Introducing
Governance Cloud™

Is your data currently hosted in a secure and compliant environment? Diligent have also released applications on Evaluations and Meeting Minutes so you can run all your Board meetings securely and compliantly. Sign up before 31 December 2018 and receive 60% discount off Diligent Boards.

Diligent has a number of clients in India including Indian Oil who read the case study below to learn how Diligent has helped them.

Indian Oil is very satisfied per Raju, “In the beginning, one of the things we also heard before choosing Diligent was that they provided excellent services, and we found this to be very true. And, we were really amazed by the Diligent Boards’ solution – it is so simple and easy to use.”

For more information or to request a demo, contact us today:
- Singapore: +65 (6) 9322 1714
- India: +91 (990) 100-4374
- Malaysia: +60 (3) 9212 1714
- Hong Kong: +852 3008 5657
- diligent.com/sa

Governance Cloud from Diligent.
Creators of Diligent Boards.
### Advertisement Tariff

(With Effect from September 2018)

<table>
<thead>
<tr>
<th>BACK COVER (COLOURED)</th>
<th>COVER II/III (COLOURED)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non – Appointment</td>
<td>Non – Appointment</td>
</tr>
<tr>
<td>Per Insertion</td>
<td>Per Insertion</td>
</tr>
<tr>
<td>$1,00,000</td>
<td>$70,000</td>
</tr>
<tr>
<td>4 Insertions</td>
<td>4 Insertions</td>
</tr>
<tr>
<td>$3,80,000</td>
<td>$1,25,000</td>
</tr>
<tr>
<td>6 Insertions</td>
<td>6 Insertions</td>
</tr>
<tr>
<td>$5,28,000</td>
<td>$3,69,000</td>
</tr>
<tr>
<td>12 Insertions</td>
<td>12 Insertions</td>
</tr>
<tr>
<td>$10,20,000</td>
<td>$7,14,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FULL PAGE (COLOURED)</th>
<th>HALF PAGE (COLOURED)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non – Appointment</td>
<td>Non – Appointment</td>
</tr>
<tr>
<td>Per Insertion</td>
<td>Per Insertion</td>
</tr>
<tr>
<td>$50,000</td>
<td>$15,000</td>
</tr>
<tr>
<td>4 Insertions</td>
<td>4 Insertions</td>
</tr>
<tr>
<td>$1,20,000</td>
<td>$54,000</td>
</tr>
<tr>
<td>6 Insertions</td>
<td>6 Insertions</td>
</tr>
<tr>
<td>$2,64,000</td>
<td>$79,200</td>
</tr>
<tr>
<td>12 Insertions</td>
<td>12 Insertions</td>
</tr>
<tr>
<td>$5,10,000</td>
<td>$1,32,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PANEL (QTR PAGE) (COLOURED)</th>
<th>EXTRA BOX NO. CHARGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Insertion</td>
<td>For ‘Situation Wanted’ ads</td>
</tr>
<tr>
<td>15,500</td>
<td>100</td>
</tr>
<tr>
<td>(Subject to availability of space)</td>
<td>For Others 200</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>MECHANICAL DATA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Page - 18x24 cm</td>
</tr>
<tr>
<td>Half Page - 9x24 cm or 18x12 cm</td>
</tr>
<tr>
<td>Quarter Page - 9x12 cm</td>
</tr>
</tbody>
</table>

### Panel (QTR Page) Charges

- The Institute reserves the right not to accept order for any particular advertisement.
- The Journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month’s issue.

### Panel (QTR Page) Charges

- 30% Rebate on the total billing for 36 insertions in 3 years in any category

---

**Dess Digital Meetings**

The Trusted Meetings Solution Used By The Leading Boards

Please contact:

CS Gorav Arora,
Divisional Head – Corporate Secretarial,
Apollo Tyres Ltd.

189 97029 28562 | info@dess.net
From the President 05

Articles 25

Research Corner 73

Legal World 77

From the Government 87

News from the Institute 101

Annual Subscription

'Chartered Secretary' is normally published in the first week of every month. Non-receipt of any issue should be notified within that month. Articles on subjects of interest to company secretaries are welcome. Views expressed by contributors are their own and the Institute does not accept any responsibility. The Institute is not in any way responsible for the result of any action taken on the basis of the advertisements published in the journal. All rights reserved. No part of the journal may be reproduced or copied in any form by any means without the written permission of the Institute. The write ups of this issue are also available on the website of the Institute.

Edited, Printed & Published by
Ashok Kumar Dixit* for The Institute of Company Secretaries of India, ‘ICSI House’, 22, Institutional Area, Lodi Road, New Delhi- 110 003. Phones : 41504444, 45341000, Grams : 'COMPSEC'
Fax : 91-11-24626727
E-Mail : info@icsi.edu
Website : http://www.icsi.edu

Mode of Citation: CSJ (2018)(11/--- (Page No.)
1. CS Makarand Lele addressing the delegates on Future of the Strategic Board: Shared Leadership Issues during the 18th London Global Convention 2018.

2. CS Makarand Lele at “India Inc.: Quo Vadis’ Governance Performance Impact” organised by Deen Dayal Upadhyaya College, University of Delhi.

3. CS Makarand Lele addressing at National Summit on Capital Alternatives for SMEs & Start ups organised by Assocham.


5. CS Makarand Lele addressing the august gathering at the Contact Programme for 3 months Certified CSR Professional Course.

6. Group photo of CS Makarand Lele at the new premises of Pune Chapter of ICSI for First MSOP.
Dear Professional Colleagues,

Author of some of biggest fiction bestsellers, Khalil Gibran puts more meaning in the above few words than one may be able to convey through paragraphs and chapters. Even so, the current economic state of the Indian territory, the achievements and surprises, the unprecedented progress are all a proof that his words are no fiction.

It was indeed a proud moment for all of us as Indians first and even more as professionals that the Indian economy has been on a path of growth which is par extraordinaire. It was in 2014 that the Hon’ble Prime Minister of the country had envisioned the nation standing at 142nd rank in the Doing Business Index of the World Bank to rise up the ladder and achieve 50th position. Four years hence and a quantum of reforms later, brought about not just consistently but implemented with equated grit and dedication and we stand just 27 points away from our targeted goal.

India is a land of cultural diversity and varied ethnicities; and this very statement has formed part of so many addresses and speeches that we have learnt it by heart. And yet when business, its developments, its evolution, its achievements or even the issues and challenges are discussed, we all find common grounds to discuss even though the language of discussion might vary. Such is the beauty of the nation which has made a jump of 23 points in a single year following its 30 point jump in the previous one.

But as they say, “The price of success is hard work and dedication to job at hand”. The success that we have achieved as a nation is not just the product of one single entity in isolation, but the outcome of collective and collaborative efforts of segments and entities who have all worked hard back stage to put a great show... From the Central Government as the policy formulator to each and every Ministry and Department, from professional bodies to each and every Professional, and from Industry Associations to each and every corporate and business entity, the long list of parties to this achievement speaks volumes of the understanding of one’s own responsibility by each of them.

If I am to reminisce the prim and proper planning of the Department of Industrial Planning and Promotion (DIPP), I cannot help but feel a sense of gratification for the role played by the Institute in providing necessary support in rolling out practically impacting reforms in the arena of ‘Starting a business’ or ‘Resolving Insolvency’ or even ‘Paying Taxes’. To each one his own, the various segments or Directorates of the ICSI played their desired roles leading to the Indian ground successively scaling greater heights. On one hand, while we understood and analysed the practical difficulties being faced by stakeholders and conveyed the same to the regulatory authorities, every attempt was made to test and practically assess the reforms intended for their desired impact on real-time basis. The result of this dedication can be witnessed in the improved ‘Distance to Frontier’ in the area of ‘Starting a business’ where the recorded jump is 19 points.

The Insolvency and Bankruptcy Code, 2016 can be rightly called the ‘law of revolution’ if the insolvency scenario is to be taken into accord and
the Insolvency Professionals trained and regulated by professional bodies of the likes of the ICSI IIP, its revolutionaries. It would be an understatement to say that the law along with its propagators and practitioners has impacted the insolvency culture; rather it has accorded the culture and its issues a 360 degree turnaround. I am delighted to share that understanding the finer nuances of the Insolvency and Bankruptcy Code, 2016, the Insolvency Professionals are playing their part in improving the ranking of the country in ‘Resolving insolvency’ (an area with an improvement of 28 points since the enforcement of the Code).

As you all might be aware, since the rolling out of GST Laws, the ICSI has been India’s proud GST partner. And when you take up partnerships, you honour them with full gusto. The Hon’ble Prime Minister had pinned his expectations with us to step-up to a stronger role, train professionals and we at the ICSI have been on our toes since. With ICSI members continuously striving forward as GST Professionals, the GST Accounts Assistants Course too, is training and educating candidates to serve the Indian businesses with the services the need.

The Month Gone by:
Of all the moments lived as President day-in and day-out, a few stand out, which you not only want to cherish but share with your peers with a big smile... The month gone by gave me two such moments, one in my capacity as the President of this Institution and the second as a Professional. Talking of the first one, while at one end, the Doing Business Report placed the nation at a higher pedestal in the global scenario, at the other end, the ICSI, made waves internationally too!!

The IOD’s 18th London Global Convention held on the 25th to 27th October, 2018 was an eye opener, a perfect discussion forum, an astonishing destination for meeting of minds and sharing of thoughts galore. The deliberations begot ponderance upon the transforming dynamics of the Indian Boards, focussing on the altering role of Independent Directors, gender diversity and the need for not just ‘women’ directors but ‘trained, well-read and informed women’ directors, the evolution of the role of Company Secretaries from working behind closed doors to their portrayal as KMPs and hence face of the companies, the continuous need for training and development. With a host of enlightening sessions followed and preceded by meetings and greetings with the who’s who of the International professional world, the visit was nothing short of ‘tremendously memorable’. To a name a few, we were bestowed with the honour to meet personas and dignitaries like Prof. (Judge) Mervyn E. King SC Chairman, King Committee on Corporate Governance & Former Judge, Supreme Court of South Africa, Rt. Hon. Lord Swraj Paul of Marylebone, PC, Founder & Chairman, The Caparo Group Plc., UK, Ms. Prema Sian, CEO, Vaahan, International magazine on Current Affairs, Ms. Lakshmi Kaul, Head & Representative - UK, Confederation of Indian Industry, H.E. Shri Charanjeet Singh, Deputy High Commissioner, High Commission of India, London, Mr. Neil Stevenson, Managing Director, Global Implementation, International Integrated Reporting Council at London. While with some this was a second chance, but with many such tête-à-têtes were all firstly, leaving us bedazzled and awestruck with their thoughts and perceptions about the professionals and their approach about the future of the global business world. I am sure that the times to come shall witness a sweeping modification in the role of us professionals as the world looks to strengthening the governance scenarios globally.

Another development which portrayed the confidence and belief of the Ministry, the regulatory authority for the Indian Corporates, was the recent promulgation of the Companies (Amendment) Ordinance, 2018 resulting into decriminalisation of a host of offences. Re-categorising a number of offences in the category of compoundable offences to an in-house adjudication framework and yet ensuring compliance of the default by way of stiffer penalties in case of repeated defaults, the Ordinance came across as one of the most sought after reforms in the regulatory as well as corporate arena. Not only does it depict the Government’s dedication towards standing tall and rising high in the doing business numbers but also endows the professionals especially the Company Secretaries with greater responsibility to ensure that the corporates understand the true value of such an initiative and assure the regulators that the decision to have a lenient view shall not have any consequences in order.

With such national and international achievements and developments across, what matters for each one of us as a true-blue professional is to understand the heightened roles and responsibilities conferred upon us and that it shall be equally imperative and significant for us to hold on to our ethics and morals while undertaking our tasks and activities. For as D. H. Lawrence, English Author and poet, puts it,

Yours Sincerely

CS Makarand Lele
President, ICSI

November 2018
New Delhi
Recent Initiatives Taken by ICSI

Further to the details published in the Chartered Secretary, we are pleased to share the following initiatives taken by the Institute during the month of October 2018:

1. **50th Foundation Day of the Institute**
   John Milton once quoted that *time would surely run fast, but if channelized with hard work and dedication, it would fetch the age of gold*. This stands true with the golden journey of our alma mater, the Institute of Company Secretaries of India, which has recently celebrated its 50th Foundation Day on October 4, 2018 at Mumbai. The 50th Foundation Day which is a carnival in the life of the organization not only makes the entire commune to look back on significant milestone of their hard work, dedication and good work, but also serves a platform for us in looking forward on building celebrative milestone in the upcoming journey of the Institute with its Vision New ICSI 2022.

   In order to commemorate the significant 50 years in our journey towards establishing, promoting and subsuming the best practices of compliance and governance at par, the Institute released the following publications/ Course(s):
   - Corporate Saviour Portal
   - Certificate Course in GST
   - Certificate Course on Certified CSR Professionals – (Admission Announcement)
   - Diploma in Internal Audit
   - GST Educational Series
   - Handbook on GST Compliances
   - ICSI RVO Connect Newsletter for Valuation Professionals
   - Secretarial Standard on Report of the Board of Directors(SS - 4)

2. **ICSI observed Rashtriya Ekta Diwas (National Unity Day), 2018**
   Considering the significance of unity in the inclusive growth of the nation and respecting the role of Sardar Vallabhbhai Patel in keeping India united, the Institute observed Rashtriya Ekta Diwas (National Unity Day) on October 31, 2018 with organizing a Pledge Taking Ceremony administered by the Officiating Secretary through video conferencing in all the offices of the Institute Pan India.

3. **ICSI receives Membership of the ‘International Valuation Standards Council’**
   The Golden Jubilee Year of the Institute has made our milestones more golden with adding the feathers of ever-increasing accomplishment and recognitions nationally and internationally. One among many is the recent feather added to the cap of our professional commune when the Institute of Company Secretaries of India received membership of the coveted ‘International Valuation Standards Council (IVSC)’.

4. **President, ICSI Re-elected as Secretary, CSIA**
   CS Makarand Lele, President of the Institute of Company Secretaries of India (ICSI) has been re-elected as Secretary of Corporate Secretaries International Association (CSIA). The election took place in the Annual General Meeting of CSIA held on September 27, 2018.

5. **18th London Global Convention and Golden Peacock Awards**
   The Institute joined hands with the Institute of Directors in organizing the 18th Edition of London Global Convention on Corporate Governance and Sustainability from October 24 to 27, 2018 in London, which also venerated the presentation of Golden Peacock Awards and a Global Business Meet at House of Lords.

   CS Makarand Lele, President, ICSI addressed the delegates on Session- Future of the Strategic Board: Shared Leadership Issues during the 18th London Global Convention-2018.

