined by the Court.

No objection has been received regarding the Scheme from any other party. In view of the approval accorded by the shareholders, secured and unsecured creditors of the petitioner transferee company to the proposed Scheme and there being no surviving objection to the same by the Regional Director, there appears no impediment to the grant of sanction to the Scheme.

Consequently, the company petition is allowed and sanction is hereby accorded to the Scheme of arrangement to the transferee company under Sections 391(2) and 394 of the Companies Act. CS

LW.61.07.2013

ANAND PRATYABHOOT VITT NIGAM LTD v. MADHU BALA SHARMA [DEL]

CO.A(C) No. 1 of 2010 in Co. Pet. No. 95 of 1990

S. Muralidhar, J.
[Decided on 28/05/2013]

Companies Act, 1956 - Section 446 - company under liquidation - depositor receiving excess amount - whether liable to be refunded - Held, Yes. Whether provisions of Section 446 attracted to the claim made by the OL - Held, No.

Brief facts

This is an application filed by the Official Liquidator ('OL') attached to this Court under Section 446 of the Companies Act, 1956 ('Act') seeking to recover from the Respondent a sum of Rs. 6,13,408 together with interest @18% p.a. from June 2006 till realisation along with administrative expenses of the OL and costs.

Anand Pratyabhoot Vitt Nigam Ltd. (hereafter the 'company') was ordered to be wound up by this Court on 9th October 1997. The OL was appointed as its Liquidator. On 16th February 2005, the Court directed the OL to invite claims from the creditors and the workmen of the company. Notices to that effect were published in the newspapers and the claims received were processed by the OL.

The Respondent submitted claims in all the twenty investments along with the originals of the certificates of fixed deposits and the hire purchase agreements. She also furnished the calculations of maturity value of the investments from the date of deposit till the date of winding up, i.e., 9th October 1997. By a letter dated 4th November 2006, the OL informed the Respondent that her claim in the sum of Rs. 7,42,509 had been admitted. The payment of the said sum was made on 12th May 2006.

However, after re-examining the claims and taking the stand that no compound interest as such was admissible on her claims, the OL by letters dated 24th November 2009 and 14th December 2009, requested the Respondent to return the excess of Rs. 4,81,169.

Decision: Application allowed.

Reason

The contention that the claim was time-barred overlooks the fact that it was filed pursuant to the orders passed by the Court on 7th September 2009 and 21st January 2010. The cause of action for claiming the sum arose only when it was brought to the knowledge



of the OL by way of the report of the CA submitted to the OL in February 2010. Consequently, this Court rejects the plea that the claim of the OL for refund of the excess amount paid to the Respondent is time-barred.

The plea that the present application is not maintainable under Section 446 of the Act is also untenable. Under Section 446(2)(b) any claim can be brought by the OL on behalf of the company. The question of obtaining the leave of the Court for filing an application under Section 446 does not arise. It is only where a claim is to be filed by the company in some other forum that the leave has to be obtained. The expression "claim" is of wide amplitude and includes a claim for refund of payment made in excess.

In the instant case, beyond the date of maturity of the deposits, there was no agreement between the Respondent and the company as to the rate of interest that was payable. There was no automatic deemed renewal of the deposit. The compound rate of interest was payable only as long as the deposits had not matured. After the date of maturity and in the absence of any renewal, the Respondent would be entitled to interest not exceeding 4% on the deposit amounts for the period from the date of the maturity till the date of payment. The amount payable to Mrs. Madhu Bala Sharma was Rs. 1,26,701.14. Therefore, clearly, an excess payment was made to her.

For the aforementioned reasons, none of the objections of the Respondent either to the maintainability of the application or to its merits is tenable. The Respondent is directed to refund to the OL the excess amount of Rs. 6,13,408 together with simple interest @ 9% p.a. from 12th May 2006 till the date of payment, which, in any event, cannot be beyond eight weeks from today. If the payment is not made within the time granted, the Respondent will be liable to pay penal simple interest @ 12% p.a. on the said sum for the period of delay. CS

LW.62.07.2013

IN THE MATTER OF: KAPRI INTERNATIONAL PVT LTD & ADARSH KUMAR AGGARWAL v. KAPRI INTERNATIONAL PVT LTD [DEL]

CA No. 2068 of 2012 in Co. Pet. No. 59 of 1994; CA No. 27 of 1997 & IA No. 12367 of 2012 in CS (OS) No. 2293 of 1996

S. Muralidhar, J.
[Decided on 28/05/2013]

Companies Act, 1956 – sections 446(1)(2) and (3), 458 - A, 536, 537 - sick company wound up by company court on the recommendations of the BIFR - property of the company sold

during the pendency of the proceedings in clandestine manner - whether the sale tenable - Held, No.

Brief facts

The bone of contention in these applications was the alleged sale of one of the properties of KIPL situated at B-72, Mohalla Mahatma Gandhi Nagar, Moradabad during the pendency of the proceedings before the BIFR and the company court and its validity.

The BIFR recommended the winding up of Kapri International Pvt. Ltd. ('KIPL') and accordingly an order was passed on 11th April 1994 by the Company Judge in Co. Pet. No. 59 of 1994 winding up KIPL and directing notices to issue to all parties including the Operating Agency ('OA') i.e. the Canara Bank.

Meanwhile, the Civil Judge, Moradabad passed an *ex parte* decree, where under KIPL was directed to execute a sale deed in regard to one half of the plot at B-72, Mohalla Mahatma Gandhi Nagar, Moradabad in favour of the Plaintiffs i.e. Adarsh Kumar Agarwal and Niraj Kumar Agarwal within two months failing which the Plaintiffs were permitted to take possession of the plot with the help of the Court. As regards the other half of the property, an agreement to sell the same was entered into by KIPL and one Ashok Kumar Agarwal.

Two applications were thereafter filed by the Liquidator. CA No. 2068 of 2012 was filed in Co. Pet. No. 59 of 1994 under Section 446(2) of the Act for declaring the agreement to sell dated 31st May 1988 concerning the other half of the property found in the occupation of Mr. Ashok Agarwal was invalid.

Meanwhile on 23rd May 2012, the Liquidator also filed IA No. 12367 of 2012 in Suit No. 2293 of 1996 under Sections 536 and 537 of the Act for a declaration that the sale deed dated 25th May 1995 executed in favour of Mr. Adarsh Kumar Agarwal and Niraj Kumar Agarwal in respect of the half portion of B-72, Mohalla Mahatma Gandhi Nagar, Moradabad be declared null and void.

Decision: Applications allowed.

Reason

As already noted at the very first hearing itself, the Court directed winding up of KIPL. A further formal order to that effect was made on 1st May 1995 under Section 20(2) SICA and the Chief Manager of Canara Bank was appointed as Liquidator of KIPL. The date the winding up became effective would be the date on which the BIFR formed its *prima facie* opinion that KIPL should be wound up. The law in this regard has been explained by the Supreme Court in *NGEF Ltd. v. Chandra Developers (P) Ltd.* (2005) 8 SCC 219. Disagreeing with the decision of the Division Bench of Karnataka High Court in *BPL Ltd. v. Intermodal Transport Technology Systems (Karnataka) Ltd.*, the Supreme Court in *NGEF Ltd.* held that "it may be true that no formal application is required to be filed for initiating a proceeding under section 433 of the Companies Act



as the recommendation therefor are made by BIFR or AAIFR, as the case may be, and thus the date on which such recommendations are made, the Company Judge applies its mind to initiate a proceeding relying on or on the basis thereof, the proceeding for winding up would be deemed to have been started". Therefore, the date of commencement of winding up would be the date on which BIFR made the recommendation for KIPL's winding up, i.e. 27th October 1993. Even before the *ex parte* decree was passed on 18th August 1993 proceedings had commenced before the BIFR i.e. 1991. If KIPL did not appear thereafter it can possibly be explained by the fact that there was no information of the pendency of the suit filed by Adarsh Kumar Agarwal and Niraj Kumar Agarwal.

As rightly pointed out by learned counsel for the Liquidator, the agreement to sell has been signed only by Mr. Kathuria. The original of the PoA dated 17th May 2008 stated to have been issued in favour of Mr. Kathuria has not been produced. In any event there appears to be no resolution by KIPL in that behalf. Also there was no decision taken by KIPL either to sell the half portion of property at B-72, Mohalla Mahatma Gandhi Nagar, Moradabad in favour of Adarsh Kumar Agarwal and Niraj Kumar Agarwal or to sell the remaining half to Mr. Shyam Agarwal or Mr. Ashok Agarwal.

In any event under Section 22 of the SICA even if an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company can be instituted or continued except with the consent of the BIFR.

The subsequent facts were obviously not brought to the notice of the trial court and, therefore, the suit itself could not have been proceeded with without the permission of the BIFR. The *ex parte* decree passed on 18th August 1993 also overlooked the mandatory requirement in the agreement to sell that exemption from the income tax authorities had to be obtained. Therefore the decree dated 18th August 1993 cannot be sustained in law. The execution proceedings for enforcement of the decree are also judicial proceedings. The execution petition in any event could not have been continued after 1st May 1995 when a Liquidator was appointed by the Court. It is an admitted position that the sale deed dated 25th May 1995 was executed in favour of Adarsh Kumar Agarwal and Niraj Kumar Agarwal only pursuant to the order passed by the executing court and subsequent to the winding up of KIPL. The above proceedings continued without any permission being sought from the Company Court. The actual conveyance of the property i.e. one half of B-72, Mohalla Mahatma Gandhi Nagar, Moradabad in favour of Adarsh Kumar Agarwal and Niraj Kumar Agarwal was clearly hit by Sections 536(2) and 537 of the Act.

This Court, therefore, has no hesitation in holding that neither the *ex parte* decree passed by the civil court on 18th August 1993 nor the subsequent sale deed executed on 25th May 1995 can be sustained in law. They are hereby declared to be illegal and void and quashed as such.

As regards the other half of B-72, Mohalla Mahatma Gandhi Nagar, Moradabad, there was only an agreement to sell which again was not expressly authorised by KIPL by a resolution. In fact, Mr. Ashok Agarwal and Mr. Shyam Agarwal never sought to enforce the said agreement by filing a suit for specific performance. Once the company was ordered to be wound up, there was no question of any transaction involving the said property without the permission of the Company Court. The benefit of Section 53A of the TP Act is not available to Mr. Ashok Agarwal as the contract is, for the reasons explained, not valid. The intervening act of KIPL being declared sick under the SICA and thereafter being wound up by the Court deprives the transferee of taking the plea of transfer in good faith and for due consideration. There cannot be a valid sale deed executed in favour of Mr. Ashok Agarwal after the order of winding up. There is no legal basis for permitting Mr. Ashok Agarwal to be in continued possession and occupation of the property being the other half of B-72, Mohalla Mahatma Gandhi Nagar, Moradabad.

For the aforementioned reasons, this Court is satisfied that the prayers of the Liquidator in CA No. 27 of 1997 and IA No. 12367 of 2012 in CS (OS) No. 2293 of 1996 as well as CA No. 2068 of 2012 in Co. Pet. No. 59 of 1994 should be allowed. Accordingly, it is ordered as under:

- (i) the *ex parte* decree passed by the civil court on 18th August 1993 in CS (OS) No. 2293 of 1996 is set aside.
- (ii) the sale deed dated 25th May 1995 is declared null and void and same is set aside.
- (iii) the agreement to sell dated 30th May 1988 executed in favour of Mr. Shyam Agarwal is hereby set aside. CS

LW.63.07.2013

M/S. ESS ESS INTERMEDIARIES v. SEBI [SAT]

Appeal No. 13 of 2013.

Jog Singh, Member & Presiding Officer

[Decided on 19/06/2013]

Securities and Exchange Board of India Act, 1992 read with SEBI FUTP Regulations - trade by sub-broker - no proper adjudication - penalty imposed - whether tenable - Held, No.

Brief facts

The Appellant, who is a sub-broker based in Ahmedabad (Gujarat), has preferred the present appeal against the Impugned Order



dated December 14, 2012, hereinafter referred to as "Impugned Order", passed by the Securities and Exchange Board of India, hereinafter referred to as "Respondent", under Section 15-I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry by Enquiry Officer and Imposing Penalties by the Adjudicating Officer) Rules, 1995. The Impugned Order seeks to impose a penalty of Rs. 9 lacs under Section 15HA of the Securities and Exchange Board of India Act, 1992 on the Appellant for the alleged violation of Regulations 4(1), 4(2)(a), (b), (e), (g) and (n) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, hereinafter referred to as "FUTP Regulations". A further penalty of Rs.1 lac is sought to be imposed on the Appellant by the same Impugned Order for the alleged violation of clauses A(1), A(2), D(1), D(4) and D(5) of the Code of Conduct as specified in Schedule II under Regulation 15 of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.

Decision: Partly allowed.

Reason

Both the learned counsel for the parties have been heard at length and the pleadings in the appeal and the documents annexed therewith have been minutely perused.

First, we deal with the Respondent's emphatic contention that the Appellant did not file a second reply despite the fact that it sought, and received, time till March 26, 2012 to reply to the additional documents provided to it by the Respondent. At the outset, the Tribunal notes that the Appellant's failure to submit a second reply to the show-cause notice, after having obtained additional documents from the Adjudicating Officer, would not in itself amount to violation of the FUTP Regulations in question. There has to be sufficient material and evidence to arrive at such an inference against the Appellant, which cannot be based on flimsy grounds. It has been clearly pointed out by the learned counsel for the Appellant that after filing a reply on September 1, 2009 to the show-cause notice, no need was felt to file additionally a detailed reply in as much as the additional documents furnished by the Inquiry Officer pertained to Shri Nitin R. Patel and not the Appellant. In this connection, the Tribunal notes that even the points raised by the Appellant in the first reply dated September 1, 2009 have not been considered by the Adjudicating Officer while passing the Impugned Order. Therefore, this submission of the Respondent does not add any value to their case. Even observations / findings of the Adjudicating Officer in paragraphs 11 to 15 of the Impugned Order are based on some investigation report issued while blindsiding the Appellant. There is no evidence on record to substantiate the allegations levelled against the Appellant.

We now deal with the main issue regarding whether or not the Appellant has violated Regulations 4(1) and 4(2), (a), (b), (e), (g) and

(n) of the FUTP Regulations, 2003. Regulation 4(1), provides that no person shall indulge in fraudulent and unfair trade practice in securities. Regulation 4(2) provides that dealing in securities shall be deemed to be fraudulent and an unfair trade practice if it involves fraud and may include all or any of the ingredients enumerated in sub-sections (a), (b), (e), (g), and (n) of Regulation 4(2). Regulation 4(2)(a) deals with an act which creates a false impression with respect to trading in the securities market. Regulation 4(2)(b) deals with a situation where the securities are not intended to be transferred but operate only as a device to inflate or depress the price of such securities for wrongful gain or avoidance of loss. Regulation 4(2)(e) deals with manipulation of the price of a security. Regulation 4(2)(g) deals with transactions which are not intended to be performed by taking them to their logical conclusion. Similarly, Regulation 4(2)(n) prohibits circular transactions between intermediaries which are mainly intended to increase commission and also to provide a false appearance of trading in that security.

Thus, a perusal of the provisions of Regulation 4 and its sub-regulations reveals that the allegation of fraud can be levelled against a person/entity only for good reasons and on the basis of clear and unambiguous evidence. Such an allegation of fraud may shake the very foundation of the business of the entity in question and may adversely affect the same. Therefore, the onerous task of proving such a serious allegation lies on the person levelling such accusation on the basis of preponderance of probability. A minute reading of the Adjudicating Officer's Impugned Order dated December 14, 2012 does not demonstrate the manner in which the Appellant's actions have led to the creation of a false market and the basis on which the Appellant has been condemned for the commission of fraud, that too in connivance with others. No evidence has been brought on record to establish a connection between the Appellant and the alleged fraudulent transactions undertaken by Shri Nitin R. Patel. It is a matter of record that the alleged default is the first and only aspersion cast on the Appellant with respect to its business and, heretofore, has not had any of its acts called into question by any authority, regulatory or otherwise. Moreover, it is evident from the Impugned Order that the Appellant has enjoyed no unfair advantage or benefit of any nature owing to the execution of the trades in question, nor have the same resulted in any kind of loss suffered by investors in the scrip of AEL. This is evident from the fact that the Respondent has not received any complaint with respect to any of the allegedly manipulative acts of the Appellant.

The Appellant, as is evident from the record, acted only as a sub-broker, who is at a lower rung in the hierarchy of brokers, as above him stand the broker and the stock exchange. We agree with the Appellant in that it is an inconsequentially small market player earning a meagre amount every year and can in no way be placed at par with other dominant entities executing numerous transactions in the securities market on a regular basis.

It is evident from the records that the Appellant acted solely on the



behest of its client, Shri Nitin R. Patel, while trading in the shares of AEL. As stated above, while pronouncing its decision in the matter of Nitin R. Patel, this Tribunal observed that the quantum of penalty levied upon transgressors of the law under similar circumstances should be commensurate with the gravity of the act which leads to deviation from the provisions of law. Now, the fact of the matter is that Shri Nitin R. Patel, along with other market operators which dealt in the scrip of AEL, has been penalised to the extent of Rs. 2 lac, while the sub-broker Appellant has been asked to pay a totally unwarranted penalty of Rs. 9 lac in the facts and circumstances of the case analysed in detail hereinabove. In the opinion of this Tribunal, to a reasonable mind, the facts of this matter speak for themselves. As pointed out earlier, no evidence has been adduced to demonstrate any sort of collusion between the Appellant and Shri Nitin R. Patel while dealing in the scrip of AEL, with the intention to manipulate the price of the scrip. However, we do believe that the Appellant as a sub-broker should have been more vigilant while executing the trades in question. Even as a small-time sub-broker, the Appellant has the task of remaining alert at all times without taking its clients at face value. Unless the Appellant appreciates this duty as its paramount obligation, clients such as Shri Nitin R. Patel will keep trying to make profits at the expense of innocent investors caught unawares in the unethical scheme of such clients in the capital market and the Respondent, as a responsible Regulator, has rightly called upon the Appellant to pay a nominal amount of Rs. 1 lac for this inadvertence. Therefore, keeping the above said in mind, this Tribunal is inclined to do away with the penalty of Rs. 9 lac imposed upon the Appellant for the alleged violation of the FUTP Regulations, 2003 while upholding that of Rs. 1 lac for the violation of the Code of Conduct as specified in Schedule II under Regulation 15 of the Broker Regulations. This appeal, to the aforesaid extent, stands partly allowed. No order as to costs. CS



LW.64.07.2013

ROYAL ORCHID HOTELS LTD v. REGISTRAR OF TRADE MARKS & ANR [IPAB]

OA/74 & 75/2009/TM/CH & M. P. Nos.125 & 126/2012 in

O.A/74 & 75/2009TM/CH

Js. Prabha Sridevan, Chairman & V.Ravi,
Technical Member

[Decided on 18/06/2013]

Trademarks Act,1999 - word mark "Orchid" of the Respondent - rejection of appellant's application to register two trademarks containing the word "orchid"- whether correct - Held, No.

Brief facts

The appellant had applied for the registration of two trademarks i.e. words "Royal Orchid" and "Royal Orchid Hotels" taken as a whole. The respondent is the owner of the registered trademark "Orchid". The Registrar of Trademarks refused the registration of the two trademarks as sought by the appellant and hence the appellant had appealed against the order of the Registrar of Trademarks to the Intellectual Property Appellate Board.

Decision: Appeal allowed.

Reason

Here one mark is "Orchid" and the other mark is "Royal Orchid" or "Royal Orchid Hotels Limited". The individual words are not distinctive by themselves, but the appellant does not claim exclusive right to the word "Orchid" or the word "Royal". He seeks the registration of the words "Royal Orchid" and "Royal Orchid Hotels" taken as a whole. We are unable to see how the "Royal Orchid Hotels" is similar to "Orchid". The Registrar clearly ignored the principle by tearing the word "Orchid" out the impugned mark as a whole and arrived at the conclusion that the adoption was dishonest. The respondent had totally ignored that the appellant had adopted Royal Orchid Hotels for his company's name even before the respondent adopted the trade mark Orchid.

The respondent's objections have to be rejected since if nothing else, the appellant's company name had become Royal Orchid Hotels Limited in 1997 pursuant to a resolution dated 1996. The respondent, who claims user only from January, 1997 cannot plead that the appellant was imitating their name. When the mark is considered in its entirety, we are of the opinion that the "Royal Orchid Hotels Private Limited" and the "Orchid" cannot be confused. Further the respondent's Orchid label is with the depiction of flower. The class of customers is of the high income group and there is no likelihood of confusion especially in the instant case where the mark relates to service. Even if the mark related to goods bought off the shelf, we doubt if, the word "Orchid" and the "Royal Orchid" will cause confusion. We are not concerned with consumer goods but with services rendered in the hotel industry. Therefore both on the ground of honesty of adoption and likelihood of confusion, we are of the opinion that the impugned order must be set aside and it is set aside. CS



Tax Laws

LW.65.07.2013

KAY PAN PRODUCTS LIMITED v. STATE OF U.P. & ORS
[ALL]

Writ Petition No.4287 (MB) of 2013 & Writ Petition No.4300 (MB) of 2013

Rajiv Sharma & Dr. Satish Chandra, JJ.
[Decided on 31/05/2013]

Uttar Pradesh Trade Tax & Entry tax Act - Section 21(2) - reopening of assessment of trade tax and entry tax on the ground of undisclosed sales - whether tenable - Held , Yes for Trade tax and Held, No for entry tax.

Brief facts

In both the petitions, the petitioner has assailed the orders dated 25.03.2013 passed by the Additional Commissioner, Grade- I Commercial Tax, Lucknow whereby he has granted the permission under section 21(2) of the U.P. Trade Tax Act, for the assessment year 2006-07, to make the reassessment under the Trade Tax Act as well as under the Entry Tax Act.

The brief facts of the case are that the petitioner is a Private Limited Company, who has established its units for manufacturing and sale of Gutkha Pan Masala having Tobacco. The Brand name of the petitioner's product is "Rajshree".

On 11.03.2008, for the assessment year 2006-07, the original assessment order was passed under Rule 41(8) of the U.P. Trade Tax Rules. Assessment order under Entry Tax Act was also passed. On 30.06.2009, the Central Excise Department has conducted a survey at the business premises of the assessee namely M/s. Vinay Wires and Poly Products Limited, Kanpur; and M/s Kaveri Graphics Limited (earlier known as M/s Diamond Graphics Limited) Kanpur. During the survey, after examining the books of accounts, bank accounts and other materials, it was found that the assessee has sold more than 98 crores Gutkha Pouch

without showing it in the books of accounts. To this effect, necessary information was sent to the department. The matter was more than four years old. So, the Deputy Commissioner, Commercial Tax has sought permission from the competent authority for the extension of time for making reassessment. The authority concerned has passed the impugned orders under section 21 (2) of the Trade Tax Act and granted the permission for making the reassessment under the Trade Tax Act as well as Entry Tax Act by observing that the Gutkha is exempted from the commercial tax but its raw material is subject to tax. Being aggrieved, the petitioner has filed the present petitions.

Decision: Allowed for entry tax and dismissed for trade tax.

Reason

We have heard both the parties at length and gone through the material available on record.

In the instant case, it is evident that the original assessments were completed. Normal period for reassessment has already expired. So, the assessing officer has sought permission for reassessment from the competent authority after recording the reasons, which was granted by the impugned orders under the Trade Tax Act as well as the Entry Tax Act.

Needless to mention here that initiation of proceedings for granting permission by the Commissioner after expiry of four years from the end of assessment order in question creates valuable right in favour of the petitioner. There is obligation on the Commissioner to give opportunity of hearing or show cause notice to the petitioner before granting permission for reassessment proceedings. Where no such opportunity has been given or show cause notice has been issued, the permission accorded by the Commissioner is not justifiable as per the ratio laid down in the case of *Mohan Steel Limited v. CTT*; (2007)VSTI Alld. 59.

Once the proviso postulates recording of reasons by the Assessing Authority, it necessarily obligates the Commissioner or the Additional Commissioner to consider such reasons and make them known to the assessee before he finally forms his satisfaction and even if the Commissioner or the higher authority on his own reasons feels satisfied that it is just and expedient to re-open the assessment, it would still require that such reasons must be made known to the assessee also, so that before the assessment is reopened, he may have an opportunity to satisfy the higher authority that the reasons assigned by the Assessing Authority are not relevant or they are incorrect or they do not make out a legal ground for reopening of the assessment and likewise if the Commissioner or the higher Authority proposes to authorize the Assessing Authority for re-opening the assessment on his own, then also reasons for satisfaction have to be supplied to the dealer, so that he may have a say to convince the higher authority for not authorizing the Assessing Officer for not reopening the assessment.

Whether the Commissioner or the higher authority permits the



Assessing Officer to proceed under the extended period of limitation either on his own or on the basis of the reasons recorded by the Assessing Authority, in both cases, the assessee would have a right to put forward his defence for not re-opening the assessment. This opportunity, if excluded, or shredded out from the aforesaid proviso, it would leave the assessee with no opportunity/ remedy to challenge the very authority of the assessing officer to reopen the assessment nor there would be any opportunity to challenge the approval granted by the Commissioner under any of the remedies under the Act.

When an order is passed on the basis of the reasons recorded, it naturally means that the reasons must be rationale, genuine and relevant. Any reason which cannot be termed as rationale genuine or relevant would not make out a case for reopening of the assessment and for that matter also, the assessee has to be associated in the proceedings initiated seeking approval from the Commissioner or the Additional Commissioner, as the case may be. Similar views were also expressed in the case of *M/s. Manaktala Chemicals Pvt. Ltd. v. State of Uttar Pradesh and others*, (2006) UPTC 1128 Allahabad.

Re: Trade tax

In the present case, the assessee has not cooperated as mentioned in the report submitted by the Central Excise Department. At the time of survey, and thereafter, opportunity was given to the petitioner to submit his reply. *Prima-facie*, there is suppressed sale of raw material for manufacture of Gutkha though which is not taxable but its raw material is taxable, which was purchased by the petitioner from unregistered dealers. When it is so, then we are of the view that matter needs further inquiry by the A.O. The petitioner is at liberty to put its defence before the A.O. We hope that petitioner will cooperate with the A.O. at least this time.

In these circumstances, we find no reason to interfere with the impugned order passed by the competent authority to grant the permission under section 21(2) of the Trade Tax Act for reopening the assessment for the assessment year 2006-07. In its defence, the assessee will get another chance at the time of reassessment proceedings. So, the writ petition No.4287 (MB) of 2013 is hereby dismissed.

Re: Entry tax

Regarding writ petition 4300 (MB) of 2013, pertaining to the Entry Tax Act, it may be mentioned that the petitioner is a manufacturer of Gutkha. He is neither a dealer within the meaning of Section 2(b) of the Entry Tax Act, nor there is any liability for payment of Entry Tax.

Section 4(1) of the Entry Tax Act provides the levy of Entry Tax on the entry of goods mentioned in Schedule-II into local area from any other place outside the local area for consumption, use or sale therein and the entry tax was payable by a dealer, who is bringing the goods within the local area. The manufacturer of 'Gutkha' is not

liable for payment of entry tax. His liability is just to collect the Entry Tax from the dealers and deposit with the exchequer.

During survey, it was found that the petitioner has manufactured 'Gutkha' from the raw material purchased from the unregistered dealers and as raw material was taxable under the provisions of Trade Tax Act now known as Value Added Tax and under the provisions of Entry Tax Act, the liability to pay Tax is on the dealer but in the instant case in the absence of entries in the books of account, no case is made out as to where the goods were sold and how Entry Tax was evaded. Hence, no *prima facie* case is made out for the evade of Entry Tax.

Section 4(1) of the Entry Tax provides levy of Entry Tax on the entry of goods mentioned in the schedule into a local area from any other place outside that local area for consumption, use or sale therein and the Entry Tax was payable by dealer who is bringing the goods within the local area and not by the manufacturer. Section 4-A of the Old Entry Tax Act is equivalent to Section 12 of the New Entry Tax, 2007 and it only requires the manufacturer to collect entry tax from the purchasing dealer at the time of delivering Gutka from the manufacturer. Only change in Section 4-A and 12 (1) is that under Section 12 (1), it has been provided that the manufacturer shall not give such goods to the purchaser unless the amount of such tax has been paid by the purchaser, but such purchaser is the person who intends to bring into the local area after purchasing from the manufacturer. In other words, the liability of the manufacturer is only to the extent to collect entry tax from the dealer and deposit the same to the exchequer.

In the instant case, a survey was conducted upon unregistered dealers by the Central Excise Department from whom, it is said that petitioner used to purchase raw material for manufacturing Gutka and on the basis of the report so submitted by the Central Excise Department, proceedings for reopening and reassessment under Section 21(2) of the Trade Tax Act have been initiated on the ground that certain turnover has escaped from the assessment. It may be noted that there is no dispute in the fact that the petitioner is manufacturer of Gutka. The final product in the form of Gutka has been manufactured for the first time and the same was sold within the local area. Therefore, in view of provisions of Section 2 (C), there is no liability for payment of Entry Tax by the manufacturer, who by no stretch of imagination can be said to be a dealer in terms of Section 2(b) of the Entry Tax Act, 2007.

In the instant case, the assessment order for Entry Tax was already passed. Further, the order was also passed by the first appellate authority. Thus, the assessment order has already merged in the first appellate order, as agreed by both the parties. When it is so, then no reassessment can be made pertaining to Entry Tax and no proceedings under Section-21 can be legally initiated. Hence, we set aside the impugned order dated 25.03.2013 (Annexure No.5 to the writ petition), pertaining to the Entry Tax Act only. The petitioner will get the relief accordingly. CS



LW.66.07.2013

COMMISSIONER OF CENTRAL EXCISE v. M/S VEE GEE FAUCETS PVT LTD [P&H]

CEA No.27 of 2011

Hemans Gupta & Ritu Bahri, JJ.
[Decided on 27/05/2013]

Central Excise Act, 1944 - Sections 11-AC & 35G read with Central Excise Rules - Rule 25, Rule 26 – use of brand name 'Guru' as assignee/registered user - revenue rejected to give exemption under SSI notification- whether tenable - Held,No.

Brief facts

The respondent - M/s Vee Gee Faucets Pvt. Ltd. (for short 'the assessee') is engaged in the manufacture of bathroom and sanitary fittings falling under Central Excise Tariff sub-heading 8481.80 under the brand name 'Guru' and has availed the benefits of Small Scale Industries (SSI) exemption as per Notification No.8/2001. As per the said Notification, no duty is payable up to limit of Rs.1 Crore. The officers of the Central Excise visited the factory premises of the assessee on 11.07.2003 and found that the finished goods i.e. sanitary and bath fittings as well as packing material were found bearing the brand name 'Guru', which was owned by M/s United Cocks Pvt. Ltd., A122 Shradapuri, Ramesh Nagar, New Delhi. The visiting officers seized the goods valued at Rs.5,89,273/- on the belief that the goods bearing 'Guru' brand name lying finished in the store are intended to be cleared without payment of duty and are liable for confiscation. The stand of the assessee was that the brand name 'Guru' has been purchased by the assessee from M/s United Cocks Pvt. Ltd. on the basis of Memorandum of Understanding dated 02.04.2001 and Assignment Deed dated 01.04.2003. The said firm was engaged in the manufacture of sanitary and bath fittings till February, 2001, when they have to close their production activities due to reallocation scheme by the Delhi Government after the Central Excise Registration was surrendered.

