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1. Investor Awareness Programme of ICSI and IEPF Authority held on 20th December, 2019 at Dharamshala. Standing on dais from Left: CS Ashish Garg, CS Ranjeet Pandey, Anurag Singh Thakur (Hon'ble Minister of State for Finance and Corporate Affairs), Manoj Pandey (Joint Secretary, MCA) and CA Atul Kumar Gupta.

2. National Conference of Corporate CS held on January 4-5, 2019 at Mumbai. Group photo of Bhagat Singh Koshyari (Hon'ble Governor of Maharashtra), Council Members and ICSI officials.

3. CS Ranjeet Pandey presenting a planter to Subhash Desai (Hon'ble Minister for Industries & Mining, Govt of Maharashtra) during National Conference of Corporate CS held on January 4-5, 2019 at Mumbai. Standing on dais from Left: CS Praveen Soni, CS Ranjeet Pandey, Subhash Desai (Hon'ble Minister for Industries & Mining, Govt of Maharashtra), Rajasekhar V K (Member NCLT) and CS Ashish Karodia.

4. ICSI delegation led by CS Ranjeet Pandey met with H.E. Mr. Vipul (Consul General of India, Dubai).


7. ICSI delegation met Pranab Mukherjee, Former President of India.


12. ICSI Bhubaneswar Chapter delegation met Dharmendra Pradhan (Hon’ble Minister for Petroleum and Natural Gas & Steel, Govt. of India).

13. ICSI Bhubaneswar Chapter delegation met Pratap Chandra Sarangi (Hon’ble Minister of State for MSME and Animal Husbandry, Dairying and Fisheries, Government of India).

14. CS Ranjeet Pandey and CS Ashok Kumar Dixit met Ms. Vibha Bhalla (Joint Secretary, Ministry of Labour and Employment).

15. ICSI delegation led by CS Manish Gupta met S. K. Rahman (Joint Secretary, GST Council Secretariat, New Delhi).
As a student of the Institute, the only dream I had was to become a professional. During the tenure of the entire course, the intent was not just to read, mug up and learn whatever was placed before through study material and other reading texts; but what intrigued me more was the ‘why’ attached to it.

Having undertaken multifarious roles during my tenure at NIRC, followed by Central Council, the role of President came across as an answer to all my ‘whys’ of student life. This designation, this role and this chair, not only was a peep into the various aspects of this profession all at once, but a realisation of the impact of every single decision, howsoever big or small on a wide range of stakeholders.

The beginning of 2019 witnessed the election of a new Council; and while the ICSI Vision of 2022 was kept intact, each member not only brought his visions for the Institute to the table but practical insights as well as their alignment with the past, present and future of this profession. Each day, in this designation as President of the Institute of Company Secretaries of India has been a new learning. While we held on to the core principles engraved in the very foundation of this Institute by our forefathers, we have tried our level best to align the same with our dreams and visualisations for this revered profession.

Considering it our responsibility to share our agenda and our progress, the idea to share the decisions of the Council meeting immediately after every meeting and the ICSI Bi-annual report as a Progress Report of the Council was materialised. And while many of these initiatives which were floated have been realised and have borne the expected results, a large number of initiatives belong to the group wherein though seeds have been planted but the trees would be bearing fruits at a later date.

Though, as per the norm, a detailed Annual Report has been shared with you through the pages of this journal, I would like to take this last address of mine as the President, ICSI to share with you some of the major achievements, some of the major initiatives, and some of the beautiful beginnings made throughout the year, and their impact on the future of this profession and all ours stakeholders in totality.

1ST LEADERSHIP SUMMIT: SANKALP

The Management lessons have always taught us one thing, that “Planning precedes execution”. While there was no dearth of ideas, what was significant was to enlist those activities in a manner that almost all the stakeholders are embraced in the plan. The year of 2019 began with the chalking of agendas, development of plans, creation of a roadmap and all of it in close collaboration with those entrusted with the task of implementing and executing these plans at ground level. Involving the Chapters, the Team-ICSI, the Leadership Summit not only entailed a futuristic approach but handed over to us the opportunity to understand the hidden leaders in many participants. The zeal portrayed in the two-day event came across as the biggest factor in achieving the biggest of feats through the year.

Having set the tone, I believe that the Leadership Summit shall come across as one of the most important Flagship Events of ICSI in the times to come.

CAPACITY BUILDING OF MEMBERS:

Understanding the need to enhance and develop the calibre of governance professionals in view of the mission of “to develop high calibre professionals facilitating good corporate governance” and keeping in sight their role in promoting good governance, the Institute has held the capacity building of its members on a high pedestal.

And though the various ICSI events have been in furtherance of this thought, what is significant is that we keep a track of the altering dynamics of the Indian economic scenario and bring about the requisite developments, both in the profession as well as professionals. It is in these altering dynamics that, the Company Secretaries were bestowed with multiple recognitions, which on one hand were a matter of great pride and respect, but solicited immense efforts from the Company Secretaries in their roles as professionals.
It is with this understanding that the Certificate Course on Arbitration, Mediation and Conciliation was launched soon after the recognition of Company Secretaries to act as Arbitrators under the Law. I would like to extend our heartfelt gratitude towards the Ministry of Law and Justice headed by Shri Ravi Shankar Prasad, for this kind consideration.

With the constant urge to ‘Think ahead and lead’, the Council has even provided in-principal approval to create an Arbitral Institution as well under the provisions of the Arbitration and Conciliation (Amendment) Act, 2019.

Capacity Building for us at ICSI does not merely mean keeping ourselves abreast with the new developments but being agile and upfront in stepping up our roles in view of the futuristic expectations. The Certificate Courses on Forensic Audit, Data Analytics, Start-ups are a by-product of this thought where we as an Institute believe that our members should stand second to none in the entire professional world.

**SELF-GOVERNANCE: THE NEW AGE GOVERNANCE**

The age old saying of Plautus, “Practice yourself what you preach”, comes in handy when sharing the thought behind devising a concept such as self-governance and rolling out multiple initiatives under its garb. The launch of ICSI UDIN (Unique Document Identification Number) and ICSI eCSin (Employee Company Secretary Identification Number), the development of a dedicated Disciplinary Mechanism Software or Online Portal for Disciplinary Cases, the issuance of ICSI Auditing Standards and dedicated Guidance Note to provide necessary assistance are all a step towards ‘practising to the hilt what we preach to the world’. Not only these, the existing mechanisms of Peer Review and Quality Review, are being strengthened to create a brigade of professionals, who not only guide the Indian corporates on the path of good governance but are epitomes of governance themselves.

**STUDENT COMPANY SECRETARIES: FUTURE GOVERNANCE PROFESSIONALS**

Nelson Mandela said and I quote, “The youth of today are the leaders of tomorrow”. Your Institute as it stands today and all through its journey of 51 years has imbued these words and the thought behind in all its student centric initiatives. For us, it is this brigade who shall be the future Governance Professionals, the future torch bearers of compliance and governance in India Inc. and the future Brand Ambassadors of ICSI.

With so many responsibilities to shoulder, it becomes imperative on our part that not only are they academically equipped but own a professional bent of mind and the right mindset even before stepping foot in the profession. It is with this thought and intent that the Institute has undertaken not just various but a wide variety of initiatives to strengthen our future.

From launching One day Orientation Programme for the Students of Foundation Programme to providing ease through One day gap in the Examinations; from opening new Study Centres to opening new Examination Centres; from connecting with Libraries of Universities across the country to empanelling experts to revisit the study material and impart trainings; from strengthening class room teaching through tech support to using technology to evolve the evaluation mechanism, the Institute has aced it all.

Not to mention the National Conference of Student Company Secretaries which was given a complete revamp rendering it a more cherishing and learning experience for the students. The Yuvotsav 2020: Future meets Present is the beginning of a commitment of the ICSI to build a rock solid connection between students from across the nation with the Institute and have a sense of oneness amongst them.

**TECH-DRIVEN ICSI: TAKING FUTURISTIC LEAPS**

The words of Peter Drucker, “The best way to predict the future is to create it”, aptly precede the deliberation to follow. We at ICSI have while understanding the need to imbibe technology in various aspects of our functioning. While Artificial intelligence may be the norm of the future, the idea is to provide our stakeholders with maximum comfort and expanding the outreach of our initiatives massively. The list includes not only revamping the ICSI Website or placing ICSI on Digilocker Platform, but creating dedicated portals for Placement and PCS as well. From providing portals for UDIN and eCSin to developing e-agenda management portal, the intent of ICSI to embrace the future is crystal clear.

**INTERNATIONAL FOOTPRINT: EXTENDING GOVERNANCE BEYOND BOUNDARIES**

The year gone by witnessed the ICSI expanding its horizons not only through its Chapters but by taking a research oriented approach and initiating the development of Centres of Excellence in Research and Training.

Even further, realising our vision “to be global leaders in promoting good corporate governance, in the truest of senses, while the Institute has been signing MOUs with international Corporate Secretaries organisations, it is only this year that the CSIA held its Council Meeting in the precincts of ICSI Headquarters at Lodhi Road. It is at this meeting that they elected the President, ICSI to be the Secretary, CSIA for the year 2020. Not only this, the year gone by witnessed the launch of the Secretarial Practice Guide on meetings of the Board of Directors by the MACS developed by adopting the ICSI Secretarial Standard SS-1.

Though the ICSI has been boasting of having an Overseas Examination Centre at Dubai, the year of 2019 was rendered all the more eventful by the opening of a dedicated Overseas Centre at USA and the inauguration of the ICSI Middle East Centre at Dubai. Both these moments, while being great achievements shall definitely mark up the road for greater feats ahead on the road of professional development.

**ICSI FLAGSHIP EVENTS: HIGHEST RECORDED REGISTRATIONS**

Any event, whatsoever the theme or venue, irrespective of the city or state, is made memorable primarily by the participation of its delegates. This moment has given me an exemplary opportunity to thank each of the participants, each of the delegates who have joined us in our varied and multifarious flagship events and accorded us the achievement of entering these events in the pages of history of ICSI for their highest number of Registrations. Be it the National Conference of Practising Company Secretaries or the celebration of the 51st Foundation Day, be it the 47th National Convention of Company Secretaries or the first ever National Conference of Corporate CS; your participation and support has indeed heartened me to the core.

**COMPANY SECRETARY: A PROFESSION BEYOND BOUNDARIES**

Friends, flipping through the pages of memories of the year gone by, it gives me a sense of both satisfaction and elation on having achieved unfathomable feats, delivered in-time deliverables, reached new pinnacles and made new records or to put it this way broken older limits. But then isn’t that the norm of growth? Isn’t that we call development? Isn’t that what we call challenging our true selves? And even so isn’t this the real definition of professionalism? I believe...
that you all would agree with me that the answer to each of these questions is a big yes!!

Friends, before I tread towards extending my vote of thanks towards all those who have been a part of this journey, let me first address the issue which has not only voiced serious concerns regarding the present and future of the profession but is also being considered a serious threat to the fraternity’s position in the corporate amalgam. The amendment in the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 altering the requirement for appointment of Company Secretaries, bailing out a host of companies from the mandate of such appointment has raised many concerns. While I would not consider any of the request made, issue raised or concern conveyed as completely baseless and unfounded, yet at the same time I believe, that these moments are a true test of our profession and professional signification. For as they say, गुज़रा कि दिल की चिंता है, जिसके समय में जान होती है!! पृथ्वी से कूच नहीं होता, होलसी से उड़न होती है!!

Friends, we all need to understand that the recognition accorded under the law, the mandate made for appointment of Company Secretaries is a recognition of the skill, competence, knowledge and acumen of the professionals of this brigade. In any scenario these cannot be the defining aspects of the worthiness of this profession. The positioning of the profession, the respect commanded and the revered nature of the work encapsulated in the profile of Company Secretaries is a resultant of the hard work, passion and dedication of the professionals portrayed over the past 51 years and I hope and believe that we all shall consider this our moral, ethical and professional duty to take this legacy ahead.

OBRIGADO, MERCI, GRAZIE, THANK YOU...

The words above may have been pulled out of four different languages, and yet, they shall, even in their togetherness may not be able to convey the gratitude that I hold in my heart as the President of the ICSI.

They say “Moments of parting are the hardest” and when the love shared, the feats achieved, the support received is such as this one, these moments go beyond being overwhelming. And it is with utmost warmth in my heart that I would like to extend my deepest gratitude towards the Hon'ble President of India, who not only presided over the 51st Foundation day of ICSI but patted our backs for our work and extended his support. I believe that we all shall work in unison to live up to the expectations metted out by the First Citizen of India.

I feel extremely grateful to the Ministry of Corporate Affairs headed by Smt. Nirmala Sitharaman, Hon'ble Union Minister for Finance and Corporate Affairs and Shri Anurag Thakur, Hon'ble Minister of State for Finance and Corporate Affairs along with Shri Injeti Srinivas, Secretary, MCA. It is their appreciation and constant support that we have been able to live up to the expectations of our stakeholders. Having partnered with the Ministry and the IEPF for the Investor Awareness Programme, it gives us immense pride to note that the Ministry well acknowledges the role played by ICSI towards its multifarious stakeholders.

Along with our parent Ministry, what humbles me to the core is the support extended by various other ministries and Regulatory Authorities. I extend my gratefulness to all the honourable Ministers, Secretaries and coveted officials of the various Ministries and their Directorates and Departments; members of SEBI, NSE, BSE, NSDL, CDSL, NCLT, RBI, IBBI, etc. for being our guide, partner and pillar of support in our varied endeavours.

As President of my Alma Mater, I have always considered the designation to be a true a representation, even so the mirror of the intent of the Council. And I feel extremely blessed to have had such a supportive, motivated and dedicated Council by my side; who not only have given fuel to the fire of my ideas, but have ignited many new illuminations to guide the profession on the path of its Vision. My deepest admiration to each one of my council colleagues and government nominees for the strength provided and faith instilled in me.

At this juncture, I would also like to thank all the Regional Chairmen and members of the Regional Councils as well as Chapter Chairmen and members of Chapter Management Committees for their continuous support in implementing the vision, ideas and flagship events of ICSI rendering them successful.

An Institute is only as strong as its Foundation. And strongly believing in this thought, I would also take a moment to laud our past presidents, councils and the secretaries, and also the past Regional Councils and Chapter Management Committees along with their Chairpersons for their passion, dedication and grit in strengthening the very Foundation of this institution.

While the Council undertakes the broader decisions, the Committees and Task Forces, the Core Groups go on to play a much hands-on role in their realisation. I extend my sincere appreciation towards the members of the Appellate Authority, Disciplinary Committee, Board of Discipline, Auditing Standards Board (ASB), Secretarial Standards Board (SSB), Peer Review Board (PRB) and Quality Review Board (QRB) and all other Committees, sub-committees, Task Forces, Core Groups and Expert Groups, not to mention the Governing Boards of our subsidiary entities.

“Vision without implementation would be only be considered a dream”. Last but not the least, I would like to share the fact that it was indeed an honour to serve with one of the most cohesive and dedicated Team, Team-ICSI. It is their continuous efforts, their ‘never say never’ attitude, their ability to make the best out of worst situations which has exalted the achievements of the Institute to an all new level. The support received and the love garnered, have made this journey all the more cherishable.

THE ROAD AHEAD: WHAT NEXT?

The accomplishments of such an eventful year usually leave us yearning for more. And while we have made quite a long list of achievements, the desires of a true professional to excel and succeed seldom satiate.

As an Institute dedicated towards garnering greater opportunities and gaining further recognitions for the professionals, I believe the times to follow shall open many more doors of opportunities. Having represented before the authorities, I am hopeful that sooner than later, the Company Secretaries will be accorded the responsibility to conduct GST Audit for the Indian Companies.

Keeping in sight these winds of change, I would urge all my professional brethren to understand, realise and utilise each and every opportunity headed their way. And while we do so, I wish to see the Company Secretaries, the ‘Governance Professionals’ to be the key contributors in rendering the nation a US$5 trillion economy as envisioned by the Hon’ble Prime minister of India, Shri Narendra Modi.

I would like to part with you with these words: जिदनी की असली उड़ान अभी बाकी हैं जिदनी के कई झटकों अभी बाकी हैं अभी तो नाप हैं सुंदरी घर जमीन हमने अभी तो सारा आसमान बाकी हैं

Good luck !!!

Yours Sincerely

CS Ranjeet Pandey
President, ICSI
Inaugural Ceremony of ICSI Middle East (DIFC) NPIO & Panel Discussion on “Transforming Corporate Governance and Creating Professional Avenues” held on 10th December, 2019 at Dubai, UAE

Address by: 1. H.E. Mr. Vipul (Consul General of India, Dubai) 2. Mr. Manoj Pandey (Joint Secretary, MCA) 3. Mr. Nick Nadal (Vice President, Hawkamah Institute for Corporate Governance) 4. CS Ranjeet Pandey (President, ICSI) 5. CS Hitender Mehta (Council Member, ICSI) 6. CS Manish Gupta (Council Member, ICSI).

Group photo after Inaugural Ceremony of ICSI Middle East (DIFC) NPIO.

Panellists (L to R) : CS GVS Sai Arvind, CS Vijay Kumar Ojha, CS Hitender Mehta, Mr. Saad Maniar, CS Manish Gupta and CS Raman Lakshmanan.
ICSI delegation led by CS Ranjeet Pandey, President, ICSI met with Mr. Nick Nadal, Vice President, Hawkamah Institute for Corporate Governance at Dubai.

ICSI delegation met with Mr. Vikrant Bhansali Chief Representative-International Markets, DIFC.

ICSI delegation met with team members of Crowe Mak Ltd. led by Dr. Khalid Maniar, Founder & Managing Partner, Crowe Mak Ltd. (In centre)
Recent initiatives for the Month of December, 2019

MEETING WITH DIGNITARIES

Taking forward our pursuit for exploring opportunities for the profession and also for joint participation in flagship government initiatives, meetings with the following dignitaries were organised:

- Shri Anurag Thakur, Minister of State for Finance and Corporate Affairs
- Shri Arvind Kejriwal, Hon’ble Chief Minister of Delhi
- Shri Pranab Mukherjee, Former Vice President of India
- Ms. Vibha Bhalla, Joint Secretary, Ministry of Labour and Employment

RECOGNITIONS RECEIVED:

The following recognitions have been accorded to the Company Secretaries in Practice during the month of December, 2019:

- Company Secretary in Practice is authorised to issue the Net Worth Certificate to be submitted by the issuer at the time of admitting securities in demat form as per the requirement of NSDL.
- Company Secretary in Practice is authorised to issue the Net Worth Certificate to be submitted by the issuer at the time of admitting securities in demat form as per the requirement of CDSL.

ICSI INAUGURATED ICSI MIDDLE EAST (DIFC) NPIO AT DUBAI, UAE

With the concept of governance being omnipresent, the ICSI is stepping ahead in globalisation and expanding the horizons of the profession of Company Secretaries. In this direction, the ICSI incorporated ICSI Middle East (DIFC) NPIO (‘NPIO’) as a Non Profit Incorporated Organization under the Non Profit Incorporated Organization Law, DIFC Law No. 6 of 2012 of Dubai on September 24, 2019.

The inauguration ceremony of NPIO was organised on Tuesday, December 10, 2019 at Roda Al Murooj, Financial Centre Road, Dubai, United Arab Emirates (UAE).

The Inaugural Ceremony was graced by H.E. Mr. Vipul, Consul General of India, Dubai as Chief Guest, Mr. Manoj Pandey, Joint Secretary, Ministry of Corporate Affairs, Government of India as Guest of Honour and Mr. Nick Nadal, Vice-President, Hawkamah Institute for Corporate Governance as Keynote Speaker. Some of the glimpses of the Inaugural Ceremony are as under:

SETTING UP OF ICSI OVERSEAS CENTRE, USA

The Institute has set up ICSI Overseas Centre, USA at 4 Slivers Lane, Plainsboro, New Jersey 08536 with a total of 7 Committee Members.

The ICSI Overseas Centre, USA will act as facilitation Centre of the Institute. It will strengthen the global outreach of the profession and facilitate the students and members residing in USA in advancing their academic acumen, capacity building and in turn better professional and placement opportunities. The presence of this facilitation Centre of ICSI will pave way for expanding the dimensions of corporate governance in USA.

REPRESENTATIONS SUBMITTED:

Following representations has been submitted by the ICSI during December, 2019:

- View and suggestions on the Consumer Protection (Mediation) Regulations, 2019- Submitted to Ministry of Consumer Affairs
- Request to authorise Company Secretary to conduct Audit u/s 35(5) & Special Audit u/s 66 of the CGST Act, 2017 and to certify Form GSTR-9C u/r 80(3) of CGST Rules, 2017- Submitted to Special Secretary of the Office of the GST Council Secretariat

CERTIFICATE COURSE ON FORENSIC AUDIT – FIRST BATCH

ICSI in association with KPMG launched a Certificate Course on “Forensic Audit” to help the participants gain insights in the area of investigations and fraud risk management in the corporate world at the 47th National Convention held on 14th November, 2019.

The objective of the Course is to acquaint the members and students with the Forensic audit domain considering the increase in financial frauds. While Company Secretaries have acquainted with the academic theories, the Course will attempt to focus on practical nuances.

The Registrations for the course were commenced on 15th November, 2019 and a total of 62 candidates have enrolled in the first batch of the Course.

INTERACTIVE SESSION ON RECENT CHANGES UNDER THE COMPANIES ACT 2013

On 3rd December, 2019, Standing Conference of Public Enterprises (SCOPE) in association with The Institute of Company Secretaries of India (ICSI) organized an Interactive Program on “Recent Changes under the Companies Act 2013” at SCOPE Convention Centre, New Delhi. CS Ranjeet Pandey, President, ICSI, Mr. Atul Sobti, Director General, SCOPE and Mr. S. Sakthimani, Director (Finance) CCI addressed the inaugural session. The session was attended by a large number of senior executives from over 90 public sector enterprises across the country.
CONSTITUTION OF SUBJECT EXPERT COMMITTEE

‘Subject Experts Committee’ for each of the twenty four subjects of the Executive Programme and Professional Programme (New Syllabus) were constituted comprising five members from academics, industry and practising professionals, for imbibing practical insights into the study materials of various subjects, thereby, bridging the gap between theory and practice. The members, possessing relevant experience and expertise were expected to review the lessons and provide their inputs for continuous upgradation of Syllabus and revision in Study Materials.

Till now, 23 Meetings of the these Committees have been conducted wherein extensive discussions have been conducted on the scope of syllabus, industry demands, macro and micro observations on the study material with respect to presentation, content and coverage of each subject. The members of the committee have agreed to review the Study Material for June-2020 Examinations. It is expected that the revised study material would be available by February, 2020.

REQUESTS FOR CHANGES IN DETAILS ENTERED BY STUDENTS

Students are advised to be extremely careful while filling up the Online Registration Form and in uploading their photograph and signature. Please note that each and every subsequent change in Name, Photograph and Signature in the student records shall be a paid service.

INVESTOR AWARENESS PROGRAMME OF ICSI AND IEPF AUTHORITY, MINISTRY OF CORPORATE AFFAIRS AT DHARAMSHALA ON 20TH DECEMBER 2019

The Investor Education and Protection Fund Authority, Ministry of Corporate Affairs, Govt. of India organized an Investor Awareness Programme and a Mega Career Awareness Programme, in association with the Institute for the youth of Dharmshala, Himachal Pradesh. Hon’ble Union Minister of State, Ministry of Corporate Affairs, Shri Anurag Singh Thakur graced the occasion. The programme was intended to create awareness amongst the youth of Dharmshala regarding the various Investment and Career Opportunities available to them so that they can make an informed investment and career choice from among many. The programme was attended by more than 1200 delegates and received an overwhelming response and accolades.

ICSI BI-ANNUAL CONVOCATIONS–2019

The region-wise biannual ICSI Convocations for awarding certificate of membership to Associate & Fellow members (admitted during the period from 1st April, 2019 to 30th September, 2019) and to award prizes / medals to meritorious students (National) continued with the organization of the northern region Convocation at the Siri Fort Auditorium, New Delhi on 8th December, 2019 in one session. CS (Dr.) M S Sahoo, Chairperson, Insolvency and Bankruptcy Board of India was the Chief Guest. A total of 442 Associate and 29 Fellow members and 2 students received their certificates/awards in the programme. Thereafter, the western region Convocation was held at the Birla Matoshri Sabhagar, Mumbai in one session on 17th December, 2019. Prof. Shashikala Wanjari, Vice Chancellor, SNDT Women’s University, Mumbai was the Chief Guest and Dr. Rajeshri Varhadi, Head, Department of Law, Mumbai University was the Guest of Honour. A total of 348 Associate and 14 Fellow members and 3 students received their certificates/awards in the programme.

‘STUDENT COMPANY SECRETARY’ AND ‘CS FOUNDATION COURSE’ E-BULLETINS, DECEMBER, 2019

The Student Company Secretary e-bulletin for Executive/Professional programme students of ICSI and CS Foundation course e-bulletin for Foundation programme students of ICSI have been released for the month of December, 2019. These bulletins provide necessary information on various topics, academic guidance, registration, class room teaching centres, information on special initiatives, examinations, etc. The monthly issue of the bulletins has also been disseminated to students through bulk mail, social media platform and are also uploaded on the Academic Corner of the Institute’s website at the link: https://www.icsi.edu/e-journals/

ICSI INITIATIVES TOWARDS GST

In standing shoulder to shoulder with the government towards directed implementation of GST, the Institute has been committed to building the capacity of its members, students and related stakeholders by advancing their understanding about GST and also by constantly apprising them with updates in GST through various initiatives. Some of the major initiatives in this direction are listed below:

- GST Newsletter – Initiated from April, 2017, 29 issues of the GST Newsletter have been published so far, with December, 2019 issue being the latest.
- GST Educational Series – 476 Issues have been brought so far.

In addition to this, the Institute is regularly organising workshops, seminars and programmes on GST in order to keep its members & students updated on developments in GST.
I. INTERNATIONAL FOOTPRINT

1. Opening of ICSI New York Centre

In view of globalization of profession and frequent changes in the corporate world, the Institute opened the Institute has set up ICSI Overseas Centre, USA at New Jersey. The ICSI Overseas Centre, USA while acting as facilitation Centre will strengthen the global outreach of the profession and facilitate the students & members residing in USA in advancing their academic acumen, capacity building and in turn better professional and placement opportunities.

2. Inauguration of ICSI Middle East Centre (Dubai)

The ICSI incorporated ICSI Middle East (DIFC) NPIO (‘NPIO’) as a Non Profit Incorporated Organization under the Non Profit Incorporated Organization Law, DIFC Law No. 6 of 2012 of Dubai on September 24, 2019. The Inauguration Ceremony of the NPIO was organized on Tuesday, December 10, 2019 at Roda Al Murooj, Financial Centre Road, Dubai, United Arab Emirates (UAE).

3. International MOUs

MoU between ICSI and Chartered Institute for Securities and Investment (CISI), London has been extended for further period of three years till March 2022.

4. CSIA Council Meeting and ICSI-CSIA Conference in India

ICSI hosted the Council meeting of Corporate Secretaries International Association Limited (CSIA) on 9-10 September, 2019. ICSI is representing India in CSIA wherein CS Ranjeet Pandey, President, ICSI is Secretary, CSIA. At the meeting held on 10th September, 2019, CS Ranjeet Pandey, President, ICSI was unanimously elected as Vice-President of CSIA for the year 2020.

On 11th September, 2019, ICSI-CSIA conference was organized on the theme “Redefining Global Governance - Dawn of a New Era” at New Delhi.

5. Launch of Secretarial Practice Guide on meetings of the Board of Directors by by MACS on the lines of ICSI Secretarial Standard-1

ICSI delegation led by CS Ranjeet Pandey, President, ICSI, participated in Annual Conference of MACS 2019 held at Malaysia with the theme “Company Secretariaship in the Digital Landscape- Challenges & Transformation”.

President, ICSI addressed the delegates in Plenary Session on “Cyber Risk” and that was very much appreciated by the delegates. MACS launched Secretarial Practice Guide on meetings of the Board of Directors by adopting ICSI Secretarial Standard-1.

6. President, Institute of Chartered Secretaries & Administrators of Nigeria visits ICSI

Mr. Bode Ayeku, President, Institute of Chartered Secretaries & Administrators of Nigeria visited the ICSI Headquarters, New Delhi to discuss the Board Evaluation and Corporate Governance Evaluation in India as it is recently introduced in Nigeria, amongst other issues of mutual interest.

7. Asia Sustainability Reporting Summit 2019

ICSI representatives participated in Asia Sustainability Reporting Summit 2019 held at Singapore. The theme for the Summit ‘Sustainability Reporting: Is Mandatory Better’ reflected upon the growing trend of legislating ESG disclosures around the world. The Summit was focused on best practices in sustainability reporting and emerging topics.

8. ICSI International Professional Development and Fellowship Programme-2019

The Institute organized 14th International Professional Development and Fellowship Programme- (IPDFP) 2019 from 16th June, 2019 to 23rd June, 2019 at Spain & Portugal. The theme of IPDFP was “Company Secretary: Changing Role in Regulatory Framework”. H.E. Shri Sanjay Verma, Ambassador, Embassy of India, Spain was the Chief Guest and inaugurated the International Conference held on 19th June, 2019 at Hotel Axor Feria Madrid, Spain. Different topics relevant to profession were discussed and deliberated amongst members on other days.
II. RECOGNITIONS: ACHIEVEMENTS AND ROAD AHEAD

9. Arbitration Law Recognition

In response to representations submitted by ICSI to the Ministry of Law and Justice, Company Secretaries have been included in the list of qualification and experience of Arbitrators in the Eight Schedule in the Arbitration and Conciliation (Amendment) Bill 2019 passed by the Rajya Sabha on 18th July, 2019.

10. Recognition by NSDL and CDSL

Both the depositories, the National Securities Depository Limited (NSDL) and Central Depository Services Limited (CDSL) has authorised Company Secretary in Practice (PCS) to issue Networth Certificate to be submitted by the issuers at the time of admitting securities in CDSL.

11. Representations Submitted

Apart from the above representations are being submitted to the Authorities concerned as follows:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Authority</th>
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<tbody>
<tr>
<td>• Request to authorise Company Secretary to Conduct Audit and Special Audit under the Goods and Services Tax Law</td>
<td>Members of GST Council / Finance Minister of Different States on different dates</td>
</tr>
<tr>
<td>• To Recognize Company Secretaries as Compliance Officers under the SEBI (Prohibition of Insider Trading) Regulations, 2015</td>
<td>Securities and Exchange Board of India</td>
</tr>
<tr>
<td>• Request to provide exemption to the Company Secretaries from undertaking the SICCE Examination of NISM</td>
<td>Securities and Exchange Board of India</td>
</tr>
<tr>
<td>• Request for inclusion of the services of Company Secretaries in the Classification of Services under the Trade Marks Act, 1999 and Trade Marks Rules, 2017</td>
<td>Controller General of patents, Designs &amp; Trade Marks</td>
</tr>
<tr>
<td>• To formulate Third party Certification/Audit Scheme in various States and to authorize Company Secretaries in Practice for the same.</td>
<td>To Labour Commissioners of different states on different dates</td>
</tr>
<tr>
<td>• Request for introduction of Audit of compliance of labour laws and to authorize Company Secretaries in Practice for conducting Labour Audit under the proposed Labour Code</td>
<td>Minister of State for Labour and Employment, (Independent Charge), Govt. of India</td>
</tr>
<tr>
<td>• Request to secure recognition for Company Secretaries for appearance before Consumer Forums</td>
<td>Minister of State Consumer Affairs, Food &amp; Public Distribution</td>
</tr>
<tr>
<td>• Comments on Draft Copyrights Rules 2019 - suggested format of annual transparency report on non-financial disclosures and certification of the same by Company Secretary in Practice.</td>
<td>Joint Secretary Department for Promotion of Industry and Internal Trade</td>
</tr>
<tr>
<td>• Need for effective governance mechanism for CSR and introduction of CSR Audit/Compliance Report</td>
<td>Presented before the High Level Committee for consideration</td>
</tr>
<tr>
<td>• To mandate issuance of Secretarial Audit and Annual Secretarial Compliance Report by a Peer Reviewed firm of Company Secretary in Practice</td>
<td>High Level Committee of Ministry of Corporate Affairs on CSR</td>
</tr>
<tr>
<td>• To allow Company Secretaries as Authorised Representatives and consider the qualification of Company Secretaries for the empanelment as Mediator</td>
<td>Minister of State for Consumer Affairs, Food &amp; Public Distribution</td>
</tr>
<tr>
<td>• To authorise Company Secretary in Practice to appear before the Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal (DRAT)</td>
<td>Minister of Finance and Corporate Affairs</td>
</tr>
<tr>
<td>• To include of CS in the definition of Accountant under Explanation to Section 288(2) of the Income Tax Act, 1961</td>
<td>Minister of Finance and Corporate Affairs</td>
</tr>
</tbody>
</table>
### III. CAPACITY BUILDING

12. **Certificate course on Certified CSR Professionals & Certificate Course in GST**

In its endeavour to continue upskilling the members in the relevant areas, the second batches of Certificate course on Certified CSR Professionals and Certificate Course in Goods & Services Tax have been launched. While a total of 118 candidates enrolled for the former, 528 enrolled for the latter one.

13. **Certificate Course on Arbitration, Mediation and Conciliation**

Company Secretaries having 10 years of experience in practice have been recognized to become an Arbitrator under the Arbitration and Conciliation (Amendment) Act, 2019. With the objective of capacity building of ICSI members, the ICSI is associating with the IMC International ADR Centre, Mumbai as well as with National Law School of India University (NLSIU), Bengaluru for conducting joint certificate course on Arbitration, Mediation and Conciliation.

14. **Certificate Course on Forensic Audit in association with KPMG**

The Institute has launched the Certificate Course on Forensic Audit in association with KPMG. The objective of this course is to acquaint ICSI members and students in the Forensic audit domain considering the increase in financial frauds. This will also help the professionals who have been working in related domains.

15. **Certificate Course on Start-ups**

The Award Ceremony of the ICSI National Awards for Excellence in Corporate Governance witnessed the ICSI and Startup India launching a joint Certificate Programme on Capacity Building to support Startup Ecosystem. The Course will equip the members with specific knowledge of all legal provisions relating to Startups and also familiarize them with emotions attached to startup culture and startup ecosystems trends.

16. **Course on Data Analytics**

Data is redefining the way we conduct business today and driving business decisions across all industries. Realizing the need to build the capacity of our members in the area of data analytics, the Council approved the launch of Certificate Course on Data Analytics in association with IBM. This Course is a Foundation level course aimed at building awareness around the concepts of Data Analytics and Artificial Intelligence.

17. **Recognition accorded to corporate Study Circles**

ICSI gave recognition to new Study Circles created by various corporate groups. These Study Circles shall open new doors of professional discussion and deliberation.

18. **Workshops and Events in partnership with PHD Chamber and SCOPE**

The Institute had played the role of Associate Partner in various workshops organized by PHD Chamber and Standing Conference of Public Enterprises (SCOPE) on

Latest Developments under Economic & Commercial Laws, Taxation, GST, Companies Act 2013 & SEBI Regulations, etc. recently, an Interactive Session on Recent Changes under the Companies Act 2013 in collaboration with SCOPE was organized.

19. **Webinars**

Various Webinars on topics of the likes of Companies (Significant Beneficial Owners) Rules, 2018, e-Form INC-22A – ACTIVE, Form DPT-3 & MSME Form-I, Annual Secretarial Compliance Report, Revised Name Availability Rules, ICSI Auditing Standards, and NFRA, etc. were organized.

20. **Classroom Training – ICSI RVO**

In order to enrich our professionals in the area of Valuation, classroom training has been provided at 17 locations wherein a total of **391 members** participated.

21. **Publications**

In an attempt to enhance the knowledge repository of the professionals, the Institute has rolled out a host of publications:

- Guidance Note on Annual Secretarial Compliance Report
- Guidance Note on Related Party Transactions (RPTs)
- Model Code for Meetings of Non-Corporate Entities
- Guidance Note on Report of the Board of Directors
- Company Secretary in Practice – Ready Reckoner
- Guidance Note on Auditing Standards
- Guidance Note on Prevention of Insider Training
- Guide to Conduct Quality Review
- FAQs on UDIN
- FAQs on eCSin

22. **Training of Trainers (ToT) Program**

With a view to enhance the quality of guidance provided to the trainees during their practical training, the institute has initiated a one day Training of Trainers (TOT) Program. The TOT program is aimed at harnessing the skill set of trainees through the Trainers mentoring them and provide them an environment to build their competencies in core, ancillary and hybrid areas.

### IV. STRENGTHENING SELF GOVERNANCE

23. **Unique Document Identification Number (UDIN)**

Aimed at enabling stakeholders to verify the authenticity of documents signed or certified by Company Secretaries in Practice, UDIN shall not only prevent counterfeiting of various attestations/ certifications but also ensure compliance w.r.t ceilings on the number of the various certification / attestation services. The mechanism shall facilitate identification of every document attested by PCS thereby acting as a trust enhancer by facilitating verification of genuinity of documents.
24. Employee Company Secretary Identification Number (eCSin)

In an attempt to monitor the appointment and cessation of Company Secretary and to bring about greater transparency by creating a platform to identify the Company Secretaries employed in a particular company the ICSI has brought forth the mechanism of eCSin. While initially made applicable on a voluntary basis, both these initiatives have been made mandatory by the Council of ICSI w.e.f. 1st October, 2019.

25. ICSI Auditing Standards

With the aim of strengthening the present governance scenario on the Indian corporate ground and to bring standardization and uniformity in the professional arena, the Institute has issued 4 (four) Auditing Standards which have been made applicable on recommendatory basis on Audit Engagements accepted by the Auditor on or after 1st July, 2019 and the same shall be mandatory for Audit Engagements accepted by the Auditor on or after 1st April, 2020.

26. Strengthening Peer Review Mechanism

- In order to phase-in Peer Review gradually, the Council has not only affixed the Ceiling on number of Annual Secretarial Compliance Reports to be issued by PCS but has also decided to mandate undertaking of such reporting by Peer Reviewed Members only.
- Further, to equip the Reviewers with thorough understanding of the aspects of conducting Peer Review, 11 Training Programmes were organized to empanel Peer Reviewers at wherein 107 members registered participation.

27. Strengthening Quality Review

To familiarize Quality Reviewers with the Quality Review Process, their roles, responsibilities, duties and submission of Reports to the Board, a Training Programme for Quality Reviewers was organized on February 19, 2019 at ICSI-CCGRT, Navi Mumbai. A total of 47 Quality Reviewers have been empanelled under the process.

V. FACILITATION AND STANDARDIZATION

28. ICSI (Guidelines for Advertisement by Company Secretaries), 2020

The Council of the ICSI at its 266th meeting held on 9th January, 2020 approved the Guidelines for Advertisement by a Company Secretaries. The Guidelines deal with the manner in which a Company Secretary in Practice of the profession of Company Secretaries of otherwise can advertise the services provided by him/ her or his/her firm and the particulars of his/her firm through a write-up.

29. ICSI Guidance on Scale of Fees for various professional services rendered by Practicing Company Secretaries

This Guidance on Scale of Fees for various Professional Services containing inter alia the scope of various professional services and the guiding principles for fixing the scale of fee would ensure transparency between the client and the PCS and also pave the way for a just and reasonable scale of fees to be charged by professionals on the basis of their experience, expertise, exposure, operational costs, associated risks, penalties for wrong certification and the market forces.

30. Facility of E-Credit hours

With a view to facilitate the members to comply with the ICSI (Guidelines for Compulsory Attendance of Professional Development Programmes by the Members), 2019 and complete the credit hours before the current block of three years ending on March 31 2019, the Council has decided to grant the credit hours through e-learning programmes/ webinars, online exam and certification courses etc.

31. ICSI (Guidelines for Attire and Conduct of Company Secretaries), 2020

The intent behind these Guidelines is to provide the rules of etiquette and decorum for appearance before the courts, statutory bodies and quasi judicial bodies such as NCLT, NCLAT, SEBI, CCI, etc., ensure respect for authority and to maintain dignity of the profession of company secretaries, prevent Company Secretaries from contemptuous behaviour to the judicial authorities and project a professional image amongst the regulators and build a brand for the profession of Company Secretaries.

32. The Institute of Company Secretaries of India (Protocol Guidelines), 2019

Another set of guidelines under the aegis of ‘The Institute of Company Secretaries of India (Protocol Guidelines), 2019’ provide for the protocol to be followed for orderly conduct of various programmes and other formal events of the Institute in a well planned and professional manner so as to accord a focused learning experience to the participants at every programme.

33. ICSI (Branding Activities & Media) Guidelines, 2019

Understanding the significance of our Regional Offices and Chapters, as our true brand ambassadors, the ICSI (Branding Activities & Media) Guidelines, 2019 have been rolled out to propagate uniformity in their attempts to promote Brand ICSI.
34. Format of Certificate of Non-Disqualification of Directors

Understanding the need for a uniform format pursuant to Regulation 34(3) and Schedule V Para C clause (10)(i) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for the issuance of certificate mentioned hereinabove, the Institute has developed a format for the same.

35. Format of intimation to be given to the previous incumbent (Company Secretary)

The primary requirement under Clause (8) of Part I of the FIRST SCHEDULE to the Company Secretaries Act, 1980 is of prior communication with the previous incumbent which is intended for reasons of professional courtesy. In accordance with the above, the Council has approved the format to be issued by Company Secretaries.

36. Introduction of New Awards for Chapters, etc.

The Institute introduced the following new categories of awards apart from the Best Regional & Chapter Awards to encourage the chapters:

- Best Study Centres Awards
- Emerging Chapters Award
- Best Chapter Award for CAP Activities
- Best Chapter Award for Class Room Teaching Activities
- Best Chapter for Placement Services
- Best Chapter for Student Registration

37. New Award Categories

The ICSI in an attempt to motivate corporates across all segments introduced new categories of awards under the 19th ICSI National Awards for Excellence in Corporate Governance. Under the new arrangement, the Awards for Best Governed Companies were given to companies in the Listed and Unlisted Segment father categorizing them into Large, Medium and Emerging categories.

38. ICSI Best Secretarial Audit Report Award

The Institute with the aim of recognizing the efforts of Company Secretaries in Practice in their roles as Secretarial Auditors in elevating the culture of governance in corporate sector and enhancing the importance of Secretarial Audit Reporting in the years to follow has instituted the Best Secretarial Audit Report Award.

39. Core Group to revamp Secretarial Audit

A Core Group comprising Senior Practitioners, Bureaucrats and Company Secretaries in Employment has been constituted to revisit the existing format of the report and to make recommendations thereon for its revision, and make such other recommendations as may be considered necessary.

40. PCS Portal

A dedicated Portal has been developed with the intent of bridging the gap between the practising professionals specializing in their areas of activity and the corporates looking out for such professionals. With its dual search mechanism – the first being a skill based search developed on the basis of specialization and the other being a name based search; the Portal comes across as an all-inclusive platform to serve the varied needs of the corporates comprehensively.

41. Placement Assistance Lounge at Ranchi Convocation

A Placement Assistance Cell Lounge was set up at Audrey House Art Gallery, Ranchi, the venue for Ranchi Convocation on 30th November, 2019. Information about the ICSI Placement Portal was shared with Members. Queries of Members about various types of activities being taken by the Institute to assist its Members looking for employment, minimum-maximum salary range for freshers, availability of jobs in various parts of India, etc. were answered.

42. ICSI HR Conclave

HR conclave for the Eastern Region was held on Saturday, 9th November, 2019 at Kolkata. The first Session was conducted on the topic “Digitization of HR”. For the Panel Discussion, deliberations were conducted on the theme “Future of HR”. A total of Out of 44 HR Heads-Managers/Executives from different Corporate Houses/PSUs attended the programme.

VI. STRENGTHENING CORPORATE GOVERNANCE

43. Format of Annual Secretarial Compliance Report

The SEBI (LODR) Amendment Regulations, 2018 authorized Practicing Company Secretary for Compulsory Secretarial Audit in a prescribed Reporting Format for listed entities as well as for their material unlisted subsidiaries.

With a view to assist the Regulator in concocting the Prescribed Format of Secretarial Audit under LODR, the Institute submitted a draft to SEBI which the Regulator vide circular dated February 08, 2019 notified in the form of Prescribed Format for Annual Secretarial Compliance Reporting required to be submitted by a
PCS for Listed Entities as well as for their Material Unlisted Subsidiaries.

44. Participation in Policy/Rule making activities of Government / Regulatory Authorities

- Primary Market Advisory Committee of the Securities and Exchange Board of India
- Committee to Advise on Valuation Matters constituted by the Ministry of Corporate Affairs and administered by IBBI
- Insolvency Law Committee constituted by the Ministry of Corporate Affairs to recommend amendments to Insolvency and Bankruptcy Code of India
- High Level Committee of the Ministry of Corporate Affairs on Corporate Social Responsibility

VII. EXPANDING HORIZONS

45. In-principal approval for creation of Arbitral Institution under Arbitration And Conciliation (Amendment) Act, 2019

The Council of the Institute has decided to incorporate a new subsidiary company to act as Arbitral Institution under Arbitration and Conciliation (Amendment) Act, 2019.

46. Centre of Excellence in Research and Training at Kolkata

The Model of Centre of Excellence in Research and Training, Kolkata at Rajarhat was unveiled by the Central Council Members of ICSI at 20 National Students Conference of Students Company Secretaries at South City International School, Kolkata on 12 January, 2020.

47. Centre of Excellence in Research and Training at Manesar

Continuing in its attempt to provide research and training avenues readily accessible to the members and students in the Northern region, the ICSI has intended to initiate the development of a new Centre of Excellence for Research & Training (CERT) at IMT Manesar, Gurugram (Haryana). The ICSI-CERT while accommodating students pursuing the Company Secretarialship course shall provide to our members an extended podium for development of their professional skills, awareness & competencies.

48. Opening of new Chapter of ICSI

With the intent of expanding the governance base in all corners of the nations, the Institute recently inaugurated six (6) new Chapters at:

- Belagavi (Karnataka),
- Gorakhpur (Uttar Pradesh)
- Patiala (Punjab)
- Panipat (Haryana)
- Karnal (Haryana)
- Coimbatore (Tamil Nadu).

Apart from these the existing infrastructure of the Ludhiana Chapter was refurbished to meet the changing needs of the stakeholders therein.

49. Opening of new Study Centres

In the months gone, various Study centers have been opened across the nation.

50. Opening of new Examination Centres

The Institute has in an attempt to expand horizons and enhance the access to students has relaxed the existing distance parameters for opening of new Examination centres. Furthermore, covering the four directions, North, South, east and West; new centres have been opened at:

- Imphal (Manipur)
- Amritsar (Punjab)
- Patiala (Punjab)
- Rewari (Haryana)
- Gandhidham (Gujarat)
- Vapi (Gujarat)
- Port Blair (Andaman & Nicobar).

VIII. INITIATIVES FOR STUDENTS

51. 100% Fee waiver Scheme for students of Jammu & Kashmir and Ladakh and 50% Concession in fees for the students of Andaman and Nicobar Islands, Lakshadweep and North-Eastern States

The Institute as part of its social responsibility initiatives and alignment towards the initiatives of Government of India for inclusive growth of people from different parts of country is launching a 100% percent Fee Waiver Scheme for the students from Jammu & Kashmir and Ladakh and 50% Concession in fees for the students of Andaman and Nicobar Islands, Lakshadweep and North Eastern States. The waiver is expected to provide a window of opportunity to the youth of these UTs and states to come to the mainstream. The Government of India is already making conscious efforts in improving the infrastructure in this area and the Institute is doing its bit for the development of society at large. The scheme has been made applicable from 1st September 2019.
RECENT INITIATIVES TAKEN BY ICSI

52. 50% Concession in fees for the students of Himachal Pradesh

Undertaking the role of youth in the development of any state, the ICSI has launched a special fee waiver scheme for the students of Himachal Pradesh. Under the scheme 50% fee waiver will be provided to students belonging to Himachal Pradesh for registration to CS Foundation and CS Executive Programme.

53. One day Orientation Program for students of Foundation Programme

To enable the students to understand the onerous responsibility they are going to take forward and the reason as to why this profession commands a coveted place, the Institute has launched a One Day Orientation Programme.

54. Reforms in Examination – One Day Gap

To provide to the students ease in undertaking the examination, the ICSI has decided to modify the examination schedule from December, 2019 session onwards where in for the CS Executive Programme one paper of Module-I shall be followed by one paper of Module-II. Similarly, for the CS Professional Programme, one paper of Module-I shall be followed by one paper of Module-II and one paper of Module-III, and the cycle shall be further repeated across the entire schedule.

55. Reforms in Examination – One more attempt under Executive Programme (2012 Old Syllabus)

The Council of the Institute has decided to give one more attempt to the students of Executive Programme (2012 Old Syllabus) in the Company Secretaries Examinations. All such students who are not able to clear the Executive Programmed during the December, 2019 Examination session may continue to appear in the 2012 Old Syllabus for one more session, i.e. June, 2020 session.

56. Strengthening of Class Room Teaching Centres of ICSI

To augment the quality of Class Room Teaching centres of the Institute and to provide the best of services to stakeholders, various initiatives have been taken by the Institute recently. Besides organising Classes at various Regional/Chapter Offices/Study Centres of the Institute, Regional/Chapter offices of the Institute are conducting mock tests/Crash Courses/Revision Classes for the students of the Institute enabling them to prepare for the examination in a much planned and focused manner.

57. ‘Academic Corner’ - One stop solution for Academic needs of students

‘Academic Corner’ at ICSI website is a resource reservoir containing study material, Guidance for Examinations, Sample Case Studies, Practice Test Papers, Student e-bulletin, and information about ICSI Academic Connect all at one place. With a view to further facilitate the students of ICSI, Academic Corner was restructured to make it more user friendly.

58. Launch of International Commerce Olympiad

The ICSI entered into an MOU with the Science Olympiad Foundation to host the future Olympiads under the aegis of International Commerce Olympiad.

59. Yuvotsav 2020: 20th National Conference of Student Company Secretaries

The National Conference has been given complete revamping this year to make it more cherishing and learning experience for the students. The 20th National Conference of Student Company Secretaries was held at Kolkata on 12th January, 2020 to mark the 157th Birth Anniversary of Swami Vivekananda on the theme Yuvotsav 2020: Future Meets Present. ICSI Students along with other students and members participated in the event. 20 different competitions were held wherein teams from 71 Chapters and 4 Regional Councils participate.

60. ICSI Student Month

July being the Student Month was filled with activities aimed at not just connecting with the future professionals but to share dedicated moments with them. From Van Mahotsav Divas or Plantation Drive, Blood donation camps, to Quiz contests and Launch of special initiatives for students like Mock tests, Crash Course, Revision classes, Special classes for non-commerce students, Classes of specific subjects, etc. from Moot Court Competitions to Communication / Soft skills development Programmes, from ‘Samadhan Diwas’- Zero Grievance Day to Celebration of Career Awareness Week, from World Nature Conservation Day to Swachh Bharat Abhiyan, the month had it all.

61. Empanelment of Trainers

The Institute with the intent of creating a pool of quality faculty for its various knowledge initiatives has undertaken the process of empanelling resource persons so as to benefit from their expertise, skills and knowledge. Apart from enhancing the quality of both CS education and CS professionals, such empanelment shall restrict the appointment as faculty to only those members of academia and other professions fulfilling the eligibility criteria.

62. Library and Reading Room Facility in collaboration with Universities and Management Institutes across India

As an initiative to provide library services to its Members and Students all over India, the ICSI has forayed into tie-up with 54 Renowned Universities and Colleges of India for gaining access to their Library/Reading room facilities. Further, the Study Material of Company Secretaryship Course and ICSI Publications will also be available in these Universities/ Colleges for the benefit of all.
63. Empanelment of Academic Resource Persons for Subject Committees

With the aim to strengthen the academics and to develop practical insights regarding various Subjects of Executive Programme and Professional Programme, New Syllabus, thereby, bridging the gap between theory and practice, the ICSI has constituted ‘Subject Experts Committee’ for each of the twenty four subjects covered in Executive Programme and Professional Programme.

64. Reduction in time for efficient delivery of Study Material from 55 days to 30 days (inclusive of printing and dispatch)

IX. ICSI FLAGSHIP PROGRAMMES

65. 1st Leadership Summit – ‘Sankalp’

The 1st Leadership Summit of ICSI was an attempt to not only instill conviction but also strengthen the commitment level of the Central Council, the Regional Councils, Chapters and even so the members of Team ICSI including the HODs; hence the name ‘Sankalp’.

The focus of the event was laid at not only chalking out and deliberating upon the road ahead but to align the PAN India goals and objectives of the Institute, while undertaking team building and motivating all India Leadership.

66. PCS Day

Taking the spirit of faith, confidence and instilment of greater responsibility in the practicing brigade of this profession, by the regulatory authorities the celebrations of ICSI PCS Day sprawled to an entire week this year under which Pan India PCS Induction Programmes were organised at Regional Councils and Chapters during June 15-22, 2019. The events comprised panel discussions, conferences, seminars aimed at instilling amongst the practising members a new zeal to serve the nation.

67. National PCS Conference

Accredited with the maximum registrations witnessed by any PCS Conference till date, the National Conference of Practising Company Secretaries entering its 20th year was organized at Bengaluru on the 5th and 6th of July, 2019 on the theme ‘Expanding dynamics of Professional Excellence’.