6. **Meeting with Dignitaries**
   ICSI delegation led by CS Makarand Lele, President, ICSI met the following dignitaries during their visit to 18th London Global Convention and Global Business meet:
   - The Rt. Hon. Lord Swraj Paul of Marylebone, PC & Founder and Chairman, The Caparo Group Plc., UK
   - Prof. (Judge) Mervyn E. King SC Chairman, King Committee on Corporate Governance & Former Judge, Supreme Court of South Africa
   - His Excellency Shri Charanjeet Singh, Deputy High Commissioner, High Commission of India, London
   - Mr. Neil Stevenson, Managing Director, Global Implementation, International Integrated Reporting Council at London
   - Dr. Mohan Kaul, President, Indian Professionals Forum, United Kingdom
   - Ms. Lakshmi Kaul, Head & Representative - UK, Confederation of Indian Industry
   - Ms. Prerna Sian, CEO, Vaahan

7. **Residential Training Programme on Corporate Social Responsibility**
   Considering the dynamic nature of the provisions pertaining to CSR under the Companies Act and Rules framed thereunder, as well as the ever-changing dimensions of the concept, the Institute in collaboration with Department of Public Enterprises organised a Three Days Residential Training on
Corporate Social Responsibility for management personnel of PSUs from October 22 to 24, 2018 at ICSI-Centre for Corporate Governance Research and Training, Navi Mumbai. The three days program aimed at providing the participants with much needed insight into the thoughts, intentions, needs, aspirations and practical aspects of both sides was well steered by the faculties from Regulatory Authorities and Corporate sector.

8. **Training Program on ‘Practical Aspects of Corporate Governance under Companies Act, 2013 and SEBI (LODR) Regulations, 2015’**
The Institute in association with Standing Conference of Public Enterprises (SCOPE) organised Two Days Training Programme on October 5-6, 2018 at New Delhi addressing the Practical Aspects of Corporate Governance under Companies Act, 2013 and SEBI (LODR) Regulations, 2015. The program which was intended for senior management covered varied topics ranging from Board Composition, Board processes, recent developments under Companies Act and Listing Regulations with a special reference to the challenges faced by Central Public Sector Enterprises related to governance.

9. **ICSI – ASSOCHAM National Summit on Capital Alternatives for SMEs and Startups – Emerging Opportunities and Challenges in India**
The Institute joined hands with ASSOCHAM as an Institutional Partner in organizing a National Summit on ‘Capital Alternatives for SMEs and Startups – Emerging Opportunities and Challenges in India’ on October 12, 2018 at New Delhi. President ICSI, also addressed the participants at the programme.

10. **ICSI Online Test Challenge on Companies Act, 2013**
In view to rejoice the successful completion of 5 years of Companies Act, 2013, the Institute organized an Online Test challenge on Companies Act, 2013 on October 2, 2018 for the students across India and abroad. Post the participation of the students in great numbers in the Competition, the Institute announced the results with the name of the winners on October 4, 2018 during the celebration of 50th Foundation Day of the Institute in Mumbai. Winners and other Top Rankers won attractive prizes in the form of cash and publications of the Institute.

11. **Webinar on Secretarial Standard on Report of the Board of Directors (SS-4)**
You are aware that the Institute recently issued the Secretarial Standard on Report of the Board of Directors (SS-4) with effect from October 1, 2018. In this perspective, with a view to build the capacity of the members about the various aspects pertaining to Secretarial Standard on Report of the Board of Directors (SS-4), the Institute organized a ‘Webinar on Secretarial Standard on Report of the Board of Directors’ on October 6, 2018 in New Delhi. The webinar recording is available on ICSI YouTube channel.

12. **ICSI IIP Webinar on Insolvency and Bankruptcy Code, 2016**
In its continuous endeavor to develop and educate the Insolvency Professionals with the contemporary understanding in the field of insolvency and bankruptcy, the ICSI Institute of Insolvency Professionals (ICSI IIP) organized a Webinar on the ‘Evolving Role of RP in view of Recent Judicial Pronouncements and Legislative Changes including in Resolution Plan’ on October 23, 2018 at New Delhi.

13. **ICSI IIP Interactive Session and Networking for Insolvency Professionals and Other Professionals**
With the aim of providing an organized interaction of Resolution Professionals with experts amongst themselves, focusing on the specific issues/challenges being faced by insolvency professionals, the ICSI Institute of Insolvency Professionals (ICSI IIP) has organized an Interactive Session and Networking for Insolvency Professionals and Other Professionals on October 24, 2018 at New Delhi.

14. **ICSI initiatives towards GST**
ICSI as part of promoting the new indirect tax regime and to educate its members & students about GST, is regularly issuing a daily flyer titled GST Educational Series, releasing a monthly newsletter on GST, holding bi-weekly GST Point sessions to resolve the queries on GST and regularly updating new circulars, notifications & recent amendment on GST. Also, ICSI is regularly organising various workshops, seminars & programmes on GST to keep its members & students updated on GST law.

15. **ICSI collaborations with Institutes/Colleges/Universities: A Step Forward**
In a step forward towards our Collaborations with Institutes/Colleges/Universities, around hundred students and nine faculty members of Rajdhani College, Delhi University made an industrial visit at ICSI Noida Office.

16. **Study Center Scheme**
The following study centres have been opened during October 2018:
• Dr Radha Krishnan Girls College, Rajasthan
• Maharshi Parshuram P G College, Rajasthan
• Seth Gyaniram Bansidhar Podar College, Rajasthan

17. **Grievance Redressal Mechanism - Single Online Portal under Monitored Environment**
To streamline the Grievance Redressal Mechanism and ensure timely resolution of the complaints/queries of its stakeholders, the Institute has completely switched over to a single online portal under monitored environment at http://support.icsi.edu. Through this single online portal, the stakeholders can register their complaints/queries directly at the portal link.
The Company Secretaries Benevolent Fund (CSBF) provides safety net to Company Secretaries who are members of the Fund and their family members in distress.

**CSBF**
- Registered under the Societies Registration Act, 1860
- Recognised under Section 12A of the Income Tax Act, 1961
- Subscription/Contribution to Fund qualifies for the deduction under section 80G of the Income Tax Act, 1961
- Has a membership of over 12,000

**Eligibility**
A member of the Institute of Company Secretaries of India is eligible for the membership of the CSBF.

**How to join**
- By making an application in Form A (available at www.icsi.edu/csbf) along with one time subscription of ₹10,000/-.
- One can submit Form A and also the subscription amount of ₹10,000/- ONLINE through Institute’s web portal: www.icsi.edu. Alternatively, he can submit Form A, along with a Demand Draft or Cheque for ₹10,000/- drawn in favour of ‘Company Secretaries Benevolent Fund’, at any of the Offices of the Institute/Regional Offices/Chapters.

**Benefits**
- ₹7,50,000 in the event of death of a member under the age of 60 years
- Upto ₹3,00,000 in the event of death of a member above the age of 60 years
- Upto ₹40,000 per child (upto two children) for education of minor children of a deceased member
- Upto ₹60,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

**Contact**
For further information/clarification, please write at email id csbf@icsi.edu or contact Mr. Saurabh Bansal, Executive on telephone no.0120-4082135.
In 2014, India stood at 142nd place in the global Ease of Doing Business (EODB) Ranking. It was then envisioned that the nation shall strive to rise up to a targeted position of 50. The jumps over the years, bringing the Indian economy to a standing of 77th rank, it can be said that a lot has been achieved. Being an economic thinker yourself and more so closely connected with policy making bodies, how do you think this was made possible?

It was made possible by focussed approach of the Government. When Modi Government came to power in 2014, it fixed its target to bring India within top 50 countries in the world in the annual ‘EODB’ ranking of the World Bank and then worked on the roadmap.

The Central Government analysed all the parameters that go into determine the ranking and worked on them meticulously. The focus was on reducing the number of permissions required, reducing human interface and compliance burden, using the prowess of Information Technology, emphasising on self-certification, simplification and digitisation.

But most importantly, this was made possible because the Government believes that Indian youth is full of entrepreneurial energy which the economy and the country were failing to harness and something had to be done about it and hence invested its political capital and energy in it.

The preparation of the report or the development of the Index is based on merely two cities, i.e., Delhi and Mumbai. In a nation of such economic and social diversity, how does this report reflect the overall Indian scenario?

It is true that the ranking is based on the survey conducted only in two cities - Delhi and Mumbai but we must keep in mind that this has not changed when India was ranked 142 and now when India is at 77th position. Thus, it cannot be denied that we have made a quantum jump.

Coming to the other part of the question, we must bear in mind that Delhi and Mumbai are pioneer cities and the regulatory regime of these cities will trickle down to other areas over a period of time. Hence, such areas would also see an improvement in the ‘Ease of Doing Business’. Modi government in collaboration with the World Bank has also introduced an annual ranking of Indian states on the EODB. The focus on EODB has spawned a culture where the states are competing with one-another in the ease of doing business to attract investment to their states.

The Hon’ble Prime Minister had pinned his expectations with the nation to achieve 50th rank. With the current standing at 77th position, how can we strive to bridge the remaining numbers? What areas shall be focussed upon henceforth by the Government to make this dream a reality?
It is not only the improvement in the ranking of EODB but we are amongst the top 10 most reforming economies. In fact, Djibouti and India are the only economies to make to the list of 10 top improvers for the second consecutive year.

There are a some areas holding scope to improve our ranking. In fact the work is already under progress in these areas and the results would be visible in due course of time. In the current ranking; we are at 137 in ‘starting a business’, at 166 in ‘registering property’, 163 in ‘enforcing contracts’ and so on. Proactive measures are being taken in these areas. Even Insolvency and Bankruptcy Code whose effect is captured in ‘Resolving insolvency’ and GST whose effect is captures under paying of taxes, etc., are work in progress and will impact the ranking positively in the coming years. Some of the reform measures like registration of property can only be addressed at the State level and the states are being encouraged by the Centre to do the same. Concerted efforts have been made to eliminate the ‘Inspector Raj’ and simplify compliances further. Under the latest changes made for MSMEs, factory inspections will be done only through computerised random allotment and inspectors shall be required to upload reports on portal within 48 hours, with reasons. MSMEs now are required to file one annual return for compliance within eight labour laws and 10 central rules. An Ordinance has also been promulgated to simplify levy of penalties for minor offences under the Companies Act and in the coming session of the Parliament, another amendment Act would be also passed.

A ranking of such accord is not a result of singular effort but multiplicity of actions in various areas. Which reforms have made this achievement possible?

It is not only the improvement in the ranking of EODB but we are amongst the top 10 most reforming economies. In fact, Djibouti and India are the only economies to make to the list of 10 top improvers for the second consecutive year. We have made significant achievement in ‘dealing with construction permits’ (184 in 2014 to 52 in 2018), ‘getting electricity’ (137 in 2014 to 24 in 2018), ‘trading across borders’ (126 in 2014 to 80 in 2018) and ‘resolving insolvency’ (137 in 2014 to 108 in 2018). In fact, if we compare India’s ranking on the 10 parameters of EODB for the year 2014 and 2018, we see that we have improved on all the parameters except for ‘registering property’.

GST is a relatively new reform and yet one of the most impactful of them all. What role has the implementation of this law played in India’s rise in the Index ladder?

In the ‘paying taxes’ parameter we were at 156 in 2014 and are now at 121. So there has been an improvement after the implementation of GST but this is not the full impact of this most significant indirect tax reform since independence.

GST is currently work in progress both for the government as well for the businesses. There are other issues like quick refund of input taxes, especially in the case of exporters. E-way bill is being implemented. Once these issues are taken care, we will see the true impact of GST in moving up the index ladder. Another important area which is e-assessment, is in the process of implementation.

Considering your close connections with professional bodies and with your keen knowledge and insight of their day-to-day functioning, you would be the best judge to tell the role played by ease in the compliance mechanism and structure in the corporate arena of the country. What factors have significantly contributed in this regard?

Governments all over the world feel certain measures in a given area to be a step towards desirable policy goals and want the people and companies operating in those areas to comply with those measures. At times ensuring these compliance requirements become quite cumbersome. Such situations should be removed by the government.

For example, in the area of labour laws, under the rubric of EODB, the Labour Ministry has taken number of steps to reduce the compliance burden of the industry. Under Ease of Compliance, the government has pruned the number of registers mandatory for all establishments to maintain under 9 Central Acts to just 5 from 56, and the relevant data fields to 144 from 933. The Registers/Forms can be maintained either in electronic form or otherwise. The Government has also made numerous technology-enabled transformative initiatives such as Shram Suvidha Portal, universal account number (UAN) and national career service portal in order to reduce the complexity burden and better accountability for enforcement. Similarly, the compliance burden for the start-ups under 6 labour laws has been considerably reduced by allowing for self-certification.

The Registrar of Companies has been completely revamped and the process of incorporating a new company has become seamless. In another attempt to ease compliance, the Government has also repealed more than 1000 old redundant laws.

In a country which has a historically strong business culture, contracts and their enforcement play a momentous role. Your mention of the same as one of the considerable reform areas further reiterates the point. Please elaborate on the
In the parameter of ‘Enforcing contracts’ we ranked at 163 this year which is certainly poor. This is not surprising because our courts are clogged with huge pendency.

With a view to address the issue, provide faster resolution of matters relating to commercial disputes and to create a positive image particularly among foreign investors about independent and responsive Indian legal system, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act was enacted in 2015 and Commercial Courts were established at District Levels in all jurisdictions, except in the territories over which the High Courts have original ordinary civil jurisdiction.

Over the period, as the system of Commercial Court stabilises and commercial disputes are successfully settled, India will see a significant jump in this parameter. It is not to say that there has been no improvement in this parameter in the last four years. India was ranked 186th in ‘Enforcing Contracts’ in the World Bank’s 2015 report (covering period from June 2013 to May 2014) which was closer to the bottom.

The Government is making attempts to reduce litigation over contract enforcement. There is Samadhan Portal of the MSME ministry for resolving delayed payment disputes of MSMEs, then there is a bill discounting platform, TReDS. Government is also discouraging its officers to go for appeals once a matter is settled in the lower courts, the government is aprised of the fact that large number of cases pending in the court has government as one of its litigants.

Corruption is usually termed as not just a speed hindrance in the growth of a nation but growth sucker. Governments across the globe take significant steps to fight this nuisance. What have these reforms been on the Indian side?

Fighting corruption was one of the issues on which the current government was voted to power and since coming to office the government has initiated a number of steps to stamp out corruption. One of the first steps of the current government was the Constitution of SIT on Black Money. It also came up with Voluntary Income Disclosure Schemes. Double Tax Avoidance Agreement (DTAA) were renegotiated, bank accounts linked with Aadhaar and PAN. Even so, relentless actions are being taken against Shell Companies, KYC and DIN has been made compulsory for all the Directors.

The focus has been on using technology and online compliances and permissions for eliminating corruption at the policy level, at the level of allocation of natural resources or at the level of regulatory and statutory permissions. Demands for bribes encountered by businessmen in their day to day activities have been sought to be curbed by methods like self-certification, randomised visits to factory premises, reduced human interface with the government, time bound clearances etc.

Demonetisation led to the unmasking of the anonymity associated with cash thereby establishing audit trail for business transactions and also led to formalisation of the economy. The information gathered from bank deposits has also led to an increase in tax base of the Indian Economy. Another important reform has been the notification of Benami Properties Act. It must be noted that though this Act was passed in 1988, it was enforced only recently. Another important legislation in the fight against corruption has been the enactment of Fugitive Economic Offenders Act of 2018 targeted against economic offenders who try to evade the process of the law by leaving the country. Goods and Services Tax (GST), too, has led to elimination of corruption in the indirect tax collection system.