The Adjudicating Authority found that the goods cleared with brand name 'Guru' prior to 02.04.2001 i.e. prior to arriving at Memorandum of Understanding, the assessee was not eligible for SSI exemption and, thus, confirmed the demand of Rs.3,46,148/-. The Adjudicating Authority also returned a finding that the Memorandum of Understanding was not arrived at on the date it purports to bear and that initial stand of the management of the assessee was that of right to use such trade name on account of relationship of the Directors of the assessee and M/s United Cocks Pvt. Ltd. Consequently, it was held that the assessee was using the brand name of another person and had manufactured and cleared goods affixed with brand name of another person, therefore, not eligible to avail benefit of SSI exemption for the period 15.02.2001 to

05.07.2003. Thus, it was ordered that the goods valued at Rs.5,89,273/- are liable to be confiscated. The Adjudicating Authority also confirmed the demand of Rs.40,00,163 and imposed penalties on Shri Ashok Sharma and Shri Dheeraj Sharma, Directors of the assessee.

In the separate appeals by the assessee and its Directors, the demand and the penalties imposed were confirmed. However, in further appeals, the learned Tribunal set aside the demand and penalty. Aggrieved against the said order, the Revenue is in appeal.

Decision: Appeal dismissed.

Reason

The issue in the present *lis* is regarding benefit of exemption under Notification No.8/2001 available to an assessee, a Small Scale Industry. It is not an issue relating to rates of duty or the value of goods, but only to the effect whether the assessee is entitled to exemption granted to a Small Scale Industrial Unit on the basis of trade mark of another concern. Any decision thereon, is relevant only inter-parties and has no wider ramification within the jurisdiction of this Court much less in the Country. Therefore, such localized dispute does not fall within the exception of Section 35G of the Act. Thus, this Court will have jurisdiction to entertain the appeal in respect of clandestine removal of goods claiming benefit of exemption as per Notification No.8/2001. Thus, the first question of law is answered holding that claim of the benefit of a notification by an assessee does not give rise to an issue relating to 'rate of duty' or the 'value of goods' for the purposes of assessment, therefore an appeal would be maintainable before this court.

In respect of second question of law, we find that the assessee has filed Civil Appeal bearing Diary No. 35099 of 2010. Such appeal was dismissed by the Supreme Court on 13.12.2010. In view of the ratio of the above-stated judgments, the order dated 13.12.2010, as reproduced above, dismissing Civil Appeal leads to merger of that part of the order alone, which was against the assessee. Once the assessee has availed the remedy of appeal and such appeal has been dismissed, the findings of the Tribunal, which are against the assessee, stands affirmed and stood merged with the order of the Supreme Court. It is more so, when the appeal was dismissed without notice to the Revenue and the Revenue had no opportunity to point that it intends to file an appeal against an order of the Tribunal. Therefore, the findings against the Revenue could be disputed before the competent Court of law.

In view of the above, we hold that the doctrine of merger would be applicable only in respect of findings, which were disputed by the assessee before the Supreme Court and not in respect of findings, which were recorded by the Tribunal in favour of the revenue.

We now examine the scope of the Rules in question. Rule 25 and Rule 26 of the Central Excise Rules confer the power to impose penalty on the Adjudicating Authority subject to provisions of



Section 11-AC of the Act. Penalty is imposable under Rule 25, if any producer, manufacturer, registered person of a warehouse or a registered dealer, contravenes any of the provisions of these Rules or the notifications issued under these rules 'with intent to evade payment of duty'. It also contemplates that 'penalty shall not exceed the duty on the excisable goods'.

A reading of clause (d) of Rule 25 shows that the penalty is imposable if there is intention to evade payment of duty. Thus, *mens rea* becomes a necessary ingredient before imposition of penalty under Rule 25.

The Tribunal has set aside the order of imposing penalty finding that it is a *bona fide* belief of the assessee in using the brand name of its sister concern. Therefore, such user is not with intent to evade payment of duty and, thus, levy of penalty has been rightly set aside.

In respect of penalties imposable under Rule 26, again the penalty is payable if a person acquires possession of, or in any manner deals with any excisable goods 'which he knows or has reason to believe' are liable to confiscation under the Act. Such provision again makes the *mens rea* a necessary ingredient for imposition of penalty.

In view of the above, we find that the Revenue has not been able to prove the intention to evade the payment of duty or the fact that the assessee knew or has reason to believe that the goods used are liable to be confiscated under the Act. The Tribunal is right in setting aside the order of imposition of penalty. CS



Industrial & Labour Laws

LW.67.07.2013

FERTILIZERS AND CHEMICALS TRAVANCORE LTD v.
P.S.GIRI & ANR [KER]

WA.No. 732 of 2013 in WP(C).30534/2007

Manjula Chellur, C. J. & K.Vinod Chandran, J.
[Decided on 05/06/2013]

822

[LW-83]

July 2013

Industrial Disputes Act, 1947 - Section 11A - dismissal of employee for misconduct - labour court upheld the dismissal - single judge of the HC reversed the decision and converted the dismissal to discharge - whether correct - Held, No.

Brief facts

The 1st respondent was a workman of the appellant-Company, working as Depot Attender at the Company's Gulbarga Depot. On 27.10.1995, a chargesheet was issued against the workman and being unsatisfied with the explanation offered, a domestic enquiry was initiated into the misconducts alleged. The Enquiry Officer, on the failure of the delinquent employee to participate in the enquiry, declared him *ex parte* and proceeded with the enquiry, concluding the same, finding the workman guilty of all the charges levelled against him. The 1st respondent/workman sought a reference of the dispute regarding the justifiability of his dismissal, which resulted in award upholding the enquiry as also the punishment of dismissal. The 1st respondent challenged the actions of the management on grounds of the allegations being false and vague, violation of principles of natural justice as also on grounds of the punishment being disproportionate to the charges levelled. The Labour Court found the enquiry to be proper by a preliminary order and refused to interfere, with the punishment of dismissal imposed, under Section 11A of the Industrial Disputes Act, 1947.

The learned Single Judge, finding that the long service of the workman from 1971 onwards was neither considered by the Enquiry Officer nor by the Industrial Tribunal, converted the order of dismissal to one of discharge.

Decision: Appeal allowed.

Reason

We have gone through the preliminary order extracted in the award and which forms part of the award. It is evident that the Enquiry Officer posted the enquiry first on 14.10.1996, for which notice was issued by registered post on 28.9.1996. Since the notice returned with the endorsement "unclaimed", again a further notice was issued in the last known address as also the permanent address of the workman. In addition to this, a copy of the notice was also issued in the address given by the workman in his explanation submitted to the chargesheet. Even after that, the Enquiry Officer issued further notice on the last known addresses of the workman and later published a notice of enquiry in the Malayala Manorama Daily. On 12.3.1997, it is revealed that a communication was received from the workman requesting to change the venue of the enquiry from Gulbarga to Kerala. This request was rejected and the workman intimated of such rejection as also the next date of posting.

Here, it is relevant to notice that the workman who was employed at the Gulbarga Depot was not suspended pending enquiry and had unauthorizedly absented himself after the initiation of the proceedings. The request for change of venue by the workman was



not justified, since even during the pendency of the enquiry he was supposed to have been reporting for duty at Gulbarga. Further it is also to be noticed that the charges levelled are with respect to the workman's activities in the Gulbarga Depot and the witnesses would be from the said locality. In such circumstance, it cannot be gainsaid that the enquiry was proceeded with in violation of the principles of natural justice. We are fortified in holding so by the decision of the Supreme Court in *State Bank of India and others v. Narendrakumar Pandey* [(2013) 2 SCC 740]. Their Lordships in the said judgment held that non-compliance with mandatory rules for supply of list of documents and witnesses and illegality in relying upon documents not disclosed to the delinquent employee are not defences available to a delinquent employee who purposefully, deliberately and with full knowledge refrains from participating in an enquiry. The facts disclosed with respect to the issuance of notice in the instant case does not commend us to hold in favour of the respondent in the aspect of procedural irregularity. We are of the definite opinion that there is absolutely no violation of the principles of natural justice and the workman/1st respondent had deliberately, with full knowledge, kept away from the enquiry.

The further challenge is regarding vagueness and falsity of charges, the latter of which the workman had an opportunity to substantiate before the Enquiry Officer, which he failed to avail of. Looking at the charges of insubordination, misappropriation, damage to the Company's goods or properties, negligence of work, acting against the interest of the Company, unsatisfactory workmanship and habitual breach of rules and instructions, we cannot hold it to be in any manner vague. We do not attempt an enumeration of each and every charge, but a reading of the award would eminently demonstrate that specific instances of tampering with the stock, negligence and outright disobedience as also acting against the interest of the company is very evident. Suffice it to say that the charges are with respect to specific instances as disclosed from the discussion of the same in the award and the 1st respondent's claim that they are vague does not hold good.

The charges being found to be with respect to specific instances and the same having been proved in a valid enquiry conducted against the employee, the contours of the jurisdiction does not permit us to interfere at all with the said findings in the award. We notice that the learned Single Judge while observing on the futility of a remittance has contemplated such remittance only on the question of lack of notice. We have already found that there is absolutely no lack of notice and the workman alone is responsible for not having participated in the enquiry conducted.

What remains is the order of the learned Single Judge converting the punishment of dismissal to one of discharge. We are of the opinion that the long years of service rendered by the 1st respondent is not a circumstance which could have been taken into consideration for interference in the punishment under Section 11A of the Act, especially in the context of such service being disclosed to be not totally unblemished. The Industrial Tribunal has, while

considering the scope of interference under Section 11A, referred to various prior instances of misconduct alleged against the 1st respondent. We, however, would confine ourselves to the charges levelled against the workman to consider whether they are grave in nature to warrant a punishment of dismissal.

As noticed above, the workman had meddled with the stock in the depot of the Company and had refused to co-operate with the stock verification attempted, by refusing to sign on such stock verification statement prepared by a superior officer.

The workman was also negligent in the supply of the products of the Company to its dealers and was further negligent in submitting the cheques in lieu of payments made by the purchasers. The insistence for additional payment from dealers and the allegation of threats levelled against the dealers definitely are acts which would tarnish the image of the Company. Considering the nature of the charges, which stood uncontroverted and hence proved at the enquiry, we are of the opinion that there is no good ground or eminent reason to interfere with the punishment of dismissal. CS

LW.68.07.2013

MAHARAJA AGGRASAIN MEDICAL INSTITUTE AND
SCIENTIFIC RESEARCH SOCIETY v. PRESIDING OFFICER
& ANR [P&H]

LPA No.1104 of 2013 (O&M)

Rakesh Kumar Jain & Paramjeet Singh, JJ.
[Decided on 11/06/2013]

Industrial Disputes Act, 1947 - Section 33C(2) - reinstatement with back wages - during the appeal settlement was arrived at - as per settlement workers to be paid backwages - single judge allowed the same - whether correct - Held, Yes.

Brief facts

Services of the respondents were terminated by the appellant on 1.5.2002 which was challenged by them by raising industrial dispute under Section 10 of the Act and the learned Labour Court vide order dated 18.7.2005 allowed the reference and ordered reinstatement of the respondents in continuous service, as well as 50% of the back wages. Said order was challenged by the appellant by way of CWP No. 7770 of 2006. During the pendency of the said writ petition, a compromise was arrived at between the parties and in pursuance thereof Memorandum of Settlement.

However, the said writ petition was dismissed by the Division Bench on 2.11.2006 upholding the award of the Labour Court whereby the respondents were ordered to be reinstated with 50% back wages. The respondents thereafter filed applications under



Section 33-C(2) of the Act for getting the back wages which were dismissed by the learned Labour Court vide its order dated 29.1.2010. Aggrieved against the said order, the respondents filed writ petitions in this Court which have been allowed by the learned Single Judge vide order dated 22.3.2013 recorded in CWP No. 5336 of 2012, basically relying upon Clause (c) of the Memorandum of Settlement in which there were two conditions, namely, (i) that the workman shall relinquish his claim for back wages; and (ii) the said Memorandum of Settlement shall be subject to decision of the writ petition which was pending adjudication before this Court. While the writ petition was dismissed, the issue with regard to back wages was not raised by the appellant and as such, the order of the Labour Court was upheld and maintained.

Aggrieved against the order dated 22.3.2013 passed by the learned Single Judge, present appeals have been preferred.

Decision: Appeal dismissed.

Reason

Counsel for the appellant has submitted that as per Section 18 of the Act, settlement arrived at between the parties would be binding upon them. However, no such objection was raised by the appellant at the time of adjudication of the aforesaid writ petition. Since no objection was raised by the appellant as per Section 18 of the Act, learned Single Judge has not erred in law in allowing the writ petition on the ground that the matter was not brought to the notice

of the Division Bench when the writ petition was heard and finally disposed of.

We have heard Counsel for the appellant and have perused the record with his able assistance. In our considered view, the order passed by the learned Single Judge is without any blemish inasmuch, as the condition contained in Clause (c) of the Memorandum of Settlement has not been pressed before the Division Bench when the award of the learned Labour Court by which reinstatement with 50% back wages was upheld. In view thereof, we do not find any merit in the present appeals and the same are hereby dismissed.

CS

READERS' WRITE

The erstwhile POINTS OF VIEW column of Chartered Secretary has been re-captioned as READERS' WRITE. Members are invited to send in their queries and views for consideration for publication in this column for soliciting views/comments from other members of the Institute.

Appointments



REQUIRED COMPANY SECRETARIES

Shree Cement Limited, an integrated player in cement and power business having 13.5 million tons per annum cement production capacity and 560 MW power generation capacity, is rapidly expanding its business in various parts of India. Known for its family culture and people practices, the Company was rated one among the top 20 Best Employers in India.

The Company is looking for highly motivated and experienced professionals for junior and senior level openings in its Secretarial Department. The required credentials and key responsibilities are as under:-

Junior Level Opening

Credentials:

- Qualified Company Secretary with 2 years of experience in Secretarial function
- Good written and communications skills
- Should be acquainted with all changes like Companies Bill, 2011, Business Responsibility Reporting etc

Job Description:

- Preparation and maintenance of secretarial records of the Company and group companies
- Redressal of queries / complaints raised by investors of the Company
- Preparation of periodical MIS reports related to share transfers, stock prices, legal cases, performance of Registrar etc.
- Assistance in preparation of documents related to Board / general meeting
- Monitoring changes in relevant legislation and regulatory environment for taking appropriate action

Senior Level Opening

Credentials:

- Qualified Company Secretary with minimum 10 years of hands on experience in discharging secretarial duties in Public Limited Companies.
- Excellent written and communications skills with exposure to regulatory environment
- Thorough knowledge, understanding and insight of all changes / likely changes in Corporate Laws, SEBI regulations etc.

Job Description:

- Ensuring compliance with provisions of Companies Act 1956, Listing Agreement, SEBI regulations and other applicable enactments
- Assistance in convening of Board Meeting & Annual General Meeting and prepare minutes, etc and take actions based on the same
- Ensuring integration of risk management framework into strategic decision-making, establishing reporting mechanism to higher management & Board and creating risk awareness across the organisation to reap benefits out of it
- Undertake responsibility to oversee and coordinate various activities related to preparation of annual report, sustainability report etc
- Represent the organization to government bodies and regulators including the MCA, SEBI etc. and ensure maintenance of good relationship with them
- Responsible for compliance with implementation and reporting requirements of Business Responsibility Reporting of Listing Agreement
- Driving the sustainability and CSR agenda of the Company further to help complying with various regulatory and reporting requirements.

Interested candidates can send their CVs at gargd@shreecementltd.com.

Compensation will be commensurate to your experience and qualification and will be competitive

Invitation for Special Issues of CS

Invitation of Articles for Special Issues of Chartered Secretary

It has been decided to bring out special issues of Chartered Secretary as under:

Issue	Last Date for receiving Articles for this Issue	Theme	Broad Coverage
August, 2013	July 20, 2013	Risk Management	<ul style="list-style-type: none"> • Business and operational risks • Financial risk management • Investment risk management • Strategic organizational risk • Regulatory risks • Collateral liabilities risks in M&A • Cross border risks in global business • Credit risks and rating • Risk identification, measurement reporting and mitigation • Risk monitoring and control • International standards and risk management assurance • Managing environmental and climatic risks • Risk hedging and management-derivatives and insurance • Insurance and re-insurance • Weather insurance and derivatives • Other emerging areas in risk management. • Assurance Role of professionals
October, 2013	September 15, 2013	FEMA	<ul style="list-style-type: none"> • Foreign investment in India • Investment routes and procedures • Foreign direct / portfolio investment • Foreign exchange management • External commercial borrowing • Foreign currency convertible bonds • Deferred payment protocols • U K Sinha committee report • Chandrasekhar committee report • Overseas business opportunities and financing thereof • Joint ventures / branches of overseas companies / opening of branches abroad by Indian companies • Indian depository receipts • Offences, contraventions and compounding provisions • Common adjudication authority • Currency derivatives • Provisions in Indian financial code
November, 2013	October 15, 2013	Journey from Company Secretary to Governance Professional	<ul style="list-style-type: none"> • Role of Professions in Economic Development • Role of CS in Governance • Governance in Government • Governance in Companies • Governance in not-for-profit Organisations • Regulation of the Profession of CS, Development of the Profession of CS • CS as Independent Directors
January, 2014	December 15, 2013	Novelties in the Companies Bill, 2012	<ul style="list-style-type: none"> • One person company • Investor protection • Class actions • Gender diversity • Whistle blower policy • Corporate social responsibility • Business responsibility reporting • Subordinate legislation • Disgorgement • Auditing standards • Secretarial standards • E-governance • Role of CS
March, 2014	February 15, 2013	Gloomier Side of Business	<ul style="list-style-type: none"> • Corporate fraud • Violations of corporate laws • Securities market manipulation • Violations of securities laws • Enforcement Actions • Benami Transactions • Money laundering • Financing of terrorism • Serious fraud investigation office • Financial intelligence unit • Financial action task force • Economic offences

Articles on the aforesaid subjects are welcome for consideration by the Editorial Advisory Board for publication in the said special issues. Contributors may also refer to the general guidelines for authors published elsewhere in this issue.

The articles may kindly be forwarded to:

The Deputy Director (Publications)

The Institute of Company Secretaries of India, 22, Institutional Area

Lodi Road, New Delhi – 110003.

e-mail: ak.sil@icsi.edu copy to: ks.gopalakrishnan@icsi.edu





From the Government



» Corporate Laws

01 Power of ROCs to obtain declaration/affidavits from subscribers/ first directors at the time of incorporation

[Issued by the Ministry of Corporate Affairs vide Circular No. 11/2013, No. 17/118/2012 CLV dated 29.05.2013]

The matter of protection of interest of investors, including depositors, is very important to ensure healthy corporate capital market environment in the country. The recent instances of raising of monies by companies in a manner which is opaque/convoluted, non-accountable and which does not protect interests of depositors have been taken note of by the Ministry seriously.

Keeping in view the need to protect the interest of investors and ensure that companies raise monies in accordance with the provisions of the Companies Act/Deposit Rules, it is clarified that in exercise of the powers under the Companies Act, the Registrar of Companies may obtain declaration/affidavits from subscribers/first directors first at the time of incorporation and from directors, subsequently whenever company changes its objects, to the effect that company/directors shall not accept deposits unless compliance with the applicable provisions of Companies Act, 1956, RBI Act, 1934 and SEBI Act, 1992 and rules/directions/regulations made there under are duly complied and filed with the concerned authorities.

Sanjay Shorey
Joint Director

02 Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2013

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/12/6108 dated 19.06.2013. Published in the Gazette of India (Extraordinary) Part III- Section 4 dated 19.06.2013]

In exercise of the powers conferred under section 30 of the

Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to 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, 2013.
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, –
 - i. in regulation 34, the following new proviso shall be inserted, namely,-
“Provided that in case of mutual fund schemes eligible under Rajiv Gandhi Equity Savings Scheme, the period specified in this regulation shall be not be more than thirty days.”
 - ii. in regulation 35,-
 - a. in sub-regulation (3), the following proviso shall be inserted, namely,-
“Provided that in case of mutual fund schemes eligible under Rajiv Gandhi Equity Savings Scheme, the period specified in this sub-regulation shall be fifteen days from the closure of the initial subscription list.”
 - b. in sub-regulation (4), the following proviso shall be inserted, namely,-
“Provided that in case of mutual fund schemes eligible under Rajiv Gandhi Equity Savings Scheme, the period specified in this sub-regulation shall be fifteen days from the closure of the initial subscription list.”
 - iii. in regulation 36,-
 - a. in sub-regulation (1), after the proviso, the following new proviso shall be inserted, namely,-
“Provided further that in case of mutual fund schemes eligible under Rajiv Gandhi Equity Savings Scheme, the period specified in this sub-regulation shall be fifteen days from the closure of the initial subscription list.”
 - b. in sub-regulation (2), the following proviso shall be inserted, namely,-
“Provided that in case of mutual fund schemes eligible under Rajiv Gandhi Equity Savings Scheme, the period specified in this sub-regulation shall be fifteen days from the closure of the initial subscription list.”

U. K. Sinha
Chairman



03 Notification regarding establishment of Local Office of the Board at Chandigarh

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/14/610 dated 19.06.2013. Published in the Gazette of India (Extraordinary) Part III- Section 4 dated 19.06.2013]

In exercise of the powers conferred by sub-section (4) of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board has established its Local Office at Chandigarh under the administrative control of its Northern Regional Office at New Delhi. The Local Office so established shall look after the regulatory aspects of investor protection, facilitating redressal of investor grievances, financial and investor education and such other functions as may be assigned from time to time, and its role and responsibility shall extend to the areas falling under the territorial jurisdiction of Union Territory of Chandigarh, State of Punjab and State of Haryana.

U. K. Sinha
Chairman

04 Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.

[Issued by the Securities and Exchange Board of India vide Notification No. LAD-NRO/GN/2013-14/11/6063 dated 12.06.2013. Published in the Gazette of India (Extraordinary) Part III- Section 4 dated 12.06.2013]

In exercise of the powers conferred by sub-section (1) of Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities and Exchange Board of India hereby, makes the following regulations, namely, —

CHAPTER I PRELIMINARY

Short title and commencement.

1. (1) These regulations may be called the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.
- (2) They shall come into force on the date of their publication in the Official Gazette.

Definitions

2. (1) In these regulations unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly,—

- (a) “abridged prospectus” shall have the same meaning assigned to it in or under sub-section (1) of Section 2 of the Companies Act, 1956 and shall contain such additional disclosures as specified by Board from time to time;
- (b) “Act” means the Securities and Exchange Board of India Act, 1992;
- (c) “advertisement” includes notices, brochures, pamphlets, circulars, show cards, catalogues, hoardings, placards, posters, insertions in newspaper, pictures, films, cover pages of offer documents or any other print medium, radio, television programmes through any electronic medium;
- (d) “bank” includes any bank included in the Second Schedule to the Reserve Bank of India Act, 1934;
- (e) “Board” means the Securities and Exchange Board of India established under provisions of Section 3 of Act;
- (f) “book building” means a process undertaken prior to filing of prospectus with the Registrar of Companies by means of circulation of a notice, circular, advertisement or other document by which the demand for the non-convertible redeemable preference shares proposed to be issued by an issuer is elicited and the price and quantity of such securities is assessed;
- (g) “designated stock exchange” means a stock exchange in which securities of the issuer are listed or proposed to be listed and which is chosen by the issuer for the purpose of a particular issue under these regulations;
- (h) “innovative perpetual debt instrument” means an innovative perpetual debt instrument issued by a bank in accordance with the guidelines framed by the Reserve Bank of India;
- (i) “issuer” means any public company in terms of section 3 of the Companies Act, 1956, public sector undertaking or statutory corporation which makes or proposes to make an issue of non-convertible redeemable preference shares in accordance with these regulations or which has its securities listed on a recognized stock exchange or which seeks to list its non-convertible redeemable preference shares on a recognized stock exchange;



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- (j) "Listing Agreement" means a listing agreement to be entered into between the issuer and the stock exchange where the non-convertible redeemable preference shares are proposed to be listed in the form as may be specified by the Board from time to time;
 - (k) "non-convertible redeemable preference share" means a preference share which is redeemable in accordance with the provisions of the Companies Act, 1956 and does not include a preference share which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder;
 - (l) "perpetual non-cumulative preference share" means a perpetual noncumulative preference share issued by a bank in accordance with the guidelines framed by the Reserve Bank of India;
 - (m) "private placement" means an offer or invitation to subscribe to the non-convertible redeemable preference shares in terms of sub-section (3) of section 67 of the Companies Act, 1956;
 - (n) "promoter" has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (o) "public issue" means an offer or invitation by an issuer to public to subscribe to the non-convertible redeemable preference shares which is not in the nature of a private placement;
 - (p) "offer document" means prospectus and includes any such document or advertisement whereby the subscription to non-convertible redeemable preference shares are invited by the issuer from public;
 - (q) "recognized stock exchange" means any stock exchange which is recognized under section 4 of the Securities Contracts (Regulation) Act, 1956;
 - (r) "schedule" means a schedule annexed to these regulations;
 - (s) "specified" means as specified by the Board.
- (2) All other words and expressions used but not defined in these regulations, shall have the same meanings respectively assigned to them in the Act or the Companies Act, 1956 or Securities Contracts

(Regulation) Act, 1956 or the Depositories Act, 1996 or the Rules and the Regulations made thereunder or any statutory modification or re-enactment thereto, unless the context requires otherwise.

Applicability.

3. These regulations shall apply to,-

- (1) public issue of non-convertible redeemable preference shares;
- (2) listing of non-convertible redeemable preference shares on a recognized stock exchange which are issued by a public company through public issue or on private placement basis; and
- (3) issue and listing of Perpetual Non-Cumulative Preference Shares and Perpetual Debt Instrument, issued by banks on private placement basis in compliance with Guidelines issued by Reserve Bank of India.

CHAPTER II

ISSUE REQUIREMENTS FOR PUBLIC ISSUES

General Conditions.

- 4. (1) No issuer shall make any public issue of non-convertible redeemable preference shares if as on the date of filing of draft offer document and final offer document as provided in these regulations, the issuer or the promoter of the issuer, has been restrained or prohibited or debarred by the Board from accessing the securities market or dealing in securities and such direction or order is in force.
- (2) No issuer shall make a public issue of non-convertible redeemable preference shares unless the following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations, -
 - (a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:
Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange:
Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange;
Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation;



- (b) it has obtained in-principle approval for listing of its non-convertible redeemable preference shares on the recognized stock exchanges where the application for listing has been made;
- (c) it has obtained a credit rating from at least one credit rating agency registered with the Board and is disclosed in the offer document:
Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;
- (d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the non-convertible redeemable preference shares that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder;
- (e) the minimum tenure of the non-convertible redeemable preference shares shall not be less than three years; and
- (f) the issue has been assigned a rating of not less than "AA-" or equivalent by a credit rating agency registered with the Board.

(3) The issuer shall create a capital redemption reserve in accordance with the provisions of the Companies Act, 1956;

(4) The issuer shall not issue non-convertible redeemable preference shares for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management, other than to subsidiaries of the issuer;

Explanation: For the purpose of this regulation, the terms "part of the same Group" and "under the same management" shall have the same meaning as provided in the explanation to regulation 23 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

(5) In case of public issue of non-convertible redeemable preference shares, the issuer shall appoint one or more merchant bankers registered with the Board at least one of whom shall be a lead merchant banker.

Disclosures in the offer document.

5. (1) The offer document shall contain all material disclosures which are necessary for the subscribers of the non-convertible redeemable preference shares

to take an informed investment decision.

(2) Without prejudice to the generality of sub-regulation (1), the issuer and the lead merchant banker shall ensure that the offer document contains the following:

(a) the disclosures specified in Schedule II of the Companies Act, 1956;

(b) disclosure specified in Schedule I of these regulations; and

(c) additional disclosures as may be specified by the Board.

Explanation: For the purpose of this regulation, "material" means anything which is likely to impact an investor's investment decision.

Filing of draft offer document.

6. (1) No issuer shall make a public issue of non-convertible redeemable preference shares unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.

(2) The draft offer document filed with the designated stock exchange shall be made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange.

(3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the non-convertible redeemable preference shares are proposed to be listed.

(4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.

(5) The lead merchant banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.

(6) A copy of draft and final offer document shall also be forwarded to the Board for its records, simultaneously with filing of these documents with designated stock exchange.

(7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per



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Schedule II of these regulations.

Mode of Disclosure of Offer Document.

7. (1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF /HTML formats.
- (2) The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue.
- (3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

Advertisements for Public issues.

8. (1) The issuer shall make an advertisement in one English national daily newspaper and one Hindi national daily newspaper with wide circulation at the place where the registered office of the issuer is situated, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule I.
- (2) No issuer shall issue an advertisement which is misleading in material particulars or which contains any information in a distorted manner or which is manipulative or deceptive.
- (3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.
- (4) The credit rating shall be prominently displayed in the advertisement.
- (5) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document.
- (6) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document.
- (7) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of non-convertible redeemable preference shares or be used for solicitation.

Abridged Prospectus and application forms.

9. (1) The issuer and lead merchant banker shall ensure that:

- (a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus;
 - (b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus;
 - (c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.
- (2) The issuer may provide the facility for subscription of application in electronic mode.

Electronic Issuances.

10. An issuer proposing to issue non-convertible redeemable preference shares to the public through the on-line system of the designated stock exchange shall comply with the relevant applicable requirements as may be specified by the Board.

Price Discovery through Book Building.

11. The issuer may determine the price of non-convertible redeemable preference shares in consultation with the lead merchant bankers and the issue may be at fixed price or the price may be determined through book building process in accordance with the procedure as may be specified by the Board.

Redemption.

12. The issuer shall redeem the non-convertible redeemable preference shares in terms of the offer document.

Minimum subscription.

13. (1) The issuer may decide the amount of minimum subscription which it seeks to raise by public issue of non-convertible redeemable preference shares in accordance with the provisions of Companies Act, 1956 and disclose the same in the offer document.
- (2) In the event of non-receipt of minimum subscription, all application moneys received in the public issue shall be refunded forthwith to the applicants.
In the event the application monies are refunded beyond eight days from the last day of the offer, then such amounts shall be refunded together with interest at such rate as may be set out in the offer document which shall not be less than fifteen per cent per annum.

Underwriting.

14. A public issue of non-convertible redeemable preference shares may be underwritten by an underwriter registered with the Board and in such a case adequate disclosures regarding underwriting arrangements shall be made in the offer document.



Prohibitions of mis-statements in the offer document.

15. (1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading.
- (2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of non-convertible redeemable preference shares shall not contain any false or misleading statement.

CHAPTER III LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES

Mandatory listing.

16. (1) An issuer desirous of making an offer of non-convertible redeemable preference shares to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956.
- (2) The issuer shall comply with conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange where such non-convertible redeemable preference shares are sought to be listed.
- (3) Where the issuer has disclosed the intention to seek listing of nonconvertible redeemable preference shares issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such non-convertible redeemable preference shares.

Conditions for listing of non-convertible redeemable preference shares issued on private placement basis.

17. (1) An issuer may list its non-convertible redeemable preference shares issued on private placement basis on a recognized stock exchange subject to the following conditions:
 - (a) the issuer has issued such non-convertible redeemable preference shares in compliance with the provisions of the Companies Act, 1956, rules prescribed thereunder and other applicable laws;
 - (b) credit rating has been obtained in respect of such non-convertible redeemable preference shares from at least one credit rating agency registered with the Board:
Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings

shall be disclosed in the offer document;

- (c) the non-convertible redeemable preference shares proposed to be listed are in dematerialized form;
- (d) the disclosures as provided in regulation 18 have been made;
- (e) the minimum application size for each investor is not less than ten lakh rupees; and
- (f) the issue is in compliance with sub-regulation (3) and (4) of regulation 4.