68. ICSI Convocations

Convocations in the benign presence of dignitaries were successfully held for the different regions. The first and second rounds of bi-annual Convocations were held at Bengaluru, Kolkata, Hyderabad, Indore, Chandigarh, New Delhi, Ranchi, Mumbai, and Coimbatore wherein certificates of membership were awarded to Associate & Fellow members admitted. Prizes/Medals were also awarded to meritorious students (National Level).

69. 51st Foundation Day of ICSI : Hon’ble President of India graces the ceremony

The 51st Foundation Day of the Institute of Company Secretaries of India was celebrated in the benign and gracious presence of Shri Ram Nath Kovind, the Hon’ble President of India on the 5th of October, 2019 at Vigyan Bhawan, New Delhi. Along with the First Citizen of the nation, Shri Anurag Singh Thakur, Minister of State, Ministry of Corporate Affairs; Shri Arjun Ram Meghwal, Union Minister of State for Parliamentary Affairs, Heavy Industries and Public Enterprises and Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs presided over the event.

70. 47th National Convention of Company Secretaries

Organised under the theme ‘Empowering New India – Reform, Perform, Transform’, the 47th National Convention of Company Secretaries was held from 14th – 16th November, 2019 at the Jaipur Exhibition and Convention Centre, Jaipur, Rajasthan. The three day event was divided into multiple Technical and Special Sessions. The Inaugural Session was graced by Shri Ramcharan Bohra, Member of Parliament. The Valedictory Session of the Convention was graced by Dr. Sudhanshu Trivedi, National Spokesperson of BJP, Dr. Satish Poonia, State President, BJP, Rajasthan and Shri Ashish Chauhan, MD and CEO, BSE Limited.


In order to strengthen the structure of good governance in the capital market leading to a balance between economic and social goals, the Institute has been observing Capital Markets Week annually as one of the mega events throughout the country. Taking this initiative forward, the ‘ICSI Capital Markets Week – 2019’ was organised during August 9-17, 2019, on the theme ‘Redefining the Indian Capital Market-Vision 2022’. Mega programs were organised at Kolkata, Chennai, Mumbai and New Delhi.
72. ICSI National Awards for Excellence in Corporate Governance, 2019

The ICSI National Awards for Excellence in Corporate Governance, the journey that started way back in 2001, is an initiative to shape, refine and redefine the corporate culture.

The Award Function was held on 10th January, 2020 at The ITC Maurya, New Delhi. Shri Anurag Singh Thakur, MoS for Finance and Corporate Affairs and Mr. Justice Dipak Misra, Former Chief Justice of India were the Guests of Honour at the presentation ceremony and presented the Awards to the winner companies.

The Presentation Ceremony was preceded by two special sessions by Dr. Ritesh Malik, Founder, Innov8 Coworking and Mr. Sonam Wangchuk, Founder, The Students’ Educational and Cultural Movement of Ladakh (SECMOL)

The Award for Best Governed Companies under the 19th ICSI National Awards for Excellence in Corporate Governance was won by:

- Mahindra & Mahindra Limited (Listed Company: Large Category)
- Blue Star Limited (Listed Company: Medium Category)
- Tata Steel Long Products Limited (Listed Company: Emerging Category)
- BSEs Rajdhani Power Limited (Unlisted Company: Large Category)
- Star Union Dai-ichi Life Insurance Company Limited (Unlisted Company: Medium Category)
- Route Mobile Limited (Unlisted Company: Emerging Category)

4th ICSI CSR Excellence Awards: The awards for the Best Corporate under the 4th ICSI CSR Excellence Awards were conferred upon:

- Apollo Tyres Limited (Large Category)
- SRF Limited (Medium Category)
- Persistent Systems Limited (Emerging Category)

The ICSI Best Secretarial Audit Report Awards were presented to:

- CS Atul Mehta, Mehta & Mehta Associates
- CS (Dr.) CV Madhusudhan, KSR & Co.
- CS Vinita Nair, M/s Vinod Kothari & Co.

The prestigious ICSI Lifetime Achievement Award was conferred on Mrs. Indu Jain, Chairperson, Bennett Coleman & Company Limited for Translating Excellence in Corporate Governance into Reality.

73. 1st National Conference of Corporate CS

The two-day National Conference of Corporate CS was held at Mumbai on 4th–5th January, 2020. The Conference was inaugurated at the hands of Shri Bhagat Singh Koshyari, Governor, Maharashtra. Keeping in sight the transforming role of professionals and the ever increasing need to strive for excellence, the theme for the Conference has been centred at ‘Governance beyond Compliance: Expanding Horizons for Company Secretaries.

Attended by around 500 participants from across the nation, the National Conference comprised three Technical Sessions on areas of professional interest and various Motivational and Special Sessions. Two special sessions were dedicated to Expectations of the Board: CS as Catalyst to Board Functioning and Cyber Theft.

74. State Level Conference on Investor Education and Awareness

The ICSI organized an Investor Awareness Programme in association with the Investor Education and Protection Fund Authority, Govt. of India and a Mega Career Awareness Programme for the youth of Himachal Pradesh on 26th December, 2019 at Sports Authority of India (SAI) Auditorium, Dharmshala, Himachal Pradesh.

Shri Anurag Singh Thakur, Hon’ble Union Minister of State, Ministry of Corporate Affairs will be the Chief Guest. Shri Injeti Srinivas, Secretary, MCA, Shri Manoj Pandey, Joint Secretary, MCA graced the event and address the gathering.

75. ICSI Teacher’s Week

The Institute of Company Secretaries of India engaged with the Educators across India through the august Platform of ICSI Teachers Week and Empowered the torch bearers of Knowledge through thread bare sessions on the recent topics related to Companies Act 2013, GST Law etc. along with their updates on latest amendments by the Govt. of India.

ICSI Teachers Conferences on the Theme “Empowering Educators” were organised by ICSI Regional Councils at New Delhi, Chennai, Kolkata and Mumbai and ICSI Chapters during the ICSI Teachers Week across India at more than 40 Locations.

X. ENHANCING BRAND EQUITY

76. In an attempt to enhance its brand equity, the Institute has undertaken various initiatives to create greater brand presence of the course and the profession.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Press Coverage of ICSI events, announcements</td>
<td>700</td>
</tr>
<tr>
<td>Press Conferences</td>
<td>22</td>
</tr>
<tr>
<td>Exclusive Interview and write-ups of ICSI Spokesperson in Print media</td>
<td>20</td>
</tr>
<tr>
<td>Coverage on Electronic Media</td>
<td>15</td>
</tr>
<tr>
<td>Number of videos created for brand promotion</td>
<td>16</td>
</tr>
</tbody>
</table>
XI. TECH-DRIVEN INITIATIVES
The benefits of imbibing technology in every sphere of activity of the Institute have always been in the foresight leading to new and regular IT initiatives being taken by the Institute for both students and members. During the last few months the following initiatives were undertaken:

77. New ICSI website
78. ICSI Placement Portal
79. First phase of Disciplinary Mechanism Software
80. Launch of E-Chartered Secretary
81. Dedicated portals for UDIN and eCSin
82. Online payment of Fees by members
83. E-learning Solution – Third Phase
84. E-Agenda Management Portal
85. Reimbursement Module for Employees
86. Conference Room Booking Facility
87. In principal-approval of Council to empanel vendors for providing e-library for legal books and Case Digest on discounted rates
88. Webpage for Registration of Resource Persons for Academic Purposes
89. Dedicated App under ‘Shaheed Ki Beti’ Initiative
90. Online classroom teaching facilities
91. Video Bytes for Students on:
   • Coping up with Examination related stress
   • Examination Preparation for June, 2019 exam and Academic Guidance
   • Success stories of the Rank holders of December 2018 examination of the Institute.
92. Short-term training module
A new short term training module has been designed and developed for the purpose of providing uniformity to the various processes involved in various short term trainings organised by ICSI. In the Module, the Dt of Training at ICSI HQ will set all the rules and eligibility criteria of training programmes; RCs and Chapters will create training calendar, topic and faculty mapping, manage attendance & feedback and issue completion certificate and Students can apply and book their seats in various training by making necessary online payments.
93. Digital Platform for Certificate Courses
This platform facilitates the conduct of Certificate Courses in a completely automated environment including Registration, Fee Payment, Examination, Notifications and Certification. It is a complete end to end solution from Registration to Certification. The platform offers ease of access and is scalable to cater to needs of larger participants. It also facilitates the participants to collaborate for discussion relating to the respective courses.

94. ICSI on DigiLocker Platform
The Institute On 5th October, 2019 launched digital Identity Cards for its members in association with the National e-Governance Division (NeGD), Digital India Corporation, Ministry of Electronics & Information Technology (MeitY), Government of India. The Identity Cards will be available online and real time. It is envisaged that this initiative will play a significant role in reducing the administrative overhead of the Institute by minimizing the use of paper and will be convenient and time saving for the members.

XII. SOCIAL INITIATIVES
95. Fit India – Fit ICSI Walkathon
The Institute of Company Secretaries of India celebrated its Foundation Day on, 4th of October, 2019 by aligning with the recently launched Fit India Movement. The ICSI organised Pan India ‘Fit India-Fit ICSI’ Walkathons at all the Regional Councils and Chapter Offices of the Institute. Members and students along with their peers participated in the Walkathon which was flagged-off in the presence of dignitaries. The Fitness Pledge was also administered to propagate the adoption of a healthy lifestyle. The same was well appreciated by the Hon’ble President of India.

96. Sankalp se Siddhi – Single Use Plastic Free ICSI
The celebration of the Foundation Day of ICSI was a day of reiteration of the commitment towards its intended goals and towards building a sustainable nation and serving the society and stakeholders in an unprecedented manner. In pursuit of this vision and with the theme of India @ 75 – Sankalp se Siddhi in sight, the ICSI has stepped up to the responsibility and has intended to contribute to the national mission of ‘Single use Plastic Free India’ by launching ‘Single use Plastic Free ICSI’ initiative.

97. Go-Green Initiative – Solar Panels at ICSI Lodi Road, and other ICSI Chapters
To conserve and protect natural resources for future generations and to protect human health, the ICSI as an initiative in this regard has intended to contribute to reducing global warming by installing solar panels at its various buildings. The first inauguration was held at ICSI HQ, Lodi Road, New Delhi.

98. Concession in Fee for Registration to CS Course
The Institute has decided to grant Concession in Fee for Registration to CS Course to the Widows and Wards of Personnel of Indian Army, Indian Air Force, Indian Navy Martyrs, Permanent Disability cases, Serving / Retired and all para military forces.

99. Enhancement of Company Secretaries Benevolent Fund
The Managing Committee of CSBF has increased the financial assistance accorded under the scheme (upto the age of 60 years) from Rs. 7.5 lakh to Rs. 10 lakh.

100. GST Day
Akin to our other GST centric initiatives, PAN-India celebrations were made of GST Day, as the accomplishment ceremony of two years of the Good and Simple Tax.
ICSJ National Awards for Excellence in Corporate Governance 2019
ICSI National Awards for Excellence in Corporate Governance 2019

Best Governed Company in Listed Segment (Large Category) Mahindra & Mahindra Limited

Best Governed Company in Listed Segment (Emerging Category) Tata Steel Long Products Limited

Best Governed Company in Unlisted Segment (Medium Category) Star Union Dai-ichi Life Insurance Company Limited

Best Governed Company in Unlisted Segment (Large Category) BSES Rajdhani Power Limited

Best Governed Company in Unlisted Segment (Emerging Category) Route Mobile Limited

ICSI Life Time Achievement Award for Translating Excellence in Corporate Governance into Reality Mrs. Indu Jain, Chairman, Bennett, Coleman & Co. Ltd.

Best Corporate (Large Category) Apollo Tyres Limited
ICSI National Awards for Excellence in Corporate Governance 2019

Best Corporate (Emerging Category)
Persistent Systems Limited

Best Corporate (Medium Category)
SRF Limited

ICSI Best Secretarial Audit Report Award Joint Winners
CS Atul Mehta as Secretarial Auditor of The New India Assurance Company Limited

CS (Dr.) CV Madhusudhanan as Secretarial Auditor of Mahindra & Mahindra Financial Services Limited

CS Vinita Nair as Secretarial Auditor of Housing Development & Finance Corporation Limited

JANUARY 2020 | CHARTERED SECRETARY
INAUGURAL SESSION

CS CHAMPIONING THE ROLE OF KMP

CS ASPIRING TO BE CORPORATE GENERAL COUNSEL

EXPECTATIONS OF THE BOARDS: CS AS CATALYST TO BOARD FUNCTIONING

NATIONAL CONFERENCE OF CORPORATE CS HELD AT MUMBAI (JANUARY 4-5, 2020)
LEADING FROM THE FRONT:
FROM COMPLIANCE OFFICER TO WOMEN DIRECTOR

SPECIAL ADDRESS SESSION

CYBER THEFT – SERIOUS CONCERN FOR INDIA INC.

INTERACTIVE SESSION

VALEDICTORY SESSION
Glimpses of Investor Awareness Programme of ICSI and IEPF Authority
Glimpses of Investor Awareness Programme of ICSI and IEPF Authority

Ministry of Corporate Affairs, Government of India

State Level Conference on Investor Education and Awareness राज्य स्तरीय निवेशक शिक्षा एवं जागरूकता सम्मेलन

JANUARY 2020

CHARTERED SECRETARY
NATIONAL MEETINGS OF ICSI DELEGATIONS WITH DIGNITARIES (YEAR- 2019)
NATIONAL MEETINGS OF ICSI DELEGATIONS WITH DIGNITARIES (YEAR- 2019)
NATIONAL MEETINGS OF ICSI DELEGATIONS WITH DIGNITARIES (YEAR-2019)
New Feather in the cap: Recognition accorded by CDSL

The Institute of Company Secretaries of India (ICSI) as a part of its commitment towards development of the profession of Company Secretaries has been continually striving towards gaining and securing recognitions for the Profession under various laws.

It gives us immense pleasure to share with you that recognising the competencies and expertise of Company Secretaries, a new recognition has been accorded to the practising members of the profession by the Central Depository Services (India) Ltd. (CDSL), one of the most important securities market player in the Indian financial markets. Flagged off in 1999, CDSL is the second Indian central securities depository with which all leading stock exchanges like the BSE Ltd, National Stock Exchange and Metropolitan Stock Exchange of India have established connectivity.

The CDSL vide its letter dated December 17, 2019 has authorised Company Secretary in Practice (PCS) to issue Networth Certificate to be submitted by the issuers at the time of admitting securities in CDSL.

For details, you may click on the following link: https://www.cdslindia.com/issuer/issuer-joiningpro.html

While extending our heartfelt gratitude to the CDSL for instilling faith in the profession, I hope and believe that we as professionals shall understand the accountability attached to this recognition and act with due diligence to fulfil our designated responsibilities.
A new achievement, an added recognition:

National Securities Depository Limited (NSDL)

CS Ranjeet Pandey
President, The ICSI

The Institute of Company Secretaries of India (ICSI) as a part of its commitment towards development of the profession of Company Secretaries has been continually striving towards gaining and securing recognitions for the Profession under various laws.

It is only recently that we had shared with you the recognition accorded to the Company Secretaries in Practice (PCS) by the Central Depository Services (India) Ltd. (CDSL) to issue the Networth Certificate to be submitted by issuers at the time of admitting securities in CDSL.

We feel extremely elated to share with you that recognising the competencies and expertise of the Company Secretaries, the same recognition has been extended by National Securities Depository Limited (NSDL). The NSDL has also authorised PCS to issue Networth Certificate to be submitted by the issuers at the time of admitting securities in NSDL.

While extending our heartfelt gratitude to the NSDL, for instilling faith in the profession, I hope and believe that as professionals while understanding the accountability attached to this recognition we shall act with due diligence to fulfil our designated responsibilities.
Companies are not just legal entities; they are Corporate citizens today and consequently, the community, regulators and all stakeholders have a lot of expectations from these corporate citizens. With this change, even the way in which Board of Directors and managers look at corporate objectives is also undergoing a significant change. The corporate objective is ‘stakeholder welfare’ a clear shift beyond ‘wealth maximization for shareholders’; a shift from profitability to sustainability. Sustainability objective can be achieved only when the Board of Directors steer the company towards better governance through their exemplary behaviour and drive value system of the organisation through appropriate policy prescriptions. Policies also work as a very good definition of expected behaviour of management and employees in the organisation. The Board has to rely on policy framework to be able to ensure good governance since members of the board are not whole-time participants in management / executive functioning. Company Secretary (CS) who is a part of the Board processes, also interacts with every member of the board both individually and collectively in the boards and committees. CS is very well poised/positioned to understand Board’s thinking process about policy formulation and the Board looks up to the CS not only for policy formulation, but also for its implementation and monitoring. Legislature suggests that Company Secretary shall be the guide to Board of Directors on governance related matters. Undoubtedly there is a total convergence of company secretary function and Corporate governance function. In fact, company secretary function, today, is only a sub-set of corporate governance function. It is high time that company secretary is rechristened as “Chief Corporate Governance Officer” of any corporate.

Responsible Business Conduct and Sustainability-The Mantra for Successful Business

Hema Gaitonde

Over the past few years we have seen that besides financial parameters, it is the environmental, social and governance factors of the business which are being considered as important parameters while reviewing the performance of the business. Every business entity has to work towards an inclusive and sustainable growth. In addition to wealth creation, they must think about how much they can give back to the society and how to create positive footprints in the environment. MCA has released the National Guidelines on Responsible Business Conduct (NGRBC) in March 2019. These guidelines are based on certain important principles, which have arisen out of the International Commitments made by India. The Article attempts to bring forth the importance of Responsible Business Conduct and some of the Key drivers which have nudged the business entities to act in economically and socially responsible manner.

Corporate Governance: Addressing the schism between Owners and Agents

Joel Evans

When the relationship is that of the governor and the governed, the value of governance increases. Even in a corporate scenario, when there is a relationship of the agents (directors) and the owners (shareholders), the concept of corporate governance acquires immense importance. In the current dynamic and technologically advanced world, corporate governance has become the buzzword. The governed claim more rights and the governors are loaded with more duties. This creates a schism between the agents...
and the owners. The article traces the etymology and the regulatory and judicial response to the idea of corporate governance.

Regulatory Governance against Insider Trading - A walk through important amendments

Dr. C. V. Madhusudhanan

The SEBI (Prohibition of Insider Trading) Regulations, 2015 is one of the important legal frame work put in place to check the unethical securities market practice called ‘insider trading’. World over many leading securities market regulators have enacted similar laws to arrest such fraudulent market manipulations and transactions. Upon institution of SEBI way back in the year 1992, one of the first regulations that came to be notified by SEBI is the SEBI (Prohibition of Insider Trading) Regulations, 1992. The market practices and ingenuity of human mind has provided many a learning exercise to SEBI to strengthen the legal frame work in curbing insider trading. SEBI felt the need to bring in large scale amendments to the Regulations then in force and this paved the way for SEBI to replace it with SEBI (Prohibition of Insider Trading) Regulations, 2015. The 2015 Regulations brought a paradigm shift to the definition of ‘insiders’ and introduced many compliance measures to curb insider trading including operationalizing Code of Conduct against insider trading and reporting measures on insider trading related violations. The present Regulations requires installing a stringent institutional framework both by a listed entity and the market intermediaries and fiduciaries associated with it. The recent amendments to 2015 Regulations, provides a real challenge to a listed entity and the Designated Persons and their immediate relatives (otherwise known as ‘insiders’) in providing a water tight mechanism against insider trading and spreading SEBI’s net on a wider regulatory overreach. Compliance requirements by listed entities have grown many-fold under the 2015 Regulations. The 2015 Regulations has now undergone many revisions in the past one year and this calls for both Executive Company Secretaries (being compliance officers) and Practising Company Secretaries to have a thorough understanding of the concepts, definitions and compliance processes relating to insiders and mechanics of putting in place the institutional mechanism there to.

Fair Competition for Good Governance

Surendra U Kanjista

The purpose of corporate governance is to help build an environment of trust, transparency and accountability necessary for fostering long-term investment, financial stability and business integrity, thereby supporting stronger growth and more inclusive societies. The Competition Act seeks to prevent practices having adverse effect on competition; promote and sustain competition in markets; protect the interests of consumers; and ensure freedom of trade carried on by other participants in markets, in India. Anti-competitive activities like cartels or acquisition drives like combinations are monitored by the Competition Act. Existence of good corporate governance framework may help an enterprise to deal with cartels or combinations in a proactive manner. This article deals with the interaction between corporate governance and competition law.

Independent Directors – A Tool for Corporate Governance

Vasumathi R, Jaya Bharathi K and Vinodini P Rao

In the light of corporate scandals and global financial crisis, corporate governance has become an integral part of companies globally. Concept of Independent Directors too has developed its roots in this scenario and it is now mandatory for certain companies to have them on Board and its committees. This article aims to provide an insight into the evolution, role and significance of the Independent Directors, who perform a major role for implementation of Corporate Governance practices required to be adhered to by the companies, with special focus on the applicable provisions of Companies Act, 2013. Independent Directors, with their honesty, integrity and experience, act as core resource persons and are an important tool for effective management and for discharge of social responsibility.

A comparative study of Corporate Governance norms across different countries

Dr. Shiv Nath Sinha

Corporate Governance norms of different countries differ from each other because of a number of factors like culture, traditions, legal development, investor activism, development of securities markets, judiciary, ownership structure, board composition, etc. Each country has develop their own corporate governance norms, which to a large extent are similar but there are certain norms which are unique to that particular country. There are research studies which indicate that the introduction of corporate governance norms in one country increasingly influences corporate governance codes elsewhere in the world. The main objective of this paper is to study the Corporate Governance codes of Australia, China, Germany, Japan, South Africa, UAE and UK and to analyze the similarity and convergence of different codes. The objective is also to identify distinct features of governance norms and framework prevailing in different jurisdictions across the globe.
Corporate Governance - Realm of Company Secretaries

Narendra Singh and Prativa Jena

Vision New ICSI – 2022 to be a leader in promoting good corporate governance is in sync to commemorate the year 2022 when India completes 75 years of independence. Corporate governance is indispensable for sustainable development of the corporates. The last two decades have witnessed transformation of Company Secretaries role from mere statutory officer to lead compliance and governance functions. The regulatory bodies played significant role in identifying and mandating apt legislation for adoption and sustainable growth of the organisation. CS continues to lead corporate governance function as it revolved around compliances, transparent and prompt disclosure practices and imbuing ethical culture in the organisation. Role played by the ICSI is commendable as it continues to be promoting culture of better corporate governance practices which echoes in Vision New ICSI 2022 documents.

Entity Management Software for Governance and Compliance

Dr. Joffy George

Company Secretary is primarily responsible for supporting the board of directors and overseeing the company’s compliance programs. Effective corporate governance means having specific rules, controls, policies and resolutions in place to dictate corporate behaviour; good governance is nothing more than using the right information and controls to effectively direct an organization and to make decisions. Entity management has become a central function of corporate governance for compliance professionals. Because all other essential governance and compliance functions rely on a dynamic and accurate corporate record, best practices in entity management support the Company Secretary’s governance advisory role. Electronic tools and industry expertise help professionals to manage, access and share corporate data at a moment’s notice. A comprehensive entity management solution must include consultative support from a team of entity management specialists. In addition to day-to-day support, this team will provide a wide range of important functions, including implementation, support for complex issues, apprising you of changing compliance and regulatory rules, and training on corporate governance and compliance best practices.

Whether section 14 of Companies Act 2013 is applicable to deemed public company when section 43A of Companies Act 1956 ceases to apply?

Dr. K. R. Chandratre

One of the issues that figured out and dealt with in the Order of the National Company Law Tribunal (NCLAT) in Cyrus Investments Pvt. Ltd. v Tata Sons Ltd (Company Appeal (AT) No. 254 of 2018, was regarding legal status of Tata Sons Limited’ from under the Companies Act 2013. The NCLAT held that the company was a public company. The NCLAT referred to section 14 of the Companies Act, 2013, which contains provisions concerning voluntary conversion of a private company into public company and vice versa. It, however, appears that all deemed public companies became private companies on section 43A being omitted, irrespective of whether they have complied with the formality of informing the Registrar and getting the name in the certificate of incorporation altered by inserting in the name the word “private”. Those of them which had not complied with that formality are continuing, in law, as private companies though they might not have been using the word “private” in their names and otherwise treating themselves as public companies. Of course, those of them who have taken necessary steps to convert themselves as full-fledged public companies are, needless to state, public companies. Consequently, section 14 of the Companies Act 2013 did not apply to the companies which became deemed public companies. The article discusses all relevant aspects of this issue.

Supreme Court Decision on NCLT jurisdiction in Passing Orders in the Realm of Public Law

Delep Goswami and Anirrud Goswami

Supreme Court holds that NCLT cannot pass orders pertaining to matters in the realm of public law and the aggrieved party can invoke writ jurisdiction of the High Court under Article 226 of the Constitution of India. The Court also holds that allegations of fraud committed by the Corporate Debtor can be inquired into by the NCLT. The article clearly highlights the ruling of the Supreme Court on the extent to which the wide powers of NCLT arising out of Section 60(4) and Section 60(5) of the IBC 2016 can extend – certainly not so far as to bring absurd results.

Integrating Diversity in the Organisation

Om Prakash Dani and M.S.Srinivasan

Unity in Diversity is one of the fundamental principles of life; it is also the right foundation for the long-term success and effectiveness of a group like a community, organisation or nation. As an organisation expands and diversifies into many distinct, independent, self-managing units or division, it has to forge a common ground which gives identity and stability to the group. This article examines this problem of forging unity in diversity in an organisation in the form of a case study.
Legal World

- **LMJ 01:01:2020** The Appellants do not state as to how they would be prejudiced by the act of Respondent No.1 in not filing the application for registration of transfer of shares within the aforementioned period. [SC]
- **LW 01:01:2020** Banks advanced loans to Karvy, by taking shares as pledge, are entitled to be heard by SEBI. [SAT]
- **LW 02:01:2020** Investigation into one of the group companies (not involved in the merger scheme) of the transferor company, by ipso facto, cannot be the reason to sanction a scheme of amalgamation. [NCLAT]
- **LW 03:01:2020** CCI orders investigation with respect to abuse of dominance in Odisha rice procurement by government agency. [CCI]
- **LW 04:01:2020** We find that the amount directed to be paid by the National Commission in the impugned order must be paid by the Developer and CHB in the ratio of 70:30. [SC]
- **LW 05:01:2020** This Court is satisfied that the respondent is guilty of gross misconduct of unauthorized absence and the punishment inflicted by the petitioner is proportionate to her misconduct. [DEL]
- **LW 06:01:2020** In view of the fact that the authorities below have not applied their mind and in view of the fact that the Honourable Supreme Court has held that mens rea is an essential ingredient, the appeal is allowed and the impugned order of the learned Single Judge and the orders passed by the authorities below are set aside. [SC]
- **LW 07:01:2020** It is unfortunate that the authorities have initiated the disciplinary proceedings against the petitioner for stating the truth before the court that the records had been destroyed. [MAD]
- **LW 08:01:2020** In our considered view, once the demand was made in due compliance of bank guarantees, it was not open for the appellant Bank to determine as to whether the invocation of the bank guarantee was justified so long as the invocation was in terms of the bank guarantee. [SC]

From The Government

- Relaxation of additional fees and extension of last date of filing of CRA-4 (cost audit report) for FY 2018-19 under the Companies Act, 2013
- Amendment in notification regarding Court Jurisdiction
- Notification regarding establishment of Special Court in the State of Uttarakhand, Union territory Jammu & Kashmir and Union territory of Ladakh
- Measures to strengthen the conduct of Investment Advisers (IA)
- Stewardship Code for all Mutual Funds and all categories of AIFs, in relation to their investment in listed equities
- Framework for listing of Commercial Paper-Amendments
- Investment in units of Mutual Funds in the name of minor through guardian and ease of process for transmission of units
- Format on Statement of Deviation or Variation for proceeds of public issue, rights issue, preferential issue, Qualified Institutions Placement (QIP) etc.
- Guidelines for filing of placement memorandum - InvITs proposed to be listed
- Management and advisory services by AMCs to Foreign Portfolio Investors
- Filing of Offer Documents under Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018
- Review of investment norms for mutual funds for investment in Debt and Money Market Instruments

Other Highlights

- MEMBERS RESTORED DURING THE MONTH OF NOVEMBER 2019
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF NOVEMBER 2019
- ATTENTION! KNOW YOUR MEMBER (KYM)
- ATTENTION! ADVISORY FOR MEMBERS OF ICSI
- ATTENTION! MEMBERS HOLDING CERTIFICATE OF PRACTICE
- ATTENTION! MEMBERS WHO HAVE NOT PAID THE ANNUAL MEMBERSHIP FEE BY LAST DATE 30-06-2019
- RESTORATION OF MEMBERSHIP
- ATTENTION! DIGITAL I-CARD FOR MEMBERS
- RESTORATION OF CERTIFICATE OF PRACTICE
- OBITUARIES
- ETHICS & SUSTAINABILITY CORNER
- GST CORNER
### Gazetted Holidays

| Month   | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---------|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| FEBRUARY | | | | |
| MARCH   | 10 Tuesday – Holi | 15 Saturday – Janmashtami | 15 Saturday – Janmashtami | 20 Monday – Guru Gobind Singh’s Birthday |
| APRIL   | 7 Thursday – Buddha Purnima | 8 Tuesday – Dussehra | 10 Friday – Dussehra | 15 Saturday – Guru Gobind Singh’s Birthday |
| MAY     | 7 Thursday – Buddha Purnima | 11 Monday – Rakshabandhan | 15 Saturday – Janmashtami | 25 Sunday – New Year’s Day |
| JUNE    | 31 Wednesday – Janmashtami | 31 Wednesday – Janmashtami | 31 Friday – Janmashtami | 31 Tuesday – Guru Gobind Singh’s Birthday |
| JULY    | 1 Saturday – Id-ul-Zuha (Bakrid) | 14 Saturday – Id-ul-Zuha (Bakrid) | 24 Tuesday – Christmas Day | 30 Thursday – Guru Gobind Singh’s Birthday |
| AUGUST  | 1 Saturday – Id-ul-Zuha (Bakrid) | 24 Tuesday – Christmas Day | 30 Thursday – Guru Gobind Singh’s Birthday | |

### Restricted Holidays

| Month   | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---------|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| JANUARY | 1 Wednesday – New Year’s Day | 2 Thursday – Guru Govinda Singh’s Birthday | 13 Monday – Lohri | 15 Wednesday – Makar Sankranti / Pongal |
| FEBRUARY | 1 Monday – Holika Dahan | 15 Monday – Makar Sankranti | 27 Monday – Makar Sankranti | 30 Monday – Makar Sankranti |
| MARCH   | 15 Monday – Makar Sankranti | 15 Monday – Makar Sankranti | 15 Monday – Makar Sankranti | 15 Monday – Makar Sankranti |
| JUNE    | 24 Thursday – Christmas Eve | 24 Thursday – Christmas Eve | 24 Thursday – Christmas Eve | 24 Thursday – Christmas Eve |

### ICSI Vision

“To be a global leader in promoting good corporate governance”

### ICSI Motto

“सत्यं वदसः हर्म चरसः”

“Speak the truth. Abide by the law.”

### ICSI Mission

“To develop high calibre professionals facilitating good corporate governance”
ARTICLES

- COMPANY SECRETARY AS GOVERNANCE PROFESSIONAL
- RESPONSIBLE BUSINESS CONDUCT AND SUSTAINABILITY—THE MANTRA FOR SUCCESSFUL BUSINESS
- CATALYSING ‘SUSTAINABILITY’ DIMENSION OF CORPORATE GOVERNANCE
- CORPORATE GOVERNANCE - REALM OF COMPANY SECRETARIES
- REGULATORY GOVERNANCE AGAINST INSIDER TRADING—A WALK THROUGH IMPORTANT AMENDMENTS
- FAIR COMPETITION FOR GOOD GOVERNANCE
- INDEPENDENT DIRECTORS – A TOOL FOR CORPORATE GOVERNANCE
- A COMPARATIVE STUDY OF CORPORATE GOVERNANCE NORMS ACROSS DIFFERENT COUNTRIES
- CORPORATE GOVERNANCE: ADDRESSING THE SCHISM BETWEEN OWNERS AND AGENTS
- ENTITY MANAGEMENT SOFTWARE FOR GOVERNANCE AND COMPLIANCE
- WHETHER SECTION 14 OF COMPANIES ACT, 2013 IS APPLICABLE TO DEEMED PUBLIC COMPANY WHEN SECTION 43A OF COMPANIES ACT, 1956 CEASES TO APPLY?
- SUPREME COURT DECISION ON NCLT JURISDICTION IN PASSING ORDERS IN THE REALM OF PUBLIC LAW
- INTEGRATING DIVERSITY IN THE ORGANISATION
Company Secretary as Governance Professional

Ever since the coming into force of Companies Act 2013 and further push given by SEBI LODR, the role, responsibility and stature of company secretary has grown in the transformation path from a company secretary/KMP. With growing expectations about better standards of governance from all stakeholders viz., investors, employees, regulators, customers, community, analysts and press Boards are now very sensitive to issues of governance and look up to Company Secretary for guidance in governance matters. With the strategic participation of company secretary in all corporate actions and being a reference point for the Board of Directors in governance issues, the company secretary can rightly be called as the “Chief Governance Officer”.

CHANGING FOCUS OF CORPORATE OBJECTIVES

Increasingly the focus in discussions on corporate goals are moving towards “maximizing firm value”; working towards “Stakeholder welfare” and to “sustainability” from “maximizing shareholder wealth” and “profitability”. The institutional investors are tilting towards a belief that firm’s value will improve with improved sustainability of the firm. IiAS, an investors’ advisory services firm in India in its report “Stability despite headwinds” published in December 2019 observed that “Although global investors are far ahead of this curve, domestic institutional investors are now also seeing the benefits of sustainability-based investing. ESG funds are being launched and companies are being encouraged to have better disclosures on the sustainability practices. Several of the larger listed companies have begun the move to integrated reporting. These are telling signs of how the Indian market will change over the next few years. It will move from G to ESG”. Perhaps, this belief has entered the legislature and regulators long before due to which the regulations and law has now substituted the expression ‘stakeholder’ in place of the expression ‘shareholder’ in place of the expression ‘shareholder’. The Companies Act 2013, while describing the duties of directors prescribes that “a director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.” The Companies Act while describing the role of independent directors in Schedule IV prescribes that

“safeguard the interests of all stakeholders, particularly the minority shareholders; balance the conflicting interest of the stakeholders.”

Corporate Governance enunciated by OECD which forms the basis for corporate governance regulatory framework across the world, particularly in G20 countries, prescribe that “The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.”

As the regulatory focus shifts from shareholder welfare to stakeholder welfare, the focus on better compliance will shift towards governance.

RESPONSIBILITY FOR BETTER CORPORATE GOVERNANCE AND CORPORATE BEHAVIOUR

Shareholder theory of management obligates managers to increase profits but through legal, non-deceptive means. There is an inherent risk in the shareholder theory orientation in the sense that due to the quarterly performance disclosure requirement and ‘management incentive structures’, shareholder theory gets geared toward short-term profit improvement and the long term tends to get coterminous with the contract period of chief executive by whatever name called. In this context LODR issued by SEBI has rightly stated
under the head “responsibilities of board” that “The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk. The board of directors shall have ability to ‘step back’ to assist executive management by challenging the assumptions underlying strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity’s focus”. Further, LODR has also cast an obligation on the listed entities that “Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure... The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.” The responsibility prescribed and the obligation cast on the boards of listed entities in LODR ensure that short term orientation of the management is duly kept under check by the board and long-term sustainability element is introduced in company performance management and disclosure of such performance. In parallel, there is enough and more is being said about corporate social responsibility by practitioners, regulators, NGOs that focus on environment, community development and other connected stakeholders. The move towards ‘sustainability’ from purely ‘profitability’ is clear and certain.

How can this transformation from ‘shareholder welfare’ to ‘stakeholder welfare’ and from ‘profitability’ to ‘sustainability’ be ever possible in corporate entities without a transformation in the thinking process and value systems of the management team that manage corporations? Had Nokia management been mindful of sustainability goal, Nokia phones could still be ringing and ringing around the world!! Had management of Jet Airways been mindful of sustainability, Jet Airways could be still flying.

PIVOTAL ROLE OF INDEPENDENT DIRECTORS

Regulatory prescriptions rely heavily on the office of Independent Directors (ID) for ensuring better standards of governance. However, in practical terms, ID’s interact with the company/executives in and around the Board meetings. They are in a position to have a look at the company only to the extent company shows itself to them through the board agenda notes and discussions in the board meetings and discussions in the committee meetings. LODR prescribes that an ID can be held responsible for the acts of commission and omission of a company to the extent such acts of omission and commission can be attributed to ID through the process of board processes (board meetings, committee meetings) or where ID has not acted diligently. The same LODR expects that listed entity shall familiarize ID through training programs and LODR expects that every ID acts on fully informed basis. Thus, the listed entity is responsible to make the ID informed and ID is obligated to get informed. Accordingly, the regulatory structure is well balanced and it is difficult for ID to escape responsibility for corporate behaviour. LODR rightly exhorts boards to set corporate culture and values by which executives in the listed entity shall behave.

Shareholder theory of management obligates managers to increase profits but through legal, non-deceptive means. There is an inherent risk in the shareholder theory orientation in the sense that due to the quarterly performance disclosure requirement and ‘management incentive structures’, shareholder theory gets geared toward short-term profit improvement and the long term tends to get coterminous with the contract period of chief executive by whatever name called.

PLACE OF POLICIES IN CORPORATE GOVERNANCE

Considering that Board of Directors, especially, the non-executive and independent directors interact with companies infrequently and only around the time of board meetings, an important question in this context is what are means through which Board and IDs can set corporate culture and value system without being constantly in touch with the corporate?

LODR at different places has thrown enough light on how boards can actually set standards of corporate behaviour by suggesting that Board shall enunciate policies to guide corporate behaviour. In all there is a mention of the following policies to be made by the Board:

1. Whistle Blower Policy & Vigil Mechanism
2. Code of Conduct for Board and Senior Management
3. Criteria for nominating candidates to Board and Senior Management Positions
4. Remuneration and Diversity of Board Composition
5. Criteria for Evaluation of Performance of Independent Directors
7. Criteria for Determining Remuneration to Non-Executive Directors
8. Criteria for Determining Material Subsidiaries
9. Criteria for Determining Materiality of RPTS & To Deal with RPTs
10. Criteria for Grant of Omnibus Approval by Audit Committee for Related Party Transactions.
11. RPT Criteria for Determining Materiality of Events and Information
12. Policy for Preservation of Documents
14. Risk Management Policy
15. Strong and effective group governance policy
16. Medium-term and long-term strategy
17. Framework for Avoiding Insider Trading
18. Fair Disclosure Policy

Policies prescribed by the board provide an excellent, clear, and unambiguous parameters for corporate behaviour. The regulations offer adequate freedom to the boards of corporates to draw up policies to suit the specific requirements of the company in question such that the management of such company may execute the subject matter falling different
policies are in accordance with the views / parameters prescribed by the Board. Board may add some more polices in addition to the above, if it is found necessary for ensuring better governance standards.

Boards seek compliance reports either on full or exceptional basis on the compliance with the above stated polices in every board meeting. Such monitoring at the board level links the ability of the Board to oversee the corporate behaviour with board expectations/set standards.

**CONVERGENCE OF REQUIREMENTS OF CORPORATE GOVERNANCE FUNCTIONS AND COMPANY SECRETARY FUNCTIONS**

Board is responsible for setting up policies which in turn drives the corporate behaviour. Board is entitled and expects company secretary to help the Board in formulating policies for the company. Company Secretary, being a Key Managerial Person (KMP) of the company, can exercise his authority and is in a position to gather necessary inputs from within the company and from the corporate world at large for formulating policies suitable to the company’s specific requirements. As a consequence of company secretary’s function of gathering inputs for boards and committee functions, company secretary has to monitor and observe or ensure compliance with various policies formulated by the Board. If any non-compliance is observed or if board expresses need for improvements in compliance standards with various policies stipulated, it falls within the role of company secretaries to communicate with the concerned executive/function to improve compliance with the policy. Thus being ‘eyes and ears’ of the board and conscience keeper, company secretary plays a critical and pivotal role in maintaining governance standards of the company.

Ms. Renuka Kumar, Joint Secretary, MCA, Government of India has made significant contributions in drafting the Companies Act 2013 and she in her article in Chartered Secretary (September 2013) observed that “company secretaries are the natural conscience keepers for the corporate sector since they are specialists in the fields of corporate governance, regulation and process and are the eyes and ears of the Board on such matters. It is they who validate board process and ensure that companies do the right things, always”.

Company Secretary is duty bound to provide the following assistance to the board, in addition to other functions as prescribed under Companies (Appointment and Remuneration) Rules (see rule 10 – only rules pertinent to this discussion are extracted here below):

(i) To provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
(ii) To assist the Board in the conduct of the affairs of the company.
(iii) To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.
(iv) Such other duties as may be assigned by the Board from time to time.

The organizational functions/departments can be viewed from ‘operational’ and ‘sustainability’ perspectives. Functions like finance, production, selling, human resources management and other routine functions are “operational” activities. Functions like corporate strategy, business performance management, compliance management, internal control, ethics management, investor relations, business continuity management, enterprise risk management, corporate social responsibility management, community relationships management, board secretariat broadly fall under the ‘sustainability’ category. Though all the functions report into the Board through respective executive director hierarchies, it is interesting note that legislation and regulation cast direct responsibility on Board with respect to the sustainability functions.

Company Secretary is responsible for convening board meetings and Committee meetings. In this process, company secretary coordinates with all verticals in the company for preparation of agenda and notes for discussion. LODR has prescribed “minimum information to be placed before the board”. In this prescribed list of items of information to be placed before the Board, there are 15 line items which together cover almost every aspect of functioning of a company.

The matters placed before Audit Committee, Stakeholder Committee, Risk Committee, Nomination and Remuneration Committee, CSR Committee and other functional committees cover many of the topics at a very granular level. Thus, during the process of coordinating for the agenda, company secretary is poised to know every aspect of company’s affairs. While it may appear innocuous, both the Companies Act and LODR require Company Secretary to report to the board about compliance with applicable laws and to ensure that the correct procedures have been followed that would result in correctness, authenticity and comprehensiveness of information, statements and reports filed; this responsibility is far reaching and being a KMP, company secretary may have to exert necessary authority to ensure that expectations of the legislation and regulations are satisfactory met.

Even from a practical perspective, company secretary is perhaps the only person standing before the Board representing all functions within the company (other than those represented by
executive director concerned) and Board will look at company secretary to communicate its requirements, concerns, appreciations though the institution of company secretary. If a random survey of the subjects represented by executive directors in a company is undertaken, it will be clear that they represent ‘operational’ functions as opposed to ‘sustainability’ functions discussed above. Company Secretary is expected to be the link between the ‘sustainability’ functions and the Board.

It is interesting to note that most of the SEBI Regulations affecting listed entities and intermediaries require appointment of a compliance officer under that regulation viz., Merchant Bankers, Stock Brokers, Stock Exchanges, Clearing Corporations, Depositories, Prevention of Insider Trading Regulations, LODR, Mutual Fund Regulations and so on. It is also observed that all these entities routinely name the company secretary of the company to be the compliance officer. Although, the PIT regulations which were implemented from April 1, 2019, has allowed any financially literate person to be appointed as compliance officer, most of the listed companies have continued the practice of appointing company secretary as compliance officer. The regulatory concerns addressed by LODR and PIT are closely connected with corporate governance standards. It is also noticed from a random survey that Company Secretary individually or with other colleagues like head of HR or Finance is responsible to conduct inquiry into whistleblower complaints, complaints filed under Prevention of Sexual Harassment, etc.

With the ever-expanding scope for the role of ‘company secretary’, increasing complexity and plethora of regulations under which compliance has to be ensured and reported, Boards of companies are increasingly falling back on company secretary in resolving critical and tricky governance questions. This has led to expectations from good corporate governance directly converging into the role and scope of company secretary, the KMP.

With this complete convergence between the governance functions and secretarial functions, Secretarial departments are beyond the capability of one single qualified company secretary to manage. Today secretarial department has to discharge the following functions:

1. Convene Board Meeting and Committee meetings – multiple committees and therefore multiple agendas.
2. Preparation and circulation of agenda to the Board.
3. Briefing Board of directors on critical subjects in the agenda (depending on the practices of different companies).
4. Identify and advise the board on upcoming vacancies in the Board and changes required.
5. Monitoring regulatory eco system for changes in the regulations, rules and legislations.
7. Compliance reporting to Stock Exchanges, RBI, SEBI and other sectoral regulators (as may be applicable).
8. Issuing approvals/clearances under PIT Regulations.
9. Monitoring share trades to identify if any ‘raids’ are being conducted; monitoring thresholds in shareholding changes and communicating to the management and regulators as may be required.
10. Coordinating the conduct of secretarial audit.

With the ever-expanding scope for the role of ‘company secretary’, increasing complexity and plethora of regulations under which compliance has to be ensured and reported, Boards of companies are increasingly falling back on company secretary in resolving critical and tricky governance questions. This has led to expectations from good corporate governance directly converging into the role and scope of company secretary, the KMP.

11. Monitoring compliance status and requirements of subsidiary companies, if any and coordinating with them for updating board.
12. Supporting board and committee for succession planning on statutory audits, board positions, etc.
13. Drafting of Annual Reports/Integrated Reports as GRI standards. This requires comprehensive understanding of the business, affairs of the company.
15. Monitoring whether corporate website is functioning and updated promptly.
16. Redressal of investor grievances.
17. Representing company matters before regulators when called for or when necessitated.
18. Working with industry bodies to represent corporate interest as and when necessary in the face of changes in regulations.
19. Organise and execute corporate actions – a huge responsibility.
20. So and so forth – the list is endless

It is an amalgam of strategic management, middle management, operational, monitoring, reporting functions. In a typical Secretarial department of a medium sized / large sized company it is usual to find a battery of Company Secretaries being employed and it is responsible for all aspects of corporate governance.

A quick survey of job description of “Corporate Governance Officer” in other jurisdictions like Singapore, UK, Australia and the USA clearly indicates that whatever company secretary does in India is what the job description of the corporate governance officer in those jurisdictions.

**CONCLUSION**

The term ‘Company Secretary’ is an extension of the traditional ‘secretary’ or ‘secretarial assistant’. It does not represent the contemporary Authority, Responsibility, Stature, Professional Expectations of governance professional. While company secretary discharges all functions of governance professional, being called as ‘company secretary’ it takes away the fineness of exalted role and responsibility of that position. Every company secretary shall imbibe the attitude and grace its governance responsibility and discharge them accordingly and shed that ‘secretarial’ emotion. This can happen only if company secretary is rechristened as “Chief Governance Officer”.

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**ARTICLE**

**INTRODUCTION**

The Ministry of Corporate Affairs (MCA) has been regularly taking various steps for ensuring responsible business conduct by the Corporates. In March 2019, MCA has released the National Guidelines on Responsible Business Conduct with an intention to make Corporates responsible and accountable and to create a whole ecosystem with wider development goals. These Guidelines are based on the ‘Protect, Respect and Remedy’ Framework of the United Nations.

The first step in this direction was taken when the ‘Voluntary Guidelines on Corporate Social Responsibility’ were issued in 2009. Thereafter in 2011, these guidelines were revised as ‘National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011 (NVGS)’ in consultation of the experts in related fields. These were basically guidelines/principles which would help companies in India to carry on businesses in a responsible manner.

The National Guidelines on Responsible Business Conduct (NGRBC) released in March 2019 are based on the following principles which were also considered in SEBI Circular CIF/CFD/CMD/10/2015 November 04, 2015 regarding Business Responsibility Reporting:

1. Businesses should conduct and govern themselves with integrity in a manner that is Ethical, Transparent and Accountable.
2. Businesses should provide goods and services in a manner that is sustainable and safe.
3. Businesses should respect and promote the well-being of all employees, including those in their value chains.
4. Businesses should respect the interests of and be responsive to all their stakeholders.
5. Businesses should respect and promote human rights.
6. Businesses should respect and make efforts to protect and restore the environment.
7. Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.
8. Businesses should promote inclusive growth and equitable development.
9. Businesses should engage with and provide value to their consumers in a responsible manner.

**RESPONSIBLE BUSINESS CONDUCT**

Responsible Business Conduct (RBC) refers to the commitment of businesses to operate in an economically, socially and environmentally sustainable manner while balancing the demands of shareholders and other interested groups. It is a commitment to work with integrity even in most difficult situations. Beyond profit maximization and wealth creation, the role that a business is playing in the society is important. In the competitive world, if a Company has to grow and has to be distinguished from the rest, this is possible only through responsible business conduct. The trust of the investors, customers, other stakeholders and the Government can be gained by a socially responsible behaviour.
When each employee of the Company follows the mantra “I should act responsibly”, they would be accordingly guided in their conduct. There is a sense of pride, enthusiasm and contentment amongst the employees as they work for the Company. Being positively motivated, there is improvement in their productivity. The Company also has an upper hand over its competitors. Their customers would be more inclined in favour of being associated with a socially responsible business. It will earn a reputation in the business community for doing the RIGHT THING. Besides the Government policies and regulatory framework, the manner in which the various sectors of the industries conduct themselves, determines the investment friendliness of a country.

With the startups being encouraged by the Government, it is necessary that, right since its incorporation, the promoters develop a habit of conducting business not only with profit making objective but also in an ethical way and socially beneficial manner.

Today the disclosures on non-financial parameters are considered as important benchmark and the fund managers and investors globally also consider these disclosures in their evaluations. Firms that adhere to high RBC standards are more likely to bring lasting benefits to employees, customers and the societies in which they operate. The regulatory authorities are also likely to look at such businesses positively.

When each employee of the Company follows the mantra “I should act responsibly”, they would be accordingly guided in their conduct. There is a sense of pride, enthusiasm and contentment amongst the employees as they work for the Company. Being positively motivated, there is improvement in their productivity.

Companies are best able to promote RBC when governments fulfill their own distinctive roles effectively. Hence the roles of government, business and civil society are both complementary and interdependent.

**KEY AREAS WHERE A RESPONSIBLE CONDUCT BY A CORPORATE WILL HAVE RIPPING EFFECT ON ITS BUSINESS, THE SOCIETY, THE NATION AND THE WORLD**

**a.) Environment policy**

Climate Change and Global Warming are burning issues which call for strong actions and which each corporate has to keep in mind while carrying on their activities. They can play a major role in reducing carbon footprints and environment emissions, thereby protecting the planet. Basic safety standards must be adhered. Corporates should adopt cleaner production method; promote use of energy efficient devices and environment friendly technologies with use of renewable energy.

In the past we have seen the results when companies have acted in a socially and environmentally irresponsible manner. One of the classic cases is that of Bhopal Gas Tragedy in 1984, which is considered to be the world’s worst industrial disaster. Since the basic safety precautions were not taken, several persons lost their lives and many others suffered from permanent disability and not to forget the drastic affect it had on the environment. The ill effects continued for several years after the incident occurred.

Electronic maintenance of records with suitable backup, encouraging e-meetings, basic care to avoid un-necessary prints must be encouraged. Workplaces must be geared up to support the battle of plastic pollution. Businesses must start encouraging sustainable alternatives and create awareness amongst the employees. Use of biofuels, powering business with renewable energy (solar/wind/biomass), use of energy efficient production process/equipment/electrical devices, getting energy audit done every year are small steps which, when taken care by every corporate, will result in protection of our environment.

Water resources and water wastes must be managed properly and awareness about the same must be created within and outside the organisations. Corporates can play a major role in this area since they use water on large scale and also are a major source of water pollution. Effluent Treatment plants should be set up and treated water should be put to use for permissible purposes.

Companies must have good waste management system (solid and liquid), which could also be extended to the neighbouring areas as community waste management program. Corporates can set up waste collection kiosks and create awareness amongst the people for proper waste disposal.