The Institute of Company Secretaries of India has also come with a Corporate Anti-bribery Code which was released by the Prime Minister last year. It is a Code that the private sector is expected to adopt voluntarily.
Government has entrusted lot of work with regards to formation of new company relating to ROC to the Institute of Company Secretaries of India and the Institute is also skilling and developing new cadres of GST and IBC professionals for ensuring that the compliance burden for the businesses come down.

to control corruption in the private sector.

In a diverse nation and economy such as ours, while policy framing is one thing, its implementation and execution is what needs far more attention. The Indian government too has had its share of such hurdles. How has the government dealt with issues like policy paralysis in decision making?

‘Policy paralysis’ is basically lack of conviction on the part of the government in its own decisions and refusal to take strong decisions wherever required.

However, since the current government was voted with absolute majority the government is strong and decisive and has invested its political capital in its decisions which though unpopular in the short term, are in the interest of the country. Demonetisation and GST are two examples of it. All the pending projects are being personally tackled by the Prime Minister under the ‘Pragati’ initiative of the Government. Subjective interventions in industrial projects were stopped and clearances like Environmental and Coastal Zone Regulation were made transparent and time-bound.

Implementation and execution is also what differentiates governments. The Government has created a matrix for performance. Not only has the government set very ambitious targets, it has also managed to achieve them, well within the time frame set for them.

NPAs or Non Performing Assets are one of the burning issues in the Indian corporate sector. The Insolvency and Bankruptcy Code of 2016 came as a breather of sorts for the corporates as well as the regulatory bodies. If the resolution of this issue is to be dealt with, what is your take on this?

The Insolvency and Bankruptcy Code (IBC) in 2016, together with the GST are the two biggest reforms of the government.

We must understand how it was like before the enactment of IBC. The defaulters, whether wilful or not, were least bothered about repaying the loans and the lenders (i.e., Banks and other financial institutions) had to do all the running around to get the money back. The threat of legal action did not work at all and all that the lenders were doing was ‘restructuring’ of the loan in the absence of any other viable route.

Post IBC, and especially after the amendment which debars promoters and related parties from bidding for an enterprise undergoing insolvency, the defaulters are suddenly running after the lenders to pay the money back. Where the defaults were genuine and the companies are good, we have seen other companies bidding aggressively for the companies facing insolvency. Rest have to go for liquidation. Together with NCLT mechanism and supporting laws of Benami Properties Act and Fugitive Offenders Act, the money is being recovered in a specific time frame.

What according to you is the role of professionals especially Company Secretaries in furthering the objectives of ease of doing business?

I see a very important role for professionals especially Company Secretaries in furthering the objectives of EODB. High levels of ‘Corporate Governance’ can be ensured only if Company Secretaries do their duties well. We know that protection of minority investors is one of the important parameters in EODB. India has consistently been ranked well on this standard. It is for Company Secretaries to ensure that we go further up. The transparency in the functioning of the Board and documentation with regards to Minutes and the Agenda papers is also generally the responsibility of the Company Secretaries.

Because Company Secretaries play a pivotal role in functioning of any modern business and look after legal and regulatory compliances, they are in a position to know areas which require government intervention to smoothen things. For example, they may guide the government on the unnecessary forms and submissions that are required under the Companies Act.

Government has entrusted lot of work with regards to formation of new company relating to ROC to the Institute of Company Secretaries of India and the Institute is also skilling and developing new cadres of GST and IBC professionals for ensuring that the compliance burden for the businesses come down.

The Company Secretaries while offering their services to take care of the legal and regulatory work allow businesspersons and entrepreneurs to focus on their core areas of work. There is a lot of misgiving about doing business in India and navigating government processes. Company Secretaries can handhold people and also work to dispel this impression.

I expect professionals including Company Secretaries to not only keep themselves fully updated on the changes being brought by the government but also to educate the people about the same.
Three Months Certification Course on Certified CSR Professional
Educational Courses on Valuation of Securities or Financial Assets
“My vision has always been about building a business which can create value for customers across the globe and one that is sustainable and lasts forever”.

BVR MOHAN REDDY
Executive Chairman, Cyient Limited

In Conversation with Ms. Preeti Kaushik Banerjee
Director (Corporate Communication), The ICSI

The long list of services provided by Cyient Limited to global industry leaders finds affinity in the list of qualifications and awards of its founding father. A man whose awards cabinet boasts of Padma Shri, whose degree account boasts of multiple masters and honorary doctorates and whose personality profile boasts of not just analytical and entrepreneurial thinking but a passion for promoting education and giving back to the society!!

In a tête-à- tête with Ms. Preeti Kaushik Banerjee, Director, Directorate of Corporate Communication, Mr. BVR Mohan Reddy, Executive Chairman, Cyient Limited, talks about his journey with Cyient over the past 27 years, the developments in the economy and much more...

Mr. Reddy, you are a first-generation entrepreneur and have beaten the odds to build a world-class aerospace and defense solutions (inter alia) business in India. How did it all start?

In the 1970s, ‘experience’ was believed to be the biggest asset for a first generation entrepreneur. I, therefore, spent the first ten years of my career in gaining solid experience in all facets of the business – operations, management information systems, sales, and marketing. This hands-on experience early in my career laid the required foundation to become an entrepreneur. My next stint as the CEO of a company helped me implement everything I learnt. My passion for engineering, and my drive to become an entrepreneur led me thereafter to explore new opportunities in life.

In the early 1980s, CAD/CAM/CAE software was making traditional designers more productive in the West. These tools helped organizations digitize the designs, which improved productivity and gave the additional advantage of storage, updating, printing, and delivery to any destination around the world through the internet. However, challenges with capacity and costs remained. Many global manufacturing companies struggled to improve their time to market new products, given that engineers’ costs were high and availability was low. This scenario gave me the idea of providing engineering R&D services from India. The availability of talent at an affordable cost in India gave me confidence that the business proposition was robust. In 1991, I started Cyient (then, Infotech Enterprises) in my modest home on my dining table with four engineers from my neighborhood. Since engineering R&D services had initial customer-acceptance challenges, we made a beginning by offering GIS services. GIS and CAD have the same underlying technologies for data creation, storage, and representation. And as such, the transition from GIS to engineering also went very smooth.

In the early 90’s, getting into an almost impenetrable world of GIS and subsequently, engineering services must have been challenging and risky. What do you think has been your biggest strength all this while?

In those days, a business based on a global delivery model with back-end in India was quite challenging. While I saw a big opportunity in GIS and engineering services markets, we had to work on several challenges before we could convert the opportunity into sustainable revenue stream.

Talent, as in fresh engineers, was available in India but domain knowledge, awareness about quality and the requisite skills were seriously lacking. We put in place an operating model, christened it as PPT- People-Process-Tools, technology & training. Our first focus was on People. Our ability to recruit, reward, retain and retrain made us unique. We then spent considerable effort and money in developing the Processes. Process focus, as opposed to individual skill focus, brought tremendous consistency into our deliverables. Process adherence made us deliver quality and on time consistently.
at an affordable price over and over again. Our investments in Tools, Technology, and Training enabled us to bring sustainability to business in the initial years and allowed our business to scale very rapidly without losing quality. These, over the years, have become our core strengths.

My vision has always been about building a business which can create value for customers across the globe and one that is sustainable and lasts forever. Our quest to continuously learn, our ability to innovate, our desire to win, and our adherence to values are the core strengths that made us successful.

How do you inspire your team to be ahead of the game?

I strongly believe in values-based business. We made values as the foundation of the company. At Cyient, we always say, “Values FIRST” (FIRST stands for Fairness, Integrity, Respect, Sincerity, and Transparency). The four pillars of the super structure - customers, employees, investors, and society – are built on this foundation. We believe that being equitable to the four stakeholders makes the organization stable and sustainable. My commitment to walk my talk, and tirelessly communicate my beliefs and my shared vision of building the best-in-class global engineering services company helps me motivate my team to beat the competition through innovation.

Yours’ was a start-up of sorts, what is your opinion regarding the present scenario of start-ups in India?

It’s been 27 years since I set-up Cyient, and it has been a great journey to date.

In my opinion, entrepreneurship is the right solution for job creation in a country like India. Let me explain. By 2030, India’s population is expected to touch 1.5 billion, and it throws a serious challenge vis-à-vis employment. At present, ten million people are joining the workforce every year, but there are not enough suitable opportunities for everyone. We need to evolve a structured and organized approach for creating job opportunities in the next ten years if we are to meet the 2030 challenge.

In the past three years, we have seen an excellent ecosystem for start-ups in India. We would need at least 50,000 start-ups every year, which could engender 5,000 mid-size firms after five years, and 50 large ones after ten years. This kind of firm-creation and growth is an essential condition for generating 100 million new jobs in the next ten years.

For this to happen, we need to facilitate infrastructure and an ecosystem to create a pipeline of start-ups and also ensure their survival by providing market opportunities. We need a number of incubators and accelerators across the cities to groom idea-stage start-ups and the support of strong angel networks and VC funds to facilitate funding. Aspirational projects such as Smart Cities and Digital India will need support from start-ups which are innovative, use disruptive technologies, and are nimble and agile in execution.

India has a strong legal and regulatory framework in place as far as the governance of its corporates is concerned and yet, ensuring results of such governance practices continues to remain a challenge. What do you think is the reason for the same?

There is no denying that India has very strong governance processes. These processes are further being strengthened with time. The key gap comes from “form and spirit”. The forms of these governance processes are excellent, but there is scope for improvement in the spirit with which they are being implemented. Typical with any governance process, the immediate reaction is that they create overhead and as a consequence, organizations are reluctant to implement them. What they fail to see is the enormous benefits that can accrue to all the stakeholders – promoters, employees, investors, and the society – when the processes are implemented. I am not worried about the cases of non-compliance since they are not sizeable. What is more important is ensuring that we educate our entrepreneurs, investors, and employees on the benefits that could accrue with compliance. Better-governed companies have a higher PE multiple which reflects on higher market capitalization and consequently more benefits to all the stakeholders.

What is your take on the role of company secretaries in steering the businesses in the right direction?

The role of a company secretary has changed considerably over the years. This is largely on account of the expanding scope of businesses and the associated complexities, M&A activity, globalization of companies, and digitalization of businesses. On account of companies’ growth, the need for better controls and as a consequence, monitoring compliance has become important. Business risks have grown to include country risks, customer risks, and geography risks. Globalization has exposed company secretaries to the laws of various countries. Paradoxically though, in a globalized environment, there are several new and localized requirements such as GDPR in Europe. Most of the data in companies are now available in digital form. This, on one side, improves efficiency but throws up new challenges about privacy and security of data. M&A activities have considerably increased, and we find that company secretaries are playing an increasingly larger role in integrating the acquired companies and ensuring that they follow the governance processes. Company secretary role is a lot more challenging now than it was anytime in the past.

Cyient has its own CSR structure in place. Can you share what exactly is the ‘Cyient CSR policy’?

Cyient always believed in giving back to the society in a measure that is proportionate to its success in business. All our sustainability and CSR initiatives are spearheaded through the Cyient Foundation. Since its inception in 2002, Cyient Foundation has conceptualized and enabled numerous social initiatives.

To improve the quality of education, we have adopted 25 government schools in and around our facilities in Hyderabad and presently, are supporting 15,000+ underprivileged pre-
primary children all the way through to high school. Our relentless CSR efforts significantly improved girl student metrics in Cyient adopted schools. A number of these schools have received government awards and accolades from the parent community and local administration.

Our CSR interventions are going beyond education to include IT literacy, health, and community development. Consistent with the new digital world, we are empowering the neighborhoods digitally. We are presently operating 67 Cyient Digital Centres (CDCs) in and around Hyderabad, providing access to digital literacy to more than 30,000+ citizens living around the centres. Under the “Smart Village-Smart Ward Program,” we adopted a village and ensuring the provision of drinking water, sanitation, roads, and water storage facilities to 3,000+ households.

Cyient Foundation’s work with LV Prasad Eye Institute (LVPEI) in Hyderabad has led to the setting up of an innovation centre at LVPEI and the development of low-cost devices for refractive error screening and early age blindness prevention in low resource schools and remote areas.

Having honors of the likes of Padma Shri to your credit, what is the significance of these awards to you?

I think awards and recognitions certainly put more responsibility on one’s shoulders. They are not just an acknowledgement of your contribution to the industry, country, or society but also act as motivators for the younger generations to aspire for similar achievements.

What according to you should be the success mantra for the next gen?

Success means different things to different people. For me, success means the realization of goals. I set a goal, I make a plan, and I put in relentless efforts to reach that goal. And when I achieve my target, I am happy with myself. For instance, my goal was to create a global organization which is sustainable, creates employment, and gets the country its due recognition on the global map. With Cyient, I feel I have achieved that goal. The youth of today should challenge the status quo, dream big, and take risks, be open to change and new learnings, work hard and take complete ownership of the goal/target/task they have set themselves. That’s the only mantra to success.

Some life lessons that you would like to share...

There have been several life lessons in my career spanning five decades, the most important ones are:

- **Be optimistic** - Optimism is a force multiplier. A positive attitude is a must for the attainment of goals.
- **Never give-up** - Life has its crests and troughs, and it is easy to give-up during the low tides but difficult to retrace. Never give up when the going gets tough. Give your best, and you will certainly achieve your goals.
- **Slow and steady wins the race** - Cutting corners and attaining fame hurriedly will not leave you there for good. With integrity, you may be slow, but you will stay there after attaining success.
- **Put values and ethics before everything**.

Rapid Fire:

<table>
<thead>
<tr>
<th>Favourite Book:</th>
<th>21 Lessons for the 21st Century by Yuval Noah Harari</th>
</tr>
</thead>
<tbody>
<tr>
<td>Favourite Movie:</td>
<td>Bahubali - technology at its best</td>
</tr>
<tr>
<td>Best Possession:</td>
<td>My Mercedes Benz – precision and reliability at its best</td>
</tr>
<tr>
<td>Hobbies:</td>
<td>Travelling around the world and learning Carnatic music - vocal</td>
</tr>
<tr>
<td>Inspirational Figure:</td>
<td>My mother for all her passion, and love for her children</td>
</tr>
<tr>
<td>Most memorable moment:</td>
<td>Receiving Padma Shri Award from the President of India.</td>
</tr>
</tbody>
</table>
### Recent Updated Publications

#### Insolvency and Bankruptcy Code, 2016 (With Rules and Regulations) (Revised up to October, 2018)

The Publication is updated up to October, 2018 with the provisions of Insolvency and Bankruptcy (Amendment) Act, 2018 along with Rules, Regulations and Notifications along with all the Circulars and Guidelines issued by Insolvency and Bankruptcy Board of India.

#### Interim Resolution Professional A Handbook (Second Edition)

This Publication is an updated edition covering the role of Interim Resolution Professional, and the compliances and functions required to be performed. It also contains specimen formats of NCLT applications, Notices of COC, process of handing over from IRP to RP, important judgements supporting/directing IRP directly.

#### ICSI IIP Insolvency and Bankruptcy Journal

The Journal is a maiden initiative and the very first of its kind to incorporate the latest in the insolvency law. It intends to keep abreast its readers of the new jurisprudence which is rapidly evolving around the provisions of the landmark legislation i.e., the Insolvency and Bankruptcy Code, 2016 (Code).