- (2) The issuer shall comply with conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange where such non-convertible redeemable preference shares are sought to be listed.

Disclosures in respect of private placements of non-convertible redeemable preference shares.

18. (1) The issuer making a private placement of non-convertible redeemable preference shares and seeking listing thereof on a recognized stock exchange shall make disclosures as specified in Schedule I of these regulations accompanied by the latest Annual Report of the issuer.
- (2) The disclosures as provided in sub-regulation (1) shall be made on the web sites of stock exchanges where such securities are proposed to be listed and shall be available for download in PDF / HTML formats.

Relaxation of strict enforcement of rule 19 of Securities Contracts (Regulation) Rules, 1957.

19. In exercise of the powers conferred by sub-rule (7) of rule 19 of the Securities Contracts (Regulations) Rules, 1957, the Board hereby relaxes the strict enforcement of sub-rules (1) and (3) of rule 19 of the said rules in relation to listing of non-convertible redeemable preference shares issued by way of a public issue or a private placement.

CHAPTER IV CONDITIONS FOR CONTINUOUS LISTING AND TRADING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES

Continuous Listing Conditions.

20. (1) All the issuers making public issues of non-convertible redeemable preference shares or seeking listing of non-convertible redeemable preference shares issued on private placement basis shall comply with the conditions of listing specified in the respective listing agreement for non-convertible redeemable preference shares.



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- (2) Each rating obtained by an issuer shall be reviewed by the registered credit rating agency atleast once a year and any revision in the rating shall be promptly disclosed by the issuer to the stock exchange(s) where the non-convertible redeemable preference shares are listed.
- (3) Any change in rating shall be promptly disseminated to investors and prospective investors in such manner as the stock exchange where such securities are listed may determine from time to time.
- (4) The issuer and stock exchanges shall disseminate all information and reports on non-convertible redeemable preference shares including compliance reports filed by the issuers regarding the non-convertible redeemable preference shares to the investors and the general public by placing them on their websites.

Trading of non-convertible redeemable preference shares.

21. (1) The non-convertible redeemable preference shares issued to the public or on a private placement basis, which are listed in recognized stock exchanges, shall be traded and such trades shall be cleared and settled in recognized stock exchanges subject to conditions specified by the Board.
- (2) In case of trades of non-convertible redeemable preference shares which have been made over the counter, such trades shall be reported on a recognized stock exchange having a nation-wide trading terminal or such other platform as may be specified by the Board.
- (3) The Board may specify conditions for reporting of trades on the recognized stock exchange or other platform referred to in sub-regulation (2).

CHAPTER V

OBLIGATIONS OF INTERMEDIARIES AND ISSUERS

Obligations of the Issuer, Lead Merchant Banker, etc.

22. (1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.
- (2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and Schedule II of the Companies Act, 1956.

- (3) The issuer shall treat the applicants in a public issue of non-convertible redeemable preference shares in a fair and equitable manner as per the procedures as may be specified by the Board.
- (4) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.
- (5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of non-convertible redeemable preference shares which are listed or proposed to be listed on a recognized stock exchange.

CHAPTER VI

ISSUANCE AND LISTING OF NON-EQUITY REGULATORY CAPITAL INSTRUMENTS BY BANKS

Applicability to other instruments.

23. (1) These provisions of these regulations shall, so far as they may, apply to the issuance and listing of Perpetual Non-Cumulative Preference Shares and Innovative Perpetual Debt Instruments by banks.
- (2) No issuer other than a bank shall issue the instruments mentioned in subregulation (1).
- (3) A bank may issue such instruments subject to the prior approval and in compliance with the Guidelines issued by Reserve Bank of India.
- (4) If a bank is incorporated as a company under Companies Act, 1956, it shall, in addition, comply with the provisions of Companies Act, 1956 and/or other applicable statutes.
- (5) The bank shall comply with the terms and conditions as may be specified by the Board from time to time and shall make adequate disclosures in the offer document regarding the features of these instruments and relevant risk factors and if such instruments are listed, shall comply with the listing requirements.

CHAPTER VII

MISCELLANEOUS

Inspection by the Board.

24. (1) Without prejudice to the provisions of sections 11 and 11C of the Act and section 209A of the Companies Act, the Board may suo motu or upon information received by it, appoint one or more persons to undertake the inspection of the books of account, records and documents of the issuer or merchant banker or any



other intermediary associated with the public issue, disclosure or listing of non-convertible redeemable preference shares, as governed under these regulations, for any of the purposes specified in sub-regulation (2).

- (2) The purposes referred to in sub-regulation (1) may be as follows, namely:-
 - (a) to verify whether the provisions of the Act, Companies Act, 1956, Securities Contracts (Regulation) Act, 1956, Depositories Act, 1996, the rules and regulations made thereunder in respect of issue of securities have been complied with;
 - (b) to verify whether the requirement in respect of issue of securities as specified in these regulations has been complied with;
 - (c) to verify whether the requirement of listing conditions and continuous disclosure requirement have been complied with;
 - (d) to inquire into the complaints received from investors, other market participants or any other persons on any matter of issue and transfer of securities governed under these regulations;
 - (e) to inquire into affairs of the issuer in the interest of investor protection or the integrity of the market governed under these regulations;
 - (f) to inquire whether any direction issued by the Board has been complied with.
- (3) While undertaking an inspection under these regulations, the inspecting authority or the Board, as the case may be, shall follow the procedure specified by the Board for inspection of the intermediaries.

Power to issue directions.

25. (1) Without prejudice to its powers under Chapter VIA and section 24 of the Act, the Board may, in the interest of investors in securities market, issue such directions as it deems fit under section 11 or section 11A or section 11B or section 11D of the Act including:
 - (a) directing the issuer to refund of the application monies to the applicants in a public issue;
 - (b) directing the persons concerned not to further deal in securities in any particular manner;
 - (c) directing the persons concerned not to access the securities market for a particular period;
 - (d) restraining the issuer or its promoters or directors

from making further issues of securities;

- (e) directing the person concerned to sell or divest the securities;
- (f) directing the issuer or the depository not to give effect transfer or directing further freeze of transfer of securities;
- (g) any other direction which Board may deem fit and proper in the circumstances of the case:
Provided that the Board shall, either before or after issuing such directions, give an opportunity of being heard to the persons against whom the directions are issued or proposed to be issued:
Provided further that, if, any ex-parte direction is required to be issued, the Board may give post decisional hearing to affected person.

Power of the Board to issue general order or circular.

26. (1) The Board may by a general or special order or circular specify any conditions or requirement in respect of issue of non-convertible redeemable preference shares.
- (2) In particular, and without prejudice to the generality of the foregoing power and provisions of these regulations, such orders or circulars may provide for all or any of the following matters, namely:
 - (a) Electronic issuances and other issue procedures including the procedure for price discovery;
 - (b) Conditions governing trading, reporting, clearing and settlement of trade in non-convertible redeemable preference shares; or
 - (c) Listing conditions.
- (3) If any special order is proposed to be issued to any particular issuer or intermediary on a specific issue, no such order shall be issued unless an opportunity to represent is given to the person affected by such order.

Power to remove difficulty.

27. (1) In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications or grant relaxations from application requirement or conditions of these regulations, after recording reasons therefor.
- (2) The Board may, on an application made by any issuer, relax any of the procedural requirements or conditions or strict enforcement of these regulations, if the Board is satisfied that:
 - a. requirement is procedural or technical in nature; or



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- b. requirement causes undue hardship to a particular class of industry or issuers from accessing the securities market; or
- c. relaxation is in the interest of substantial number of investors; or
- d. such relaxation will be in the interest of securities market.

SCHEDULE I

[See Regulation 5 (2) (b) and Regulation 18 (1)]

DISCLOSURES

- I. The issuer seeking listing of its non-convertible redeemable preference shares on a recognized stock exchange shall file the following disclosures along with the listing application to the stock exchange:

- (a). Memorandum and Articles of Association and necessary resolution(s) for the allotment of the non-convertible redeemable preference shares;

- (b). Copies of last three years audited Annual Reports;

- (c). Statement containing particulars of dates of, and parties to all material contracts and agreements;

- (d). Copy of the Board / Committee Resolution authorizing the borrowing and its list of authorised signatories:

Provided that a recognized stock exchange may call for such further particulars or documents as it deems proper.

- II. The following disclosures shall be made in the Offer document/ Disclosure Document, where relevant:

- A. A prominent disclosure in bold writing on the cover page of offer document stating the following:

“Instruments offered through the offer document are non-convertible redeemable preference shares and not debentures/bonds. They are riskier than debentures/bonds and may not carry any guaranteed coupon and can be redeemed only out of the distributable profits of the company or out of the proceeds of a fresh issue of shares made, if any, by the company for the purposes of the redemption”

B. Issuer Information

- i. Details of the following:-

- 1) Name and address of the following:-
 - a) Registered office of the Issuer
 - b) Corporate office of the Issuer

- 2) Names and addresses of the following:-
 - a) Compliance officer of the Issuer

- b) CFO of the Issuer
- c) Arrangers, if any, of the instrument
- d) Registrar of the issue
- e) Credit Rating Agency (-ies) of the issue and
- f) Auditors of the Issuer

- ii. A brief summary of the business/ activities of the Issuer and its line of business containing particularly atleast following:-

- 1. Overview
- 2. Corporate Structure
- 3. Key Operational and Financial Parameters * for the last 3 Audited years
- 4. Project cost and means of financing, in case of funding of new projects

* At least covering the following - Consolidated basis (wherever available) else on standalone basis

Parameters	Upto latest Half Year	FY.....	FY.....	F Y.....
For Non-Financial Entities				
Net worth				
Total Debt				
of which – Non Current Maturities of Long Term				
Borrowing				
- Short Term Borrowing				
- Current Maturities of Long Term Borrowing				
Net Fixed Assets				
Non Current Assets				
Cash and Cash Equivalents				
Current Investments				
Current Assets				
Current Liabilities				
Net sales				
EBITDA				
EBIT				
Interest				
PAT				
Dividend amounts				



Current ratio (X)				
Interest cover (X)				
Gross debt/equity ratio (X)				
Debt Service Coverage Ratios (X)				
For Financial Entities				
Networth				
Total Debt				
of which – Non Current Maturities of Long Term Borrowing				
- Short Term Borrowing				
- Current Maturities of Long Term Borrowing				
Net Fixed Assets				
Non Current Assets				
Cash and Cash Equivalents				
Current Investments				
Current Assets				
Current Liabilities				
Asset Under Management				
Off Book Assets				
Interest Income				
Interest Expense				
Provisioning & Write-offs				
PAT				
Gross NPA (%)				
Net NPA (%)				
Tier I Capital Adequacy Ratio (%)				
Tier II Capital Adequacy Ratio (%)				

Gross Debt: Equity Ratio (X) of the Company :

Before the issue of nonconvertible redeemable preference shares	
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After the issue of nonconvertible redeemable preference shares	
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iii. And a brief history of the Issuer since its incorporation giving details of its following activities:-

1. Details of Share Capital as on last quarter end

Share Capital	Rs
Authorized Share Capital	
Issued, Subscribed and Paid-up Share Capital	

2. Changes in its capital structure as on last quarter end, (authorized) for the last five years

Date of Change (AGM/ EGM)	Rs	Particulars

3. Equity Share Capital History of the Company as on last quarter end for the last five years

Date of Allotment	No of Equity Shares	Face Value (Rs)	Issue Price (Rs)	Consideration (Cash other than cash, etc)	Nature of Allotment	Cumulative			Remarks
						No of equity shares	Equity Share Capital (Rs)	Equity Share Premium (Rs)	

Notes: (If any)

- Details of any Acquisition or Amalgamation in the last 1 year
- Details of any Reorganization or Reconstruction, in the last 1 year as under

Type of Event	Date of Announcement	Date of Completion	Details

iv. Details of the shareholding of the Company as on the latest quarter end:-

1. Shareholding pattern of the Company as on last quarter end

Sr. No	Particulars	Total No of Equity Shares	No of shares in demat form	Total Shareholding as % of total no of equity shares

Notes: - Share pledged or encumbered by the promoters (if any)

2. List of top 10 holders of equity shares of the Company as on



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the latest quarter end

Sr. No	Name of the Shareholders	Total No of Equity Shares	No of shares in demat form	Toatal Shareholding as % of total no of equity Shares

v. Following details regarding the directors of the Company:

Details of the current directors of the Company*

Name, Designation and DIN	Age	Address	Director of the Company since	Details of other directorship

* Company to disclose name of the current directors who are appearing in name of RBI defaulter list and/or ECGC default list.

Details of change in directors since last three years

Name, Designation and DIN	Date of Appointment / Resignation	Director of the Company since (in case of resignation)	Remarks

vi. Following details regarding the auditors of the Company:-

Details of the auditor of the Company

Name	Address	Auditor since

Details of change in auditor since last three years

Name	Address	Date of Appointment/ Resignation	Auditor of the Company since (in case of resignation)	Remarks

vii. Details of borrowings of the Company, segregating the Rupee Denominated Borrowings and Borrowings made in Foreign Currency, as on the latest quarter end:-

1. Details of Secured Loan Facilities :-

Lender's Name	Type of Facility	Amt Sanctioned	Principal Amt O/S	Repayment Date / Schedule	Security

2. Details of Unsecured Loan Facilities:-

Lender's Name	Type of Facility	Amt Sanctioned	Principal Amt O/S	Repayment Date / Schedule

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3. Details of NCDs:-

Debt ure Series	Tenor/ Period of Maturity	Rate of divid end	Amou nt/	Date of Allot ment	Redempti on Date/ Schedule	Credit Rating	Secured /unsecu red	Security

List of Top 10 Debenture Holders (as on)

Sr. No.	Name of Debenture Holders	Amount

Note: Top 10 holders' (in value terms, on cumulative basis for all outstanding debentures issues) details should be provided.

4. The amount of corporate guarantee issued by the Issuer along with name of the counterparty (like name of the subsidiary, JV entity, group company, etc) on behalf of whom it has been issued.

5. Details of Commercial Paper:-

The total Face Value of Commercial Papers Outstanding as on the latest quarter end to be provided and its breakup in following table:-

Maturity Date	Amt Outstanding

6. Details of Rest of the borrowing (if any including hybrid debt like FCCB, Optionally Convertible Debentures / Preference Shares) as on:-

Party Name (in case of Facility) /Instru ment Name	Type of Facility/ Instrum ent	Amt Sanctio ned/ Issued	Principal Amt O/S	Repayment Date/ Schedule	Credit Rating	Secured / Unsecured	Security

7. Details of all default/s or delay in payments of interest and principal of any kind of term loans, debt securities and other financial indebtedness including corporate guarantee given by the Company in the past 5 years.

8. Details of any outstanding borrowings taken / debt securities issued where taken/issued (i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount,



or (iii) in pursuance of an option;

viii. Details of Promoter of the Company:-

1. Details of Promoter Holding in the Company as on the latest quarter end :-

Sr. No	Name of the Shareholders	Total No of Equity Shares	No of shares in demat from	Total Shareholding as % of total no of equity shares	No of Shares Pledged	% of Shares pledged with respect to shares owned.

ix. Abridged version of Audited Consolidated (wherever available) and Standalone Financial Information (like Profit & Loss statement , Balance Sheet and Cash Flow statement) for at least last three years and auditor qualifications , if any.*

x. Abridged version of Latest Audited / Limited reviewed Half Yearly Consolidated (wherever available) and Standalone Financial Information (like Profit & Loss statement , and Balance Sheet) and auditors qualifications ,if any. *

xi. Any material event/ development or change having implications on the financials/credit quality (e.g. any material regulatory proceedings against the Issuer/promoters, tax litigations resulting in material liabilities, corporate restructuring event etc) at the time of issue which may affect the issue or the investor's decision to invest / continue to invest in the non-convertible redeemable preference shares.

xii. The detailed rating rationale (s) adopted (not older than one year on the date of opening of the issue)/ credit rating letter (not older than one month on the date of opening of the issue) issued by the rating agencies shall be disclosed.

xiii. Names of all the recognized stock exchanges where non-convertible redeemable preference shares are proposed to be listed clearly indicating the designated stock exchange

xiv. Other details

1. Capital Redemption Reserve (CRR) creation - relevant regulations and applicability

2. Nature of the instrument: whether cumulative or non-cumulative and complete details thereof;

3. Terms of Redemption: Out of distributable profits or out of fresh issue of shares for the purpose of redemption or both.

4. Issue/instrument specific regulations - relevant details (Companies Act, RBI guidelines, etc)

5. Application process

* Issuer will provide latest Audited or Limited Review Financials in line with timelines mentioned in Simplified Listing Agreement, notified by SEBI vide circular No.SEBI/IMD/BOND/1/2009/11/05 dated May 11, 2009 and amended from time to time , for furnishing / publishing its half yearly/ annual result.

III. Issue details

i. Summary term sheet shall be provided which shall include at least following information (where relevant) pertaining to the non-convertible redeemable preference shares (or a series thereof):

Security Name	Name of the non-convertible redeemable preference shares which includes (Issuer Name, Dividend Rate and maturity year) e.g. 8.70% XXX 2015.
Issuer	
Type of Instrument	
Nature of Instrument	
Seniority	
Mode of Issue	Public issue/Private placement
Eligible Investors	
Listing (including name of stock Exchange(s) where it will be listed and timeline for listing)	
Rating of the Instrument	_____ by _____ Ltd.
Issue Size	
Option to retain oversubscription (Amount)	
Objects of the Issue	
Details of the utilization of the Proceeds	
Dividend	
Dividend Payment Frequency	
Dividend payment dates	Dates on which dividend will be paid.
Cumulative or non-cumulative	
Interest on Application Money	
Default Interest Rate	
Tenor	___ Months from the Deemed Date of Allotment
Redemption Date	Dates on which Principal will be repaid.
Redemption Amount	
Redemption Premium /Discount	
Mode of redemption (Out of profit or out of fresh issue of capital or both)	
Issue Price	The price at which non-convertible redeemable preference share is issued
Discount at which non-convertible redeemable preference share is issued and the effective yield as a result of such discount.	
Put option Date	
Put option Price	
Call Option Date	
Call Option Price	



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Put Notification Time	Timelines by which the investor need to intimate Issuer before exercising the put option.
Call Notification	Time Timelines by which the Issuer need to intimate investor before exercising the call option.
Face Value	
Minimum Application and in multiples of ___ Non-convertible redeemable preference shares thereafter	
Issue Timing 1. Issue Opening Date 2. Issue Closing Date 3. Pay-in Date 4. Deemed Date of Allotment	
Issuance mode of the Instrument	Demat only
Trading mode of the Instrument	Demat only
Settlement mode of the Instrument	Insert details of payment procedure
Depository	
Business Day Convention ¹	
Record Date	15 days prior to each Dividend Payment / Put Option Date / Call Option Date / Redemption date.
Transaction Documents ²	
Conditions Precedent to Disbursement	
Condition Subsequent to Disbursement	
Events of Default	
Provisions related to Cross Default Clause	N/A (Not Applicable) in case clause is not there else full description of the clause to be provided
Governing Law and Jurisdiction	

¹ The procedure used to decide the dates on which the payment can be made and adjusting payment dates in response to days when payment can't be made due to any reason like sudden bank holiday or day being Sunday , etc. should be laid down.

² The list of documents which have been executed or will be executed in connection with the issue and subscription of non-convertible redeemable preference shares shall be annexed.

ii. Additional Covenants

Default in Payment:

In case of default in payment of Dividend and/or principal redemption on the due dates, with additional Dividend of atleast @ 2% p.a. over the dividend rate will be payable by the Company for the defaulting period

Delay in Listing :

In case of delay in listing of the non-convertible redeemable preference shares beyond 20 days from the deemed date of allotment, the Company will pay penal amount of atleast 1 % p.a. over the dividend rate from the expiry of 30 days from the

deemed date of allotment till the listing of such non-convertible redeemable preference shares to the investor.

The rates mentioned in above cases are the minimum rates payable by the Company and are independent of each other. Delay in Dispatch of Allotment Letters or Refund Orders:

Issuer agrees that allotment of non-convertible redeemable preference shares offered to the public shall be made not later than fifteen days of the closure. The issuer further agrees that, in such cases, it shall pay interest at the rate of fifteen per cent. per annum, if the allotment letters or refund orders have not been dispatched to the applicants or if, in a case where the refund or portion thereof is made in electronic manner, the refund instructions have not been given to the clearing system in the disclosed manner within fifteen days from the date of the closure of the issue.

SCHEDULE II FORMAT FOR DUE DILIGENCE CERTIFICATE AT THE TIME OF FILING THE OFFER DOCUMENT WITH REGISTRAR OF COMPANIES AND PRIOR TO OPENING OF THE ISSUE

To,
SECURITIES AND EXCHANGE BOARD OF INDIA

Dear Sir / Madam,
SUB.: ISSUE OF _____ BY _____ LTD.

1. We confirm that neither the issuer nor its promoters or directors have been prohibited from accessing the capital market under any order or direction passed by the Board. We also confirm that none of the intermediaries named in the offer document have been debarred from functioning by any regulatory authority.
2. We confirm that all the material disclosures in respect of the issuer have been made in the offer document and certify that any material development in the issue or relating to the issue up to the commencement of listing and trading of the shares offered through this issue shall be informed through public notices/ advertisements in all those newspapers in which pre-issue advertisement had been given prior or before opening of the issue.
3. We confirm that the offer document contains all disclosures as specified in the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.
4. We also confirm that all relevant provisions of the Companies Act, 1956, Securities Contracts, (Regulation) Act, 1956, Securities and Exchange Board of India Act, 1992 and the Rules, Regulations, Guidelines, Circulars issued there under are complied with.

We confirm that all comments/ complaints received on the draft offer document filed on the website of _____ (designated stock



exchange) have been suitably addressed.

PLACE:

DATE:

LEAD MERCHANT BANKER (S)

U. K. Sinha

Chairman

05 Enhancement in Foreign Investment limits in Government debt

[Issued by the Securities and Exchange Board of India vide CIR/IMD/FIC/8/2013 dated 12.06.2013]

1. The Government of India has enhanced the Government Debt Limits by USD 5 billion (equivalent to approximately INR 29,137 cr converted at the RBI reference rate of 1 USD = INR 58.274 as on June 12, 2013).
2. It has been decided that the aforesaid enhanced limit of USD 5 billion shall be available for investments only to those FIIs which are registered with SEBI under the categories of Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks.
3. To begin with, the amount of USD 5 billion together with the unutilized limit of INR 29,812 cr (equivalent to approximately USD 6.2 billion) as on May 31, 2013 (due for auction on June 20, 2013) will be made immediately available for investment on tap by these investors mentioned in Para 2 above.
4. The amount not utilized as on June 18, 2013 (out of the presently unutilized limit of INR 29,812 cr) will be put on auction on June 20, 2013. Similar exercise shall continue every month.
5. With regard to those FIIs which have exhausted their reinvestment limits, as a one time measure, a special window of upto USD 250 million per FII shall be available till the date of the next auction i.e. June 20, 2013 subject to the aggregate investments in Government debt by all FIIs/QFIs being limited to USD 25 Billion (i.e. the limit other than the limit of USD 5 billion earmarked for investors mentioned in Para 2 above).

Such investments made by FIIs using the special window shall be subject to a lock-in of 90 days. Moreover, these investments will not be eligible for re-investment facility.

This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

S Madhusudhanan

Deputy General Manager

06 Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/19/2013 dated 11.06.2013]

1. It is observed from the information provided by the depositories that the companies listed in Annexure 'A' have established connectivity with both the depositories.
2. The stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to the following:
 - a) At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange/s.
 - b) There are no other grounds/reasons for continuation of the trading in TFTS.
3. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in the Monthly/Quarterly Development Report.

Maninder Cheema

Deputy General Manager

Annexure A

Sr. No.	Name of the Company	ISIN
1.	Jauss Polymers Limited	INE593O01017
2.	Malti Textiles Mills Limited	INE907N01011
3.	Techtrek India Limited	INE892N01015
4.	Combat Drugs Limited	INE643N01012
5.	Mehta Housing Finance Limited	INE239B01014
6.	Essen Supplements India Limited	INE716K01012
7.	Adi Rasayan Limited	INE861N01010
8.	Shree Ganesh Biotech (India) Ltd	INE051N01018





From the Government

07 Clarification on SEBI's Circular dated August 13, 2012 providing for the "Manner of Dealing with Audit Reports filed by Listed Companies"

[Issued by the Securities and Exchange Board of India vide CIR/CFD/DIL/9/2013 dated 05.06.2013]

1. SEBI has, vide circular dated August 13, 2012 providing for the "Manner of Dealing with Audit Reports filed by Listed companies", mandated listed companies to submit either Form A (Unqualified/ Matter of Emphasis Report) or Form B (Qualified/ Subject To/ Except For Audit Report) along with the Annual Report to the Stock Exchanges. It is also envisaged that the qualified audit reports will be scrutinized by Qualified Audit Review Committee (QARC) and if necessary, the company will be required to restate its books of accounts to provide true and fair view of its financial position.
2. SEBI is in receipt of various queries with regard to restatement of books of accounts of listed companies envisaged in the captioned circular. The primary concern raised is whether the restatement of books of accounts needs to be carried out in the same financial year or in the subsequent financial year as a prior period item.
3. In order to address the aforesaid concern, it is clarified that the restatement of books of accounts indicated in Paragraph 5 of the said circular shall mean that the company is required to disclose the effect of revised financial accounts by way of revised pro-forma financial results immediately to the shareholders through Stock Exchange(s). However, the financial effects of the revision may be carried out in the annual accounts of the subsequent financial year as a prior period item so that the tax impacts, if any, can be taken care of.
4. This circular is issued in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.
5. All Stock Exchanges are advised to ensure compliance with this circular.
6. This circular is available on SEBI website at www.sebi.gov.in under the category "Legal Framework" and "Issues and Listing".

Harini Balaji
Deputy General Manager

08 Review of the Securities Lending and Borrowing (SLB) framework

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/18/2013 dated 30.05.2013]

The framework of SLB was specified vide SEBI circular no. MRD/DoP/SE/Dep/Cir-14/2007 dated December 20, 2007 and operationalised with effect from April 21, 2008. The SLB framework was subsequently revised based on the need and representations from market participants vide circulars no. MRD/DoP/SE/Cir-31/2008 dated October 31, 2008, MRD/DoP/SE/Dep/Cir-01/2010 dated January 06, 2010, CIR/MRD/DP/33/2010 dated October 07, 2010 and CIR/MRD/DP/30/2012 dated November 22, 2012.

2. In order to further extend the benefits of SLB and to facilitate efficient use of margin collateral, a review of the SLB framework was undertaken in consultation with Secondary Market Advisory Committee (SMAC). Accordingly, it has been decided to modify the extant SLB framework as under:

2.1. Eligible scrips for SLB: In addition to the scrips on which derivatives contracts are available, scrips that fulfill the following criteria shall be considered eligible for SLB:

- (a) Scrip classified as 'Group I security' as per SEBI circular MRD/DoP/SE/Cir-07/2005 dated February 23, 2005;

AND

- (b) Market Wide Position Limit (MWPL) of the scrip, as defined at para 12 (a) of Annexure 2 of the MRD/DoP/SE/Dep/Cir-14/2007 dated December 20, 2007, shall not be less than Rs.100 crores;

AND

- (c) Average monthly trading turnover in the scrip in the Cash Market shall not be less than Rs.100 crores in the previous six months.

2.2. Stock exchanges shall review the scrips eligible for SLB on a half-yearly basis. In the event a scrip fails to meet the eligibility criteria, no new SLB transaction shall be allowed in the scrip from the next trading day. However, the existing contracts in such scrips shall be allowed to continue till expiry.

2.3. The collateral to be accepted for meeting margin obligations related to SLB transactions shall be in the



same form as applicable in the Cash Market.

3. The circular shall be effective from July 01, 2013.
4. Stock Exchanges, Clearing Corporations and Depositories are directed to:
 - 4.1. take necessary steps and put in place necessary systems for implementation of the above.
 - 4.2. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
 - 4.3. bring the provisions of this circular to the notice of the stock brokers/trading members, clearing members and depository participants 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 and Section 19 of the Depositories Act, 1996, 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

09 Comprehensive guidelines on Offer For Sale (OFS) of Shares by Promoters through the Stock Exchange Mechanism.

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/17 /2013 dated 30.05.2013]

1. This is with reference to the comprehensive guidelines on sale of shares through OFS mechanism issued vide circular no CIR/MRD/DP/18/2012 dated July 18, 2012 and amended vide circular CIR/MRD/DP/04/2012 dated January 25, 2013.
2. The aforesaid circular is amended as under:
 - 2.1. Para 5 (b) shall be replaced by the following:
"Seller(s) shall announce the intention of sale of shares at least on the day prior to the offer for sale, along with the following information:".
 - 2.2. Para 5 (b) (i) to (viii) shall remain the same.
3. All other conditions for sale of shares through OFS framework shall be as per SEBI Circular CIR/MRD/DP/18/2012 dated July 18, 2012 and circular CIR/MRD/DP/04/2012 dated January 25, 2013.
4. Stock Exchanges are directed to bring the provisions of

this circular to the notice of the 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



10 Designated Appellate Authority under the Foreign Trade (Development & Regulation) Act, 1992

[Issued by the Ministry of Commerce and Industry vide Notification No. 21 (RE-2013)/2009-2014 dated 13.06.2013.

In exercise of the powers conferred by clause (b) of subsection (1) of Section 15 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) and in supersession of the earlier Notifications referred below, the Central Government hereby authorizes the officers specified in column 3 of the Table below to function as Appellate Authority against the orders passed by the Adjudicating Authorities authorized by the Central Government under section 13 of the said Act and specified in column 2 of the said Table:-

TABLE

S. No.	Designation of Adjudicating Authority	Appellate Authority
1.	Assistant Director General of Foreign Trade	Additional Director General of Foreign Trade
2.	Deputy Director General of Foreign Trade	
3.	Joint Director General of Foreign Trade	



From the Government

4.	Additional Director General of Foreign Trade	A Bench of two Additional Director General of Foreign Trade in the Directorate General of Foreign Trade to be so constituted by the Director General.
5.	Development Commissioner, Special Economic Zones	
6.	Designated Officer, Department of Electronics & Information Technology	

Earlier Notifications:

1. Notification S.O. 1059(E) dated 31st December, 1993.
2. Notification S.O. 193(E) dated 6th March, 2000.

Anup K. Pujari

Director General of Foreign Trade

11 Foreign Direct Investment Policy - definition of 'group company'

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion vide Press Note No. 2(2013 Series) dated 03.06.2013]

1.0 The Government has decided to incorporate the following definition of 'group company' in the FDI Policy contained in 'Circular I of 2013 - Consolidated FD1 Policy', effective from 05-04-2013:

2.1	Definitions
2.1.15bis	<p>"Group company" means two or more enterprises which, directly or indirectly, are in a position to:</p> <ol style="list-style-type: none"> (i) exercise twenty-six per cent, or more of voting rights in other enterprise; or (ii) appoint more than fifty per cent, of members of board of directors in the other enterprise.