**b.) Corporate Social Responsibility**

There are several companies in India, which were undertaking CSR Activities many years before it become mandatory by law. They thought it was their responsibility towards the society. Such companies have evaluated their performance not only in terms of financials but also by way of how much they could contribute to reduction in negative environment footprints towards the betterment of the environment and the society. Socially responsible behaviour has been a way of life for such organisations. They have been taking steps towards education, skill development, good health, making available safe drinking water and sanitation, use of solar energy, women and child development, slum area development, supporting the differently abled etc. This is positively seen by the customer, regulator, investors and other stakeholders.
c.) Ethical Behaviour and Anti-Corruption Policy
Companies need to promote compliance with all the applicable Anti-Corruption and Anti-Bribery laws and regulations and to establish guidelines for complying with these laws while conducting business. Any form of offering/receiving of bribe, facilitation gifts, payment, kick back etc. must be strictly prohibited. When a strong ethical culture is present across an organization, employees know what type of behaviour is expected and what is not. Right from induction of the employee, he/she should be first made aware of the corporate ethics that need to be followed. The top management must demonstrate in every action that values play a very critical role in decision making.

d.) Privacy Policy of a Company and Data Storage
A Company may be holding data about its employees, contractors, customers, suppliers and others which it has collected, used and stored during the course of business. Hence it is necessary that the Company complies with applicable privacy laws and regulations and does not misuse this information or share it with any unauthorized person (whether within the Company or outside.) Only relevant information should be obtained, with a system for keeping it updated. Formal procedures and approved processes need to be followed while granting access to Personal Data. Consent should be obtained from individuals/corporates for the collection, use, transfer, storage and disclosure of personal/corporate data. Information obtained with consent for one purpose should not be used for any other purpose. The data which is collected for the purpose of the business must be stored in such manner so to not allow unauthorized access, any hacking attempts or deletion. Printed information needs to be kept at safe places. The data protection laws and regulations describe what companies and organizations must do when they collect, use and store personal data; these should be adhered.

e.) Human Dignity, Rights and Labour Policy
Responsible businesses will ensure that they take all steps to protect the basic human rights at the work place and to establish positive and safe work environment, where each employee is treated with dignity and equally regardless of their designation, race, age, gender, sexuality, disability, culture or any other characteristics. Attention should be paid to the welfare of the labour and the contractual workers. Suitable grievance redressal systems should be in place and justice should be done without fear and favour. Compliance with the labour laws in letter and spirit, regular training for the employees, skill up-gradation, taking care of their health and safety concerns will help in making a business sustainable in the long run. Employees will support the organisation, thereby resulting in low employee turnover and there will be improvement in their productivity.

f.) Supply Chain Audit
In addition to compliance of law by the Company themselves, a supply chain audit would ensure that the vendors also comply with the regulations and are offering quality goods/ services at competitive prices. This would involve audit of the internal processes at the vendor facilities / factories/ warehouses etc. to ensure that every care is taken by them to avoid negative footprints and to comply with the quality standards and the law. Supply Chain Audit will go a long way in protecting the business and brand reputation.

g.) Safeguard the interest of the Consumer
Consumer interest, their health and safety have to be safeguarded, there has to be free competition without restricting their freedom of choice while promoting and selling the product. Factual and complete disclosure of information and risks involved, if any, should be made while selling the product/ rendering of services. Businesses must avoid any misleading advertisements and ensure that all the consumer grievances are addressed on timely basis.

h.) Corporate Governance
Narayan Murthy Report on Corporate Governance rightly states that Corporate Governance is beyond the realm of Law. It stems from the culture and mindset of management and cannot be regulated by legislation alone. Corporate Governance is all about openness, integrity and accountability. It involves a set of relationships between a company’s management, its Board, shareholders and Stakeholders. Every business must be guided by the principles of Transparency and Accountability. A Company in addition to being a wealth creator also has to be a good corporate citizen. Proper Implementation of the code of conduct, whistle blower policy, prohibition of Insider Trading, Independence of the directors in the true sense, succession plan for the Board including CEO and Executive Directors, etc. leads to increase in confidence of the shareholders and positively influence the share prices. It safeguards the interest of the stakeholders and fosters the overall economic growth.

i.) Other areas
Increasing employee engagement in community development: Companies must encourage their employees to be part of community development activities. This will enhance their personal and professional development. Donation of money and services needs to be encouraged. Good deed day/ days could be dedicated in a year with a specific objective like women empowerment, health related issues, save the environment and other social causes.

Protecting the shareholders assets: The Company must appropriately use and manage its resources and assets and avoid waste. It has to ensure accurate and timely record keeping and financial reporting.

Contribution to sustainability: Businesses should ensure safe and optimal resource use over the life cycle of the product from design to disposal and ensure that everyone connected with it- designers, producers, value chain members, customers and recyclers are aware of their responsibilities.

Businesses should make efforts to minimize the negative impacts of displacement of people and disruption of livelihoods through their business operations. In cases where such displacement is unavoidable, the entire process has to be undertaken in a humane, participative and transparent manner. Just and fair compensation must be paid to those impacted.

Businesses must respect the intellectual property rights and the related regulations.

KEY DRIVERS TO RESPONSIBLE BUSINESS CONDUCT
There are several key drivers like international commitment by the nation, the government legislations, top level corporate
culture, culture of philanthropy in the Country and the corporate, stakeholders’ expectation, brand building and, tax benefits all of which will encourage the business entity to act in a socially responsible manner.

Some of the key drivers are discussed below.


The UNG Principles were basically formulated for implementing the United Nations ‘Protect, Respect and Remedy’ framework on the issue of human rights and transnational corporations and other business enterprises. This framework was the first corporate human rights responsibility initiative to be endorsed by the United Nations. It recognizes the state duty to protect human rights, the corporate responsibility to respect human rights and access to remedy for victims of business-related injustice. It is expected that the corporates have to act with proper due diligence to protect human rights. Remedial action needs to be immediately taken where there has been infringement of these rights. They should ensure timely payment of fair living wages to meet basic needs and economic security of the employees.

- **India’s commitment to Sustainable Development Goals**

The Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by all United Nations Member States in 2015, as a universal call to act to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030. India is strongly committed to the attainment of these goals and the government has been taking all possible steps in that direction. Many companies have started mapping their responsible business actions to SDGs.

- **UN Climate Action Summit**

At the UN Climate Action Summit 2019, many countries have committed themselves to emission cuts and other measures to fight climate change. France announced that it will no longer enter into trade agreements with countries whose policies run counter to the 2015 Paris Climate Agreement; Germany committed to carbon neutrality by 2050; India pledged to increase its renewable energy capacity to 175gw by 2020, to further increase to 450gw by 2050. Various multinational companies pledged to drastically cut greenhouse gas emissions.

- **Corporate Governance Reporting**

The Companies Act 2013 (for all companies), SEBI Guidelines, SEBI LODR regulations 2015 (for listed entities) are some of the regulations which have been framed to ensure Corporate Governance in the corporate sector. There are several disclosures required to be made on regular basis which will guide the business entity to be on the right path if the law is followed in spirit. Certain Industry Specific Regulators such as Reserve Bank of India and IRDAI also prescribe governance norms.

- **Corporate Social Responsibility (CSR) Rules (under Companies Act 2013)**

In India, Sec. 135 of the Companies Act 2013 and the rules there under makes it mandatory for every Company having the net worth of rupees five hundred crores or more, or turnover of rupees one thousand crores or more, or net profit of rupees five crores or more during any financial year to spend at least two per cent of its average net profits made during the immediately three preceding financial years, in pursuance of its CSR policies. This will encourage the Company to make a positive impact on the environment and stakeholders including consumers, employees, investors, communities, and others. India is the first country to make CSR mandatory. The intention of the legislature was to make the corporate sector aware of their social responsibility and to have an inclusive growth. Other business entities can also voluntarily undertake the CSR activities listed in Schedule VII to the Act.

- **Directors’ responsibility and liability**

The Board of Directors is responsible for the management of the Company and for its strategic decisions and policies which will guide its operations and the manner in which all resources are put to use. An ethical behaviour and good corporate governance must flow from the top. Sec 166 of the Companies Act 2013 casts a fiduciary duty on the Directors by clearly stating that a director of a Company shall act in good faith in order to promote the objects of the Company for the
benefit of its members as a whole, and in the best interests of the Company, its employees, the shareholders, the community and for the protection of environment.

- **Business Responsibility Reporting**

SEBI has mandated inclusion of Business Responsibility Report (BRR) as a part of the Annual Report for top 500 listed entities based on market capitalisation. BRR is a disclosure of adoption of responsible business practices by a listed Company to all its stakeholders. This is from an environmental, social and governance perspective, with the intent to engage the businesses more meaningfully with their stakeholders.

**BRR requires reporting on**

- Sustainable sourcing, which means its social and environmental performance extends to its supply chain and its supply chain also has to take steps for sustainable development.
- Besides reporting on ethics, anti-bribery and anti-corruption, the Company has to describe what mechanism it has in place to recycle its products (including packaging) after consumption as well as for all wastes emerging out of its manufacturing process.
- Corporates are required to review on regular basis what impact their programs/initiative/projects have within and on the outside world.
- Optimum energy consumption, whether Company has procured goods from local suppliers and small vendors, percentage of re-cycling of the products and waste.
- safety and skill up-gradation training given to its employees/workers. Number of complaints relating to child labour, forced labour, involuntary labour, sexual harassment in the last financial year and pending, as at the end of the financial year.
- Initiatives to address global environmental issues - Whether the Emissions/Waste generated by the Company within the permissible limits.

Businesses are expected to provide goods and services that are safe and contribute to sustainability throughout their life cycle.

- **Consumer Protection Law (CPL)**

The CPL is a set of regulations that aim at protecting the rights of the consumer by fair trade, competition and accurate information in the marketplace. The Consumer Protection Act (CPA) 2019 is more comprehensive and it includes e-commerce transactions and has more stringent provisions for misleading advertisements by manufacturer/ endorser as compared to the CPA 1986. Considering the various challenges faced by the consumers, several amendments have been introduced e.g., establishment of Central Consumer Protection Authority to regulate matters under the Act, concept of product liability, complaints regarding unfair contracts. The Businesses have to more careful with respect to the advertisement contents, quality of the products, product packaging disclosure and their overall approach to the consumer. This will make the organisations more watchful with respect to their responsibilities towards the consumers.

- **Labour Laws**

The labour laws in a Country guide the business entities to provide safe working facilities to their employees/workers. Adherence to these laws will ensure payment of adequate wages, proper work environment, appropriate working hours; health facilities for the labour. Business policies must be formulated keeping in mind the welfare of the employees.

- **Recognition of Principle of Absolute Liability by the Courts**

In the past, there were certain exceptions to Rule of Strict Liability (rule which originated in the Rylands v/s Fletcher case) like the Act of God, wrongful act of third party, plaintiffs' own fault. These exceptions, if proved, allowed the person causing loss to escape punishment. In *M.C. Mehta v. Union of India*, AIR 1987 SC 1086, the Supreme Court sought to make a departure from the accepted legal position in *Ryland v. Fletcher*. *The Court Order stated* “an enterprise which is engaged in a hazardous or inherently dangerous activity that poses a potential threat to the health and safety of persons and owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken. Hence the principle of absolute liability is operative without any exceptions. It does not admit of the defenses of reasonable and due care. When an enterprise is engaged in hazardous or inherently dangerous activity and this results in harm, it is absolutely liable for the same, in spite of the fact that it has taken all due care. Judgments like these have over the years made organisations more cautious and careful in conduct of their business.

**ROLE OF PROFESSIONAL IN RESPONSIBLE BUSINESS CONDUCT**

A Professional has a very important role in guiding the promoters/ directors and the management in conducting the business in a responsible manner. Compliance with the various laws, making required disclosures under these laws, true and fair financial reporting, guidance regarding the CSR obligations and Corporate Governance norms are some of the areas where a professional can put his expertise into practice. There is a general feeling amongst all, that the corporates must play a wider societal role. Corporates have also realized that this will help them in the long run by building their reputation and image and are looking up for professional guidance. A professional can suitably guide the Corporates and in this way contribute beneficially to the society. He has to continuously keep himself updated with the various principles of good corporate governance across the world and should try to put them into practice.

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Catalysing ‘Sustainability’ dimension of Corporate Governance

In the last few years, the emphasis of governance has started extending from “shareholder” to “stakeholder” and consequently from mere “Profitability” now to “Sustainability”. Growing companies have realised that it is necessary to govern themselves focusing on sustainability with long term sustainability which calls for strengthening and re-orienting the business strategies and the governance framework in harmony with sustainable development goals.

It is an undisputable fact that the concern for sustainable development has entered our life and caused quite a lot of things to change. Maybe one of the most important changes that should be mentioned is the way the business world begins to think, work and act. The companies, especially the big transnational corporations have started taking the sustainable development issues seriously. What has changed is that the management boards and the executives have begun bearing in mind the sustainability issues in all their activities and actions. The mindset of the business leaders, of the “people with money” has begun to change and getting profits and more money is no longer the only leading principle in the corporate governance world. The sustainable development ideas have entered there as well and have the potential to improve this world for the better.

**CORPORATE GOVERNANCE**

At a fundamental level, the word governance comes from the Latin root “gubernare” - meaning to steer or to pilot. Corporate governance, as first defined by the UK Cadbury Committee in 1992, is “the system by which companies are directed and controlled.” However, corporate governance is more than the system of specific checks and balances that contribute to the responsible oversight of a company. Corporate governance is concerned with achieving a balance between social and economic objectives, and between the objectives of individuals and the company. The corporate governance matrix exists to encourage the efficient use of resources and also to ensure that someone is held to account for the way in which these resources are used. The goal is to align as closely as possible the interests of individuals, corporations and society”. (Sir Adrian Cadbury, ‘Global Corporate Governance Forum’, World Bank, 2000). It’s the all-encompassing mechanism that, when
Sustainability governance is a part of the overall governance that allows companies, which take economic, social, and environmental aspects. This approach implies the balance of interests of all those who contribute to the current and future company’s success, by means of sustainable value creation that satisfies both shareholders and other stakeholders in the long term. Corporate sustainability is understood as the ability of a company, through its governance practices and market presence, to positively influence ecosystems (improving natural resources, reducing pollution levels, etc.), society (supporting local populations, creating employment etc.) and economic development (distributing wealth through dividends, paying fair salaries, respecting supplier payment obligations etc.)

The principles of sustainable development include: Stable and long-term economic growth; proportionate and balanced economic and social development, Active employment policies Reduction of regional differences; Growth of personal income and consumption, Preservation of the environment for future generations and efficient usage and allocation. Sustainability is a long-term vision that characterizes socially responsible companies and that refers to a concept of global corporate responsibility including legal, economic, social and environmental aspects. Over the last decade, concerns about sustainability among companies have increased, which has also led to an increase in their investment on issues related to sustainability. The Dow Jones Sustainability Index is an opportunity for companies to differentiate themselves. In fact, the DJSI considers sustainability as a business model that allows companies, which take economic, social, and environmental risks and opportunities into consideration in their management decisions, to be identified.

CATALYSING SUSTAINABILITY THROUGH CORPORATE GOVERNANCE

In today’s economy, companies are facing intense pressure and scrutiny around their corporate behaviour apart from their own jurisdictions, also from communities, investors and customers across the globe. Now more than ever, companies are being held accountable for their actions, as their size, power and influence expands across borders and has profound impacts on societies and stakeholders. Corporate governance is a structure that boards and senior managers rely on to help them manage the company responsibly and according to sound ethics and accountability. The principles of corporate governance are based on transparency, accountability, responsibility and fairness. Those four principles are also inherently related to the company’s corporate social responsibility. Good corporate governance and social responsibility help corporations keep things in good balance. It also supports the company’s efforts to develop control mechanisms, which will also increase shareholder value and promote satisfaction with shareholders and stakeholders.
Corporations are also taking a look at how they can incorporate sustainability into their strategic planning. In taking this approach, companies need to take four key aspects into account. These key aspects hold equal importance.

1. **Societal influence**: This refers to how society impacts the corporation, including the influence on stakeholders.

2. **Environmental impact**: This refers to the impact of the corporation on the geophysical environment, such as water waste, paper waste and energy waste.

3. **Organizational culture**: This refers to the relationship between the corporation, including its managers, and its internal stakeholders, particularly employees, and all that those relationships entail.

4. **Finance**: This refers to the impact of the corporation’s financial return in relation to the potential for risk and the level of risk.

### THE GOVERNANCE OF SUSTAINABILITY

Good governance is widely acknowledged as a foundation for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger. There are now widely accepted arguments that governance should play a stronger role in SDGs agenda. Indeed, in order to achieve the economic, social and environmental objectives, it is necessary to establish good governance by first identifying the mechanisms, process and outcomes.

**GOVERNANCE FOR SUSTAINABILITY**

- **BOARD OF DIRECTORS**
- **EXECUTIVE COMMITTEE**
  - Strategy
  - Policies
  - Codes
- **SUSTAINABILITY COMMITTEE**
- **SUSTAINABILITY ORGANIZATIONAL STRUCTURE**

The relevance of sustainability for the business activities of organisations has led to the need to include sustainability management as a direct formal responsibility of Boards of Directors.

**In order to carry out its role of supervising sustainability, the Board of Directors must:**

- Have a sufficient number of Non-Executive Directors with the knowledge and experience to evaluate and challenge executive management regarding the implementation of all actions in the area of sustainability;
- Set up mechanisms and communication channels which make sufficient and necessary information available to Non-Executive Directors to evaluate sustainability management in the organisation;
- Separate the powers of supervision and execution at all hierarchical levels of the organisation in order to provide relevant and independent information about the company’s results (e.g. Internal audits, Inspections, Information systems, whistle blowing, etc)

**For the Board of Directors to carry out its role of creating and executing a coherent sustainability strategy, it must:**

- Formally make a clear commitment in relation to social, environmental and ethical issues, and identify a set of specific goals, which also reflect society’s expectations;
- Create or adopt company standards which communicate succinctly the organisation’s commitment to sustainable development;
- Build a strategic and differentiating strategy for Sustainable Development, which reduces social, environmental and economic risks with the potential to impact the present and future performance of the company, and/or takes advantage of the economic, social and environmental opportunities that have the potential to maximise the present and future performance of the company;
- Develop a structured and intensive internal and external stakeholder dialogue, leading towards the set-up of external stakeholder panels, which interact directly with the Board of Directors;
- Adopt a sustainability organisational structure that involves the main leaders of the company and those responsible for both the positive and negative impacts of the company, which will maximise the effectiveness of the implementation of sustainability programs;
- Build management controls and procedures that allow the results of sustainability management in the organisation to be evaluated and communicated.

**SUSTAINABILITY GOVERNANCE BEST PRACTICES**

1. **Strategy and Culture**: The board ensures material Environmental, Social and Governance (ESG) risks and opportunities are addressed by the company’s strategy and that sustainability is integrated in the culture.

2. **Oversight and CEO Relations**: The board establishes a governance structure to enable oversight of the company’s management of ESG issues, risks and opportunities and includes ESG in CEO relations.

3. **Risk Management and Major Decisions**: The board ensures ESG-related risks and opportunities are integrated into the company’s management of enterprise risk and major corporate decisions.

4. **Board Composition and Competency**: The board builds ESG into board renewal, education and evaluation systems.

5. **Disclosure and Shareholder Relations**: The board provides oversight of the company’s disclosure of its ESG performance and position and ensures shareholders have appropriate ESG information.
FACTORIZING CORPORATE GOVERNANCE IN SUSTAINABILITY EFFORTS

Sustainable governance considers not only the board’s role in ensuring the long-term and enduring success of the company but also includes the steps the board takes to ensure it performs an effective oversight function of the organization’s social and environmental performance. Board governance should include the interests of all company stakeholders and should consider the impacts of ESG-related risks and opportunities. More companies are now acknowledging that relationships within corporate governance are not only between shareholders, management and the board, but also with the company’s key stakeholders and the community in which the company operates. Boards must question the effectiveness of their internal controls and evaluate their governance processes by asking in depth and challenging questions such as:

- How well does the board understand the pressing new risks that are affecting their company?
- To what extent is the board considering and actively discussing ESG-related risks and opportunities?
- What does the communication and oversight look like between sustainability and other relevant business functions?
- Are there specific key performance metrics and indicators around ESG related issues that are being supervised by top-level management?
- Is the board composed of directors with relevant skills, education and expertise?
- Are the remuneration incentives in line with the company’s strategy that promotes long-term growth?

CORPORATE GOVERNANCE AND SUSTAINABILITY - ACTION AGENDA

A critical question is ‘how will sustainable development be implemented?’. It must be understood that sustainable development does not just ‘happen’ in an automatic or preordained way. It needs to be carefully discussed, openly debated, and possibly even centrally planned. Crucially, these governing processes are unlikely to take place in an institutional and political vacuum. On the contrary, they will need to be embedded in systems of governance, and targeted at particular steps in the policymaking process such as options appraisal, decision making, and/or implementation. When integrating the concept of sustainability, the company should develop management models and strategies that will lead to the creation of social, environmental and economic values. It is necessary to set up corporate governance structure and mechanisms which incorporates a positive response to the country’s social, economic and environmental risks and opportunities. Desired actions include: Integrate sustainability into the business process management (sustainability must become an integral part of strategic management and business planning), Integrate sustainability into the measurement and performance management (quantify the effects of sustainable activities in the financial performance and its impact on the growth of shareholder value), Identify appropriate business performance metrics (identification of social, environmental and economic indicators that impact internal and external stakeholders).

The Organisation for Economic Cooperation and Development checklist for improving governance for sustainable development.

THEME QUESTIONS

- A clear understanding of sustainable development (SD): Is the concept of SD sufficiently clear and understood by the all employees and other related parties?
- Clear commitment and leadership: Is there a clear commitment at the highest level to the formulation and implementation of SD objectives and strategies? Is this commitment effectively communicated across all hierarchical levels in the organization?
- Specific organizational mechanisms for management of sustainability considerations: Is there an organizational ‘catalyst’ in charge of enforcing SD strategies? Are there specific reviews of laws and regulations to check whether they conflict with sustainable development? Is SD integrated into budgeting, appraisal, and evaluation processes?
- Effective stakeholder involvement: Do mechanisms exist with government or independent organisations to ensure that consumers are informed about the consequences of their consumption decisions? Are there guidelines on when, with whom, and how consultations should be carried out? Are transparency mechanisms being reinforced at different levels of stakeholder engagement?
- Efficient knowledge management: Are there transparent mechanisms in place for managing knowledge? Is the flow of information between the experts and decision makers efficient and effective?
Sustainable governance considers not only the board’s role in ensuring the long-term and enduring success of the company but also includes the steps the board takes to ensure it performs an effective oversight function of the organization’s social and environmental performance. Board governance should include the interests of all company stakeholders and should consider the impacts of ESG-related risks and opportunities.

**TOP DOWN INTEGRATION**

Since the Board of Directors sits at the apex of a corporation, governance plays a central role in the implementation of a sustainable strategy. By altering board composition and board structure, a company can foster effective corporate governance that integrates ESG-related risks and manages stakeholder interests. However, to successfully achieve sound corporate governance, a company should look beyond the structural and compositional aspects. In order to fully comprehend effective corporate governance in its entirety, a company should understand that corporate governance is only as good as the sum of its parts and processes, that impart culture, integrity, respect and reliability. The first impulse for sustainable corporate strategies stems from the board of directors. The presence of a leader who raises followers’ commitment to achieve the organizational mission and objectives is a prerequisite to transfer the principles of sustainability into the goals and behaviours of the whole organization. Boards can better integrate sustainability throughout the systems and process:

- By establishing clear lines of responsibility, between executives, committees, managers and regional business functions. In doing so, a company can encourage accountability towards certain targets and goals.
- By establishing oversight and monitoring mechanisms such as frequent assessments, evaluations or reports to the board or committee responsible.

**BOARD LEVEL COMMITTEE DEDICATED TO ESG ISSUES**

Creating a board-level committee that is responsible for ESG or sustainability oversight is a well-known approach for improving corporate governance and internal controls over sustainability issues. By restructuring boards and adding a specialized committee, a company can establish accountability for the oversight and consideration of ESG issues, as well as a line of responsibility throughout the various business activities and day-to-day operations. A regular report from the committee to the full board, comparable to reports from other standing committees, can help raise the board’s level of understanding and ensure that critical issues receive the scrutiny they require.

**SUSTAINABILITY EDUCATION, SKILLS AND EXPERTISE AT BOARD LEVEL**

Boards often seek directors who have expertise and relationships that could facilitate challenging and innovative decision-making. However, research reveals that sustainability or ESG related skills and experience are rarely taken into consideration. Not every director or member of senior management can be an ‘ESG expert’ but directors and appropriate company personnel should educate themselves on the key ESG issues facing the company and be able to converse comfortably on those issues that matter or present significant risks.

**ESG RELATED ISSUES IN ENTERPRISE RISK MANAGEMENT AND INTERNAL CONTROL PROCESSES**

Another vital element of any corporate governance structure is how it identifies and reacts to operational risks and opportunities. There has been an evolving discourse that has petitioned for the inclusion of ESG-related risks within governance processes such as Enterprise Risk Management (ERM) and internal control mechanisms. In order to act in the best interests of the company, directors should be expected to consider and identify the long-term risks to a company’s interests and to take steps to mitigate them. Specifically, directors should have an explicit duty to identify and mitigate all the economic, social and environmental factors.

**EXECUTIVE REMUNERATION: PAY FOR SUSTAINABILITY PERFORMANCE**

In the absence of well-defined metrics and targets tied to tangible plans, ESG integration becomes vague and less likely to be achieved. One way in which a board can facilitate ESG integration is to establish executive remuneration incentives that take into account social and environmental factors. Linking ESG performance measures to remuneration metrics is an emerging trend the world over.

**CULTURE, ETHICS AND VALUES**

In the wake of multiple high-profile scandals of corruption, bribery, and ethical conduct, boards are drawing more attention to the culture that is embedded throughout the organization. A common approach to standardizing and controlling the culture throughout a company is to establish a “code of ethics,” “code of conduct. Culture in business is a key ingredient in delivering long-term sustainable performance. When there is a healthy culture, the systems, the procedures and the overall functioning and mutual support of an organization exist in harmony. This brings enhanced integrity, confidence, long-term success and, trust of all stakeholders.

**ASSOCIATION WITH RESPONSIBLE SUPPLIERS**

Sustainable and responsible sourcing is becoming decidedly important for companies competing in international markets. Sustainable and responsible sourcing bases supplier selection on social and environmental criteria, in addition to an economic assessment. The company evaluates potential suppliers using specific frameworks and models; then, it signs manufacturing and commercial agreements with those who have received a high score. Such agreements usually contain contractual obligations for responsible conduct in addition to an economic assessment.
**SUSTAINABILITY PRACTICES**

Businesses are big users of natural resources, so it makes sense that they’d also be interested in operating as “green” as possible without compromising the vitality of their operations. Many businesses are finding that a good way to do this is by incorporating conservation principles into their mission, culture, and strategic planning. Companies are trying to develop a culture that encourages all employees and other stakeholders to reserve energy, cut costs, reduce waste and enhance other environmental factors.

**SUSTAINABILITY REPORTING**

Companies are no longer seen merely as instruments of the shareholders, but they exist within society, so they have responsibilities to that society: a wide variety of other stakeholders are interested in the company, are affected by and influence its activities. Sustainability reporting is a tool to increase transparency and accountability in the issues that traditional financial reporting is not dealing with. These include the linkages between environmental, social and economic issues as well as long-term perspective. Reporting on sustainability matters has increased in the private sector since the 1990s (WGEA, 2013). Social and environmental information disclosures reduce the information asymmetry between stakeholders and organization that leads to harmonization of corporate and societal objectives.

**FINAL THOUGHTS ON CORPORATE GOVERNANCE AND SUSTAINABILITY**

Companies who do not respond to sustainability will “almost certainly face extinction.” In line with this bold assertion, sustainability is perhaps the most recent of firm imperatives argued to better align an organization’s economic mandate with broader social objectives. A sustainability-oriented board can really be a change agent. It can maintain a constant dialogue with all the stakeholders and ensure that sustainability is dynamically integrated into corporate objectives and business operations to create a shared sustainability culture. Corporate Governance is a crucial catalytic for the achievement of Sustainable Development Goals (SDGs) for which three aspects of governance need to be considered: good governance (the processes of decision making and their institutional foundations), effective governance (the capacity of countries to pursue sustainable development), and equitable governance (distributive outcomes).

Good governance ultimately fosters sustainability, creates sustainable values and helps companies achieve their values. Companies also realize long-term benefits, including reducing risks, attracting new investors and shareholders, and increasing the company’s equity. As the quest for corporate sustainability continues to improve and enhance the principles of good corporate governance, companies will feel pressured to support their efforts with transparency and public disclosure. Transparency efforts will provide information to the general public on the relationship between corporate governance and improved sustainability. Harmonizing corporate governance with sustainable development will give the companies the ability to offer products and services that attach environmental, social and financial value to their levels of quality, perceived as such by customers and providing a clear license to operate (from all relevant stakeholders). Furthermore, the sustainable development policy has led to the emergence of the “socially responsible investors”. They are investors that follow closely the work of the companies they invest in and are very much interested on their sustainable development performance. In today’s world, a sustainable approach to corporate governance can be a source of competitive advantage and a long-term success factor for any firm.

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Corporate Governance: Addressing the schism between Owners and Agents

The etymology of the word ‘Governance’ can be traced to the Latin word ‘gubernare’. Gubernare means to steer or to govern. Governance is effectively steering an entity, whether it is Corporate Entity or it is an entity in the form of a body corporate. Steering in turn involves exercising power and decision-making for a group of people. The system that encompasses this decision-making process is governance. The concept of “governance” is not new. It is as old as human civilization. Simply put “governance” means the process of decision-making and the process by which decisions are implemented (or not implemented). The author through this article attempts to highlight the role of Corporate Governance in addressing the gulf between Owners and Agents.

UNDERSTANDING THE PHILOSOPHY OF CORPORATE GOVERNANCE

The term “corporate governance” has been defined in a number of ways. In its narrowest sense, corporate governance can be viewed as a set of arrangements internal to the corporation that define the relationships between managers and shareholders. The shareholders may be public or private, concentrated or dispersed. These arrangements may be embedded in company law, securities law, listing agreements, and the like or negotiated among the key players through documents of the corporate entity, such as the articles, shareholder agreements and bye laws. At the center of the governance system is the board of directors. Its overriding responsibility is to ensure the long-term viability of the firm and to provide oversight of management.

Corporate governance has succeeded in attracting a good deal of public interest because of its apparent importance for the economic health of corporations and society in general. However, defining the concept of corporate governance is quite challenging because it potentially covers a large number of distinct economic phenomena. As a result, different people have come up with different definitions. It is therefore considered to be appropriate to list some of the definitions rather than just mentioning one definition. It is indeed difficult to provide a stereotype definition of corporate governance. To circumscribe these words into a narrow definition would mean that the very spirit of governance is circumvented.

The Cadbury Report (Cadbury, 1992) to The London Stock Exchange is one of the earliest documents from the 1990s that defines Corporate Governance. It states:

“Corporate governance is the system by which companies are directed and controlled.”

However, more than 200 years before, Adam Smith in his monumental work on economy (An Inquiry into the Nature and Causes of the Wealth of Nations, Smith, 1776, p. 192) made this comment:

“The directors of such companies, however, being the managers rather of other people’s money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartner frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master’s honor, and very easily give themselves a dispensation from having it.”

It is perhaps one of the first thoughts on Corporate Governance in history.

One of the best known, most fundamental and most cited definition of recent times on Corporate Governance comes from the Organisation for Economic Co-operation and Development (OECD). The OECD defines Corporate Governance as:

“...corporate governance ... involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined”. (OECD, 1999, p. 11)

Report of the SEBI Committee on Corporate Governance February 8, 2003 defines Corporate Governance as:

“Corporate governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company.”

In short, all the definitions stated above implies that corporate governance is a mode by which the management is motivated to work for the betterment of the real owners of the corporation i.e. the shareholders. Corporate governance thus refers to
the manner in which a company is managed and states the rules, laws and regulations that affect the management of the firm. The most important concern of corporate governance is to ensure that the managers and directors act in the interest of the firm and in the interest of the true owners i.e. the shareholders. The main purpose of good governance practices is to avoid conflict of interest between the managers and the company.

**WHY DO WE NEED CORPORATE GOVERNANCE?**

There have been time and again instances of frauds and scams reported in the corporate history of the world. It was felt that the system for regulation is not satisfactory and it was felt that it needed substantial external regulations. These regulations should penalize the wrong doers while those who abide by rules and regulations, should be rewarded by the market forces. There were several changes brought out by governments, shareholder activism, insistence of mutual funds and large institutional investors that corporations they invested in adopt better governance practices and formation of several committees to study the issues in depth and make recommendations, codes and guidelines on Corporate Governance that are to be put in practice. All these measures have brought about a metamorphosis in corporate that realized that investors and society are serious about corporate governance.

**GROWTH OF CORPORATE GOVERNANCE IN USA**

In United States, Corporate Governance gained importance with the occurrence of the Watergate scandal. Thereafter, as a result of subsequent investigations, US regulatory and legislative bodies were able to highlight control failures that had allowed several major corporations to make illegal political contributions and to bribe government officials. This led to the development of the Foreign and Corrupt Practices Act of 1977 that contained specific provisions regarding the establishment, maintenance and review of systems of internal control. This was followed in 1979 by Securities and Exchange Commission’s proposals for mandatory reporting on internal financial controls. In 1985, following a series of high-profile business failures in the US, the most notable one being the savings and loan collapse, the Tradway Commission was formed to identify the main cause of misrepresentation in financial reports and to recommend ways of reducing incidence thereof. The Tradway Report published in 1987 highlighted the need for a proper control environment; independent audit committees and an objective internal audit function and called for published reports on the effectiveness of internal control. The commission also requested the sponsoring organizations to develop an integrated set of internal control criteria to enable companies to improve their control.

**WORLD BANK ON CORPORATE GOVERNANCE**

The World Bank, involved in sustainable development, was one of the earliest economic organization to study the issue of corporate governance and suggest certain guidelines. The World Bank report on corporate governance recognizes the complexity of the concept and focuses on the principles such as transparency, accountability, fairness and responsibility that are universal in their applications. Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance frameworks are there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible, the interests of individuals, organizations and society. The foundation of any corporate governance is disclosure. Openess is the basis of public confidence in the corporate system and funds will flow to those centers of economic activity, which inspire trust. This report points the way to establishment of trust and the encouragement of enterprise. It marks an important milestone in the development of corporate governance.

**OECD PRINCIPLES**

Organization for Economic Co-operation and Development (OECD) was one of the earliest non-governmental organizations to work on and spell out principles and practices that should govern corporate in their goal to attain long-term shareholder value. The OECD was trend setters as the Code of Best practices are associated with Cadbury report. The OECD principles in summary includes the following elements.

- i) The rights of shareholders
- ii) Equitable treatment of shareholders
- iii) Role of stakeholders in corporate governance
- iv) Disclosure and Transparency
- v) Responsibilities of the board

The OECD guidelines are somewhat general and both the Anglo-American system and Continental European (or German) system would be quite consistent with it.

**SARBANES- OXLEY ACT, 2002**

The Sarbanes-Oxley Act (SOX) is a sincere attempt to address all the issues associated with corporate failure to achieve quality governance and to restore investor’s confidence. The Act was formulated to protect investors by improving the accuracy and reliability of corporate disclosures, made precise to the securities laws and for other purposes. The act contains a number of provisions that dramatically change the reporting and corporate director’s governance obligations of public companies, the directors and officers.

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CORPORATE GOVERNANCE: FOSTERING CORPORATE ACCOUNTABILITY, RESPONSIBILITY AND TRANSPARENCY

Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital. Sound corporate governance is an important element of sustainable private sector development - not only because it strengthens ability of businesses to attract investment and grow, but also because it makes them, stronger, more efficient, and more accountable.

The significance of corporate governance is that in modern economies large corporations are typically associated with a division of labour between the parties who provide the capital (i.e., shareholders) and the parties who manage the resources (i.e., management). Conflict of interest among the two groups is a significant issue in the modern corporate world with promulgation of Companies Act, 2013.

Corporate governance is a key element in improving the economic efficiency of a firm. Good corporate governance also helps ensure that corporations consider the interests of a wide range of stakeholders, as well as of the communities within which they operate. Further, it ensures that their Boards are accountable to the shareholders. This, in turn, helps assure that corporations operate for the benefit of society as a whole. While large profits can be made taking advantage of the asymmetry between stakeholders in the short run, balancing the interests of all stakeholders alone will ensure survival and growth in the long run. This includes, for instance, considering societal concerns about labor and the environment. The failure to implement good governance can have a heavy cost beyond regulatory problems.

Professor Bob Tricker, an expert in corporate governance, who wrote the first book to use the title Corporate Governance in 1984 stated: “Whilst management processes have been widely explored, relatively little attention has been paid to the processes by which companies are governed. If management is about running businesses, governance is about seeing that it is run properly. All companies need governing as well as managing.”

In the era of globalization and liberalization when the world is transforming into a global village and when the concepts of national boundary and trade barriers are becoming obsolete and the terms FDI, FPI, etc. got ready references in general discussions at every nook and corner, the companies are seriously thinking about fighting against the foreign competitors with in the country and at the same time going overseas. The big investors including FIIs are putting Corporate Governance high on agenda at the time of investing their money in any concern.

All these features make corporate governance a particularly important issue in India.

The World Bank, involved in sustainable development, was one of the earliest economic organization to study the issue of corporate governance and suggest certain guidelines. The World Bank report on corporate governance recognizes the complexity of the concept and focuses on the principles such as transparency, accountability, fairness and responsibility that are universal in their applications.

History has so evolved that even the best standards cannot prevent instances of major corporate misconduct. This proved to be true in the US - Enron, Worldcom, Tyco and gross miss-selling of collateralized debt obligations; in the UK; in France; in Germany; in Italy; in Japan; in South Korea; and many other OECD nations.

Another example of a massive fraud, the Satyam-Maytas Infra-MAYTAS Properties, scandal rocked India on 16th December 2008. This Satyam episode prompted CII to relook at Indian corporate governance norms once again and how industry can go a step further through some voluntary measures. With this in mind in February 2009 CII set up a Task Force under Mr. Naresh Chandra to recommend ways of further improving corporate governance standards and practices both in letter and spirit. The leitmotif of the report was to enunciate additional principles that could improve corporate governance in spirit and in practice.

The report enumerated a set of voluntary recommendations with an objective to establish higher standards of probity and corporate governance in the country. The recommendations outlined in this report are aimed at listed companies and wholly owned subsidiaries of listed companies.

REGULATORY ATTEMPTS IN INDIA FOR ENFORCING TRANSPARENCY AND ETHICS IN CORPORATE GOVERNANCE

As it is rightly said that agents may not be vigilant enough to safeguard the interests of the true owners of the Corporate entity, worldwide need has been felt to provide a robust system through which governance compliance can be ensured by the Corporate Entities where public fund is involved. With India outreaching to world with her ever expanding industrial base, it has become imperative to provide and comply with the world class standards of Corporate Governance.

The year 2013-14 marked a new beginning for the Indian Corporate world with promulgation of Companies Act, 2013. This enactment further refined the norms of the Corporate Governance by embedding many provisions within the Act, with a main aim to address this continuous schism between owners and the agents. Predominant provisions are:

- Introduction of institution of Independent Directors, Liberalised provisions but strengthening disclosures in cases of Related Party Transactions, provisions for Small Shareholders’ Directors, Code of conduct of Independent Directors, providing electronic voting facility to the shareholders, internal audit and internal financial control procedures, directors’ responsibility
As a result of this relationship, corporate insiders that possess material, nonpublic information have "a duty to disclose [or to abstain from trading] because of the necessity of preventing a corporate insider from taking unfair advantage of uninformed stockholders."

An alternative, but overlapping, theory of insider trading liability, commonly called the "misappropriation" theory, expands the scope of insider trading liability to certain other "outsiders," who do not have any fiduciary or other relationship to a corporation or its shareholders. Liability may attach where an "outsider" possesses material, non-public information about a corporation and another person uses that information to trade in breach of a duty owed to the owner. United States v. O'Hagan, 521 U.S. 642, 652-53 (1997); United States v. Libera, 989 F.2d 596, 599-600 (2d Cir. 1993).

In other words, such conduct violates Section 10(b) (Insider trading norms under SEC 1934) because the misappropriator engages in deception by pretending "loyalty to the principal while secretly converting the principal's information for personal gain." Obus, 693 F.3d at 285.

As far as India is concerned, the Securities and Exchange Board of India has promulgated SEBI (Prohibition of Insider Trading) Regulations, 2015 with an objective to put in place a framework for prohibition of insider trading in securities and to strengthen the legal framework thereof. The definition of the words "connected person" under Rule 2 (1)(d) of these Regulations encompass a wide range of categories of persons (both insiders and outsiders) who are classified as insiders and thus an onus of keeping the trust and confidence of the shareholders has been cast on them through a stringent statutory framework. These Regulations mark a distinct place in the field of Indian Corporate Governance.

CORPORATE GOVERNANCE: A TOOL TO BRIDGE THE GAP

Though the field of Corporate Governance has evolved over these years, in reality the governance structure has remained illusory. Many cases of failure of governance practices on the parts of the management of the Companies have led to ebbing of investor confidence. Not only this, such unethical practices have created a valley between owners and agents. Due to this, there has been a constant schism between these two main stakeholders of a juristic person, namely, a company. Corporate Governance Policy and Regulations across the globe have emerged as an effective tool to bridge this gap between the owners and the agents. The accountability and answerability of the management to the true owners have been codified through statutory framework. Failure to adhere to the prescribed corporate governance norms have been made punishable offence, thus injecting in a sense of sincerity towards compliance.

CONCLUSION

Corporate Governance as a Corporate Strategy has acquired immense value in wealth creation for various stakeholders. Good Corporate Governance increases the confidence of the investors. As more and more stakeholders, namely, investors, regulators, suppliers of debt, employees and community at large get engaged with the corporate entities, the importance of effective corporate governance will increase in times to come. The role of the Company Secretary as a governance professional and practitioner will also become demanding as well as challenging.
Regulatory Governance against Insider Trading- A walk through important amendments

Insider Trading is a white-collar crime which is prohibited under the SEBI (Prohibition of Insider Trading) Regulations, 2015. Insiders having access to Unpublished Price Sensitive Information (UPSI) relating to a listed entity or a company proposed to be listed, can be said to have an undue advantage over shareholders and general market investors, since such knowledge of UPSI will provide them an uncanny insider data on the trajectory of the price of securities as regards which the securities market will have no clue. While having access to UPSI per se is not termed illegal, what the law tries to curb is the leveraging the UPSI unfairly by trading in the securities, either by such insiders or through others by communication of UPSI with an objective of undue enrichment. Capital market regulators worldwide have stringent regulations in place against insider trading and related market manipulation. SEBI as a prime securities market regulator in India is leaving no stone unturned in strengthening such unethical and fraudulent market practices and the present Regulations can be said have come a long way, since the year 1992, when the first regulations on the subject was put to force.

One of the prime functions of Securities and Exchange Board of India (SEBI) is to regulate and prohibit market manipulation and fraudulent practices apart from regulating capital market and functionaries thereto. One of the first Regulations that was notified by SEBI upon its creation in 1992 vide the SEBI Act, 1992 is the SEBI (Prohibition of Insider Trading) Regulations, 1992 (earlier Regulations). Market manipulation on the basis of Unpublished Price Sensitive Information (UPSI) by certain persons called the "insiders" came to be addressed through the said Regulations. Regulatory governance of insider trading plays significant role in preserving market integrity and ensuring fairness to shareholders and other market players. The earlier Regulations only prohibited insiders from dealing in securities while in possession of UPSI or procuring or communicating UPSI to a person who deals in securities. The earlier Regulations did not prohibit insiders and other persons from procuring UPSI or persons who are privy to UPSI from transmitting information otherwise than for dealing in securities. Hence, SEBI replaced the earlier Regulations with SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) on 15th January, 2015 to come into effect from 120th day from the said date (PIT Regulations). With the PIT Regulations, SEBI brought a tangential shift in its prohibitory scope by making any procurement or communication of UPSI illegal by persons other than the insiders for a purpose other than a legitimate purpose, in performance of duties or in discharge of legal obligations. Another important amendment that was brought is the inclusion of Schedule C to the PIT Regulations for regulation of market intermediaries (registered with SEBI) and fiduciaries and bringing them under the scope of insider governance. The amendments have greater impact not only on the Designated Persons, but also market intermediaries and fiduciaries like merchant bankers, analysts, practicing chartered accountants, company secretaries, cost accountants, advocates and other professionals engaged by a listed company in its ordinary course of business for rendering various professional services.

In the era of web based social networking, information exchange happens by the wink and it becomes extremely difficult for any regulator to monitor or curb such exchanges. Communication of UPSI through the social networking apps and portals has resulted in movement of share prices of certain listed companies in the past. Certain recent incidents of sharing of accounting information and financial results through WhatsApp, even before such results were disseminated to stock exchanges have brought sharp focus on lacuna in procurement and sharing of UPSI by persons who are not listed as designated persons. Mere procurement of UPSI without there being any legitimate purpose as provided under the said Regulations is made illegal now. SEBI learns from its experience in dealing with conduct of persons associated with securities market and the resultant corrective measures taken to correct the course of market dynamics, shows the efficiency of securities market regulator. A walk through the recent amendments to PIT Regulations thus sets the context for this exercise.

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**RECENT AMENDMENTS TO THE PIT REGULATIONS**

SEBI had in August, 2017 constituted a Committee on Fair Market Conduct under the chairmanship of Mr. T.K. Viswanathan, Former Law Secretary and Ex-Secretary General of Lok Sabha to study and review the existing legal framework to deal with market abuse to ensure fair conduct in securities market. The Committee was also mandated to review the capital market surveillance, investigation and enforcement machinery of SEBI to make them more effective in protecting market integrity and interest of investors from market abuse. The Committee vide its Report dated 08th August, 2018 suggested amendments to the SEBI Act, 1992, SEBI (Prohibition of Insider Trading) Regulations, 2015 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The Committee recommended amendments to SEBI (Prohibition of Insider Trading) Regulations, 2015 including the insertion of a definition for the expressions “proposed to be listed”, “financial literacy” and further recommended a vibrant policy to be put in place for procurement of UPSI for legitimate purpose, inclusion of fiduciaries and market intermediaries and amendment to the existing Schedule B containing minimum standards for Code of Conduct for listed companies for regulation of Designated Persons. On the basis of the recommendations, SEBI came up with amendments to PIT Regulations vide SEBI (Prohibition of Insider Trading) Amendment Regulations, 2019 dated 31st December, 2019, SEBI (Prohibition of Insider Trading) Amendment Regulations, 2019 dated 21st January, 2019, SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2019 dated 25th July, 2019 and finally SEBI (Prohibition of Insider Trading) (Third Amendment) Regulations, 2019 dated 17th September, 2019 (to be effective from 25th December, 2019).

**APPLICABILITY TO A COMPANY WHICH IS PROPOSED TO BE LISTED**

The Companies Act, 2013 (the Act) vide Section 2(52) has defined the term “Listed Company” meaning a company which has listed any of its securities on a recognized stock exchange. Section 24 of the Act provides jurisdiction to SEBI as regards the issue of and transfer of securities and payment of dividend by a listed company or a company which “intend to get their securities listed on a recognized stock exchange”. The Act does not explain or define the expression “intend to get their securities listed on a recognized stock exchange”. Both SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) and also PIT Regulations use the expression ‘proposed to be listed’. Further, ICDR Regulations also does not define nor explain the expression ‘proposed to be listed’.

The general understanding is that, SEBI Regulations in general do not apply to an unlisted company, until such a company invites their application by its actions through various corporate actions which are primarily the domain of listed companies or companies proposed to get listed, requiring mandatory compliance of the said Regulations. The earlier Regulations (the predecessor to PIT Regulations) applied only to listed companies. However, this understanding has an exception in the now amended PIT Regulations.

Based on the report of the SEBI constituted committee on Fair Market Conduct (FMC), SEBI implemented amendments to include a definition under Regulation 2(hb) to define the expression “proposed to be listed” as under:

“Proposed to be listed” shall include securities of unlisted company (i) if such unlisted company filed offer documents or other documents, as the case may be with the Board , stock exchanges(s), registrar of companies in connection with listing, or (ii) if such unlisted company is getting listed pursuant to any merger or amalgamation and has filed a copy of such scheme of merger or amalgamation under the Companies Act, 2013.”

While an unlisted company has to obtain the approval of shareholders under Section 62(1)(c) of the Companies Act, 2013 (the Act) for making further issue of shares to any person by way of a public offer, the question is whether such a company, which has obtained such approval can be termed as “intending to get its securities listed on a recognized stock exchange” within the meaning of Section 24? All that Section 24 states is that Chapter III (Prospectus and Allotment of Securities) and Chapter IV (Share Capital and Debentures) have application only to the extent where specific regulations with regard to the provisions of the said Chapters are not provided under SEBI Regulations as applicable to a listed company or a company intending to list its securities. Hence, a company which has merely obtained the approval of shareholders under the Act to make an Initial Public Offer (IPO) and may intend to list its securities on a recognized stock exchange can be termed to be a company which is proposing to list its securities, though it has to do much more to be brought within the expanse of the expression “proposed to be listed”.

The expression “proposed to be listed” is used in different contexts and for different purposes in ICDR Regulations and in PIT Regulations. This discussion is limited only on the intended use of the said expression under PIT Regulations.

While Section 24 of the Act provides for the requirement of certain compliances under the respective regulatory framework of SEBI (like SEBI ICDR Regulations), the scope of the said expression under PIT Regulations seems to make its provisions applicable to such companies even before a company could make a public issue of securities. Hence in the above background, it is important to examine the provisions of PIT Regulations which casts obligation on a company which is ‘proposed to be listed’.

The terms which form the crux of the discussion and regulatory reach under PIT Regulations are “Generally Available Information” (GAI), “Unpublished Price Sensitive Information” (UPSI), “Insider” and “Connected Person”.

The information which is accessible to public on a non-discriminatory basis is termed as GAI.

UPSI means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;

(ii) dividends;
(iii) change in capital structure;
(iv) mergers, demergers, acquisitions, delisting, disposals and expansions of business and such other transactions;
(v) change in Key Managerial Personnel;
(vi) other requirements, if any.

As regards an unlisted company, which is proposing to get listed, information which is filed on the portal of MCA in compliance of various requirements under the Act and the disclosures made in the offer document namely the red herring prospectus, can be the information which can be said to be GAI. Hence, when an unlisted company which is proposing to get listed, has made available the required relevant information as aforesaid, it has no other obligation to provide any further information to the public unless required so by SEBI.

It can be seen that the term ‘UPSI’ is defined in the context of the unpublished information having a direct connect to the price of securities. As regards an unlisted company, in respect of its securities for which price discovery in the market is yet to happen, it will appear that the term UPSI may not be relevant. However, in the context of disclosures made in the RHP filed with SEBI and with the public through the portal of MCA, any information which is not disclosed in the RHP (whether due to the fact that such information is not statutorily required to be disclosed or such information has arisen post the approval of RHP by SEBI) will be termed as UPSI, if its publication can have a bearing on price of shares or securities of such company in price discovery during the public issue or the price of its securities post listing of its securities.

The term “Insider” is defined to mean any person who is a connected person or a person who is in possession of or having access to UPSI.

The term “Connected Person” is defined to mean a person who is or has during the six months prior to an act concerned has been associated with the company, directly or indirectly, in any capacity including:-

- by reason of frequent communication with its officers; or
- by being in a contractual, fiduciary or employment relationship; or
- by being a director, officer or an employee of the company; or
- holds any position including a professional or business relationship between himself and the company whether temporary or permanent that allows such person, directly or indirectly, access to UPSI or is reasonably expected to allow such access.

Further, certain persons namely an immediate relative of a connected person, a holding company or an associate company or a subsidiary company or an official of a stock exchange etc. are deemed to be Connected Persons. While the PIT Regulations takes a presumption of such persons who are identified in the definition to be Connected Persons having access to UPSI, the presumption is a rebuttable presumption and it is open to a person who is presumed to be a Connected Person to rebut such presumption based on facts and circumstances.

It should be noted that a Connected Person is an Insider as per the PIT Regulations. It should be further noted that as regards a company which is proposing to list its securities, the terms “Insider” and “Connected Persons” are very much relevant.

**RESTRICTION ON PROCUREMENT AND COMMUNICATION OF UPSI**

Regulation 3 of the PIT Regulations provide for prohibition on procurement or communication of UPSI. It casts a statutory obligation on the Insider in respect of a listed company or a company which is proposed to be listed, not to communicate or provide or allow access to UPSI to any person including other insiders except in furtherance of requirement of legitimate purposes or performance of duties or discharge of legal obligations. Similar obligation is also cast on any person having relationship (though professional) to procure or cause communication of UPSI from an Insider except in furtherance of requirement of legitimate purposes or performance of duties or discharge of legal obligations. UPSI can be shared only on need to know basis. The board of directors of listed companies are required to make a policy to determine as to what constitutes ‘legitimate purposes’ as part of the ‘Code of Fair Disclosure and Conduct’ to be formulated under Regulation 8. However, it is explained that ‘legitimate purpose’ includes sharing of UPSI in the ordinary course of business by an insider with partners, collaborators, lenders, customers, legal advisors, auditors, insolvency professionals etc. provided such sharing is not to evade restrictions under Regulation 3. General exemption is provided for communication of UPSI in relation to open offer under SEBI takeover regulations, provided such sharing is in the best interests of the company and subject to execution of confidentiality undertaking from the recipients of such UPSI. Further, duty is cast on the board of directors of the company to create and maintain a digital database of persons to whom UPSI is shared.

It should be noted that a Connected Person is an Insider as per the PIT Regulations. It should be further noted that as regards a company which is proposing to list its securities, the terms “Insider” and “Connected Persons” are very much relevant.

Regulation 4 prohibits trading in securities while in possession of UPSI by Insiders of a listed company and a company which is proposed to be listed. The term “Trading” is defined to mean and include subscribing, buying, dealing, selling, pledge or agreeing to subscribe, buy, sell, pledge or deal in securities. Any trading by a person while in possession of UPSI is presumed to have been motivated by the knowledge and awareness of such information in his or her possession. Regulation 4 also provides for exception from the said prohibition in respect of inter se transfer of securities between promoters who are insiders themselves subject to the condition that they have not violated the statutory obligation cast on them under Regulation 3. The following transactions are out of the ambit of prohibition under Regulation 4:

(a) Off-market transactions inter se insiders.
(b) Transactions carried through block deal window mechanism between persons in possession of UPSI.
(c) Transactions undertaken pursuant to statutory or regulatory obligation.

It should be noted that a Connected Person is an Insider as per the PIT Regulations. It should be further noted that as regards a company which is proposing to list its securities, the terms “Insider” and “Connected Persons” are very much relevant.
Transactions under (a) and (b) above is allowed, provided, there is no breach of provisions of Regulation 3. In respect of non-individual insiders, the individuals in such on-individual insiders and who possess UPSI or deemed to have access to UPSI are different from individuals who would undertake trading decisions, provided appropriate arrangements have been made to protect UPSI and such arrangements do not get breached.