The Journal comprises of following sections:

- **Insights** - Articles from the experts in the field of Insolvency and Bankruptcy Law.
- **Judicial Pronouncements** - Full case reports (with Head Notes) from Supreme Court, NCLAT and different benches of NCLT.

#### Voluntary Liquidation-A Handbook

This Publication covers the procedural aspects of voluntary liquidation of corporate persons along with the specimen formats of Board resolution, shareholders’ resolution, engagement letter, intimations to various authorities, preliminary report, final report, application to NCLT for dissolution, FEMA and taxation aspects of Voluntary liquidation etc.

#### Practical Aspects of Insolvency Law (Third Edition)

This Publication is updated up to August, 2018 and covers the Insolvency and Bankruptcy (Amendment) Act, 2018 and related changes in the Regulations, Circulars etc., specimen formats of NCLT applications along with major landmark judgements that would help Insolvency Professionals get an insight into the interpretations of provisions of Code.

These books and publications are available for purchase at ICSI IIP, Lodhi Road or can be ordered online through our website: www.icsiiip.com
Dear Professional Colleagues,

Subject: Registrations Open for Educational Course on ‘Valuation of Securities or Financial Assets’ at Bhubaneswar

We are pleased to inform you that the Classroom training of ICSI Registered Valuers Organisation (ICSI RVO) Educational Course on ‘Valuation of Securities or Financial Assets’ have been successfully completed at various cities.

In continuation of the above, ICSI RVO is planning to conduct Classroom training of its 50 hour course for its next batch at Bhubaneswar:

<table>
<thead>
<tr>
<th>Venue</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICSI House</td>
<td>The 50 hour course shall be conducted as follows:</td>
</tr>
<tr>
<td>Plot No. 70, VIP Colony, IRC Village, Bhubaneswar – 751 015</td>
<td>29th November, 2018 to 6th December, 2018</td>
</tr>
</tbody>
</table>

Any individual willing to register for the Educational Course, which is a pre-requisite for appearing in the IBBI examination, may fill-in the online application in the form available at the link below with the requisite attachments:

http://www.icsirvo.in/Member/SignUp

After the successful submission of application, the payment link shall be sent to the candidates.

Enrolment Fee : Rs. 8,850 (Rs. 7,500 + GST @ 18%)

Educational Course Fee : Rs. 26,550 (Rs. 22,500 + GST @ 18%)

Educational course Fee (for members who have successfully completed the Course on Valuation conducted by ICSI): Rs.20,650/- (Rs.17,500 + GST @ 18%)

For more details, please visit the website www.icsirvo.in

Regards

CS Samir Raheja
CEO (Designate)
Dear Professional Colleagues,

Subject: Registrations Open for Educational Course on ‘Valuation of Securities or Financial Assets’ at Jaipur

We are pleased to inform you that the Classroom training of ICSI Registered Valuers Organisation (ICSI RVO) Educational Course on ‘Valuation of Securities or Financial Assets’ have been successfully completed at various cities.

In continuation of the above, ICSI RVO is planning to conduct Classroom training of its 50 hour course for its next batch at Jaipur:

<table>
<thead>
<tr>
<th>Venue</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICSI House</td>
<td>The 50 hour course shall be conducted as follows:</td>
</tr>
<tr>
<td>Plot No. A5/A,</td>
<td>23rd November, 2018</td>
</tr>
<tr>
<td>Jhalana Doongri</td>
<td>to</td>
</tr>
<tr>
<td>Jaipur – 302004</td>
<td>10th December, 2018</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>(Evening Classes)</td>
</tr>
</tbody>
</table>

Any individual willing to register for the Educational Course, which is a pre-requisite for appearing in the IBBI examination, may fill-in the online application in the form available at the link below with the requisite attachments:

http://www.icsirvo.in/Member/SignUp

After the successful submission of application, the payment link shall be sent to the candidates.

Enrolment Fee : Rs. 8,850 (Rs. 7,500 + GST @ 18%)

Educational Course Fee : Rs. 26,550 (Rs. 22,500 + GST @ 18%)

Educational course Fee (for members who have successfully completed the Course on Valuation conducted by ICSI): Rs.20,650/- (Rs. 17,500 + GST @ 18%)

For more details, please visit the website www.icsirvo.in

Regards

CS Samir Raheja
CEO (Designate)
ANNOUNCEMENT

The new and revamped Training webpage hosted on website of the institute at the hands of CS Makarand Lele, President, ICSI during the inaugural session of contact program of 03 months certified Course on “Certified CSR Professional” on November 14, 2018 at ICSI Noida.

Director (Training & Placement)
The ICSI

All stakeholders are hereby informed to visit the website www.icsi.edu at training page available on https://www.icsi.edu/student/training to get the information on training services of the Institute.
"Officer who is in Default" Under the Companies Act, 2013 ...Wake up Call to Directors, KMPs etc. to be Vigilant

S Srinivasan

T he statutory principles of Corporate Governance & Compliance Management in India are primarily governed by the Company Law i.e. Companies Act, 2013 and Companies Act, 1956 (Previous Act) and other Regulations, Enactments, Updates, etc. With an aim to promote Corporate Governance with transparency and accountability, the Companies Act 2013/1956, has introduced specific provisions on “Officer who is in default”. Officers mentioned under Section 2(60)/Section 5 of the Companies Act, 2013/Companies Act 1956 respectively have to realise that Directors, Manager, Secretary, Managing Directors, CFO etc. are not only designations for a prestige and a status symbol in society. There are extra ordinary liabilities and responsibilities that go along with these positions. The Act, has also provided for liabilities, duties, powers, responsibilities, imposition of fines and imprisonment for default on “Officer who is in default” for contraventions of the provisions laid down in the Act.

e-Adjudication and Companies Act 2013

Hema Gaitonde

T he Companies (Amendment) Ordinance, 2018 has been promulgated by the President w.e.f. 2nd November, 2018. It is based on the recommendations of Shri Injeti Srinivas Committee which was formed to review the penal provisions under the Companies Act, 2013 and suggest measures for promoting corporate governance. One of the suggestions of the Committee is to transfer certain compoundable offences from the Tribunal to an adjudicatory officer and a system based mechanism for levy of penalty. This article deals with the topic of e-adjudications and its benefits. With this note, the Author emphasises on each and every aspects of “Officer who is in default” under the Companies Act 2013/1956 covering current provisions, latest amendments, enactments, rules & regulations thereof. The article list out an overview of the term “Officer who is in default” and what is the impact on directors particularly Whole time Director, Key Managerial Personnel (CEO, CFO, MD, Personnel under immediate Authority under Board, persons accustomed to act in accordance with advice of Board). The author has also drawn reference as to why Nominee directors and Independent directors can be outside the purview of the expression “Officer who is in default”.

Brief Analysis on how the Companies Act deals with ‘Fraud/ Fraudulent Practices’ by Companies/ Directors

Delep Goswami and Anirudd Goswami

Brought about in that regard by the Companies (Amendment) Act, 2017 and by the recently promulgated Companies (Amendment) Ordinance, 2018 and how the professionals associated with companies, including Company Secretaries, are to be guided in ensuring compliance with the regulatory measures.

Special Courts under the Companies Act, 2013 - what is special about them?

T.K.A. Padmanabhan

Criminal trial and justice delivery system under the two major legislations which are corporate as well as economic growth engines are now in the hands of special courts. The intention of the Government to establish special courts for speedy trial of offences is laudable. However, the manner in which the same is implemented is not satisfactory. Without doing a proper home-work or having a well chalked-out implementation programme, the mere hasty legislative enthusiasm not only undermines the good intention but also derails the smooth functioning of the justice delivery system. The need of the hour is to iron out the anomalies pointed out in the article and unless this is done the avowed objective of speedy trial will remain only as a big screen pipe dream.

Offences and Penalties Under The Companies Act, 2013 and Role of Company Secretary

Bhargav Parekh

One of the important changes brought in by the Companies Act, 2013 compared to the erstwhile Companies Act, 1956 is the manner of dealing with non-compliances. The constitution of Special Courts as judicial authorities, National Company Law Tribunal (“NCLT”) as administrative cum quasi-judicial authority and delegation of power of adjudication of penalties to Registrar of Companies (“ROC”) are the key changes brought in by the Act in the Indian corporate regime. Further, with intent to promote ease of doing business in India and ensure better corporate compliance, the Companies Act, 2013 was again amended by promulgation of the Companies (Amendment) Ordinance, 2018 to reclassify and decriminalize certain procedural or technical non-compliances. This article is an attempt to analyze the substantive provisions of the Companies Act, 2013 (as amended by the Companies (Amendment) Act, 2017 and the Companies (Amendment) Ordinance, 2018) (“Act”) concerning the offences and defaults by the companies and officers in default and the mechanism under the Act to deal with them and the role of a Company Secretary in such scenario.

Critical Analysis of Restructuring of Offences Under Companies Act 2013

Namitha Tripathi

With an objective of ease of doing business and to promote “Make in India” movement, government formed a committee of ten panel members under the chairmanship of Mr. Injeti Srinivas, Secretary of MCA. The core principle behind the constitution of the Committee was to identify those compoundable offences, which are technical or procedural in nature; attract minimum non compliance liability and where public interest is not involved. Committee recommended the restructuring of corporate offences, in the nature of civil liability so as to relieve the Special Courts from adjudicating routine offences and also to de-clog the NCLT. Based on the recommendation of Committee, an Ordinance promulgated and came into force on 2nd November, 2018 to amend the Companies Act, 2013, made penal provisions...
less onerous for procedural lapses and technical breaches. The new system will speed up the adjudication process and the objective of ease of doing business in India seems to be feasible.

**Understanding Fraud and Building Fraud Prevention Mechanisms**

Komal Shah

The term ‘fraud’ is not defined in the Indian Penal Code, 1908, however it defines ‘cheating’ and lays down certain essential elements for the offence of ‘cheating’. The Companies Act, 2013, however, defines fraud in relation to the affairs of a company or body corporate by virtue of Section 447, which also includes similar elements as the offence of ‘cheating’. Both of them mention an ‘attempt to deceive’. Fraudulent activities are subject to stringent penalties under the provisions of section 447 of the Act, which have recently been increased by the Companies Amendment Ordinance, 2018. Fraudulent activities of one director can result in making other directors liable since the provisions of the Act are quite strict in covering them under the term ‘officer who is in default’ if they are expected to be aware by any means of such activities. If the company is made liable to a third party on account of fraudulent activities of directors, it will be considered a victim and might be able to claim such losses from the guilty director. Some mechanisms to prevent fraud from sprouting in an organisation can also be thought of like carrying out a thorough background checking of the potential directors and employees, installing strong internal control mechanisms, etc.

**Offences under Companies Act, 2013 and Insolvency and Bankruptcy Code, 2016**

Tomsh Ranjan

The Companies Act, 2013, and the Insolvency and Bankruptcy Code, 2016 (IBC) poses various obligations to be discharged by the Companies, Directors, officers and other concerned person(s). Non-compliance of such obligations attracts punishment which may be imprisonment and/or fine/penalty. The Companies (Amendment) Ordinance, 2018 which has been made effective from 2.11.2018 provides much needed relief to the corporates and professionals by decriminalising a host of offences. Considering re-categorisation of certain ‘acts’ punishable as compounding offences to ‘acts’ carrying civil liabilities it is evident that the Indian Government is leaving no stone unturned in its aim to improve Ease of Doing Business in India. The legislature, RBI, SEBI, and the judiciary have presented a unified front, unprecedented in India so far. In tune with legal developments in the country, guided by recent pronouncements of the Apex court it would be appropriate for the law to provide a regime of penalties for companies and others concerned.

**Research Corner**

ICSI – CCGRT INVITES Research Papers on Champion Sectors

Legal World

- **LMJ 11:11:2018** Looking to all the circumstances and taking a broad and humane view of the situation we are of the opinion, that it would be just and proper that the finished goods which are lying in stock should be sold and out of the sale proceeds the workers should be paid their dues up to the date of closure so that at least they will get something for subsistence. [SC]
- **LW 81:11:2018** If a real dispute exists between the parties, the IBC provisions cannot be invoked as it is not a forum for recovery. [SC]

**From the Government**

- The Companies (Amendment) Ordinance, 2018
- Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013- State of Kerala - reg.
- Amendments in Schedule III to the Companies Act, 2013
- Date of coming into force of the sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 of the Companies Act, 2013
- Amendment to Notification No. S.O. 831 (E) dated the 24th March, 2015
- Establishment of the office of ROC cum OL at Dehradun
- Establishment of the office of ROC at Vijayawada
- Participation of Eligible Foreign Entities (EFEs) in the commodity derivatives market
- Monthly report of FPI registration on SEBI’s website
- Uniformity in the procedure for obtaining samples of goods at the Exchange accredited warehouses
- Total Expense Ratio (TER) and Performance Disclosure for Mutual Funds

**Other Highlights**

- Members Restored During the month of September 2018
- List of members whose removal of name from Register of Members revoked w.e.f. 01-09-2018
- Know Your Member (KYM)
- Ethics & Sustainability Corner
- Global Connect
- CG Corner
- Notification
- Gst Corner
- Certificate Course in Goods & Services Tax
• “OFFICER WHO IS IN DEFAULT” UNDER THE COMPANIES ACT, 2013 … WAKE UP CALL TO DIRECTORS, KMPS ETC. TO BE VIGILANT
• E-ADJUDICATION AND COMPANIES ACT 2013
• BRIEF ANALYSIS ON HOW THE COMPANIES ACT DEALS WITH ‘FRAUD/FRAUDULENT PRACTICES’ BY COMPANIES/DIRECTORS
• SPECIAL COURTS UNDER THE COMPANIES ACT, 2013 - WHAT IS SPECIAL ABOUT THEM?
• OFFENCES AND PENALTIES UNDER THE COMPANIES ACT, 2013 AND ROLE OF COMPANY SECRETARY
• CRITICAL ANALYSIS OF RESTRUCTURING OF OFFENCES UNDER COMPANIES ACT 2013
• UNDERSTANDING FRAUD AND BUILDING FRAUD PREVENTION MECHANISMS
• OFFENCES UNDER COMPANIES ACT, 2013 AND INSOLVENCY AND BANKRUPTCY CODE, 2016
Articles in Chartered Secretary
Guidelines for Authors

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

Declaration-cum-Undertaking

1. I, Shri/Ms./Dr./Professor………………………… declare that I have read and understood the Guidelines for Authors.
2. I affirm that:
   a. the article titled“………” is my original contribution and no portion of it has been adopted from any other source;
   b. this article is an exclusive contribution for Chartered Secretary and has not been/nor would be sent elsewhere for publication; and
   c. the copyright in respect of this article, if published in Chartered Secretary, shall vest with the Institute.
   d. the views expressed in this article are not necessarily those of the Institute or the Editor of the Journal.
3. I undertake that I:
   a. comply with the guidelines for authors,
   b. shall abide by the decision of the Institute, i.e., whether this article will be published and/or will be published with modification/editing.
   c. shall be liable for any breach of this ‘Declaration-cum-Undertaking’.