2.0 The above decision will take immediate effect.

D. V. Prasad

Joint Secretary

12 Review of the policy on foreign direct investment in the Multi Brand Retail Trading Sector - amendment of paragraph 6.2.16.5(2) of 'Circular 1 of 2013-Consolidated FDI Policy'

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion vide Press Note No. 1(2013 Series) dated 03.06.2013]

1.0 Present Position:

1.1 As per paragraph 6.2.16.5 of 'Circular 1 of 2013-Consolidated FD1 Policy', effective from 5.4 .2013, FDI,

up to 51%, under the government approval route, is permitted in the multi-brand retail trading sector, subject to specified conditions.

1.2 The list of States/Union Territories which have conveyed their agreement for the policy in Multibrand retail trading is contained in Paragraph 6.2.16.5(2) of the said Circular, as under :

6.2 .16.5 (2) LIST OF STATES/ UNION TERRITORIES AS MENTIONED IN PARAGRAPH 6.2.16.5(1)(viii)

1. Andhra Pradesh
2. Assam
3. Delhi
4. Haryana
5. Jammu & Kashmir
6. Maharashtra
7. Manipur
8. Rajasthan
9. Uttarakhand
10. Daman & Diu and Dadra and Nagar Haveli (Union Territories)

2.0 Revised Position:

2.1 The Government of Himachal Pradesh has given its consent to implement the policy on multi-brand retail trading in Himachal Pradesh in terms of paragraph 6.2.16.5 (1) (viii) . The list of States/Union Territories as at paragraph 6.2 .16.5 (2) therefore, is amended to read as be low:

S.No.	Sector/ Activity	% of FDI Cap/ Equity	Entry route
6.2.16.5	Multi Brand Retail Trading	51%	Government
	<p>(1) FDI in</p> <p>(2) LIST OF STATES/ UNION TERRITORIES AS MENTIONED IN PARAGRAPH 6.2.16.5(1)(viii)</p> <ol style="list-style-type: none"> 1. Andhra Pradesh 2. Assam 3. Delhi 4. Haryana 5. Himachal Pradesh 6. Jammu & Kashmir 7. Maharashtra 8. Manipur 9. Rajasthan 10. Uttarakhand 11. Daman & Diu and Dadra and Nagar Haveli (Union Territories) 		

3.0 The above decision will take immediate effect.

D. V. Prasad

Joint Secretary



Banking Laws

13 RBI's Fraud Monitoring Cell to function from Bengaluru from July 01, 2013

[Issued by the Reserve Bank of India vide RBI/2012-13/ 532, DNBS (PD) CC.No.283/ 03.10.042/2012-13 dated July 2, 2012 on Reporting of Frauds to RBI.]

Attention is invited to para 3 of Master Circular DNBS.(PD) CC.No.283/ 03.10.042/2012-13 dated July 2, 2012 on Reporting of Frauds to RBI.

2. The Reserve Bank of India's Fraud Monitoring Cell attached to Department of Banking Supervision (DBS), Central Office has shifted from the present location at 2nd Floor, World Trade Centre-1, Cuffe Parade, Mumbai - 400005 to Bengaluru Regional Office of the Reserve Bank. The Central Fraud monitoring Cell will continue to be part of Department of Banking Supervision, Central Office Mumbai and will start functioning from the new location at Bengaluru from July 01, 2013. All the NBFCs are requested to take note of the address of the Central Fraud Monitoring Cell at the new location:

Central Fraud Monitoring Cell
Department of Banking Supervision,
Reserve Bank of India, 10/3/8, Nruputhunga Road,
P.B. No. 5467
Bengaluru – 560001.
Phone No: - +91 80 22244120
Fax No.: +91 80 22127754

3. All NBFCs may file fraud reports etc / furnish response to the existing letters from Fraud Monitoring Cell of DBS, Central Office and fresh letters at your end to the new address at Bengaluru from June 14, 2013 onwards.

C.R.Samyuktha
Chief General Manager

14 Foreign investment in India by SEBI registered Long term investors in Government dated Securities

[Issued by the Reserve Bank of India vide RBI/2012-13/530, A.P. (DIR Series) Circular No.111 dated 12.06.2013.]

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, in terms of which SEBI registered Foreign Institutional Investors (FIIs) and long term investors may purchase, on repatriation basis Government securities and non-convertible debentures (NCDs) / bonds issued by an Indian company subject to such terms and conditions as mentioned therein and limits as prescribed for the same by RBI and SEBI from time to time.

2. Attention of AD Category-I banks is also invited to A.P.(DIR Series) Circular No.94 dated April 1, 2013 in terms of which the present limit for investments by FIIs, QFIs and long term investors in Government securities and for corporate debt stood at USD 25 billion and USD 51 billion respectively.
3. On a review, it has now been decided in consultation with Government of India to enhance the limit for foreign investment in Government dated securities with USD 5 billion to USD 30 billion with immediate effect. The enhanced limit of USD 5 billion will be available only for investments in Government dated securities by long term investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks.
4. The operational guidelines in this regard will be issued by SEBI.
5. All other existing conditions for investment in Government securities remain unchanged.
6. AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
7. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager-in-Charge



From the Government

15 Foreign Direct Investment – Reporting of issue / transfer of Shares to/by a FVCI

[Issued by the Reserve Bank of India vide RBI/2012-13/529, A.P. (DIR Series) Circular No.110 dated 12.06.2013.]

Attention of Authorised Dealers Category-I (AD Category - I) banks is invited to Regulations 9 and 10 and para 9 of Schedule I to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000 -RB dated May 3, 2000 (hereinafter referred to as Notification No. FEMA 20), as amended from time to time. Attention of AD Category - I banks is also invited to A. P. (DIR Series) Circular No. 44 dated May 30, 2008 and A.P. (DIR Series) Circular No.63 dated April 22, 2009.

2. In terms of the said regulations, transfer of equity shares / fully and mandatorily convertible debentures/ fully and mandatorily convertible preference shares (hereinafter referred to as 'shares') of an Indian company, from a person resident outside India (non-resident) to a person resident in India (resident) or vice versa, has to be reported to an Authorized Dealer bank within 60 days of transactions. Further, the receipt of consideration for issue of shares as well as the issue of shares of an Indian company, to a non-resident has to be reported to the Reserve Bank of India through an Authorized Dealer bank within 30 days of the transaction.
3. It has been observed that SEBI registered FVCIs making investments in an Indian Company under FDI Scheme in terms of Schedule 1 of Notification No. FEMA.20 / 2000 -RB dated May 3, 2000, as amended from time to time, also report the same transaction under Schedule 6 of the Notification *ibid*, resulting in double reporting of the transaction.
4. It is clarified that wherever a SEBI registered FVCI acquires shares of an Indian company under FDI Scheme in terms of Schedule 1 of Notification No. FEMA 20 / 2000-RB dated May 3, 2000, as amended from time to time, such investments have to be reported in form FC-GPR/ FC-TRS only, as applicable. Where the investment is under Schedule 6 of the Notification *ibid*, no FC-GPR/ FC-TRS reporting is required. Such transactions would be reported by the custodian bank in the monthly reporting format as prescribed by RBI from time to time. Revised forms FC-GPR and FC-TRS are annexed as ANNEX-I and ANNEX-II, respectively, to this A.P.(DIR Series) Circular.

5. A SEBI registered FVCI while making investment in an Indian company may determine upfront whether the said investment is under FDI or FVCI scheme and report accordingly. For the guidance of FVCI investors, a suitable remark in para 3(4) and 5(a)(4) of form FC-GPR and para 4(4) and para 5(4) of form FC-TRS, has been incorporated, which would read as follows:

'The investment/s made by SEBI registered FVCI is/are under FDI Scheme, in terms of Schedule 1 to Notification No. FEMA 20 dated May 3, 2000.'

6. AD Category - I banks may bring the contents of the circular to the notice of their customers/constituents concerned.
7. Reserve Bank has since amended the Regulations vide Notification No.FEMA.266/2013-RB dated March 05, 2013 and notified vide G.S.R.No.341(E) dated May 28, 2013.
8. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager-in-Charge

**[ANNEX-I to A.P.(DIR Series)
Circular No.110 of 12.06.2013]**

FC-GPR

(To be filed by the company through its Authorised Dealer Category – I bank with the Regional Office of the RBI under whose jurisdiction the Registered Office of the company making the declaration is situated as and when shares/ convertible debentures / others are issued to the foreign investor, along with the documents mentioned in item No. 4 of the undertaking enclosed to this form)

Permanent Account Number (PAN) of the investee company given by the Income Tax Department	<input type="text"/>
Date of issue of shares / convertible debentures/ others	<input type="text"/>

No.	Particulars	(In Block Letters)
1.	Name	



	Address of the Registered Office	
	State	
	Registration No. given by Registrar of Companies	
	Whether existing company or new company (strike off whichever is not applicable)	Existing company / New company
	If existing company, give registration number allotted by RBI for FDI, if any	
	Telephone	
	Fax	
	e-mail	
2.	Description of the main business activity NIC Code	
	Location of the project and NIC code for the district where the project is located	
	Percentage of FDI allowed as per FDI policy	
	State whether FDI is allowed under Automatic Route or Approval Route (strike out whichever is not applicable)	Automatic Route / Approval Route
3	Details of the foreign investor / collaborator¹*	
	Name	
	Address	
	Country	
	Constitution / Nature of the investing Entity [Specify whether 1. Individual 2. Company 3. FII 4. FVCI [#] 5. Foreign Trust 6. Private Equity Fund 7. Pension / Provident Fund 8. Sovereign Wealth Fund (SWF) ² 9. Partnership/ Proprietorship Firm 10. Financial Institution 11. NRIs / PIO 12. Others (please specify)]	
	Date of incorporation	

- * If there is more than one foreign investor/collaborator, separate Annex may be included for items 3 and 4 of the Form.
- ² SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.
- [#] The investment/s is/are made by FVCI under FDI Scheme in terms of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000.

4	Particulars of Shares / Convertible Debentures /others Issued							
(a)	Nature and date of issue							
		<i>Nature of issue</i>	<i>Date of issue</i>	<i>Number of shares/ convertible debentures/others</i>				
	01	IPO / FPO						
	02	Preferential allotment / private placement						
	03	Rights						
	04	Bonus						
	05	Conversion of ECB						
	06	Conversion of royalty (including lump sum payments)						
	07	Conversion against import of capital goods by units in SEZ						
	08	ESOPs						
	09	Share Swap						
	10	Others (please specify)						
		Total						
(b)	Type of Security Issued							
	No.	Nature of security	Number	Maturity	Face value	Premium	Issue Price per share	Amount of inflow*
	01	Equity						
	02	Compulsorily Convertible Debentures						
	03	Compulsorily Convertible Preference shares						
	04	Others (please specify)						
		Total						

- i) In case the issue price is greater than the face value please give break up of the premium received.



From the Government

- ii) * In case the issue is against conversion of ECB or royalty or against import of capital goods by units in SEZ, a Chartered Accountant's Certificate certifying the amount outstanding on the date of conversion

(c)	Break up of premium	Amount
	Control wPremium	
	Non competition fee	
	Others®	
	Total	

@ please specify the nature

(d)	Total inflow (in Rupees) on account of
	<p>issue of shares / convertible debentures/ others to non-residents (including premium, if any) vide</p> <p>(i) Remittance through AD: (ii) Debit to NRE/FCNR/ Escrow A/c with Bank _____ (iii) Others (please specify)</p> <p>Date of reporting of (i) and (ii) above to RBI under Para 9 (1) A of Schedule I to Notification No. FEMA 20 /2000-RB dated May 3, 2000, as amended from time to time.</p>
(e)	Disclosure of fair value of shares issued**
	We are a listed company and the market value of a share as on date of the issue is*
	We are an un-listed company and the fair value of a share is*

** before issue of shares

*(Please indicate as applicable)

5. Post issue pattern of shareholding						
			Equity		Compulsorily convertible Preference Shares/ Debentures/others	
Investor category			No. of shares	Amount (Face Value) Rs.	%	
a)	Non-Resident					
	01	Individuals				
	02	Companies				
	03	Flls				
	04	FVCIs#				
	05	Foreign Trusts				

06	Private Equity Funds					
07	Pension/ Provident Funds					
08	Sovereign Wealth Funds					
09	Partnership/ Proprietorship Firms					
10	Financial Institutions					
11	NRIs/PIO					
12	Others (please specify)					
Sub Total						
b)	Resident					
Total						

The investment/s is/are made by FVCI under FDI Scheme in terms of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000.

DECLARATION TO BE FILED BY THE AUTHORISED REPRESENTATIVE OF THE INDIAN COMPANY: *(Delete whichever is not applicable and authenticate)*

We hereby declare that:

- We comply with the procedure for issue of shares / convertible debentures as laid down under the FDI scheme as indicated in Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.
- The investment is within the sectoral cap / statutory ceiling permissible under the Automatic Route of RBI and we fulfill all the conditions laid down for investments under the Automatic Route namely (strike off whichever is not applicable).
 - Shares issued on rights basis to non-residents are in conformity with Regulation 6 of the RBI Notification No FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.

OR

- Shares issued are bonus.

OR

- Shares have been issued under a scheme of merger and amalgamation of two or more Indian companies or reconstruction by way of de-merger or otherwise of an Indian company, duly approved by a court in India.

OR

- Shares are issued under ESOP and the conditions regarding this issue have been satisfied
- Shares have been issued in terms of SIA /FIPB approval No. _____ dated _____
 - The foreign investment received and reported now will be utilized in compliance with the provision of a Prevention of Money Laundering Act 2002 (PMLA) and Unlawful Activities(Prevention) Act, 1967 (UAPA). We confirm that the investment complies with the provisions of all applicable Rules and Regulations



5. We enclose the following documents in compliance with Paragraph 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000:

(i) A certificate from our Company Secretary certifying that

- all the requirements of the Companies Act, 1956 have been complied with;
- terms and conditions of the Government approval, if any, have been complied with;
- the company is eligible to issue shares under these Regulations; and
- the company has all original certificates issued by authorised dealers in India evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

(ii) A certificate from SEBI registered Merchant Banker / Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

6. Unique Identification Numbers given for all the remittances received as consideration for issue of shares/ convertible debentures/others (details as above), by Reserve Bank.

R																			
---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

R																			
---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Signature of the Applicant)* : _____

(Name in Block Letters) : _____

(Designation of the signatory) : _____

Place: _____

Date: _____

(* To be signed by Managing Director/Director/Secretary of the Company)

CERTIFICATE TO BE FILED BY THE COMPANY SECRETARY ³ OF THE INDIAN COMPANY ACCEPTING THE INVESTMENT:

(As per Para 9 (1) (B) (i) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000)

In respect of the abovementioned details, we certify the following :

- All the requirements of the Companies Act, 1956 have been complied with.
- Terms and conditions of the Government approval, if any, have been complied with.
- The company is eligible to issue shares / convertible debentures/others under these Regulations.
- The company has all original certificates issued by AD

Category – I banks in India, evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

(Name & Signature of the Company Secretary) (Seal)

FOR USE OF THE RESERVE BANK ONLY:

Registration Number for the FC-GPR:

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Unique Identification Number allotted to the Company at the time of reporting receipt of remittance

R																			
---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

³ If the company doesn't have full time Company Secretary, a certificate from practicing Company Secretary may be submitted

**[ANNEX-II to A.P.(DIR Series)
Circular No.110 of 12.06.2013]**

Form FC-TRS

Declaration regarding transfer of shares / compulsorily and mandatorily convertible preference shares (CMCPs) / debentures / others by way of sale from resident to non resident / non-resident to resident

(to be submitted to the designated AD branch in quadruplicate within 60 days from the date of receipt of funds)

The following documents are enclosed

For sale of shares / compulsorily and mandatorily convertible preference shares / debentures / others by a person resident in India

- Consent Letter duly signed by the seller and buyer or their duly appointed agent and in the latter case the Power of Attorney Document.
- The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India.
- Certificate indicating fair value of shares from a Chartered Accountant.
- Copy of Broker's note if sale is made on Stock Exchange.
- Declaration from the buyer to the effect that he is eligible to acquire shares / compulsorily and mandatorily convertible preference shares / debentures/others under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.
- Declaration from the FII/sub account to the effect that the individual FII / Sub account ceiling as prescribed has not been breached.
- Additional documents in respect of sale of shares / compulsorily and mandatorily convertible preference shares / debentures / others by a person resident outside India
- If the sellers are NRIs/OCBs, the copies of RBI approvals, if applicable, evidencing the shares held by them on repatriation/non-repatriation basis.
- No Objection/Tax Clearance Certificate from Income Tax Authority/ CharteredAccount.



From the Government

1 Name of the company	Address (including e-mail, telephone Number, Fax no)	
	Activity	
	NIC Code No.	
	2 Whether FDI is allowed under Automatic route	
Sectoral Cap under FDI Policy		
3	Nature of transaction (Strike out whichever is not applicable)	Transfer from resident to non resident / Transfer from non resident to resident
4 Name of the buyer	Constitution / Nature of the investing Entity Specify whether	
	1. Individual	
	2. Company	
	3. FII	
	4. FVCI [#]	
5. Foreign Trust		
6. Private Equity Fund		
7. Pension/ Provident Fund		
8. Sovereign Wealth Fund (SWF ^o)		
9. Partnership / Proprietorship firm		
10. Financial Institution		
11. NRIs / PIOs		
12. others		
Date and Place of Incorporation		
Address of the buyer (including e-mail, telephone number. Fax no.)		
5	Name of the seller	

The initial investment/s was/were made by FVCI under FDI Scheme in terms of Schedule 1 to Notification No. FEMA.20/2000-RB dated May 3, 2000

^o SWF mean a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of monetary authorities.

Constitution/Nature of the disinvesting entity Specify whether	1. Individual
	2. Company
	3. FII
	4. FVCI ^{##}
	5. Foreign Trust
	6. Private Equity Fund
	7. Pension/ Provident Fund
	8. Sovereign Wealth Fund (SWF ^o)
	9. Partnership/ Proprietorship firm
	10. Financial Institution
	11. NRIs/PIOs
	12. Others ⁱ

Date and Place of Incorporation				
Address of the seller (including e-mail, telephone Number Fax no)				
6 Particulars of earlier Reserve Bank / FIPB approvals				
7 Details regarding shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures/ others (such as FDI compliant instruments like participating interest rights in oil fields, etc.) to be transferred				
Date of the transaction	Number of shares CMCPS / debentures / others	Face value in Rs.	Negotiated Price for the transfer** in Rs.	Amount of consideration in Rs

^{##} The initial investment/s was/were made by FVCI under FDI Scheme in terms of Schedule 1 to Notification No. FEMA.20/2000-RB dated May 3, 2000.

^o SWF mean a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of monetary authorities.

8 Foreign Investments in the company		No. of shares	Percentage
	Before the transfer		
	After the transfer		
9 Where the shares / CMCPS / debentures / others are listed on Stock Exchange			
Name of the Stock Exchange			
Price Quoted on the Stock exchange			
Where the shares / CMCPS / debentures / others are Unlisted			
Price as per Valuation guidelines*			
Price as per Chartered Accountants			
* / ** Valuation report (CA Certificate to be attached)			

Declaration by the transferor / transferee I / We hereby declare that

i. The particulars given above are true and correct to the best of my/our knowledge and belief.



ii. I/ We, was/were holding the shares compulsorily and mandatorily convertible preference shares / debentures/ other as per FDI Policy under FERA/ FEMA Regulations on repatriation/non repatriation basis.

iii. I/ We, am/are eligible to acquire the shares compulsorily and mandatorily convertible preference shares / debentures /other of the company in terms of the FDI Policy. It is not a transfer relating to shares compulsorily and mandatorily convertible preference shares / debentures /others of a company engaged in financial services sector or a sector where general permission is not available.

iv. The Sectoral limit under the FDI Policy and the pricing guidelines have been adhered to.

Signature of the Declarant or his duly authorised agent

Date:
Note:

In respect of the transfer of shares / compulsorily and mandatorily convertible preference shares / compulsorily and mandatorily convertible debentures/ others from resident to non resident the declaration has to be signed by the non resident buyer, and in respect of the transfer of shares / compulsorily and mandatorily convertible preference shares / compulsorily and mandatorily convertible debentures/ other from non-resident to resident the declaration has to be signed by the non-resident seller.

Certificate by the AD Branch

It is certified that the application is complete in all respects.

The receipt / payment for the transaction are in accordance with FEMA Regulations / Reserve Bank guidelines.

Signature

Name and Designation of the Officer

Date : Name of the AD Branch

AD Branch Code

Know Your Customer (KYC) Form in respect of the non-resident investor

Registered Name of the Remitter / Investor (Name, if the investor is an Individual)	
Registration Number (Unique Identification Number* in case remitter is an Individual)	
Registered Address (Permanent Address if remitter Individual)	
Name of the Remitter's Bank	
Remitter's Bank Account No.	
Period of banking relationship with the Remitter	

* Passport No., Social Security No, or any Unique No. certifying the bonafides of the remitter as prevalent in the remitter's country.

We confirm that all the information furnished above is true and accurate as provided by the overseas remitting bank of the non-resident investor.

(Signature of the Authorised Official of the AD bank receiving the remittance)

Date:

Place:

Stamp :

Proforma

Statement of inflows/outflows on account of remittance received/ made in connection with transfer of shares / compulsorily and mandatorily convertible preference shares / debentures/ others/other, by way of sale

Category-wise

Part A - NRI/erstwhile OCB

Part B - Foreign National/non-resident incorporated entity

Part C - Foreign Institutional Investors

Inflow -Transfer from resident to non-resident

[Amount in Rs.]

Date of Transaction	Name of the Company	Activity	NIC CODE	Name of the Buyer	Constitution/ Nature of Business of the Buyer	Name of the Seller	Constitution/ Nature of Business of the Seller	No. of Shares Transferred	Face Value	Sale Price per Share	Total Inflow
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

Outflow -Transfer from non-resident to resident

[Amount in Rs.]

Date of Transaction	Name of the Company	Activity	NIC CODE	Name of the Seller	Constitution/ Nature of Business of the Seller	Name of the Buyer	Constitution/ Nature of Business of the Buyer	No. of Shares Transferred	Face Value	Sale Price per Share	Total Inflow
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

16 NBFCs not to be Partners in Partnership Firms- Clarifications

[Issued by the Reserve Bank of India vide RBI/2012-13/526 DNBS.PD/CC.No. 328 /03.02.002/2012-13 dated 11.06.2013.]

NBFCs were advised vide CC No. 214/03.02.002/2010-11 dated March 30, 2011 that they are prohibited from contributing capital to any partnership firm or to be partners in partnership firms. In cases of existing partnerships, NBFCs were advised to seek early retirement from the partnership firms.





From the Government

2. In this connection certain clarifications are being made as given below;
 - (a) Partnership firms mentioned above will also include Limited Liability Partnerships (LLPs).
 - (b) Further, the aforesaid prohibition will also be applicable with respect to Association of persons; these being similar in nature to partnership firms.
3. Non-Banking Financial Companies which had already contributed to the capital of a LLP/Association of persons or was a partner of a LLP/Association of persons are advised to seek early retirement from the LLP/Association of persons.
4. Copies of Amending Notifications Nos. DNBS (PD).255 /CGM (CRS)-2013 and DNBS (PD).256 /CGM (CRS)-2013 both dated June 11, 2013 are enclosed for meticulous compliance.

C.R. Samyuktha

Chief General Manager-in-Charge

**RESERVE BANK OF INDIA
DEPARTMENT OF NON-BANKING SUPERVISION
CENTRAL OFFICE
CENTRE I, WORLD TRADE CENTRE,
CUFFE PARADE, COLABA,
MUMBAI, 400 005.**

Notification No.DNBS(PD). 255/ CGM (CRS) 2013 dated June 11 , 2013

The Reserve Bank of India, having considered it necessary in public interest and being satisfied that, for the purpose of enabling the Bank to regulate the credit system to the advantage of the country, it is necessary to amend the Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 (hereinafter referred to as the said Directions), contained in Notification No. DNBS.192/DG(VL)-2007 dated February 22, 2007, in exercise of the powers conferred by Section 45JA and Section 45L of the Reserve Bank of India Act, 1934 (2 of 1934) and of all the powers enabling it in this behalf, hereby directs that the said Directions shall be amended with immediate effect as follows,

2. In para 19A, of the said Directions under the title, "NBFCs not to be partners in partnership firms", after sub-para(2) the following sub-para shall be inserted, namely:-
"(3) In this connection it is further clarified that;
(a) Partnership firms mentioned above will also include Limited Liability Partnerships (LLPs).
(b) Further, the aforesaid prohibition will also be applicable with respect to Association of persons; these being similar in nature to partnership firms."
3. NBFCs which had already contributed to the capital of a LLP/ Association of persons or was a partner of a LLP/Association of persons are advised to seek early retirement from the LLP/ Association of persons.

C.R. Samyuktha

Chief General Manager-in-Charge

**RESERVE BANK OF INDIA
DEPARTMENT OF NON-BANKING SUPERVISION
CENTRAL OFFICE
CENTRE I, WORLD TRADE CENTRE,
CUFFE PARADE, COLABA,
MUMBAI, 400 005.**

Notification No.DNBS (PD). 256/ CGM (CRS) 2013 dated June 11 , 2013

The Reserve Bank of India, having considered it necessary in public interest and being satisfied that, for the purpose of enabling the Bank to regulate the credit system to the advantage of the country, it is necessary to amend the Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 (hereinafter referred to as the said Directions), contained in Notification No. DNBS.193/DG(VL)-2007 dated February 22, 2007, in exercise of the powers conferred by Section 45JA and Section 45L of the Reserve Bank of India Act, 1934 (2 of 1934) and of all the powers enabling it in this behalf, hereby directs that the said Directions shall be amended with immediate effect as follows,

2. In para 20A, of the said Directions under the title, "NBFCs not to be partners in partnership firms", after sub-para (2) the following sub-para shall be inserted, namely:-
"(3) In this connection it is further clarified that;
(a) Partnership firms mentioned above will also include Limited Liability Partnerships (LLPs).
(b) Further, the aforesaid prohibition will also be applicable with respect to Association of persons; these being similar in nature to partnership firms."
3. NBFCs which had already contributed to the capital of a LLP/ Association of persons or was a partner of a LLP/Association of persons are advised to seek early retirement from the LLP/ Association of persons.

C.R. Samyuktha

Chief General Manager-in-Charge

17 Ready Forward Contracts in Corporate Debt Securities

[Issued by the Reserve Bank of India vide RBI/2012-2013/525 UBD.BPD. (SCB). Cir.No. 4 /16.20.000/2012-13 dated 10.06.2013.]

Please refer to paragraph 77 of the Second Quarter Review of Monetary Policy 2012-13 (extract enclosed) and circular No.IDMD. PCD.1423/14.03.02/2012-13 dated October 30, 2012 (copy enclosed) in terms of which it has been decided to permit Scheduled Urban Co-operative Banks with strong financials and sound risk management practices as eligible participants to undertake ready forward contracts in corporate debt securities. Accordingly, Scheduled Urban Co-operative Banks, fulfilling the following conditions only would be permitted to undertake such transactions.



- a) CRAR of 10% or more and gross NPA of less than 5% and continuous record of profits during the previous three years.
- b) Sound risk management practices and mandatory concurrent audit of the Investment portfolio.
2. Further, the Repo transactions in corporate bonds shall be undertaken only with scheduled commercial banks/PDs and not with other market participants. Urban Co-operative Banks which are lenders of funds in a repo transaction may provide for Counter-party credit risk corresponding to the risk weight for such exposure as applicable to the loan /investment exposure. Urban Co-operative Banks may ensure that securities acquired under repo along with other Non-SLR investment already in the Balance Sheet should be within the stipulated ceiling of Non-SLR investment (i.e. 10% of a bank's total deposits as on March 31 of the previous year). The funds borrowed under repo should be within the limit prescribed for call money borrowing (i.e. 2% of the previous year's deposits).
3. The amount borrowed by the bank through repo shall be reckoned as part of its DTL and the same shall attract CRR / SLR.
4. Urban Co-operative Banks are advised to adhere to the directions as prescribed by Internal Debt Management Department of Reserve Bank of India for repo in corporate bonds from time to time.

A. K. Bera

Principal Chief General Manager

**Extract of paragraph 77 of Second Quarter Review
of Monetary Policy 2012-13
Urban Cooperative Banks (UCBs) - Repo in
Corporate Bonds**

77. In the SQR of October 2009, the Reserve Bank had announced the introduction of repo in corporate bonds and issued the 'Repo in Corporate Debt Securities (Reserve Bank) Directions, 2010' in January 2010. On the basis of requests received from Federations/Associations of UCBs, it has been decided:
- to include scheduled UCBs with strong financials and sound risk management practices as eligible participants to undertake repo transactions in corporate bonds.

18 Foreign Direct Investment (FDI) in India - Issue of equity shares under the FDI scheme allowed under the Government route against pre-operative/pre-incorporation expenses

[Issued by the Reserve Bank of India vide RBI/2012-13/502 A.P. (DIR Series) Circular No. 104 dated 17.05.2013.]

Attention of Authorised Dealers Category – I banks is invited

to Para 3 (II) of A.P. (DIR Series) Circular No. 74 dated June 30, 2011 read with A.P. (DIR Series) Circular No. 55 dated December 9, 2011, allowing thereby issue of equity shares/preference shares under the Government route by conversion of import of capital goods, etc., subject to terms and conditions stated therein.