It is now clarified that pre-clearance of trading plans submitted under Regulation 5 will not be required for carrying on any trade or contra-trade even during the period of trading window closure, provided the trades are as per the trading plan submitted to the listed entity concerned.

DESIGNATED PERSONS

The reference to the term Designated Person was found earlier only in Schedule B to PIT Regulations prior to the SEBI (Prohibition of Insider Trading) Amendment Regulations, 2019 dated 31st December, 2019 (with effect from 01st April, 2019). PIT Regulations earlier did not define as to who is a Designated Person. The amended Regulation 9(4) explains that the Board of Directors of the listed entity or governing body of the market intermediary or fiduciary, in consultation with its compliance officer (appointed in terms of the PIT Regulations) shall decide to cover such employees who can be designated as Designated Persons, on the basis of their seniority, professional designation, role and function in the company or organization, if such role and function were to provide access to UPSI. Accordingly, a company was required to designate employees and connected persons on the basis of their functional role, to whom the code of conduct (created by such company) would apply while dealing with its securities. However, vide the said amendment regulations, the term Designated Person finds reference in Regulation 7 (continual disclosures) and in Regulation 9 (code of conduct). The board of directors of listed company and board of directors or heads of organization of any intermediary and a fiduciary being professionals or firms such as auditors, accountancy firms, law firms, analysts etc. who assist or advise listed companies are required to identify and disclose their Designated Person(s) to their client listed companies. Designated Persons are now mandated to disclose names and PAN or any other unique identifier as per law, in respect of self, immediate relatives, persons with whom such Designated Person has a material relationship (explained under para 14 of Schedule B) including phone numbers used by them. Further, names of educational institutions from which such Designated Persons have graduated and the names of past employers have to be disclosed. This requirement makes it onerous on the part of the intermediaries and fiduciaries to collate such information and requires an efficient mechanism to be put in place for recording and disclosing such information to their listed clients. While the intermediaries and fiduciaries are left to the mercy of such disclosures made by their staff or associates, it needs to be seen as to how information gathering can be made fool proof so as to ensure effective compliance.

DISCLOSURES BY PROMOTER GROUP & DESIGNATED PERSON

In addition to promoter, key managerial personnel (KMP) and director, every member of the promoter group is now required to make disclosures and are now required to make initial disclosures within thirty days (with effect from 21st January, 2019) on their respective holding of securities in the company as on 21st January, 2019. Further every person who is appointed as director or KMP and every promoter upon becoming a promoter is required to make disclosures on their respective holdings on the date of appointment or becoming promoter. Every promoter, member of promoter group and every Designated Person is required to disclose to the company within two trading days, if the trading in securities of the company is in excess of ten lakh rupees. The said monetary limit needs to be reckoned either in single transaction or a series of transaction over a calendar quarter. The company is mandated to report to the stock exchange within two trading days of such disclosure.

TRADING RESTRICTIONS

The compliance officer (named under the Code of Conduct) is required to determine the purpose of closure of trading window and notify accordingly to the stock exchange(s) to prevent Designated Persons from misusing UPSI. The trading window closure restriction will not apply to off-market transactions intermediary insiders, transactions carried through block deal window mechanism, transactions undertaken pursuant to statutory or regulatory obligation, exercise of stock options with pre-fixed exercise price and transactions as per submitted trading plan with the listed entity. Transactions like pledge of shares for bona fide purposes like raising finances can also be
The requirements include:

- Company to devise internal control measures to ensure Regulation 9A of the PIT Regulations requires a listed company to formulate a Code of Conduct by adopting minimum standards set out in Schedule C of the PIT Regulations for their immediate relatives) by adopting minimum standards of its securities by Designated Persons (which shall include their immediate relatives) by adopting minimum standards set out in Schedule B of the PIT Regulations. In addition to listed company, board of directors or head of organization of every other person (namely fiduciaries and intermediaries) who is required to handle UPSI in the course of business is required to formulate a Code of Conduct to aid in governance of trading by Designated Persons. The board of directors of a listed company is required to formulate a Code of Conduct to aid in governance of trading by Designated Persons while the trading window is open should always be with the pre-clearance of the compliance officer provided the value of such trades is beyond thresholds prescribed by the board of directors of the listed company.

**INTERNAL MINIMAL CODE OF CONDUCT TO REGULATE, MONITOR AND REPORT TRADING BY DESIGNATED PERSONS**

The board of directors of a listed company is required to formulate a code of conduct to aid in governance of trading of its securities by Designated Persons (which shall include their immediate relatives) by adopting minimum standards set out in Schedule B of the PIT Regulations. In addition to listed company, board of directors or head of organization of every other person (namely fiduciaries and intermediaries) who is required to handle UPSI in the course of business is required to formulate a Code of Conduct by adopting minimum standards set out in Schedule C of the PIT Regulations for governing trading in securities of their client listed entities.

**INSTITUTIONAL MECHANISM AGAINST INSIDER TRADING**

Regulation 9A of the PIT Regulations requires a listed company to devise internal control measures to ensure compliance of the said regulations against insider trading. The requirements include:

- Identifying employees having access to UPSI and designating them as Designated Persons (including their immediate relatives)
- Execution of confidentiality agreements
- Educating the employees of the compliance of the said regulations
- Review of the internal control measures for its efficacy
- Creation of digital data base comprising of persons to whom UPSI is shared along with PAN or any other unique identity number (as per law) of such persons
- Maintenance of digital data base with adequate internal controls, time stamping and audit trails to ensure non-tampering of data base

The compliance officer (named under the Code of Conduct) is required to determine the purpose of closure of trading window and notify accordingly to the stock exchange(s) to prevent Designated Persons from misusing UPSI. The trading window closure restriction will not apply to off-market transactions *inter se* insiders, transactions carried through block deal window mechanism, transactions undertaken pursuant to statutory or regulatory obligation, exercise of stock options with pre-fixed exercise price and transactions as per submitted trading plan with the listed entity.

The audit committee of the listed company is entrusted with the responsibility to review the compliance of the PIT Regulations and the adequacy and operational efficiency of internal controls, at least once in a financial year. Further, board approved written policies and procedures need to be formulated for conducting inquiry in case of leak or suspected leak of UPSI. Fiduciaries and intermediaries are also mandated to cooperate with any inquiry conducted in connection with leak or suspected leak of UPSI. A whistleblower policy to enable employees to inform the board in case of any leak or potential leak of UPSI should also be formulated. A process as to how and when people are brought ‘inside’ on sensitive transactions should be formulated. Further, the listed company should provide continuous advocacy on handing UPSI and its disclosure and the consequences of their misuse for the benefit of Designated Persons.

**PRACTISING COMPANY SECRETARY AS FIDUCIARY**

As per the PIT Regulations, the term ‘fiduciary’ includes professional firms such as auditors, accountancy firms, company secretary firms, insolvency professionals, merchant bankers, registrar and transfer agents, analysts, consultants etc. Hence, the requirements discussed under this head will equally apply to all such fiduciaries. However, in order to supply special emphasis to practising company secretaries and secretarial auditors having listed entities as their clients, the institutional mechanism required under the PIT Regulations is discussed here.

A practising company secretary or a firm of practising company secretaries (PCS firm) which advises or is the secretarial auditor of a listed company is a fiduciary. A PCS firm is required to identify Designated Persons in its firm and is also required to formulate a Code of Conduct for governing such Designated Persons and their immediate relatives for governing trading in securities of its client listed companies. The partners or the managing partner, as the case may be, of the PCS firm is mandated by the PIT Regulations for ensuring compliance of Regulation 9 which requires putting in place an institutional mechanism for prevention of insider trading.

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Hence a PCS firm which has a listed company as its client is required to comply with the following:

- Put in place an institutional mechanism for prevention of insider trading by formulating a code of conduct by adopting minimum standards as per Schedule C to the PIT Regulations;
- The code of conduct shall govern designated persons and their immediate relatives and a process should be laid down for updating changes to their personal and contact information;
- The code of conduct should lay down in handling of UPSI on a need to know basis and should prohibit communication or procurement of UPSI otherwise than for legitimate purposes, performance of duties or in discharge of legal obligations;
- The code of conduct should contain appropriate Chinese wall process for permitting Designated Persons to cross the wall;
- Ensure that the code of conduct has adequate internal controls specifying restrictions to access, communication and procurement of UPSI vis-à-vis client listed companies;
- The code of conduct should provide for sanctions and disciplinary actions for any violation of the code;
- Designate a Compliance Officer to administer the code of conduct;
- Specify Designated Persons on the basis of their role and function in the firm and having access to UPSI relating to its client listed companies;
- Execute a confidentiality and adherence undertaking specifically with such Designated Persons for compliance of code of conduct;
- Communicate the list of Designated Persons (including their immediate relatives) to the client listed company;
- Ensure that trades by Designated Persons in respect of securities of client listed companies happens only with the pre-clearance of the compliance officer;
- Mandate submission of demat accounts of the Designated Persons and their immediate relatives for verification on a periodical basis;
- Carry out a periodical review to evaluate the effectiveness of the working of the code of conduct.

**VOLUNTARY INFORMATION DISCLOSURE MECHANISM**

Vide SEBI (Prohibition of Insider Trading) (Third Amendment) Regulations, 2019 dated 17th September, 2019 (to be effective from 25th December, 2019), Chapter IIIA containing detailed procedure for voluntary information disclosure mechanism has been introduced to enable effective surveillance of compliance of the PIT Regulations and to safeguard the interests of the investors. Similar mechanism is in place in US and other countries to check insider trading violations. The said mechanism enables incentivizing whistle blower mechanism with reward of 10% of the amount disgorged upon monetary sanctions, provided, the money disgorged is at least one crore rupees. The main ingredients of the said mechanism are:

- An informant being an individual who has knowledge or has a reasonable basis for suggesting that an insider trading violation has occurred or is occurring or is about to occur, can voluntarily notify SEBI by submission of a Voluntary Information Disclosure Form (VIDF), the format for which is prescribed under Schedule D to the PIT Regulations. The VIDF can also be filed through a legal representative (being an advocate) of the informant;
- The informant is required to disclose the source of the information and can take steps to expunge the relevant portions which can reveal his or her identity;
- An Office of Informant Protection (OIP) has now been created by SEBI to which the informant will be required to submit VIDF. The OIP is not required to acknowledge the receipt of VIDF including rejection of VIDF;
A practising company secretary or a firm of practising company secretaries (PCS firm) which advises or is the secretarial auditor of a listed company is a fiduciary. A PCS firm is required to identify Designated Persons in its firm and is also required to formulate a Code of Conduct for governing such Designated Persons and their immediate relatives for governing trading in securities of its client listed companies. The partners or the managing partner, as the case may be, of the PCS firm is mandated by the PIT Regulations for ensuring compliance of Regulation 9 which requires putting in place an institutional mechanism for prevention of insider trading.

- The OIP is expected to oversee the receiving and registering the VIDF in addition to instituting a mechanism for assessing the authenticity of the information contained in VIDF;
- Upon processing of the information, the OIP will be sending a recommendation to relevant department or division of SEBI for appropriate enforcement action;
- After the enforcement action and recovery of monetary sanctions at least twice the reward, SEBI will determine the amount of the reward to be granted to the informant;
- Interim reward not exceeding ten lakh rupees or such higher sum that SEBI may decide can also be granted to the informant;
- If more than one informant has submitted VIDF, the reward will be divided equally amongst all the informants;
- Reward will be paid out of Investor Protection and Education Fund;
- The informant is required to submit an Informant Reward Claim Form (IRCF) as per the format prescribed under Schedule E to the PIT Regulations, within the period specified in the intimation to the informant by SEBI;
- Grounds for rejection of reward has been specified;
- The OIP is obligated to maintain confidentiality of the informant’s identity as well as the information supplied;
- The Code of Conduct under Regulation 9 (formulated by listed entity and also by the intermediaries and fiduciaries) is required to be amended to include measures against victimization of informant(s) including intermediaries, fiduciaries against any penalty, demotion, harassment, suspension, or termination, directly or indirectly, on account of filing the VIDF / assisting the SEBI;
- If the information furnished by the informant turns out to be vexatious or frivolous, appropriate action can be initiated against the informant concerned by the SEBI as per the applicable law;
- No amnesty / immunity is to be provided to informants for violation of securities law. SEBI may choose to offer an amnesty scheme to the informants facing any enforcement action for a reward and settlement with confidentiality, if the informant voluntary cooperates with SEBI investigation.

SEBI has vide Circular dated 19th July, 2019 has notified on the reporting of violations to the code of conduct formulated by listed entities, market intermediaries and fiduciaries under Regulation 9 of the PIT Regulations. The violations of the Code of Conduct by Designated Persons and their immediate relatives are required to be reported as per the format prescribed vide the said Circular, so that standardized complete particulars of the violations get reported to SEBI. Database of such violators are required to be maintained so that, appropriate actions are initiated. The reporting inter alia requires action taken by the company / intermediary / fiduciary against the erring persons.

 Amendments to PIT Regulations is expected to fortify the regulatory mechanism and is expected to provide more teeth to SEBI in curbing the menace of market manipulation by insiders and Designated Persons. Consultants and advisors to listed companies and other professionals associated with it, who were not earlier considered as insiders under the PIT Regulations have now been reigned in. This calls for a stringent institutional diligence mechanism against insider trading is put in place by practicing company secretaries, chartered accountants, cost accountants, advocates, intermediaries etc. who help in various transaction advisory services for listed entities, so as to safeguard against any insider trading by their employees or associates. The reward based voluntary information disclosure mechanism will further help in bringing to light surreptitious fraudulent market dealings in securities of listed companies by intermediaries and fiduciaries and is expected to aid in SEBI's market vigilance set up. Stringent enforcement and penalties coupled with name and shame approach of SEBI should also bring desired results in curbing the insider trading menace. While the policing insider trading violations gains importance, time will tell whether such measures require a specialized adjudication process by setting up of specialist courts or tribunals for speedy rendering of justice.
Fair Competition for Good Governance

Corporate governance and competition law may be perceived as strong collaborators to ensure that the enterprises behave in an ethical manner and do not follow unfair business practices. The Competition Act prohibits the prevalence of anti-competitive practices and SEBI LODR prescribes the corporate governance principles and the manner of adherence to the same. This paper outlines the connect between Competition and Corporate Governance and the framework of the competition governance in India and its effect on the economy.

I. INTRODUCTION

According to the Planning Commission Report of the Working Group on Competition Policy (February 2007), ‘corporate governance is ethical conduct within the internal environment of the company. Similarly, compliance with competition law is akin to ethical conduct in the external environment of the company, principally in the market place’. According to an OECD Report on Competition and Corporate Governance (2010), competition policy primarily concerns the relationship between corporations and other market actors regarding horizontal and vertical relationships and mergers and acquisitions. In contrast, corporate governance primarily concerns the relationship between officers, directors and shareholders. The result is two relatively separate bodies of law, with at times competition policy stronger and corporate governance weaker and vice versa. This correlation assumes greater significance in the present time when governance failure is resulting into corporate frauds affecting the numerous stakeholders in the economy. This paper deals with the interaction between corporate governance and competition law.

II. CORPORATE GOVERNANCE

The purpose of corporate governance is to help build an environment of trust, transparency and accountability necessary for fostering long-term investment, financial stability and business integrity, thereby supporting stronger growth and more inclusive societies. The first OECD Principle of Corporate Governance reads as under:

The corporate governance framework should promote transparent and fair markets and the efficient allocation of resources. It should be consistent with the rule of law and support effective supervision and enforcement.

Under Indian regulatory regime, the Companies Act, 2013 gives adequate recognition to the principles of corporate governance and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR) is supposed to be a powerful tool for implementing the corporate governance by the listed companies. SEBI LODR prescribes key norms on board and senior management framework, disclosure and transparency mechanism, documentation, related party transactions, system formulation etc.

The corporate governance framework should promote transparent and fair markets and the efficient allocation of resources. It should be consistent with the rule of law and support effective supervision and enforcement.

III. THE REGULATORY CONNECT - THE COMPETITION ACT AND COMPETITION COMMISSION

Enacted in 2002, the Competition Act, 2002 (the Act) seeks to prevent practices having adverse effect on competition; promote and sustain competition in markets; protect the interests of consumers; and ensure freedom of trade carried on by other participants in markets, in India. The Act prohibits anti-competitive agreement or abuse of dominant position in the market and regulates certain combinations. The Competition Commission of India (the Commission) has been established as the competition authority in India. In Rajasthan Cylinders and Containers Limited vs. Union of India (Civil Appeal No. 3546 of 2014) and another, it was observed by the Supreme Court that ‘since competition among the enterprises or businessmen is treated as service for a public purpose and, therefore, there is a need to curb anti-competitive practices, the Commission is given the task (as a regulator) to ensure that no such anti-competitive practices are undertaken. In fact, Section 18 of the Act casts a specific and positive obligation on Commission to eliminate anti-competitive practices and promote competition, interest of the consumer and free trade’. The vision statement of the Commission is ‘to promote and sustain an enabling competition culture through engagement and enforcement that would inspire businesses to be fair, competitive and innovative; enhance consumer welfare; and support economic growth’. The Commission’s Mission is to establish a robust competitive environment through:
• Proactive engagement with all stakeholders, including consumers, industry, government and international jurisdictions.
• Being a knowledge intensive organization with high competence level.
• Professionalism, transparency, resolve and wisdom in enforcement.

Enacted in 2002, the Competition Act, 2002 seeks to prevent practices having adverse effect on competition; promote and sustain competition in markets; protect the interests of consumers; and ensure freedom of trade carried on by other participants in markets, in India.

IV. CODE OF CONDUCT AND SEBI LODR

Regulation 17(5)(a) of the SEBI LODR mandates that the board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity. Regulation 26 casts certain obligations on directors, promoters etc. and provides that all members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management personnel on an annual basis.

The Code of an organization is termed as a commitment to its stakeholders about the fair dealings in all its business operations. With regard to its responsibilities to the customers and suppliers, the code invariably states that the company will encourage and protect free and fair competition. The same is reflected in the following three cases.

Tata Code of Conduct: On fair competition, the Tata Code of Conduct states as under:

• We support the development and operation of competitive open markets and the liberalisation of trade and investment in each country and market in which we operate.
• We shall not enter into any activity constituting anti-competitive behaviour such as abuse of market dominance, collusion, participation in cartels or inappropriate exchange of information with competitors.

• We collect competitive information only in the normal course of business and obtain the same through legally permitted sources and means.

Wipro Limited: Code of Business Conduct Wipro Limited lays down the following standards on anti-trust and fair competition:

• We believe in free and open competition and we never engage in improper practices that may limit competition through illegal and unfair means. We do not enter into agreements with competitors to engage in any anticompetitive behaviour, including setting prices or dividing up customers, suppliers or markets.

• As Wipro’s business interests are spread across the world, Wipro may be subject to competition laws of various jurisdictions. Most countries have well-developed bodies of law designed to encourage and protect free and fair competition. Wipro is committed to adhering to these laws both in letter and spirit. These laws often regulate Wipro’s relationships with our distributors, resellers, dealers and customers.

Axis Bank Limited: Code of Conduct & Ethics of Axis Bank Limited, in its commitment to External Stakeholders, believes in maintaining business relationships and fair competition. The Code states that the Bank’s commitment to dealing with external stakeholders such as customers, competitors, suppliers, and any related agency is based on the principles of fair competition, compliance with laws and regulations of the land, and in the spirit of honesty and integrity of our corporate values.

V. COMPETITION COMPLIANCE PROGRAMME

Compliance with the law and relevant standards is an important responsibility imposed on the Board of a listed company by the SEBI LODR. Regulation 17(3) of the SEBI LODR mandates that the board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances. According to the Institute of Company Secretaries of India, compliance of competition law is more than just corporate governance, because it reduces the risk of the company being subjected to an investigation by the competition authorities, which may involve senior management time and independent legal
advice. In the event of an infringement of the law, the business can face significant financial penalties; third party actions; and loss of reputation and goodwill. To ensure compliance of the Competition Act, the Commission strongly advocates for adoption of the Competition Compliance Programme (CCP) by the enterprises. CCP, according to the Commission, is primarily aimed at preventing the risk of violation of the Act, knowingly or unknowingly. Enterprises should not indulge in anti-competitive behaviour such as price fixing, deliberate reduction in output, creation of barriers to entry, allocation of markets, bid-rigging, tie-in sales, predatory pricing, discriminatory pricing etc., which cause consumer harm and reduce market efficiencies. Adoption of CCPs by enterprises ameliorates these risks and encourages good corporate governance.

Enterprises should not indulge in anti-competitive behaviour such as price fixing, deliberate reduction in output, creation of barriers to entry, allocation of markets, bid-rigging, tie-in sales, predatory pricing, discriminatory pricing etc., which cause consumer harm and reduce market efficiencies.

VI. WHISTLE BLOWER MECHANISM

With a view to empower the stakeholders, SEBI LODR requires every entity to devise an effective whistle blower mechanism to enable stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices. The audit committee is required to review the functioning of the whistle blower mechanism. Annual Report of the entity is required to contain the details of establishment of vigilant mechanism, whistle blower policy, and affirmation that no personnel has been denied access to the audit committee.

Huge penalties are prescribed on formation of cartels under the Act. The Commission is empowered to impose upon each producer, seller, distributor, trader or service provider included in the cartel, a penalty of up to three times of its profit for each year of the continuance of the cartel or ten percent of its turnover for each year of the continuance of the cartel, whichever is higher. An employee of the entity having been involved in any cartel, on becoming aware of the same may first choose to follow the process prescribed under the Whistleblower Policy. If dissatisfied with the outcome, he may approach the Commission by following the process prescribed under the Competition Commission of India (Lesser Penalty) Regulations, 2009. These Regulations permits even an individual who has been involved in the cartel on behalf of an enterprise, and submits an application for lesser penalty to the Commission. All he has to do is to make a vital disclosure by submitting evidence of a cartel, enabling the Commission to form a prima-facie opinion regarding the existence of a cartel which is alleged to have contravened the provisions of section 3 of the Act and the Commission did not, at the time of application, have sufficient evidence to form such an opinion.

VII. COMBINATIONS

Adequate and timely disclosure of accurate information or material events is the backbone of SEBI LODR. Regulation 30 provides for dissemination of certain information or information in the specified manner. An important event that needs to be disclosed relates to all acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation, merger, demerger, restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring. Acquisition includes acquiring control, whether directly or indirectly; acquiring or agreeing to acquire shares or voting rights in, a company, beyond specified thresholds.

Section 5 and 6 of the Act read with the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 deals with the combinations. These provisions require the acquirer to seek prior approval of the Commission if the combined assets or turnover exceeds the thresholds prescribed under the Act. The combinations include acquisition of control, shares, voting rights or assets or merger or amalgamation. Contravention of these provisions may result in imposition of huge penalties. Hence simultaneous compliance of competition law and corporate governance will surely be a good strategy.

VIII. THE CONCEPTUAL CONNECT BETWEEN CORPORATE GOVERNANCE AND COMPETITION

Perfect competition in the real world is a myth. The market is characterized by imperfect competition, consisting of entities that strategically work towards maximizing their bottom lines and for this purpose restrict the opportunities available to their competitors. Such distorted competition results in exploitation of consumers and imposes significant economic and social costs on society. In the long run, such imperfect competition is not sustainable from the point of view of inclusive economic growth.

There is a need for all entities having the capacity to influence competition (most of whom are companies) to behave in a responsible manner by at least complying with the prevailing regulatory framework in letter and spirit.

Competitive business environment and appropriate good corporate governance in substance have a very close nexus, much more than what is apparent in its form, with competition influencing Governance and Governance catching up to meet the challenge of imperfections in the competition.

Competitive business environment and appropriate good corporate governance in substance have a very close nexus, much more than what is apparent in its form, with competition influencing Governance and Governance catching up to meet the challenge of imperfections in the competition.

While profit making is justified and should be allowed being the basis of economic activity, profiteering should be prevented. Reasonable profit making will allow new parties into the market resulting in better supply position, but lower prices leading to lower profitability. In a market driven by competition, there is always an incentive to bring about technological advances and innovations thereby providing...
Company Secretaries being the governance professionals have specialized knowledge of the nuances of the governance codes and provisions of the competition law. They are therefore the natural allies of the board of directors and the senior management in ensuring the constant interaction between the Corporate Governance norms and competition law principles.

All corporate activities ultimately have a common point, the consumer. Sustainable Corporates understand that consumer welfare and interest should form the basis of their marketing and management strategy. This in turn requires ensuring free and fair competition, which can be achieved by a company which ensures rational allocation of economic resources, availability of goods and services of acceptable and good quality at reasonable prices. The ultimate focus is to provide a just and fair deal to the consumers. Corporate Governance rules have to factor these principles and rules to ensure that they achieve the country level responsibilities and objectives set for itself.

IX. ROLE OF THE BOARD OF DIRECTORS

Board of directors is entrusted with the responsibilities like reviewing and guiding corporate strategy, major plans of action, risk policy, business plans; monitoring the effectiveness of governance practices; ensuring the integrity of systems for risk management, financial and operational control, and compliance with the law and relevant standards; overseeing the process of disclosure and communications. The Board shall set the corporate culture and the values, maintain high ethical standards and exercise objective independent judgement on corporate affairs.

The Institute of Company Secretaries of India had in its research study on the guidelines on compliance on competition law by enterprises, had suggested that the commitment to the CCP must be driven from Board level. The support of senior management must be visible, active and regularly reinforced. The advocacy document from the Commission also provides for designating a member of senior management team to take overall responsibility for ensuring that the CCP is properly designed; regularly monitored; effectively implemented and reported upon at regular intervals to the Board.

X. ROLE FOR THE PROFESSIONALS

Meaningful implementation of the corporate governance norms and the compliance of the competition law in the letter and spirit should be done in a planned manner. Company Secretaries being the governance professional have specialized knowledge of the nuances of the governance codes and provisions of the competition law. They are therefore the natural allies of the board of directors and the senior management in ensuring the constant interaction between the Corporate Governance norms and competition law principles.

XI. CONCLUSION

Principle 1 of the National Guidelines on Responsible Business Conduct states that businesses should conduct and govern themselves with integrity, and in a manner that is ethical, transparent, and accountable. One of the core elements of this principle provides that the Governance Structure should take responsibility for meeting all its statutory obligations in line with the spirit of the law, enabling fair competition and ensuring it treats all its stakeholders in an equitable manner. The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. Corporate governance and competition law complement each other and aim at balancing the interest of all the stakeholders of the social and economic system. Competition law compliance has an important role in setting the high standards of the corporate governance in the corporate sector. The provisions of the Act are generally applicable to the large conglomerates and the total implementation of corporate governance practices is expected from the said economic entities. The Act mandates the Commission to perform the formidable task of undertaking competition advocacy and thereby create a healthy competition culture in the economy. Corporate governance norms under SEBI LODR have been an immense help to the Commission in its endeavor to ensure that the fair competition leads to greater good.

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Independent Directors – A Tool for Corporate Governance

Corporate Governance is adopted by an organization for effective functioning of its business operations. The concept of Independent Director, as a part of Corporate Governance initiative, has evolved across the globe, originally on a voluntary basis, followed by mandated legal provisions. Independent Directors are Non-Executive Directors with wide experience in various fields and play a significant role in the functioning of the Board of Directors and its Committees. This article aims at understanding how the integrity, experience and expertise of Independent Directors work towards safeguarding the interests of the company and various stakeholders in tandem with various Corporate Governance practices.

INTRODUCTION

Corporate Governance which lays down the broad framework of rules and regulations to be adhered to, aims at instilling a holistic development of all the stakeholders concerned with the organisation through promoting loyalty, integrity and working in harmony to achieve the organizational goals rather than pursuing cheap means to attain personal gains. Corporate Governance at the global level also encourages effective communication at all levels so as to build an atmosphere of positive and constructive dialogues to share strengths and overcome weaknesses. This helps in handling issues amicably and promoting a sense of harmony in working towards achieving the organizational goals. Corporate Governance aims at instilling higher accountability and responsibility in the top management through transformation of their thought process to a higher thinking order not only for creating and maintaining a meaningful, fulfilling and sustainable development of the business entity but also for the sustainable development of the society as a whole.

Independent Directors (ID) play a significant role in ensuring strong Corporate Governance and thereby help in enhancing the corporate image in the business world. Independent directors carry along much needed professional expertise since they are individuals with wide experience in various fields like management, accountancy, laws, etc. relevant to the industry and have a thorough understanding of the factors affecting the environment in which the business operates. The importance and the need for Independent Directors has arisen with each and every corporate scandal and financial crisis across the globe. Global research on Corporate Governance has proved that Independent Directors with integrity, experience and expertise play a critical role in implementing Corporate Governance practices in companies across the globe. The demand for Independent directors has significantly increased due to the mandatory requirements provided under Companies Act, 2013 and rules thereunder and various regulations issued by Securities and Exchange Board of India (“SEBI”) with respect to presence of Independent Director in the Board of Directors of certain companies.

An Independent Director (“ID”) is a Non-Executive Director who does not have a material or pecuniary relationship with company or related persons, except sitting fees, but is one who is enriched with appropriate balance of skill, experience, independence and knowledge of the corporates and assigned with the task to monitor and guide the Board in risk management, thereby improving corporate credibility and also functions as a watchdog by playing an active role in all the committees set up by the company to ensure good Corporate Governance.

EVOLUTION OF ID ACROSS THE GLOBE

Independent Directors were introduced voluntarily as a measure of good governance in the United States of America in the 1950s even before they were mandated by law. The corporate scandals such as Enron WorldCom, Tyco, etc. led to the introduction of stringent regulations in the form of Sarbanes and Oxley Act 2002, followed by amendments to the listing rules in New York Stock Exchange (NYSE) and National Association of Securities Dealers Automated Quotations (NASDAQ) making voluntary monitoring Boards into mandatory appointments.

*The views expressed are personal views of the authors*
Independent directors play a significant role in ensuring strong Corporate Governance and thereby help in enhancing the corporate image in the business world. Independent directors carry along much needed professional expertise since they are individuals with wide experience in various fields like management, accountancy, laws, etc. relevant to the industry and have a thorough understanding of the factors affecting the environment in which the business operates.

through creation of audit committees comprising of Independent Directors. The Concept of Independent Directors was first introduced in United Kingdom in 1990s, subsequent to the publication of the Cadbury Committee Report which assigned two principal responsibilities to non-executive directors, viz. (i) to review the performance of the Board and the executives and (ii) to take the lead in decision-making whenever there is a conflict of interest.

The Australian Stock Exchange (ASX) introduced the mandatory requirement for appointment of Independent Directors in the Listed entities in 1992 based on the recommendations of the Cadbury Committee Report. However, the requirement to induct Independent Directors was not fully implemented in Australia till 2004. The Concept of Independent Director in China and other Asian countries were introduced around the year 2000.

The Concept of Independent Director was first introduced in the Indian corporate scenario through clause 49 of the Listing Agreement by SEBI in 2001 as a reform in the area of Corporate Governance. The same was later amended in 2004 to give a broader significance and meaning to the concept of Independent Director. Evolution of corporate scandals like Satyam gave rise to the introduction of the concept of Independent Director and mandatory appointments in certain companies under the Companies Act, 2013.

**INDEPENDENCE OF INDEPENDENT DIRECTORS**

Regulators in many countries had taken efforts to ensure that Independent Directors do not have conflicts of interest and these have been codified into rules governing how many companies they can associate themselves with and the sectors and industries that they represent. The Companies Act, 2013 and rules made thereunder requires every Independent Director to submit a self-declaration with the criteria of independence as required under section 149(6) of the Companies Act, 2013 at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an Independent Director.

**COMPANY LAW PROVISIONS GOVERNING VARIOUS PARADIGMS OF INDEPENDENT DIRECTORS IN THE ARENA OF CORPORATE GOVERNANCE**

a.) Participation in Board meetings and Committee meetings

Sec. 149(4) of Companies Act, 2013 read with the rules made thereunder, mandates every public listed company to have atleast one-third of the total number of directors as Independent Directors and certain classes of companies are required to appoint atleast two directors as Independent Directors.

Independent Directors shall participate in all the Board meetings as well as the Committee meetings, of which he / she is a member, of the Company, as a matter of good governance and practice, so as to guide the Board in taking appropriate decisions and also to prevent the management from taking decisions that is likely to affect the interest of the minority shareholders. Independent Directors’ professional, technical and industry experience and knowledge of the external environment in which the company’s business operates, act as a driving force for major decisions of the Board. Independent Directors are expected to use their objective independent judgement while concurring or dissenting to the Board’s collective decision, bearing in mind the legitimate interest of the company as a whole.

Sec. 173(3) of Companies Act, 2013 and rules made thereunder, provides for participation of atleast one Independent Director, in case of Board meetings held at a notice less than seven days. Where all the Independent Directors are absent from such a meeting, decisions taken at such meeting shall be final only if the same has been ratified by atleast one Independent Director. This has been made mandatory in the Companies Act, 2013 so as to ensure that there are no unethical behaviour or fraudulent practices adopted by the Board of Directors in violation of the company’s policy and public interest.

The presence of ID in Board meetings aids the Board in making decisions on key issues like reviewing corporate strategy, business plans, quarterly and annual budgets, risk management policies, approval and review of capital expenditures, etc. and in reviewing and modifying the Corporate Governance practices and ethical code of conduct from time to time.

b.) Attendance in General Meetings

Independent Directors who are generally appointed as the Chairman of the Committees like the Audit Committee, Nomination and Remuneration Committee, Stake Holders
Relationship Committee shall be present in all the General meetings of the company not only to answer the queries but also to provide an assurance to all the shareholders of the company that the business is run in an ethical manner.

c.) Financial Reporting
According to Sec. 177(2) of Companies Act, 2013 and rules made thereunder, Audit Committee is required to be constituted with a minimum of three directors with Independent Directors forming majority, with atleast one of them having an expertise and knowledge in Financial management or Audit or Accounts.

Independent Directors as a member of the Audit committee shall

- oversee the financial reporting process and financial information to ensure correct, adequate and reliable financial statements;
- review and recommend the appointment of Auditors, their terms of appointment and frequently monitor their performance and review their independence;
- review annual financial statements with reference to accounting policies and practices, compliance with going concern assumption, accounting standards, legal and regulatory requirements, qualifications in Auditor’s report, if any, before submission to the Board;
- periodically discuss with management, internal and/or external Auditors, the adequacy or otherwise of internal control and internal audit systems, qualifications of Internal Auditors, including irregularities and follow up for corrective action;
- scrutinise intercorporate loans and investments for the purpose of approval / modification / rejection of transaction with related parties and also initiate undertaking the valuation of assets or the undertaking, as and when necessary and also carry out the evaluation of internal financial control and risk management system and
- to monitor the end use of funds raised through public issue and other related matters

d.) Succession Planning
Effective Board / Senior Management succession planning is an important process of good Corporate Governance and Independent Directors who are members of the Nomination and Remuneration Committee are definitely an important tool in ensuring good Corporate Governance.

According to Sec. 178(1) of Companies Act, 2013 and rules made thereunder, every listed public company and certain other companies shall constitute Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one half shall be Independent Directors.

Independent Directors as a member of the Nomination and Remuneration Committee shall oversee:

- appointments to the Board / senior management are subject to a formal, rigorous and transparent procedure.
- formulation of Succession plan as a part of the Corporate Governance code, in order to ensure stability and sustainability of the business
- appointments and succession plan shall be based on merit, objective criteria, promote gender diversity, social and ethnic back grounds and personal strengths.

e.) Corporate Social Responsibility
Corporate Social Responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. The World Business Council for Sustainable Development defines Corporate Social Responsibility as the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.

According to Sec 135(1) of Companies Act, 2013 and rules made thereunder, every company having net worth of Rs. 500 Crores or more, or turnover of Rs. 1000 Crores or more or a net profit of Rs.5 Crores or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which atleast one director shall be an Independent Director. Where there is no requirement of Independent Director, committee is permitted to function with two or more directors.

Independent Directors who are a member of the CSR committee are responsible

- to recommend a CSR policy to the Board, which shall include the list of activities / projects or programs which the company shall undertake within the purview of schedule VII of the Companies Act 2013.
- to specify the mode of execution of such programs and implementation schedules for the same.
- to include a report on CSR activities of the company which shall be signed by the Chairman of the CSR Committee as a part of Annual report of the Companies

f.) Board Evaluation
According to Sec 134(3)(p), every listed company and every other public company having a paid- up share capital of twenty-five crore rupees or more calculated at the end of the preceding financial year, shall include in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors. (Rule 8(4) of the Companies Accounts Rules 2014).

Independent Directors play a vital role in the Board evaluation so as to determine the effectiveness of the Board which is responsible for the company to promote good Corporate Governance.

Companies Act 2013 and SEBI Listing Obligations Disclosure Requirements Regulations, 2015 mandates an annual meeting of the Independent Directors excluding the non-independent directors and members of the management so as to

- review the performance of the Board as a whole
- review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors
- assess the quality, quantity and timeliness of flow of information between the company management and the Board, that is necessary for the Board to effectively and reasonably perform their duties.

g.) Fraud Prevention and Detection
Independent Directors participate constructively in the Board and Committee meetings and their tasks include:
to seek clarification on unethical behavior and suspicion of fraud / to detect / prevent fraud and misconduct in order to ensure compliance with good governance
- to take appropriate professional and outside expertise view on matters affecting the operations of the company.
- to approve related party transaction after detailed discussion and deliberations and after considering the legitimate interest of the company and the stakeholders as a whole.
- to act as a watch dog and keep their eyes and ears open so as to inform the Board and the regulators about any irregularity or unethical conduct or information which is critical to the company that comes to their knowledge so as to take appropriate action and protect the company from defacement.
- to ensure that there is an effective review of internal control systems including internal audit.
- to ensure that the Board has formulated adequate Internal financial control and to constantly monitor its effectiveness in order to protect the financial health of the organization.

Participation of Independent Directors in the Board and Committee meetings is viewed as a deterrent to fraud and mismanagement and has ensured a sense of accountability and transparency in the Board room operations.

**h.) Statutory and Regulatory Compliances**

Independent Directors have to ensure that the Board has devised proper system in place for compliance with all statutory and regulatory requirements especially when business activities of the companies extend beyond the borders attracting investors across the globe. Non-compliance of various statutory and regulatory requirements attracts severe penalties as well as suspension from trading / delisting. Independent Directors should therefore ensure that the company is run ethically and legally through a good system of Corporate Governance that shall enhance the corporate image.

Ministry of Corporate Affairs, with an intent to foster the growth of Corporate Governance across the Boards and with the objective of strengthening the institution of Independent Directors under the Companies Act, 2013 launched Independent Director’s Databank in accordance with the provisions of the Companies Act, 2013 and the rules made thereunder on 2nd December 2019. This mandates online proficiency self-assessment examination (conducted by the Indian Institute of Corporate Affairs), to be passed by Independent Directors, covering company law, securities law, basic accountancy, and such other areas relevant to the functioning of an individual acting as an Independent Director. All existing Independent Directors shall have one year time to clear the proficiency test. Exemption is granted to those individuals who have served more than ten years as a director or a key managerial personnel in a listed or an unlisted company with more than Rs. 10 Crores paid up capital. Additionally, a statement in the Board report is to be included by the companies that the Independent Directors on the Board had cleared the online proficiency test unless they are exempted from the same. This is to update the shareholders regarding the capacity of the Independent Directors on Board.

**CONCLUSION**

Corporate Governance is the application of best management practices, compliance of law in its true spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.

Independent Directors enriched with skill, knowledge, experience and expertise in the relevant field are considered as core resource persons in adherence of Corporate Governance through evaluation of management decisions and contributing to all key decision making in respect of strategies, risk analysis, performance evaluation so on and so forth in order to protect the interests of all the Stakeholders.

Independent Directors are part of a vigil mechanism in the Board and various Committees of the Board set up by the company, in accordance with Companies Act, 2013 and rules made thereunder, to act as an important tool for effective Corporate Governance and to improve the corporate credibility and image. They act as a bridge between the management and stakeholders by upholding the principles of Corporate Governance through providing transparency, accountability and disclosures in the working of the company and resolving conflict areas. Requirements under SEBI have been differing with that of Companies Act, 2013, at the time of its introduction and further amendments are being made in both the legislations to match with each other. Hence, mention of the provisions mandated by SEBI has not been dealt exclusively. Introduction of Independent Director’s Databank and online proficiency self-assessment examination for Independent Directors with an intent to foster the growth of Corporate Governance, is definitely a welcome move for enabling the Independent Directors to gear up to the new challenges.

Independent Directors have been in existence for more than few decades and global research on Corporate Governance has proved that Independent Directors with integrity, experience and expertise play a critical role and are considered as an important tool in implementing Corporate Governance practices in companies across the globe.

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A comparative study of Corporate Governance norms across different countries

There is a lot of debate on the convergence of corporate governance norms across different jurisdictions. The question before the researcher is whether globalization will lead to convergence of corporate governance norms into one set of governance: Anglo Saxon, shareholder model or whether the existing national characteristic will impede the convergence. Convergence in corporate governance means increasing similarity in terms of legal framework. There are a number of factors or drivers which are encouraging countries to adopt a global Corporate Governance standard rather than different standards for different countries. There are also obstacles in the way of convergence, but still some research has established that convergence is occurring globally over the years. This article studies the corporate governance norms of seven different countries to find out the convergence.

1. INTRODUCTION

The aim and objective of all the corporate governance codes is to protect the rights of shareholders, especially minority shareholders, and stakeholders, encourage transparency & disclosure, while ensuring the best interest of the company. But because of various factors like ownership structure, board composition, investor activism, etc., Corporate Governance rules vary from country to country. There is an ongoing debate whether the different corporate governance codes will merge into one standard governance code in future or there shall always be dissimilarity in different jurisdictions.

2. CORPORATE GOVERNANCE CODE IN DIFFERENT COUNTRIES

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Country</th>
<th>Latest Corporate Governance Code</th>
<th>Corporate Governance Code Issued by</th>
<th>Applicable from</th>
<th>Applicable on</th>
<th>Approach</th>
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<tbody>
<tr>
<td>1.</td>
<td>Australia</td>
<td>ASX Corporate Governance Code, 2019</td>
<td>Australian Stock Exchange (ASX) Governance Council</td>
<td>January 01, 2020</td>
<td>Listed Companies</td>
<td>Principle Based: 'Comply or Explain'</td>
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<td>3.</td>
<td>Germany</td>
<td>Deutscher Corporate Governance Kodex (German Corporate Governance Code, 2019)</td>
<td>The Commission, Regierungskommission Deutscher Corporate Governance Kodex</td>
<td>Yet to be adopted (Currently Corporate Governance Code, 2017 is applicable)</td>
<td>Listed Companies &amp; Companies with access to capital markets under the German Stock Corporation Act</td>
<td>Principle Based: 'Comply or Explain'</td>
</tr>
<tr>
<td>5.</td>
<td>South Africa</td>
<td>King IV Report on Corporate Governance, 2016</td>
<td>Institute of Directors, South Africa, (King Committee)</td>
<td>April 01, 2017</td>
<td>Companies Listed on Johannesburg Stock Exchange</td>
<td>Principle Based: 'Comply and Explain'</td>
</tr>
</tbody>
</table>
3. COMPARATIVE ANALYSIS OF CORPORATE GOVERNANCE CODE

A brief analysis of provisions of Corporate Governance code pertaining to Board of Directors, Board Diversity, Independent Director, Separation of the role of Chairman and CEO, Audit, Nomination, Remuneration and Risk Management Committee, Induction and Training, performance Evaluation is as follows:

3 (i) Board of Directors: Brief provisions of Corporate Governance Code are as follows.

<table>
<thead>
<tr>
<th>Country</th>
<th>Provisions pertaining to Board of Directors</th>
</tr>
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<tbody>
<tr>
<td>ASX</td>
<td>The board of a listed company should be of an appropriate size and collectively have the skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value. A listed company should have and disclose a board skills matrix setting out the mix of skills that the board currently has or is looking to achieve in its membership.</td>
</tr>
<tr>
<td>Code of Corporate Governance for Listed Companies in China</td>
<td>There is a dual structure - Management Board and Supervisory Board. The supervisory board of a listed company shall be accountable to all shareholders. The supervisory board shall supervise the corporate finance, the compliance and legitimacy of directors, managers and other senior management personnel's performance of duties, and shall protect the company's and the shareholders' legitimate rights and interests. The supervisory board may ask directors, managers and other senior management personnel, internal auditing personnel and external auditing personnel to attend the meetings of supervisory board and to answer the questions that the supervisory board is concerned with.</td>
</tr>
<tr>
<td>German</td>
<td>There is a dual - Management Board and Supervisory Board. The Management Board develops the enterprise strategy, coordinates it with the Supervisory Board and ensures its implementation. The Supervisory Board appoints and discharges or dismisses the members of the Management Board; it supervises and advises the Management Board in the management of the enterprise and has to be involved in decisions of fundamental importance to the enterprise. The Supervisory Board determines, within legal and statutory provisions, the number of Management Board members, the required qualifications as well as the appointment of suitable candidates to individual positions. Supervisory Board consists of shareholder representatives, and of employee representatives. Shareholder representatives are usually elected by the General Meeting. The applicable co-determination acts stipulate – depending on the number of employees and the respective industry sector – if and how many Supervisory Board members must be elected by employees. The Supervisory Board shall also meet on a regular basis without the Management Board. The Management Board is responsible for keeping the Supervisory Board informed.</td>
</tr>
<tr>
<td>Japan’s</td>
<td>Companies may choose one of three main forms of organizational structure under the Companies Act. Company with Kansayaku Board, Company with Three Committees (Nomination, Audit and Remuneration), or Company with Supervisory Committee. A Company with Kansayaku Board is a system unique to Japan in which certain governance functions are assumed by the board, kansayaku and the kansayaku board. Under this system, kansayaku audits the performance of duties by directors and the management and have investigation power by law. Also, to secure both independence and high-level information gathering power, not less than half of kansayaku, as appointed at the general shareholder meeting, must be outside kansayaku, and at least one full-time kansayaku must also be appointed. The latter two forms of organizational structure are similar to companies in other countries where committees are established under the board and assigned certain responsibilities with the aim of strengthening monitoring functions. The board should be well balanced in knowledge, experience and skills in order to fulfill its roles and responsibilities, and it should be constituted in a manner to achieve diversity including gender and international experience and appropriate size. In addition, persons with appropriate experience and skills as well as necessary knowledge on finance, accounting, and the law should be appointed as kansayaku. In particular, at least one person who has sufficient expertise on finance and accounting should be appointed as kansayaku.</td>
</tr>
</tbody>
</table>
A comparative study of Corporate Governance norms across different countries

### Analysis:

The Corporate Governance code of all the jurisdictions recommends that the board should comprise of executive and non-executive directors (including independent directors), majority being non-executive directors. The idea is to have an appropriate number and mix of inside and outside so that it can help in better decision making. In most of the jurisdictions, the Board is unitary while in Germany and China the Board is Dual (Supervisory and Management Board). Management broad comprise of top management while members of the supervisory board are nominated by the shareholders and employees. Supervisory board has the power to hire and fire the members of the management board.

### 3 (ii) Board Diversity: Brief provisions of Corporate Governance Code are as follows.

<table>
<thead>
<tr>
<th>Corporate Governance Code</th>
<th>Board Diversity</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASX Corporate Governance Code, 2019</td>
<td>A listed co. should: (a) have and disclose a diversity policy; (b) through its board or a committee of the board, set measurable objectives for achieving gender diversity in the composition of its board; and (c) disclose in relation to each reporting period: (1) the measurable objectives set for that period to achieve gender diversity; (2) the entity’s progress towards achieving those objectives; If the entity was in the S&amp;P/ASX 300 Index at the commencement of the reporting period, the measurable objective for achieving gender diversity in the composition of its board should be to have not less than 30% of its directors of each gender within a specified period.</td>
</tr>
<tr>
<td>Code of Corporate Governance for Listed Companies in China, 2018</td>
<td>Corporate Governance code does not mention any provision pertaining to board diversity.</td>
</tr>
<tr>
<td>German Corporate Governance Code, 2019</td>
<td>The composition of the Supervisory Board must ensure the legal gender quota. When appointing Management Board members, the Supervisory Board shall take diversity into account.</td>
</tr>
<tr>
<td>Japan’s Corporate Governance Code, 2018</td>
<td>The board should be well balanced in knowledge, experience and skills in order to fulfill its roles and responsibilities, and it should be constituted in a manner to achieve both diversity, including gender and international experience, and appropriate size.</td>
</tr>
<tr>
<td>King IV Report on Corporate Governance, 2016</td>
<td>The governing body should comprise of appropriate balance of knowledge skill, experience, diversity, and independence for it to discharge its governance role and its responsibilities objectively and effectively.</td>
</tr>
<tr>
<td>UAE Corporate Governance Rules, 2016</td>
<td>Candidates for Board membership shall be represented by female board members (at least 20%), the Company shall disclose the reasons in case no female is nominated; and shall also disclose the rate of female representation in the Board of Directors in its Annual Governance Report.</td>
</tr>
<tr>
<td>UK Corporate Governance Code, 2018</td>
<td>Annual evaluation of the board should consider its composition and diversity. Both appointments and succession plans should be based on merit and objective criteria and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths. The annual report should describe the policy on diversity and inclusion, and how it has been implemented and progress on achieving the objectives.</td>
</tr>
</tbody>
</table>

### Analysis:

Corporate Governance code of all the jurisdiction (except China), prescribes that the company should promote diversity of gender. ASX Corporate Governance code prescribes that companies in ASX 300 to have not less than 30% of its directors of each gender, while UAE Corporate Governance code prescribe that at least 20% of the board members shall be female. The Corporate Governance code also recommends companies to disclose the policy on gender diversity, setting of measurable gender diversity target for each reporting period and the progress thereof.
3 (iii). Independent Director: Brief provisions of Corporate Governance Code are as follows.

<table>
<thead>
<tr>
<th>Corporate Governance Code</th>
<th>Independent Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASX Corporate Governance Code, 2019</td>
<td>A majority of the board of a listed company should be independent directors.</td>
</tr>
<tr>
<td>Code of Corporate Governance for Listed Companies in China, 2018</td>
<td>A listed company shall introduce independent directors to its board of directors in accordance with relevant regulations. Independent directors shall be independent from the listed company that employs them and the company’s major shareholders. An independent director may not hold any other position apart from independent director in the listed company.</td>
</tr>
<tr>
<td>German Corporate Governance Code, 2019</td>
<td>The Supervisory Board shall include what it considers to be an appropriate number of independent members from the group of shareholder representatives, thereby taking into account the shareholder structure. A Supervisory Board member is considered independent if he/she is independent from the company and its Management Board, and independent from any controlling shareholder. More than half of the shareholder representatives shall be independent from the company and the Management Board. Supervisory Board members are to be considered independent from the company and its Management Board if they have no personal or business relationship with the company or its Management Board that may cause a substantial – and not merely temporary – conflict of interest.</td>
</tr>
<tr>
<td>Japan’s Corporate Governance Code, 2018</td>
<td>Companies should appoint at least two independent directors and if a company believes it needs to appoint at least one-third of directors as independent directors based on a broad consideration of factors such as the industry, company size, business characteristics, organizational structure and circumstances surrounding the company, it should appoint sufficient number of independent directors. Regular meetings consisting solely of independent directors (executive sessions) would be one way of achieving this. Boards should establish and disclose independence standards aimed at securing effective independence of independent directors, taking into consideration the independence criteria set by securities exchanges.</td>
</tr>
<tr>
<td>King IV Report on Corporate Governance, 2016</td>
<td>Non-executive member of governing body may be categorized by the governing body as independent if it concludes that there is no interest, position, association, or relationship which, when judged from the perspective of a reasonable and informed third party is likely to influence unduly or cause bias in decision making in the best interests of the organization. A non-executive member of the governing body may continue to serve, in an independent capacity, for longer that nine years, if upon, an assessment by the governing body conducted every year after nine years, it is concluded that the member exercises objective judgement and there is no interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision making.</td>
</tr>
<tr>
<td>UAE Corporate Governance Rules, 2016</td>
<td>At least one-third of Board members shall be Independent Board Members.</td>
</tr>
<tr>
<td>UK Corporate Governance Code, 2018</td>
<td>At least half the board, excluding the chairman, should be non-executive directors whom the board considers to be independent.</td>
</tr>
</tbody>
</table>

Analysis: All the Corporate Governance code specify the appointment of Independent Director on the Board. The number of Independent Directors vary (ASX Corporate Governance code: Majority; German Corporate Governance code: 1/2, Japanese Corporate Governance Code: 1/3, UAE Corporate Governance Code: 1/3, UK Corporate Governance code: 1/2) Each Corporate Governance code has defined the word independence in their own, though they are very similar on major aspect.

3 (iv). Separation of the Role of Chairman and CEO: Brief provisions of Corporate Governance Code are as follows.