Signature

NOVEMBER 2018 | CHARTERED SECRETARY ICSI
“Officer who is in Default” Under the Companies Act, 2013

...Wake up Call to Directors, KMPs etc. to be Vigilant

The article aims to bring to the fore, the liabilities which vests not only on a person who is a director but also on those who are part of the top management of companies known as “key managerial personnel” and termed as “officers who are in default” under the Companies Act whenever such liabilities arise involving penal consequences for non-compliances of laws associated with the company.

S.Srinivasan, FCS
Practising Company Secretary
Senior Partner, SR Srinivasan & Co., Chennai
ssrini50@gmail.com

It is a natural human desire to be recognized in society for good reasons. To call oneself a “director” of an organization is at once a prestige and a status symbol in society. In fact, without understanding the meaning of the word “director,” sometimes even a proprietor of a proprietorship firm or a partner in a partnership firm takes pride in flashing a business card showing that he or she is a “director” in his or her firm. He or she gets an “awe” from the recipient of the card which fulfills the ego of the holder. The word director is generally used in relation to a company. But unfortunately, many of those who call themselves as directors, particularly in companies, are oblivious of the extra ordinary liabilities and responsibilities that go along with that position. It is not only the company which is penalized for contravention of the provisions of the Companies Act but also the individual officers who are responsible for such contravention. This article aims to bring to the fore, these liabilities which vests not only on a person who is a director but also on those who are part of the top management of companies known as “key managerial personnel” and termed as “officers who are in default” under the Companies Act whenever such liabilities arise involving penal consequences for non compliances of laws associated with the company.

MEANING OF “DIRECTOR”

The literal meaning of the word “director” is a person who directs, or regulates or supervises the affairs of an organization in business with the required authority or to a person who directs others in conducting an event such as a movie or music. In the context of our discussion, the usage of the word “director” would be confined to the affairs of a company incorporated under a statute such as the Companies Act. Section 2(34) of the Companies Act, 2013, defines the term “director” to mean “a director appointed to the Board of a company” and a “company” under section 2(20) would mean a company incorporated under the Companies Act, 2013 or under any previous company law. However, the Companies Act, 1956, defined the term in a broader manner and encompassed not only a member of the Board but also others. That Section of the Companies Act, 1956, (since repealed) defined a “director” to include any person occupying the position of director, by whatever name called.” It is pertinent to point out here that in some companies it has become the fashion to designate a person as “President” or “Vice-President” on the lines of American Companies without such person being part of the Board of Directors even as they are allowed to attend Board Meetings as “invitees”. In fact, there is a Circular which appeared in Company News dated December 2, 1963, issued by the then Department of Company Affairs which clarifies that the Government sees no objection to the use of such nomenclature provided that in the articles of association, it is made clear by the company what the terms “President” and “Vice-President” mean in the context of company management by clearly defining their powers and duties. It is also essential that the company concerned should make it quite clear to the prospective investors, if and when a public issue is contemplated by it, or in its public announcements, what such nomenclature means in terms of the conventional nomenclature of managing director, executive director, etc. ordinarily used by Indian Companies.

The Department has also prohibited companies from designating persons as Special Directors, Directors –Administration, etc. when they are not part of the Board vide its Circular no. 2/82, dated 20-1-1983 and Circular no.11 dated 29-5-1990. Because of these Circulars they were vulnerable to be construed as directors under the Companies Act, 1956. However, under the Companies Act, 2013, these persons can wriggle out of the liabilities attached to the Board if one has to go by the definition of “director” under the new Act.

MEANING OF “OFFICER WHO IS IN DEFAULT”

In any company of sizable stature, it is not only the board of directors who manage the affairs of the company, though the directors are ultimately responsible for the acts of commission and omission by the company. There are other senior officers of the company who are vested with various serious responsibilities in carrying out the functions necessary for the smooth running of the company under the directions of the Board and who are compensated adequately for their roles. It is only fair that these officers also share ownership of the acts of commission and omission of the company along with the directors. Therefore, to hold only the directors of the company alone responsible for the acts of commission and omission of the company in complying with the provisions of the Companies Act would not be reasonable, fair and logical. The evolution of the Companies Act since the
On the coming into force of the Companies Amendment Act, 1988, it was felt that there was no necessity to prove that the default was committed by the officer knowingly or willfully. Thus, mens rea was not an essential ingredient for establishing the offence in question. In Sukhbir Saran Bhatnagar v. ROC, (1972)42 Comp Cas 408 (Del), it was held that where there is a failure to comply with a statutory provision and the mere failure is made punishable, it is a clear indication that mens rea is ruled out.

Companies Act, 1913 came into force with various amendments and new enactments, successful attempts have been made by the Governments of the day to rope in those officers of the company who should also be held liable along with the directors. These officers can be labelled as “Officers who are in default”. The expression “Officer who is in default” also includes certain managerial personnel in the category of directors. Therefore, in today’s context, it has become very important for the officers of the company to know whether they can be held up as an “officer who is in default” and the circumstances under which they can be held as such.

**MENS REA AS A PRE-REQUISITE TO CALL ONE AS AN “OFFICER WHO IS IN DEFAULT”**

Should mens rea be established for proceeding to prosecute those officers of the company who are responsible for the defaults? The Companies Act, 1913 never defined the expression “Officer who is in default” though the word “officer” was defined. For the first time the Companies Act, 1956, introduced the expression in a new section 5 which defined the term reproduced as hereunder:

5. **Meaning: of “officer who is in default”.—For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression “officer who is in default” means any officer of the company who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision, or who knowingly and willfully authorizes or permits such default, non-compliance, failure, refusal or contravention. (Emphasis added)**

It clearly stated that the “intention” of the officer needs to be established so as to show that the director was at fault to be coming under the bracket of “Officer who is in default”. That means “mens rea” had to be established if the administrative machinery had to prosecute an officer as an officer who is in default under the Companies Act, 1956, as it was enacted then. It became an onerous task for the administrative machinery to prove mens rea on the part of the officer. This difficulty on the part of administrative machinery was fully exploited by unscrupulous officers. In H.Nanjundiah v. The Registrar of Companies, Maharashtra and another (1986 59 Comp Cas 356(Bom)) the learned judge remarked and allowed the appeal as under:

Taking into consideration the meaning of ‘Officer who is in default’ as defined under section 5, the learned Judge remarked as under:

I had asked Mr. Bulchandani, the learned counsel for the respondent, (here the RoC) to point out any resolution of the company to which the petitioner was party which allowed the company to make borrowings in excess of the limits or to point out any act of the petitioner wherein the petitioner had knowingly subscribed to the borrowing beyond the limits, or of the petitioner having willfully authorized or permitted someone to borrow the monies in excess of the limits. Mr. Bulchandani was unable to point out a single act to satisfy this position or even indicate remotely as to how the petitioner could be said to be “an officer in default”.

Based on such stance adopted by the various courts, the Government of the day was compelled to amend section 5 vide the Companies (Amendment) Act, 1988, based on the Sachar Committee recommendations, which read as under:

**Section 5 in The Companies Act, 1956**

**Meaning of “officer who is in default”**

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression “officer who is in default” means all the following officers of the company, namely:-

(a) the managing director or managing directors;
(b) the whole-time director or whole-time directors;
(c) the manager;
(d) the secretary;
(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
(f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board;
(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors: Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

**APPLICABILITY OF MENS REA AFTER AMENDMENT ACT OF 1988**

On the coming into force of the Companies Amendment Act, 1988, it was felt that there was no necessity to prove that the default was committed by the officer knowingly or willfully. Thus, mens rea was not an essential ingredient for establishing the offence in question. In Sukhbir Saran Bhatnagar v. ROC, (1972)42 Comp Cas 408 (Del), it was held that where there is a failure to comply with a statutory provision and the mere failure is made punishable, it is a clear indication that mens rea is ruled out.

It is pertinent to note that this section will be applicable only to those provisions which provide for punishment to ‘officer in default’. It will not apply to provisions in which the said (or similar) expression has not been used. In case of latter mentioned
provisions of the Act, mens rea will continue to be a determining factor and the prosecution will have to prove that the offence was committed knowingly or willfully.

The complaint against an officer in default should be a specific averment. Mens rea cannot always be attributed to all the directors of the company. It is, therefore, incumbent on the prosecution to fix the liability with respect to particular officer. (Ajit Kumar Sarkar v. Asstt. ROC, (1979) 49 Comp Cas 909 (Cal). Followed by Registrar of Companies v. Bipini Behari Nayak, (1996) 86 Comp Cas 641 (Orn)).

Mere default is enough to charge a company with penalty liability; mens rea or negligence is not a relevant factor. (Public Prosecutor v. The Coimbatore National Bank Ltd., (1943) 13 Comp Cas 50, 52 : AIR 1943 Mad 214.)

**APPLICABILITY OF MENS REA AFTER ENACTMENT OF THE COMPANIES ACT, 2013**

The concept of mens rea took a further beating in the Companies Act, 2013. The expression “officer who is in default”, which hitherto occupied a special place as a separate section, was brought into the definition clause as section 2(60) by the Companies Act, 2013 reproduced hereunder:

<table>
<thead>
<tr>
<th>2(60). “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. whole-time director;</td>
</tr>
<tr>
<td>ii. key managerial personnel;</td>
</tr>
<tr>
<td>iii. where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;</td>
</tr>
<tr>
<td>iv. any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;</td>
</tr>
<tr>
<td>v. any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;</td>
</tr>
<tr>
<td>vi. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;</td>
</tr>
<tr>
<td>vii. in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;</td>
</tr>
</tbody>
</table>

In today’s context, the officers who are vulnerable to be coming under the definition of “officer who is in default” need not give too much importance to the concept of mens rea and the definitions which prevailed earlier to the enactment of the Companies Act, 2013, or how the courts ruled earlier. These are subjects which should bother only the legal fraternity or the corporate law consultants such as the practising company secretaries. The present senior officers including directors of companies are now vulnerable to be labelled as “officer who is in default” by the mere fact of holding a particular position in the Board or in the managerial position in the Company. They have to ensure compliance of the provisions of the Companies Act, 2013, so as not to be hauled up by the regulators as an officer who is in default under section 2(60) of the Act. It is imperative therefore, that the senior management personnel take adequate precaution right from the day they are appointed in their positions.

The present senior officers including directors of companies are now vulnerable to be labelled as “officer who is in default” by the mere fact of holding a particular position in the Board or in the managerial position in the Company. They have to ensure compliance of the provisions of the Companies Act, 2013, so as not to be hauled up by the regulators as an officer who is in default under section 2(60) of the Act. It is imperative therefore, that the senior management personnel take adequate precaution right from the day they are appointed in their positions.

The sub-section 2(60) has two components:  

**Component 1**: Who can be bracketed under “officer who is in default”; and

**Component 2**: In what situations an officer would come under that bracket.

We shall now examine each of these category of persons listed in the sub section.

**Section 2 (60) (i)**: A wholetime director

**Wholetime Director**: (defined under section 2(94))

A Whole-time director comes squarely under the ambit of the expression “Officer who is in default”. Section 2(94) of the Companies Act, 2013 defines the term “whole-time director” to include a director in whole-time employment of the company. Therefore, the term “Whole-time Director” is a broader term. While a director in whole-time employment need not necessarily be a whole-time director, a whole-time director has necessarily to be in whole-time employment of the company. It has been held by the Bombay High Court that the expression “whole-time director” must refer to a director who spends all his time in the management of the company in the same sense as a managing director does. [Ramaben A Thanaawala v. Jyoti Ltd (1957) 27 Comp Cas 105 (Bom)] though he may accept office of non-whole-time director in other companies subject to the limits imposed by section 275 read with sections 277 and 278.(then Companies Act,1956).

It is not necessary that a situation must warrant to make the WTD an accused. The mere fact that a person is designated as a
whole-time director, he will come under the ambit of “Officer who is in default” under section 2(60)(i) of the Act. However, a director in whole-time employment need not necessarily come under this definition under the sub-clause (2)(60)(i). For e.g. “Director-Finance” who is not a whole-time director but a director in whole-time employment will not come under the definition under this particular sub-clause i.e. 2(60)(i) but he may come under the category of Key Managerial Personnel.

**Can there be more than one WTD in a company? If so, will all the WTDs be labelled as “Officers who are in default” or the name of any particular WTD has to be specified? In which case, who will specify—the Company or the Administrative Authority?**

There is no bar under the Companies Act, 2013, that a company cannot have more than one WTD. In fact, the Act indirectly permits appointment of more than one WTD in that clause (i) of the second proviso to section 197 makes a reference to a cap on remuneration being paid to more than one WTD. The question now will arise as to which of the directors can be labelled as an “officer who is in default” or should all the WTDs fall in the category? It would be interesting to note that section 5 of the erstwhile Companies, 1956 specifically brought all WTDs under this clause. However, the Companies Act, 2013, has omitted the plural. Nevertheless it appears that all the whole-time directors will come under the definition of “Officer who is in default” and there is no choice either for the company or the Administrative Authorities to pick and choose since no such provision is there in the Act.

**Section 2 (60) (ii) Key Managerial Personnel**

Section 2(51) of the Companies Act, 2013, defines the expression “Key Managerial Personnel” (KMP) in relation to a company to mean:

(i) the Chief Executive Officer; (defined under Section 2(18))
(ii) the Managing Director; (defined under Section 2(54))
(iii) the manager; (defined under Section 2(53))
(iv) the company secretary except company secretary of section 8 companies (defined under Section 2(24) read with Notification No. GSR 466E dated 5-6-2015)
(v) the whole-time director; (defined under Section 2(94))
(vi) the Chief Financial Officer; (defined under Section 2(19))
(vii) such other officer, not more than one level below the directors who is in whole time employment, designated as key managerial personnel by the Board; and
(viii) such other officer as may be prescribed;

One must be an “Officer” of the company first to be labelled as “Officer who is in default”. It would, therefore, be necessary to understand the definition of “officer” of the company. Section 2(59) of the Companies Act, 2013, defines the term as under:

“officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

The term “officer” would include: (a) a director; (b) a manager; or (c) a KMP; or (d) any other person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act. While one can identify the persons who come under categories (a) (b) and (c) easily, person coming under category (d) will be a subjective assessment.

Section 7 of the erstwhile Companies Act, 1956, which defined the expression “person in accordance with whose directions or instructions directors are accustomed to act” is reproduced hereunder and such person has been generally referred to as a “shadow director”:

**Section 7 - Interpretation of “person in accordance with whose directions or instructions directors are accustomed to act”. Except where this Act expressly provides otherwise, a person shall not be deemed to be, within the meaning of any provision in this Act, a person in accordance with whose directions or instructions the Board of directors of a company is accustomed to act, by reason only that the Board acts on advice given by him in a professional capacity.**

However, the Companies Act, 2013 has not defined this expression but the concept has been borrowed while dealing with “Related Party Transactions” (RPT) in defining the term under section section 2(76)(vi), (vii), and (viii) of the Act. Therefore, proper judgement will be required while interpreting the expression depending upon the facts of each case.