2. On review of the policy, it has now been decided to amend condition at (c) in the aforesaid para. The amended condition is given in the Annex.
3. All the other conditions contained in the A.P. (DIR Series) Circulars No. 74 dated June 20, 2011 and No. 55 dated December 9, 2011, shall remain unchanged.
4. AD Category - I banks may bring the contents of the circular to the notice of their customers/constituents concerned.
5. Necessary amendments to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated May 3, 2000) have been notified vide Notification No. FEMA.229/2012-RB dated April 23, 2012.
6. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar

Chief General Manager-in-Charge

Annex

[A. P. (DIR Series) Circular No. 104 dated May 17, 2013]

c.f. A.P.(DIR Series) Circular No. 74 dated June 30, 2011	Earlier Condition	Revised condition
Para 3(II)(c)	Payments should be made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be eligible for issuance of shares towards FDI; and	Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations; and





News From the Institute



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4	Sh. Padakanti Ravindra	FCS - 7171	SIRC
5	Mrs. Aparna Joshi	FCS - 7172	WIRC
6	Sh. Surjit Singh	FCS - 7173	NIRC
7	Sh Dinesh Vijay	FCS - 7174	NIRC
8	Sh Mahesh Motilal Darji	FCS - 7175	WIRC
9	Sh. D.R. Mishra	FCS - 7176	SIRC
10	Sh. Gourav Khatri	FCS - 7177	NIRC
11	Sh. P V Rai	FCS - 7178	SIRC
12	Sh. Vinit Kumar	FCS - 7179	NIRC
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15	Ms. Sangeeta Verma	FCS - 7182	NIRC
16	Ms. Chanchal Jindal	FCS - 7183	NIRC
17	Sh. Anatha Bandhaba Chakrabartty	FCS - 7184	EIRC
18	Ms. Sarika Yadav	FCS - 7185	NIRC
19	Sh Raj Kumar Bhawsar	FCS - 7186	WIRC
20	Sh. Vinay Kumar V Khataavkar	FCS - 7187	WIRC
21	Mrs. Gayatri Avinash Gumaste	FCS - 7188	WIRC
22	Sh. Munish Mehta	FCS - 7189	NIRC
23	Sh. Jyoti Bhusan Das	FCS - 7190	EIRC
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25	Sh. Subhash Kumar Kundra	FCS - 7192	NIRC
26	Sh. Vijay Jamnadas Kalyani	FCS - 7193	WIRC
27	Ms. Pratibha A. Khandelwal	FCS - 7194	NIRC
28	Ms. Divya Sameer Momaya	FCS - 7195	WIRC
29	Ms. Poonam Sangal	FCS - 7196	NIRC
30	Sh. Sandip Kumar Mishra	FCS - 7197	WIRC
31	Sh. Abhishek Jain	FCS - 7198	NIRC
32	Sh. Chandan Das	FCS - 7199	EIRC
33	Ms. Sangeeta Ajith	FCS - 7200	WIRC
34	Ms Saroj Prakash Dhanawat	FCS - 7201	NIRC
35	Sh. Deepak Bhasin	FCS - 7202	NIRC
36	Mrs. Niti Dwivedi	FCS - 7203	NIRC
37	Sh. Vivek Jain	FCS - 7204	NIRC
ASSOCIATES*			
1	Mr. Manasranjan Sahoo	ACS - 32701	EIRC
2	Mr. Vishal Saurav	ACS - 32702	NIRC

3	Mr. Ramit Kumar Mam	ACS - 32703	NIRC
4	Mr. Deepak Yadav	ACS - 32704	NIRC
5	Ms. Sweta Agarwal	ACS - 32705	NIRC
6	Mr. Ankush Pandurang Lawate	ACS - 32706	WIRC
7	Mr. Bijoy Krishna Paul	ACS - 32707	EIRC
8	Ms. Nitu Goel	ACS - 32708	EIRC
9	Ms. Shikha Jain	ACS - 32709	WIRC
10	Mr. Sondip Goswami	ACS - 32710	EIRC
11	Ms. Rekha Malu	ACS - 32711	SIRC
12	Ms. Harshita Choudhary	ACS - 32712	EIRC
13	Ms. Kritika Jain	ACS - 32713	EIRC
14	Mr. Satya Pradeep Roy	ACS - 32714	EIRC
15	Mr. Sameer Shukla	ACS - 32715	NIRC
16	Mr. Raman Singh	ACS - 32716	NIRC
17	Ms. Umeet Kaur Bhatia	ACS - 32717	NIRC
18	Ms. Tripti Gupta	ACS - 32718	NIRC
19	Ms. Nitu Kumari	ACS - 32719	NIRC
20	Ms. Shiwati Gandhi	ACS - 32720	NIRC
21	Ms. Simrat Kaur	ACS - 32721	NIRC
22	Mr. Rohit Meharchandani	ACS - 32722	NIRC
23	Mr. Sanjeev Kumar	ACS - 32723	NIRC
24	Ms. Sonali Gupta	ACS - 32724	NIRC
25	Ms. Gunjan Dubey	ACS - 32725	NIRC
26	Mr. Amit Kumar	ACS - 32726	NIRC
27	Ms. Shelly Sharma	ACS - 32727	NIRC
28	Ms. Palak Sethi	ACS - 32728	NIRC
29	Mr. Rahul Kumar	ACS - 32729	NIRC
30	Mr. Kanwaljit Singh	ACS - 32730	NIRC
31	Mr. Kapil Goyal	ACS - 32731	NIRC
32	Ms. S Madhavi	ACS - 32732	WIRC
33	Mr. Prabhakar Tiwari	ACS - 32733	SIRC
34	Mr. G Naresh	ACS - 32734	SIRC
35	Ms. Medha Gokhale	ACS - 32735	SIRC
36	Mr. Dubba Anil	ACS - 32736	SIRC
37	Mr. V S R Murthy Eranki	ACS - 32737	SIRC
38	Ms. Urvi Yogesh Sharma	ACS - 32738	WIRC
39	Ms. Megha Bipin Thakkar	ACS - 32739	WIRC
40	Mr. Dharendra Dinesh Shastri	ACS - 32740	WIRC
41	Mrs. Nivedita Tripathi	ACS - 32741	WIRC
42	Mr. Mahesh Madhav Kuwalekar	ACS - 32742	WIRC
43	Mr. Subhash Kishan Kandrapu	ACS - 32743	SIRC
44	Ms. Neha Ramesh Gupta	ACS - 32744	WIRC
45	Mr. Shailesh Vishwas Gadgil	ACS - 32745	WIRC
46	Mr. Narayan Lodha	ACS - 32746	NIRC
47	Mr. Nallasamy K	ACS - 32747	SIRC
48	Mr. Viral Pratapbhai Rajyaguru	ACS - 32748	WIRC
49	Ms. Tripti Gupta	ACS - 32749	NIRC
50	Mr. Venkateswaran Vinod	ACS - 32750	WIRC
51	Mr. Rahul Vasudeo Deshpande	ACS - 32751	WIRC
52	Mr. Mohan Rajmanickam Pillay	ACS - 32752	WIRC
53	Ms. Hashima Kakkar	ACS - 32753	NIRC
54	Ms. Payal Goel	ACS - 32754	NIRC
55	Mr. Narasimhan R	ACS - 32755	SIRC
56	Ms. Priyanka Gakhar	ACS - 32756	NIRC
57	Ms. Swati Bansal	ACS - 32757	NIRC
58	Ms. Jyotsna Shyamsunder Chhipa	ACS - 32758	WIRC
59	Ms. Chitra Kempaiah	ACS - 32759	SIRC
60	Ms. Tripti Pandey	ACS - 32760	NIRC
61	Ms. Nikita Agarwal	ACS - 32761	NIRC
62	Mr. R Arvind	ACS - 32762	SIRC
63	Mrs. Pinki Jain	ACS - 32763	EIRC
64	Ms. Neha Agarwal	ACS - 32764	EIRC
65	Ms. Pragya Kanoi	ACS - 32765	EIRC
66	Ms. Puja Kumari Surana	ACS - 32766	EIRC

* Admitted on 20th May, 31st May and 10th June, 2013



67	Ms. Priyanka Sharma	ACS - 32767	EIRC	131	Ms. Jyoti Sidhesh Bandodkar	ACS - 32831	WIRC
68	Ms. Shital Agarwal	ACS - 32768	EIRC	132	Mr. Shashal Sahu	ACS - 32832	WIRC
69	Ms. Mala Sharma	ACS - 32769	NIRC	133	Ms. Chopra Nayna Parasmalji	ACS - 32833	WIRC
70	Mr. Vinay Dixit	ACS - 32770	NIRC	134	Mr. Sanin Panicker	ACS - 32834	SIRC
71	Ms. Sumedha Rastogi	ACS - 32771	EIRC	135	Mr. Bharatkumar Pathubhai Patel	ACS - 32835	WIRC
72	Mr. Lovi Mehrotra	ACS - 32772	NIRC	136	Mrs. Prajakta Premanand Risbud	ACS - 32836	WIRC
73	Ms. Neha Sharma	ACS - 32773	NIRC	137	Mr. Venkatesh Ganapati Bhat	ACS - 32837	SIRC
74	Ms. Preeti Verma	ACS - 32774	NIRC	138	Mr. Ganesh Kumar Chandak	ACS - 32838	WIRC
75	Mr. Irfan Ali	ACS - 32775	NIRC	139	Mr. Rahul Kedia	ACS - 32839	WIRC
76	Ms. Tajender Kaur	ACS - 32776	NIRC	140	Ms. Megha Gupta	ACS - 32840	NIRC
77	Ms. Shipra Katyal	ACS - 32777	NIRC	141	Ms. Anu Maria Jacob	ACS - 32841	SIRC
78	Ms. Pragnya Parimita Pradhan	ACS - 32778	NIRC	142	Mr. Bharat Rath	ACS - 32842	WIRC
79	Mr. Arjun Choudhary	ACS - 32779	NIRC	143	Ms. Komal Goenka	ACS - 32843	EIRC
80	Ms. Sukanya Sontha	ACS - 32780	SIRC	144	Ms. Jyoti Gupta	ACS - 32844	EIRC
81	Ms. Seema P S	ACS - 32781	SIRC	145	Ms. Tripti Bhardwaj	ACS - 32845	NIRC
82	Ms. Radhika Satish Karmarkar	ACS - 32782	SIRC	146	Mr. Abhishek Khandelwal	ACS - 32846	NIRC
83	Ms. Prajna P Hegde	ACS - 32783	SIRC	147	Ms. Preeti Sharma	ACS - 32847	NIRC
84	Mrs. Sonam Agiwal	ACS - 32784	SIRC	148	Ms. Priyanka Sharma	ACS - 32848	NIRC
85	Ms. Brinda T B	ACS - 32785	SIRC	149	Ms. Deepa Gusain	ACS - 32849	NIRC
86	Ms. Nidhi Narayan Prasad Kedia	ACS - 32786	WIRC	150	Ms. Priyanka Maheshwari	ACS - 32850	NIRC
87	Ms. Swarna Shivaji Gunware	ACS - 32787	WIRC	151	Ms. Nisha Sharma	ACS - 32851	NIRC
88	Mr. Lalit Avinash Bhanu	ACS - 32788	WIRC	152	Ms. Mani Mahendru	ACS - 32852	NIRC
89	Mr. Hardik Kailash Makwana	ACS - 32789	WIRC	153	Mr. Mohit Kanojia	ACS - 32853	NIRC
90	Ms. Snehlata Mishra	ACS - 32790	NIRC	154	Mr. Karandeep Singh Tuli	ACS - 32854	NIRC
91	Ms. Vrushi Girish Gadgil	ACS - 32791	WIRC	155	Ms. Kiran Kumari	ACS - 32855	NIRC
92	Ms. Alisha Purankumar Jain	ACS - 32792	WIRC	156	Mr. Prince Chadha	ACS - 32856	NIRC
93	Mr. Dhiraj Kumar Nimwal	ACS - 32793	WIRC	157	Ms. Jyoti Agarwal	ACS - 32857	NIRC
94	Ms. Monali Harshadbhai Patel	ACS - 32794	WIRC	158	Mr. Ritesh Jain	ACS - 32858	NIRC
95	Mr. Vijay Bharatkumar Anadkat	ACS - 32795	WIRC	159	Mr. Sourabh Arora	ACS - 32859	NIRC
96	Mr. Rahul Banerjee	ACS - 32796	EIRC	160	Mr. Harashanag G R	ACS - 32860	SIRC
97	Ms. Riddhi Kamlesh Tilwani	ACS - 32797	WIRC	161	Mr. K Sridhar	ACS - 32861	SIRC
98	Mr. Aakash Kumar	ACS - 32798	EIRC	162	Ms. Rohini Ramanathan	ACS - 32862	SIRC
99	Mr. Anshul Mehta	ACS - 32799	NIRC	163	Ms. Sravya Kandukuri	ACS - 32863	SIRC
100	Ms. Nidhi Narang	ACS - 32800	NIRC	164	Mr. Krishnadas K	ACS - 32864	SIRC
101	Ms. Karishma Kaushik Jhaveri	ACS - 32801	WIRC	165	Mr. Pramod Kumar Suri	ACS - 32865	SIRC
102	Ms. Anisha Agarwal	ACS - 32802	EIRC	166	Mr. Bibin M Cherian	ACS - 32866	SIRC
103	Ms. Nidhi Rateria	ACS - 32803	EIRC	167	Mr. Pushpendra Raikwar	ACS - 32867	WIRC
104	Mr. Govind Pandey	ACS - 32804	EIRC	168	Ms. Amruta Hari Balgi	ACS - 32868	WIRC
105	Ms. Nidhi Singhania	ACS - 32805	EIRC	169	Mr. Swapnil Tukaram Dafle	ACS - 32869	WIRC
106	Ms. Meenu Sharma	ACS - 32806	NIRC	170	Mr. Hardik Vinodrai Kothari	ACS - 32870	WIRC
107	Ms. Swati Garg	ACS - 32807	NIRC	171	Ms. Mitali Yogesh Shah	ACS - 32871	WIRC
108	Mr. Jaspinder Singh Saluja	ACS - 32808	NIRC	172	Mr. Kaustubh Kishor Ratnaparkhi	ACS - 32872	WIRC
109	Mr. Bhanu Prakash Pant	ACS - 32809	NIRC	173	Ms. Priyanka Balkrishna Honnangi	ACS - 32873	WIRC
110	Ms. Shilpa Verma	ACS - 32810	NIRC	174	Mr. Arvind Iyer	ACS - 32874	WIRC
111	Mr. Mohd Arshad	ACS - 32811	NIRC	175	Ms. Mayuri Shirish Wanjape	ACS - 32875	WIRC
112	Ms. Disha Jain	ACS - 32812	NIRC	176	Ms. Ahir Kisna Prabhudas	ACS - 32876	WIRC
113	Mr. Saurav Narang	ACS - 32813	NIRC	177	Mr. Rajkiran Parshuram Phadatare	ACS - 32877	WIRC
114	Ms. Alisha Nakra	ACS - 32814	NIRC	178	Mr. Kalpesh Bhupatbhai Baraiya	ACS - 32878	WIRC
115	Ms. Chetna Malhotra	ACS - 32815	NIRC	179	Mr. Sushil Kumar Shah	ACS - 32879	WIRC
116	Mr. Arun Goel	ACS - 32816	NIRC	180	Ms. Neha Rohatgi	ACS - 32880	EIRC
117	Mr. Gourav Kapoor	ACS - 32817	NIRC	181	Mr. G Sairam	ACS - 32881	SIRC
118	Ms. Pavana Jyothi Ayaluru	ACS - 32818	SIRC	182	Ms. Tanveerkaur Kuldeepsingh Ahuja	ACS - 32882	WIRC
119	Ms. Voodigi Anisha	ACS - 32819	SIRC				
120	Mr. Jishnu R G	ACS - 32820	SIRC				
121	Ms. Patel Dharaben Pankajbhai	ACS - 32821	WIRC				
122	Ms. Suchi S Agarwal	ACS - 32822	WIRC				
123	Mr. Siddharth Rajesh Jain	ACS - 32823	WIRC				
124	Ms. Mrunali Prashant Mamlatdarna	ACS - 32824	WIRC				
125	Ms. Avani Pradeep Kothari	ACS - 32825	WIRC				
126	Ms. Sayalee Prafulla Jalgaonkar	ACS - 32826	WIRC				
127	Mr. Vijaykumar Dahyabhai Chaudhari	ACS - 32827	WIRC				
128	Ms. Sangeeta Vasant Kulkarni	ACS - 32828	WIRC				
129	Mr. Gaurav Ramesh Mishra	ACS - 32829	WIRC				
130	Mr. Neel Ravindra Shah	ACS - 32830	WIRC				

RESTORED*

1.	Mr. Amod Shankar Ketkar	ACS - 10559	NIRC
2.	Mr. Nagarimadugn Chandra Reddy	ACS - 10196	SIRC
3.	Mr. Gyaneswar Bansal	FCS - 718	NIRC
4.	Mr. Manisha Vedak	ACS - 9022	WIRC
5.	Mr. K Narayanan	ACS - 4610	SIRC
6.	Mr. Sudhir Kumar Rai	ACS - 26445	NIRC
7.	Mr. Devender Krishanbatish	ACS - 26155	NIRC
8.	Mr. Deepak Sharma	ACS - 20417	NIRC

* Restored from 21st May 2013 to 21st June 2013



News From the Institute

9.	Mr. P K Venkatasubramanian	ACS - 22089	SIRC
10.	Ms. Deepti Gulati	ACS - 17713	NIRC
11.	Ms. P Padmaja	ACS - 14980	NIRC
12.	Ms. Supriya Nagpal	ACS - 9329	NIRC
13.	Ms. Rakhi Kapoor	ACS - 25526	NIRC
14.	Mr. Rakesh Prasadkhandelwal	ACS - 12916	NIRC
15.	Mr. A K Sahi	ACS - 7962	NIRC
16.	Mr. Arhant Jain	ACS - 5124	NIRC
17.	Mr. Nirakarpradhan	ACS - 8882	SIRC

Certificate of Practice

Sl. No.	Name	ACS/FCS No.	C P No.	Region
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ISSUED*

1	Ms. Kimmi Jassal	ACS - 29514	11907	NIRC
2	Sh. Sunil Kumar Nauharia	FCS - 5161	11908	NIRC
3	Sh. Rajesh L. Somani	FCS - 7181	11909	WIRC
4	Ms. S Revathy	ACS - 32170	11910	SIRC
5	Mr. Umesh Roy	ACS - 31988	11911	WIRC
6	Mr. Rakesh Kumar	ACS - 32443	11912	NIRC
7	Mr. Kashif Raza	ACS - 32432	11913	NIRC
8	Mr. Swapneel Shrikant Kuber	ACS - 29707	11914	WIRC
9	Mr. Vidit Deepak Bhai Narsana	ACS - 28344	11915	WIRC
10	Mrs. Neha Bhatt	ACS - 21890	11916	WIRC
11	Mr. R Sivaram	FCS - 6744	11917	SIRC
12	Sh. Tanmay Kumar Saha	ACS - 27396	11918	EIRC
13	Mr. Jitesh Bansal	ACS - 29149	11919	EIRC
14	Mr. Akash Sharma	ACS - 32522	11920	NIRC
15	Mr. Kelam Subrahmanyam	ACS - 32524	11921	SIRC
16	Mr. Manish Dasgupta	ACS - 31325	11922	EIRC
17	Ms. Alpa Mahendra Lakhani	ACS - 31920	11923	WIRC
18	Ms. R Vinitha	ACS - 31999	11924	SIRC
19	Mrs. Hemanshi Vadhera	ACS - 27926	11925	NIRC
20	Ms. Nishchal Sanwal	ACS - 32012	11926	NIRC
21	Mr. Amit Anand	ACS - 13409	11927	NIRC
22	Ms. Tarna Arora	ACS - 26381	11928	NIRC
23	Ms. Nisha Joly Machingal	ACS - 32115	11929	WIRC
24	Ms. Megha Gupta	ACS - 32294	11930	EIRC
25	Mr. Nitin Agrawal	ACS - 31846	11931	WIRC
26	Sh. Syed Shahabuddin	ACS - 4121	11932	SIRC
27	Ms. Ritu Bajaj	ACS - 19709	11933	EIRC
28	Sh. Purushottam Ashok Rasalkar	ACS - 14492	11934	SIRC
29	Ms. Sathya R	ACS - 32469	11935	SIRC
30	Mr. Pankaj Kumar Aggarwal	ACS - 31463	11936	NIRC
31	Ms. Rupanshi Dubey	ACS - 32274	11937	NIRC
32	Mr. Akhilesh Kumar Singh	ACS - 21730	11938	SIRC
33	Sh. C Krishnakumar	FCS - 4437	11939	SIRC
34	Ms. Divya	ACS - 32513	11940	NIRC
35	Ms. Mitali Pradeep Oza	ACS - 31757	11941	WIRC
36	Ms. K Vijayalaxmi	ACS - 9533	11942	WIRC
37	Mr. Vishnu Prakash Agarwal	ACS - 30580	11943	EIRC
38	Mrs. Purvi Vinod Kakani	ACS - 25432	11944	WIRC
39	Mr. Anil Kumar Doshi	ACS - 32077	11945	SIRC
40	Ms. Payal Rajesh Rana	ACS - 30834	11946	WIRC
41	Mr. Mandar Ganeshrao Takalkar	ACS - 32369	11947	WIRC

42	Ms. Sonali Varshney	ACS - 31787	11948	NIRC
43	Ms. Rashmi Joshi	ACS - 31569	11949	WIRC
44	Ms. Aruna Bawri	ACS - 32393	11950	EIRC
45	Mr. Mohammed Irfan	ACS - 32512	11951	SIRC
46	Mr. Suresh Chandra Pal	ACS - 32198	11952	EIRC
47	Mr. Gaurang Manubhai Shah	ACS - 32581	11953	WIRC
48	Sh. Chandrashekhra Hegde	ACS - 25373	11954	SIRC
49	Mr. Saurabh Maheshwari	ACS - 32026	11955	NIRC
50	Mr. Bhushan Sohanlal Kotecha	ACS - 32686	11956	WIRC
51	Ms. Ruchi Gupta	ACS - 32646	11957	NIRC
52	Mr. Sivadasan C P	ACS - 32387	11958	SIRC
53	Mr. Chintan Kanaiyalal Patel	ACS - 31987	11959	WIRC
54	Ms. Deepali Fatehpuria	ACS - 32478	11960	NIRC
55	Ms. Manjushri Dilip Lele	ACS - 22322	11961	WIRC
56	Ms. Arpita Saxena	ACS - 23822	11962	NIRC
57	Mr. Abhijit Vishwanath Ginimav	ACS - 32592	11963	NIRC
58	Mr. Vijaykumar C N	ACS - 32570	11964	SIRC
59	Mrs. Jagruti Yogesh Vadhvana	ACS - 24538	11965	WIRC
60	Ms. Bhoomika Dhawan	ACS - 31711	11966	NIRC
61	Mr. Gopal Rukiya Kadawat	ACS - 32687	11967	WIRC
62	Mr. Taher Noor Sayed	ACS - 28266	11968	EIRC
63	Mr. Vinayak Balasaheb Patil	ACS - 32464	11969	WIRC
64	Mr. Preyansh Bharatkumar Shah	ACS - 32593	11970	WIRC
65	Ms. Barkha Jain	ACS - 32124	11971	EIRC
66	Ms. Preeti Rampal Singh	ACS - 27996	11972	WIRC
67	Mr. Anand Rochlani	ACS - 32633	11973	NIRC
68	Ms. Akshita Surana	ACS - 32571	11974	SIRC
69	Ms. Akanksha Ramchandra Motwani	ACS - 32588	11975	WIRC
70	Mr. Jatin Singal	ACS - 32448	11976	NIRC
71	Mr. Robin Jain	ACS - 32446	11977	EIRC
72	Sh. Sunil Ashok Kumar Thakur	ACS - 24713	11978	WIRC
73	Mr. R Balasubramanian	ACS - 30556	11979	SIRC
74	Ms. Neha Gandhi	ACS - 30608	11980	WIRC
75	Mr. Biswaranjan Jena	ACS - 32700	11981	EIRC
76	Ms. Rajini G N	ACS - 32653	11982	SIRC
77	Ms. Garima Jain	ACS - 32632	11983	NIRC
78	Mr. Avi Sangal	ACS - 31713	11984	NIRC
79	Mr. Vikram Singh	ACS - 31714	11985	NIRC
80	Mr. Prashant Kumar Kulshrestha	ACS - 32693	11986	WIRC
81	Mr. Amit Soni	ACS - 28350	11987	WIRC
82	Mr. Vivekkumar Sushilkumar Barlot	ACS - 32694	11988	WIRC
83	Ms. Rajshree Choudhari	ACS - 22498	11989	SIRC
84	Mr. Tarun Saini	ACS - 32626	11990	NIRC
85	Ms. Chanchal Vijay Loya	ACS - 32605	11991	WIRC
86	Ms. Sheela Arvind	ACS - 32648	11992	SIRC
87	Ms. Reetika Agarwal	ACS - 25855	11993	EIRC
88	Mr. Bijoy Krishna Paul	ACS - 32707	11994	EIRC
89	Mr. Mohammad Tausif Shamim	ACS - 32291	11995	EIRC
90	Ms. Vandana Singh	ACS - 32135	11996	EIRC
91	Ms. Kalpa Jaiswal	ACS - 29045	11997	EIRC
92	Ms. Shweta Jaykumar Agarwal	ACS - 32457	11998	WIRC
93	Ms. Kanchan Amit Kakade	ACS - 18404	11999	WIRC
94	Ms. Vidhi Nitinkumar Damani	ACS - 31651	12000	WIRC
95	Ms. Hashima Kakkar	ACS - 32753	12001	NIRC
96	Mr. Deepak Yadav	ACS - 32704	12002	NIRC
97	Mr. Yatin Wahi	ACS - 31800	12003	NIRC
98	Mr. Bhupesh Kumar	ACS - 32550	12004	NIRC
99	Mr. Abhishek Agarwal	ACS - 32542	12005	EIRC
100	Ms. Neha Khandelwal	ACS - 30077	12006	NIRC
101	Mr. Sukesh	ACS - 31024	12007	NIRC
102	Mr. Chandan Arora	ACS - 32676	12008	NIRC

* Issued during the month of May 2013



103	Ms. Alka	ACS - 32352	12009	NIRC
104	Mr. Pradeep Kumar	ACS - 32424	12010	EIRC
105	Mr. Aripirala Sridhar	ACS - 30499	12011	SIRC
106	Sh. B Prem Kumar	ACS - 3717	12012	SIRC
107	Ms. Vidisha Choudhary	ACS - 31761	12013	NIRC
108	Ms. Vidhi Chaudhary	ACS - 27685	12014	NIRC

CANCELLED*

1	Mr. Sumit Mutha	ACS - 30341	10933	NIRC
2	Mr. Damoder Bethamalla	ACS - 31450	11577	SIRC
3	Mr. Sooraj Kapoor	FCS - 623	1171	NIRC
4	Mr. Vishwambhar Lal Joshi	FCS - 1921	6659	EIRC
5	Mr. Ravi Gupta	ACS - 22431	8319	NIRC
6	Mr. Taher Noor Sayed	ACS - 28266	11749	EIRC
7	Mr. Chetan Goel	ACS - 28069	11165	NIRC
8	Mr. Archit Agarwal	ACS - 30928	11581	NIRC
9	Ms. Neelam Garg	ACS - 30913	11680	NIRC
10	Ms. B M Hingorani	ACS - 21540	9829	WIRC
11	Ms. Neha Sharma	ACS - 25128	10775	NIRC
12	Mr. Sanket M Jain	ACS - 27967	9991	WIRC
13	Mr. V Marikannan	ACS - 30767	11230	SIRC
14	Ms. Somina Jain	ACS - 18576	10926	NIRC
15	Mr. P Laxmidhar Prusty	ACS - 31077	11885	EIRC
16	Mr. Rahul Ahuja	ACS - 28123	11744	NIRC
17	Mr. Rakesh Kapur	FCS - 3863	2623	WIRC
18	Ms. Kamini Gupta	ACS - 29181	10581	NIRC
19	Rahul Kumar Tandon	ACS - 20931	10887	NIRC
20	Mr. R Sivaram	FCS - 6744	11917	SIRC
21	Mrs. Meeta Sharma	ACS - 20861	11117	NIRC
22	Mr. Nitin Misra	ACS - 24286	11613	NIRC
23	Mr. Jitendra Kumar Singh	ACS - 21381	11184	EIRC
24	Mr. Baburao Maruti Tupare	ACS - 30195	11091	WIRC
25	Ms. Kirandeep Saluja	ACS - 26038	11716	NIRC
26	Mr. Kishan Singh Nathawat	ACS - 31349	11650	NIRC
27	Ms. Harshada Nandkumar Eklahare	ACS - 28708	11647	WIRC
28	Ms. Aarti Gupta	ACS - 29883	10846	NIRC
29	Mr. Subramaniyan Narayanan	ACS - 24815	11545	WIRC
30	Ms. Prachi Vij	ACS - 30103	11127	NIRC
31	Ms. Shilpi Jain	ACS - 28746	10458	NIRC
32	Mr. Parmal Singh	ACS - 30302	10943	NIRC
33	Ms. Sona Balaji	ACS - 26895	10490	NIRC
34	Ms. L Rajarajeswari	ACS - 20768	7799	SIRC

Licentiate ICSI

Sl. No.	Name	Licentiate No.	Region
ADMITTED**			
1	Ms. Shruti Shailesh Shah	6535	WEST
2	Ms. Astha Jain	6536	NORTH
3	Ms. Roshni Rajiv	6537	WEST
4	Mr. Asir Deepak Desai	6538	WEST
5	Mr. Sabari Krishna	6539	SOUTH
6	Mr. Yashwant Bangani	6540	SOUTH
7	Ms. Ananya Rajiv Khawte	6541	WEST
8	Mr. Vishal Agarwal	6542	EAST

* Cancelled during the Month of May 2013

** Admitted During the Month of May, 2013

Payment of Annual Membership and Certificate of Practice Fee for the Year 2013-14

The annual membership fee and certificate of practice fee for the year 2013-14 **became due for payment w.e.f. 1st April, 2013. The last date for payment of fee was 30th June 2013 which has now been extended upto 31st August, 2013.**

The membership and Certificate of Practice fee is as follows:-

1] Annual Associate Membership fee	Rs. 1125/-
2] Annual Fellow Membership fee	Rs. 1500/-
3] Annual Certificate of Practice fee	Rs. 1000/-(*)

* The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute www.icsi.edu and also published elsewhere in this issue.

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of :

- On-Line (through payment Gateway of the Institute's web-site (www.icsi.edu) by following the steps given below:-
The payment can be made online through Institute's portal www.icsi.edu by following the steps given below:-
Kindly ensure that your browser is IE8, IE9, Mozilla 15.0.1 and above, Chrome 21.0, Safari 4.0.3 and the best resolution for view is 1024x768 pixels.
 - Login to portal www.icsi.edu.
 - Click online services on the right top corner and then click 'Member's Tab' on page.
 - Login for self profile by entering the membership number (like A1234) as per the sample given on the page and password. In case you do not have a password. You may retrieve your password in case your email is correctly registered in the institute alternatively you may send an email request for password with your ACS / FCS membership number to dd.garg@icsi.edu
 - After login, select the 'Member Option' then click on "Online Services "
 - Select the check box if you are CP holder (forCOP payment).
 - Click on Proceed for Payment button for payment.
 - Keep the generated acknowledgment for future reference and record.
- Credit card at the Institute's Headquarter at Lodi Road, New Delhi or Regional Offices located at Kolkata, New Delhi, Chennai and Mumbai.
- Cash/ local cheque drawn in favour of 'The Institute of Company Secretaries of India', payable at New Delhi at the Institute's Headquarter or Regional/ Chapter Offices located at Kolkata, New Delhi, Chennai, Mumbai and Chandigarh, Jaipur, Bangalore, Hyderabad, Ahmedabad, Pune respectively. Out Station cheques will not be accepted. However, at par cheques will be accepted.

Demand draft / Pay order drawn in favour of 'The Institute of Company Secretaries of India', payable at New Delhi (indicating on the reverse name and membership number).

For queries, if any, the members may please contact Mr. D.D. Garg, Admn. Officer or Mrs. Vanitha Dhanesh on telephone Nos.011-45341062/64 or Mobile No.9868128682 / through e-mail ids: annualfee@icsi.edu, cp@icsi.edu



APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION* OF CERTIFICATE OF PRACTICE

See Reg. 10, 13 & 14

To
The Secretary to the Council of
The Institute of Company Secretaries of India
'ICSI HOUSE', 22, Institutional Area,
Lodi Road, New Delhi - 110 003

Sir,

I furnish below my particulars

- (i) Membership Number FCS/ACS:
- (ii) Name in full:
(in block letters) Surname Name
- (iii) Date of Birth:
- (iv) Professional Address:
- (v) Phone Nos. (Resi.) (Off.)
- (vi) Mobile No Email id
- (vii) Additions to or change in qualifications, if any:

1. Submitted for (tick whichever is applicable):

(a) Issue (b) Renewal (c) Restoration

2. (a) Particulars of Certificate of Practice issued / surrendered/Cancelled earlier

Sl. No	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP

3. i. I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including ICAI and the ICWAI.
- ii. I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.
- iii. I hereby undertake that, I shall adhere to the mandatory ceiling of not more than eighty companies in aggregate in a calendar year in terms of the **Guidelines for Issuing Compliance Certificate and Signing of Annual Return** issued by the Institute on 27th November, 2007.
- iv. I state that I have issued / did not issue advertisements during the year 20 -..... in accordance with the **Guidelines for Advertisement by Company Secretary in Practice** issued by the Institute*.
- v. I state that I issued Corporate Governance compliance certificates under Clause 49 of the listing agreement during the year 20 -.....*
- vi. I state that I have / have not undertaken Audits under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 20 - *
- vii. I state that I have / have not maintained a register of attestation/certification services rendered by me/my firm in accordance with the **Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services Rendered by Practising Company Secretary/Firm of Practising Company Secretaries** issued by the Institute. *
4. I send herewith Bank draft drawn on Bank Branch bearing No for Rs towards annual certificate of practice fee for the year ending 31st March
5. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)

Place:

Encl.