<table>
<thead>
<tr>
<th>Corporate Governance Code</th>
<th>Separation of the Role of Chairman and CEO</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASX Corporate Governance Code, 2019</td>
<td>The chairman of the board of a listed company should be an independent director and, in particular, should not be the same person as the CEO of the co.</td>
</tr>
<tr>
<td>Code of Corporate Governance for Listed Companies in China, 2018</td>
<td>Corporate Governance code does not mention any provision pertaining to the separation of position of Chairman and CEO.</td>
</tr>
<tr>
<td>German Corporate Governance Code, 2019</td>
<td>Corporate Governance code does not mention any provision pertaining to the separation of position of Chairman and CEO.</td>
</tr>
<tr>
<td>Japan’s Corporate Governance Code, 2018</td>
<td>Corporate Governance code does not mention any provision pertaining to the separation of position of Chairman and CEO.</td>
</tr>
<tr>
<td>King IV Report on Corporate Governance, 2016</td>
<td>The governing body should elect an independent non-executive member as chairman. The CEO of the organization should not also chair the governing body and the retired CEO should not become the chairman of the governing body until three complete years have passed after the end of the CEO’s tenure.</td>
</tr>
</tbody>
</table>
**Analysis:** Corporate Governance code of Australia, South Africa, UK provides for the appointment of non-executive independent director as chairman so that there is always a balance of power between the executive and non-executive director. UAE Corporate Governance code specifies the separation of the role of Chairman and Managing Director.

3 (v). **Audit Committee:** Brief provisions of Corporate Governance Code are as follows.

<table>
<thead>
<tr>
<th>Corporate Governance Code</th>
<th>Audit Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASX Corporate Governance Code, 2019</strong></td>
<td>The board of a listed company should: (a) have an audit committee which: (1) has at least three members, all of whom are non-executive directors and a majority of whom are independent directors; and (2) is chaired by an independent director, who is not the chairman of the board, and disclose: (3) the charter of the committee; (4) the relevant qualifications and experience of the members of the committee; and (5) in relation to each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or (b) if it does not have an audit committee, disclose that fact and the processes it employs that independently verify and safeguard the integrity of its corporate reporting, including the processes for the appointment and removal of the external auditor and the rotation of the audit engagement partner.</td>
</tr>
<tr>
<td><strong>Code of Corporate Governance for Listed Companies in China, 2018</strong></td>
<td>The audit committee shall be chaired by an independent director, and independent directors shall constitute the majority of the committees. At least one independent director from the audit committee shall be an accounting professional. The main duties of the audit committee are (1) to recommend the engagement or replacement of the company's external auditing institutions; (2) to review the internal audit system and its execution; (3) to oversee the interaction between the company's internal and external auditing institutions; (4) to inspect the company's financial information and its disclosure; and (5) to monitor the company's internal control system.</td>
</tr>
<tr>
<td><strong>German Corporate Governance Code, 2019</strong></td>
<td>The Supervisory Board shall establish an Audit Committee that – provided no other committee or the plenary meeting of the Supervisory Board has been entrusted with this work – addresses in particular the review of the accounting, the monitoring of the accounting process, the effectiveness of the internal control system, the risk management system, the internal audit system, the audit of the financial statements and compliance. The Chairman of the Audit Committee shall have specific knowledge and experience in applying accounting principles and internal control procedures, shall be familiar with audits, and shall be independent. The Chairman of the Supervisory Board shall not chair the Audit Committee.</td>
</tr>
<tr>
<td><strong>Japan’s Corporate Governance Code, 2018</strong></td>
<td>‘Company with an Audit &amp; Supervisory Committee’ and ‘Company with three Committees’ shall constitute an Audit Committee. The majority of Audit Committee members must be outside directors. The committee is empowered with broader audit authority.</td>
</tr>
<tr>
<td><strong>King IV Report on Corporate Governance, 2016</strong></td>
<td>The governing body should consider establishing an Audit Committee, the role of which should be to provide independent oversight of among others, (a) the effectiveness of the organization’s assurance functions, including external assurance service providers, internal audit and the finance function; (b) the integrity of the annual financial statements and. The members of the audit committee should, as a whole, have the necessary financial literacy, skills and experience to execute their duties effectively. All members of the audit committee should be independent, non-executive members of the governing board. The chairman of the audit committee should be an independent non-executive member of the governing board. The audit committee should meet annually with the internal and external auditors, without management being present.</td>
</tr>
<tr>
<td><strong>UAE Corporate Governance Rules, 2016</strong></td>
<td>The Board of Directors shall form the Audit Committee. The Committee shall consist of at least three Non-Executive Board members, of whom at least two members shall be independent Board members, and shall be chaired by one independent Board member. Chairman of the Board of Directors shall not be a member of the committees. All the committee members shall have knowledge in financial and accounting matters and one of them at least shall have practical experience in accounting or finance fields or shall have a university degree or professional certificate in accounting or finance or other relevant fields. The committee shall convene its meetings once every three months at least or as required. Any former partner at the Company’s auditing office shall not be a member in the Committee for one year as of the date of expiry of such partnership or any financial interest which he/she is involved in the auditing office, the latest of the two dates.</td>
</tr>
<tr>
<td><strong>UK Corporate Governance Code, 2018</strong></td>
<td>The board should establish an audit committee of independent non-executive directors, with a minimum membership of three, or in the case of smaller companies, two. The chairman of the board should not be a member. The board should satisfy itself that at least one member has recent and relevant financial experience. The committee as a whole shall have competence relevant to the sector in which the company operates.</td>
</tr>
</tbody>
</table>

**Analysis:** This is the most important committee which is recommended to be constituted by all the Corporate Governance code. All the codes recommend that the committee shall comprise of non-executive directors with majority being independent directors. All the members of the committee shall have basic understanding in accounts and finance with one member with relevant financial/accounting expertise.
3 (vi). Nomination Committee: Brief provisions of Corporate Governance Code are as follows.

<table>
<thead>
<tr>
<th>Corporate Governance Code</th>
<th>Nomination Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASX Corporate Governance Code, 2019</td>
<td>The board of a listed company should: (a) have a nomination committee which: (1) has at least three members, a majority of whom are independent directors; and (2) is chaired by an independent director, and disclose: (3) the charter of the committee; (4) the members of the committee; and (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or (b) if it does not have a nomination committee, disclose that fact and the processes it employs to address board succession issues and to ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.</td>
</tr>
<tr>
<td>Code of Corporate Governance for Listed Companies in China, 2018</td>
<td>The nomination committee shall be chaired by an independent director, and independent directors shall constitute the majority of the committees.</td>
</tr>
<tr>
<td>German Corporate Governance Code, 2019</td>
<td>The Supervisory Board shall form a Nomination Committee, composed exclusively of shareholder representatives, which names suitable candidates to the Supervisory Board for its proposals to the General Meeting.</td>
</tr>
<tr>
<td>Japan’s Corporate Governance Code, 2018</td>
<td>Companies may choose one of three main forms of organizational structure (i) Company with Kansayaku Board, (ii) Company with three Committees (Nomination, Audit and Remuneration), and (iii) Company with Supervisory Committee. A company with Kansayaku Board or Company with Supervisory Committee is not required to establish a nomination committee by the Companies Act. However, the company may establish such committees on its own initiative.</td>
</tr>
<tr>
<td>King IV Report on Corporate Governance, 2016</td>
<td>The governing body should consider allocating the oversight of the following to a dedicated committee: (a) the process for nominating, electing and appointing members of the governing body; (b) Succession planning in respect of governing body matters; (c) Evaluation of performance of governing body. All members of the Nomination Committee should be non-executive members of the governing body, and the majority should be independent.</td>
</tr>
<tr>
<td>UAE Corporate Governance Rules, 2016</td>
<td>The Board of Directors shall form Nominations and Remunerations Committee. The Committee shall consist of at least three Non-Executive Board members, of whom at least two members shall be independent Board members, and shall be chaired by one independent Board member. Chairman of the Board of Directors shall not be a member of the committee. The committee shall convene its meetings once annually or as required.</td>
</tr>
<tr>
<td>UK Corporate Governance Code, 2018</td>
<td>The board should establish a nomination committee to lead the process for appointments, ensure plans are in place for orderly succession to both the board and senior management positions, and oversee the development of a diverse pipeline for succession. A majority of members of the committee should be independent non-executive directors. The chairman of the board should not chair the committee when it is dealing with the appointment of their successor.</td>
</tr>
</tbody>
</table>

Analysis: All the Corporate Governance Codes require the constitution of Nomination Committee with all or the majority as non-executive director, chairman being the Independent Director. All the Corporate Governance codes prescribe a comprehensive work for the committee which includes appointment of new board member, succession planning, performance evaluation, etc.

3 (vii). Remuneration Committee: Brief provisions of Corporate Governance Code are as follows.

<table>
<thead>
<tr>
<th>Corporate Governance Code</th>
<th>Remuneration Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASX Corporate Governance Code, 2019</td>
<td>The board of a listed entity should: (a) have a remuneration committee which: (1) has at least three members, a majority of whom are independent directors; and (2) is chaired by an independent director, and disclose: (3) the charter of the committee; (4) the members of the committee; and (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or (b) if it does not have a remuneration committee, disclose that fact and the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.</td>
</tr>
<tr>
<td>Code of Corporate Governance for Listed Companies in China, 2018</td>
<td>The Board may establish a remuneration and appraisal committee in accordance with the resolutions of the shareholders’ meetings. The committee shall be composed solely of directors and shall be chaired by an independent director, and independent directors shall constitute the majority of the remuneration committee. The main duties of the committee are (1) to study the appraisal standard for directors and management personnel, to conduct appraisal and to make recommendations; and (2) to study and review the remuneration policies and schemes for directors and senior management personnel.</td>
</tr>
</tbody>
</table>
Brief provisions of Corporate Governance Code are as follows.

3 (viii). Risk Management Committee:

<table>
<thead>
<tr>
<th>Corporate Governance Code</th>
<th>Risk Management Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASX Corporate Governance Code, 2019</td>
<td>The board of a listed co. should: (a) have a committee or committees to oversee risk, each of which: (1) has at least three members, a majority of whom are independent directors; and (2) is chaired by an independent director, and disclose: (3) the charter of the committee; (4) the members of the committee; and (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or (b) if it does not have a risk committee or committees that satisfy (a) above, disclose that fact and the processes it employs for overseeing the entity's risk management framework. (ii) The board or a committee of the board should: (a) review the entity's risk management framework at least annually to satisfy itself that it continues to be sound and that the entity is operating with due regard to the risk appetite set by the board; and (b) disclose, in relation to each reporting period, whether such a review has taken place.</td>
</tr>
<tr>
<td>Code of Corporate Governance for Listed Companies in China, 2018</td>
<td>The code does not mention about constitution of risk management committee.</td>
</tr>
<tr>
<td>German Corporate Governance Code, 2019</td>
<td>Though the code does not prescribe the constitution of Risk Management Committee, but it specifies that the Management Board shall institute an appropriate compliance management system reflecting the enterprise’s risk situation, and disclose the main features of this system.</td>
</tr>
<tr>
<td>Japan’s Corporate Governance Code, 2018</td>
<td>Though the Code does not prescribe the constitution of Risk Management Committee, but the Corporate Governance code specifies that the board should engage in oversight activities in order to ensure timely and accurate information disclosure, and should establish appropriate internal control and risk management systems.</td>
</tr>
<tr>
<td>King IV Report on Corporate Governance, 2016</td>
<td>The governing body should consider allocating the oversight of risk governance to a dedicated committee. If the committees for audit and risk are separate, the governing body should consider for one or more members to have joint membership of both committees for more effective functioning. The committee for risk governance should have executive and non-executive members, with a majority being non-executive members.</td>
</tr>
</tbody>
</table>
Analysis: King IV Report on Corporate Governance prescribes the constitution of Risk Management Committee. Other Corporate Governance codes give the risk management either to the Board or the Audit Committee.

3 (ix). Induction and Training: Brief provisions of Corporate Governance Code are as follows.

<table>
<thead>
<tr>
<th>Corporate Governance Code</th>
<th>Induction and Training</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASX Corporate Governance Code, 2019</td>
<td>A listed company should have a program for inducting new directors and for periodically reviewing whether there is a need for existing directors to undertake professional development to maintain the skills and knowledge needed to perform their role as directors effectively.</td>
</tr>
<tr>
<td>Code of Corporate Governance for Listed Companies in China, 2018</td>
<td>Directors shall earnestly attend relevant trainings to learn about the rights, obligations and duties of a director, to familiarize themselves with relevant laws and regulations and to master relevant knowledge necessary for acting as directors.</td>
</tr>
<tr>
<td>German Corporate Governance Code, 2019</td>
<td>The members of the Supervisory Board take responsibility for undertaking any training or professional development measures necessary to fulfil their duties.</td>
</tr>
<tr>
<td>Japan’s Corporate Governance Code, 2018</td>
<td>New and incumbent directors and kansayaku should deepen their understanding of their roles and responsibilities as a critical governance body at a company, and should endeavor to acquire and update necessary knowledge and skills. Accordingly, companies should provide and arrange training opportunities suitable to each director and kansayaku along with financial support for associated expenses.</td>
</tr>
<tr>
<td>King IV Report on Corporate Governance, 2016</td>
<td>Members of the governing body with no or limited governance experience should be provided with mentorship and encouraged to undergo training. Directors of SMEs who are not experienced non-executive directors should undergo corporate governance training so that they are adequately equipped to fulfill their fiduciary duties.</td>
</tr>
<tr>
<td>UAE Corporate Governance Rules, 2016</td>
<td>Board shall ensure designing appropriate training programs for the board members to enhance and update their knowledge and skills and ensure effective participation. Board shall also familiarize a newly appointed Board member with all the Company’s departments and sections and providing him/her with all the information required to ensure correct understanding of the Company’s activities and works and full realization of his/her responsibilities, all that enables him/her to perform their duties duly in accordance with the applicable legislations, all other regulatory requirements, and the Company’s policies in its field of business.</td>
</tr>
<tr>
<td>UK Corporate Governance Code, 2018</td>
<td>Corporate Governance code does not mention any provision pertaining to Induction and Training.</td>
</tr>
</tbody>
</table>

Analysis: All the Corporate Governance codes, except UK, prescribe provisions pertaining to induction and training of the Board members. The training can be comprehensive but should particularly update the directors on their fiduciary duties, rights, obligations, various regulations applicable to the company, governance, and the business model.

3 (x). Performance Evaluation: Brief provisions of Corporate Governance Code are as follows.

<table>
<thead>
<tr>
<th>Corporate Governance Code</th>
<th>Performance Evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASX Corporate Governance Code, 2019</td>
<td>A listed company should have a process for periodically evaluating the performance of the board, its committees and individual directors; and should disclose for each reporting period whether a performance evaluation has been undertaken in respect of that period.</td>
</tr>
<tr>
<td>Code of Corporate Governance for Listed Companies in China, 2018</td>
<td>A listed company shall establish fair and transparent standards and procedures for the assessment of the performance of directors, supervisors and management personnel. The performance assessment of the directors and management personnel shall be conducted by the board of directors or by the remuneration and appraisal committee. The evaluation of the performance of independent directors and supervisors shall be conducted through a combination of self-review and peer review. The board of directors and the supervisory board shall report to the shareholders the performance of the directors and the supervisors, the results of the assessment of their work and their compensation.</td>
</tr>
<tr>
<td>Country/Report</td>
<td>Corporate Governance Code, Year</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Germany</td>
<td>German Corporate Governance Code, 2019</td>
</tr>
<tr>
<td>Japan</td>
<td>Japan’s Corporate Governance Code, 2018</td>
</tr>
<tr>
<td>King IV</td>
<td>King IV Report on Corporate Governance, 2016</td>
</tr>
<tr>
<td>UAE</td>
<td>UAE Corporate Governance Rules, 2016</td>
</tr>
<tr>
<td>UK</td>
<td>UK Corporate Governance Code, 2018</td>
</tr>
</tbody>
</table>

**Analysis:** All the Corporate Governance codes, except UAE, prescribe the establishment of performance evaluation of the Board and its committees. King IV Report and UK Corporate Governance code contains comprehensive recommendations on Performance Evaluation.

### 4. CONCLUSION

Are Corporate Governance norms converging? Yes, there are a number of factors which are encouraging the convergence of Corporate Governance norms. Globalization of companies, raising capital from abroad, investment from sovereign wealth funds, investment from key investors / Private Equity, FIs, listing of shares in foreign stock exchange, corporate governance codes published by World Bank, Organization for Economic Co-operation and Development, global concentration of audit practices into Big 4, etc. are forcing countries as well as companies to adopt best Corporate Governance practices, thereby merging into one. All the Corporate Governance codes prescribes the appointment of non-executive independent directors, board diversity, independent chairman of the board, constitution of Audit Committee, Remuneration Committee, Nomination committee, Risk Management committee, Auditors, disclosure, transparency and accountability. Most of the Corporate Governance codes, studied in this paper is drafted or applicable from 2016 to 2020. This points to the fact that every country is updating their Corporate Governance code at frequent intervals taking a cue from Corporate Governance code of a similar country. The content of the all the CG codes is very similar in a broad way, while the specific details of the Corporate Governance code vary from country to country. It looks like that Corporate Governance code across the globe is merging into a set standard.

### REFERENCES:

2. Code of Corporate Governance for Listed Companies in China, 2018
3. German Corporate Governance Code, May 09, 2019
4. Japan’s Corporate Governance Code, 2018
6. UAE Corporate Governance Rules, 2016
7. The UK Corporate Governance Code, July 2018
Corporate Governance - Realm of Company Secretaries

Corporate Governance became dominant theme for sustainable growth of entities about two decades ago when SEBI appointed the Committee, under the Chairmanship of Shri Kumar Mangalam Birla in 1999. Since then the recommendations of N. R. Narayana Murthy and Uday Kotak Committees, enactment of the Companies Act, 2013 and robust regulations to curb insider trading continues to imbibe and thrust corporates to adopt evolving globally acceptable corporate governance practices.

FOUNDATION OF CORPORATE GOVERNANCE - KUMAR MANGALAM BIRLA COMMITTEE

In India, ‘Corporate Governance’ became dominant theme for sustainable growth of entities about two decades ago when SEBI, in May 1999, appointed the Committee, under the Chairmanship of Shri Kumar Mangalam Birla, on Corporate Governance. The Committee report was considered by SEBI in its Board meeting held on 25th January, 2000 and introduced new Clause 49 in the then Listing Agreement popularly known as “Corporate Governance” on 21st February, 2000.

Agreeing that fundamental objective of corporate governance is the enhancement of shareholders’ value, keeping in view the interests of other stakeholder, the Committee identified Shareholders, the Board of Directors and the Management as the key constituents of corporate governance; and recognised accountability, transparency and equality of treatment for all stakeholders as key aspects of corporate governance.1

The requirement as inserted in Clause 49 were namely optimum composition of the Board and its procedures, constitution of Audit committee and its powers, disclosures of remuneration of directors, minimum information that are to be placed before board of directors, Management Discussion and Analysis report as part of directors report and report on corporate governance etc.

CS became inherent choice to comply with the mandated requirement of Corporate Governance as Clause 49 became part of Listing Agreement. Since then, there is no looking back for CS to lead the corporate governance function as enhanced focus of Regulators particularly SEBI and Ministry of Corporate Affairs (‘MCA’) mandated numerous practices to improve the standard of corporate governance in listed entities and such requirement continued to be embedded under Clause 49 of the then Listing Agreement.

SECOND MAJOR REVAMP - N. R. NARAYANA MURTHY COMMITTEE

In the opening para of N. R. Narayana Murthy Report, the Committee noted the need of corporate governance as under:-

“A corporation is a congregation of various stakeholders, namely, customers, employees, investors, vendor partners, government and society. A corporation should be fair and transparent to its stakeholders in all its transactions. ….”

Following recommendation of the Committee boosted robustness of corporate governance of listed entities:

1 Kumar Mangalam Birla Committee report on Corporate Governance

“India completes 75 years of independence in the year 2022 and planned to commemorate the same by hosting and/or achieving momentous events including Prime Minister’s vision “Sankalp se Siddhi” (Attainment through Resolve) Scheme, which aims doubling farmers’ income, poverty-free, corruption-free, terrorism free, clean India etc. by 2022. Vision New ICSI-2022 is in sync to mark the occasion and be a leader in promoting good corporate governance. Robust corporate governance is indispensable for vibrant capital markets and indispensable instrument of investor protection.

In this article, the authors intend to eloquent the events which took place during last two decades that ensured paradigm shift in the role of Company Secretaries (‘CS’) in leading the corporate governance functions as under:-
Audit committee to review Financial statements and draft audit report, including quarterly / half-yearly financial information; Management discussion and analysis of financial condition and results of operations; Reports relating to compliance with laws and to risk management etc.

All transactions with related parties including their basis to be placed before the independent audit committee for approval / ratification.

The Board of a company to lay down the code of conduct for all Board members and senior management of a company and all Board members and senior management personnel to affirm compliance with the code on an annual basis.

The term ‘Independent director’ to have the same meaning as contained in the Naresh Chandra Committee report.

Requirement of whistle blower policy for Personnel who observe an unethical or improper practice (not necessarily a violation of law) should be able to approach the audit committee without necessarily informing their supervisors.

The performance evaluation of non-executive directors should be by a peer group comprising the entire Board of Directors, excluding the director being evaluated as non-mandatory recommendation.

CEO / CFO certification as stated in section 2.10 of Naresh Chandra Committee Report.

In the Companies Act, 2013, leadership role of CS in handling compliances applicable to the company has also been reiterated as Section 205 of the Act, read as under:-

“(a) to report to the Board about compliances with the provisions of this Act, the rules made thereunder and other laws applicable to the company;”

Indubitably, based on the recommendation of Shri N. R. Narayana Murthy, SEBI in August 2003, amended Clause 49 of the then Listing Agreement wherein directors were mandated to periodically review legal compliance reports prepared by the company as well as steps taken to cure any taint, laying down Code of Conduct for directors and senior management and whistle blower policy etc. ensured CS to not only lead compliance functions but also finest corporate governance practices.

**ENACTMENT OF THE COMPANIES ACT, 2013**

The substance of the Companies Act, 2013 (‘Act’) was laid down way back in the Companies (Amendment) Bill, 2003 which contained provisions relating to corporate governance. Though the Companies (Amendment) Bill, 2003 contained significant provisions in the arena of independence of auditors, relationship of auditors with the management of the company, independent directors etc. nonetheless held back for comprehensive review of the Company Law. In the meantime, the Government decided to prepare and introduce concept paper containing a model codified company law consolidating the existing provisions of the law. Subsequently, the Committee was constituted under the Chairmanship of Dr. J. J. Irani which submitted report of the Expert Committee on Company Law on 31st May, 2005. The consultative process not only allowed ideas, comments and suggestions from different bodies but enabled the Government to work out appropriate laws to meet the requirements of growing economy of India. The Act primarily conceptualised based on the recommendation of report of Dr. J. J. Irani and learnings aftermath of Satyam scandal in the year 2009.

CS became inherent choice to comply with the mandated requirement of Corporate Governance as Clause 49 became part of Listing Agreement. Since then, there is no looking back for CS to lead the corporate governance function as enhanced focus of Regulators particularly SEBI and Ministry of Corporate Affairs (‘MCA’) mandated numerous practices to improve the standard of corporate governance in listed entities and such requirement continued to be embedded under Clause 49 of the then Listing Agreement.

The Act contained numerous better corporate governance provisions which, inter-alia, includes independent directors, women directors, vigil mechanism, key managerial personnel, compliances of secretarial standards etc. and also specifically states of the duties of Company Secretary as under:

“to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.”

The above in entirety exhibit that during last two decades Corporate Governance became an exclusive realm of Company Secretaries and CS are well poised to achieve the following statement:

“This terminology of Company Secretaries, I have heard this terminology for years, it does not go down well with me. We have got to change the concept of what the job all of you do. It is ensuring that the Board and the management comply with the laws of the land. It is a tremendous responsibility, it is not making and filing notes but it is to make sure that the company is responsible to the shareholders, to the people of this country, to the law makers and there is full compliance. Therefore, this term needs to be slowly or swiftly transformed to be called governance professionals.”

**SEBI’S KOTAK COMMITTEE REPORT**

To improve standards of corporate governance of listed entities, SEBI, on 2nd June, 2017, formed Committee on corporate governance under the Chairmanship of Shri Uday Kotak. The report of the Committee contained out-of-the-box thinking recommendations; and SEBI expeditiously in its Board meeting held on 28th March, 2018 accepted several recommendations which were notified on 9th May, 2018. The major amendments introduced were concept of board inter-lock, inclusion of person or entities belonging to promoter group who holds 20% or more of the shareholding of listed entity as related party, reduction in threshold for material subsidiary from 20% to 10%, requirement of at least one independent woman director, shareholders’ approval if annual remuneration payable to a single non-executive director (‘NED’) exceeds 50% of the total annual remuneration payable to all NED, review of Policy on materiality of related party transactions at least once in every 3 years, additional disclosures in report on Corporate Governance/ Management discussion and analysis, secretarial audit of unlisted material subsidiaries (whether public or private) etc.

2. Statement of the then Hon’ble Minister of Corporate Affairs made at the 41st National Convention of Company Secretaries of India.
Nonetheless, requirement of unrelated Chairman and the MD or CEO as inserted in Regulations 17(1B)³ of SEBI Listing Regulations states that with effect from 1st April, 2020, the top 500 listed entities to ensure that the Chairperson of the Board to be a non-executive director; not related to the Managing Director or the Chief Executive Officer.

In India, 92% of family businesses allow family members to work in the business. When it comes to spouses/partners, three-fourths allow them to own shares and two-thirds allow them to work in the business. Women average only 15% on the board and 13% on management teams in Indian family businesses, compared to 21% on the board and 24% in management teams across the globe. When it comes to the next gen, 73% of family businesses in India (compared to 65% globally) have them working in the business and 60% (compared to 57% globally) plan to pass on management and/or ownership to the next gen.⁴

The promoters driven entities in India have grown significantly over a period of time and the same was predominantly due to stewardship, effort, leadership and requisite funding etc. deployed by them to grow their companies. Hence, it would not be fair to enforce such requirement by giving less than 2 years’ time. It would therefore be pertinent if SEBI soonest amend the requirement either by removing the word ‘related’ from the said rule or timeline to comply the same is extended by few more years to enable the promoters to find alternative for suave transition.

INSIDER TRADING REGULATIONS

There was no law to deal with malpractices related to the capital market till late 1992. Enactment of Securities and Exchange Board of India Act, 1992 on 4th April, 1992 provided for establishment of a Board to protect the interest of investors in securities and to promote the development and to regulate the securities market and for matters connected therewith or incidental thereto. Specific law to curb insider trading, first time, came into force on 11th November, 1992 upon introduction of SEBI (Insider Trading) Regulations, 1992 (‘1992 Regulations’).

The significance of robust insider trading laws also emanates from the noting made by Shri Kumar Mangalam Birla Committee in its’ report to SEBI way back in the year 2000 as under:-

“Another important aspect of corporate governance relates to issues of insider trading. It is important that insiders do not use their position of knowledge and access to inside information about the company, and take unfair advantage of the resulting information asymmetry. To prevent this from happening, corporates are expected to disseminate the material price sensitive information in a timely and proper manner and also ensure that till such information is made public, insiders abstain from transacting in the securities of the company. The principle should be ‘disclose or desist’.”

Thereafter, first major amendment in 1992 Regulations took place vide SEBI (Insider Trading) (Amendment) Regulations, 2002 effective 20th February, 2002 wherein the words ‘Prohibition of’ was inserted before the word ‘Insider Trading’ in the title of the 1992 Regulations and since then it is aptly known as the SEBI (Prohibition of Insider Trading) Regulations, 1992 instead of SEBI (Insider Trading) Regulations, 1992. The amendment in 2002 completely revamped 1992 Regulations which, inter-alia, included requirement of policy on disclosures and internal procedure for prevention of insider trading; and model code of conduct for prevention of insider trading for listed companies (i.e. Schedule I) covering, inter-alia, the following:

- Framing of Code of internal procedures and conduct as near thereto the Model Code;
- Initial and continual disclosure of interest or holding by directors and officers and substantial shareholders;
- Compliance Officer to be senior level employee to set forth policies, procedures, monitoring adherence to the rules for the preservation of Price Sensitive Information;
- Trading window;
- Pre-clearance of trade;
- Penalty for contravention of code of conduct.

Insertion of Chapter VA vide the SEBI (Amendment) Act, 2002, effective 29th October, 2002 emphasised on prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control. The year 2002 became landmark year to curb insider trading as section 15G of the SEBI Act which deals with penalty for insider trading enhanced from earlier “not exceeding five lakh rupees” to “twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher” effective 17th December, 2002. Year 2015 became another landmark year to curb insider trading when SEBI (Prohibition of Insider Trading) Regulations, 2015 (‘2015 Regulations’) became effective 15th May, 2015 repealing more than two-decade old SEBI (Prohibition of Insider Trading) Regulations, 1992. 2015 Regulations contained additional novelties which, inter-alia, included trading plan, widening of definition of designated person, requirement of Code of Practices and Procedures for fair disclosure of UPSI etc.

In India, 92% of family businesses allow family members to work in the business. When it comes to spouses/partners, three-fourths allow them to own shares and two-thirds allow them to work in the business. Women average only 15% on the board and 13% on management teams in Indian family businesses, compared to 21% on the board and 24% in management teams across the globe.
The following data reveals necessity of robust laws to curb insider trading as number of investigations taken up by SEBI continues to be dominated by matters relating to market manipulation/price rigging and insider trading:

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Source: SEBI’s Handbook of Statistics 2018
# Indicate that the data pertains to Apr-Dec for the years 2017-18 and 2018-19

From year 2002, CS continues to develop and strengthen the system/practices in the organisation to curb insider trading and gain prominence in leading such an imperative area of corporate governance.

LISTED ENTITIES, NECESSITY OF CORPORATE GOVERNANCE

Though the requirement of corporate governance initially mandated for listed entities, nonetheless upon enactment of the Act most companies are mandated to adopt better corporate governance practices. Following data reveals necessity of better corporate governance in listed entities:

“Europe’s largest economy has a market capitalisation of $2.08 trillion, compared with $2.12 trillion for India, Bloomberg data showed. This is the second time in seven years that Mumbai outran Frankfurt. India’s market capitalisation touched a record high of $2.45 trillion in January 2018. In the last one year, India’s benchmark index rose 4 per cent in dollar terms, while the key German gauge, DAX, dropped 14 per cent.”

“How many listed companies are there across the world? Approximately 41,000 at the end of 2017. What is their market cap? About US$ 84 trillion, the same as global GDP that year. Where are these companies listed? 10% by number, and 36% by market cap are listed in the US. Asia accounts for the largest number 57%, and 37% of market cap. Exclude Japan, China, and other advanced Asian countries, residual Asia is home to 23% of the companies, but a paltry 5% of the global market cap...”

Institutional investors hold 41% of the global market cap, with close of half of it as a part of a passive strategy. The second highest ownership is by the state, at 14%. Corporates, strategic investors and families together own about 18%, with the residual being ‘free float’, defined as direct holdings of retail investors and institutional investors ‘that does not exceed the required thresholds for public disclosures of their holdings.’ 65% of these investors, in terms of market cap are in the US, 11% in UK.

CORPORATE GOVERNANCE, ICSI INITIATIVES

The thrust of ICSI continues to promote culture of better corporate governance practices which echoes in Vision New ICSI 2022 document and can also be traced way back in 2001. In pursuit of excellence and to identify, foster and reward the culture of evolving globally acceptable standards of corporate governance among Indian Companies, the ICSI in the year 2001 instituted the ‘ICSI National Award for Excellence in Corporate Governance’.

The ICSI, since then, has been recognising and conferring the award to companies adopting better corporate governance practices. Sensing that globally acceptable standards of Corporate Governance are need of hour for all corporates entities, ICSI also recognises and confer award to selected unlisted entity as well.

In its continuous thrust to promote better corporate governance, the ICSI instituted, CSR Excellence Awards to recognise and promote the execution of CSR amongst the Indian corporate; and ICSI best Secretarial audit report award report award in the year 2016 and 2019 respectively. All the above initiatives of the ICSI continue to gain prominence as selection criteria for such award/ recognition is rigorous and the Jury comprises of eminent personalities.

CONCLUSION

“To develop the high calibre professionals facilitating good Corporate Governance” - Mission Statement of the ICSI

The process of metamorphism of profession CS took about two decades ago from being mere statutory officer to not only lead compliances but also corporate governance. Apart from framing governance policies, CS certifies mostly all Forms/returns required to be submitted to MCA or SEBI or Stock Exchanges; undertake secretarial audit of listed entities, bigger companies and material unlisted subsidiaries (whether public or private), incorporated in India; certain certifications under FEMA. Additionally, NCLT, NCLAT and Insolvency and Bankruptcy law opened plethora of opportunities of CS. Regulatory bodies’ continuous thrust on mandating better corporate governance for listed entities and enactment of the Act have complimented profession CS in achieving such dynamic function.

Managing the above effectively by CS, would realise the vision of ICSI in becoming global leader to promote good corporate governance.
Entity Management Software for Governance and Compliance

Entity management has become a central function of corporate governance for compliance professionals. Entity Management support the Company Secretary’s governance advisory role. Electronic tools and industry expertise help professionals to manage, access and share corporate data at a moment’s notice. A comprehensive Entity Management Solution must include consultative support from a team of entity management specialists.

INTRODUCTION

In order to effectively identify and prevent legal and compliance risks, organizations need to focus on standardizing existing manual processes and invest in software to increase the automation of everyday tasks. Entity management software, designed to streamline and automate the process of managing business entities and their regulatory and compliance needs, allows legal specialists to focus more proactively on strategic initiatives rather than on manual reconciliation of data. Company Secretary is primarily responsible for supporting the board of directors and overseeing the company’s compliance programs.

As organizations continue to focus on how to effectively grow their business globally, many organizations are increasing growth through M&A, adding subsidiaries, adding new products and services, or venturing into new markets. For organizations to properly support these high-growth initiatives, they require a robust corporate governance platform to make sure that this growth is coupled with good governance practices. Effective corporate governance means having specific rules, controls, policies and resolutions in place to dictate corporate behaviour; good governance is nothing more than using the right information and controls to effectively direct an organization and to make decisions.

ADVANTAGES OF ENTITY MANAGEMENT SOFTWARE

A well-designed Entity Management Software offers the following advantages: -

1. **Increase Efficiencies:** Enable multiple departments to gain real-time access to entity and subsidiary-related information in a secure manner. Entity management software platforms provide a springboard for growth. By cutting out manual processes, expediting the formation of new entities and ensuring that regulatory requirements are met in an accurate and timely manner, entity management software frees individuals working in the legal segment to spend time assisting their organization in achieving long-term strategic company goals rather than compiling and reconciling data or tracking down paperwork.

2. **Ensure Compliance:** It helps in creating a single source of truth for corporate record and improving data cleanliness in order to facilitate compliance. Tracking regulatory change, governance standings and compliance risk is becoming increasingly difficult as the pace of change accelerates. So, the stakes around governance, compliance and risk are higher than ever before. Investing in a robust, flexible entity management platform positions an organization with the ability to achieve improved governance, risk and compliance standards across the global footprint.

3. **Mitigate Risk:** Standardized and automated entity management processes offered by the Entity Management Software ensure data integrity and reduces risk. When data is unified and accurate, processes are standardized and collaboration across functions is easily adopted, it transforms the ease with which organizations can overcome the complexity of managing voluminous amounts of legal entity information. The key to effective entity management lies in an organization’s ability to locate accurate corporate data quickly in order to respond to requests for information from key stakeholders across the business. Entity management platforms should help Company Secretaries to find answers to questions faster with more accurate and up-to-date data, so they can report the information to the right stakeholders for better informed decision-making.

ESSENTIAL FEATURES & FUNCTIONALITIES OF AN ENTITY MANAGEMENT SOFTWARE

These key characteristics can be divided into 8 essential elements, so that one can more easily align their needs with organizational benefits. They are-

1. **Jobs to be done:** First of all, it is important to understand what progress you, as a customer, are looking to make; how you want to measure it; and how you will identify the steps to analyze your level of success. In this section, the focus is on the duties that must be carried out in order
Entity management platforms should help Company Secretaries to find answers to questions faster with more accurate and up-to-date data, so they can report the information to the right stakeholders for better informed decision-making.

1. **Required capabilities for success**: These are the minimum solution requirements that are needed to solve the business problems and to achieve positive business outcomes.

2. **Flexibility and scalability**: Whether it is a highly regulated multinational corporation with thousands of entities or a fast-growing mid-market company, a software platform must be able to fulfill the short and long term needs of an organization’s legal and compliance functions. The vendor of choice of the relevant organization must provide a growth platform with a wide range of configurations. In addition to the ability to more closely customize the platform according to the needs within the industry, the ideal requirement is for a technology that can create a unique instance to drive process efficiency, ensure compliance and decrease risk across the organization.

3. **Vision**: Uncovering a software vendor’s vision helps to create a powerful picture of the future by increasing the clarity in their purpose and focus for long-term goals. Organizations should seek to understand where the potential vendors are placing their R&D investments in order to explore the features and functionality that might be available in the future. Many buyers today are relatively short-sighted and only focused on resolving the issues affecting them in the short-term consequent to which the big picture of long-term vision is missing. Choosing an appropriate Entity Management Software helps to bring a better focus on the future and brings clarity in thought about where they’d like to go in the next five years.

4. **Reputation**: “Peer recommendations” is one of the top reasons for making a technology purchase. Buyers should seek to understand the reputation of an organization prior to making an investment, as the feedback of third party publications, their peers and respected consulting organizations should be weighted heavily in their criteria for a preferred vendor.

5. **Service**: Studies show that, in most organizations, two out of three transformation initiatives fail. This is because employees don’t have proper clarity on the four hard elements that dictate the success of change management programs:
   a. Duration,
   b. Integrity,
   c. Commitment ;and
   d. Effort.

6. **Security**: It is important that a vendor of choice is fully committed to provide assurance of security controls and practices through third-party certifications and audits. A preferred vendor should engage third-party professionals to perform rigorous security tests against their networks and provide these results to customers.

8. **Expertise**: Prospects should seek to understand a vendor’s experience in a particular sector. Knowledge and technical expertise should always be evaluated with any sizeable and lengthy software investment.

**ATTRIBUTES THAT DIFFERENTIATE ONE VENDOR FROM ANOTHER**

Organizations invest in software in order to accomplish three things: make money, save money or reduce risk. An entity management solution should effectively help organizations to achieve all the three. A typical Entity Management Software should primarily help organizations to save money and reduce risk by increasing efficiency with standardization and automation of manual processes. With greater transparency into all entities and their performance, there will be a clearer picture of how to increase monetary gains. In order to effectively understand the extent of an organization’s efficiency gains, one must first understand the jobs that must be accomplished in order to achieve the bare minimum standards for proper entity management.

**SCALABILITY AND ADAPTABILITY**

When evaluating entity management systems, scalability and adaptability are critical components. Flexibility and scalability offer multiple advantages, including the ability to:
- Scale the features and functionality of the software as your organization grows and your needs increase
- Meet the demands of key stakeholders across different functions and global jurisdictions
- Adapt to the requirements of specific industries and sectors

While an organization stands at a specific juncture today, that posture isn’t static. New regulations, competitive pressures, tax cuts, opportunities and expansion into new territories require proactive adjustments along the way to continue to meet evolving business objectives. Getting a handle on your
Organizations invest in software in order to accomplish three things: make money, save money or reduce risk. An entity management solution should effectively help organizations to achieve all the three. A typical Entity Management Software should primarily help organizations to save money and reduce risk by increasing efficiency with standardization and automation of manual processes. With greater transparency into all entities and their performance, there will be a clearer picture of how to increase monetary gains.

CORPORATE GOVERNANCE AND ENTITY MANAGEMENT SOFTWARE

Good governance is not a luxury to aspire to; rather it is a corporate imperative that must guide your decision-making. The opportunity cost of poor governance is high and continues to escalate. What previously could be swept under the rug with a fine and a slap on the wrist now can rise to the level of fired and jailed executives, major reputational damage, lawsuits, congressional hearings, drop in stock price and even government oversight. Organizations need to seek technology to help balance governance and compliance challenges and the increasing pressure on directors and senior managers to both understand and cope with evolving regulatory expectations.

An entity management system that provides across-the-board opportunities to govern well is a big factor that contributes to raising the bar around governance. When everyone has access to the right data, established workflows and a shared vision of governance, the organization naturally evolves to a higher governance plateau. It is necessary to ensure that the entity management software vendor possesses the same unwavering commitment to governance that the management of the entity has. As vendors and organizations properly align, they can accomplish a joint mission to achieve new levels of performance by putting the right information, operations and insights in place. The right vendor will continue to show investment in R&D and meet the needs of the latest compliance regulations ensuring that the organization can continue to engage in good governance practices while focusing on its core business objectives.

When you entrust your data, governance, compliance and risk functions to an entity management software platform, you’re embarking on a step with transformative power. You’ve established the ideal path forward: growth coupled with good governance. Whether that vision turns into the best possible reality rests on the ability of an entity management partner to implement, support, train and facilitate the governance, risk and compliance functions on which your organization depends.

In the best-case scenario, you’ll select the leading entity management software vendor with decades of experience in the field while gaining the ability to collaborate with companies like yours and utilize best-in-class features and functionality to continue to achieve your ongoing governance, risk and compliance excellence. The ideal vendor will continue to develop features to remain relevant and to future-proof the product. In an alternate scenario, usually driven by lack of budget, organizations will select a vendor purely based on cost; however, there’s huge risk in this. The entity management software space has historically high retention rates because it is very difficult to migrate from one vendor to another due to the laborious process involved in migrating data, designing new workflows and re-integrating existing systems into a new entity management solution. Making a short-sighted investment with a less costly platform that is unable to provide all of the features necessary for long-term success typically results in inaccurate or incomplete data over the course of time as individuals stop using the platform as a single source of truth. This results in increased fears of the unknown and puts the entire management team, including Company Secretaries at risk of consequential incorrect or bad decisions that will adversely affect their organizations.

All too often, companies in search of new software focus so much attention on the technology itself that the implementation and relationship phase of a purchase are neglected. The real work starts after a deal closes and vendors must push their clients, tell hard truths and become personally invested in their business goals. That is why implementation risk and change management kill more projects than actual bad decision-making. Too much attention is paid to the short-term thrill of spending money and not enough to the long-term investment of implementation, upgrades and servicing. The start reality is that implementation can be a protracted and painful ordeal, if not handled properly. Disruptions abound as managers and staff faces separation from familiar routines and workflows, receive training, and climb the learning curve toward mastering the new platform leaving their comfort zone.

Collaborating with a partner that strives to minimize disruption through a customized project plan headed by a dedicated implementation manager helps ease the pain. To mitigate implementation risk, it is necessary to ensure that all implementation costs are disclosed upfront and that a detailed, realistic implementation schedule has been created.

Once implementation is complete, ongoing service is critical. Every vendor you talk to will tout the advantages of their long list of product features; however, it is important to ensure that those features properly translate into the accomplishment of your specific business goals and are focused around improving efficiencies, ensuring compliance and mitigating risk. Entity management is a maturing industry and the vendors in the space range from experienced, proven leaders to up-and-coming challengers, early visionaries and service providers attempting to supply software to complement their services.

It is necessary to ensure that the vendors who are being evaluated provide customized add-ons that support the entity’s corporate governance and regulatory compliance needs for major compliance initiatives.
Business has become too complex and is moving rather too rapidly for boards and CEOs to make good decisions without intelligent systems. One of the solutions to this complexity will be adoption of an effective Entity Management Software. This type of software will come to be an essential competitive advantage, just like electricity was in the industrial revolution or ERP is in the information age.

Entity Management Software is going to have a major impact on corporate governance mainly because it will be better able to understand the context of the environment of an organization. Generally, when a decision is made within an organization, it is made based on a limited amount of data. But, with Entity Management Software, it is possible for including more data sources to get a much better picture of what’s going on and how the context of the organization is changing and influencing decision-making.

DIGITAL BOARD PORTALS – FORMING AN INTEGRAL PART OF ENTITY MANAGEMENT SOFTWARE

The advent of new technologies has increased the speed and ease of doing business around the World, creating business opportunities at every turn. Incidents of customer data, financial information and trade secrets being leaked results in brand reputation damage, expensive lawsuits and cases of lost revenue. These cases depict clearly why Board of Directors must have secure and efficient tools at their disposal to properly lead their organizations. Replacing paper with a Digital Board Portal solution, not only addresses some of the inconveniences associated with traditional paper documentation, but can also be one of the most secure and convenient solutions for directors, company secretaries and their boards. Company secretaries face an ongoing challenge to facilitate the exchange of timely and accurate information between management and the board.

Boards were initially tempted by the Internet, but the lack of security made them retreat. In the interest of time, there may be pressure to send confidential papers via email, but email does not provide adequate security. Transiting on the web, documents could be stolen and confidential information could end up in the wrong hands. The advent of cloud computing has not resolved the issue. Cloud computing refers to computing resources that are available on subscription or demand from an external or outsourced supplier, typically provided remotely, from ‘out there somewhere’ or ‘the cloud’. This might be a web-based application where the computing power sits on a server, with the results delivered to users over the internet. Alternatively, it may be storage of documents or information that users can access remotely for convenience. Many Boards and committees eventually remained with the paper process, despite its cost and inconvenience.

Developments in technology have changed the way organizations facilitate meetings. More secure electronic communication channels are now available that address the issues of hardcopy board packs while providing a fast and convenient way to share information. Nowadays, meetings go beyond face-to-face interactions within the same room; instead, they transcend distances and time zones, allowing more people to connect with each other in a virtual environment created by electronic meeting systems. The transition from paper-based tasks to entirely digital and mobile processes is nothing new. Enterprises have been on this track for several years now. But the good news is that technology continues to offer far easier and cheaper ways to painlessly move to paperless operations.

Some of the Boards are also under pressure to lower their operating costs while at the same time go-green. Over time, the amount of paper, consumables and resources required to manage meetings add up to big expenses. Paperless
meeting software makes it easy for anyone to reduce impact on the environment – as well as achieve major time and cost savings. Paperless meeting puts all the meeting information online so that the board members, staff and constituents can access it 24/7 without the need to print lengthy agendas and attachments. Plus, security features protect the data from unauthorized access. With printing of paper agendas, last-minute changes can be a huge hassle, calling for edits, printing new copies, collation of everything and distribution of new agendas. With paperless meetings, last-minute changes have become easier. Simply update the document so attendees can access it via their computers, laptops, tablets or mobile devices. In addition to reducing our paper usage, paperless meeting eliminates many of the time-consuming tasks. One can automate every aspect of meetings, such as scheduling, agenda creation and distribution, roll calls, voting, publishing documents and following up on action items.

Developments in technology have changed the way organizations facilitate meetings. More secure electronic communication channels are now available that address the issues of hardcopy board packs while providing a fast and convenient way to share information. Nowadays, meetings go beyond face-to-face interactions within the same room; instead, they transcend distances and time zones, allowing more people to connect with each other in a virtual environment created by electronic meeting systems.

SECURITY MATTERS THE MOST

In a universe in which hacks and security breaches are increasing, security must remain a key factor in the decision relating to purchase of entity management software. Transparency is a major factor surrounding security. All too often, it is easy for vendors to either brush off security questions or assure prospects that all is well. The best potential partners will walk the customer through what is necessary to know about security on a particular platform and ensure that the potential user understands the exact parameters of security associated with that software. In the buying process, it is important to work in tandem with your organization’s security team to understand the minimum standards needed for any software investment. Instead of checking the security box toward the end of the buying process, it is advised to bring up security earlier in the conversation.

CONCLUSION

Entity management has become a central function of corporate governance for compliance professionals. Because all other essential governance and compliance functions rely on a dynamic, accurate corporate record, best practices in entity management support the Company Secretary’s governance advisory role. Electronic tools and industry expertise help professionals to manage, access and share corporate data at a moment’s notice. A comprehensive entity management solution must include consultative support from a team of entity management specialists.

In addition to day-to-day support, this team will provide a wide range of important functions, including implementation, support for complex issues, apprising you of changing compliance and regulatory rules, and training on corporate governance and compliance best practices. Ultimately it has to be kept in mind that a comprehensive approach that combines system, process and people will give the most effective, long-lasting solution for the entire organization.

REFERENCES:

2. CALPERs, 2002 Study Report.
9. US, The conference board, Commission on public trust and private enterprise (Jan.03).
Whether Section 14 of Companies Act, 2013 is applicable to deemed public company when Section 43A of Companies Act, 1956 ceases to apply?

In Cyrus Investments Pvt. Ltd. v Tata Sons Ltd the NCLAT held that Tata Sons Ltd was a public company since it did not follow the requirements under section 14 of the Companies Act, 2013. The article analyses whether section 14 of Companies Act, 2013 is applicable to deemed public company when section 43A of Companies Act, 1956 ceases to apply.

One of the issues that figured out and dealt with in the Order of the National Company Law Tribunal (NCLAT) in Cyrus Investments Pvt. Ltd. v Tata Sons Ltd (Company Appeal (AT) No. 254 of 2018, was regarding legal status of Tata Sons Limited' from under the Companies Act 2013. Tata Sons Limited' was initially a ‘Private Company’ but after insertion of Section 43A (1A) in the Companies Act, 1956 on the basis of average annual turnover, it assumed the character of a deemed ‘Public Company’ w.e.f. 1st February, 1975.

The NCLAT held that the company was a public company. The NCLAT referred to section 14 of the Companies Act, 2013, which contains provisions concerning voluntary conversion of a private company into public company and vice versa. In this regard, the NCLAT observed:

“173. Like Section 43A(1A) of the Companies (Amendment) Act, 2000, there is no provision under the Companies Act, 2013 for automatic conversion of ‘Public Company’ to ‘Private Company’ or a ‘Private Company’ to ‘Public Company’. Therefore, on the basis of definition of ‘Private Company’ as defined under Section 2(68) of the Companies Act, 2013, there cannot be automatic conversion of a ‘Public Company’ to ‘Private Company’. Similarly, on the basis of definition of ‘Public Company’ as defined under Section 2(71) of the Companies Act, 2013, there cannot be automatic conversion of Private Company’ to ‘Public Company’.

174. For alteration of articles including alteration of the Company from a ‘Private Company’ to a ‘Public Company’ or ‘Public Company’ to ‘Private Company’, steps are contemplated to be taken under Section 14 of the Companies Act, 2013.

175. The Company (‘Tata Sons Limited’) having become ‘Public Company’ since long, for altering its Articles as a ‘Public Company’ into a ‘Private Company’, it is required to follow Section 14(1) (b) r/w Section 14 (2) (3) of the Companies Act, 2013.”

As to legal status of the company, the NCLAT said:

“It was submitted by the Respondent that by reason of MCA’s General Circular No. 15/2013 dated 13th September, 2013 and Notification dated 12th September, 2013 issued by the Central Government, that the Company came within the meaning of ‘Private Company’ under Section 2(68) and could take direct permission from the Registrar of Companies to change the Articles of Association and to record it as ‘Private Company’.”

However, the NCLAT rejected that submission and held that,

“177. However, aforesaid General Circular No. 15/2013 dated 13th September, 2013 and Notification dated 12th September, 2013 cannot override the substantive provisions of Section 14 of the Companies Act, 2013 which is mandatory for conversion of a ‘Public Company’ to a ‘Private Company’.”

Finally, the NCLAT held:

“178. Curiously, the ‘Tata Sons Limited’ remained silent for more than 13 years and never took any step for conversion in terms of Section 43A(4) of the Companies Act, 1956. Even after enactment of the Companies Act, 2013 which came into force since 1st April, 2014, for more than three years, it had not taken any step under Section 14. Till date, no application has been filed before the Tribunal under Section 14(2) of the Companies Act, 2013 for its conversion from ‘Public Company’ to ‘Private Company’.

In absence of any such approval by the Tribunal under Section 14, we hold that ‘Tata Sons Limited’ cannot be treated or converted as a ‘Private Company’ on the basis of definition under Section 2(68) of the Companies Act, 2013.”

RELEVANT PROVISIONS OF SECTION 43A

Subsection (2) of section 43A provided that “Within three months from the date on which a private company becomes a public company by virtue of this section, the company shall inform the Registrar that it has become a public company...”

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as aforesaid, and thereupon the Registrar shall delete the word “Private” before the word “Limited” in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association.”

According to subsection (4), a private company which has become a public company by virtue of this section shall continue to be a public company until it has, with the approval of the Central Government and in accordance with the provisions of this Act, again become a private company.

OMISSION OF SECTION 43A

As noted above, subsection (11) of section 43A Inserted by the Companies (Amendment) Act, 2000, sought to omit section 43A on and after the commencement of the Companies (Amendment) Act, 2000, i.e. w.e.f. 13-12-2000. It read as follows:

“(11) Nothing contained in this section except sub-section (2A) shall apply on and after the commencement of the Companies (Amendment) Act, 2000.”

Subsection (2A) was Inserted by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000 in section 43A which read as follows:

“(2A) Where a public company referred to in sub-section (2) becomes a private company on or after the commencement of the Companies (Amendment) Act, 2000, such company shall inform the Registrar that it has become a private company and thereupon the Registrar shall substitute the words “private company” for the words “public company” in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association within four weeks from the date of application made by the company.”

THE DCA’S VIEW

The then Department of Company Affairs (DCA) had, in its Circular, stated as follows:

section 43A(2A):

CLARIFICATION REGARDING NEW PROVISIONS OF SECTION 43A(2A) OF THE COMPANIES ACT, 1956

I am directed to refer to your letter No.TC/43A(2A)/3854 dated 23.1.2002 addressed to the Regional Director, Kanpur and copy endorsed to this Department and to say that fixing of time limit for getting conversion by deemed public company to private limited company under Section 43A(2A) of the Companies Act, 1956 may not be feasible. If a public company, which had become a deemed public company under Section 43A of the Companies Act when it was in force, does not approach for reconversion, it is deemed to have chosen to remain as a public company.” [Circular No.3/2002 [No.17/4/2002-CL.V] dated 24th July, 2002]

EFFECT OF SUBSECTION (2A)

Subsection (2A) stated, inter alia, that “Where a public company referred to in sub-section (2) becomes a private company on or after the commencement of the Companies (Amendment) Act, 2000”.