It is possible for a holding company (through the actions of its directors) to be a shadow director of its subsidiary companies. Where a holding company deputes its employees to be on the Board of the subsidiary company, it is more likely than not that such employee would be accustomed to act in accordance with the advice, directions or instructions of the directors of the holding company. This is not an uncommon situation in Holding-Subsidiary relations in India. Can we then say that the directors of the holding company are “Officers who are in default” in relation to contraventions made by the subsidiary company? It will be a tall order for the administrative machinery to establish such a contention. But if the records such as the minutes books of the Holding and Subsidiary Companies reflect such intentions the directors of the Holding Company can come under the label of Officers who are in default of the subsidiary company. It remains to be seen how the courts would view such situations.

Again, are the auditors of the company to be construed as an “officer” of the company? In several companies the Board is accustomed to act in accordance with the advice of the auditors. None of the Companies Acts, whether it be 1913, 1956, or 2013 defined the term “auditor”. While the definition clauses in the 1913 and 1956 Acts expressly excluded the auditor from the definition of “officer” except for certain sections, the Companies Act, 2013, neither includes nor excludes the auditor from the definition of officer in section 2(59) of the Act. Even the term “statutory auditors” have not been defined. Therefore, the benefit of doubt can lean in favour of the auditors while considering whether the auditors should be labelled as “Officers who are in default” even where the directors are accustomed to act in accordance with the advice of the auditors.

We shall now discuss under each of the above heads of KMP Section 2 (60) (ii) Key Managerial Personnel

(a) The Chief Executive Officer; (CEO) (defined under section 2(18))

The CEO is an “officer” of the company and he has to be designated as the CEO in his appointment order by the recognized authority issuing the order, whether such authority be the Board, a Committee or a person authorized as such by a Board Resolution. It is a good secretarial practice to issue an appointment order describing the CEO’s functions and responsibilities. In fact, it would be in the own interest of the CEO concerned to insist on this requirement. It is advisable that the
A director in whole-time employment need not necessarily come under this definition under the sub-clause 2(60)(i). For e.g. “Director- Finance” who is not a whole-time director but a director in whole time employment will not come under the definition under this particular sub-clause i.e. 2(60)(i) but he may come under the category of Key Managerial Personnel.

Therefore, the following condition has to be satisfied if the JMD has to be roped in under the definition of OID:

“The articles of a company or the JMD’s agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, has to entrust substantial powers of management of the affairs of the company on the JMD.”

It would be immaterial if he is called a JMD instead of MD since the section says MD includes a director occupying the position of managing director, by whatever name called. But lo behold! Even if he has not been entrusted with substantial powers, the JMD will get caught under the definition of KMP as amended by the Companies Amendment Act, 2017 which has added a new sub-clause (v) to sub-section 2(51) which reads as under:

2(51)(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board;

Therefore, a JMD, with or without substantial powers of management, will squarely come under the definition of OID.

Section 2 (60) (iii) Where there is no key managerial personnel
Where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

As per section 203(1) read with Rule 8 and 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following class of companies have to mandatorily appoint KMPs:

(i) Listed Companies; (ii) every other public company with paid-
up share capital of Rs.10 Crores or more and (iii) a Company Secretary in respect of a company, whether public or private with paid up capital of Rs.5 Crores or more.

There are two situations: one, the above companies may not comply with the aforesaid requirement in appointing KMPs and second, companies not coming under the above classes of companies may have appointed KMPs voluntarily. In these situations, the OIDs will be:
(a) director or directors who have been specified to be OID and has/have given their consent in writing to the Board to be OIDs; and
(b) all the directors where no one is specified to be OID.
(c) where there is no compulsion by law to appoint the KMPs, the KMPs will fall under the expression OID if they have given consent to be such or designated as a KMP under the definition clause.

Section 2 (60) (iv) Personnel under immediate Authority under Board
Any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

J.J.Irani Committee Report which has been the backbone while drafting the Companies Act, 2013 based on which the Act has been drastically revamped has this to say on the captioned clause:

12. The Committee also recommends that in relation to criminal liability of officers in default, the rules should provide that :-
(i) ........................................
(ii) ........................................
(iii) Any person other than a Managing Director/Whole Time Director/CEO/CFO/Company Secretary (whether or not employed by the company) who, under the immediate authority of the Board/Managing Director/Whole Time Director/CEO/CFO/ Company Secretary, is charged with certain functions including maintenance, filing or distribution of accounts or records should also be liable where he authorizes, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, the default;
(iv) ........................................
(v) ..................................................

While the J.J. Irani Committee report had mentioned persons who are charged with certain functions mentioned therein and who come under immediate authority of the Board/Managing Director/Whole Time Director/CEO/CFO/ Company Secretary, the Act in its present form has made a distinction not to rope in all persons who come under the immediate authority of the Managing Director/Whole Time Director/CEO/CFO/ Company Secretary but the Board alone. This is because the expressions “immediate authority of the Board” and “the Key Managerial Personnel” must be read as stand alone. If the expression “immediate authority” is read so as to be applicable to the expression “the Key Managerial Personnel” also, it would lead to a dangerous situation where even the clerks who are assigned jobs by the KMP will also come under the expression OID. That is not the intention of law or the Committee. After all they may not be “officers” under the Companies Act which is an essential requirement to be an OID.

Section 2 (60) (v) Person accustomed to act in accordance with advice of Board
Any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

Such persons must come under the definition of “officers” and not otherwise.

However, it may be difficult to prove that the person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, is a “shadow director”. Impact of instructions from the Board of Holding Company to the persons who represent the Holding Company in the Subsidiary and how the directors of the Holding Company will come under the definition of “Officers who are in default” in the subsidiary has been dealt with in earlier paragraphs.

Section 2(60) (vi) Every director who does not object
Every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

This is a new clause which has been added in the Companies Act, 2013 based on the recommendations of J.J. Irani Committee Report:

“Clause 12(i) of J.J. Irani Committee Report recommends that in relation to criminal liability of officers in default, the rules should provide that :-
(i) directors should be liable where they authorize, actively participate in, knowingly permit, or knowingly fail to take active steps to prevent (including monitoring failures where appropriate) the default;”

This new clause is to prevent unscrupulous directors from wriggling out of a situation where they attempt to absolve themselves of the liabilities arising out of non-compliances feigning ignorance of such non-compliances since they were not specifically brought to their notice by the officers in charge of compliances or where they have assumed that compliances do not come under their domain. Therefore, with the introduction of this new clause no director can take a stand that he/she was not aware of non-compliances if he/she was in receipt of any proceedings of the Board or participated in such proceedings without objecting to the same.

“Nominee Director” coming under the definition of “Officer who is in default”

The definition clause 2 of the Companies Act 2013 does not contain a definition for Nominee Directors. However, there is a reference to the term in Section 149(7) where it seeks to explain the meaning of “Nominee Director” for the purpose of that section. “Nominee Director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.
From the above, Nominee director on the Board has to have the following attributes:

a) He should be nominated by any financial Institution in pursuance of any law or in terms of an agreement entered into by the company.

b) He could be appointed by the Government or by any other person.

c) The person so appointed shall represent the interests of the organization/Institution which he represents.

However, a nominee director could be proceeded against and they cannot claim immunity from the provisions of section 2(60)(vi) of the Companies Act 2013 and their exoneration from the proceeding merely by virtue of being nominee directors. There must be an express provision to that effect in the Companies Act, 2013 which is not the case.

"It is for the prosecution to establish that the nominee director was party to the offence. This principle may be widely disregarded in practice and nominee directors may take themselves to be simply as watchdogs for those who put them on the Board. They are wrong, and before accepting office they should remember that the law expects them to devote their loyalty to the company as a whole. They must be careful. They must not represent only those appointing them. They must look to the interest of 'the company's employees in general', and they, like any other director, must also balance these, where necessary, with those of the membership comprising the company. See LORD DENNING in Meyer v. Scottish C.W.S Ltd., (1959) AC 324 at pp. 366, 367 (HL) cited with approval in Selangar United Rubber Estates Ltd. v. Cradock (No. 3), (1968) 1 WLR 1555 : (1969) 39 Comp Cas 485. Further, in the case of Geetanjali Mills Ltd. v. Thiruengadathan (1989) 1 Comp. L. J, the liability of the nominee directors in the Income Tax Act, 1961 was discussed and it was held that the Nominee Directors of the creditors, institutions, government, joint venture partners etc., generally, do not enjoy any special immunity. Financial Institutions' nominee directors, however, get immunity under the State Financial Corporation Act. But it has to be established that the accused person has acted in good faith."

Therefore, it is clear that "Nominee Directors" will certainly fall under the ambit of Section 2(60)(vii).

"Independent Director" coming under the definition of "Officer who is in default"

Clause 2(47) of the Companies Act 2013 defines "Independent Director" to mean an independent director referred to in subsection (6) of section 149. We have seen earlier that certain persons inter alia, whole-time directors, key managerial persons or every director who is aware of a contravention under the Companies Act, by virtue of the receipt by the concerned director of any proceedings of the board or participation in such proceedings without objecting to the same, or where such contravention takes place with his consent or connivance, will be held liable for contraventions under the Companies Act, 2013. What is applicable to nominee directors is equally applicable to independent directors.

In this context, the Securities and Exchange Board of India (SEBI) has in its order dated 20 June 2017 in respect of Zylog Systems Limited, sought to provide respite to independent directors for contraventions under the Companies Act, involving actions to be taken by the company’s management. In its order, SEBI has acknowledged that the role of independent directors does not extend to the day-to-day management of the Company. Further, it has upheld that as long as independent directors discharge their duties using “best efforts”, they cannot be held liable for non-compliances attributable to the company’s management. It may be worthwhile for directors of companies (listed and unlisted) to pro-actively deal with the affairs of the company. It remains to be seen if standards similar to those applied by SEBI to listed companies are applied to for directors, independent or otherwise of a private company under Companies Act, 2013.

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Companies Act, 2013 have cast onerous responsibilities on the directors with enhanced duties and liabilities, to make them more accountable, including being personally liable in case of wrongs committed by them. Considering that stringent penal actions are imposed even for not-such-grave non-compliances, it is necessary that directors, whether nominee, independent, or otherwise, adopt extreme care whilst exercising their duties to limit their exposure to possible penal action in case of contravention by the company. While directors must always act in the best interests of the company, abundant caution must also be observed in their actions, such as attending as many board meetings as possible or ensure that board papers reach them if for some reasons they are not able to attend any board meeting, so that they are fully aware of the company’s business and in particular non-compliances of the provisions of the Companies Act, 2013 and its rules. Directors must read all necessary papers and relevant background information made available to them for meetings to enable their meaningful participation and contribution. Directors must also seek information where means to information is only given in the board papers. They must ensure that any question raised by them in a board meeting or any dissent expressed is properly recorded in the minutes of the meeting so as to provide prima facie evidence, in the event the actions of a director are questioned and attempts are made to rope in the directors to come under the purview of the expression “Officer who is in default” under section 2(60)(vi).

SECTION 2(60)(vii) - RTAs and MBs as Officers in default

In respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

This is a new clause which has been added in the Companies Act, 2013. The share transfer agents, registrars and merchant bankers to the issue or transfer are the main interfaces with the shareholders of the listed companies and prospective listed companies. Therefore, it is only logical that the Companies Act, 2013 has rightly included this new clause to cast responsibilities on these agents.

SUMMING UP

The purpose of this article is to give a “wake up call” to all the directors including whole time directors, nominee directors, independent directors, KMPs, share transfer agents, registrars and merchant bankers to be ever vigilant in their respective functions so as not to be hauled up by the administration authority as an “officer who is in default”. It is, therefore, imperative that these persons are armed with a competent Practicing Company Secretary as a friend, philosopher and guide.
e-Adjudication and Companies Act 2013

The Companies (Amendment) Ordinance, 2018 promulgated by the President with effect from 2.11.2018 is based on the recommendations of Shri Injeti Srinivas Committee which was formed to review the penal provisions under the Companies Act 2013 and suggest measures for promoting corporate governance. One of the suggestions of the Committee is to transfer certain compoundable offences from the Tribunal to an adjudicatory officer and a system based mechanism for levy of penalty. This article deals with the topic of e-adjudications and its benefits.

INTRODUCTION

The Companies (Amendment) Ordinance, 2018 (hereafter referred to as “The Ordinance”) has been promulgated by the President of India w.e.f. 2nd November 2018. This is one more step in the direction of promotion of ease of doing business. This amendment is based on the report of the Committee which was set up under the Chairmanship of Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs (MCA) in July 2018, to review the existing framework dealing with offences under the Companies Act, 2013, to make recommendations to promote better corporate compliance and to reduce the burden on the Special Courts/ Tribunals. The present article discusses in detail about one of the suggestions by the Committee i.e. system based adjudication process.

The Committee undertook a detailed analysis of the penal provisions of the Companies Act, 2013 and submitted its report on 21st August 2018. It comprised of eminent persons like Shri T.K. Vishwanathan, former Secretary General Lok Sabha and Chairman, BLRC Shri Uday Kotak, MD Kotak Mahindra Bank, Shri Shardul Shroff, Executive Chairman Shardul Amarchand Mangaldas and Co, Shri Ajay Bahl, Founder Managing Partner, AZB & Partners. The terms of reference of the Committee included, to recommend, if any of the above acts which are considered to be compoundable offences under the Companies Act, 2013 could be re-categorised to attract civil liability, to recommend whether any of the non-compoundable offences could be re-categorised as compoundable offence, to look into the necessity of providing any improvement in the mechanism for levy of penalty, to lay down guidelines for an in-house adjudicatory mechanism with penalty being levied in a MCA21 system driven manner with minimum discretion, to take necessary steps in the formulation of draft changes in the law and such other related matters.

RECOMMENDATIONS BY THE COMMITTEE

- Re-categorising of 16 offences out of 81 which are in the nature of compoundable offences to an in-house adjudication framework wherein defaults would be subject to penalty by adjudication officer
- No change suggested in respect of non-compoundable offence
- Instituting a transparent and technology driven in-house adjudication mechanism and increasing the transparency by

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>i.</td>
<td>minimizing physical interface</td>
</tr>
<tr>
<td>ii.</td>
<td>conducting proceedings on an online platform</td>
</tr>
<tr>
<td>iii.</td>
<td>Publication of the order on the website</td>
</tr>
</tbody>
</table>

- Strengthening the in-house adjudication mechanism by necessitating an order for making good the default at the time of levying of penalty, with the ultimate aim of achieving better compliance
- De-clogging the NCLT by
  - i) Enlarging the jurisdiction of Regional Director (by enhancing the pecuniary jurisdiction up to which they can compound offences under Section 441 of the Act).
  - ii) The Central Government can be vested with the power to approve the alteration in the financial year under Section 2(41) and cases of conversion of public company into private company.
- Certain other recommendations with respect to better compliances and Corporate Governance.

COMPOUNDABLE OFFENCES (Section 441)

As per the provisions of the Companies Act, 2013, the offences punishable with imprisonment only or with imprisonment and fine are non-compoundable offences. These offences have serious implication and are hence non-compoundable. Offences other than these (i.e. those which are punishable with fine only or with imprisonment or fine or both) are compoundable. Compounding is a settlement mechanism where defaulter agrees to pay the penalty for having committed the default. It is an opportunity to avoid prosecution in the Trial Court.