Date:

* Applicable in case of renewal or restoration of Certificate of Practice



Company Secretaries Benevolent Fund

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



Sl. No.	LM No.	Name	Mem No.	City
EIRC				
1	10036	MR. SATYA PRADEEP ROY	ACS - 32714	BHUBANESWAR
NIRC				
2	10039	MR. NAVNEET RAGHUVANSHI	ACS - 14657	FARIDABAD
3	10040	MS. SHWETA KANDOI	ACS - 30488	VARANASI
SIRC				
4	10037	MR. S ANANTHAKRISHNAN	ACS - 4533	SECUNDERABAD
5	10043	MS. SEEMA P S	ACS - 32781	THIRUVANANTHAPURAM
6	10044	MR. DUBBA ANIL	ACS - 32736	KARIMNAGAR
WIRC				
7	10035	MR. SHAILESH VIJAY BAPAT	ACS - 26165	MUMBAI
8	10038	MS. KRISHMA KANAK KOTHARI	ACS - 32284	MUMBAI
9	10041	MR. VENKATESWARAN VINOD	ACS - 32750	THANE WEST
10	10042	MS. VRUSHALI GIRISH GADGIL	ACS - 32791	MUMBAI
11	10045	MR. BIJAN KUMAR DASH	ACS - 17222	NAGPUR
12	10046	MS. MITA SANGHAVI	FCS - 7205	THANE

* Enrolled from 21st May 2013 to 20th June, 2013

ATTENTION ! PRACTISING COMPANY SECRETARIES

EMPANELMENT AS A "PEER REVIEWER"

(AS PER THE GUIDELINES FOR PEER REVIEW OF ATTESTATION SERVICES BY PRACTISING COMPANY SECRETARIES)

The Council of the Institute approved the Guidelines for Peer Review of Attestation Services by Practising Company Secretaries at its 202nd Meeting held on August 25-26, 2011 at New Delhi.

A copy of the Guidelines is available on the ICSI website (<http://www.icsi.edu/LinkClick.aspx?link=2242&tabid=2220&mid=4498>) and also published in the September, 2011 issue of the Chartered Secretary Journal.

The Guidelines have come into effect from October 1, 2011. The Peer Review exercise has already commenced from January 4, 2012. The Peer Review Board has been organising extensive training programmes for Peer Reviewers at various locations throughout the country and many more programmes have been scheduled in the months of July-August, 2013.

The nature and complexity of peer review requires the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:-

- Be a member;
- Possess at least ten years experience; and
- Be currently in the practice as Company Secretary.

Members in practice are invited to empanel themselves as a Peer Reviewer under the Guidelines for Peer Review of Attestation Services by PCS if they fulfill the aforesaid qualifications for being empanelled as a Peer Reviewer.

The Proforma for Empanelment as a "Reviewer" is available on the webpage of the Peer Review Board on ICSI website (<http://www.icsi.edu/AppointmentReviewer/tabid/2240/Default.aspx>). The duly filled in proforma may be sent to - The Secretary, Peer Review Board, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi 110 003 (email: prb-icsi@icsi.edu).



News From the Institute



List of Companies Registered for Imparting Training During the Month of May 2013

Region	Training Period	Stipend (Rs.)			
Eastern					
Shyam Steel Industries Ltd. Shyam Towers, EN-32 Sector V, Salt Lake Kolkata-700091	15 Months Training	6000/-		Apis India Ltd. 18/32, East Patel Nagar, New Delhi-110008 <i>mail@apisindia.com</i>	15 Months Training 3500/-
Pincon Spirit Ltd. 7, Red Cross Place, 3rd Floor "Wellesley House" Kolkata-700001 <i>aditya@pincongroup.com</i>	15 Months & 3 Months Practical Training	Suitable		Cosmic Structures Ltd. A-17, Sector-16, Noida-201301(U.P.) <i>info@cosmicindia.in</i>	15 Months & 3 Months Practical Training 3500/-
Cement Manufacturing Company Ltd. Satyam Tower, 3, Alipore Road 1st Floor, Unit No.98, Kolkata-700027 West Bengal, Calcutta-700019 <i>kolkata@cmcl.co.in</i>	15 Months & 3 Months Practical Training	Suitable		United Overseas Trade Mark Company 52, Sukhdev Vihar, Mathura Road New Delhi-110025 <i>unitedmark@sify.com</i>	15 Months Training Suitable
Northern					
Intellective Law Offices A-74, LGF, Defence Colony New Delhi-110024 <i>info@intellectivelawoffices.com</i>	15 Months Training	Suitable		Teleecare Network India Pvt. Ltd. Zen House, 261, Kohinoor Enclave, Western Marg, Saidullajab New Delhi-110030	15 Months Training Suitable
India Finsec Ltd. D-16, 1st Floor Above ICICI Bank, Prashant Vihar Sector-14, Rohini New Delhi-110085 <i>indiafinsec@yahoo.com</i>	15 Months & 3 Months Practical Training	Suitable		Moser Baer Energy & Development Ltd. 616 A (16a, Sixth Floor) Devika Tower, Nehru Place New Delhi-110019	15 Months Training Suitable
D M South India Hospitality Pvt. Ltd. 1405-1410, 14th Floor, Narain Manzil, 23, Barakhamba Road New Delhi-110001 <i>engg@dmgi.com</i>	15 Months & 3 Months Practical Training	Suitable		Prop Tiger Realty Pvt. Ltd. D-12, 1st Floor Sector-3, Noida-201301(U.P.) <i>info@proptiger.com</i>	15 Months Training Suitable
TV 18 Broadcast Limited Express Trade Tower, Plot No. 15-16, Sector-16a, Noida-201301, Uttar Pradesh <i>bindu.trivedi@network18online.com</i>	3 Months Practical Training	Suitable		Garg Inox Ltd. (Govt. Recognised Export House) 35, Jhandewalan Road Motia Khan, New Delhi-110055 <i>gargwire@vsnl.com</i>	15 Months Training Suitable
				Innovative Kids Zone Pvt. Ltd. 122, Saraswati Enclave Apartments, Plot No. 26/3, Sector 9 Rohini, New Delhi-110066	15 Months & 3 Months Practical Training Suitable
				WSP Consultants India Ltd. FC-24, 2nd Floor, Sector-16A, Film City Noida-201301, Uttar Pradesh <i>ijyotisawroop.arora@wspgroup.in</i>	3 Months Practical Training Suitable
				Sara Capital Equipments Pvt. Ltd. 7/1 Pritam Road, Dehradun-248001 <i>aara.capital@aaraservices.com</i>	15 Months Training Suitable
				Sunshine Capital Ltd. 209, Bhanot Plaza II 3 D B Gupta Road, New Delhi-110055 <i>sunshinecapital95@gmail.com</i>	15 Months & 3 Months Practical Training 6000/-



Advant I.T. Park Pvt. Ltd. 90, SFS Flats Munrika Vihar, New Delhi-110067 <i>gaurav.agrawal@advantindia.com</i>	15 Months & 3 Months Practical Training	Suitable	HSBC Asset Management (India) Pvt. Ltd. 16, V.N. Road, Fort, Mumbai-400001 Maharashtra <i>hsbcmf@hsbc.co.in</i>	3 Months Practical Training	3500/-
Airline Allied Services Ltd. 205, Second Floor, G+5 Building Igi Airport Terminal-1 New Delhi-110037 <i>arungoyal_ag@yahoo.co.in</i>	15 Months Training	Suitable	Pantaloon Fashion & Retail Ltd. 701-704, 7th Floor Skyline Icon Business Park 86-92 Off A.K. Road, Marol Village Andheri East, Mumbai-400059 Maharashtra	15 Months Training	7500/-
Southern Toyota Logistics Kishor India Pvt. Ltd. "TLKI YARD", Toyota Kirloskar Motors Gate No.5, Plot No.1, Bidadi Indl. Area, Bidadi, Ramanagara (District) Bangalore-562109, Karnataka <i>k.santhosh@tlki.co.in</i>	15 Months Training	Suitable	Shree Renuka Energy Ltd. Bc 105, Havelock Road, Camp Belgaum-590001 <i>belgaum@renukasugars.com</i>	15 Months & 3 Months Practical Training	Suitable
Shriram Land Developmant India Pvt. Ltd. #33-44, 1&2,8th Main 4th Cross, Sadashivnagar RMV Extension Bangalore-560080 Karnataka <i>mail@shriramland.com</i>	15 Months & 3 Months Practical Training	8000/-	Exclusive Securities Ltd. 113, B- Block, 1st Floor Silver Mall, 8-A, RNT Marg Indore-452001(M.P.)	3 Months Practical Training	Suitable
Nile Ltd. Plot No.149A, Old MLA Colony, Road No.12 Banjara Hills Hyderabad-500034 <i>ho@nilelimited.com</i>	15 Months & 3 Months Practical Training	Suitable	Salasar Yarns Pvt. Ltd. 5007, World Trade Centre Near Parag House Ring Road, Surat-2 Gujarat	15 Months Training	3500/-
IMS Health India Pvt. Ltd. Global Offshore Centre The Millenia Tower A & D Murphy Road, Ulsoor Bangalore-560008 Karnataka	15 Months Training	Suitable	Uniquet Infra Ventures Pvt. Ltd. Naman Chambers, 2nd Floor, C-32, G-Block, Bandra-Kurla Complex, Bandra (East) Mumbai-400051 <i>balaji.rao@uniquetgroup.com</i>	15 Months & 3 Months Practical Training	Suitable
Suzuki Textiles Limited Village Gudda, P.O. Mandal Distt. Bhilwara Rajasthan <i>suzukigroup@suzukitextiles.com</i>	15 Months & 3 Months Practical Training	Suitable	Shree Ram Diamex Pvt. Ltd. 99, Vasta Devdi Road Katargam, Surat-395004 Gujarat <i>accsurat@srkexport.in</i>	15 Months Training	Suitable
Western Genuine Stock Brokers Pvt. Ltd. B-601, Gopal Palace, Opp. Ocean Park, Nehru Nagar Ahmedabad-380015 Gujarat	15 Months & 3 Months Practical Training	Suitable	Rosy Blue (India) Pvt. Ltd. 1608/1609, Prasad Chambers Opera House, Mumbai-400004 Maharashtra <i>mumbai@rosyblue.com</i>	15 Months & 3 Months Practical Training	Suitable
			Blue Star Ltd. Kasturi Buildings Mohan T Advani Chowk Jamshedji Tata Road Mumbai-400020	15 Months Training	Suitable
			Swastik Coal Corporation Pvt. Ltd. "Swastik House", 21/3 Ratlam Kothi, Main Road Indore-452001 <i>bindalco@swastikcoal.com</i>	15 Months Training	Suitable



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Gujarat State Seeds Corporation Ltd. "Beej Bhavan", Sector-10/A Gandhinagar-382010 Gujarat	15 Months Training	Suitable	Arvind Infrastructure Ltd. 24, Govt. Servant's Society Adj. Municipal Market, C.G. Road Ahmedabad-380009 Gujarat <i>rv.bhimani@arvind.in</i>	15 Months & 3 Months Practical Training	Suitable
Lafarge India Pvt. Ltd. Crescenzo Bldg., B-Wing 10th Floor, C-38 & C-39, G Block Bandra A Kurla Complex Bandra (East) Mumbai-400051 <i>pawan.laddha@in.lafarge.com</i>	15 Months & 3 Months Practical Training	10000/-	Aditya Birla Finance Ltd. One Indiabulls Centre Tower 1 18th Floor, Jupiter Mill Compound 841, Senapati Bapat Marg Elphinstone Road Mumbai-400013	15 Months & 3 Months Practical Training	Suitable
Mount Everest Breweries Ltd. BPK Star Tower, 4th Floor Above Shoppers Stop, A B Road Indore-452008 Madhya Pradesh <i>corp@meblindia.com</i>	15 Months & 3 Months Practical Training	Suitable			
Aventus Pe Investment Advisors Pvt. Ltd. The II&Fs Financial Centre 5th Floor, B Quadrant Bandra Kurla Complex, Bandra (E), Mumbai-400051 Maharashtra	15 Months Training	Suitable			
Star Agriwarehousing & Collateral Management Ltd. G-102, Molshree Residency Plot No.29, Mission Compound Ajmer Road, Jaipur	15 Months & 3 Months Practical Training	Suitable			
Metal Link Alloys Ltd. Aidun Building, 'A' Block, 1st Floor, Office No. 3, 1st Dhobi Talao Lane Opp. Metro Cinema Mumbai-400002 Maharashtra <i>metallink@bronze-ignot.com</i>	15 Months Training	Suitable			
Shilp Gravures Ltd. 101, Kashi Parekh Complex B/H Bhagwati Chambers, C.G. Road, Ahmedabad-380009 Gujarat <i>pragneshdarji@shilpgravures.com</i>	15 Months Training	Suitable			
Tellabs Chemicals Pvt. Ltd. Kamanwala Chambers Sir Phirozeshah Mehta Road Mumbai-400001, Maharashtra <i>tellabsmumbai@telgroup.com</i>	15 Months & 3 Months Practical Training	Suitable			
Tara Jewels Ltd. Plot 29 (P) & 30 (P), Sub Plot A, Seepz Sez, Andheri (E) Mumbai-400096, Maharashtra <i>amol.raje@tarajewels.co.in</i>	15 Months Training	5000-10000/-			
			CS CSHUBHANGI A BAIWAR Company Secretary in Practice Flat No.1504 ,Rushabh Tower Zakaria Bunder Cross Road Off P. D'mello Road,Sewree (W) Mumbai – 400 015		PCSA – 3444
			CS JANARDHANA REDDY CHAPPIDI Company Secretary in Practice H.No:6-3-347/9/N, Flat No:8 First Floor, Nv Plaza, Punjagutta Dwarakapuri Colony Hyderabad – 500 082		PCSA – 3445
			CS SUSHIL KUMAR Company Secretary in Practice 213,,Jagat Trade Centre Near Hotel Rajasthan Fraser Road, P.O.- G P O Patna -800 001		PCSA – 3446
			CS NAMRATA NIKHIL EKHE Company Secretary in Practice "Swamikrupa", S.No. 22/5/1/1 Anandbaug Colony Near Sancheti High School Thergaon, Pune - 411 033		PCSA – 3447
			CS ARCHANA BANSAL Company Secretary in Practice 79, Shyam Lal Road 3rd Floor, Daryaganj New Delhi - 110 002		PCSA – 3448

List of Practising Members
Registered for the
Purpose of
Imparting Training
During the Month of
May, 2013





CS MAHESH N

Company Secretary in Practice
473, 2nd Floor
12th Cross, Wilson Garden
Bangalore -560 027

PCSA – 3449

CS MEGHA SHARMA

Company Secretary in Practice
Hotel New Rajasthan Kale Walaya
Lalpur Chowk
Ranchi - 834 001

PCSA – 3450

CS RASHMI RIMJHIM

Company Secretary in Practice
C/O O P Jalan & Associates
48, Cart Sarai Road
Upper Bazar
Ranchi – 834 001

PCSA – 3451

CS RAJESH DWARKA SHARMA

Company Secretary in Practice
473, 2nd Floor
12th Cross, Wilson Garden
Bangalore -560 027

PCSA – 3452

CS RAJ KUMAR GUPTA

Company Secretary in Practice
Flat No. 202, Plot No.660
Shalimar Garden, Extension. -1
Sahibabad
Ghaziabad -201 005

PCSA – 3453

CS ASHISH OMPRAKASH LALPURIA

Company Secretary in Practice
14, Adarsh, 83, Nehru Road
Near Hdfc Bank
Vile Parle (East)
Mumbai – 400 057

PCSA – 3454

CS VIKASH SETHI

Company Secretary in Practice
Nehru Road
Ramgarh Cantt -829 122

PCSA – 3455

CS MUHAMMED SAHAL. K

Company Secretary in Practice
Ashique Sameer Associates
Practising Co. Secretaries
3rd Floor, Delta Tower, Thana
Kannur – 670 012

PCSA – 3456

CS MANGESH MANIK KAMBLE

Company Secretary in Practice
81/6 Gadia Estate, H.No 144
Nandanvan Society, Paud Road
Kothrud, Pune – 411 038

PCSA – 3457

CS SONIA MITTAL

Company Secretary in Practice
D-45, Kamla Nagar, First Floor
Delhi – 110 007

PCSA – 3458

CS MEGHA GUPTA

Company Secretary in Practice
D-45, Kamla Nagar, First Floor
Delhi – 110 007

PCSA – 3459

CS NANDITA GUJRATI

Company Secretary in Practice
K-36/11, Chowkhambha
Near Agrasen
Mahajneri Boys School
Varanasi – 221 001

PCSA – 3460

CS ANAND KUMAR SINGH

Company Secretary in Practice
H-13, 1st Floor
Vijay Chook
Main Market, Laxmi Nagar
Delhi – 110 092

PCSA – 3461

CS NOOPUR SHARMA

Company Secretary in Practice
F-105, Brigade Metropolis
Mahadevpura
Bangalore -560 048

PCSA – 3462

CS SRIKANTH SANGAI

Company Secretary in Practice
3-2-373/E
Chappal Bazar
Kachiguda, Hyderabad – 500 027

PCSA – 3463

CS AVANI SURESH POPAT

Company Secretary in Practice
202, 2nd Floor
May Building
297/299/301, Princess Street
Near Marine Lines Flyover
Mumbai – 400 002

PCSA – 3464

CS DHAWAL CHHAGANLAL GADDA

Company Secretary in Practice
F - 111a, First Floor
Dreams The Mall
Lbs Road
Bhandup West
Mumbai – 400 078

PCSA – 3465

CS SHWETA CHOUDHURY

Company Secretary in Practice
33/1, Bhupen Bose Avenue
Kolkata – 700 004

PCSA – 3466

CS SHRENIK UDAY NAGAONKAR

Company Secretary in Practice
C-G-4, Sterling Tower
Gavat Mandal
Shahupuri, Kolhapur – 416 001

PCSA – 3467

CS NAYAN M ADHYARU

Company Secretary in Practice
J- Bijal Appartment
Opp. Panchvati Bus Stop
Ellisbridge, Ahmedabad – 380 006

PCSA – 3468





News From the Institute

CS DIPAK MANIAR

Company Secretary in Practice
Eff Jumbo Darshan Chsl. Bldg F/2,
Koldongari, Andheri (E)
Mumbai – 400 069

PCSA – 3469

CS ANKIT SINGH KUSHAWAH

Company Secretary in Practice
Plot No. 42, Flat No. F-1, Sai Kripa
Apartment 1st, Jai Bhawani Nagar
Khatipura, Jaipur - 302 012

PCSA – 3470

CS PAWAN ANCHALIA

Company Secretary in Practice
16 A, Shakespeare Sarani
New B.K. Market, 5th Floor
Kolkata – 700 071

PCSA – 3471

CS M KAVITHA SURANA

Company Secretary in Practice
"S.U.S. Bhawan"
2, Vimala Street, Ayyavoo Colony
Aminjikarai, Chennai – 600 029

PCSA – 3472

CS PUNEET KUMAR PANDEY

Company Secretary in Practice
Flat No. Pocket –F -25
Sadbhawna Apartments
Sector -3, Rohini
New Delhi – 110 085

PCSA – 3473

CS K GAURAV KUMAR

Company Secretary in Practice
Office No. A1 And A2, First Floor No. -9
Roop Arcade, General Muthiah Street
Chennai - 600 079

PCSA – 3474

CS R. SIVA SEKARAN

Company Secretary in Practice
16/29, Rasmi
Plot No: C-236-A
6h Main Road Nanganallur
Chennai – 600 061

PCSA – 3475

CS KRISHNA MURARI JETHLIA

Company Secretary in Practice
Shop No. 28, Shree Plaza
Infront Of Jay Mandir Cinema
College Road
Beawar – 305 901

PCSA – 3476

CS SANTOSH OJHA

Company Secretary in Practice
2689, Upper GF
Street No -3
Shadipur Main Bazar
New Delhi -110 008

PCSA – 3477

CS SNEHA KARMARKAR

Company Secretary in Practice
49/1, Parvati
Bhargav Chambers
Pune -411 009

PCSA – 3478

CS PAWAN KUMAR BAID

Company Secretary in Practice
5019, Trade House, Opp. Fire Bridgade
Ring Road, Surat -395 002

PCSA – 3479

CS DHIRAJ KUMAR JHA

Company Secretary in Practice
Flat -4a, Pancchali Apartment
117, Regent Place
Ranikutni Tollygunge
Kolkata – 700 040

PCSA – 3480

CS ARVIND BAJPAI

Company Secretary in Practice
161/1, M.G. Road, 1st Floor
Room No. 30, Kolkata – 700 007

PCSA – 3481

CS AMAN NATH KUKREJA

Company Secretary in Practice
E-147a/, Naraina Vihar
New Delhi – 110 028

PCSA – 3482

CS MINI SINGHANIA

Company Secretary in Practice
"Orchid Golf", 4/105
Golf Club Road, Tollygunge
Kolkata – 700 033

PCSA – 3483

CS KHUSHBOO AGRAWAL

Company Secretary in Practice
40, Nagar Nigam Colony
Near Agrasen Chowk
Raipur – 492 001

PCSA – 3484

CS SHILPA BHATT

Company Secretary in Practice
B-306 Vinayak Towers
Central Spine, VDN
Jaipur - 302 023

PCSA – 3485

CS SHRADDHA KULKARNI

Company Secretary in Practice
Office No.1, Jai Bhagirathi
881/B, Sadashiv Peth
Pune - 411 030

PCSA – 3486

CS SANDEEP NAGARKAR

Company Secretary in Practice
Office No.1, Jai Bhagirathi
881/B, Sadashiv Peth
Pune - 411 030

PCSA – 3487

CS DEBARATI BANERJEE

Company Secretary in Practice
C N Roy Road, Govt Housing Estate
Block L/A, Flat -6
Picnic Garden, Kolkata – 700 039

PCSA – 3488

CS NISHA GATTANI

Company Secretary in Practice
Kamal Bhawan, Near Maheshwari Bhawan
Khalpara, Agrasan Road
Siliguri – 734 005

PCSA – 3489



News From the Regions

» Eastern India Regional Council

BHUBANESWAR CHAPTER

Lecture Meet on Risk Management through Financial Derivatives

On 21.6.2013 the Chapter organized a lecture meeting at its premises on Risk Management through Financial Derivatives. Prof. (Dr) P.K. Swain, Principal, ITER, Bhubaneswar was the main speaker who while addressing outlined about the capital market, risk management and derivatives market. The queries raised at the end of the session were ably replied by the speaker. Around 55 members and students attended the programme.

Image Building

On 19.6.2013, a delegation of the Bhubaneswar Chapter met J.K. Mohapatra, IAS, Development Commissioner & Additional Chief Secretary (Finance) and P. Venugopal, IAS, Principal Secretary, Department of Public Enterprise, Govt. of Odisha. During the meeting the ICSI delegation apprised the dignitaries about the role and function of the ICSI, its activities and also the activities of the Bhubaneswar Chapter. They were also requested for appointment of Company Secretary in the various public sector companies in Odisha. Further the delegation requested the dignitaries to visit the Bhubaneswar Chapter office and also invited them to the seminar of the Chapter to be held in future. CS A. Acharya, Chairman and CS J.B. Das, past Chairman of the Chapter represented the Chapter.

Talk on Professional Excellence in a Spiritual Way

On 29.5.2013 the Chapter organized an evening talk on Professional Excellence in a Spiritual Way at its premises. CS J.B. Das, Practising Company Secretary, Bhubaneswar addressed the gathering on the aforesaid subject. CS J.B. Das emphasized the need for dedication, devotion and adherence to the professional ethics while discharging their duties. About 28 members were present in the meeting.

Session on Yoga for Members

On 28.4.2013, 5, 12, 19, 26.5.2013, 2, 9, 16, and 23.6.2013 the Chapter organized a series of Yoga sessions for the members at its premises. The yoga classes were addressed by S.K. Palit, M/s.

Vivekananda Yoga Therapy Research Institute, Bhubaneswar. During the sessions practicals on yoga and other tips for better life were apprised to the participants.

CS

» Northern India Regional Council

South Zone Study Group Meeting on FEMA – Latest Updates on ODI

On 10.5.2013 at the South Zone Study Group Meeting on FEMA – Latest Updates on ODI, CS Vipin Gupta was the speaker.

Vaishali Study Group Meeting on Practical aspects of Drafting - Corporate Legal Documents

On 11.5.2013 the Vaishali Study Group organised a Meeting on Practical aspects of Drafting - Corporate Legal Documents. Wajeeh Shafiq, Advocate, Supreme Court of India was the speaker.

Campus Placement for newly admitted Members

On 11.5.2013 the Regional Council organised Campus Placement for newly admitted Members.

West Zone Study Group Meeting on Secretarial Audit

On 19.5.2013 at the West Zone Study Group Meeting on Secretarial Audit, CS (Dr.) S. Chandrasekaran was the speaker.

Study Circle Meeting on Evolution to a Revolution: The Power to Speak

On 24.5.2013 at the Study Circle Meeting on Evolution to a Revolution: The Power to Speak Dr. Meraj Hussain, Member, Film Censor Board, Ministry of I & B, Govt. of India was the speaker.

North Zone Study Group Meeting on Labour Laws & Compliances

On 26.5.2013 at the North Zone Study Group Meeting on Labour Laws & Compliances CS Saurabh Ahuja was the speaker.

Meeting of Company Secretaries in Practice on Going Global - Setting up Venture outside India and Raising Foreign Currency Loans

On 27.5.2013 at the Meeting on the above topic CS Atul Mittal was



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the speaker.

East Zone Study Group Meeting on Overseas Direct Investment

On 31.5.2013 at the East Zone Study Group Meeting on Overseas Direct Investment CA Deepender Agrawal was the speaker.

Career Awareness Programmes/ Career Fairs

The Regional Council organised seven Career Awareness Programmes/Career Fairs during the month of May, 2013 in various schools and colleges located in and around Delhi. CS Shiv Tyagi, Laxman Dev and Himanshu Sharma addressed in these programmes/fairs. The students were apprised about the mode of registration in the course, syllabus, structure of the course and also the avenues available after completion of the Company Secretaryship Course both in employment and in practice.

Meeting with the President, Vice-President, Council Members and Secretary of the Institute

The Office-bearers and Regional Council Members of NIRC met S N Ananthasubramanian, President, Harish K Vaid, Vice-President, Nesar Ahmad, Immediate Past President and M S Sahoo, Secretary, the ICSI to discuss the matters of professional interest both for members and students and manpower and infrastructure requirement of the Regional Council. President and Vice-President assured their full support in all the endeavours of NIRC.

ICSI Convocation

On 25.5.2013 the ICSI Convocation – Northern Region 2013 was organised at Manekshaw Auditorium, New Delhi. Justice Dilip Raosaheb Deshmukh, Chairman, Company Law Board was the Chief Guest on the occasion. CS Sutanu Sinha declared the Convocation open. CS M G Jindal, Chairman, NIRC said that the Convocation is a special occasion in the life of the Institute and the students. It marks the culmination of a phase of learning. He congratulated all the members for getting their membership certificates. He advised them that learning is a never ending process. At every stage of life, there will be opportunities to learn and suggested them to keep an open mind and equip to face the challenges of life with poise, sincerity and courage.

CS Sanjay Grover, Council Member, the ICSI in his welcome address congratulated the new members and said that the new members will be part of a great transition from Company Secretaries to Corporate Governance professionals. He suggested that new members should recognise failures and obstacles in their path and learn from their mistakes and mistakes of others. He also suggested them to be ready to face the new phase of professional pursuit.

CS Harish K. Vaid, Vice President, the ICSI in his address congratulated the members & said that it is our attitude that determines the altitude to which we could reach. Similarly, it is our attitude and not the aptitude that could determine the altitude. Attitude determines the lifestyle of a person and it develops when perception is followed by projection, planning and actioning. Our attitude towards life can have a significant positive impact on shaping our quality of life. He said that a positive and proactive attitude always leads to success. It is thus, important to develop a positive attitude. He emphasized that clearly defined goals, positive attitude and faith in one's capabilities, supported by an untiring commitment and toil could create wonders.

CS S.N. Ananthasubramanian, President, the ICSI congratulated the new members and advised each one of them that they should consider investing in themselves so as to witness the transformation which will happen in each one of them. He said that before starting investing a SAP - Self Awareness Programme to identify traits, sweet-spots, strengths etc., should be undertaken. This investment could be anything; it may be in the form of additional languages, grooming skills, dramatics, music and many more because as one grows in life, the need to keep reinventing oneself is far more paramount. He further said that with this investment which is essentially long term, one will gain market appreciation over time like companies which practise good governance gain in their value over time and provide long-term gains in the form of dividends and price-appreciation. He also added that the need to remain credible is the most critical challenge today as your words hold out for you, your employers, your clients etc. Being credible is nothing else but doing what you say and saying what you do. The ability to distinguish between right and wrong has always been the most challenging assignment in life which is never taught in the classrooms.

Justice Dilip Raosaheb Deshmukh, Chairman, Company Law Board, in his address said that we all recognize the critical role that education and good governance play in the development of a nation. Being the prime mover of the progress of a country, it is but a critical role that the young professionals need to play in the development and governance of the corporate sector. India is in the process of fast and radical change, a process which is unstoppable. However, change is occurring at very different speeds in each segment of society. The successful management of this change is the biggest challenge for all of us. Today company secretary is called as the conscience keeper, the time keeper for all the various compliances that need to be adhered to and therefore in the last decade in India, the Job, the profile, the scope of work and the importance of the responsibilities that the company secretaries handle has grown rapidly. He said that as we enter an era where we are looking to have a regulatory regime that is more compliant to the practices around the globe, it is important for us to keep ourselves completely updated.

The new members were invited to receive the Certificates of



Membership from the Chief Guest, President and Vice President. Thereafter meritorious students were invited to receive their awards.

CS Sutanu Sinha while making the concluding remarks advised the students that they should take care of the performance in whatever they do and the wealth would take care of itself. He reiterated the fact that the path to success is through hard work and perseverance and not through accumulation of wealth. At the end, he offered his best wishes to the new members for their bright & successful career. He declared the Convocation as closed.

Valedictory Session of 175th MSOP

On 23.5.2013 the Valedictory session of 175th MSOP was organized by NIRC-ICSI at ICSI-NIRC Building, New Delhi. CS O P Sharma, VP (Corporate Affairs) and Company Secretary, A.B. Hotels Ltd. was the Chief Guest on the occasion. CS M G Jindal, Chairman, NIRC while addressing the participants said that there is no substitute for hard work and the participants are free to choose between employment and self-employment. He strongly recommended for reading Chartered Secretary the monthly journal of the Institute for corporate professionals.

CS Deepak Kukreja advised the participants that they should follow the tips given to them by senior faculties. He stressed on providing quality service/advice to the corporates/clients. He said that as a professional we should update our knowledge with the changing laws. He also advised them to be positive for their future career.

CS Rajiv Bajaj, Immediate Past Chairman, NIRC-ICSI said that industry looks for excellent professionals and there is scarcity of them. He advised the participants to grab every opportunity whichever comes on their way and then try to excel. He said that nobody follows the managers, people follow the leaders and suggested them to inculcate the qualities of good leader.