What is contemplated by the words “becomes a private company” is that after the Companies (Amendment) Act, 2000, every company referred to in subsection (2) i.e. deemed public company, becomes a private company by operation of law, without anything further and without any action to be taken or any procedure to be followed by the company, as a result of abolition of section 43A. These words are clear and unambiguous. They signify is that (after the Companies (Amendment) Act, 2000) a deemed public company becomes (by operation of law) a private company. Such a company has no choice, no option; it happens by operation or force of law. The verb ‘becomes’ declares the effect of the Companies (Amendment) Act, 2000. To become means “be transformed into, change into, develop into, turn into, be converted into”.1

This change of status of a company is not conditional; it does not require any approval of shareholders or Registrar or other Government authority or any other formality to become a private company; the change is involuntary, inevitable and ipso facto on the subsection (11) of section 43A coming into force. No form was prescribed for informing the Registrar and no specific procedure or requirement was prescribed. No approval of the Registrar was required and there was no provision stipulating that the change in the status of the company would be effective only after the Registrar inserted the word ‘private’ in the company’s name. Even the change of name of the company by insertion of the word ‘private’ did not require approval of the Central Government which was otherwise required under section 21 of the Companies Act 1956. Even the proviso to section 31, which provided that no alteration made in the articles under this sub-section which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government, did not apply since that proviso applied only in the case of conversion of a public company into a private company by volition, whereas changing the status of a deemed public company to a private company was by operation of law.

Whether Section 14 of Companies Act, 2013 is applicable to deemed public company when Section 43A of Companies Act, 1956 ceases to apply?

It is after a deemed public has become a private company that it is required to comply with one procedural formality or an action to be taken by the company (after it has become a private company), which is stated in subsection (2A), namely: “such company shall inform the Registrar that it has become a private company”. The expression “such company” means the company which has become a private company in terms of subsection (2A) of section 43A. Thus, a company which has already become a private company by virtue of subsection (2A) should inform the Registrar that it has become a private company.

Thus, the company which has already become a private company by the force of law has thereafter to inform the Registrar of the change of its status. This requirement is not a substantive and mandatory requirement of such nature that its non-compliance impinges on the status of the company to change it to a public company. Such an interpretation is an absurdity. The unambiguous language also does not justify such interpretation.

The requirement of giving intimation to the Registrar is a mere formality or a procedural requirement; it is not a substantive requirement non-compliance with which would render the effect of the company having become a private company nugatory.

The Supreme Court has observed that: “Substance must take precedence over form. Of course, there are some rules which are vital and go to the root of the matter which cannot be broken. There are others where non-compliance may be condoned or dispensed with. In the latter case, the rule is merely directory provided there is substantial compliance with the rules read as a whole and no prejudice is caused.”

Some of the statutory provisions expressly provide that the provision shall have no effect unless, or shall have effect only if, a certain act is done or happens. For example, section 13(2) of the Companies Act, 2013 states:

“(2) Any change in the name of a company shall be subject to the provisions of sub-sections (2) and (3) of section 4 and shall have effect except with the approval of the Central Government(3) in writing:

Section 13(3) provides:“(3) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.”

Then, section 13(4) states:

“(4) The alteration of the memorandum relating to the place of the registered office from one State to another shall have no effect unless it is approved by the Central Government(4) on an application in such form and manner as may be prescribed.”

Section 13(10) provides:

“(10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.”

Section 14 itself provides that any alteration in the Articles of Association of a public company having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed.

There were some provisions in the 1956 Act as well. For example, section 23(1) of the provided that, on a change in the name of a company, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.” [Emphasis supplied].

Section 391(3) provided as follows:

“(3) An order made by the Tribunal under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.”

These provisions stand in contrast with subsection (2A) of section 43A. Hence, the effect of a deemed public company having become a private company is not dependent upon the formality of informing the Registrar. In fact, the intimation is to be given of the change of status which has already taken place and it is required to be given after the change has taken place, not before; hence it is not a condition precedent to the change of status of the company.

RULES OF INTERPRETATION

It has been observed in the celebrated and authoritative treatise on Interpretation of Statutes(5) that “The phrases and sentences are to be construed according to the rules of grammar.” The cardinal rule of interpretation of statutes is to construe its provisions literally and grammatically giving the words their ordinary and natural meaning. It is only when such a construction leads to an obvious absurdity which the legislature cannot be supposed to have intended that the Court in interpreting the section may introduce words to give effect to what it conceives to be the true intention of the legislature.(6)

It is a well-accepted principle of interpretation of statutory provisions that if the plain language of a section is clear or unambiguous it is not open to a Court to interpret it giving a meaning different from the plain grammatical meaning of the provisions.(7)

Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed. This can be vouchsafed by “an alert recognition of the necessity not

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3. Powers delegated to Registrar of Companies vide Notification No. SO 1353(E), dated 21-5-2014, w.e.f. 21-5-2014.
4. Powers delegated to the Regional Directors vide Notification No. SO 4090(E), dated 19-12-2016, w.e.f. 19-12-2016.
7. State of West Bengal v Scene Screen Pvt Ltd 2000 AIR SCW 3530.
to cross it and instinctive, as well as trained reluctance to do so”.8 Where, therefore, the “language” is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here.9 Indeed, the Court cannot reframe the legislation as it has no power to legislate.10

DEEMED COMPANY’S ORIGINAL STATUS

There is one more reason in support of the view that deemed public companies had automatically become private companies on the abolition of section 43A. These companies were originally private companies incorporated as such. They were compelled to become (deemed) public companies by operation of law by virtue of the legal fiction enacted in section 43A. Their basic structure was that of a private company as defined in section 3(1)(iii) of the Act, which continued to be so even after they became public companies under section 43A, because they were allowed to do so by the proviso appended to subsections (1) to (1C). It reads as follows: “Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be or may at any time, be reduced below seven.”


Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valor. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed.

A deemed public company could never be incorporated as such; it always was registered as a private company and became, by operation of law, a public company. As pointed out by the Supreme Court in Needle Industries (India) Ltd. v Needle Industries Newey (India) Holdings Ltd AIR 1981 SC 1298:[1981] 51 Comp Cas 743 (SC), after the amending Act 65 of 1960, three distinct types of companies occupied a distinct place in the scheme of the Companies Act: (1) private companies, (2) public companies and (3) private companies which had become public companies by virtue of section 43A but which continued to include or retain the three characteristics of a private company. A salient feature of section 43A was that a private company which became a public company by virtue of this section did not, for all intents and purposes, cease to be a private company; nor did it lose all the privileges and exemptions available to private companies. Even after becoming a public company it continued to be a private company in its basic structure and continued to enjoy some of the exemptions and privi-leges conferred on private companies. At the same time, it was required to observe
certain restrictions applicable to private companies. A deemed public company, thus, did not cease to be a private company; it did not become a full-fledged public company either. It could, even after becoming a public company, continued to retain in its articles the three characteristics mentioned in section 3(1)(iii) of the Act which constitute the company a private company, and thereby retain its basic structure as a private company and it may continue to have fewer than seven members.

If a company was deemed to be a public company by operation of law, it is logical to say that when the law by virtue of which the company had been deemed to be a public company, ceases to be operative, the consequence of that is that the company goes back to its original status.

**DOES SUBSECTION (2A) PROVIDE OPTIONS?**

It is to be noted that subsection (2A) does not give options to choose from; it declares a consequence of the amendment to section 43A, leaving no choice to these companies. There is nothing in the language of subsection (2A) to that effect. Those of the deemed companies which wish to become full-fledged public companies ought to follow the procedure laid down in the Act for converting a private company into a public company. Under the Act, a private company can be converted into a public company. This can be done by alteration of the articles of association of the company by omitting therefrom the three conditions specified in section 3(1)(iii), which constitute a company a private company. According to section 44(1) of the Companies Act if a private company alters its articles in such a manner that they no longer include the provisions of section 3(1)(iii), which are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company.

**MCA CIRCULAR AND NOTIFICATION**

In the NCLAT, it was submitted by the Respondent that by reason of MCA’s General Circular No. 15/2013 dated 13th September, 2013 and Notification dated 12th September, 2013 issued by the Central Government, that the Company came within the meaning of ‘Private Company’ under Section 2(68) and could take direct permission from the Registrar of Companies to change the Articles of Association and to record it as ‘Private Company’.

Now, the Notification referred to is merely a statutory instrument of commencement of certain sections of the Companies Act, 2013 and two of them were definitions of ‘private company’ and ‘public company’, and what the General Circular of 13 September 2013, insofar as relevant here, was as follows:

**CLARIFICATION ON THE NOTIFICATION DATED 12-9-2013 REGARDING IMPLEMENTATION OF PROVISIONS OF COMPANIES ACT, 2013**

General Circular No. 15/2013, dated 13-9-2013

The Companies Act, 2013 received the assent of the President on 29th August, 2013 and was notified in the Gazette of India on 30th August, 2013. Towards the proper implementation of the Companies Act, 2013, first tranche of Draft Rules on 16 Chapters have been placed on the website of the Ministry on 9.9.2013 for inviting comments and objections/suggestions from the general public/stakeholders. Of the 16 Chapters, only 13 Chapters require specifying of Forms referred to in those Chapters. The draft Forms shall be placed on the website shortly.

2. Ministry of Corporate Affairs has also notified 98 sections for implementation of the provisions of the Companies Act, 2013 (the “said Act”) on 12.9.2013. Certain difficulties have been expressed by the stakeholders in the implementation of following provisions of the said Act. With a view to facilitate proper administration of the said Act, it is clarified that—

(i) Sub-section (68) of section 2: Registrar of Companies may register those Memorandum and Articles of Association received till 11.9.2013 as per the definition clause of the ‘private company’ under the Companies Act, 1956 without referring to the definition of ‘private company’ under the “said Act”.

It will be observed that the Circular is not relevant to the issue since it was in connection of incorporation of new companies after the Companies Act, 2013 was enacted but not made effective till 12 September 2013.

**CONCLUSION**

Thus, all deemed public companies became private companies on 13 December 2000, irrespective of whether they have complied with the formality of informing the Registrar and getting the name in the certificate of incorporation altered by inserting in the name the word “private”. Those of them which had not complied that formality are continuing, in law, as private companies though they might not have been using the word “private” in their names and otherwise treating themselves as public companies. Of course, those of them who have taken necessary steps to convert themselves as full-fledged public companies are, needless to state, public companies. Consequently, section 14 of the Companies Act 2013 did not apply to the companies which became deemed public companies.

11. On this date the Companies (Amendment) Act, 2000 came into force.
Supreme Court decision on NCLT Jurisdiction in passing orders in the realm of Public Law

In view of Section 238 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, “the Code” or “IBC”) which gives overriding effect of the Code over all other statutes, there is a general feeling that any matter which calls for adjudication by the Adjudicating Authority (AA), i.e., National Company Law Tribunal (NCLT) in respect of corporate insolvency resolution process (CIRP) of a corporate debtor, the directions given by the AA are required to be followed/ adhered to by the concerned parties, be they the State Government, any other statutory authority created under any special statute or even any other private party. This aforesaid line of thinking no doubt enables adhering to the timeline prescribed under the IBC for adjudication of CIRP and also gives certainty to the directions by the AA, yet there are certain instances when such decisions of the AA are questioned by the affected party either before the National Company Law Appellate Tribunal (NCLAT) under the provisions of IBC or by availing the writ jurisdiction under Article 226/227 or Article 32 of the Constitution of India.

BACKGROUND

Three-Judge Bench of the SC was hearing three appeals, one filed by the Resolution Applicant, the second filed by the Corporate Debtor (CD) through the Resolution Professional (RP) and the third filed by the Committee of Creditors (COC), all of which challenged an Interim Order passed by the Division Bench of High Court of Karnataka (Karnataka HC) in a writ petition, staying the operation of a direction contained in the order of the NCLT, on an application filed by the RP.

The brief facts leading to the aforesaid three appeals, are that M/s. Udhyaman Investments Pvt. Ltd. (Financial Creditor), moved an application before the NCLT, Chennai, under Section 7 of the IBC against M/s. Tiffins Barytes Asbestos & Paints Ltd. (the CD) and the NCLT vide order dated 12.03.2018 admitted the said application, and ordered the commencement of CIRP and appointed an Interim Resolution Professional (IRP). During this time, the CD held a mining lease granted by the Government of Karnataka, which was to expire by 25.05.2018. Though a notice for premature termination of the lease had already been issued on 09.08.2017 by the Karnataka Government, on the allegation of violation of statutory rules and the terms and conditions of the lease, no order of termination had been passed till the date of initiation of CIRP. Thereafter, the IRP wrote a letter to the Karnataka Government informing them of the commencement of CIRP and vide another letter he sought for a deemed extension of the lease beyond 25.05.2018, up to 31.3.2020 in terms of Section 8A(6) of the Mines & Minerals (Development and Regulation) Act, 1957 (hereinafter “the MMDR Act”). Finding that there was no response, the IRP also filed a writ petition in Karnataka High Court, seeking a declaration that the mining lease should be deemed to be valid up to 31.03.2020. During the pendency of the writ petition, the Karnataka Government passed an order dated 26.09.2018, rejecting the proposal for deemed extension, on the ground that the CD had contravened not only the terms and conditions...
Upon disputes arising out of the grant of mining leases under objections: (1) relating to the jurisdiction of NCLT to adjudicate a Statement of Objections before NCLT, primarily raising two fresh consideration. Thereafter, the State of Karnataka filed NCLT order and remanded the matter back to NCLT for the High Court vide order dated 22.03.2019, set aside the choose to appear despite service of notice. Therefore, was passed ex parte, on the ground that the State did not relevant to note that the said NCLT order dated 11.12.2018, moved a writ petition before the Karnataka High Court. It is Aggrieved by the said NCLT order, the Karnataka Government execute Supplement Lease Deeds in favour of the CD for the period of IBC. The NCLT also directed the Karnataka Government to execute Supplement Lease Deeds for the moratorium declared on 12.03.2018 in terms of Section 14(1) application and set aside the order of rejection and Overruling the objections, the NCLT passed an order allowing the said order of rejection, the IRP on behalf of the CD, withdrew the Writ Petition with liberty to file a fresh writ petition. However, instead of filing a fresh writ petition, the RP moved an application before NCLT, praying for setting aside the Karnataka Government’s rejection order and seeking a declaration that the lease should be deemed to be valid upto 31.03.2020 and also a consequential direction to Karnataka Government to execute Supplement Lease Deeds for the period upto 31.03.2020.

The NCLT vide order dated 11.12.2018 allowed the said application and set aside the order of the Karnataka Government on the ground that the same was in violation of the moratorium declared on 12.03.2018 in terms of Section 14(1) of IBC. The NCLT also directed the Karnataka Government to execute Supplement Lease Deeds in favour of the CD for the period upto 31.03.2020.

Aggrieved by the said NCLT order, the Karnataka Government moved a writ petition before the Karnataka High Court. It is relevant to note that the said NCLT order dated 11.12.2018, was passed exparte, on the ground that the State did not choose to appear despite service of notice. Therefore, the High Court vide order dated 22.03.2019, set aside the NCLT order and remanded the matter back to NCLT for fresh consideration. Thereafter, the State of Karnataka filed a Statement of Objections before NCLT, primarily raising two objections: (1) relating to the jurisdiction of NCLT to adjudicate upon disputes arising out of the grant of mining leases under the MMDR Act between the State Lessor and the Lessee; and (2) relating to the fraudulent and collusive manner in which the entire resolution process was initiated by the related parties of the CD themselves, solely with a view to corner the benefits of the mining lease.

Overruling the objections, the NCLT passed an order allowing the application and set aside the order of rejection and directed the State Government to execute Supplemental Lease Deeds. Challenging the aforesaid NCLT order, the State Government moved a writ petition before the Karnataka HC. On behalf of the CD, the RP appeared through Counsel. Thereafter, the High Court granted a stay of operation of the NCLT Order dated 03.05.2019. Interim Stay was necessitated in view of a Contempt Application moved by the RP before the NCLT against the Karnataka Government for their failure to execute Supplement Lease Deeds. It was against the said ad Interim Order granted by the High Court that the Resolution Applicant, the RP and the COC filed appeals before the Supreme Court.

**ISSUES BEFORE THE SUPREME COURT**

While hearing the appeal, the Supreme Court framed the following two issues:

(a) Whether the High Court ought to interfere under Articles 226/227 of the Constitution, with an order passed by the NCLT in a proceeding under the IBC, ignoring the availability of a statutory remedy of appeal to the NCLAT and if so, under what circumstances; and

(b) Whether questions of fraud can be inquired into by the NCLT/NCLAT in the proceedings initiated under the IBC.

**Arguments by both sides**

On behalf of the RP it was contended that when there is an efficacious alternative remedy available under Section 61 of IBC, the Karnataka HC ought not to have entertained a writ petition and that too, against an Order passed by the NCLT. It was argued that when a statutory forum is created for redressal of grievances, a writ petition should not be entertained and that since the essence of the IBC is the revival of a CD and the resolution of its problems to enable it to survive as a going concern, through the maximization of the value of its assets, the IRP/RP had a right to move the NCLT for appropriate relief for the preservation of the properties of the CD and therefore the only way the steps taken by the RP could be set at naught, was to take recourse to the provisions of the IBC alone. The LD Senior Counsel contended that IBC is a unified umbrella of code and that remedies provided thereunder are all pervasive and exclusive.

On behalf of Resolution Applicant, the LD Senior Counsel supplemented the aforesaid arguments and contended that since NCLT had already approved the Resolution Plan by an order dated 12.06.2019, therefore the High Court cannot do anything that will tinker with or destroy the very Resolution Plan approved by the NCLT.

On behalf of the RP, it was contended by the LD Senior Counsel that the whole object of the IBC would get defeated, if the Orders of NCLT are declared amenable to review by the High Court under Article 226/227. It was also contended that the provisions of IBC are given overriding effect under Section 238, over all other statutes. He questioned the State Government going back to NCLT for raising all contentions and it was therefore not open to the Government to question the jurisdiction of the NCLT in the next round of litigation. He contended that since the CD’s right to deemed extension of lease would come within the purview of the expression “Property” under Section 3(27) of IBC, the RP was duty-bound to preserve the property of the CD. It was also contended that the only ground on which Karnataka Government opposed extension of lease was fraud and collusion on the part of CD and the creditor who initiated CIRP. Further it was contended that in view of the sweep of the jurisdiction conferred upon NCLT under Section 60(5)(c) of IBC, NCLT only could investigate even into allegations of fraud. Therefore, the question of High Court exercising jurisdiction...
under Article 226 against an order of NCLT does not arise. It was further argued that any recognition by the Supreme Court of the jurisdiction of the High Court under Article 226 to interfere with the Orders of the NCLT under IBC would completely derail the resolution process which was bound to happen within a time frame. Therefore, he appealed that the Order of the High Court should be set aside on the ground of lack of jurisdiction.

On behalf of the COC, Ld. Senior Counsel submitted that IBC being a complete code in itself does not provide any room for challenging the Orders of NCLT, otherwise than in a manner prescribed by the code itself. What was sought by the RP, according to the Ld. Senior Counsel, was a mere recognition of the statutory right of deemed extension of lease conferred by Section 8A of the MMDR Act and that therefore, NCLT could not be taken to have exercised a jurisdiction not vested in it in law, so as to enable the High Court to invoke the jurisdiction under Article 226.

In response to the aforesaid arguments, on behalf of Karnataka Government, the Ld. Attorney General (AG) submitted that if a case falls under the category of inherent lack of jurisdiction on the part of a Tribunal, the exercise of jurisdiction by the Tribunal would certainly be amenable to the jurisdiction of the High Court under Article 226. It was contended by the Ld. AG that the jurisdiction of NCLT is confined only to contractual matters inter partes and an order passed by a statutory/quasi-judicial authority under certain special enactments such as the MMDR Act falls in the realm of public law and hence the NCLT would have no power of judicial review of such orders.

The Three-Judge Bench of the SC observed that the IBC is a complete code in itself and that it is an exhaustive code on the subject matter of insolvency in relation to corporate entities and others.

To the contention that the Karnataka Government had an efficacious alternative remedy before the NCLAT, the Ld. AG submitted, on the basis of the decision in Barnard and Others vs. National Dock Labour Board & Ors (1953) 2 WLR 995, that when an inferior Tribunal passes an Order which is a nullity, the superior Court need not drive the party to the appellate forum stipulated by the Act. He also relied upon SC’s decision in The State of Uttar Pradesh vs. Mohammad Nooh (1958) SCR 595.

RULING BY THE SUPREME COURT – REASONING THEREOF

The Three-Judge Bench of the SC observed that the IBC is a complete code in itself and that it is an exhaustive code on the subject matter of insolvency in relation to corporate entities and others. Thereafter, the Court examined the scope of the jurisdiction and the nature of the powers exercised by – (i) the High Court under Article 226 of the Constitution and (ii) the NCLT and NCLAT under the provisions of IBC. The Court noted that traditionally, the Jurisdiction under Article 226 was considered as limited to ensuring that the judicial or quasi-judicial tribunals or administrative bodies do not exercise their powers in excess of their statutory limits. But in view of the use of the expression “any person” in Article 226(1), Courts recognized that the jurisdiction of the High Court extended even over private individuals, provided that the nature of the duties performed by such private individuals are public in nature. Therefore, the remedies provided under Article 226 are public law remedies, which stand in contrast to the remedies available in private law. Public law proceedings serve a different purpose than private law proceedings.

The Court also examined caselaw which dealt with the distinction between cases where a statutory/quasi-judicial authority exercised jurisdiction not vested in it in law; and cases where there was a wrongful exercise of the available jurisdiction. It also noted that an error of jurisdiction was always distinguished from “in excess of jurisdiction” and in regard this, the Supreme Court analysed relevant judicial precedents on this subject wherein it was held that “before a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought, but must also have the authority to pass the orders sought for.” The Court also pointed out that it is not sufficient that it has some jurisdiction in relation to the subject matter of the suit, but its jurisdiction must include (1) the power to hear and decide the questions at issue and (2) the power to grant the relief asked for.

Therefore, in so far as the question of exercise of the power conferred by Article 226, despite the availability of a statutory alternative remedy, the distinction between the lack of jurisdiction and the wrongful exercise of the available jurisdiction, should certainly be taken into account by High Courts, when Article 226 is sought to be invoked bypassing a statutory alternative remedy provided by a special statute.

The SC also observed that the MMDR Act is a Parliamentary enactment traceable to Entry 54 of the Union List in Seventh Schedule of the Constitution. Section 2 of the Act declares that it is expedient in public interest that the Union should take under its control, the regulation of mines and development of minerals. The Act also imposes restrictions on the grant of mining leases. Insofar as minor minerals are concerned, the State government is empowered to make rules for regulating the grant of mining leases.

The SC noted that in the case on hand, the land which formed the subject matter of mining lease belonged to the State Government. Therefore, the relationship between the Corporate Debtor and the State Government under the mining lease was not just contractual but also statutorily governed. Also, the element of “public interest” finds a place in Section 2 of the MMDR Act in the form of a declaration.

Therefore the SC held that Karnataka Government’s decision to refuse the benefit of deemed extension of lease, was in the public law domain and hence the correctness of the said decision could be called into question only in a superior
The SC also observed that the MMDR Act is a Parliamentary enactment traceable to Entry 54 of the Union List in Seventh Schedule of the Constitution. Section 2 of the Act declares that it is expedient in public interest that the Union should take under its control, the regulation of mines and development of minerals. The Act also imposes restrictions on the grant of mining leases. Insofar as minor minerals are concerned, the State government is empowered to make rules for regulating the grant of mining leases.

The SC noted that there are no separate provisions in the Companies Act, exclusively dealing with the jurisdiction and powers of NCLT. In contrast, Section 60(4) and (5) of IBC give an indication about the powers and jurisdiction of NCLT as AA and Section 60(5)(c) was very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. The SC held that, however, a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase “arising out of or in relation to the insolvency resolution” appearing in Clause (c) of Subsection (5). Therefore, the Court observed that the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results.

With regard to the appellants’ argument that the IRP is duty bound under Section 20(1) of IBC to preserve the value of the property of the CD, the Supreme Court observed that the duties of the RP are entirely different from the jurisdictions and powers of the NCLT. The Court also noted that under Section 25(2)(b) of IBC, the RP is obliged to represent and act on behalf of the CD with third parties and exercise rights for the benefit of the CD in judicial, quasijudicial and arbitration proceedings but the RP cannot shortcircuit the same and bring a claim before NCLT taking advantage of Section 60(5).

Thus, the SC held that in light of the statutory scheme as examined from various provisions of the IBC, it was clear that whenever the CD has to exercise a right that falls outside the purview of the IBC, especially in the realm of the public law, they cannot, through the RP, take a bypass and go before NCLT for the enforcement of such a right.

The Court held that moratorium declared under Section 14 of IBC could not have any impact upon State Government’s right to refuse the extension of mining lease granted to the CD. The purpose of moratorium is only to preserve the status quo and not to create a new right.

Hence, the SC held that NCLT did not have jurisdiction to entertain an application against the Karnataka Government for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the Karnataka High Court was justified in entertaining the writ petition, on the basis that NCLT was coram non judice.

**SC HOLDS NCLT CAN INQUIRE INTO ALLEGATIONS OF FRAUD**

On the issue as to whether NCLT is competent to enquire into allegations of fraud, especially in the matter of the very initiation of CIRP, the Karnataka Government had contended that there was a fraudulent and collusive manner in which CIRP was initiated by one of the related parties of the CD themselves and that the Resolution Applicant namely, M/s. Embassy Property Development Pvt. Ltd. as well as the Financial Creditor who initiated CIRP namely, M/s. Udhyaman Investments Pvt. Ltd. were all related parties, and thus the Karnataka Government thought it fit to invoke the jurisdiction of the High Court under Article 226 without taking recourse to the statutory alternative remedy of appeal before the NCLAT.

The SC examined and noted that Section 65 of IBC specifically deals with fraudulent or malicious initiation of proceedings and observed that even fraudulent trading carried on by the CD during CIRP, could be inquired into by the AA under Section 66. Further, Section 69 makes an officer of the CD and the CD itself liable for punishment, for carrying on transactions with a view to defraud creditors.

The SC, thus, held that NCLT was vested with the power to inquire into (i) fraudulent initiation of proceedings as well as (ii) fraudulent transactions and had jurisdiction to enquire into allegations of fraud. As a corollary, the Court held that NCLT would also have jurisdiction. Thus, it was held by SC that fraudulent initiation of CIRP cannot be a ground to bypass the alternative remedy of appeal provided in Section 61. However, the Court observed that though NCLT and NCLAT would have jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate upon disputes such as those arising under MMDR Act and hence, the High Court was justified in entertaining the writ petition.

**CONCLUSION**

The IBC Amendment Ordinance 2019 which was promulgated on 28.12.19 also makes a provision for ensuring certain supplies during the moratorium period. One such amendment proposes is insertion of Explanation in sub-section (1) of Section 14, which, inter-alia, clarifies that during the moratorium period, Government permits, grants or licences etc. shall not be suspended on ground of insolvency alone, provided there is no default in payment of current dues to such Authority. In view of the SC’s decision in Embassy Property (supra) dated 3.12.19, how the aforesaid amendment will be harmoniously construed is yet to seen.
Integrating Diversity in the Organisation

Unity in Diversity is one of the fundamental principles of life; it is also the right foundation for the long-term success and effectiveness of a group like a community, organisation or nation. As an organisation expands and diversifies into many distinct units or division, it has to forge a common ground which gives identity and stability to the group. This article examines this problem of forging unity in diversity in an organisation in the form of a case study.

Matza Hotels is one of most diversified hotel chains in Asia with its hotels in almost all the big commercial and tourist centres of Asia like Singapore, Hong Kong, India, China, Thailand, Sri Lanka with city, beach and mountain hotels; hotels for families, couples, singles, business peoples, historical, young, old; spas, conference centres. The company had always preferred to emphasise the distinct personalities of its properties, each of which is tailored to its locale. Operations were highly decentralized. Each hotel retained its own identity, managed its own business with full P&L responsibility, ran its own incentive programme and handled its relations with key-intermediaries. The benefit was diversity and flexibility. The downside was, as Vijay Malhotra explained to Seng, lack of a larger and common identity of the Matz brand or group among the employees as well as customers.

Seng thought what Matz needs at present is a common culture which binds employees and effective branding which projects a unique corporate identity of the Matz name to customers. As a first step in this difficult journey Seng decided to have personal discussions with senior executives of Matz and the managers of some of the most well-managed and profitable hotels in the Matz chain.

Seng’s first choice was Kim Borswik, Manager of a luxurious Matz hotel in Hong Kong. Kim is a young, attractive 32-year old South Korean woman, with a successful career in the hotel industry. Kim greeted Seng with a warm smile and a soft handshake. “Welcome to Hong Kong” said Kim. “Is this your first visit to Hong Kong.” Seng said, “I have been here a few times before.” After some more formal small talk, Seng asked in a soft voice, “Kim I have already briefed you regarding what we are trying to do to give a new direction to Matz. Tell me frankly what do you feel about it.” Kim looked straight at Seng’s eyes for a few seconds and said, “I hope you don’t mind if I am frank.” “In fact, I prefer and appreciate frankness much more than a polite acceptance,” replied Seng. After a few minutes of silence Kim said thoughtfully: “Seng, culture, branding are traditional management methodologies. But I am sure whether they are needed for a richly diversified company like Matz. If you want culture, this diversity, uniqueness of each hotel and the independence and autonomy of our managers, is our culture. Regarding branding, it is a western concept and companies in the west spend much money on this concept. But we don’t know to what extent it helps in improving customer response. You must note Seng, that most of the highly successful Asian companies do not spend much money on branding. As long as our hotels are making money, employees and customer are happy what is the need for creating a new culture or branding?”

Seng felt a genuine appreciation for the sharp mind of this young woman manager, though he did not entirely agree with her. “You have made a valid point, Kim” said Seng. “However, don’t you think we need a common uniting thread
running through our hotel and present a common image to our
customer on what we stand for as a group.” “May be” said Kim
“Look Seng I am not against culture or branding, but it requires
much thought and consideration.” Senge said with a smile,
“Yes, I agree. Thank you, Kim, for your thoughtful points,
which I will keep in mind.” As Seng rose from his seat holding
Kim’s hands, Kim said, “There is one more point, Seng. I am
telling this based on my interactions with other managers of
Matz hotels. This independence, autonomy we have here is a
unique advantage of Matz for attracting talent. I came to Matz
because of this autonomy rejecting other lucrative offers from
more reputed hotel chains.”

As Seng went through his first round of discussions with Matz’s
managers he found most of them had more or similar views as
that of Kim. There is a general resistance to the new initiative.
How to overcome this resistance and build a common ground?

BUILDING A BINDING PURPOSE

The resistance from Matz’s managers is not surprising. They are living a comfortable life in their own small fiefdom
and therefore they are apprehensive that the new initiative
may disturb the status quo. There are valid points in Kim’s
argument especially related to branding, autonomy and
attracting talent. However more diversified and decentralized
a company, greater the need for a unifying force that can
create a larger whole which is more than the sum of its parts.
If the organisation is able to create such a larger whole, it enhances the energy-level of each unit as well as the
organisation as a whole, because the energy of the whole flows
into each part.

Seng is also right in thinking that culture can be such a
unifying force. The essence of culture is shared vision,
values or a purpose. Each company has to find a unifying
system of values. But what is the criterion for determining
these values? The system of values for an organisation
must have a universal as well as a specific dimension; it must contain elements of universal human values like truth, beauty,
goodness, harmony, unity which evoke the deeper and higher
self in people and inspire them towards self-transcending
action; it must also contain elements which reflect the unique
nature of the company and the geographical, national or
continental environment or culture in which the company grew
up or functions. An example of such a system of values in the
hotel industry is Taj Hotels in India. Recently, Taj was admired
for the exemplary bravery and selflessness of its employees
in handling the terror attack and protecting its customers.
This exemplary behaviour is the result of a carefully ingrained
culture based on universal human values as well as the more
specific values of the Indian cultural tradition. In a thoughtful
article on the culture of Taj in Harvard Business Review, Rohit
Deshpande and Anjali Raina, articulate the following principles
as the basis of Taj system of values:

- Placing customers above the Company
- Taj recruiters look for three character traits: respect for elders
  (how does he treat his teachers?); cheerfulness (does she
  perceive life positively even in adversity?); and neediness
  (how badly does his family need the income from a job?)
- The Taj Group prefers to go into the hinterland because
  that’s where traditional Indian values—such as respect
  for elders and teachers, humility, consideration of others,
  discipline, and honesty—still hold sway. In the cities, by
  contrast, youngsters are increasingly driven by money,
  are happy to cut corners, and are unlikely to be loyal to
  the company or empathetic with customers.
- Taj recruiters emphasise more on hiring people with
  integrity and devotion to duty than on acquiring those with
  talent and skills.
- What the Taj Group looks for in managers is integrity, along
  with the ability to work consistently and conscientiously, to
  always put guests first, to respond beyond the call of duty,
  and to work well under pressure.

We can see here that Tata System of values contains universal
elements like integrity and character as well as values which are
specific to Indian culture like respect for elders. Seng must try
to evolve such a unifying system of values for the Matz group.
Since Matz is confined to Asia, its value system has to reflect
the uniquely Asean values. However shared value is only one
aspect of cultural unity. The other factors are:

- Sharing of cultural knowledge and information related
to different locations and nations where the hotels are
situated.
_rotation of manager and executives across geographical location.
- Common training, development and leadership programmes for employees at all levels.
- Active involvement and participation of all hotel managers in formulating future plans and strategies of the group as a whole.

This kind of interactions between people at various units of the diversity creates a sense of unity and synergy among employees and also enhances the energy-level and creative potentialities of the collective life.

The other issue is branding. As Kim points out, companies in the west spend so much money and effort in branding, with questionable impact on the customer. However, presenting an attractive and meaningful idea or image of what Matz stands for to the customer can perhaps have a positive impact on the customer. For Matz, the brand idea could be providing the “Asean experience” to the customer, which means giving a clear understanding and a vivid experience of the unique intellectual, aesthetic and spiritual genius of Asia. There are well-known ways of creating this kind of experience like for example:

The Indian approach to branding

This brings us to the concept of branding. The Indian concept of swadharma may provide some useful hints for evolving effective branding strategies.

The Indian thought held the view that every type of human individual or the group has its unique and intrinsic self-nature, swadharma.

Every collectivity like an individual, as it evolves, develops its own unique swadharma in the form of a distinctive competence and a vital, mental, moral, aesthetic or spiritual temperament. This swadharma of an organization is shaped by three factors. First is the environment of which it is a part or in which it is embedded. A business organization is part of the economic life of the community and therefore its swadharma will be part of the larger nature of the economic organism. However, the social and cultural environment also exerts a considerable influence in moulding the swadharma of the organization. The second factor is the Vision and Values of its founders. The third factor is whatever new directions, modifications or innovations in vision, values and methods given or built into the organization by its later leaders.

Some of the modern management concepts like differentiation, core competence and branding are very much related to the concept of swadharma. An organization discovers and manifest its Swadharma by developing a unique vital, mental, moral and aesthetic temperament distinct from other organizations in the same industry and an inimitable competence in delivering better value for the customer. Companies like Northwest Airlines, Federal Express and Body Shop are examples of effective differentiation by developing the swadharma of the organization. The maverick founder of Body Shop, Anita Rodick once said that she carefully watches the current trends in the industry and does the opposite! And Branding is nothing but the process of projecting and communicating the unique psychological personality of the Organization, swadharma of the organization to the public or the customer.

The concept of swadharma has important practical implications for organizational development. Every organization goes through a cycle of birth, growth, decline and when the period of decline is handled creatively, rejuvenation. There are many factors which causes the cycle of decline. One of the causative factors of decline could be loss of contact with the vision, values or the distinctive competence which gave birth to the organization and the source of its growth and success, or in other words, disconnect from the swadharma of the organization. So, when the organization is in a cycle of low growth and decline, it is always helpful to recollect and reexamine impartially and objectively the following factors:

1. History of the organization and its mission, vision, values and distinctive competencies;
2. Causative factors behind its “golden ages” of success and achievement;
3. How much of these factors and to what extent these factors are still alive or lived in the organizational culture;
4. How much of them are still relevant to the present condition and therefore have to be recovered or retained;
5. What are the modifications or innovations to be made and new competencies to be acquired for tackling the present realities and future possibilities;
6. How to give a new identity to organisation and communicate it to the customer and the public.

CONCLUSION

A rich diversity of individuals and groups in an organization is a great strength. But the positive advantage of this diversity can be realized only when it is integrated into a unified whole. There are many ways of doing it. Having a shared vision and values is one of the ways. It is necessary to integrate the strength of diversity into a shared visions and values to create a distinct identity. This needs to be supported with distinct orientation focusing on centralized training and leadership programmes. Ultimately the strategy would be to manage the resultant unique identity which includes the diversity in the organization to customers, public and employees as a distinct brand. The case studies discussed in this article reinforces the need to manage diversity in such a manner that a distinct brand is created.

REFERENCE:

Startup India is a flagship scheme of the Government of India which was launched by the Hon’ble Prime Minister of India Shri Narendra Modi launched on 16th January 2016.

The Startup India Initiative has rolled out several programs with the objective of supporting entrepreneurs, building a robust startup ecosystem and transforming India into a country of job creators instead of job seekers. These programs are managed by a dedicated Startup India Team, which reports to the Department for Industrial Policy and Promotion (DPIIT).

Within the Startup India Team, there is a dedicated team of Company Secretaries, a Chartered Accountant and a Lawyer who work solely on easing out regulations to improve the ease of doing business for startups in the country. The team is led by Dr. Preet Deep Singh a Company Secretary and a PHD holder from IIM Ahmedabad.

The team has so far witnessed and been instrumental in bringing about 32 regulatory changes so far.

The changes will aid various stakeholders in the ecosystem. In order to reduce financial burden on Indian startups, a tax holiday for a 3-year period, under section 80-IAC, has been extended to eligible startups which is applicable in the first 7 years of incorporation of the company.

Tax relaxations have also been extended to Startups for issue of shares above fair market value based on a self-declaration to the Central Board of Direct Taxes. Tax regimes have been further made more favourable by providing exemption, Exemption from tax under the provisions of section 56(2)(viib) to Startups for issue of shares above fair market value on the basis of a self-declaration to the Central Board of Direct Taxes. Exemption has been extended from tax on capital gains, under section 54GB, arising out of sale of residential house or a residential plot of land if the amount of net consideration is invested in prescribed stake of equity shares of eligible Startup for utilizing the same for purchase of specified asset.

Taking a step further in enhancing the reach of monetary support to startups, they are now permitted to access loans under the External commercial borrowing framework up to USD 3 million. Integrating the Indian Startup ecosystem with the Global marketplace has been further boosted by allowing Startups to open a foreign currency account with a bank outside India for the purpose of crediting to it foreign exchange earnings out of exports/ sales made by the said entity and/ or the receivables, arising out of exports/ sales, of its overseas subsidiary.

For more interesting insights on the Indian startup ecosystem, please visit our website:

www.startupindia.gov.in
- DOVE INVESTMENTS PVT. LTD. & ORS v. GUJARAT INDUSTRIAL INV. CORPORATION LTD & ORS [SC]
- BAJAJ FINANCE LIMITED v. SEBI [SAT]
- FLIPKART LOGISTICS PVT. LTD & ORS v. REGIONAL DIRECTOR, SOUTH EAST REGION & ORS [NCLAT]
- MAA METAKANI RICE INDUSTRIES v STATE OF ODISHA & ANR [CCI]
- CHANDIGARH HOUSING BOARD V. PARASVANATH DEVELOPERS PVT.LTD & ANR [SC]
- SR. DIVISIONAL MANAGER, LIC OF INDIA v. RENUKA SHARMA [DEL]
- M/S.R.D.34 ARiyAKUDI PRIMARY AGRICULTURAL COOPERATIVE BANK v. EMPLOYEES’ PROVIDENT FUND APPELLATE TRIBUNAL & ORS [MAD]
- E.R.SUGUMARAN V. M.D, TAMIL NADU CIVIL SUPPLY CORPORATION [MAD]
- STANDARD CHARTERED BANK v. HEAVY ENGINEERING CORPORATION LTD & ANR [SC]
Landmark Judgement

LMJ 01:01:2020

DOVE INVESTMENTS PVT. LTD. & ORS v. GUJARAT INDUSTRIAL INV. CORPORATION LTD & ORS [SC]

Civil Appeal No. 942 of 2006 [@ S.L.P (C) No.5172 of 2005] with connected Civil Appeal No. 943 of 2006 [@ S.L.P (C) No.5260 of 2005]

S.B. Sinha & P.K. Balasubramanayan, JJ. [Decided on 02/02/2006]

Equivalent Judgements: [2006] 129 Comp Cas 929(SC) ; (2006) 71 CLA.

Companies Act,1956- section 108- share transfer- belated lodgement of share transfer form by lender - company refused to register the shares- Whether correct-Held, No.

Brief facts:
The core issue raised in this appeal is whether shares could be transferred to the transferee when the share transfer form is lodged beyond the prescribed lodgement period. Appellant company took loan from Respondent No.1 and Respondents 2-4 pledged their shares in the appellant company to Respondent No.1 as security. Upon delay in payment of loan, Respondent No.1 lodged the share transfer form with the Appellant which was refused on the ground of belated lodgement. The CLB and the Madras High Court upheld the transfer in favour of Respondent No.1, which has been challenged in this appeal.

Decision: Appeals dismissed.

Reason:
Section 108 (1) prohibits registration of transfer of shares except on production of the instrument of transfer and unless the conditions precedent therefor are complied with. Section 108 (1A) provides that every instrument of transfer of shares shall be in such form as may be prescribed, and shall, before it is signed by or on behalf of the transferor, be presented to the prescribed authority for the purpose of stamping or otherwise endorsing thereon the date on which it is so presented and after it is executed by or on behalf of the transferor and the transferee and completed in all other respects be delivered to the company within two months from the date of such presentation. Section 108 (1C) provides for a non obstante clause stating, inter alia, that any share deposited by any person, inter alia, with a financial institution by way of security for the repayment of any loan or advance to, or for the performance of any obligation undertaken by such person, if, inter alia, the financial institution stamps or otherwise endorses on the form of transfer of such shares, if it intends to get such share registered in its own name, the date on which the instrument of transfer relating to such share is executed by it and the instrument of transfer of such form duly completed in all respects is delivered to the company within two months from the date so stamped or endorsed. Section 108 (1D) again provides for a non obstante clause whereby the Central Government has been conferred with the power to extend the period mentioned in those sub-sections by further time as it may deem fit, if it is of the opinion that it is necessary so to do to avoid hardship in any case. Section 111 empowers the Company to refuse registration upon assigning reasons therefor. Sub-section (3) of Section 111 provides for an appeal to the Company Law Board against such an order.

A company may refuse to register shares for various reasons. In this case, however, the shares being freely transferable refusal for transfer can be made only on limited grounds. Some such grounds may be that the transfer is mala fide or transferee is not a bona fide investor or transfer is not permissible in terms of one or the other provisions of the Articles of Association or the same is otherwise prohibited in law e.g. subsection (3) of Section 22A of the Securities Contract (Regulation) Act, 1956. However, before the company can be asked to perform its duties in terms of the said provisions, the procedural requirements contained in Section 108 are required to be complied with. Section 108 requires the applicant desiring to obtain the registration of transfer of shares in its favour to comply with the provisions contained therein. It is, therefore, ordinarily for the applicant to comply with all formalities. If it does not do so it cannot make the company bound to effect the transfer, unless sufficient and cogent reasons are assigned. The time is specified in the aforementioned provisions for filing of such an application in the prescribed form and upon complying with the requirements prescribed therein.

The Appellants do not state as to how they would be prejudiced by the act of Respondent No.1 in not filing the application for registration of transfer of shares within the aforementioned period. The Appellants have, indisputably, filed suits. In para 10 of the plaint filed by Appellant No.1, in O.S. No.3742 of 2003, it was categorically stated:

“…..Even though the plaintiff cannot have an objection on the transfer, the plaintiff is concerned about the value at which the second defendant is attempting to transfer the equity shares in its favour…..”

On their own saying, thus, they were not prejudiced. In fact, they had no objection in registering the shares. The only objection was with regard to the value thereof. It is also not in dispute that they, in fact, registered 2, and 99,800 pledged shares, although they were also presented after a period of two months without any demur whatsoever. The Appellants, therefore, must be held to have waived their right. The pledge of shares is not in dispute.

The fact that the Appellant had taken a loan of ₹ 4.5 cores is also not in dispute. Furthermore, we are of the opinion that by reason of the impugned judgment no injustice as such has been done to the Appellants and in that view of the matter this Court in exercise of its jurisdiction under Article 136 of the Constitution of India may not interfere with the impugned order, even if it may be lawful to do so.
In Taherkhatoon (D) By LRs. v. Salambin Mohammad [(1999) 2 SCC 635], this Court observed:

“20. In view of the above decisions, even though we are now dealing with the appeal after grant of special leave, we are not bound to go into merits and even if we do so and declare the law or point out the error still we may not interfere if the justice of the case on facts does not require interference or if we feel that the relief could be moulded in a different fashion….“

In Chandra Singh & Ors v. State of Rajasthan & Anr [(2003) 6 SCC 545], It was held:

“….Furthermore, this Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason thereof substantial justice is being done. [See S.D.S. Shipping (P) Ltd. v. Jay Container Services Co. (P) Ltd.17] Such a relief can be denied, inter alia, when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal one….“

The said principle was reiterated in Inder Parkash Gupta v. State of J & K & Ors [(2004) 6 SCC 788] in the following terms:

“In ordinary course we would have allowed the appeal but we cannot lose sight of the fact that the selections had been made in the year 1994. A valuable period of 10 years has elapsed. The private respondents have been working in their posts for the last 10 years. It is trite that with a view to do complete justice between the parties, this Court in a given case may not exercise its jurisdiction under Article 136 of the Constitution of India”

Following the aforementioned decisions, we are of the opinion that with a view to do complete justice to the parties, no inference with the High Court’s judgment is called for.

Decision: Disposed of with direction.

Reason:
Having heard the parties we find that the impugned order notes that Karvy had raised funds pledging securities from banks and NBFCs and therefore was aware that rights of those entities would be impacted by the said order. As such, even if they could not be heard while passing the impugned order at the least on their representation they were entitled to be heard. It is on record that the appellant wrote to SEBI on November 23, 2019 (received by SEBI on November 25, 2019, 23rd and 24th being Saturday and Sunday). It is also an undisputed fact that lending against securities is a normal and permitted business activity of banks and NBFCs and SEBI is fully aware of the same. Therefore, we are of the considered view that the impugned order has prejudiced and adversely affected the rights of the appellant as a bonafide lender. Since it is the impugned order which has impacted the rights of the appellant, not arraying NSE and NSDL as parties, though their arraying might have brought in more facts on table, does not impact the maintainability of this appeal.

Accordingly, without commenting on the merit of the case, we direct the WTM of SEBI to hear the appellant on the basis of their representation dated November 23, 2019 and / or any other additional representation which they may like to make. If the appellant is desirous to make any additional representation it shall be made latest by December 4, 2019. Thereafter, the WTM of SEBI shall consider the representation(s) of the appellant and, after giving an opportunity for personal hearing, pass an order as per law latest by December 10, 2019. In the interim further transfer of securities shall remain suspended from DP account no. 11458979, named KARVY STOCK BROKING LTD. (BSE) in terms of direction no. (iv) of the impugned order (supra). Appeal is disposed of on above terms at the stage of admission itself. No order on costs.
Decision: Appeal allowed.

Reason:

Having heard learned counsel for both the sides, it appears to us that the reason recorded in paragraph Nos. 12 and 13 of the impugned order by the Ld. ‘National Company Law Tribunal’ cannot be maintained. The enquiry was not against any of the Transferor of Transferee Companies. It was against Flipkart Internet Private Limited. The said Company is not subject matter of the scheme. Apart from this, the Appellants have given undertaking as mentioned above.

The other objection of the Ld. NCLT that information regarding one more Company Flipkart Digital Private Limited merging with the Transferee Company was not disclosed, is not such a big issue to non-suit the Appellants.

Both the sides agree that other than above two reasons recorded by the Ld. NCLT in decline the second motion, there was no other reason. The learned counsel for the appellant has pointed out the application by way of second motion which was filed before the NCLT at Annexure- A 12 in which the relevant prayer was in para 29 of D & E which reads as under:-

“D. That Scheme as annexed herewith and marked as Annexure-1, may kindly be sanctioned by this Hon’ble Tribunal, with or without modification(s), so as to be binding on said Petitioner Companies and their respective shareholders and creditors of Petitioner Companies and all concerned;

E. That Petitioner Company No. 1 and Petitioner Company No. 2 shall stand dissolved without following the process of winding up / liquidation on filing a certified copy of the order of this Hon’ble Tribunal with the ROC;”

In the present appeal the prayer is to set aside part of the impugned Judgment rejecting the Scheme of Amalgamation of the Appellants and allow the scheme of amalgamation of the Appellants. Going through the records and the considering the submissions made, we set aside the impugned order and allow the prayer of the Company Appeal. We sanction the Scheme proposed, as far as it relates to the Appellants with modification that the Appellants Nos. 1 to 3 shall be bound by the undertaking as given vide Diary No. 13289 relevant part of which is reproduced in para 15 Supra.

We make it clear that the Appellant Nos. 1, 2 and 3, their Promoters and Directors and Shareholders shall remain responsible for any liability, if any, getting attracted against them due to the enquiry against “Flipkart Internet Pvt. Ltd.”.

The Scheme as regards the Appellants will be treated as approved to the extent of the Amalgamation of the Appellant Nos. 1, 2 and 3. We remit the matter back to the Ld. NCLT and request to issue further formal order(s) required to be issued, within a month of receipt of copy of this Judgment and order. The appeal is disposed of accordingly. No costs.

MAA METAKANI RICE INDUSTRIES v STATE OF ODISHA & ANR [CCI]

Case No. 16 of 2019

A.K.Gupta, Sangeeta Verma & B.S.Bishnoi. [Decided on 01/11/2019]

Competition Act-section 4- rice procurement by government agency- non settlement of dues and losses of the miller- whether falls under abuse of dominance- Held, Yes. Whether investigation required-Held, Yes.

Brief facts:

Informant is a miller. OP-1 is the Food Supply & Consumer Welfare Department (FS & CW Department), Government of Odisha. OP-2 is Odisha State Civil Supplies Corporation Ltd. OP-2 is the largest agency involved in paddy procurement in the State of Odisha as it purchases more than 90% of the total paddy produced in the State and all the rice mills in the State including that of the Informant, are totally dependent on OP-2 to run their rice mills.

Custom Milled Rice (‘CMR’) is manufactured by milling the paddy procured by State Government/State agencies and FCI. In the State of Odisha, paddy is mainly procured by State Government/State agencies and the resultant CMR is delivered to State Government/State Agencies and FCI by rice millers. OP-1 is stated to play a significant role in supporting the activities of OP-2 by providing subsidy to recompense for its losses.

The Informant alleged that OP-2 directly and/or indirectly imposed unfair and discriminatory conditions in purchase of service from the Informant and it could be deduced that OP-2 acted in an exploitative and exclusionary manner. The Informant also alleged that it is being subjected to high handedness, arbitrariness and complete abuse of dominant position by the OPs, which is not tenable in the eyes of law. It has also been asserted that OP-2 had failed to maintain the “essential facilities” in an efficient manner.

In sum and substance, the Informant has alleged that it suffered huge economic hardship owing to the high handed approach adopted by OP-2 by delaying the settlement of the CMR dues and also not settling the claim with the insurance company and paying off the legitimate dues of the Informant.

Based on the basis of the above facts and circumstances, the Informant has prayed that an enquiry be instituted and it be held and declared that OP-2 has indulged in anti-competitive practice and that the policy and the actions of OP-2 are opposed to the freedom of trade; OP-1 and OP-2 be further directed to discontinue and stop such practice and OP-2 may be directed to discontinue the abuse of dominant position.
Decision: Investigation of OP-2 ordered.

Reason:
It is clear that OP-2 holds a significant market share in the total rice delivery, indicating it to be an equally significant player in the procurement of rice milling services. Though market share is not the sole or conclusive factor for determination of dominance, it nevertheless is a good indicator of dominance. Though the above details pertain to KMS 2015-16, given that OP-2 continues to be identified as the primary government agency procuring for subsequent KMS as per the policy, it can be safely inferred that OP-2 continues to enjoy a dominant position in the relevant market in the later years also i.e. 2016-17, 2017-18 and 2018-19. In view of the above, the Commission is, prima facie, of the view that OP-2 is dominant in the relevant market.

The main allegations of abuse in the relevant market, inter alia, pertain to the conduct of OP-2 in non-settlement of CMR dues of the Informant and imposition of unfair condition by it upon millers for entering into an agreement for Custom Milling for KMS 2018-19. With regard to the former allegation, the Commission perused the order dated 27.12.2017 (Annexure 16 to the information filed) passed by the SCDR in Misc Case No. 987 of 2017. Further, the Commission notes that as per the letter dated 18.04.2018, filed with the information, the Informant stated that the custom milling charges for the KMS 2015-16 and 2016-17 had been withheld on account of non-settlement of insurance claim between the insurance company and OP-2. From the documents placed on record, it appears there is high-handedness on the part of OP-2. The Commission, at this stage, without delving into the specifics of the abuse, as alleged, is of the prima facie opinion that the issue requires investigation.