Any Compoundable offence (whether by Company or by its officer), punishable under this Act,

- May be compounded either before or after the institution of any prosecution
- Can be compounded by National Company Law Tribunal (NCLT)
- Where the fine involved is less than Rupees Five Lacs, it can be compounded by the Regional Director (RD) or officer authorised by the Central Government (CG). (This limit has now been enhanced to Rupees Twenty Five Lacs by the Ordinance)
- Offences may be compounded on payment to CG of amount specified by NCLT or RD
- The sum specified will not exceed the maximum amount of fine which may be imposed for the offence so compounded
- No offence can be compounded if there is any investigation which has been initiated or pending against the Company
- An application of compounding of an offence will be made to Registrar who will forward the same with his comments to NCLT or the RD or officer authorised by CG
- In case an offence is compounded before institution of prosecution, no prosecution shall be instituted in relation to such an offence against the offender in relation to whom the offence is compounded.
In case the offence is compounded after the institution of the prosecution proceedings, the Registrar has to bring in writing the fact of such compounding to the notice of the Court, before which prosecution is pending. Thereafter the said Company or the officer in default shall stand discharged

Where the offence is on account of non-filing of certain document or return, NCLT, RD or the officer authorised by CG may in its order require the filing of such document/return with late fees, within a specified time

Any Company or officer in default who fails to comply with the order above will be punishable with imprisonment which may extend to six months or fine up to Rs. one lac or both

Any second or subsequent offence committed after expiry of three years from the date on which offence was compounded will be deemed to be first offence

Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

As per the Ordinance the following compoundable offences shall now be liable to penalty instead of being punishable with fine or imprisonment. For all other compoundable offences the present rigour of law to continue.

<table>
<thead>
<tr>
<th>Section</th>
<th>Content of the Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 53(3)</td>
<td>Prohibition on the issue of shares at discount.</td>
</tr>
<tr>
<td>Section 64(2)</td>
<td>Failure to give notice to Registrar for increase in the share capital.</td>
</tr>
<tr>
<td>Section 92(5)</td>
<td>Filing of annual return within specified time period.</td>
</tr>
<tr>
<td>Section 102(5)</td>
<td>Attachments of statement with respect to the special business in the general meeting notice and the information to be given therein.</td>
</tr>
<tr>
<td>Section 105(3)</td>
<td>Default in giving declaration regarding provision of appointment of proxy in the notice calling general meeting.</td>
</tr>
<tr>
<td>Section 117(2)</td>
<td>Defaults in filing certain resolutions and agreements with the Registrar.</td>
</tr>
<tr>
<td>Section 112(3)</td>
<td>Filing of report on the Annual General Meeting with the Registrar by listed public company.</td>
</tr>
<tr>
<td>Section 137(3)</td>
<td>Copy of financial statement to be filed with Registrar.</td>
</tr>
<tr>
<td>Section 140(3)</td>
<td>Failure/delay in filing the statement by auditor after resignation.</td>
</tr>
<tr>
<td>Section 157(2)</td>
<td>Company to inform DIN to Registrar.</td>
</tr>
<tr>
<td>Section 159</td>
<td>Other contraventions related to allotment of DIN.</td>
</tr>
<tr>
<td>Section 165(6)</td>
<td>Accepting directorships beyond limit.</td>
</tr>
<tr>
<td>Section 191(5)</td>
<td>Payment to director not to be made in case of loss of office except under certain circumstances and subject to prescribed limits. Any amount received by director is to be held in trust.</td>
</tr>
<tr>
<td>Section 197(15)</td>
<td>Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.</td>
</tr>
<tr>
<td>Section 203(5)</td>
<td>Appointment of key managerial personnel in certain class of companies.</td>
</tr>
<tr>
<td>Section 238(3)</td>
<td>Requirement of registration of offer of schemes related to transfer of shares.</td>
</tr>
</tbody>
</table>

The pecuniary jurisdiction of the Regional Director (RD) for compounding of offences has now been increased from Rupees Five Lacs to Rupees Twenty Five Lacs. This will result in significant reduction in compounding cases before NCLT, thereby leading to speedy disposal of more serious offences. The NCLT Benches will be able to concentrate better on the Insolvency cases which are time bound matters.

As per the Ordinance, the Central Government has been vested with the power to approve alteration in the financial year of a company under section 2(41) of the Act and conversion of public companies into private companies under section 14 of the Act. All the applications under the above sections which are pending with the NCLT as on the date of the commencement of the Ordinance shall be disposed of by NCLT in accordance with the provisions applicable to it prior to the Ordinance.

ADJUDICATION OF PENALTIES (PRESENT PROVISIONS OF LAW)

Section 454 of the Companies Act, 2013 (read with Rules there under) provides for Adjudication of Penalties upon detection of default by ROC. At present it requires the defaulting company representative or its officer to be present before the adjudicating officer during the adjudicating proceedings.

Upon receipt of notice from the adjudicating officer, the Company representative or the officer in default is required to show cause within the specified period, as to why inquiry should not be held against him or the Company. If, after considering the cause, shown by such company or officer, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance. On the date fixed for hearing, after giving a reasonable opportunity of being heard to the person(s) concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order as he thinks fit. He has the power to summon and enforce the attendance of any person acquainted with the facts of the case and to order for evidence or to produce any document, that may be useful for or relevant to the subject matter of the inquiry. If any person fails, neglects or refuses to appear as required above, before the adjudicating officer, he may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

While adjudging quantum of penalty, the adjudicating officer shall have due regard to the amount of disproportionate gain made as a result of default, the amount of loss caused to an investor or a group of investors or creditors as a result of the default; repetition of the default.

Any person aggrieved by an order made by the adjudicating officer may prefer an appeal to the Regional Director having jurisdiction in the matter.

IN-HOUSE SYSTEM BASED ADJUDICATION MECHANISM (AS SUGGESTED BY THE COMMITTEE)

It is important to understand the important suggestions with respect to the system based adjudication mechanism made by the Committee.

1. System Driven and technology based: There will be minimum physical interface between the adjudicating officer and the defaulter. The MCA21 system must be able to throw up cases of non-compliances. An auto populated list of certain percentage of such cases can be generated in a random manner.
2. E-notices: Notices will be issued via the electronic platform to the defaulting parties in the list. No other name can be picked unless any order for investigation has been passed.
3. In case no reply is received to the e-notification, within the stipulated time, a physical notice will be sent after uploading it on the on-
4. The Physical notice must also insist that the reply to the notice be given via on-line platform. In a particular case where the adjudicating officer requires the presence of the defaulting person for compounding the matter, he must record the reasons for the same. Physical presence must therefore be an exception.

5. In case the representative of the defaulting party wants to make an oral representation, he should be allowed to do so only after filing their written reply electronically. In order to ensure transparency, the oral representations made should be video recorded.

6. The orders passed by the adjudicating officer should be published online. This will not only ensure transparency but also help creation of awareness amongst the stakeholders. “Good” orders will be treated as precedents in the future.

7. Ensuring compliance of default should be the main objective. The adjudicating officer must mention in the order that at the time of paying the penalty the default has to be made good to the extent possible.

8. Up-gradation of the online platform will be required. The Corporates should be able to access the online notices/queries raised by the authority and to upload their reply.

9. To avoid repeat default, Section 451 of CA 2013 provides for payment of twice the fine in case same default is repeated for second and subsequent occasions within a period of three years. However at present there is no such provision with respect to a penalty under Section 454. Hence the Committee has recommended such a provision as Section 454A which has been made effective under the promulgation.

10. The implementation of the above mechanism will require amendment to the rules and up-gradation of the on-line platform.

**E-PROCEEDINGS UNDER INCOME TAX ACT**

As a part of the Government initiative towards e-Governance, the concept of E-proceedings has already been implemented under the Income Tax Act with effect from Oct 2017. The Income tax Department which was sending notices through emails is now gradually migrating its ‘e-mail based communication’, to the ‘e-Proceeding’ facility on Income Tax Business Application (ITBA) platform of the Department. An option is now available to the concerned assessee (having an ‘e-Filing’ account) to furnish their consent to the Income-tax Department for conducting assessment proceedings through the ‘eProceeding’ facility of ITBA. Once this option is exercised by the assessee within the stipulated time-frame all further proceedings in that case would be system based.

ITBA module: It is a simple way of communication between the Department and assessee, through electronic means, without the necessity to visit Income-tax Office for conduct of assessment proceedings. This taxpayer friendly measure has substantially reduced the compliance burden for the assessee. In assessment proceeding, ‘e-Proceeding’ enables seamless flow of Letter(s)/Notice(s), Questionnaire(s), Order(s) etc. from Assessing Officer to the account of the concerned assessee on ‘e-Filing’ website. Upon Login into the website, on receipt of Departmental communication, assessee would be able to submit the response along with attachments by uploading the same, on ‘e-Filing’ portal. The response submitted by the assessee would be viewed by the Assessing Officer electronically in Income Tax Business Application (ITBA) module. This, besides saving precious time of the Assessee, also provides a 24X7 anytime/anywhere convenience to submit response to the Departmental queries in course of assessment proceedings. Assessee can retain complete information of all e-submissions made during the course of assessment proceedings through ‘E-Proceeding’ facility for reference & record purpose in his e-Filing portal account. Assessee will have the facility to opt out of E-Proceeding and such option has to be communicated to the Department through the e-Filing website. Upon closure or completion of any proceeding under this procedure, the final Order, letter or document will be delivered to the Assessee under “E-Proceeding” Tab in the e-filing website of the Department and if required, the same may also be delivered by Post.

It remains to be seen how the entire process will take effect under the Companies Act, 2013.

Some of the benefits of the e-proceedings are:

1. Adjudication turning faceless is a welcome step since this would mean lesser chances of influencing the decision of the authority.

2. An online record of exchange of information will be generated, leading to continuity in the flow of communication between adjudicating officer and defaulting party.

3. Ease of doing business- Efficient management of time for the adjudicating authority as well as the defaulting party. E-proceedings will also help in saving travel cost. System based proceedings will obviate the need for seeking appointment with the RD/ Adjudication officer or waiting for long time at their offices.

4. Environment friendly manner – This initiative is environment friendly as adjudication proceedings would become paperless and there will be no need to travel. An online reply can be accessed by different concerned authorities at any time.

5. Transparency: If the orders are placed online, there will be transparency in the entire proceedings.

6. The upgradation of the online platform will lead to generation of a repository of data for the corporates and the adjudicatory authority.

7. Due to large number of pending cases before NCLT, it is taking a long time to get the matter compounded. With the introduction of system based penalty levy mechanism, defaults, if any can be compounded faster. In genuine cases where default is unintentional, this will be a big relief.

**CERTAIN DIFFICULTIES WHICH THE STAKEHOLDERS ARE LIKELY TO FACE UNDER SYSTEM BASED PENALTY MECHANISM**

1. Disparity in the operating system of the uploading entity and the adjudicating officer.

2. File size restrictions.

3. Login authorization at certain level of adjudicating officer only.

4. The person uploading the reply to the notice must be careful enough to comply with all the requirements of the platform, for e.g. correct nomenclature to be used for file name so that it can be easily identified by the officer, once downloaded; proper page numbering, so that the officer can, if required, further raise any query with reference to the reply given.

The Government has been taking various initiatives to digitalize the data being submitted by the Corporates and its directors. Right from introduction of the MCA21 system in 2005-2006, the requirement to submit data in XBRL format, Director KYCs in 2018 to future plans to introduce e-adjudication. We as professionals are no doubt facing a few hiccups in this entire process. However, it is clear that India is progressing fast on the path of digitalization.
Brief Analysis on how the Companies Act deals with ‘Fraud/Fraudulent Practices’ by Companies/Directors

The article attempts to highlight some of the important provisions of Companies Act, 2013 with regard to dealing with fraud/fraudulent practices committed by companies through directors and the changes brought about in this regard by the Companies (Amendment) Act, 2017 and by the recently promulgated Companies (Amendment) Ordinance, 2018 and how the professionals associated with companies, including Company Secretaries, are to be guided in ensuring compliance with the regulatory measures.

Delep Goswami, FCS
Advocate, Supreme Court of India
New Delhi
delepgoswami@gmail.com

Anirrud Goswami
Advocate, Goswami & Goswami Advocates
New Delhi
anirrudgoswami@gmail.com

FRAUD DEFINED IN THE COMPANIES ACT, 2013

The Companies Act, 2013 (‘CA 2013’) brought about significant changes in the way in which business was being conducted by corporate entities in India who were, till then, governed by the erstwhile Companies Act, 1956. The necessity for such drastic changes in legislation arose after the ‘Satyam Scam’ which revealed failure of the monitoring/supervision by the directors, particularly the independent directors of the company. The ‘Satyam Scam’ also highlighted the negligence shown by a reputed firm of auditors like PriceWaterhouseCoopers in detecting the fraud until the Chairman of company, Ramalingam Raju himself revealed about the fudging of the accounts and the consequent defrauding to the tune of Rs.8000 crores.

The CA 2013 was expected to address the gaps noticed in the previous Act of 1956 and many drastic provisions were added in the CA 2013 to ensure good corporate governance, audit of accounts of a company in order to give a true and fair picture of the company and the CA 2013 also prescribed enhanced responsibilities and liabilities for not just company directors but also for independent directors. CA 2013 also highlighted the important role of the Serious Fraud Investigation Office (SFIO) and its powers. It was expected that with such stricter control over companies and their management and audit functions, the number of corporate frauds would get minimized. However, this has been proved wrong by the recent spate of corporate frauds committed inter alia by Vijay Mallya of Kingfisher, Nirav Modi, Mehul Choksi, Fortis Healthcare, Amrapali Builders, Unitech, Bhushan Steel, etc.

While it will be useful to understand the impact of the stricter measures contemplated in the CA 2013 towards good corporate governance, well-defined roles, liabilities and responsibilities of company directors, including the independent directors, and importantly the role of key managerial personnel, in this article an attempt has been made to highlight some of the important provisions of CA 2013 with regard to dealing with fraud/fraudulent practices committed by companies through directors and the changes brought about in that regard by the Companies (Amendment) Act, 2017 and the recently promulgated Companies (Amendment) Ordinance, 2018 and how the professionals associated with companies, including Company Secretaries, are to be guided in ensuring compliances of the regulatory measures.

For the first time, CA 2013 defined the term ‘fraud’ and prescribed ‘punishment for fraud’. Section 447 of CA 2013, which was in force till amended and diluted by the Companies (Amendment) Act 2017, reads as below:

“Punishment for Fraud.
447. Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation.—For the purposes of this section—
(i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful
Brief Analysis on how the Companies Act deals with ‘Fraud/Fraudulent Practices’ by Companies/Directors

Recently, the Companies (Amendment) Ordinance, 2018 brought into force from 2nd November, 2018 has only increased the fine prescribed under second proviso to section 447 from the hitherto stipulated “rupees twenty lakhs” to an enhanced “rupees fifty lakhs”. Interestingly, the said Ordinance of 2018 has not touched upon or extended the punishment prescribed for fraud involving public interest.

While the Companies (Amendment) Act, 2017 did not touch the explanation to the earlier section 447 of CA 2013 with regard to what constitutes ‘fraud’, ‘wrongful gain’ and ‘wrongful loss’, in effect the Amendment of 2017 defined three classes of fraud for the purposes of punishment and brought into its fold the element of “public interest” and the concept of fraud linked to ‘turnover’ of a company.