CS O P Sharma, VP (Corporate Affairs) & Company Secretary, A.B. Hotels Ltd., congratulated the participants for completing their last leg of training i.e. MSOP. He said that budding professionals always remain in dilemma whether to opt for service or do their own practice and suggested them that this is the right time to decide their interest area and work upon it from the very beginning of their career. He intimated that compliances are very difficult in Public Sector Undertakings. He suggested them to be positive and always try to come out with the solution to the problem given after going through the books. He also advised them to be focused and loyal towards their organizations.

CS Shyam Agrawal, Vice Chairman, NIRC-ICSI advised the participants to be updated while giving professional advice to their clients. He also advised them to use social media very carefully.

Inauguration of 176th MSOP

On 4.6.2013 the NIRC-ICSI inaugurated 176th MSOP at ICSI-

NIRC Building, New Delhi. CS N C Maheshwari, Chairman, Farsight Group was the Chief Guest & CS M S Rathore, Vice President Legal & Corporate Communication, Chambal Fertilizers & Chemicals Ltd. was Guest of Honour. The programme was inaugurated by the Chief Guest, Guest of Honour & Regional Council Members present.

CS Avtaar Singh initiated the proceedings of the programme.

CS Shyam Agrawal while addressing the participants said that the Institute has reached to this level because of the sincere and dedicated efforts of the senior members. He emphasized on maintaining decorum and discipline during the 15 days of Management Skills Orientation Programme. He advised the participants to take full advantage of MSOP.

CS Deepak Kukreja while delivering his address congratulated the participants for passing CS Professional examinations and joining Management Skills Orientation Programme. He said that for next 15 days all the participants will be students but after the completion of MSOP they will be treated as Members of ICSI and industry expect a lot from our young professionals. He suggested the participants to be attentive and responsive during MSOP.

CS M S Rathore while addressing the participants said that they are the future of India and Nation looks at them with high hope. He encouraged the participants to compete in the open market. He said that participants to be in demand should sharpen their skills. He congratulated the Institute of Company Secretaries of India for having such a huge number of female members. He advised the participants to look beyond secretarial work.

CS N C Maheshwari while delivering his address congratulated the participants for joining MSOP. He emphasized on the art of negotiation and said that we should not demand the work rather command the work. He informed that the role of Company Secretary has changed from Chief Compliance Officer to Chief Governance Officer. He made the participants aware about the Board Room Manners and importance of Body Language.

CS Manish Gupta suggested the participants to freeze their decision regarding whether to go in practice or job during these 15 days only otherwise it will be too late. He advised them to be updated always.

H P State Conference

On 8.6.2013 the NIRC of the ICSI organized H P State Conference on 'Company Secretary – Partnering Corporate Growth' at Shilon Resort, Shimla. Maneesh Garg, IAS, Secretary (Finance, Language, Art and Culture) and Advisor Planning was the Chief Guest and Dr. Raj Singh, Registrar of Companies, Punjab, Chandigarh & HP was the Guest of Honour on the occasion. The Conference was attended by a good number of members and students.



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Inaugural Session: CS Vineet Chaudhary, Chairman, Professional Development & Programmes Coordination Committee, NIRC anchored the inaugural session of the conference. The HP State Conference was inaugurated by the Chief Guest, Guest of Honour & other Central Council, Regional Council and Managing Committee Members of the Shimla Chapter. CS M G Jindal, Chairman, NIRC in his welcome address said that due to expansion of business and increased number of regulations there is no dearth of opportunities for competent professionals. He said that the Company Secretaries are playing vital role in strategic planning and management apart from assisting the top management. He also said that to become a successful Corporate Executive or a promising professional, not only academic and technical excellence but a winning attitude is also required.

CS Nesar Ahmad, Immediate Past President, the ICSI, spoke on the role & importance of Company Secretaries in the Corporate Growth. He informed that Profession of Company Secretaries is expanding its wings at the Global Fora.

Dr. Raj Singh, Registrar of Companies, Punjab, Chandigarh & HP addressed the august gathering and mentioned that the profession of company secretaries has grown by leaps and bounds. He informed that Government has approved setting up of ROC Office in Shimla with which compliance and corporate governance will improve. He appreciated holding of HP State Conference at Shimla which gives opportunity to local persons to learn and also brand building of the profession in small states.

Maneesh Garg, IAS, Secretary (Finance, Language, Art and Culture) & Advisor Planning said that ensuring Corporate Growth requires not only compliances but also taking care of social, environmental and other issues. He appreciated the role and functions of Company Secretary who he said has double role of ensuring compliances and also serving the profession with ethics. He said that for growth of the economy we need to develop confidence level for governance and here comes the role of company secretaries.

First Technical Session: CS Deepak Kukreja, Regional Council Member, NIRC anchored the first technical session of the Conference. The first technical session was addressed by Nesar Ahmad, Immediate Past President, ICSI on Opportunities for Company Secretary in Global Environment. Rajiv Bajaj, Associate Director & Company Secretary & CFO, Panasonic AVC Network India Co. Ltd. addressed the audience on Opportunities for Company Secretary – under New Regime.

Second Technical Session: CS Sudarshan Sharma anchored the second technical session of the Conference. Satwinder Singh, Partner, Vaish Associates, addressed on Compliance, Issue & Strategies – Inbound and Outbound Investments. Dr. Kulbhushan Chandel, Associate Professor, Faculty of Commerce and Management, HP addressed the audience on Harmonizing

Corporate Growth and Governance Issues.

Open House Session: At the end of the Conference, an Open House Session was held with CS Nesar Ahmad, CS M G Jindal and Regional Council Members and Managing Committee Members of Shimla Chapter wherein the queries of the members and students were suitably replied by all.

Chandigarh Chapter Seminar on Labour Laws & Statutory Compliances

On 31.5.2013 the Chapter organized a Seminar on Labour Laws & Statutory Compliances in PHD Chamber of Commerce & Industry.

The Chief Guest on the occasion was Justice Mehtab Singh Gill, Former Acting Chief Justice of Punjab & Haryana High Court. Justice Mehtab Singh Gill while presiding over the function advised to comply with labour laws or face the consequences. Emphasizing on the aspect of compliance, Justice Gill said that companies try all kinds of back-door methods to fulfill their compliance obligations under labour laws. But the litmus test arises when a company is embroiled in dispute and the matter is referred to court. The first question the court wants to know is whether the company has been complying with various laws applicable to it. If not, be ready to face the consequences. Quoting the unrest that unfolded at the Maruti plant in Haryana, Justice Gill said, "Had the management been vigilant, such labour unrest would not have occurred". Justice Gill also suggested, because of having to deal with multitude of labour laws, compliance sometimes remains incomplete. Therefore companies must seek professional legal advice.

Mukesh Sharma, Chapter Chairman in his address said that such seminars should be organized more often as they help bring to light the importance of various labour laws applicable to organizations.

The key speakers were Anupam Malik, Joint Labour Commissioner Haryana and Prabhjit Gill, Attorney and Founder - Evaluator. The speakers stated that Labour laws are extensive and sometimes considered non-core HR function. Effort must be made, either to have an in-house team dedicated to this function or have the entire function outsourced to a specialized firm. Where, there is an in-house team, the organization must get their books audited from a law firm.

All-in-all the seminar was an eventful one for employers as well as employees as they learnt how to work within the framework of law. It was attended by more than 140 professionals, auditors, industry experts, HR managers, entrepreneurs and students of the ICSI.

GURGAON CHAPTER Seminar on Foreign Exchange



Management Laws - Recent Developments

On 31.5.2013 the Chapter organised a full day seminar on Foreign Exchange Management Laws - Recent Developments at Gurgaon. CS Parvesh Kheterpal, Chapter Chairman while introducing the theme of the programme emphasized on the requirement for knowledge optimization of members by conducting programmes more specifically on topics which are connected with routine professional work like Foreign Exchange Laws etc. He apprised the members for the Corporate Membership Programme introduced by the Chapter and requested them to enroll themselves for the same. He also appealed to the attendees to become the member of Company Secretary Benevolent Fund (CSBF). The other speakers addressed on the occasion were CS Atul Mittal, Nihar Ranjan Sahoo, Chief Guest Sameer Choudhary. The programme was attended by more than 125 participants.

First Technical Session on Foreign Direct Investment: CS Parvesh Kheterpal chaired the first session. He shared few statistics on FDI in India and its structuring through various Tax heaven countries and countries under DTAA. CS Atul Mittal said that investing in India or setting up business in India is governed by rules and regulations under the Foreign Direct Investment (FDI) Policy issued and updated by Department of Industrial Policy and Promotion. FDI regulations allow investment in all industries except those in the negative list. Additionally, there are sectoral caps for investing in certain industries. FDI is not permitted beyond these caps. FDI can be brought into India through the automatic approval route and, for certain activities, on obtaining prior government approval.

CA Joy Jain, Founder-Joy Financial consulting (EX PWC Partner) highlighted on various aspects on Valuation under FEMA and shared his experience for the transactions/valuation by quoting case studies.

CS Saurabh Kalia, Partner Śastra Legal spoke at length on Contravention & Compounding under FEMA. He said that the provisions of Section 15 of FEMA, 1999 permit compounding of contraventions and empower the Compounding Authority to compound any contravention as defined under Section 13 of the Act on an application made by the person committing such contravention either before or after the institution of adjudication proceedings. 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 the view to: (a) minimize transaction costs; and (b) taking a serious view of the willful, mala fide and fraudulent transactions.

Second Technical Session on Overseas Direct Investment & ECB: CS Hitender Mehta, Co-opted member, Gurgaon Chapter and past Chairman-NIRC, chaired the Second Session. He shared his experience and apprised about the scope and involvement of

company secretaries relating to Investment outside India (ODI) and borrowings from outside India (ECB).

CA Vinod Jain, Founder, Inmacs Limited enlightened on Overseas Direct Investment (ODI). He said that since globalization of trade is a two-way process, integration of the Indian economy with the rest of the world with all its attendant benefits is achieved through overseas investment. It is the reverse of Foreign Direct Investment (FDI) i.e. Indian direct investment abroad. Joint Ventures/Wholly Owned Subsidiaries abroad promote economic co-operation between India and the host countries. CA Sujay Paul along with Rishabh, from KPMG spoke on External Commercial Borrowing (ECB). He said that External Commercial Borrowings (ECB) refer to commercial loans in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares) availed of from non-resident lenders. ECB can be accessed under two routes, viz., (i) Automatic Route and (ii) Approval Route.

Hari Bhaskar and Gaurav Verma from HSBC spoke on the topic FDI/ODI - Bankers Perspective. He gave tips for taking care of routine compliances in relation to FDI/ODI. He said that foreign direct investment (FDI) is an integral part of an open and effective international economic system and a major catalyst to development. Developing countries, emerging economies and countries in transition have come increasingly to see FDI as a source of economic development and modernization, income growth and employment. Countries have liberalized their FDI regimes and pursued other policies to attract investment. He said that overseas direct investment by Indian companies increased by 179 per cent to US\$ 3.30 billion in January 2013 (as against US\$ 1.18 billion in January 2012). In conclusion CS Hitender Mehta, thanked HSBC Bank for their support as well Sastra Legal as knowledge partner.

Career Fair and Career Awareness Programme

On 6. 4.2013 the Gurgaon Chapter participated in career fair at Salwan Public School. On 6.5.2013 a Career Awareness Programme was organized at CCA School, Gurgaon to make aware the students about CS as a career option after class twelve. Both the programmes were addressed by Animesh Srivastava, Executive Officer of the Chapter Office. A film on Company Secretary Career Opportunities was also shown to the students. Information brochures explaining CS course were distributed to the students.

Round Table Discussion on Governance in Provident Fund Law

On 3.5.2013 the Gurgaon Chapter organized a round table discussion on Governance in Provident Fund Law. This discussion was addressed by CS M K Pandey, Ex-Asst., Commissioner of EPFO, New Delhi. The discussion was focused on awareness of



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various laws and rules related with employee provident fund and working knowledge required for Company Secretaries. The discussion included areas like coverage, applicability and registration, membership & contribution, compliance and periodic returns, assessment and recovery proceedings, penal provisions, inspection and audit, types of claims, etc.

Study Circle Meeting on Effective Communication Skills

On 24.5.2013 the Gurgaon Chapter organized a study circle meeting on Effective Communication Skills and its importance for CS Professionals at the Chapter premises. CS Govind Mishra, Corporate Trainer addressed the meeting. He said that the job profile of Company Secretaries demand excellent communication skills with constant improvement in it.

LUCKNOW CHAPTER

New Era's Education and Career Expo 2013

On 15 and 16.6.2013 the Lucknow Chapter of NIRC of the ICSI participated in New Era's Education and Career Expo 2013 held at Hotel India Avadh, Lucknow. The ICSI stall was managed by Maitreya, Negi and S.M.Tiwari. There were around 30 stalls in the career fair. The ICSI stall was decorated with banners and posters of ICSI. Standee of ICSI was kept at a prime location to make sure it is visible to each and every one visiting the career fair. Students and Parents who visited the stall were counselled by Staff of Lucknow Chapter. The prospects of the profession along with admission procedure and fee structure were informed to all the students and parents who visited the stall during the career fair. Visitors to the ICSI stall were asked to write their name and contact details in the visitor book of the Chapter. CS Anuj Tiwari, Chapter Secretary and CS Aditya Agarwal, Chapter Treasurer visited the ICSI stall and had interaction with the students and parents present. They explained the students and parents about the role of Company Secretary along with the prospects of the profession, admission procedure, etc. More than 50 students visited the ICSI stall. CS

» Southern India Regional Council

Participation in the Times Education Boutique 2013

On 4 & 5.5.2013 the ICSI – SIRC participated in the Times Education Boutique – 2013, an education fair organized by the 'The Times of India' magazine at Chennai Trade Centre, Chennai. Around 100 students/parents visited the ICSI stall and around 40 students registered getting more information about the CS course.

Pamphlets explaining the course were distributed to the visitors of the stall. Dr.V.Balaji, AEO, ICSI–SIRC was present at the stall on both the days and disseminated information about CS course to the students and clarified their doubts.

Study Circle Meeting on Tax Planning – Salaries and Income from Profession

The ICSI – SIRC organized a study circle meeting on tax planning, which was addressed by CA Gopal Krishna Raju, Chartered Accountant & Treasurer, SIRC of ICAI, Chennai. Raju spoke elaborately on Tax rebate for resident individuals under Section 87A, non-taxable gifts, interest on borrowed capital under Section 24[b], wealth tax returns, 80CCG, which deals with Rajiv Gandhi Equity Savings Scheme and dividend from foreign subsidiary companies. The members actively interacted with the speaker.

Half Day Seminar on Technical Scrutiny of Balance Sheet and Impact of Related Party Transactions

On 30.5.2013 a half-day seminar on Technical Scrutiny of Balance Sheet and Impact of Related Party Transactions was organized by the ICSI – SIRC. CS Chandra B, Company Secretary in Practice, Chennai was the speaker for the first session. Chandra started with the powers exercised by the Central Government and the Ministry of Corporate Affairs pertaining to the technical scrutiny of balance sheet. She also explained that the objectives of technical scrutiny are to ensure the compliance with the provisions of the Companies Act, to ensure whether the balance sheet and profit & loss accounts present a true and fair view and to ascertain prima facie whether the company is run on sound commercial principles. On the requirements to become an expert in technical scrutiny of balance sheet, she opined that perseverance, knowledge of company law, knowledge of Accounting Standards and a very thorough knowledge of Schedule VI are the qualities to be required. Chandra then spoke on various points to be taken care in due course of technical scrutiny. She also threw light on the accounting standard based technical scrutiny. CS Dr. B Ravi, Company Secretary in Practice and Member, ICSI – SIRC the speaker of the second session in his usual authoritative command on the topic, spoke elaborately on related party transactions, its impact and implications. The members actively participated in the discussion which followed his speech. E Selvaraj, Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai was also present and wished the seminar a success.

HYDERABAD CHAPTER

Interactive meeting with RD (SER), MCA

On 24.5.2013 the Chapter organized an interactive meeting with N. K. Bhola, Regional Director, South Eastern Region, MCA. CS R. Ramakrishna Gupta, Chapter Chairman in his welcome address explained the need for organizing a session with Bhola and briefed



about the importance of the session. The members brought the practical and technical problems that they were facing, to the notice of N. K. Bhola who took note of the same. He then replied point by point. He also explained the backdrop of the circular how it had been conceived and drafted and how the same had been captured by MCA portal. He also explained in detail the proposed initiative to strengthen the system further. He concluded by stating that he would make every effort to resolve the issues that had been brought to his notice. Shasiraj Dhara, Assistant Registrar of Companies and Raja Gopal, Assistant Official Liquidator graced the occasion. Members actively participated in the interactive session.

Cricket Match

On 5.5.2013 the Chapter organized a Cricket match between ICSI Members XI v. MCA Officials XI at Sports Coaching Foundation. This outdoor programme attracted a lot of members. There was an enthusiastic response from both the teams and it was a great pleasure watching members and officials play by taking their precious time out. Earlier, the Cricket Match was inaugurated by N.K. Bhola, Regional Director, South Eastern Region, MCA and the N. Krishnamurthy, Registrar of Companies, Andhra Pradesh. The match was attended by large number of members and was a great joy.

Study Circle Meeting on Service Tax Negative List – approach towards Taxation

On 11.5.2013 the Chapter organized a Study Circle Meeting on Service Tax Negative List-approach towards Taxation. Guest speaker S. Suresh Kumar, Superintendent spoke on broad scheme of new taxation, What is service, consideration and how is the money value of non-monitory consideration determined, why negative list approach, how to decide an activity as taxable service and also emphasized on Negative list of services, declared services, Place of Provision of Service Rules, 2012, Valuation Rules with reference to works contract and hotels & restaurants etc. Members very actively participated in the interactive session and the speaker replied the queries raised by the participants.

KOCHI CHAPTER

Participation in Career Fair - Times Education Boutique 2013

On 11 & 12.5.2013 the Kochi Chapter of SIRC of the ICSI participated in the 2 days Times Education Boutique 2013 at Hotel Taj Residency, Ernakulam. During the 2 days programme, ICSI posters, banners, prospectus, brochures and journals were displayed in the stall for the information of the students and their parents. Course contents, course fees, library and oral coaching facilities of the Chapter were also informed to the visitors. All the visitors were invited to the chapter for spot admission. Sreekumar T.S., office in charge and Sureshkumar K.S. managed the stall and provided information to the visitors.

Professional Development Programme – Companies Bill 2012 – Secretarial Audit and Annual Return Certification

On 18.05.2013, the Chapter organized its 4th Professional Development Programme on Companies Bill 2012. The topics discussed were Secretarial Audit and Annual Return Certification. The speaker for the programme was CS J Sundareshan from Bangalore. The programme was very lively and the participants gave very good feedback.

Condolence Meeting on the Demise of Past Chairman

On 27.5.2013 CS T.S.K. Menon (88), former Chairman of the Chapter for the years 1996 and 2003 expired at his son's residence in Canada. On 31.5.2013 the Managing Committee of the Chapter organized a condolence meeting on the sad demise of CS TSK Menon, at its premises. Several senior members attended and shared the memories of CS T.S.K. Menon. Chapter Chairman CS Jayan K. presided over the meeting.

Professional Development Programme – Capital Mobilisation from Public for SMEs

On 6.6.2013 the Chapter organized a Professional Development Programme on Capital Mobilization from Public for SMEs at Kochi. The programme was led by CS V.S. Subash, Practising Company Secretary, Coimbatore. The programme was well attended by members and students. The programme benefited the members in giving a general idea of the separate listing procedure available for SMEs. It was acknowledged the need of more awareness programmes in rural areas to tap the capital for SMEs and to unleash the true potential for professionals.

Professional Development Programme - Equity Valuation - Beyond Financial Statements

On 14.6.2013 the Chapter organized a Professional Development Programme on Equity Valuation - Beyond Financial Statements at Kochi. The programme was led by Thomas Mathew and was well attended by members and students. The programme focused on the importance of qualitative and other practical aspects involved in the valuation process. There was an active interactive session with the speaker at the end of the programme.

MADURAI CHAPTER

Career Fair – The Hindu Education Plus

On 20.05.2013 the Hindu Education Plus conducted Career Counseling Fair 2013 in Tirunelveli. District Collector Samayamoorthy addressed the students accompanied by their parents and said that as India is an emerging economy students apart from their academic



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excellence should also develop entrepreneurship skills and must explore all the avenues available to them and should also be job provider and not job seeker. CS S.Kumararajan, Chapter Chairman enumerated various avenues available to the profession of company secretaries. Further the new Companies Bill 2012 is yet to come into play replacing the existing Companies Act, 1956 in which the role of company secretaries is widened. Apart from statutory compliance company secretary's role has been further widened as Key Managerial Personnel (KMP) in the company's administration. Further he also assured that company secretary ship guarantees high- paying jobs. T.Raja, Office In-charge coordinated the programme. CS

➤ Western India Regional Council

Management Skills Orientation Programme (MSOP)

From 17.5.2013 to 4.6.2013 WIRC of the ICSI organized its 29th MSOP at its premises. Hitesh Buch, Chairman, WIRC and Amit Kumar Jain, Regional Council Member and Chairman-TEFC were the Guests of Honour. The programme commenced by traditional lighting of lamp. Further both of them shared their thoughts and interacted with the participants. A group of expert professionals and Company Secretaries from different core areas belonging to employment and practice took various sessions of contemporary relevance like IPO, Compliance of Listing Agreements, Practical Aspects of Mergers and Amalgamations, Appearing before various judicial bodies, FEMA, Service Tax, Legal Drafting and writing skills, SMEs, practical aspects of Board Meetings, etc.

Sessions on Personality Development, Life Skills, Communication and Presentation Skills, Team Building and Leadership, Stress Management, Emotional Intelligence, Campus to Corporate etc. were also covered during the programme.

During the course of MSOP a visit was organized to National Stock Exchange and SEBI.

On 31.5.2013 the Project presentations were held. The group comprising Almas Badar, Dhvani Kothari, Manish Sindgikar and Rucha Jain whose Case Study Presentation was adjudged as the Best Case Study Group and Ankita Thakurdesai was adjudged as the Best Presenter.

On 4.6.2013 at the valedictory session of the MSOP Mukesh Bhanti, Ombudsman, Income Tax Department was the Chief Guest. Pramod Shah, Former Chairman, WIRC of the ICSI was also present on the occasion. Shah during his brief interaction explained various initiatives of the Institute. He also spoke on the significance

of reading and advised the participants to cultivate the art of writing and contribute various articles in academic magazines and journals. Bhanti during his valedictory address spoke on various initiatives of Income Tax Department and the role and functioning mechanism of Ombudsman. He also spoke about the origin of Ombudsman concept. In conclusion he said that one should enjoy the job and plan the routine activities in an orderly manner. Further the Chief Guest along with Pramod Shah and DVNS Sarma distributed the course completion certificates to the participants. The Chief Guest also presented the mementoes for the Best Presenter and the Best Participant. C. Rajesh Kumar was adjudged as the Best Participant of the 29th MSOP.

Programme on Cyber Laws - Important Insights for Company Secretaries

On 1.6.2013 the ICSI-WIRC organized a full day programme on Cyber Laws - Important Insights for Company Secretaries at its auditorium. The speakers for the programme were Subramaniam Vutha, N S Nappinai, Prathamesh Popat, Nandkumar Sarvade and Kishore Kanjilal. The programme was attended by members, professionals from various walks and students. All the sessions were interactive and the queries raised by the participants were replied satisfactorily by the speakers.

Half-day Programme on Foreign Direct Investment

On 20.4.2013 the ICSI-WIRC organized a half-day programme on Foreign Direct Investment at WIRC auditorium, Mumbai. The speakers for the programme were Jayesh Thakur and Rajesh Athavale, Partners, M/s B K Khare & Co., Mumbai who covered topics such as Outbound and Inbound Regulations under FEMA. The programme was well attended and the speakers responded to the queries raised by the participants satisfactorily.

Programme on Enhance Your Effectiveness (EYE)

On 27 and 28.4.2013, and on 4 and 5.5.2013 the Regional Council organized its first ever Programme on Enhance your Effectiveness (EYE) at WIRC auditorium, Mumbai. Pramod Palekar, Managing Director & Principal Faculty of Sumances Consultrainers Pvt. Ltd having rich experience of over three decades was the faculty. The programme was basically of an experiential learning mode and the participants were restricted to 27. Various aspects pertaining to the theme including How to Build Self Confidence, Body Language, Business Etiquette, How to Think Positive, Goal-setting, Good Relationship – Secret to success, Techniques for Presentation Skills and use of Audio Visual Aids, How to Develop Creativity in Communication, How to Create Humor in Speeches, How to Generate Audience Interest etc. were covered during the course of the programme. The sessions held on Public Speaking Skills on the first and last day, video shooting was done where the participants got an opportunity to identify their shortcomings and improve upon the same.



On 5.5.2013 at the valedictory session Prakash Pandya, Regional Council Member and Chairman, Professional Development Committee (PDC) delivered the valedictory address. He said that such type of sessions are required to sharpen ones hidden skills and suggested the participants to practice regularly all the soft skills which they have learned during the 4 day programme. Certificate of Participation was issued to the participants during the valedictory session. Sameer Shelar assisted Palekar during the course of the programme.

Programme on Practical Aspects of Mergers & Demergers

On 4.5.2013 the WIRC of the ICSI organized a Full Day Programme on Practical Aspects of Mergers & Demergers at Maharashtra Chamber of Commerce, Agriculture & Industry, Mumbai. The Speakers for the programme were Mahavir Lunawat, Director, Sarthi & Past Chairman, ICSI-WIRC, Kalidas Ramaswami, Vice President & Company Secretary, Reliance Power Ltd, Sharad Abhayankar Partner, Khaitan & Co and Surendra Kanstiya, Practising Company Secretary & Former Chairman, Consumer Guidance Society of India (CGSI) who covered various topics such as Overview of Mergers and Demergers, Tax related aspects of Mergers & Demergers, Legal aspects/Court Proceedings with regards to Mergers and Demergers & Combinations under the Competition Act, etc.

The queries raised by the participants were responded by the speakers. The programme was well attended by members and students of ICSI, other professionals etc. from across the region.

Programme on Buyback, Insider Trading and Takeovers

On 11.5.2013 the WIRC of the ICSI organized a Full Day Programme on Buyback, Insider Trading and Takeovers at M C Ghia Hall, Mumbai. The speakers for the programme were Robert Pavary, Practising Company Secretary, Yogesh Chande, Associate Partner, Economic Laws Practice, Advocates and Solicitors Bhagirat B Merchant, Chairman, Tarragon Capital Advisors (India) Pvt. who covered various aspects of the subject including Practical Aspects of Buyback, Insider Trading Strategic Intent of Mergers & Acquisition etc. In conclusion, the speakers responded to the queries raised by the participants. Hitesh Kothari, Regional Council Member in conclusion also explained about the Company Secretaries Benevolent Fund (CSBF).

28th Management Skills Orientation Programme (MSOP)

From 29.4.2013 to 16.5.2013 the Regional Council organised its 28th Management Skills Orientation Programme. N.L.Bhatia, Former Chairman ICSI-WIRC & Practising Company Secretary was the Guest of Honour and delivered the inaugural address. During his address he spoke on the changes and scope which he has seen in the profession in last four decades. He also spoke on Secretarial Standards and how to interact with seniors. He focused on various

skills which an individual has to possess in order to be a successful professional. The 15 days of MSOP was a proper blend of Soft Skills & Technical Sessions where various topics like Communication & Presentation Skills, Etiquettes, Emotional Intelligence, Stress Management, From Classroom to Boardroom, FEMA, Appearing before various judicial bodies, IPO etc. were covered. A visit was also arranged to NSE and SEBI during the course of the programme. A session on Practical aspects of Board Meetings was also held during the programme.

On 15.5.2013 the Case Study Presentations were held. The group comprising Kaushal Shah, Madhuri Survase, Pooja Bagwe, Nidhi Chowdhary was adjudged as Best Case Study Group and Shruti Chopra was adjudged as the Best Presenter.

On 16.5.2013 at the Valedictory session Hitesh Buch, Chairman WIRC and Amit Kumar Jain, Chairman-TEFC, ICSI-WIRC were the Guests of Honour. Amit Kumar Jain during his remarks opined that Company Secretaries should go far beyond the conventional Secretarial activities. Hitesh Buch after complimenting the participants on the completion of 15 days training spoke on the novel dimensions of the profession and cautioned the participants about the challenges. He said that professionals should develop cope up mechanism to face and withstand any challenge and should thrive to achieve success. Pooja Bagwe was adjudged as the Best Participant of the 28th MSOP.

Ahmedabad Chapter

Study Circle Meeting on Import of Capital Goods at Concessional Rate of Customs Duty under EPCG Scheme

On 1.6.2013 the Chapter organized a Study Circle Meeting on the above topic under the leadership of CS Rohit Dudhela, Chairman, PCS Committee of Ahmedabad chapter. CA Vipul Khandhar addressed on the occasion. The meeting was held to understand and discuss in detail the integrity of the relevant provisions with regard to Import of Capital Goods at concessional rate of customs duty under EPCG Scheme of Import – Export Policy. The study circle session was attended by 53 Members who were allotted 01 PCH.

Study Circle Meeting on Renewable Energy Policy of Government of Gujarat & Government of India

On 6.6.2013 at a study circle meeting held at Gandhinagar, CS Nayan Chokshi, Company Secretary & Chief Project Officer, Gujarat Power Corporation Limited while discussing the topic briefed the participants that in April, 2006 Dr. APJ Abdul Kalam the then President of India emphasized Solar Energy whilst inaugurating the World Renewable Energy Conference at New Delhi – setting the Solar Energy Generation Target at 50,000 MW. Later on the GERC order of January, 2010 offered a very attractive Feed in Tariff of Rs. 15/kwh for the first 15 years and Rs. 5/kwh for the next 13 years.



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With these gradual developments Solar Energy Association of Gujarat was formed and launched in January, 2011. He discussed the trials and tribulations of Solar Developers, Challenges of Land Procurement, Constraints to be overcome for Converting Future Solar Dreams to Reality and Drivers for Future Solar Dreams to Reality. The study circle was attended by 14 Members.

Study Circle Meeting on Provisions related to Incorporation and Management of Section 25 Company

On 8.6.2013 the Chapter organized a Study Circle Meeting on the above topic taken by CS Rohit Dudhela, Practising Company Secretary and Member of the Managing Committee and Chairman - PCS Committee of Ahmedabad Chapter of WIRC of the ICSI. The meeting was arranged to spread awareness to our professional colleagues regarding provisions related to incorporation and management of Section 25 Company. The meeting was useful to understand and discuss in detail the integrity of the relevant provisions with regard to incorporation and management of Section 25 Company under the Companies Act, 1956. The study circle session was attended by 62 Members who were allotted 01 PCH.

Study Circle Meeting on MS Excel as a Secretarial Tool

On 15.6.2013, A study circle meeting was arranged by the chapter under the leadership of CS Rohit Dudhela, Chairman, PCS Committee of the Chapter. CA Vishal Langalia, an expert in using MS EXCEL addressed on the topic. We, as professionals use MS Word for preparing Resolutions, minutes, annexures etc. However we face huge challenges at the time of authentication of the routine templates being used by trainees or other staff members. With use of MS EXCEL one can speed up the process with minimum margin of ERRORS. In this way MS EXCEL can be used as Capacity building tools for the members - both in practice or in service. It is also possible to create Dynamic Forms for Resolutions, minutes, annexure etc. using Google Spreadsheet which will transform the way our offices actually work. The speaker deliberated on the above topic with few live demonstrations at the Meeting. The study circle session was attended by 50 Members who were allotted 01 PCH.