Further, the Commission notes that the Informant has also alleged that OP-2 issued a letter dated 22.11.2018, allegedly threatening the millers by dictating that the differential custody and maintenance charges arising out of revised duration pertaining to KMS 2017-18, would not be paid to the millers unless they executed the agreement for KMS 2018-19, in order to participate in procurement.

The Commission further notes that AORMA’s letter dated 06.11.2018 addressed to all District Collectors contained issues like no timely disclosure of charges for KMS, no proper reimbursement of the charges incurred by millers in providing various services since last several years and rates of some services being unilaterally reduced from what was being paid for the same services during earlier years. It was further stated in the said letter that this was a common problem in all the districts of the State of Odisha. Based on this, the millers demanded that they would participate during current KMS 2018-19 subject to, (i) release of arrears due after finalization of rates, (ii) incorporating full details about scope of work and rates payable thereof in the agreement before execution and (iii) formulation of a suitable policy to ensure functioning of Rice Milling Industry of both Single and Double Crop districts for 10 to 11 months during a year for economically viability.

The Commission notes that the aforesaid issues raised in the letter dated 06.11.2018 of AORMA pertaining to alleged non-clearance of dues/arrears, incorporating details about scope of work and rates payable thereof in the Agreement before execution and formulation of a suitable policy and the facts contained in the letter dated 22.11.2018 are issues which prima facie require an investigation under Section 4 of the Act. Apart from the above, the allegation of the arbitrary disclosure of criteria for selection of Custom Millers for participation in Rabi Season KMS 2017-18, vide letter dated 28.04.2018 of OP-2, also requires to be investigated by the Director General (‘DG’).

Accordingly, the DG is directed to investigate into the matter and submit its report within a period of 60 days from receipt of this order.

It is made clear that, if during the course of the investigation, the DG comes across anti-competitive conduct of any other entity/person in addition to those mentioned in the information, the DG shall be at liberty to investigate the same.

LW 04:01:2020

CHANDIGARH HOUSING BOARD v. Parasvanath Developers Pvt.Ltd & Anr [SC]

Civil Appeal No. 10748 of 2016

M.M. Shantanagoudar & R. Subhash Reddy, JJ. [Decided on 17/12/2019]

Consumer protection Act, 1986- Consumer complaint- housing project not commenced – applicant filed complaint against the owner and developer- compensation allowed and the owner and developer were directed to pay in the proportion of 70:30- whether tenable-Held, Yes.

Brief facts:
The Petitioner is the owner of the land and the Respondent No.1 is the developer and the respondent No.2 is the applicant of flat and complainant before the National Commission. The complainant applied for a flat in the housing project floated by the petitioner and Respondent No.1 and paid the consideration of flat and complainant before the National Commission. The petitioner and Respondent No.1 is the developer and the respondent No.2 is the applicant of flat and complainant before the National Commission and the Commission allowed the complaint and directed the petitioner and Respondent NO.1 to pay the compensation and costs in the proportion of 70:30.

Decision: Appeal dismissed.

Reason:
Upon perusing the record and hearing the arguments advanced by the parties, two issues arise for our consideration in this appeal:

(a) Whether the National Commission was right in directing the payment of amount towards mental harassment and litigation costs in the ratio of 70:30, or whether such amount falls within the purview of compensation under Clause 9(c) of the Tripartite Agreement so as to be paid solely by the Developer.

(b) Whether the interest rate awarded on the principal sum was rightly increased from 9% p.a. to 10% p.a.

As regards the first issue, we find that such division is well-founded as the sale proceeds from the flat buyers were apportioned in the same ratio of 70:30 between the Developer and CHB. This is supported by the Escrow Agreement dated 01.06.2007 executed by CHB and the Developer in pursuance of the Development Agreement dated 06.10.2006. Clause 4(b) of this Escrow Agreement provides that 30% of the sale proceeds in respect of the residential units would first be transferred to CHB, and the remaining amount shall then be
transferred to the Developer. In view of this, we find that the amount directed to be paid by the National Commission in the impugned order must be paid by the Developer and CHB in the ratio of 70:30.

With respect to the second issue concerning the enhancement of interest rate, Clause 9(d) of the Tripartite Agreement is relevant. As mentioned supra, this Clause requires the Developer and CHB to refund the amounts received from the buyer with interest if the Developer is unable to deliver the unit to the buyer due to non-approvals from the competent authorities. Here, under Clause 9(d), the parties are liable to refund the principal sum in the ratio of 70:30 as they had received the sale proceeds in the same ratio. It has been brought to our notice that CHB has already paid 30% of the principal sum at 9% interest p.a. in accordance with the directions of the National Commission in order dated 05.03.2013 passed in a similar matter. Notably, the interest rate was revised to 10% p.a. in the impugned order and has been challenged by the Appellant. We do not find any reason to interfere with the same, as the increase was made by the National Commission in exercise of its discretionary power. It is possible that the National Commission chose to enhance the interest rate in view of the fact that it had already imposed lesser compensation than the significantly higher compensation stipulated under Clause 9(c). Thus, the contention of the Appellant on this front is liable to be dismissed.

In view of the foregoing observations, we find that the National Commission was right in directing the Developer and CHB to pay the principal sum of ₹ 1, 03, 31,250/- at 10% p.a. to the Complainant herein. Further, it is found that the direction to pay ₹ 2 lakhs towards mental harassment and litigation costs in the ratio of 70:30 between the Developer and CHB, is also correct. Accordingly, the instant appeal deserves to be dismissed.

**Industrial & Labour Laws**

**LW 05:01:2020**

**SR. DIVISIONAL MANAGER, LIC OF INDIA v. RENUKA SHARMA [DEL]**

W.P(C)No. 6692of 2014

J.R. Midha, J. [Decided on 04/12/2019]

Employee remained absent without permission- re-joined to face disciplinary proceedings- failed to appear before the enquiry officer - dismissed from services- on appeal Tribunal set aside the dismissal and reduced three increments - whether tenable-Held, No.

**Brief facts:**

The respondent applied for and was granted leave for 35 days to visit Singapore. The respondent failed to join back the duties despite letters and a show cause notice-cum-charge sheet was issued to the respondent to show cause as to why penalty of removal be not imposed. The respondent joined back the duties subject to the enquiry proceedings but again proceeded on unauthorized leave thereafter.

The respondent chose not to appear before the Enquiry Officer to contest the enquiry despite repeated written intimations. The Enquiry Officer fairly conducted the enquiry after affording a reasonable opportunity to the respondent. The disciplinary authority imposed the penalty of removal on the respondent for unauthorized absence of 373 days.

The respondent filed an appeal before the Appellate Authority, Zonal Manager which was rejected. The respondent, thereafter, filed a memorial to the Chairman which was also rejected. Thereafter, respondent raised an industrial dispute, in which the impugned judgement was passed by the Industrial Tribunal.

The petitioner has challenged the award of the Industrial Tribunal whereby the Industrial Tribunal set aside the penalty of removal from service of the respondent and imposed penalty of reduction of three stages of basic pay of time scale in lieu of penalty for removal from service.

**Decision:** Petition allowed.

**Reason:**

The Industrial Tribunal held the punishment imposed on the respondent as discriminatory on the ground that lower punishment was awarded to similarly situated employees. This finding is under challenge on the ground that the Article 14 cannot be enforced in negative manner. Without prejudice, it was submitted that the two cases referred to by the Tribunal are entirely different and not comparable.

The law is well settled that equality before law is a positive concept and it cannot be enforced in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot claim order on principle of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. In Gursharan Singh v. NDMC 1996 (2) SCC 459, the Supreme Court held that if an order is passed in favour of a person who is not entitled to the same, the others cannot claim parity because it would amount to directing an illegal procedure/order to continue and perpetuate further.

In State of Haryana v. Ram Kumar Mann, (1997) 3 SCC 321, the Supreme Court observed that the doctrine of discrimination is founded upon the existence of an enforceable right to entitle a person to equal treatment for the enforcement thereof. A wrong decision does not give a right to a person to enforce the wrong order and claim parity or equality.

This case is squarely covered by the principles laid down by the Supreme Court in Gursharan Singh (supra) and Raj Kumar Maan (supra). Applying the principles laid down by the Supreme Court to the present case, this Court holds that the respondent who remained on an unauthorized leave without approval since 16th May, 2008, had no enforceable right to reinstatement. The doctrine of equality has been wrongly applied by the learned Tribunal which is contrary to the well settled principles laid down by the Supreme Court in the above judgments.

Even otherwise, the cases of V.S. Iyer and H.C. Bhatnagar are not comparable as those officers appeared before the Enquiry
Officer and substantiated their claims whereas the respondent, in the present case, choose not to appear before the Enquiry officer to substantiate her claim. This difference by itself makes the comparison impermissible.

Assuming for the sake of arguments that the cases of V.S. Iyer and H.C. Bhatnagar were similar, this Court is not satisfied with the correctness of the decision in those cases and therefore, claiming equality on the basis of a wrong decision is not permissible in view of the principles laid down by Supreme Court in Gursharan Singh (supra) and State of Haryana v. Raj Kumar Maan.

This Court is satisfied that the respondent is guilty of gross misconduct of unauthorized absence since 16th May, 2008 and the punishment inflicted by the petitioner is proportionate to her misconduct. The learned Tribunal gravely erred interfering with the punishment of removal of service of the respondent which is contrary to the well-settled law. By unnecessary interference by the learned Tribunal, the respondent has made a fortune by receiving more than ₹12, 00,000/- under Section 17B of the Industrial Disputes Act during the pendency of this petition. The writ petition is allowed and the impugned order of the learned Single Judge and the orders passed by the authorities below are set aside. The Respondent’s statement of claim is dismissed and the punishment of removal of the respondent is upheld.

**LW 06:01:2020**

**M/S.R.D.34 ARIYAKUDI PRIMARY AGRICULTURAL COOPERATIVE BANK v. EMPLOYEES’ PROVIDENT FUND APPELLATE TRIBUNAL & ORS [MAD]**

W.A (MD) No.516 of 2012

A. P. Sahi & Subramonium Prasad, JJ. [Decided on 16/12/2019]

EPF Act- section 14B- damages- delay in deposit of contribution- levy of damages- authorities failed to appreciate the reasons given by the appellant- whether the levy of damages valid-Held, No.

**Brief facts:**

The short issue which arises for consideration in this case is to whether mere delay in depositing the contribution to the Provident Fund is sufficient to attract levy of damages or not.

The admitted fact in this case is that the appellant company failed to remit the PF dues in time and consequently in the proceedings conducted under Section 14-B of the Act, intimation was sent to the appellant to show cause as to why damages should not be remitted. The reason given by the appellant herein was that there was severe financial crisis faced by the company and therefore, non-deposit of the PF was unintentional. Ongoing through the facts of the case, the second respondent passed the order levying damages which was challenged before the appellate Tribunal. The appellate Tribunal also dismissed the appeal on the ground that there was a delay in depositing the funds.

Neither the Assistant Provident Fund Commissioner nor the Appellate Tribunal looked into the issue as to whether delay in deposit was intentional or not. The order of the Tribunal was challenged by filing the instant writ petition. The learned Single Judge dismissed the writ petition again on the ground that mere delay is sufficient to impose damages. The same is assailed before us in this instant writ appeal.

**Decision:** Appeal allowed and remanded back for fresh adjudication.

**Reason:**

After discussing the Supreme Court judgements rendered in Moleed Russel India Ltd v. Regional Provident Fund Commissioner, Jalpaiguri & Ors, (2014) 15 SCC 263; ESI Corporation v. HMT Ltd., (2008) 3 SCC 35 and Assistant Provident Fund Commissioner, EPFO v. Management of RSL Textiles India Pvt. Ltd, (2017) AIR (SCW) 679, the court held as under:

A perusal of the orders of the authorities below and the learned Single Judge shows that the authorities below and the learned Single Judge have not applied their mind to the fact as to whether the reason as put forward by the appellant is sufficient to waive payment or not and what should be the proportionality in imposing the damages.

In view of the fact that the authorities below have not applied their mind and in view of the fact that the Honourable Supreme Court has held that mens rea is an essential ingredient, the appeal is allowed and the impugned order of the learned Single Judge and the orders passed by the authorities below are set aside. The matter is remitted back to the Assistant Provident Fund Commissioner to once again consider the issue of mens rea before levying the damages and the said exercise may be completed within a period of twelve weeks from the date of receipt of a copy of this order. It goes without saying that the Assistant Provident Fund Commissioner will give reasonable opportunity to the appellant as well as the respondents. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**LW 07:01:2020**

**E.R.SUGUMARAN V. M.D, TAMIL NADU CIVIL SUPPLY CORPORATION [MAD]**

W.P (MD) No.12667 of 2011

J.Nisha Banu, J. [Decided on 12/12/2019]

Employee admitting the loss of records before the court-employer lost the case- employer stopped increments for six months- whether tenable-Held, No.

**Brief facts:**

The petitioner retired as Assistant Engineer in the respondent corporation. He was allowed to retire on reaching the age of superannuation without prejudice to the pending departmental proceedings against him. When he was working as Assistant Engineer in Modern Rice Mill, Coimbatore, he had to appear as a witness for the Corporation in a civil suit filed by the Corporation against one M/s.Rajalakshmi Paper Mills Ltd., to recover a sum of ₹ 4,34,062.90/- towards damages for the loss sustained by the corporation due to contractual violation of the said paper mill. During the course of cross examination, the petitioner had to admit the loss of records in the office of the corporation, and due to this the corporation lost the case. No appeal was filed. Instead, disciplinary proceedings were initiated against the petitioner for losing the case and his increments were stopped for six months.
Decision: Petition allowed.

Reason:
It is unfortunate that the authorities have initiated the disciplinary proceedings against the petitioner for stating the truth before the court that the records had been destroyed. Admittedly, the records have been destroyed and the person in whose period the records were destroyed also retired from service. It is also admitted that during the period of delinquency, the petitioner was not working in the concerned department and the persons who had been working in the concerned department namely, Jeyapal and Amarnath were left scot-free and the disciplinary proceedings had been initiated only against the petitioner for the reason that he has depose before the court the truth that the records have been destroyed which is unknown to law and the corporation had not filed any appeal against the dismissal of the suit. Without producing the relevant documents before the court, the corporation cannot blame the petitioner for giving evidence before the court that the document was not available and consequently cannot hold him liable for the dismissal of the case. Therefore, I am inclined to interfere with the impugned order. Accordingly, the order passed by the respondent is quashed and the writ petition is allowed.

General Laws

LW 08:01:2020

STANDARD CHARTERED BANK v. HEAVY ENGINEERING CORPORATION LTD & ANR [SC]

Civil Appeal No.9288 OF 2019 (@ SLP(C) No. 23430 of 2019)
L.Nageshwar Rao & Ajay Rastogi, JJ. [Decided on 18/12/2019]

Law of guarantee- bank guarantee- invocation of – whether bank can refuse to honour the guarantee when beneficiary invokes it-Held, No.

Brief facts:
Facts are immaterial. The crux of the issue is whether the bank can refuse to honour the guarantee issued by it to the beneficiary and if so on what circumstances.

Decision: Appeal dismissed.

Reason:
The law relating to invocation of bank guarantees with the consistent line of precedents of this Court is well settled. The settled position in law that emerges from the precedents of this Court is that the bank guarantee is an independent contract between bank and the beneficiary and the bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable one. The dispute between the beneficiary and the party at whose instance the bank has given the guarantee is immaterial and is of no consequence. There are, however, exceptions to this Rule when there is a clear case of fraud, irretrievable injustice or special equities. The Court ordinarily should not interfere with the invocation or encashment of the bank guarantee so long as the invocation is in terms of the bank guarantee.

The guarantees in the instant case were unconditional, specific in nature and limited in amount. The terms of the guarantee categorically covered money which the 1st respondent had advanced against supply of the plant and equipment by SCIL. The said guarantees covered any loss and damage caused to or suffered by the 1st respondent plaintiff in due performance of the contract for supply of plant and equipment. The guarantee documents as a whole and clause 2 of the guarantee document in particular cover the advance which had been paid by the 1st respondent plaintiff by reason of any breach or failure by SCIL in due performance of the aforesaid contracts i.e. against the contract for supply of plant and equipment.

In our considered view, once the demand was made in due compliance of bank guarantees, it was not open for the appellant Bank to determine as to whether the invocation of the bank guarantee was justified so long as the invocation was in terms of the bank guarantee. The demand once made would oblige the bank to pay under the terms of the bank guarantee and it is not the case of the appellant Bank that its defence falls in any of the exception to the rule of case of fraud, irretrievable injustice and special equities. In absence thereof, it is not even open for the Court to interfere with the invocation and encashment of the bank guarantee so long as the invocation was in terms of the bank guarantee and this what has been observed by the Division Bench of the High Court in the impugned judgment and that reflected the correct legal position. We do not find any merit in the appeal which is hereby dismissed. No costs.
ICSI COE, Hyderabad successfully organised a 3 days residential training program on “Arbitration in Commercial Disputes” from 27th Dec to 29th Dec 2019. The program was well accepted for its design and delivery by the participants. The program was attended by 39 participants including CS members and other allied professionals from industry. The training was useful in enhancing the knowledge and skill sets of the participants in the area of Arbitration & Conciliation. Beyond that, classroom participants were exposed to various team based assignments such as case laws, reports and case studies. Pre-training, during training and post training reading material was provided to the participants. Broad Program coverage included contemporary topics such as contracts and relevance to corporate disputes, documentation in commercial contracts, ADR methods, Simulation on Arbitration & Conciliation, Fast Track Arbitration and emerging professional growth opportunities in Arbitration & Conciliation.

The program was inaugurated by Justice (Retd) T N C Rangarajan Former Judge, High Court of Madras and Andhra Pradesh. In his inaugural address he spoke upon the careers in arbitration and the emphasis given by ICSI in building arbitration skills.

On the first day program key facilitator Prof. Dr. K V S Sarma, Vice Chancellor, Maharashtra National Law University discussed case laws on legal issues in Contract Law and allied laws relating to contract administration and deliberated on the various aspects of Tenders, Government Contracts, International Contracts and damages, & Dimensions of Arbitration Clauses in Commercial Transactions.

The key facilitator for the second and third day CS (Dr.) P Bhaskara Mohan focussed his discussions on various methods of resolution of Commercial Disputes and perspectives on domestic and international commercial arbitration. Further participants were also exposed to group based simulation exercises which focused on court craft & conduct of Mock Arbitral Tribunal and Conciliation Sessions.

During the three days in addition to the key facilitators expert sessions were conducted on drafting of commercial contracts and other documents, by CS S V Ramakrishna, Fast Track Arbitration by CS Y Suryanarayana & Emerging professional growth opportunities in Arbitration & Conciliation by CS Shalini Deendayal.

Three Days Residential Program on ARBITRAION IN COMMERCIAL DISPUTES AT ICSI CENTRE OF EXCELLENCE (COE), HYDERABAD From 27th Dec to 29th Dec 2019

Right to Left: CS Dr. P. Bhaskara Mohan Advocate High Court of Telangana, Chief Guest Hon’ble Shri Justice T, Amarnath Goud, CS Praveen Soni, ICSI Central Council Member and Chairman ICSI-CoE and Dr. Sapna Malhotra, Deputy Director ICSI, CoE Hyderabad.

The Valedictory function for the program was held in august presence of The Chief Guest, Honb’le Sri Justice T Amarnath Goud, Judge, High Court for the State of Telangana. Congratulating the ICSI-CoE for successfully conducting this program he said, “The ICSI-CoE in future can serve as a centre to provide arbitration facilitation services for the speedy redressal of disputes within affordable means. “This training has contributed towards honing the talent and skills of all the learned participants”. He Mentioned.

During the occasion, CS Praveen Soni, ICSI Central Council Member & Chairman ICSI-CoE and ICSI-CCGRT in his address highlighted on the impetus given by the institute on development of centres for conducting research based activities. He mentioned that unique feature of this program was the facilitative approach followed by the faculty members that encouraged rigorous involvement of participants in beyond classroom activities. He also spoke on the new initiatives of the institute such as introduction of UDIN and ECSIN, Placement Portal, & Disciplinary Mechanism.

Dr. CS Bhaskara Mohan, mentor and key faculty member presented program summary and key highlights of the program. He complimented participants on their exemplary performance during the three days and said that the need of the hour is conciliation but not confrontation.

During the valedictory Function, the participants received the Certificate of participation in the hands of Chief Guest. Special Awards in each of the category of Best Arbitrators, Best Claimants, Best Respondents and Best Conciliator were also bestowed on the participants.

With the recent amendments introduced in the Arbitration and Conciliation Amendment Act 2019 elaborating on the qualification, experience and general norms applicable to arbitrators and process of setting up and grading of arbitral institutions, a huge scope for the appointment of CS professionals as Arbitrators, will be observed in the near future. The ICSI intends to conduct more such programs in future for the benefit of the professional fraternity.
What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

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Advantages of enrolling into CSBF

1. To ensure that your immediate family has some financial support in the event of your unfortunate demise
2. To finance your children’s education and other needs
3. To ensure that you have extra resource during serious illness or accident

Become a proud Member of CSBF by making a one-time online subscription of ₹10,000/- (to be changed soon) through Institute’s web portal (www.icsi.edu) along with Form ‘A’ available at link https://www.icsi.edu/csf/home duly filled and signed.

Decide Now! Decide Wise!

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FROM THE GOVERNMENT

- AMENDMENT IN NOTIFICATION REGARDING COURT JURISDICTION
- NOTIFICATION REGARDING ESTABLISHMENT OF SPECIAL COURTS IN THE STATE OF UTTARAKHAND, UNION TERRITORY OF JAMMU & KASHMIR AND UNION TERRITORY OF LADAKH
- MEASURES TO STRENGTHEN THE CONDUCT OF INVESTMENT ADVISERS (IA)
- STEWARDSHIP CODE FOR ALL MUTUAL FUNDS AND ALL CATEGORIES OF AIFS, IN RELATION TO THEIR INVESTMENT IN LISTED EQUITIES
- FRAMEWORK FOR LISTING OF COMMERCIAL PAPER-AMENDMENTS
- INVESTMENT IN UNITS OF MUTUAL FUNDS IN THE NAME OF MINOR THROUGH GUARDIAN AND EASE OF PROCESS FOR TRANSMISSION OF UNITS
- FORMAT ON STATEMENT OF DEVIATION OR VARIATION FOR PROCEEDS OF PUBLIC ISSUE, RIGHTS ISSUE, PREFERENTIAL ISSUE, QUALIFIED INSTITUTIONS PLACEMENT (QIP) ETC.
- GUIDELINES FOR FILING OF PLACEMENT MEMORANDUM - InvITs PROPOSED TO BE LISTED
- MANAGEMENT AND ADVISORY SERVICES BY AMCS TO FOREIGN PORTFOLIO INVESTORS
- FILING OF OFFER DOCUMENTS UNDER SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018
- REVIEW OF INVESTMENT NORMS FOR MUTUAL FUNDS FOR INVESTMENT IN DEBT AND MONEY MARKET INSTRUMENTS
01 Relaxation of additional fees and extension of last date of filing of CRA-4 (cost audit report) for FY 2018-19 under the Companies Act, 2013

[Issued by Ministry of Corporate Affairs vide F. No. 52/50/CAB/2019 dated 30.12.2019.]

1. In continuation to this Ministry’s General Circular No. 12/2019 dated 24.10.2019 on the above subject and in view of several representations received from various stakeholders for extension of last date, it is informed that the last date of filing of CRA-4 (cost audit report) for all eligible companies for the Financial Year 2018-19, without payment of additional fee, has been further extended till 29.02.2020.

2. It may be noted that the said extension is given for the entire process starting from ‘preparation of Annexures to the Cost Audit Report’ to ‘submission of Cost Audit Report by the Cost Auditor to the Company’ and finally ‘filing of Cost Audit Report by the Company with the Central Government’

3. This issues with the approval of the competent authority.

KMS NARAYANAN
Assistant Director (Policy)

02 Amendment in notification regarding Court Jurisdiction

[Issued by Ministry of Corporate Affairs Vide F. No. 01/12/2009-CL-I dated 19.12.2019.]

S.O. 4569(E) – In exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), the Central Government, with the concurrence of the Chief Justice of the High Court of Jammu and Kashmir, hereby makes the following amendments in the notification of the Government of India, Ministry of Corporate Affairs, number S.O. 1796(E), dated, the 18th May, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), namely:-

In the said notification, in the Table, for serial number 1 and the entries relating thereto, the following shall be substituted, namely:-

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Existing Court</th>
<th>Jurisdiction as Special Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Courts of Additional Sessions Judges Anti-corruption, Jammu and Srinagar</td>
<td>Union territory of Jammu and Kashmir</td>
</tr>
</tbody>
</table>

K. V. R. MURTY
Joint Secretary

03 Notification regarding establishment of Special Courts in the State of Uttarakhand, Union territory of Jammu & Kashmir and Union territory of Ladakh

[Issued by Ministry of Corporate Affairs Vide F. No. 01/12/2009-CL-I dated 19.12.2019.]

S.O. 4570(E) – In exercise of the powers conferred by section 435 of the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act), the Central Government, with the concurrence of the Chief Justices of the High Court of Uttarakhand, Nainital and High Court of Jammu and Kashmir, hereby designates the following Courts mentioned in column (2) of the Tables below as Special Courts, namely:-

(a) for the purpose of providing speedy trial of offences punishable with imprisonment of two years or more as per clause (a) of sub-section (2) of section 435 of the said Act, namely:-

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Court</th>
<th>Jurisdiction as Special Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Court of IV Additional District and Session Judge, Dehradun</td>
<td>State of Uttarakhand</td>
</tr>
<tr>
<td>2</td>
<td>Principal Sessions Judge, Leh</td>
<td>Union territory of Ladakh</td>
</tr>
</tbody>
</table>

(b) for the purpose of providing speedy trial of other offences as mentioned in clause (b) of sub-section (2) of section 435 of the said Act, namely:-

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Court</th>
<th>Jurisdiction as Special Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Court of II Additional Chief Judicial Magistrate, Dehradun</td>
<td>State of Uttarakhand</td>
</tr>
<tr>
<td>2</td>
<td>Sub-Judge/Special Mobile Magistrates, Jammu and Srinagar</td>
<td>Union territory of Jammu and Kashmir</td>
</tr>
<tr>
<td>3</td>
<td>Chief Judicial Magistrate, Leh</td>
<td>Union territory of Ladakh</td>
</tr>
</tbody>
</table>

K. V. R. MURTY
Joint Secretary
04 Measures to strengthen the conduct of Investment Advisers (IA)


1. Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (IA Regulations) provides for code of conduct to be followed by IAs. In order to further strengthen the conduct of IAs, while providing investment advice and to protect the interest of investors seeking their advice, the IAs shall comply with the following:

(i) Restriction on free trial

As per SEBI (Investment Advisers) Regulations, 2013, investment advice can be given after completing risk profiling of the client and ensuring suitability of the product. It has come to the notice that IAs are providing advice on free trial basis without considering risk profile of the client. Hence the IAs shall not provide free trial for any products/services to prospective clients. Further, IAs shall not accept part payments (where some part of the fee is paid in advance) for any product/service.

(ii) Proper risk profiling and consent of client on risk profiling

Risk profiling of the client is essential to provide advice on suitable product based on various criteria like income, age, securities market experience etc. RIAs shall provide investment advice only after completing the following steps:

a. Complete the risk profile of the client based on information provided by the client.
b. Obtain consent of the client on completed risk profile either through registered email or physical document.

(iii) Receiving fees through banking channel only

It is observed that investment advisers are receiving advisory fee in the form of cash deposit in their bank accounts or through payment gateways which does not provide proper audit trail of fees received from the clients. To bring transparency in dealing with the clients, IAs shall accept fees strictly by account payee crossed cheques / demand draft or by way of direct credit into their bank account through NEFT/RTGS/IMPS/UPI. It is clarified that, IAs shall not accept cash deposits.

(iv) Display of complaints status on website

In order to bring more transparency and enable the investors to take informed decision regarding availing of advisory services, IAs shall display the following information on the homepage (without scrolling) of their website/mobile app. The information should be displayed properly using font size of 12 or above and made available on monthly basis (within 7 days of end of the previous month):

<table>
<thead>
<tr>
<th>Number of complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>At the beginning of the month</td>
</tr>
</tbody>
</table>

2. The measures as referred above shall come into effect from January 01, 2020.

3. This circular is issued in exercise of the 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.

NAVEEN SHARMA
General Manager

05 Stewardship Code for all Mutual Funds and all categories of AIFs, in relation to their investment in listed equities


1. The importance of institutional investors in capital markets across the world is increasing the world over; they are expected to shoulder greater responsibility towards their clients / beneficiaries by enhancing monitoring and engagement with their investee companies. Such activities are commonly referred to as ‘Stewardship Responsibilities’ of the institutional investors and are intended to protect their clients’ wealth. Such increased engagement is also seen as an important step towards improved corporate governance in the investee companies and gives a greater fillip to the protection of the interest of investors in such companies.

2. SEBI has already implemented principles on voting for Mutual Funds through Circulars dated March 15, 2010 and March 24, 2014, which prescribed detailed mandatory requirements for Mutual Funds in India to disclose their voting policies and actual voting by Mutual Funds on different resolutions of investee companies.

3. SEBI along with Insurance Regulatory and Development Authority of India (IRDAI) and Pension Fund Regulatory and Development Authority (PFRDA) had subsequently examined a proposal for introducing stewardship principles in India, which was approved by a sub-committee of the Financial Stability and Development Council (FSDC-SC).

4. It has now been decided that all Mutual Funds and all categories of AIFs shall mandatorily follow the Stewardship Code as placed at Annex A, in relation to their investment in listed equities.

5. The Stewardship Code shall come into effect from the Financial Year beginning April 01, 2020.

6. This circular is issued in exercise of powers conferred under Section 11 of the Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996 and Regulation 36 of SEBI (Alternative Investment Funds) Regulations, 2012, to protect the interests of investors in securities and to promote the development of and to regulate the securities market.

7. This Circular is available at www.sebi.gov.in under the link “Legal → Circulars”.

PRADEEP RAMAKRISHNAN
General Manager
Stewardship Code  

Principle 1
Institutional Investors should formulate a comprehensive policy on the discharge of their stewardship responsibilities, publicly disclose it, review and update it periodically.

Guidance

Stewardship responsibilities include monitoring and actively engaging with investee companies on various matters including performance (operational, financial, etc.), strategy, corporate governance (including board structure, remuneration, etc.), material environmental, social, and governance (ESG) opportunities or risks, capital structure, etc. Such engagement may be through detailed discussions with management, interaction with investee company boards, voting in board or shareholders meetings, etc.

Every institutional investor should formulate a comprehensive policy on how it intends to fulfill the aforesaid stewardship responsibilities and disclose it publicly. In case any of the activities are outsourced, the policy should provide for the mechanism to ensure that in such cases, stewardship responsibilities are exercised properly and diligently.

The policy should be reviewed and updated periodically and the updated policy should be publicly disclosed on the entity’s website. A training policy for personnel involved on implementation of the principles is crucial and may form a part of the policy.

Principle 2
Institutional investors should have a clear policy on how they manage conflicts of interest in fulfilling their stewardship responsibilities and publicly disclose it.

Guidance

As a part of the aforesaid comprehensive policy, institutional investors should formulate a detailed policy for identifying and managing conflicts of interest. The policy shall be intended to ensure that the interest of the client/beneficiary is placed before the interest of the entity. The policy should also address how matters are handled when the interests of clients or beneficiaries diverge from each other.

The conflict of interest policy formulated shall, among other aspects, address the following:

1. Identifying possible situations where conflict of interest may arise. E.g. in case of investee companies being associates of the entity.
2. Procedures put in place by the entity in case such conflict of interest situations arise which may, inter alia, include:
   a. Blanket bans on investments in certain cases
   b. Having a ‘Conflict of Interest’ Committee to which such matters may be referred to.
   c. Clear segregation of voting function and client relations/sales functions.
   d. Policy for persons to recuse from decision making in case of the person having any actual/potential conflict of interest in the transaction.
   e. Maintenance of records of minutes of decisions taken to address such conflicts.
3. Periodical review and update of such policy and public disclosure.

Principle 3
Institutional investors should monitor their investee companies.

Guidance

As a part of the aforesaid comprehensive policy, institutional investors should have a policy on continuous monitoring of their investee companies in respect of all aspects they consider important which shall include performance of the companies, corporate governance, strategy, risks etc.

The investors should identify the levels of monitoring for different investee companies, areas for monitoring, mechanism for monitoring etc. The investors may also specifically identify situations where they do not wish to be actively involved with the investee companies e.g. in case of small investments.

The investors should also keep in mind regulations on insider trading while seeking information from the investee companies for the purpose of monitoring.

Accordingly, the institutional investors shall formulate a policy on monitoring specifying, inter-alia, the following:

1. Different levels of monitoring in different investee companies. E.g. companies where larger investments are made may involve higher levels of monitoring vis-à-vis companies where amount invested in insignificant from the point of view of its assets under management.
2. Areas of monitoring which shall, inter-alia, include:
   a. Company strategy and performance - operational, financial etc.
   b. Industry-level monitoring and possible impact on the investee companies.
   c. Quality of company management, board, leadership etc.
   d. Corporate governance including remuneration, structure of the board (including board diversity, independent directors etc.) related party transactions, etc.
   e. Risks, including Environmental, Social and Governance (ESG) risks
   f. Shareholder rights, their grievances etc.
3. Identification of situations which may trigger communication of insider information and the procedures adopted to ensure insider trading regulations are complied with in such cases.

Principle 4
Institutional investors should have a clear policy on intervention in their investee companies. Institutional investors should also have a clear policy for collaboration with other institutional investors where required, to preserve the interests of the ultimate investors, which should be disclosed.

Guidance

Institutional investors should have a clear policy identifying the circumstances for active intervention in the investee companies and the manner of such intervention. The policy should also involve regular assessment of the outcomes.
of such intervention. Intervention should be considered even when a passive investment policy is followed or if the volume of investment is low, if the circumstances so demand.

Circumstances for intervention may, inter alia, include poor financial performance of the company, corporate governance related practices, remuneration, strategy, ESG risks, leadership issues, litigation etc.

The mechanisms for intervention may include meetings/discussions with the management for constructive resolution of the issue and in case of escalation thereof, meetings with the boards, collaboration with other investors, voting against decisions, etc. Various levels of intervention and circumstances in which escalation is required may be identified and disclosed. This may also include interaction with the companies through institutional investor associations (E.g. AMFI). A committee may also be formed to consider which mechanism to be opted, escalation of matters, etc. in specific cases.

**Principle 5**

Institutional investors should have a clear policy on voting and disclosure of voting activity.

**Guidance**

To protect and enhance wealth of the clients/beneficiaries and to improve governance of the investee companies, it is critical that the institutional investors take their own voting decisions in the investee company after in-depth analysis rather than blindly supporting the management decisions.

This requires a comprehensive voting policy to be framed by the institutional investors including details of mechanisms of voting, circumstances in which voting should be for/against/abstain, disclosure of voting, etc. The voting policy, voting decisions (including rationale for decision), use of proxy voting/voting advisory services, etc. should be publicly disclosed.

The voting policy shall, inter-alia, include the following:

1. Mechanisms to be used for voting (e.g., e-voting, physically attending meetings, voting through proxy, etc.)
2. Internal mechanisms for voting including:
   a. Guidelines on how to assess the proposals and take decision thereon
   b. Guidelines on how to vote on certain specific matters/circumstances including list of such possible matters/circumstances and factors to be considered for a decision to vote for/against/abstain
   c. Formulation of oversight committee as an escalation mechanism in certain cases
   d. Use of proxy advisors
   e. Policy for conflict of interest issues in the context of voting
3. Disclosure of voting including:
   a. Periodicity of disclosure
   b. Details of actual voting for every proposed resolution in investee companies i.e. For, Against or Abstain
   c. Rationale for voting
4. In case of use of proxy voting or other voting advisory services, disclosures on:
   a. Scope of such services
   b. Details of service providers
   c. Extent to which the investors rely upon/use recommendations made by such services

**Principle 6**

Institutional investors should report periodically on their stewardship activities.

**Guidance**

Institutional investors shall report to their clients/beneficiaries periodically on how they have fulfilled their stewardship responsibilities as per their policy in an easy-to-understand format.

However, it may be noted that the compliance with the aforesaid principles does not constitute an invitation to manage the affairs of a company or preclude a decision of the institutional investor to sell a holding when it is in the best interest of clients or beneficiaries.

Institutional investors shall report periodically on their stewardship activities in the following manner:

1. A report may be placed on website on implementation of every principle. Different principles may also be disclosed with different periodicities. E.g. Voting may be disclosed on quarterly basis while implementation of conflict of interest policy may be disclosed on an annual basis. Any updation of policy may be disclosed as and when done.
2. The report may also be sent as a part of annual intimation to its clients/beneficiaries.

**Framework for listing of Commercial Paper-Amendments**


2. Based on the representations received from the market participants, following paragraphs of CP circular stands modified:
   a) The proviso to para 5.2 of Annexure I of CP Circular shall read as under:

Provided that listed issuers (who have already listed their specified securities and/or ‘Non-convertible Debt Securities’ (NCDs) and/or ‘Non-Convertible Redeemable Preference Shares’ (NCRPS)) who are in compliance with SEBI (Listing obligations and disclosure requirements) Regulations 2015 (hereinafter “SEBI LODR Regulations”), and/or issuers (who have outstanding listed Commercial Paper (CPs)) who are in compliance with Annexure II of CP Circular may file unaudited financials with
limited review for the stub period in the current financial year, subject to making necessary disclosures in this regard including risk factors.

b) Second para of para 1.2 of Annexure II of CP Circular shall be read as under:

However, if an issuer is required to prepare financial results for the purpose of consolidated financial results of its parent company in terms of Regulation 33 of SEBI LODR Regulations, such issuers shall submit financial results in terms of para 1.1 above or shall submit quarterly financial results that have been prepared for the purpose of consolidation of their parent company.

3. This Circular is issued in exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992.

4. This Circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and under the drop down “Circulars”.

RICHIA G. AGARWAL
Deputy General Manager

07 Investment in units of Mutual Funds in the name of minor through guardian and ease of process for transmission of units


In order to bring about uniform processes across Asset Management Companies (AMCs) in respect of investments made in the name of a minor through a guardian and to enable efficient transmission of units the following has been decided:

1. Process for Investments made in the name of a Minor through a Guardian

a. Payment for investment by means of Cheque, Demand Draft or any other mode shall be accepted from the bank account of the minor or from a joint account of the minor with the guardian only. For existing folios, the AMCs shall insist upon a Change of Pay-out Bank mandate before redemption is processed.

b. Upon the minor attaining the status of major, the minor in whose name the investment was made, shall be required to provide all the KYC details, updated bank account details including cancelled original cheque leaf of the new account. No further transactions shall be allowed till the status of the minor is changed to major.

c. AMCs shall build a system control at the account set up stage of Systematic Investment Plan (SIP), Systematic Transfer Plan (STP) and Systematic Withdrawal Plan (SWP) on the basis of which, the standing instruction is suspended when the minor attains majority, till the status is changed to major.

2. Process for transmission of Units

a. In order to improve the processing turnaround time for transmission requests, AMCs shall implement image based processing wherever the claimant is a nominee or a joint holder in the investor folio.

b. AMCs shall have a dedicated, Central Help Desk and a webpage carrying relevant information and instructions in order to provide assistance on the transmission process.

c. AMCs shall adopt a common Transmission Request Form (common fields) and NOC form. All such forms and formats shall be made available on the website of the AMCs, RTAs and AMFI.

d. AMCs shall implement a common set of document requirements for transmission of units to claimant who are nominees or joint holders in the investor account.

e. AMCs shall implement a uniform process for treatment of unclaimed funds to be transferred to the claimant including the unclaimed dividends.

f. AMCs shall not accept requests for redemption from a claimant pending completion of the transmission of units in his / her favour.

g. The Stamp duty payable by the claimant with respect to the indemnity bond and affidavit, shall be in accordance with the stamp duty prescribed by law.

AMCs and AMFI shall promote the importance of nomination as a part of its investor education and awareness programmes.

3. To ensure uniformity across the industry, AMFI is advised to prescribe the forms and formats referred in point 2 (c), common set of documents referred in point 2 (d) and uniform process for treatment of unclaimed funds referred in point 2 (e), within 30 days from date of issuance of this circular and shall mandatorily be followed by all Mutual Funds/AMCs.

4. This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with Regulation 77 of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

DEENA VENU SARANGADHARAN
Deputy General Manager

08 Format on Statement of Deviation or Variation for proceeds of public issue, rights issue, preferential issue, Qualified Institutions Placement (QIP) etc.


1. As per Regulations 32(1), 32(2) and 32(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (‘SEBI LODR Regulations’), a
listed entity is, *inter alia*, required to submit to the stock exchange, a statement of deviation or variation, pursuant to review by the audit committee, on a quarterly basis for public issue, rights issue, preferential issue etc. indicating,

- deviations, if any, in the use of proceeds of public issue, rights issue, preferential issue etc. and
- the category wise variation between projected utilisation of funds and the actual utilisation of funds.

Such statement of deviation or variation is to be submitted till the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.

2. Stock Exchanges, during the course of interactions with SEBI have submitted that while listed entities submit the statement of deviation or variation, there is no uniformity in the formats so submitted. Hence there is a need to introduce a common format for such reporting.

3. Further, such a common format will also aid monitoring by Stock Exchanges, of the end use of issue proceeds raised by listed entities through public issue, rights issue, preferential issue, QIP etc. Hence, for the purpose of compliance with 32(1), 32(2) and 32(3) of the SEBI LODR Regulations, listed entities shall follow the format placed at Annex A to this Circular.

4. The salient features of the format are as under:

   a. **Applicability**: The format shall be applicable for funds raised by listed entities through public issue, rights issue, preferential issue, QIPs etc.

   b. **Frequency of Disclosure**: The disclosure to the Stock Exchange(s) shall be made by listed entities on quarterly basis along with the declaration of financial results (within 45 days of end of each quarter / 60 days from the end of the last quarter of the financial year) until such funds are fully utilised or the purpose for which these proceeds were raised has been achieved.

   c. **Role of the Audit Committee**: The statement of deviation report shall be placed before audit committee of the listed entity for review on quarterly basis and after such review, the comments of audit committee along with the report shall be disclosed/submitted to the stock exchange, as part of the format.

In cases where the listed entity is not required to have an audit committee under the provisions of SEBI LODR Regulations or Companies Act, 2013, the word ‘Audit Committee’ shall be replaced with ‘Board of Directors’.

5. The first such submission shall be made by the listed entities for the quarter ending December 31, 2019; subsequent submissions shall be quarterly as explained above.

6. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all the listed entities and to disseminate the same on their websites.

7. The circular is issued in exercise of the powers conferred under sections 11 and 11A of the Securities and Exchange Board of India Act, 1992 read with Regulations 32 and 101 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

8. The circular is available on SEBI website at www.sebi.gov.in under the category ‘LegalàCirculars’.

PRADEEP RAMAKRISHNAN
General Manager

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### Annex A

**Statement of Deviation / Variation in utilisation of funds raised**

<table>
<thead>
<tr>
<th>Name of listed entity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mode of Fund Raising</strong></td>
</tr>
<tr>
<td>Public Issues / Rights Issues / Preferential Issues / QIP / Others</td>
</tr>
<tr>
<td><strong>Date of Raising Funds</strong></td>
</tr>
<tr>
<td><strong>Amount Raised</strong></td>
</tr>
<tr>
<td><strong>Report filed for Quarter ended</strong></td>
</tr>
<tr>
<td><strong>Monitoring Agency</strong></td>
</tr>
<tr>
<td>applicable / not applicable</td>
</tr>
<tr>
<td><strong>Monitoring Agency Name, if applicable</strong></td>
</tr>
<tr>
<td><strong>Is there a Deviation / Variation in use of funds raised</strong></td>
</tr>
<tr>
<td>Yes / No</td>
</tr>
<tr>
<td><strong>If yes, whether the same is pursuant to change in terms of a contract or objects, which was approved by the shareholders</strong></td>
</tr>
<tr>
<td><strong>If Yes, Date of shareholder Approval</strong></td>
</tr>
<tr>
<td><strong>Explanation for the Deviation / Variation</strong></td>
</tr>
</tbody>
</table>
Guidelines for filing of placement memorandum - InvITs proposed to be listed


1. Regulation 2(1)(zoa) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”) defines “private placement” as an issue of units by an InvIT to any select person or group of persons and does not include an offer of units made through a public issue and Regulation 2(1)(zl) of InvIT Regulations defines a “placement memorandum” as any document through which private placement of units of the InvIT is made.

2. The following clarification is issued to the InvITs which are issuing units on private placement basis that are proposed to be listed:

   a. InvITs, wherein units are issued by way of private placement and which are proposed to be listed, shall file a draft placement memorandum with the Board and stock exchange(s) through a merchant banker registered with the Board not less than thirty days prior to opening of the issue.

   b. The draft placement memorandum shall contain disclosures as specified in Schedule III of InvIT Regulations and the merchant banker shall submit a due diligence certificate as per Form A (to the extent applicable) of Annexure I of SEBI Circular no. CIR/IMD/DF/55/2016 along with the draft placement memorandum.

   c. The Board may issue observations, if any, on the draft placement memorandum within fifteen working days from the later of the following dates:

      i) the date of receipt of the draft placement memorandum by the Board; or

      ii) the date of receipt of satisfactory reply from the issuer and/or merchant banker to the issue, where the Board has sought any clarification or additional information from them; or

      iii) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or

      iv) the date of receipt of a copy of in-principle approval letter issued by the stock exchange(s).

   d. The merchant banker to the issue, shall ensure that all comments are suitably incorporated in the draft placement memorandum prior to filing of the placement memorandum in terms of Regulation 14(2)(e) of InvIT Regulations and shall provide the due diligence certificate as per Form B of Annexure I of SEBI Circular no. CIR/IMD/DF/55/2016.

3. The Circular shall come into effect from January 15, 2020 for all InvITs issuing units on private placement basis and are proposed to be listed.

4. This Circular is issued in exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992 read with Regulation 14(6) and Regulation 33 of InvIT Regulations.

5. This Circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and under the drop down “Circulars”.

   RICHA G. AGARWAL
   Deputy General Manager
10 Management and advisory services by AMCs to Foreign Portfolio Investors


1. Consequent to the notification of SEBI (Foreign Portfolio Investors) Regulations, 2019 (hereinafter referred as “FPI Regulations”), Regulation 24 (b) of SEBI (Mutual Funds) Regulations, 1996 (hereinafter referred as “MF Regulations”) pertaining to “Restrictions on business activities of the asset management company” was amended and notified in the Gazette having no. SEBI/LAD-NRO/GN/2019/37 dated September 23, 2019.

2. In this regard, the following has been decided:
   i. AMCs may provide management and advisory services in terms of Regulation 24(b) of MF Regulations to FPIs falling under the following categories of FPIs as specified in FPI Regulations:
      a. Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled or at least 75% directly or indirectly owned by such Government and Government related investor(s);
      b. Appropriately regulated entities such as pension funds, insurance or reinsurance entities, banks and mutual funds;
      c. Appropriately regulated FPIs wherein (a) or (b) above hold more than 50% of shares/units.
   Further, for agreements entered into by the AMCs on or before the date of this Circular, to provide management and advisory services to such FPIs which are not falling under the above categories, the AMCs may continue to provide the services, for the period as mentioned in the agreement or one year from the date of this Circular, whichever is earlier.
   ii. The proviso to clause (vi) of regulation 24(b) of MF Regulations shall be applicable for the categories of FPIs as mentioned under paragraph (i) above.
   iii. The aforesaid provisions shall be effective from the date of this circular.

3. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of regulations 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

**HRUDA RANJAN SAHOO**
Deputy General Manager

11 Filing of Offer Documents under Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018


2. In partial modification of the above referred circular, it has been decided that the draft offer documents in respect of issues of size upto ₹ 750 crores shall be filed with the concerned regional office of the Board under the jurisdiction of which the registered office of the issuer company falls. Merchant Bankers are accordingly advised to file the draft offer documents / offer documents with the concerned office of the Board, based on the estimated issue size as indicated below:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Region in which registered office of the issuer is located</th>
<th>Jurisdictions covered in this region</th>
<th>Name and address of the office of the Board where draft offer document / offer document is required to be filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>All regions</td>
<td>All jurisdictions</td>
<td>SEBI Head Office, SEBI Bhavan, Plot No. C4-A, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400051</td>
</tr>
<tr>
<td>2</td>
<td>Northern Region</td>
<td>Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Uttar Pradesh, Chandigarh, National Capital Territory of Delhi, Uttarakhand</td>
<td>SEBI Northern Regional Office, New Delhi</td>
</tr>
<tr>
<td>3</td>
<td>Eastern Region</td>
<td>Assam, Bihar, Manipur, Meghalaya, Nagaland, Odisha, West Bengal, Tripura, Arunachal Pradesh, Mizoram, Jharkhand, Andaman &amp; Nicobar Islands and Sikkim</td>
<td>SEBI Eastern Regional Office, Kolkata</td>
</tr>
<tr>
<td>4</td>
<td>Southern Region</td>
<td>Andhra Pradesh, Telangana Karnataka, Kerala, Tamil Nadu, Puducherry, Lakshadweep</td>
<td>SEBI Southern Regional Office, Chennai</td>
</tr>
</tbody>
</table>

**CHARTERED SECRETARY | JANUARY 2020**

**FROM THE GOVERNMENT**

129
Triumph International (India) Private Limited
Wholly owned subsidiary of Triumph Universa AG, Switzerland, invites applications from Members of the ICSI to work as its COMPANY SECRETARY at its Registered Office at Singaperumal Koil 603102, Chengalpattu District, Tamil Nadu.

Recently qualified candidates with Accounts Background would be preferred. Remuneration Commensurate with qualifications and experience Would be paid to the candidate selected after an Interview at the Registered Office.

Interested candidates may please apply with their Resume mentioning their current remuneration to murugan.selvaraj@triumph.com within 15 days.
NEWS FROM THE INSTITUTE

- Members restored during the month of November 2019
- Certificate of practice surrendered during the month of November 2019
- Attention! Know Your Member (KYM)
- Attention! Advisory for members of ICSI
- Attention! Members holding certificate of practice
- Attention! Members who have not paid the annual membership fee by last date 30-06-2019
- Restoration of membership
- Attention! Digital I-card for members
- Restoration of certificate of practice
- Obituaries
## MEMBERS RESTORED DURING THE MONTH OF NOVEMBER 2019

<table>
<thead>
<tr>
<th>S. NO.</th>
<th>A/F</th>
<th>MEM. NO.</th>
<th>NAME</th>
<th>REGN.</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>F</td>
<td>7612</td>
<td>SH. JITIN SADANA</td>
<td>NIRC</td>
</tr>
<tr>
<td>2</td>
<td>A</td>
<td>17504</td>
<td>MRS. ANJALI KEDAR KULKARNI</td>
<td>WIRC</td>
</tr>
<tr>
<td>3</td>
<td>A</td>
<td>40342</td>
<td>MR. VISHAL BALASAHEB SHELKE</td>
<td>WIRC</td>
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<tr>
<td>4</td>
<td>A</td>
<td>520</td>
<td>SH. RAMESH KHANNA</td>
<td>WIRC</td>
</tr>
<tr>
<td>5</td>
<td>A</td>
<td>25503</td>
<td>MS. SAKSHI TUTEJA</td>
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<tr>
<td>6</td>
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<td>SH. DARSHAN JIT SINGH MINOCHA</td>
<td>NIRC</td>
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<td>50555</td>
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<tr>
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<td>52305</td>
<td>MR. LOKESSH KANJA</td>
<td>NIRC</td>
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<tr>
<td>9</td>
<td>A</td>
<td>52214</td>
<td>MR. SOYEB MEHBOOB PATEL</td>
<td>WIRC</td>
</tr>
<tr>
<td>10</td>
<td>A</td>
<td>14474</td>
<td>SH. MANOJ KUMAR SARAF</td>
<td>EIRC</td>
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<tr>
<td>11</td>
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<td>SH. KRISHNAN VENKATERAMAN</td>
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<tr>
<td>12</td>
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<td>SIRC</td>
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<tr>
<td>13</td>
<td>A</td>
<td>31304</td>
<td>MR. GIRISH RAMANAND TIWARI</td>
<td>WIRC</td>
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<td>MS. BHAWNA GUPTA</td>
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<td>MS. ANGEE RAJENDRAKUMAR SHAH</td>
<td>NIRC</td>
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<td>16</td>
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<td>30521</td>
<td>MR. AMIT SAXENA</td>
<td>NIRC</td>
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<td>17</td>
<td>A</td>
<td>16911</td>
<td>SH. RAVI LAHOTI</td>
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<tr>
<td>18</td>
<td>A</td>
<td>12289</td>
<td>SH. DIWAN CHAND ARYA</td>
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<td>19</td>
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<tr>
<td>20</td>
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<td>SH. AMIT MEHRA</td>
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<td>21</td>
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<td>MS. NIKHITA SOOD</td>
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<td>SH. K SATYANARAYANA</td>
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<tr>
<td>26</td>
<td>A</td>
<td>49459</td>
<td>MS. SURBHI GUPTA</td>
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## CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF NOVEMBER 2019

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<tr>
<th>SL. NO.</th>
<th>NAME</th>
<th>ACS/ FCS NO.</th>
<th>COP NO.</th>
<th>REGN.</th>
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<tr>
<td>1</td>
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<td>A-55731</td>
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<td>2</td>
<td>MR. PRASHANT</td>
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<td>3</td>
<td>MR. PARAS KOUSHIK</td>
<td>A-47105</td>
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<td>4</td>
<td>MR. RAKESH MOreshwar KANZODE</td>
<td>A-52375</td>
<td>21350</td>
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<tr>
<td>5</td>
<td>MS. VIDHYA KOLLARTHODI VISWAMBARAN</td>
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<td>6</td>
<td>SH. MULTAN SINGH KADIAN</td>
<td>F-2416</td>
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<tr>
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<td>MS. VINEETHA SASIDHARAN</td>
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<tr>
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<td>MR. AKASH SHARMA</td>
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<td>9</td>
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<td>MS. KOMAL SAURABH DESHMUKH SAMANT</td>
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<td>18</td>
<td>MR. NAVAL KISHOR VERMA</td>
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<tr>
<td>19</td>
<td>MS. RASHMI MEWARA</td>
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<tr>
<td>20</td>
<td>MS. NISHA VIJAY PATIL</td>
<td>A-37574</td>
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<tr>
<td>21</td>
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<td>MRS. BAGESHREE SARANG CHAUDHARI</td>
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<tr>
<td>25</td>
<td>MR. NIRAJ SANTOSH AGARWAL</td>
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<tr>
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<td>8208</td>
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<td>27</td>
<td>MR. PERIKILAKKATTUNIRAPPAL SUNDARESHWARAN BINEESH KUMAR</td>
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<td>28</td>
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<tr>
<td>29</td>
<td>SH. MADURAI SUNDARESH IYER SUBRAMANIAN</td>
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<td>31</td>
<td>MS. SURABHI MODI</td>
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<td>MS. NITU KUMARI</td>
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<td>33</td>
<td>MR. MD SADDAM HUSSAIN</td>
<td>A-54362</td>
<td>20348</td>
<td>SIRC</td>
</tr>
</tbody>
</table>
ATTENTION!

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link https://www.icsi.edu/member

ATTENTION!

KNOW YOUR MEMBER (KYM)

A User Manual for filling the Know Your Member (KYM) proforma online is available at the below link: https://www.icsi.in/student/Portals/0/Manual/KYM_Usermanual.pdf

ATTENTION!

ADVISORY FOR MEMBERS OF ICSI

Members would henceforth be required to declare their PAN (mandatory) and Aadhaar / UID Number (optional) at the time of making online payment of annual membership fees and while applying for Fellow membership of the Institute in Form-B.

Further, offline Membership fee / Certificate of Practice fee / Restoration fee is not being accepted in any office of the Institute from 1st June, 2019. Only online fees is being accepted from 1st June, 2019 onwards.

Members may also note that as per Regulation 3 of the Company Secretaries Regulations, 1982, they are required to communicate to the Institute any change in their Professional Address within one month of such change.

Team ICSI

ATTENTION

List of members whose names stand removed from the Register of Members owing to non-receipt of annual membership fee of FY 2019-20 till 30th June, 2019 is placed under Latest @ICSI, What's New at the link: https://www.icsi.edu/media/webmodules/Defautler_List.pdf

Members whose names stand restored w.e.f 1-7-2019 is placed under Latest @ICSI, What's New at the link: https://www.icsi.edu/media/webmodules/Members_whose_names_stand_restored_wef_01072019.pdf

ATTENTION!

MEMBERS HOLDING CERTIFICATE OF PRACTICE

The Institute has brought out a CD containing List of Members holding Certificate of Practice of the Institute as on 31st March 2019. The CDs are available at Noida office of the Institute and will be provided free of cost to the members holding Certificate of Practice on receipt of request. Request may please be sent to the Directorate of Membership at e-mail id: saurabh.bansal@icsi.edu

ATTENTION MEMBERS

The CD containing List of Members of ICSI as on 1st April, 2019 is available in the Institute on payment of Rs. 280/-* for members and Rs. 560/-* for non-members (*including GST@12%). Request along with payment may please be sent to Joint Secretary, Directorate of Membership, ICSI House, C-36, Sector-62, Noida-201309. For queries if any, please write to member@icsi.edu

For specific assistance raise a ticket at http://support.icsi.edu

ATTENTION!

MEMBERS WHO HAVE NOT PAID THE ANNUAL MEMBERSHIP FEE BY LAST DATE 30-06-2019

The last date for payment of annual membership fee was 30-06-2019. The members who have not paid their annual membership fee by the last date are required to restore their membership by paying the requisite additional entrance and restoration fees totalling Rs. 2655/- (inclusive of GST@18%) alongwith the applicable annual membership fee with GST@18% payable. Members are required to submit Form–BB for restoration of membership duly filled and signed. For specific assistance raise a ticket at http://support.icsi.edu
RESTORATION OF MEMBERSHIP

The members can restore their membership online only by making an application in Form BB (available on the website of the Institute www.icsi.edu) together with payment of the annual membership fee for the year 2019-2020 including GST@18% (Associates admitted on or after 1-4-2018 – Rs. 1770/-, Associates admitted till 31-03-2018 – Rs. 2950/- and Fellow – Rs. 3540/-) with the entrance fee of Rs. 2360/- and restoration fee of Rs. 295/-.

MODE OF REMITTANCE OF FEE

The fee can be remitted through ONLINE mode only using the payment gateway of the Institute’s website www.icsi.edu through members’ login portal. Payment made through any other mode will not be accepted.

Steps to make online payment for Restoration of Membership

• Login to portal www.icsi.edu
• Click Online services in the Menu and then click on Member
• Fill the User name: Enter your membership no. (eg. A1234)
• Password. Fill the password. In case you do not have a password, you may retrieve the password in case your email id and mobile number is correctly registered (you can check at https://www.icsi.edu/member/members-directory/) in the Institute’s record. You may use ICSI service portal at http://support.icsi.edu. One of the reasons of not getting the password on retrieval could be that you may have blacklisted ICSI email account: dnr@icsi.edu. To whitelist the same, you may send a request to member@icsi.edu that you have inadvertently blacklisted ICSI email account and desire to whitelist the same.
• After login, go to Members Option (from top menu) then click on Manage Account à Restoration of Membership for FY2019-20 only (on the left side under Place your Request)
• Click on proceed for payment.

For specific assistance raise a ticket at http://support.icsi.edu

ATTENTION!
DIGITAL I-CARD FOR MEMBERS

You may be aware that the National Digital Locker System, launched by Govt. of India, is a secure cloud based platform for storage, sharing and verification of documents and certificates. Targeted at the idea of paperless governance, DigiLocker is a platform for issuance and verification of documents & certificates in a digital way, thus eliminating the use of physical documents. Digital Locker also makes it easier to validate the authenticity of documents as they are issued directly by the registered issuers. Organizations that are registered with Digital Locker can push electronic copies of documents and certificates directly into citizens’ lockers.

Members of ICSI can now access their digital I-Card anytime, anywhere. This is convenient and time saving. ICSI has launched this initiative on 5th Oct 2019 in the presence of Honourable President of India by making available Identity Cards online for its members.

You may access the DigiLocker in the following manner:

• Go to https://digilocker.gov.in and click on Sign Up
• You may down load mobile app from mobile store (Android/IOS)

How to Login:

• Signing up for DigiLocker is easy - all you need is your mobile number.
• Your mobile number will be authenticated by sending an OTP (one-time password) followed by selecting a username & password. This will create your DigiLocker account.
• After your DigiLocker account is successfully created, you can voluntarily provide your Aadhaar number (issued by UIDAI) to avail additional services.

How to Access your digital Documents:

On successful validation of credential go to the “Pull Documents” in Issued document section, select the partner name “The Institute of Company Secretaries of India” & document type “Identity Card” and enter the document details asked for and fetch the same.
The process of Restoration of Certificate of Practice is now enabled for the members who could not pay the COP fees by the due date i.e. 30-09-2019. Please note that you can restore your Certificate of Practice during the same financial year i.e. on or before 31st March, 2020. Accordingly, after 31st March, 2020, the Certificate of Practice cannot be restored and a fresh certificate of practice has to be obtained.

The certificate of practice fee and restoration fee payable is as follows:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Associate (admitted till 31.03.2018)</th>
<th>Associate (admitted on or after 01.04.2018)</th>
<th>Fellow</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificate of Practice fee*</td>
<td>Rs. 2360</td>
<td>Rs. 1770</td>
<td>Rs. 2360</td>
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<tr>
<td>Restoration fee**</td>
<td>Rs. 295</td>
<td>Rs. 295</td>
<td>Rs. 295</td>
</tr>
</tbody>
</table>

* Fee inclusive of applicable GST@18%.

** Fee inclusive of applicable GST@18% and applicable as certificate of practice fee is not received by 30th September, 2019

**MODE OF REMITTANCE OF COP FEE: ONLINE ONLY**

Procedure for filling Online Form D:
1. Kindly go to Manage Account. Select Online Form D. Fill the form and keep a copy of the same for your records. Fill the form stepwise
2. First fill the Personal detail and click the save as draft
3. Second go to Area of practice, select the radio buttons of your area of interest and click the save as draft
4. In Verification details click the save as draft (this page is important) and please fill all the mandatory fields which is marked as blue
5. Last page is Declaration, fill the place option and click the save as draft option.
6. At the end please click the ‘Final save & Print’ button and keep a copy of form-D for your records*

Procedure for payment of Restoration of COP fee:
1. Go to Manage Account and select the first option “Requests relating to COP”
2. Select the button Restoration of COP
3. Select the button online form D (at the Top)
4. You will get a message “You have already submitted the declaration for the financial year”
5. Please write in the Comment box (mandatory box)
6. Remit the payment online*

*(Members admitted on or after 01.4.2018 shall pay Rs. 2065/- while members admitted before 01.04.2018 shall pay Rs. 2655/- (all amount inclusive of GST @ 18%).

For any support you may reach out to us at http://support.icsi.edu.

**OBITUARIES**

Chartered Secretary deeply regrets to record the sad demise of the following Member:
CS Solaiyappan Solaiyappan (22.03.1940 – 23.12.2019), a Fellow Member of the Institute from Salem and Past Chairman of ICSI Salem Chapter.
May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.
May the departed soul rest in peace.
**MANDATORY PEER REVIEW FOR CERTIFICATIONS AND AUDIT SERVICES**

The Council has issued Guidelines for mandatory Peer Review for Certification and Audit services as under:

<table>
<thead>
<tr>
<th>Services</th>
<th>Applicability</th>
<th>Effective date (w.e.f.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Secretarial Audit Report / Annual Secretarial Compliance Report under SEBI (LODR) Regulations, 2015</td>
<td>Top 100 companies as per market capitalization as on 31st March, 2020</td>
<td>April 1, 2020</td>
</tr>
<tr>
<td>• Certification of Annual Return in terms of Section 92 (2) of the Companies Act, 2013</td>
<td>Top 500 companies as per market capitalization as on 31st March, 2021</td>
<td>April 1, 2021</td>
</tr>
<tr>
<td>• Compliance Certificate under Schedule V, Clause E of SEBI (LODR) Regulations, 2015</td>
<td>all listed companies</td>
<td>April 1, 2022</td>
</tr>
<tr>
<td>• Half yearly Share Capital Reconciliation Certificate under Regulation 40 (9) of SEBI (LODR) Regulation, 2015</td>
<td>all companies</td>
<td>April 1, 2023</td>
</tr>
<tr>
<td>• Quarterly Share Capital Reconciliation Certificate under Regulation 76 of SEBI (Depository Participants) Regulation, 2018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Internal Audit of Operations of the Depository Participants</td>
<td></td>
<td>April 1, 2020</td>
</tr>
<tr>
<td>• Diligence Report for Banks in case of Consortium Lending / Multiple Banking Arrangements</td>
<td></td>
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</tr>
<tr>
<td>Sl. No.</td>
<td>Firm Name</td>
<td>City</td>
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</tr>
<tr>
<td>1</td>
<td>Ms. B. Chandra</td>
<td>Chennai</td>
</tr>
<tr>
<td>2</td>
<td>M/s. VKC &amp; Associates</td>
<td>Delhi</td>
</tr>
<tr>
<td>3</td>
<td>Mr. Krishna Sharan Mishra</td>
<td>Chennai</td>
</tr>
<tr>
<td>5</td>
<td>M/s. S. N. Ananthasubramanian &amp; Co.</td>
<td>Thane</td>
</tr>
<tr>
<td>6</td>
<td>Mr. Sudhir Vishnupant Hulyalkar</td>
<td>Bangalore</td>
</tr>
<tr>
<td>7</td>
<td>Mr. Ranjit Binod Kejriwal</td>
<td>Surat</td>
</tr>
<tr>
<td>8</td>
<td>M/s. DR Associates</td>
<td>New Delhi</td>
</tr>
<tr>
<td>11</td>
<td>Mr. Chikbalapuram Nagender Kranthi Kumar</td>
<td>Hyderabad</td>
</tr>
<tr>
<td>12</td>
<td>Dr. Ahalada Rao Vummenthal</td>
<td>Hyderabad</td>
</tr>
<tr>
<td>14</td>
<td>M/s. A. N. Ramani &amp; Co.</td>
<td>Thane-(w)</td>
</tr>
<tr>
<td>21</td>
<td>M/s. SVJS &amp; Associates</td>
<td>Bangalore</td>
</tr>
<tr>
<td>23</td>
<td>M/s. P. Nayak &amp; Associates</td>
<td>Bhubaneswar</td>
</tr>
<tr>
<td>25</td>
<td>M/s. KSM Associates</td>
<td>Chennai</td>
</tr>
<tr>
<td>26</td>
<td>Mr. Shailesh Amichand Kachalia</td>
<td>Mumbai</td>
</tr>
<tr>
<td>27</td>
<td>Mr. Shyamprasad D. Limaye</td>
<td>Pune</td>
</tr>
<tr>
<td>34</td>
<td>M/s. BNP &amp; Associates</td>
<td>Mumbai</td>
</tr>
<tr>
<td>38</td>
<td>M/s. HVS &amp; Associates</td>
<td>Chennai</td>
</tr>
<tr>
<td>39</td>
<td>M/s. JHR &amp; Associates</td>
<td>Thane (W)</td>
</tr>
<tr>
<td>41</td>
<td>M/s. M R M Associates</td>
<td>Pune</td>
</tr>
<tr>
<td>43</td>
<td>M/s. SVJS &amp; Associates</td>
<td>Chennai</td>
</tr>
<tr>
<td>44</td>
<td>M/s. GMJ &amp; Associates</td>
<td>Mumbai</td>
</tr>
<tr>
<td>45</td>
<td>M/s. SVJS &amp; Associates</td>
<td>Ernakulam</td>
</tr>
</tbody>
</table>
CAREER OPPORTUNITIES

The Institute of Company Secretaries of India (ICSI) is a statutory body set up by the Parliament under the Company Secretaries Act, 1980 to regulate and develop the profession of Company Secretaries in India. The ICSI invites applications for the following posts at its Headquarters at New Delhi/ Noida and at ICSI-Centre of Excellence for Research and Training (CERT), Hyderabad:-

<table>
<thead>
<tr>
<th>Name of the Post</th>
<th>Pay Level as per 7th CPC Pay Matrix (Rs.)</th>
<th>Gross Salary per Annum (Rs. in Lakh)</th>
<th>Max. Age (as on 01.01.2020)</th>
<th>No. of Posts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Director (Infrastructure &amp; Buildings Maintenance)</td>
<td>Level 12 (78800-209200)</td>
<td>14.3</td>
<td>50 years</td>
<td>01</td>
</tr>
<tr>
<td>Executive (Academics)</td>
<td>Level 8 (47600-151100)</td>
<td>08.5</td>
<td>35 years</td>
<td>06</td>
</tr>
<tr>
<td>Executive (Law)</td>
<td>Level 8 (47600-151100)</td>
<td>08.5</td>
<td>35 years</td>
<td>01</td>
</tr>
<tr>
<td>Executive (Finance and Accounts)</td>
<td>Level 8 (47600-151100)</td>
<td>08.5</td>
<td>35 years</td>
<td>01</td>
</tr>
<tr>
<td>Executive (Internal Audit)</td>
<td>Level 8 (47600-151100)</td>
<td>08.5</td>
<td>35 years</td>
<td>01</td>
</tr>
<tr>
<td>Executive (Corporate Communication)</td>
<td>Level 8 (47600-151100)</td>
<td>08.5</td>
<td>35 years</td>
<td>01</td>
</tr>
<tr>
<td>Executive (Infrastructure)</td>
<td>Level 8 (47600-151100)</td>
<td>08.5</td>
<td>35 years</td>
<td>01</td>
</tr>
<tr>
<td>Executive (Exams)</td>
<td>Level 8 (47600-151100)</td>
<td>08.5</td>
<td>35 years</td>
<td>01</td>
</tr>
<tr>
<td>Executive (Admin)</td>
<td>Level 8 (47600-151100)</td>
<td>08.5</td>
<td>35 years</td>
<td>01</td>
</tr>
</tbody>
</table>

For further details viz. qualification, experience, procedure for submission of application etc., please visit website [www.icsi.edu/career](http://www.icsi.edu/career) on and from 14.01.2020. Interested candidates may apply only through electronic mode (Online). Last date for submission of application (Online) is 27.01.2020. Reservation policy will be applicable as adopted by the “ICSI” in its Service Rules. The “ICSI” reserves the right to increase/decrease or even not to fill up any posts as per its requirement.
MISCELLANEOUS CORNER

- ETHICS & SUSTAINABILITY CORNER
- GST CORNER
- BOOK REVIEW “RELATED PARTY TRANSACTIONS UNDER THE COMPANIES ACT, 2013”
Y
ears come and go and life moves on, sometimes with the same pace & ways and
sometimes with some little advancements. Going down the memory lane, we eventually
realize that when we were children, every year used to mean a new class, new books,
new learnings, new dresses & new growth. But with the years passing by, the pace of newness
in life has slowly decreased. With this we find a gradual dissipation in the enthusiasm and joy
that we had during our childhood days.

We have celebrated many ‘New Years’ till date. On the new year eve, we wish everyone a
Happy New Year, but have we actually and really felt anything new about the coming year? Are
we actually excited and happy about the coming year? Everyone is preparing to bid adieu to
2019 and welcome 2020. Many would have already planned for some New Year Resolutions
as well; but to ultimately break them after a month. The same system… same promises with the self and others… but still
the same ways of living with little differences, is the reality!

But why does this happen that despite of striving for everything to be New and Happy, we end up with everything being
nearly the same. This is because we cannot reach a different destination by walking the same path. Or putting it another
way, we cannot come up with a new recipe using the same ingredients and the same method. We cannot eat the same
food daily, we need newness in what we eat, what we wear, what we do, where we go etc, similarly we should strive for
newness in other subtle aspects of our life as well. Without that we tend to lose enthusiasm and the charm of life, which not
only effects our mental health but has a significant impact on
our physical and social health also.

1. CREATING SPACE FOR NEWNESS

We all must have experienced that, most of the time when
we stand in front of our wardrobe, we find it almost full, but
still wondering what to wear, because it is filled with stuff that
we rarely wear. These are the kind of dresses which we had
bought thinking that they would be useful, but now do not like
to put them on and at the same time are reluctant to discard.
Ultimately even when we buy new ones, we are short of space
to keep them. This stands true for our life as well.

The first thing to do is to realize that the old is not doing any good to me. Till the time we keep telling ourselves, that
little complaint is natural, little anger is necessary, we will have them in our mental wardrobes without any use, just
occupying our internal space. After realizing, we need to replace them with the new.

Let us see what all newness can we bring about in our lives this New Year!

2. NEWNESS IN THOUGHTS

Old thoughts cannot drive newness in Life. The characteristic of anything new
is that it is beautiful, appreciated by everyone, is at its pinnacle of quality, and
ultimately, gives us happiness when we use it. This can work as a litmus test
even for thoughts. If a thought is not beautiful, not appreciated, not a quality
thought and does not give us happiness, it is old and needs replacement. So
we need to check our thinking patterns. How much do we keep churning the old
thoughts? Not surprisingly, the answer for most of us would be - almost the entire
day!

In this new year let us churn, in our minds, what is beautiful, appreciated, highest
in quality and gives happiness. The thoughts of peace, love, care, generosity,
harmony etc. are such types of thoughts. They not only soothe our inner self, but
also create a positive environment wherever we go. All of us have an aura around
us which is made up of energy. The energy may be positive or negative depending upon the quality of our thoughts. If we keep ourselves trapped in negative thoughts, our aura would remain negative which will have an effect on everything outside us.

Since thoughts are the seeds of action, newness in thoughts would trigger a newness in everything we do and that newness would be evident and visible. This can happen only when we pay attention to our inner world, to make it full of only the positive, irrespective of what others do.

3. NEWNESS IN THE OUTLOOK

The world is the same but seems different to different individuals, due to difference in outlook. A poet can find beauty in a barren land and a critic can criticize a garden. All these years, have we found ourselves criticizing the world, but at the same time safeguarding ourselves from the criticism, as if we are not a part of this world? We have to ask ourselves that even while criticizing the wrong, why are our eyes interested to see it. Any wrong act if discussed and viewed again and again, increases the negativity in the surroundings and in the world. Any discussion on the wrong cannot make it right. Amidst all the unfair things happening in this world, my duty is just to take care of my inner light of hope and support which, if unshaken, can enlighten the path of others and help reducing the darkness of negativity.

This new year, let us work on a small shift. We might not find it feasible to change the entire world, but we all can definitely change our own small worlds by changing our outlook. It is rightly said “Nazar badlo, toh nazarein badal jaate hain”. In the coming year if we are determined to see only the positive, we would develop a special art of being able to see the good in anything bad. With this we would become solution oriented instead of being problem aligned. This would not only help in developing a positive attitude but would also provide inner strength, to be able to overcome any situation. The power to transform the world lies in self-transformation.

4. NEWNESS IN RELATIONS

Every year we live with some old relations and some newly formed relations. There would hardly be any year in which we would not have made any new relations, be it friends, colleagues or any others. But does our quality of relations really improve year by year or is it sometimes the other way around? We often find our relations strained with misunderstandings, over-expectations and complaints. When an existing relation is full of these factors, we tend to search for and make new relations in search of love, company, understanding and trust. We do succeed in making few new relations, but over a period of time, start experiencing the same factors in this new relation too, which ultimately strains that relation also. What is needed, is not increasing the number of relations, but their quality. There is a need to break the old methods of maintaining relations and redefine the basis of human-bonding. We might have heard people saying “If you care for me, please do this… or get this for me”. With such a thinking, relations become dependent on the wishes, they become conditional! In some other instances, we hear people saying “He is never going to change”. This is a kind of hopelessness that we experience in relations, which pulls down our enthusiasm. Slowly without even realizing, we start moving away from the person. The key to this is the knowledge that everyone has their own thinking patterns and no two people in this world are alike. It is absolutely fine for someone, not to act and do things exactly as I want them to do. This knowledge generates acceptance within us. The person might still be the same, but our acceptance increases in such a way that the quality of relations improves.

We need to discard the old definitions of relations which say that a relation means “give and take” and replace it with the definition of “giving unconditionally”, only then we would be able to enjoy the sweetness of every relation and experience the newness even in old relations. Treating the elderly as well as the younger ones with respect is one aspect of bringing newness to relations. Simply saying the magical words “Thank You”, “Sorry”, “I understand you” can do wonders. When we start practicing these consciously, after sometime they would become a part of our personality. Then, we would not have to search for love, trust and support, instead we would be radiating the same wherever we go and whoever we meet. Like a rose need not invite people to adore it, its fragrance is enough to attract everyone towards it and even change someone’s bad mood to a refreshed one, similarly, a person who has a lot of love, good wishes and support to give to others, automatically attracts wonderful and long-lasting real relations.

Above all, on a bigger magnitude, if we talk of the society, then by considering everyone as our spiritual brother & sister we can experience a shift in our attitude towards every individual. If we understand the deepest secret that all of us as souls belong to one Father (Supreme Soul) and one universal family, then this would bring about a change in the way we treat
even strangers. This feeling of “Vaasudheva Kutumbkam” will instill within us kindness, humility and generosity. With this, there would come a new angle to everyone’s social behavior too.

5. NEWNESS IN ATTITUDE AT WORKPLACE

How many of us have been working in an organization, disliking our own jobs and criticizing the nature or quality of work? We compare our work, salaries, opportunities and even bosses, with that of others. Result is – Grass is always greener the other side. This generates a feeling of negative competition and jealousy. With these feelings inside, even a small unintentional act may seem to be a huge discrimination and lead to disappointments. A disappointed person would always land up in stress. He would try to prove, try to insist his ideas on others and either behave superior or inferior in situations. This always leaves us dissatisfied with what we are doing. That is the time when we stop enjoying work and start feeling it to be sort of a burden.

This not only affects our professional growth, but also has an impact on our health. The lethargy and jealousy generated inside us burns more of us than others. Various psycho-somatic diseases like hypertension, diabetes etc. make our bodies their permanent residence.

To remain content with our work and at the same time enthusiastic to improve the quality of our work, we need to understand the principle of karma, which says “As you sow, shall you reap”. I will, by all means get the fruit of my hard work which no one else can snatch from me. Similarly, if someone is getting rewarded, definitely it is because of some or the other effort of his which I might be complete unaware of.

If this remembrance remains within us at our workplace too, then there cannot exist any feeling of jealousy or negativity. Instead we would be able to contribute towards building team spirit. This is the newness we need to bring at our workplace, this new year.

6. THE BASIS OF NEWNESS

We have earlier seen that to make a new recipe we need to modify the ingredients and method. Similarly, to bring about so many newness in our lives, we require spiritual direction and strength. Both of these come through meditation, which is a journey to explore the inner treasures. Like in the ocean, we find fishes on the surface but jewels deep inside, similarly when we sit in silence, considering ourselves in our true identity (soul conscious) that is the time we experience our original nature and original virtues. Meditation means connecting to the Higher Energy (we may call him God, or Supreme Soul). In turn we get filled with the original virtues and experience freshness and newness anytime, anywhere & throughout the life.

Wishing Everyone a Very Happy New Year 2020 in the real sense!
Decisions taken in 38th GST Council meeting held on 18th December, 2019

Grievance Redressal Committees (GRC) will be constituted at Zonal/State level with both CGST and SGST officers and including representatives of trade and industry and other GST stakeholders (GST practitioners and GSTN etc.). These committees will address grievances of specific/general nature of taxpayers at the Zonal/State level.

2. Due date for annual return in FORM GSTR-9 and reconciliation statement in FORM GSTR-9C for FY 2017-18 to be extended to 31.01.2020.

3. Following measures would be taken to improve filing of FORM GSTR-1:

   (i) Waiver of late fee to be given to all taxpayers in respect of all pending FORM GSTR-1 from July 2017 to November 2019, if the same are filed by 10.01.2020.

   (ii) E-way Bill for taxpayers who have not filed their FORM GSTR-1 for two tax periods shall be blocked.

4. Input tax credit to the recipient in respect of invoices or debit notes that are not reflected in his FORM GSTR-2A shall be restricted to 10 per cent of the eligible credit available in respect of invoices or debit notes reflected in his FORM GSTR-2A.

5. To check the menace of fake invoices, suitable action to be taken for blocking of fraudulently availed input tax credit in certain situations.

6. A Standard Operating Procedure for tax officers would be issued in respect of action to be taken in cases of non-filing of FORM GSTR-3B returns.

7. Due date of filing GST returns for the month of November, 2019 to be extended in respect of a few North Eastern States.

8. The Council also approved various law amendments which will be introduced in Budget 2020.

9. To exempt upfront amount payable for long term lease of industrial/financial infrastructure plots by an entity having 20% or more ownership of Central or State Government. Presently, the exemption is available to an entity having 50% or more ownership of Central or State Government. This change shall become effective from 31st December, 2019.

10. To levy a single rate of GST @ 28% on both State run and State authorized lottery. This change shall become effective from 1st March, 2020.

11. The Council also considered the rate of GST rate on Woven and Non-Woven Bags and sacks of polyethylene or polypropylene strips or the like, whether or not laminated, of a kind used for packing of goods (HS code 3923/6305) in view of the requests received post the changes recommended on such goods in last meeting and recommended to raise the GST to a uniform rate of 18% (from 12%) on all such bags falling under HS 3923/6305 including Flexible Intermediate Bulk Containers (FIBC). This change shall become effective from 1st January, 2020.

Refer link for complete details:

Notification No. 63/2019 – Central Tax, dated 12th December, 2019

In exercise of the powers conferred by second proviso to subsection (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.28/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.454(E), dated the 28th June, 2019, namely:–

In the said notification, for the proviso to the first paragraph, the following proviso shall be substituted, namely:–

“Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in FORM GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for each of the months from July, 2019 to September, 2019 till 20th December, 2019.”

2. This notification shall be deemed to come into force with effect from the 30th Day of November, 2019.

Notification No. 64/2019 – Central Tax, dated 12th December, 2019

In exercise of the powers conferred by second proviso to subsection (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.46/2019 – Central Tax, dated the 9th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.769(E), dated the 09th October, 2019, namely:–

In the said notification, for the proviso to the first paragraph, the following proviso shall be substituted, namely:–

“Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, the time
This notification shall be deemed to come into force with effect from the 30th Day of November, 2019.

Notification No. 65/2019 – Central Tax, dated 12th December, 2019

In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, for the third proviso, the following proviso shall be substituted, namely:–

“Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in FORM GST-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2019 to October, 2019, whose principal place of business is in the State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 20th December, 2019.”

This notification shall be deemed to come into force with effect from the 30th Day of November, 2019.

Notification No. 66/2019 – Central Tax, dated 12th December, 2019

In exercise of the powers conferred by sub-section (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 09th October, 2019, namely:–

In the said notification, for the proviso to the first paragraph, the following proviso shall be substituted, namely:–

“Provided that the return in FORM GSTR-3B of the said rules for the month of October, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 20th December, 2019.”

This notification shall be deemed to come into force with effect from the 30th Day of November, 2019.

Notification No. 68/2019 – Central Tax, dated 13th December, 2019

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Eighth Amendment) Rules, 2019.

2. They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 48, after sub-rule (3), the following sub-rules shall be inserted, namely:-

“(4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

(5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

(6) The provisions of sub-rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub-rule (4).”
**Notification No. 69/2019 – Central Tax, dated 13th December, 2019**

In exercise of the powers conferred by section 146 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule(4) of rule 48 of the Central Goods and Services Tax Rules, 2017 and section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies registered person, whose aggregate turnover in a financial year exceeds one hundred crore rupees, as the date from which the provisions of the said rule, shall come into force.

**Notification No. 72/2019 – Central Tax, dated 13th December, 2019**

In exercise of the powers conferred by the sixth proviso to rule 46 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), the Government, on the recommendations of the Council, hereby notifies that an invoice issued by a registered person, whose aggregate turnover in a financial year exceeds five hundred crore rupees, to an unregistered person (hereinafter referred to as B2C invoice), shall have Quick Response (QR) code:

Provided that where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

2. This notification shall come into force from the 1st day of April, 2020.

**Notification No. 73/2019 – Central Tax, dated 23rd December, 2019**

In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the said notification, after the proviso, the following proviso shall be inserted, namely:–

“Provided further that the return in FORM GSTR-3B of the said rules for the month of November, 2019 shall be furnished electronically through the common portal, on or before the 23rd December, 2019.”

2. This notification shall be deemed to have come into force with effect from the 20th Day of December, 2019.

**Notification No. 74/2019 – Central Tax, dated 26th December, 2019**

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the
Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 4/2018– Central Tax, dated the 23rd January, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide number G.S.R. 53(E), dated the 23rd January, 2018, namely:–

In the said notification, after the second proviso, the following proviso shall be inserted, namely:–

“Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who failed to furnish the details of outward supplies in FORM GSTR-1 for the months/quarters from July, 2017 to November, 2019 by the due date but furnishes the said details in FORM GSTR-1 between the period from 19th December, 2019 to 10th January, 2020.”.

2. This notification shall be deemed to have come into force with effect from the 19th day of December, 2019.

Notification No. 75/2019 – Central Tax, dated 26th December, 2019

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:–

1. (1) These rules may be called the Central Goods and Services Tax (Ninth Amendment) Rules, 2019.

(2) Save as otherwise provided, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), with effect from the 1st January, 2020, in rule 36, in sub-rule (4), for the figures and words “20 per cent.”, the figures and words “10 per cent.” shall be substituted.

3. In the said rules, after rule 86, the following rule shall be inserted, namely:–

“86A. Conditions of use of amount available in electronic credit ledger.–

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as

a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36–

i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained;

or

ii. without receipt of goods or services or both; or

b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.”.

4. In the said rules, with effect from the 11th January, 2020, in rule 138E, after clause (b), the following clause shall be inserted, namely:–

“(c) being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be.”.

Notification No. 76/2019 – Central Tax, dated 26th December, 2019

In exercise of the powers conferred by second proviso to subsection (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.46/2019 – Central Tax, dated the 9th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 769(E), dated the 09th October, 2019, namely:–

In the said notification, in the first paragraph, after the proviso, the following proviso shall be inserted, namely:–

“Provided that for registered persons whose principal place of business is in the State of Assam, Manipur or Tripura, the time limit for furnishing the details of outward supplies in FORM GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the month of November, 2019 till 31st December, 2019.”

2. This notification shall be deemed to come into force with effect from the 11th Day of December, 2019.
**Notification No. 77/2019 – Central Tax, dated 26th December, 2019**

In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 09th October, 2019, namely:–

In the first paragraph of the said notification, after the second proviso, the following proviso shall be inserted, namely:–

“Provided also that the return in FORM GSTR-3B of the said rules for the month of November, 2019 for registered persons whose principal place of business is in the State of Assam, Manipur, Meghalaya or Tripura, shall be furnished electronically through the common portal, on or before the 31st December, 2019.”

2. This notification shall be deemed to have come into force with effect from the 23rd day of December, 2019.

**Notification No. 78/2019 – Central Tax, dated 26th December, 2019**

In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, after the third proviso, the following proviso shall be inserted, namely:–

“Provided also that the return in FORM GSTR-7 of the said Act, the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, the in the first paragraph, after the third proviso, the following proviso shall be inserted, namely:–

“Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the month of November, 2019, whose principal place of business is in the State of Assam, Manipur or Tripura, shall be furnished electronically through the common portal, on or before the 25th December, 2019.”

2. This notification shall be deemed to have come into force with effect from the 10th day of December, 2019.

**Notification no. 26/2019- Integrated Tax (Rate) dated 30th December, 2019**

In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 666 (E), dated the 28th June, 2017, namely:–

In the said notification-

(a) in Schedule II - 6%, serial numbers 80AA and 171A and the entries relating thereto shall be omitted;

(b) in Schedule III - 9%, after serial number 163A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

| 163B | 3923 or 6305 | Woven and non-woven bags and sacks of polyethylene or polypropylene strips or the like, whether or not laminated, of a kind used for packing of goods; |
| 163C | 6305 32 00 | Flexible intermediate bulk containers”. |

2. This notification shall come into force on the 1st day of January, 2020.

**Notification no. 27/2019- Central Tax (Rate) dated 30th December, 2019**

In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28th June, 2017, namely:–

In the said notification-

(a) in Schedule II - 6%, serial numbers 80AA and 171A and the entries relating thereto shall be omitted;

(b) in Schedule III - 9%, after serial number 163A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

| 163B | 3923 or 6305 | Woven and non-woven bags and sacks of polyethylene or polypropylene strips or the like, whether or not laminated, of a kind used for packing of goods; |
| 163C | 6305 32 00 | Flexible intermediate bulk containers”. |

2. This notification shall come into force on the 1st day of January, 2020.
Notification no. 27/2019- Union Territory Tax (Rate) dated 30th December, 2019

In exercise of the powers conferred by sub-section (1) of section 7 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Union Territory Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 710(E), dated the 28th June, 2017, namely:-

In the said notification-

(a) in Schedule II - 6%, serial numbers 80AA and 171A and the entries relating thereto shall be omitted;

(b) in Schedule III - 9%, after serial number 163A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

<table>
<thead>
<tr>
<th>“163B”</th>
<th>3923 or 6305</th>
<th>Woven and non-woven bags and sacks of polyethylene or polypropylene strips or the like, whether or not laminated, of a kind used for packing of goods;</th>
</tr>
</thead>
<tbody>
<tr>
<td>163C</td>
<td>6305 32 00</td>
<td>Flexible intermediate bulk containers.</td>
</tr>
</tbody>
</table>

2. This notification shall come into force on the 1st day of January, 2020.

Notification no. 28/2019- Central Tax (Rate) dated 31st December, 2019

In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.13/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 692(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, for serial number 15 and the entries relating thereto, the following shall be substituted, namely: -

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“15” Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.</td>
<td>Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 percent to the service recipient.</td>
<td>Any body corporate located in the taxable territory.</td>
<td></td>
</tr>
</tbody>
</table>

“Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:

Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:

Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:

Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same."

2. This notification shall come into force with effect from the 1st day of January, 2020.

Notification no. 29/2019- Central Tax (Rate) dated 31st December, 2019

In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.13/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 692(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, for serial number 15 and the entries relating thereto, the following shall be substituted, namely: -

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<thead>
<tr>
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<tbody>
<tr>
<td>“15” Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.</td>
<td>Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 percent to the service recipient.</td>
<td>Any body corporate located in the taxable territory.</td>
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</tr>
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</table>

“Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:

Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:

Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:

Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same."

2. This notification shall come into force with effect from the 1st day of January, 2020.
Notification no. 27/2019- Integrated Tax (Rate) dated 31st December, 2019

In exercise of the powers conferred by sub-section (3) and sub-section (4) of section 5, sub-section (1) of section 6 and clause (xxv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.10/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 684 (E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, against serial number 43, -

(a) in column (3), for the figure “50”, at both the places where they occur, the figure “20” shall be substituted;
(b) for the entry in column (5), the following entries shall be substituted, namely, -

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<tbody>
<tr>
<td>“17 Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.</td>
<td>Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging integrated tax at the rate of 12 percent to the service recipient.</td>
<td>Any body corporate located in the taxable territory.”.</td>
<td></td>
</tr>
</tbody>
</table>

Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:

Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:

Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of integrated tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:

Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the integrated tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.”.

2. This notification shall come into force with effect from the 1st day of January, 2020.

Notification no. 28/2019- Union Territory Tax (Rate) dated 31st December, 2019

In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.10/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 685(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, for serial number 17 and the entries relating thereto, the following shall be substituted, namely: -

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<td>“17 Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.</td>
<td>Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging integrated tax at the rate of 12 percent to the service recipient.</td>
<td>Any body corporate located in the taxable territory.”.</td>
<td></td>
</tr>
</tbody>
</table>

Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:

Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:

Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of integrated tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:

Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the integrated tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.”.

In the said notification, in the Table, against serial number 41, -

(a) in column (3), for the figure “50”, at both the places where they occur, the figure “20” shall be substituted;
(b) for the entry in column (5), the following entries shall be substituted, namely, -
Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:

Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:

Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of union territory tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:

Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the union territory tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same:—.

2. This notification shall come into force with effect from the 1st day of January, 2020.

**Notification no. 29/2019- Union Territory Tax (Rate) dated 31st December, 2019**

In exercise of the powers conferred by sub-section (3) of section 7 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.13/2017- Union Territory Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 704(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, for serial number 15 and the entries relating thereto, the following shall be substituted, namely:—

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<td>“15 Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.</td>
<td>Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging union territory tax at the rate of 6 percent to the service recipient.</td>
<td>Any body corporate located in the taxable territory.”.</td>
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</table>

**Circular No. 127/46/2019 – GST dated 4th December, 2019**

Certain clarifications were given in relation to various doubts related to supply of Information Technology enabled Services (ITeS services) under GST. Numerous representations were received expressing apprehensions on the implications of the said Circular.

In view of such apprehensions as highlighted by various representations and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, has vide Circular No. 127/46/2019 – GST dated 4th December, 2019 withdrawn, ab-initio, Circular No. 107/26/2019.

**Circular No. 128/47/2019 – GST dated 23rd December, 2019**

**Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons — reg.**

With a view to leverage technology for greater accountability and transparency in communications with the trade/ taxpayers/ other concerned persons, the Board had issued Circular No. 122/41/2019 – GST on 05th November, 2019 to implement the decision for Generation and Quoting of Document Identification Number (DIN) on specified documents.

1. Vide the aforementioned Circular, the Board had specified that the DIN monitoring system would be used for incorporating a DIN on search authorisations, summons, arrest memos, inspection notices to begin with. Further, a facility was provided to enable the recipient of these documents/communications to easily verify their genuineness by confirming the DIN on-line at cbic.gov.in. In continuation of the same, the Board has now directed that electronic generation and quoting of Document Identification Number (DIN) shall be done in respect of all communications (including e-mails) sent to tax payers and other concerned persons by any office of the Central Board of Indirect Taxes and Customs (CBIC) across the country. Instructions contained in this Para would come into effect from 24.12.2019.

2. Accordingly, the online digital platform/facility already available on the DDM’s online portal “cbicddm.gov.in” for electronic generation of DIN has been suitably enhanced to enable electronic generation of DIN in respect of all forms of communication (including e-mails) sent to tax payers and other concerned persons. On the one hand electronic generation of DIN’s would create a digital directory for maintaining a proper audit trail of communications sent to tax payers and other concerned persons and on the other hand, it would provide the recipient of such communication a digital facility to ascertain the genuineness of the communication.

3. In this context, the Board also felt it necessary to harmonize and standardize the formats of search
authorisations, summons, arrest memos, inspection notices etc. issued by the GST/Central Excise/Service Tax formations across the country. Accordingly, the Board had constituted a committee of officers to examine and suggest modifications in the formats of these documents. The committee has submitted its recommendations. The standardized documents have since been uploaded by DDM and are ready to be used. When downloaded and printed, these standardized documents would bear a pre-populated DIN thereon. Accordingly, the Board has directed that all field formations shall use the standardized authorisation for search, summons, inspection notice, arrest memo and provisional release order (the formats are attached). These formats shall be used by all the formations w.e.f. 01.01.2020.

4. The Board has directed that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in paragraph 3 of Circular 122/41/2019-GST dated 05.11.2019, shall be treated as invalid and shall be deemed to have never been issued.

Circular No. 129/48/2019 – GST dated 24th December, 2019

Standard Operating Procedure to be followed in case of non-filers of returns– reg

Doubts have been raised across the field formations in respect of the appropriate procedure to be followed in case of non-furnishing of return under section 39 or section 44 or section 45 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”), It has further been brought to the notice that divergent practices are being followed in case of non-furnishing of the said returns.

2. The matter has been examined. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarifications and guidelines.

3. Section 46 of the CGST Act read with rule 68 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the “CGST Rules”) requires issuance of a notice in FORM GSTR-3A to a registered person who fails to furnish return under section 39 or section 44 or section 45 (hereinafter referred to as the “defaulter”) requiring him to furnish such return within fifteen days. Further section 62 provides for assessment of non-filers of return of registered persons who fails to furnish return under section 39 or section 45 even after service of notice under section 46. FORM GSTR-3A provides as under:

“Notice to return defaulter u/s 46 for not filing return

Tax Period - Type of Return –

Being a registered taxpayer, you are required to furnish return for the supplies made or received and to discharge resultant tax liability for the aforesaid tax period by due date. It has been noticed that you have not filed the said return till date.

1. You are, therefore, requested to furnish the said return within 15 days failing which the tax liability may be assessed u/s 62 of the Act, based on the relevant material available with this office. Please note that in addition to tax so assessed, you will also be liable to pay interest and penalty as per provisions of the Act.

2. Please note that no further communication will be issued for assessing the liability.

3. The notice shall be deemed to have been withdrawn in case the return referred above, is filed by you before issue of the assessment order.”

As such, no separate notice is required to be issued for best judgment assessment under section 62 and in case of failure to file return within 15 days of issuance of FORM GSTR-3A, the best judgment assessment in FORM ASMT-13 can be issued without any further communication.

4. Following guidelines are hereby prescribed to ensure uniformity in the implementation of the provisions of law across the field formations:

(i) Preferably, a system generated message would be sent to all the registered persons 3 days before the due date to nudge them about filing of the return for the tax period by the due date.

(ii) Once the due date for furnishing the return under section 39 is over, a system generated mail / message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc.

(iii) Five days after the due date of furnishing the return, a notice in FORM GSTR-3A (under section 46 of the CGST Act read with rule 68 of the CGST Rules) shall be issued electronically to such registered person who fails to furnish return under section 39, requiring him to furnish such return within fifteen days;

(iv) In case the said return is still not filed by the defaulter within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said person under section 62 of the CGST Act, to the best of his judgement taking into account all the relevant material which is available or which he has gathered and would issue order under rule 100 of the CGST Rules in FORM GST ASMT-13. The proper officer would then be required to upload the summary thereof in FORM GST DRC07;
(v) For the purpose of assessment of tax liability under section 62 of the CGST Act, the proper officer may take into account the details of outward supplies available in the statement furnished under section 37 (FORM GSTR-1), details of supplies auto populated in FORM GSTR-2A, information available from e-way bills, or any other information available from any other source, including from inspection under section 71;

(vi) In case the defaulter furnishes a valid return within thirty days of the service of assessment order in FORM GST ASMT-13, the said assessment order shall be deemed to have been withdrawn in terms of provision of sub-section (2) of section 62 of the CGST Act. However, if the said return remains unfurnished within the statutory period of 30 days from issuance of order in FORM GST ASMT-13, then proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act;

5. Above general guidelines may be followed by the proper officer in case of non-furnishing of return. In deserving cases, based on the facts of the case, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of FORM GST ASMT-13.

6. Further, the proper officer would initiate action under sub-section (2) of section 29 of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29.

Circular no. 130/49/2019- GST dated 31st December, 2019
Clarification regarding Reverse Charge Mechanism (RCM) on renting of motor vehicles.

Suppliers of service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient have an option to pay GST either at 5% with limited ITC (of input services in the same line of business) or 12% with full ITC.

2. The GST Council in its 37th meeting dated 20.09.2019 examined the request to place the supply of renting of motor vehicles under RCM and recommended that the said supply when provided by suppliers paying GST @ 5% to corporate entities may be placed under RCM. RCM was not recommended for suppliers paying GST @12% with full ITC, so that they may have the option to continue to avail ITC. RCM otherwise would have blocked the ITC chain for them.

Accordingly, the following entry was inserted in the RCM notification with effect from 1.10.19:

<table>
<thead>
<tr>
<th>SI No.</th>
<th>Category of Supply of Services</th>
<th>Supplier of service</th>
<th>Recipient of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Services provided by way of renting of a motor vehicle provided to a body corporate.</td>
<td>Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business.</td>
<td>Any body corporate located in the taxable territory.</td>
</tr>
</tbody>
</table>

3. Post issuance of the notification, references have been received stating that when a service is covered by RCM, GST would be paid by the service recipient and not by the supplier.

Therefore, the wording of the notification that “any person other than a body corporate, paying central tax at the rate of 2.5%” is not free from doubt and needs amendment/clarification from the perspective of drafting.

4. The matter has been examined. When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC. The only interpretation of the notification entry in question which is not absurd would be that –

(i) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and,

(ii) where the supplier of the service doesn’t charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

5. Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non body corporate clients, to bring in greater clarity, serial No. 15 of the notification No. 13/2017-CT (R) dated 28.8.17 has been amended vide notification No. 29/2019-CT (R) dated 31.12.19 to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:

(a) is other than a body-corporate;
(b) does not issue an invoice charging GST @12% from the service recipient; and
(c) supplies the service to a body corporate.

6. It may be noted that the present amendment of the
notification is merely clarificatory in nature and therefore for the period 01.10.2019 to 31.12.2019 also, clarification given at para 5 above shall apply, as any other interpretation shall render the RCM notification for the said service unworkable for that period.

Order No. 09/2019-Central Tax dated 3rd December, 2019

WHEREAS, sub-section (1) of section 112 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this Order referred to as the said Act) provides that any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal;

AND WHEREAS, sub-section (3) of section 112 of the said Act provides that the Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order;

AND WHEREAS, section 109 of the said Act provides for the constitution of the Goods and Services Tax Appellate Tribunal and Benches thereof;

AND WHEREAS, for the purpose of filing the appeal or application as referred to in subsection (1) or sub-section (3) of section 112 of the said Act, as the case may be, the Appellate Tribunal and its Benches are yet to be constituted in many States and Union territories under section 109 of the said Act as a result whereof, the said appeal or application could not be filed within the time limit specified in the said sub-sections, and because of that, certain difficulties have arisen in giving effect to the provisions of the said section;

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely:–

1. Short title.—This Order may be called the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019.

2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating,-

(a) the “three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal” in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:-

(i) date of communication of order; or
(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;

(b) the “six months from the date on which the said order has been passed” in sub-section (3) of section 112, the start of the six months period shall be considered to be the later of the following dates:-

(i) date of communication of order; or
(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters Office.

Order No. 10/2019 – Central Tax dated 26th December, 2019

WHEREAS, sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this Order referred to as the said Act) provides that every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year;

AND WHEREAS, for the purpose of furnishing of the annual return electronically for every financial year as referred to in sub-section (1) of section 44 of the said Act, certain technical problems are being faced by the taxpayers as a result whereof, the said annual return for the period from the 1st July, 2017 to the 31st March, 2018 could not be furnished by the registered persons, as referred to in the said sub-section (1) and because of that, certain difficulties have arisen in giving effect to the provisions of the said section.

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely:–

1. Short title.—This Order may be called the Central Goods and Services Tax (Tenth Removal of Difficulties) Order, 2019.

The 2nd edition of the book titled “Related Party Transactions under the Companies Act, 2013” is a comprehensive book that covers the entire aspects of Related Party Transactions not only under the Companies Act, 2013, but also the various requirements under the SEBI (LODR) Regulations, 2015, CARO, 2016 as well as relevant accounting standards in detail.

The author in this edition has divided the entire work into 17 chapters to cover comprehensively all the aspects pertaining to the topic. Since the book is about related party transactions, the author has rightly started his work with a detailed analysis of the duties of directors not only under the Companies Act, 2013 in India but has also touched upon similar provisions under other jurisdictions such as UK, USA, Australia and South Africa, quoting relevant case laws in those jurisdictions. Chapter 2 covers specified related party transactions requiring consent, approvals, disclosures in the board report, consequences of causing losses to the company, penal consequences for contravention of Section 188, prior period contracts, etc. Chapter 3 though covers certain aspects of appointment of related parties as agent and to office or place of profit under Section 188, has included a separate chapter since the office or place of profit is distinctly different from other categories of related party transactions. While Chapter 4 covers loans, guarantee and security to directors and persons in whom directors are interested under section 185 of the Companies Act, 2013, Chapter 5 deals with the loans, guarantee, security and inter corporate investments under section 186 of the Companies Act, 2013.

Chapter 6 deals with related party transactions for a consideration otherwise than cash, under section 192 which is most relevant at present specifically under the IBC regime, which, in fact has not been touched upon by other authors. Further Chapter 10 deals with Related Party Transactions under the Accounting Standards, Schedule III and CARO, which is most relevant to understand and make compliance and disclosures in the financial statements and for the proper and adequate understanding and reference by various stakeholders, Investors, Banks and Government Authorities such as SEBI, NFRA, SFIO, Income Tax Department, etc.

Chapter 11 deals with Related Party Transaction – Remuneration to Directors under Listing Regulations which is most appropriate and useful for the listed companies, its Company Secretary and Compliance Officer in view of the amendment in the SEBI (LODR) 2015 w.e.f. 1st April, 2020.

The author has in a systematic manner also summarized various complicated issues relating to appointment of related party as agent and office or place of profit, One Person Company (Section 193); Disclosure of interest in contracts or arrangements (Section 184); Register of contracts and arrangements in which directors are interested (Section 189); appointment and remuneration to managerial personnel (Sections 196-201); appointment of Key Managerial Personnel (Section 203); contract of employment with Managing or Whole-time-Director (Section 190); Compensation for loss of office of managerial persons (Section 202), etc. Certain key questions have been answered by the author logically which are likely to haunt the minds of professional readers, for instance, the expressions such as “interested directors”, “ordinary course of business”, and “arm’s Length”. It is also interesting to note that the author has anticipated certain issues that require attention. Some of the points brought out by the author in his previous edition have been included in the statute book through amendments. The author has analyzed the disclosure requirements under various statutory instruments which makes it very useful for a broad understanding. Illustrative problems and solutions given by the author in a separate chapter, I am sure, would offer guidance to professionals in rendering opinions.

The book also contains an Appendix section for text of the various updated rules for easy reference of the readers and has also given table of cases which is considered very useful to see the full judgement with the arguments on the Companies Act, Securities Law and FEMA.

After reading this book, I am of the opinion that the title of the book do not properly justify its contents. I therefore, suggest the author that the title of the book may be reframed as “All about – The Related Party Transactions under the Corporate Laws (Including the Companies Act, 2013, SEBI (LODR) Regulations, 2015, FEMA and Income Tax)” I hope that the author will consider my suggestion in a constructive manner.

I found all the requirements in a single book which make this book very unique and first of its kind for the corporate, secretarial department executives, director of companies, shareholders, creditors, investors, and budding law/CS students, and it would be equally beneficial for practitioners, teachers, department officers and judges.

The author is complemented and appreciated for the second edition of book and I wish him all success.

CS (Dr.) D.K. Jain
Member of the Editorial Advisory Board
### Advertisement Tariff

(With Effect from September 2018)

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