Meeting with Officials of SK Patel College, Gandhinagar

ICSI-CCGRT in association with GKS (Gujarat Knowledge Society) with an objective of bridging the gap between educational system and industries and in order to overcome employment came up with a revolutionary measure to bridge the gap between requirements of educational system and industries. Gujarat Knowledge Society aims to empower the youth for accessing better employment opportunities in the age of knowledge based economy. The ICSI - CCGRT initiated with GKS, a customized short term 3- days workshop on Securities Markets, Company Law and Financial Accounting. This is designed to develop understanding among youth; especially targeting commerce graduates to enhance their skills and generate

greater employability. Towards this CS Umesh Ved, Council member, CS Chirag Shah, Past Chairman, CS Chetan Patel, Chairman, Pratima Sanghvi, Research Officer and Anu Varghese, Executive Officer had a meeting on 20. 6. 2013 with the officials - Dr. Ramakant and CS Jayesh Tanna of S.K.Patel College at Gandhinagar. The SKPIMCS was established in the year 1998 for education and training of professionals for careers in management and computer studies. The institute is approved by the All India Council for Technical Education (AICTE) and a constituent of Kadi Sarva Vishwavidyalaya.

Career Awareness Programme

On 20.6.2013 Council Member CS Umesh Ved, Past Chairman CS Chirag Shah, Chairman CS Chetan Patel, Research Officer Pratima Sanghvi and Executive Officer Anu Varghese had a meeting on 20.6.2013 with the officials - Dr. Ramakant and CS Jayesh Tanna of S.K.Patel College, at Gandhinagar, with regard to 3 days workshop. During the meet the Chapter got an opportunity to impart knowledge about Company Secretaryship course to the students of BBA/Management course students. The career awareness with regard to CS course was given by CS Umesh Ved, Council Member ICSI, to BBA students pursuing third year. He shared the knowledge and importance of Company Secretaries Course in the development of a Company Secretary profession and also expressed his views on the future prospects of the profession. The career awareness with regard to CS course was given by CS Chirag Shah, Practising Company Secretary and Past Chairman Ahmedabad Chapter, to BBA students pursuing second year. The speaker briefed on the role of Company Secretary and its importance in present time. He also detailed on the course contents and future prospects of the profession. The career awareness with regard to CS course was given by CS Chetan Patel, Chairman Ahmedabad Chapter to BBA students pursuing third year. He informed the students about the fee structure and benefits of CS course. The students were also briefed about the placement assistance provided by the Chapter/RC/ICSI. The career awareness with regard to CS course was given by Pratima Sanghvi, Research Officer to BBA students pursuing second year. Anu Varghese, Executive Officer of the Chapter Office of the ICSI briefed about the cut off dates of registration and examination enrolment procedures and about various trainings, to BBA students. The students were given awareness regarding the website of the ICSI to generate any information regarding registration and other details. The strength of BBA students were around 110 in each class.

Study Circle Meeting on Understanding Competition Law

On 22.6.2013 the Chapter organized a Study Circle Meeting on the above topic under the leadership of CS Rohit Dudhela, Chairman, PCS Committee of the Chapter and addressed by CS Joel Evans. The meeting was useful to understand competition among economies of developed as well as underdeveloped countries at national and international level, it is imperative as a professional to understand the pros and cons of the existing Competition Law in



India as applicable to business enterprises. The session was attended by 56 Members who were allotted 01 PCH.

Two Days Career Fair

On 31.5.2013 and 1.6.2013 the Ahmedabad Chapter of WIRC of the ICSI participated in two days Education and Career Fair organized by Pathway Group at Gujarat University Convention Hall at GMDC Ground. The institutes from different educational sectors participated in the fair. The ICSI stall was manned by CS Vatan Rao, CS Ronak Doshi, CS Deepa Methwani and CS Vaishali Shah to counsel the visitors regarding CS technical queries and to guide them. The staff of Ahmedabad Chapter – Rohit Khunt, EO Anu Varghese and Navin Dongre were also present to brief about the administrative and queries related to student services. The parents and students were informed about the prospects of the profession of CS, cut off dates for registration & enrolment along with fee and other details. The information about the role of Company Secretary was given to around 256 visitors.

Campus Placement

On 17.5.2013 the Chapter organized Campus Placement at its premises, wherein companies like Gujarat State Seeds Corporation Limited, Gujarat Venture Finance Ltd (GVFL), Asian Granito India Limited, Sterling Addlife India Ltd., Shanku's Pharmaceuticals, Shankus Acme Pharma Pvt. Ltd. and Sahajanand Laser Technology Ltd., participated. The company executives interviewed and selected CS Students as Trainees for 15 months apprenticeship. The first campus placement held at Ahmedabad Chapter under the guidance and leadership of Chairman, CS Chetan Patel and Secretary, CS Rajesh Tarpara, was successful with good results.

Study Circle Meeting on Talk on Listing of Securities with CSE

On 22.5.2013 the Chapter organized a Study Circle Meeting addressed by Madhav Reddy-CEO/MD, Calcutta Stock Exchange. The meeting was on the recent scenario of losing importance by the Regional Stock Exchanges. The speaker focused that at present NSE and BSE are the prime stock exchanges of the country, however Calcutta Stock Exchange has still maintained its popularity among listed companies. He deliberated that after two major stock exchanges, Calcutta stock exchange is the most preferred exchange for listing of securities. The study circle session was attended by 67 Members who were allotted 01 PCH.

Meeting for Joint Programme of ICSI-CCGRT wiith GKS

On 4.5.2013 a meeting was held at Ahmedabad Chapter, between the Chairmen of ICSI Chapters of Gujarat Region and Chairman ICSI - CCGRT – CS Umesh Ved, regarding the joint programme of ICSI-CCGRT with Gujarat Knowledge Society. The meeting was held to discuss the proposed three days' workshop on Secretarial Practice in association with GKS (Gujarat Knowledge Society). The joint programme is an initiation by ICSI-CCGRT wherein the details of reading material Tentative Date Schedule, proposed programme

structure, Discus Role and Responsibilities of CCGRT and Respective Chapters, Identification of faculties in respective zone, any other things arising out of the discussion with the consent of Umesh Ved.

RAIPUR CHAPTER

Study Circle Meeting on Merger and Amalgamation

On 2.6.2013 the Chapter organised a Study Circle Meeting on Merger and Amalgamation at Pandri, Raipur. Chapter Chairman, Y.C. Rao was the speaker and 30 members attended the study circle.

Seminar on Union Budget 2013-14

On 3.3.2014 the Chapter organised a seminar on Union budget 2013-14. The speaker was CA R.B. Doshi & CA Bhishma Ahluwalia.

Seminar on the Companies Bill, 2012 and Corporate Governance v. Bhagwad Gita

On 18.2.2013 the Chapter organised a seminar on Union Budget 2013-14. Dr. PVS Jagan Mohan Rao, past President, the ICSI was the speaker. Sixty five members attended the seminar.

CS



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ICSI - CCGRT

Two Day Programme on Achieving Excellence in Practice

The journey of a Practising Company Secretary began on 15.6.1988 when the Companies Act, 1956 was amended to define for the first time the secretary-in-whole-time practice, to grant first statutory recognition to the practising company secretaries for various certifications and also to recognise them for making a verified declaration in respect of registration of a company.

It has been 25 years since and to commemorate this silver jubilee occasion, ICSI-CCGRT conducted 2 days Programme on "Achieving Excellence in Practice" at its premises in CBD Belapur, Navi Mumbai.

The Guest of Honour on the occasion was P Vijay Bhaskar, Executive Director, Reserve Bank of India who inaugurated the programme. P Vijay Bhaskar, in his address on the theme 'Professional Excellence', while quoting the verses from Shrimad Bhagvat Gita and words of Swami Vivekananda, briefly defined and described the two important words of profession and excellence and its essential ingredients. He highlighted the generic principles of human excellence viz. harmonization of 3Qs – Intelligence Quotient, Emotional Quotient and Spiritual Quotient and derived the principles of professional excellence therefrom. Bhaskar stated that hard skills are relatively easy while soft skills, by and large, are hard to develop. To effectively play the dual role of both the principal and agent of one's customers, while all along maintaining a sense of ethics and values is a feat which is akin to walking on a razor's edge. While wishing the Institute on Silver Jubilee, he hoped that the Institute would throw light on a path which would enable all the professionals of the Institute to walk the razor's edge continuously and consistently without any slip up.

M S Sahoo, Secretary, the ICSI in his thought provoking key-note address outlined the change in attitude, skill, experience and commitment required by the Company Secretary on his journey from a Compliance Professional to a Governance Professional. He also threw light on status of the Company Secretaries in current scenario and recognitions granted to them till date.

Harish K Vaid, Vice President, the ICSI gave a snapshot of the growth of the Practising Company Secretary from 1979 when the first certificate of practice was issued and discussed the challenges and opportunities to the Company Secretaries over 25 years from 15th June, 1988 when the first statutory recognition was granted to Practising Company Secretary. In conclusion, he thanked CCGRT for providing the platform to share 25 years of pleasant reminiscences of practicing company secretaries.

Other eminent speakers who enriched the gathering on the 1st day were S. D. Israni, Former Council Member, ICSI who spoke on Soft

Skills, Setting up of practice and infrastructure requirement thereof, Shailashri Bhaskar, PCS and Former Dy. General Manager, SEBI who discussed Due Diligence in IPO & FPO, C. L. Baradhwaj, Sr. Vice President-Compliance, Bharti Axa Life Insurance Company Limited who threw light on Emerging areas of practice in Insurance, Subramaniam Vutha, Advocate, Subramaniam Vutha & Associates who explained the Role of Company Secretary in IT and IPR and M. V. Phadke, Chief General Manager – Legal, IDBI Bank Ltd. who elaborated the Role of Company Secretary in Project Finance and Loan Documentation.

On the second day, Vikas Khare conducted a session on Soft Skills – How to make effective presentation, Opinion Writing, Business Etiquettes which is the Essence of Professional Life, N. L. Bhatia, PCS, Mumbai spoke on methodologies to carry out Secretarial Audit, B V Dholakia, Practising Company Secretary threw light on the challenges faced by PCS and their position before 25 years, Mahesh Athavale, Past President, ICSI emphasised the importance of code of conduct in one's life, Keyoor M. Bakshi, Past President, the ICSI discussed Due Diligence in Takeovers and Sudhir Babu and R. Sridharan, Council Members of ICSI spoke on Disciplinary Action and Peer Review respectively.

During the momentous occasion of the programme, an MOU was also signed between The Institute of Company Secretaries of India (ICSI) and Indian Institute of Banking and Finance (IIBF) for jointly offering a certification course namely 'Banking Compliance Professional', inter-alia, for the members of ICSI. This was signed by M S Sahoo on behalf of ICSI and R Bhaskaran, CEO, IIBF in the presence of S N Ananthasubramanian, President, the ICSI and Dr. K Ramakrishnan, CEO, Indian Banks' Association.

Two days Certificate Programme on Securities Law Documentation

On 8 and 9.6.2013, ICSI-CCGRT in collaboration with National Institute of Securities Markets (NISM), an Educational initiative by SEBI conducted a unique Two Days Certificate Programme on Securities Laws Documentation at the ICSI-CCGRT Training Hall in CBD Belapur, Navi Mumbai.

P C Singh, Director - General Counsel, Credit Suisse Securities (India) Pvt. Ltd., Mumbai was the Chief Guest on the occasion who inaugurated the programme. The speakers for the programme were Sunil Kadam, General Manager, Securities and Exchange Board of India (SEBI), Sudhir Bassi, Executive Director – Capital Market, Khaitan & Company, Bhushan Mokashi, Assistant General Manager & Head Listing Sales, BSE Limited, Dara J Kalyaniwala, Vice President-Investment Banking, PL Capital Markets Pvt. Ltd. Mumbai and Dr. Sunder Ram Korivi, Dean, NISM. Dr. Sunder Ram Korivi was also the coordinator of the programme who set the tone to the proceedings and explained the theme of the programme.

P C Singh, in his introductory remarks, pointed out that securities law documentation has come a long way and become more difficult



especially after the replacement of SEBI (DIP) Guidelines by SEBI (ICDR) Regulations. To simplify, he clarified the underlying principle of securities law documentation i.e. the information should remain the same for all. In this context, he said that it is expected from professionals like company secretaries that they protect not only the company's interests but also the investors' interest. He advised the participants to interact with the regulators as much as possible to improve the quality of documentation and ensure that they are in the right direction. In conclusion, he thanked ICSI-CCGRT and NISM for giving him such wonderful opportunity and requested the participants to make best use of the programme.

Sudhir Bassi took through New Issues from a Legal Perspective with particular reference to due diligence in the documentation. He said that before the constitution of SEBI, the offer documents used to be just about 20 pages. It has come a long way since then and now it has become bulky, the objective being the overall development of capital markets. Consequently, the work of practitioners has become more difficult in the sense that he/she needs to provide adequate and quality information. He then discussed the standards of diligence, parties involved in due diligence, classification of information in the offer documents viz. expertised and non-expertised portion and the liability of the issuer/practitioners thereof with reference to actual case laws. He advised the practitioners to prepare bring-down checklist to get information from companies which would also act as a defense for them if anything goes wrong.


Bhushan Mokashi and his colleague Nitin spoke on listing of IPO/FPO shares at BSE and reviewing documents thereof. While discussing the eligibility and other requirements for listing of shares in BSE, they pointed out that exchange permission/approval needs to be taken for DRHP before going to SEBI. They listed out certain important documents/information which are reviewed by the exchange at various stages of listing process i.e. In principle approval Stage, Issue Opening Stage, Basis of allotment Stage, Listing & Trading Approval Stage. Some of these documents/information include Pre IPO Corporate Shareholding, Corporate Governance Certificate (u/c 49), Material Development between filing of DRHP and In Principle Approval, Details Of price band, issue opening and closing date, etc., Verification of restrictive clauses in MOA & AOA, Confirmation of dividend payment, Compliance with LA clauses, Basis of Allotment calculation sheet signed by all parties, Certificate from Merchant Banker of receipt of minimum subscription, Listing Agreement with signature and common seal, Board resolution, Letter of application as prescribed by SEBI, Confirmation from PCS for lock-in & basis of allotment etc. They also discussed about the Listing Ceremony and Discovery of Price which takes place between 9.15 A.M. to 10 A.M. on the day of listing after which regular trading starts at 10 A.M.

Sunil Kadam, General Manager, Securities and Exchange Board of India (SEBI) threw light on the Diligence aspects of Offer Document from a Regulator's perspective. He explained the need for and role of regulator in capital markets viz. regulation of companies,

intermediaries etc. and more importantly, investor protection. He then discussed some of the major discrepancies observed by SEBI in the Offer Documents which should be avoided and pointed certain aspects which the regulator look into in the markets viz. circular transactions, sudden spurt in business, audit report etc. He also spoke on the measures introduced by SEBI for market improvement and investor protection, the recent ones being safety net mechanism, forensic accounting cell etc. While sharing his practical experiences, he spoke about the Sahara Case, Jhaver Habib Case and opined that it is the professionals like company secretaries who need to convey and make the corporates understand about the regulator's intention of investor protection and lend a hand to the regulators in ensuring the same.

On the 2nd day, Dr. Korivi conducted a session on Drafting Trust Deed and Objects Clause of a Mutual Fund. He initiated the discussion by explaining the meaning of trusts, kinds of trusts and the relationship between the trust, trustees and the beneficiaries viz. bailor-bailee or agent-principle. He listed out the laws applicable to trusts in chronological order and explained its extent of applicability to the trusts. He clarified that the basic guiding principle for a trustee is to act as a prudent man for the benefit of beneficiary and this aspect need to be brought out while drafting trust deed. Apart from this, there must be clarity on intention to create a trust, subject matter of the trust and object of the trust. The objects clause must consist of a clause on making merger/demerger more effective. The mutual fund trust deed should incorporate clauses for future M & A, partial sell-off, discontinuation of schemes, facilitate winding-up etc. Once the trust deed is ready, they are to be registered under the Indian Registration Act, 1908. In conclusion, he threw light on the tax aspects of the trust and advised the participants to navigate through SEBI website for Mutual Fund and Debenture Trustee Deeds.

Dara J Kalyaniwala made an elaborate presentation on reviewing specimens of document relating to Corporate Restructuring through Takeover and Buyback Arrangements. He began by explaining in brief the provisions of the Companies Act and SEBI Regulations relating to buy-back and takeover and then pointed out certain aspects which a professional should take care during its documentation. Some of these aspects were - the special resolution for buy-back should properly record whether the promoters are tendering their shares in buy-back in which case they should not participate in discussion and letter of offer should not be sent to them, deed of solvency to be filed for buy-back should be notarised etc. further, Escrow agreement in takeover should give powers to the Merchant Banker to forfeit the entire amount if the acquirer fails to honour. He also discussed various disclosures under SEBI Buy-back & Takeover Regulations.

A cross-section of participants from different parts attended this intensive participation-oriented two days Programme. Certificates were awarded by NISM at the end of the programme to those who successfully completed the programme based on their evaluation. 



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July 19-20, 2013 (Friday & Saturday)

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Venue:

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Speakers:

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Participants:

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Delegates	Non Residential	Residential	
		Twin Sharing	Single Occupancy
Members	Rs. 3371/-	Rs. 6121/-	Rs. 8371/-
Non-members	Rs. 3933/-	Rs. 6683/-	Rs. 8933/-
Students/Licentiates of ICSI	Rs. 2809/-	Rs. 5559/-	Rs. 7809/-
Accompanying Spouse / Children (above the age of 12 years)	Rs. 2809/-	Rs. 5559/-	****



- Check in: 19th July, 2013/ Check out: 20th July, 2013
- Registration fee covers the cost of background material, lunch, tea (both days) and dinner (Friday, 19th July, 2013) and includes service tax.
- As limited number of rooms are available at the Vedic Village Spa Resort on 'First Come First Served' basis, we shall appreciate if a line in confirmation is sent at the email id sudhir.saklani@icsi.edu so that the desired accommodation is blocked at the venue of the Conference.
- Delegates with chauffeur driven cars will have to pay extra charges for food arrangements for Driver during the conference. These charges have to be paid immediately on arrival.
- Any extra stay will be charged separately, subject to availability of rooms and receipt of reservation charges in advance.
- Any extra facilities availed by the delegate during the stay have to be paid directly to Vedic Village Spa Resort.

PROGRAMME DIRECTOR	PROGRAMME COORDINATOR	PROGRAMME FACILITATOR
CS Ashok Pareek Council Member, ICSI 033 – 66023845 akpareek2000@yahoo.co.in	CS Deepak Kumar Khaitan Chairman, EIRC 09830306692 / 09007055560 deepak_khaitan@hotmail.com	CS Arun Kumar Khandelia Vice Chairman, EIRC 033-22890431 / 09831014145 khandeliaarun@hotmail.com

For any clarification please contact :

1. **Ms. Jagvinder Kaur Bedi**, Administrative Officer - Ph: 011-45341040; e-mail: jagvinder.bedi@icsi.edu
2. **Mr. Saurabh Jain**, Assistant Director - Ph: 011-45341035; e-mail: saurabh.jain@icsi.edu
3. **Mr. Utpal Mukherjee**, Assistant Director - Ph: 033-22816542; e-mail: utpal.mukherjee@icsi.edu

Registration

The delegate registration fee (Residential/Non Residential) is payable in advance and is not refundable for accepted nominations. The registration form duly completed along with a **crossed Cheque/Demand Draft may be sent in favour of 'The Institute of Company Secretaries of India'** payable at New Delhi / Kolkata at the following addresses:

CS Saurabh Jain Assistant Director The Institute of Company Secretaries of India 'ICSI HOUSE', 2, Institutional Area, Lodi Road New Delhi 110 003 Tel: 011-45341035 saurabh.jain@icsi.edu	Mr. Utpal Mukherjee Assistant Director Eastern India Regional Council of ICSI ICSI-EIRC Building 3-A Ahiripukur 1st Lane, Kolkata 700 019 Tel: 033-22816542/22816541 utpal.mukherjee@icsi.edu
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Advertisement in Souvenir

It is proposed to bring out a Souvenir containing important information, programmes, lists, etc. It would be widely circulated to professionals, corporate and regulatory authorities. Advertisement released in the Souvenir would receive wide publicity for Products, Services and Corporate Announcements. Members /Organisations are requested to release advertisements. The advertisement material along with cheque/demand draft drawn in favour of '**The Institute of Company Secretaries of India**' may be sent to **Shri Utpal Mukherjee**, Assistant Director, Eastern India Regional Council, ICSI-EIRC Building, 3-A Ahiripukur 1st Lane, Kolkata 700 019, Tel: 033-22816542 / 22816541 and [email:utpal.mukherjee@icsi.edu](mailto:utpal.mukherjee@icsi.edu).

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Salary will be under IBA pattern and commensurate with experience.

Those fulfilling the norms may send in their bio-data within 15 days to
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IDENTITY CARDS FOR MEMBERS

Members who are yet to get the Identity Card issued from the Institute are requested to apply for the same along with their latest two coloured passport size photographs in the format given below (indicating on the reverse the Name and Membership Number) to the Membership Section of the Institute at ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110003. For queries, if any, contact on -

Phone No. 011 45341062

Mobile No. + 91 9868128682

Email Ids member@icsi.edu / ashish.tiwari@icsi.edu

Request for issue of Member's Identity Card

Please send latest two coloured passport size photographs mentioning your name & membership no. on the reverse of the photograph along with the following details:

Membership No. ACS/FCS
Name
(in block letters) (First Name) (Middle Name) (Surname)
Date of birth
Phone: Office: Residence:
Mobile No.
E-mail address

Passport
size coloured
photograph

Signature with date



ATTENTION MEMBERS

CHANGE OF ADDRESS

Member's attention is drawn to Regulation 3 of the Company Secretaries Regulations, 1982 according to which every member of the Institute is required to communicate to the Institute any change of Professional address within one month of such change. The contravention of the same amounts to professional misconduct under clause (1) of part II of the Second Schedule to the Company Secretaries Act, 1980.

Members are, therefore, requested to intimate the change in their professional address within the specified period.

A The members may change their professional and residential address and other details online through Institute's portal www.icsi.edu by following the steps given below:-

1. Login to portal www.icsi.edu.
2. Click online services on the right top corner and then click 'Login' on page.
3. Fill the User name: Enter your membership number (like A1234) as per the sample given on the page.
4. Password. Fill the password. In case you do not have a password. You may retrieve your password in case your email is correctly registered in the Institute. Alternatively you may send an email request for password with your ACS / FCS membership number to dd.garg@icsi.edu
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6. Click on Manage Account
7. Click on Change of Address
8. A window will be displayed with the option "Professional" or " Residential" then change the details and click on "go" button
9. A screen will be displayed with the options "Existing details as per records" and "Enter change Details"
10. Change the details as required and press on "Submit" button.

B Members may also send their request for change of address to the Institute's email IDs at member@icsi.edu & ashish.tiwari@icsi.edu from their e-mail ID as recorded with the Institute.

C Members may send the request through electronic mode as described under A, B & C above. Otherwise, members may also send their request through post to the Membership Section of the Institute at ICSI House, 22 Institutional Area, Lodi Road, New Delhi – 110003.

For Clarifications if any, members may contact **Mr. Ashish Kumar Tiwari**, Jr. Assistant at telephone no. 011 45341063 or **Mr. D D Garg**, Administrative Officer at Telephone No. 011 45341062 or write at e-mail ids ashish.tiwari@icsi.edu or dd.garg@icsi.edu

ATTENTION MEMBERS

UPLOADING OF SCANNED IMAGES OF PHOTOGRAPHS & SIGNATURES ON INSTITUTE'S WEBSITE

The Institute has reoriented its online services to capture the information pertaining to photographs and signatures of members. The members may upload the scanned image of their photograph and signature on the website of the Institute by following the steps given below:

1. Login to portal www.icsi.edu.
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3. Fill the User name : Enter your membership number (like A1234) as per the sample given on the page.
4. Password. Fill the password. In case you do not have a password, you may retrieve your password provided your email is correctly registered in the Institute. Alternatively you may send an email request for password with your ACS / FCS membership number to dd.garg@icsi.edu.
5. After login, go to 'Members Option' (from top menu) then click on "My Account".
6. Click on Manage Image.
7. Then upload your Photo (passport size) and Signature and click on Upload button.

(The format of the file containing the photograph and signature should be in .jpeg format and the size of the file containing the photograph and signature should be maximum of 150kb each).

In case the members are facing any problem in doing the same, the members are requested to send their images of photograph and signature from their email id registered with the Institute at email IDs at ashish.tiwari@icsi.edu. For clarifications if any, members may contact **Mr. J. S. N. Murthy**, Administrative Officer at jsn.murthy@icsi.edu, phone 011 45341049



Our Members

CONGRATULATIONS

Dr. Sanjeev Gupta, FCS, on his being awarded the Ph. D degree in management studies by Maharshi Dayanand University, Rohtak, Haryana for his thesis on "Corporate Frauds in India - Nature, Consequences and Regulation".

Shri G P Madaan, FCS on his being nominated as Co-Chairman of the National Council on Mergers & Acquisitions of ASSOCHAM for 2013-14.

Shri Jitendra Ramanlal Bhagat, FCS on his being elected (uncontested) as President of the Southern Gujarat Commercial Tax Bar Association Surat for the F.Y. 2013-2014.

ELEVATION

Shri Deepak Jain, FCS, Vice President & Company Secretary, Unitech Limited. Earlier, he was working as General Manager & Company Secretary in Unitech Limited, Gurgaon.

ATTENTION

PRACTISING COMPANY SECRETARY

The Institute has come out with a CD containing list of Practising Company Secretaries as on 1st April 2013. The CDs are available at the headquarters of the Institute and will be supplied free of cost on receipt of request.

Request may please be sent to the Membership Section at email ids rajeshwar.singh@icsi.edu or member@icsi.edu

For queries if any please contact on

Telephone No. 011-45341063/64 or on

Mobile No. 919868128682

ANNUAL LICENTIATE SUBSCRIPTION

The Annual Licentiate Subscription for the year 2013-14 became due for payment w.e.f. 1st April, 2013. The last date for payment of fee was 30th June, 2013 which has now been extended till 31st August, 2013.

CS QUIZ

There was a dispute between two companies in regard to quality of goods supplied by one to the other under a contract. The contract provided for resolving the disputes by arbitration. One of the companies suggested the Arbitrator, which was not agreed to by the other. Under the circumstances can a court appoint the Arbitrator under Arbitration and Conciliation Act, 1996?

Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th August, 2013.
- 3] Two best answers will be awarded Rs. 1000 each in cash and the names of the contributors and their replies will be published in the journal.
- 4] The envelope should be superscribed '**Prize Query July, 2013 Issue**' and addressed to :

Deputy Director (Publications)

The Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi-110003.

Announcement

Revised guideline for availing 45 days leave during 15 months training

The Council of the Institute has revised the guideline for grant of leave during the 15 months training to the students of Company Secretaryship Course by withdrawing 45 days or balance leave to trainees who have passed Final/Professional Programme examination and allowed only 15 casual leaves to the candidates undergoing training who have passed Final/Professional Programme examination.

The leave of 45 days during the training will be applicable only for Intermediate/Executive Programme passed students for preparation of Professional Programme examination.

The decision will be effective on the students commencing training on or after 1st March 2013.

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Foundation Programme : 10+2 Pass or its equivalent

Executive Programme : Graduation/CS Foundation Pass/Foundation Pass of ICAI-CMA/CPT Pass of ICAI

- Students of any discipline in Arts, Commerce and Science (excluding Fine Arts) can pursue the Company Secretaries Course.
- The CS Course is by Correspondence / Distance Learning with provision for optional oral coaching classes
- 24X7 Study through E-Learning (<http://elearning.icsi.edu>)
- The Online CS Course includes: Web based Training (WBT), Video based Training (VBT), Live Virtual Classroom (LVC)

Admission to CS Course :

- Admission is open throughout the year.
- Examination is held twice a year in June and December

Cut-off dates :

CS Foundation Programme : 31st March, 30th September

CS Executive Programme : 28th February, 31st May,
31st August & 30th November

Prospectus & Application Form:

- Available at **Headquarters/Regional Councils/Chapters**

Foundation Programme Executive Programme

- Cash payment Rs. 500/-
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 Phone: 22832973, 22816541, 22816542, 22901065, 22902178-79 Fax: 22816542, E-mail: eirc@icsi.edu

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NORTHERN INDIA REGIONAL COUNCIL : ICSI-NIRC Building, Plot No.4, Prasad Nagar Institutional Area, New Delhi-110005 Phone: 49343000 Fax: 25722662 Email: nirc@icsi.edu

Chapters: Agra: 2581174 Almer: 2425013 Allahabad: 9415306147 Alwar: 9413740652 Amritsar: 2566861, 2227270-71 Bareilly: 2310708 Bhilwara: 329603, 238044 Chandigarh: 2661840 Dehradun: 9411108794 Faridabad: 9136606601-05 Ghaziabad: 4559681 Gurgaon: 2380021 Jaipur: 2707236, 2707736 Jalandhar: 2280315, 9872397506 Jammu: 2475148 Jodhpur: 5102551 Kanpur: 2296535, 2212767 Karnal: 3290035 Kota: 2476176 Lucknow: 4109382, 7388892362 Ludhiana: 2545456 Meerut: 9212605990 Modinagar: 243048 Noida: 981231064 Shimla: 9805761656 Sonapat: 9416972240 Srinagar: 9796341055 Udaipur: 2413977 Varanasi: 2507491, 2506077 Yamunanagar: 227541, 9355337541

SOUTHERN INDIA REGIONAL COUNCIL : ICSI-SIRC House, No.9 Wheat Crofts Road, Nungambakkam, Chennai-600 034 Phone: 28279898, 28222212 Fax: 28268685 E-mail: sirc@icsi.edu

Chapters: Bangalore: 22286574, 22287158 Calicut: 2374702 Coimbatore: 2452006 Hyderabad: 23399541, 23396494 Kochi: 2392950, 4050502 Madurai: 2340797 Mangalore: 2216482 Mysore: 2516065 Palakkad: 2544061 Puducherry: 2251151, 9362251151 Salem: 8754340840 Thiruvananthapuram: 2451915 Thrissur: 2327860, 9996639511 Tiruchirappalli: 2461662 Visakhapatnam: 2535516

WESTERN INDIA REGIONAL COUNCIL : 13 Jolly Maker Chambers, No.2, First Floor, Nariman Point, Mumbai-400021 Phones: 22844073, 22047569, 22047580, 22047604 Fax: 22850109 E-mail: wiro@icsi.edu

Chapters: Ahmedabad: 26589343, 32918705 Aurangabad: 2451124 Bhayander: 28183888 Bhopal: 2577139 Dombivli: 2445423 Goa: 2435033 Indore: 4248181, 2494552 Kolhapur: 2659498 Nagpur: 2453276 Nashik: 2509989, 2500150 Navi Mumbai: 27721488 Pune: 24263228, 24260341 Raipur: 2627784 Rajkot: 3059646 Surat: 2463404, 3917164 Thane: 25444478, 25444479 Vadodra: 2331498

Overseas Chapters: Dubai: +971 55 886 8029

CS Helpline : 011-41504444

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