It seems that the Companies (Amendment) Act, 2017 did not touch upon the punishment prescribed under the proviso dealing with fraud involving public interest, which is a term of imprisonment not less than three years, but instead the said Amendment Act of 2017 prescribed greater punishment for frauds of amount less than ten lakh rupees and not involving public interest. More recently, the Companies (Amendment) Ordinance, 2018 brought into force from 2nd November, 2018 has only increased the fine prescribed under second proviso to section 447 from the hitherto stipulated “rupees twenty lakhs” to an enhanced “rupees fifty lakhs”. Interestingly, the said Ordinance of 2018 has not touched upon or extended the punishment prescribed for fraud involving public interest.

CORPORATE OFFENCES PUNISHABLE UNDER COMPANIES ACT 2013

The definition of “fraud” as was originally introduced and enforced in CA 2013 was actually meant to deter non-compliances by companies and their directors and was aimed at promoting good corporate governance and presentation of financial statements and audited accounts to give the true and fair picture of the affairs of the company. Towards this end, the punishment for fraud as envisaged in section 447 of the CA 2013 was also linked up with other provisions of CA 2013, few of which are highlighted below.

It is hoped that the company directors/key managerial personnel will be exercising due caution and vigilance while dealing with the below-mentioned provisions of the CA 2013 which will prevent the company and its directors from being hauled up for indulging in fraud/fraudulent practices:

(1) Section 7 – Sub-sections (5) makes furnishing of any false or incorrect particulars by a person in relation to incorporation of a company, an offence liable for action under section 447 (punishment for fraud). Further sub-section (6) of section 7 stipulates that where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or inter alia by any fraudulent action, the promoters, the persons named as the first directors of the company shall each be liable for action under section 447.

(2) Section 8 – The proviso to section 8 stipulates that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447 (punishment for fraud).

(3) Section 34 – prescribes criminal liability for issue of prospectus containing statements that are misleading or untrue and stipulates that every person who authorizes the issue of prospectus shall be liable for action under section 447 (punishment for fraud).

(4) Section 36 – similarly, if any person fraudulently induces
a person to invest money, such person shall be liable for action under section 447 (punishment for fraud).

(5) Section 38 – This section deals with punishment meted out to any person who impersonates/personates falsely in order to acquire securities and stipulates that such person shall be liable for action under section 447 (punishment for fraud).

(6) Section 46 – Sub-section (5) stipulates that if a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or Rs.10 Crore whichever is higher and every officer of the company who is in default shall be liable for action under section 447 (punishment for fraud).

(7) Section 56 – Sub-section (7) states that without prejudice to any liability under the Depositories Act, 1996, where any depository or depositary participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447 (punishment for fraud).

(8) Section 143 – Sub-section (12) mandates that if an auditor of a company in the course of performance of his duties as an auditor, has reason to believe that an offence involving fraud has been committed by the company officers/employees, the auditors shall report the matter to the Central Government within 60 days. Further, in case fraud has been committed involving lesser than the amount specified in the rules, the matter shall be reported to the Audit Committee.

(9) Section 206 - In this context, it is also necessary to point out that CA 2013 originally in Section 206, sub- section 4 stipulated that where the Registrar of Companies is satisfied that business of a company has been or is being carried out for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447 (punishment for fraud).

(10) Section 213 - Further, Section 213 of the CA 2013 which is concerned with the investigation into the affairs of the company in other cases, stipulates that every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs, shall be punishable for “fraud” in the manner provided in section 447.

(11) Section 224 – Sub-section 5 of section 224 stipulates that in the context of an inspector’s report under section 223 of the CA 2013, where such report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

(12) Section 229 – which deals with ‘penalty for furnishing false statement, mutilation, destruction of documents’ stipulates that where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation, and provides an explanation which is false or which he knows to be false, he shall be punishable for fraud in the manner as provided in section 447.

(13) Section 245 – which deals with the concept of “class action suit”, under sub-section (1) thereof permits the affected persons to apply to the National Company Law Tribunal to claim damages or compensation or demand any other suitable action from or against inter alia, the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part or against any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part. Further, sub-section (2) of section 245 stipulates that where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

(14) Section 251 – stipulates that where it is found that an application by a company under sub-section (2) of section 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved— (a) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and (b) be punishable for fraud in the manner as provided in section 447.

(15) Section 266 – which deals with the power of NCLT to assess damages against delinquent directors, etc., also provides that such delinquent directors can be punished for fraud in the manner as provided in section 447.

(16) Section 448 – which deals with punishment for giving false statement, stipulates that save as otherwise provided in the CA 2013, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of the CA 2013 or the rules made thereunder, if any person makes a statement, (a) which is false in any material particulars, knowing it to be false; or (b) which omits any material fact, knowing it to be material, he shall be liable under section 447.

JUDICIOUS COMPLIANCE CAN PREVENT ATTRACTION OF COMPANIES ACT PROVISIONS RELATING TO FRAUD

Thus, it seems that the legislature intended that seriousness must be accorded by the company and its directors to the show cause notices received from the regulators like the Registrar of Companies seeking information and also to deter the company and its directors from furnishing false and misleading evidence/information and those were also linked up with the possible claim of damages in cases involving class action suits.

However, the rationale of the legislature in ensuring that the aforesaid provisions are not diluted/touched upon by the Companies (Amendment) Act, 2017 as well as the Companies (Amendment) Ordinance, 2018, seems to be that the company
management ought to continue to give seriousness to compliances of the said provisions, non-compliance whereof had originally been made equivalent to fraud and punishable thereunder.

It would also be pertinent to mention that since the Companies (Amendment) Act, 2017 and the subsequent Companies (Amendment) Ordinance, 2018, has not touched upon or diluted the original section 448 of CA 2013 with regard to “fraud”, it would be appropriate to appreciate that since all the company filings including annual returns, annual reports, financial statements, prospectus, other documents relating to shareholding, additional shares, charges, etc. have to be in compliance with the provisions of the CA 2013 or the rules made thereunder and they come under the public domain, any false statement in material particulars knowing it to be false or omitting any material fact therefrom could attract punishment under section 447 dealing with “fraud”, and the company directors and more particularly, Company Secretaries or compliance officers or key managerial personnel of the company would be required to continue exercise of due diligence and stricter compliances in respect of these important corporate matters.

Where the Central Government is of the opinion that it is necessary to investigate into the affairs of a company ‘inter alia’, on the receipt of a report of ROC or inspector under section 208 or on intimation of special resolution passed by a company that the affairs of the company ought to be investigated or in public interest, the Central Government may under Section 210 of CA 2013 order an investigation into the affairs of the company.

RBI ISSUES MASTER DIRECTIONS ON FRAUD DETECTION AND REPORTING BY BANKS

With stricter enforcement of the Insolvency and Bankruptcy Code, 2016 and the large number of cases filed against companies by commercial banks and financial creditors, there has appeared a need to look deeper into the diversion of funds made by borrower companies. In this context, ‘Master Directions on Frauds – Classification and Reporting by commercial banks and select Financial Institutions’ issued by the Reserve Bank of India (updated on July 3, 2017) provide a framework to banks, enabling them to detect and report frauds early and taking timely actions like reporting to the investigative agencies so that fraudsters can be brought to book easily. It prescribes that banks should vigorously pursue with the CBI or police authorities and/or the court for final disposal of pending fraud cases. It further prescribes checks/ investigations during the different stages of the loan disbursement and the bank’s risk management group may collect independent information and market intelligence on the potential borrowers from the public domain on their track record, involvement in legal disputes, raids conducted on their businesses and may validate information submitted to concerned ROC.

POWERS OF SFIO IN INVESTIGATING CORPORATE FRAUDS

Further, it is also pertinent to note that as per Section 212 (1) of the Companies Act, 2013, the Central Government may assign the investigation into the affairs of a company to Serious Fraud Investigation Office: (a) on receipt of report of the Registrar or Inspector under section 208; (b) on intimation of a special resolution passed by a company requesting an investigation into its affairs; (c) in public interest; (d) on the request of any Department of Central Government or State Government.

Section 149(8) read with Schedule IV of the CA 2013 prescribes that the independent directors of a company shall also exercise due vigilance in respect of the affairs of the company and where they see/suspect fraud, it shall immediately be reported so that appropriate action against the same can be taken.

ROLE OF INDEPENDENT DIRECTORS IN REPORTING FRAUD/SUSPECTED FRAUD

Section 149(8) read with Schedule IV of the CA 2013 prescribes that the independent directors of a company shall also exercise due vigilance in respect of the affairs of the company and where they see/suspect fraud, it shall immediately be reported so that appropriate action against the same can be taken.

SUPREME COURT ORDERS ARREST OF AMRAPALI GROUP CMD AND DIRECTORS FOR ILLEGAL DIVERSION OF FUNDS AND DIRECTS FORENSIC AUDIT

In this context, as recently reported in The Economic Times on 11th November, 2018, the Supreme Court of India which was hearing a batch of petitions filed by affected home-buyers consequent upon the failure of the Amrapali Group of real estate companies to handover 42,000 flats booked by home-buyers, when the Court did not get satisfactory answers from the company management, it ordered that group Chairman and Managing Director and two other directors be detained under police custody. The Court also appointed a team to conduct forensic audit and it was reported that there may be 200 to 250 firms where the home-buyers’ money was transferred. As reported in The Economic Times, while questioning the internal auditor of the group of companies, the Supreme Court remarked that professionals like chartered accountants were service providers for the society in whom people reposed faith and instead of being aware of such responsibility, the internal auditor helped incorporate the companies that were used as conduits for transfer of money illegally by the Amrapali Group. The instances of corporate fraud were further highlighted when the Court questioned as to how the company paid Rs.2 Crore as income tax for its CFO when he actually had a monthly salary of only Rs.50,000. Terming such action as nothing but an ‘effervescence’, the Apex Court observed that “There is a tall building but with no foundation.”

CONCLUSION

In the aforesaid background, what needs to be appreciated by company directors and key managerial personnel is that prosecution need not necessarily be always triggered only by regulatory authorities like ROC or SEBI but action can be initiated even by affected persons, shareholders’ group, auditors, the SFIO, Enforcement Directorate, Central Bureau of Investigation, the Central Government and even the Courts. The recent prosecution of company directors and senior officials in cases of corporate fraud only goes on to show that the law enforcement agencies and the Courts are extremely serious in curbing the menace of fraud and all this points to the ever-increasing role played by professionals such as Company Secretaries in minimizing corporate frauds and ensuring good corporate governance.
Special Courts under the Companies Act, 2013 - what is special about them?

The Companies Act, 2013 [“the Act”] introduced the concept of special court to deal with the offences committed under the Act in order to facilitate speedy trial. Further, under the Insolvency and Bankruptcy Code, 2016 [“the IBC”] also the offences committed under the IBC are triable only by the special courts constituted under the Act. This article examines the concept, implementation and effectiveness of special courts on the touchstone of whether speedy trial would be possible.

T.K.A. Padmanabhan, FCS
Advocate, Padmanabhan Associates, Solicitors & Advocates, New Delhi
padmanabhanassociates@gmail.com

AMBIT

The Companies Act, 2013 [“the Act”] introduced the concept of special court to deal with the offences committed under the Act in order to facilitate speedy trial. Various special courts were notified from time to time since 2016 and by 2018 almost all States have special courts constituted and designated to try and adjudicate the offences committed under the Act. Further, under the Insolvency and Bankruptcy Code, 2016 [“the IBC”] also the offences committed under the IBC are triable only by the special courts constituted under the Act. This article examines the concept, implementation and effectiveness of special courts on the touchstone of whether speedy trial would be possible.

ESTABLISHMENT OF SPECIAL COURTS

Section 435 of the Act, as originally enacted, provided for the establishment of the Special Court to try offences under the Act. The Amendment Act 2015 amended this section to the extent providing for the special court for the trial of specific offences and a special court consisting of MM or JM IC for the trial of other offences. Thus the 2017 Amendment Act created two kinds of special courts, as above. The power to appoint/d designate special courts and its judges was with the Central Government.

The details of special courts established as of date is as under:

<table>
<thead>
<tr>
<th>State/area</th>
<th>Designated court</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>Courts of Additional Special Judge, Anti-corruption at Jammu and Srinagar</td>
<td>S.O.1796(E) dt.18/05/2016</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>Presiding Officers of court No.37 &amp; 58 of the City Civil &amp; Sessions Court, Greater Mumbai</td>
<td></td>
</tr>
<tr>
<td>UT of Dadra, Nagar Haveli, Daman and Diu</td>
<td>Court of Principal District &amp; Sessions Judge, Silvassa.</td>
<td></td>
</tr>
<tr>
<td>Goa</td>
<td>Court of District Judge-1 &amp; Additional Sessions Judge, Panaji.</td>
<td></td>
</tr>
<tr>
<td>Gujarat</td>
<td>Court of Principal District &amp; Sessions Judge, Ahmedabad (Rural), Mirzapur, Ahmedabad.</td>
<td></td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>9th Additional Sessions Judge, Gwalior.</td>
<td></td>
</tr>
<tr>
<td>UT of Andaman &amp; Nicobar Islands</td>
<td>Court of Additional District &amp; Sessions Judge, Port Blair.</td>
<td></td>
</tr>
<tr>
<td>West Bengal</td>
<td>2nd special court, Calcutta.</td>
<td></td>
</tr>
<tr>
<td>NCT of Delhi</td>
<td>Court of additional Sessions Judge (03), South-West District, Dwarka, Delhi.</td>
<td>S.O.2554(E ) dt.27/07/2016</td>
</tr>
<tr>
<td>Chattisgarh</td>
<td>Sessions Judge, Bilaspur</td>
<td>S.O.2843(E) dt.01/09/2016</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>Court of Special Judge (Satl Nwaran) Jaipur</td>
<td></td>
</tr>
<tr>
<td>Punjab</td>
<td>Court of Sessions Judge &amp; 2nd Additional Sessions Judge, SAS Nagar</td>
<td></td>
</tr>
<tr>
<td>Haryana</td>
<td>Court of Sessions Judge &amp; 2nd Additional Sessions Judge, Gurgaon</td>
<td></td>
</tr>
<tr>
<td>UT Chandigarh</td>
<td>Court of sessions Judge &amp; 2nd Additional Sessions Judge, Chandigarh</td>
<td></td>
</tr>
<tr>
<td>Part of Tamil Nadu</td>
<td>I Additional District &amp; Sessions Court, Coimbatore</td>
<td></td>
</tr>
<tr>
<td>Manipur</td>
<td>Sessions Judge, Imphal East</td>
<td></td>
</tr>
<tr>
<td>UT Puducherry</td>
<td>II Additional District &amp; Sessions Court, Puducherry</td>
<td></td>
</tr>
<tr>
<td>Meghalaya</td>
<td>Court of District &amp; Sessions Judge, Shillong</td>
<td>S.O.3464(E) dt.17/11/2016</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>Court of IV Additional District Judge --cum- II Additional Metropolitan Sessions Judge, Vishakapatnam</td>
<td>S.O.945 dt.23/03/2017</td>
</tr>
</tbody>
</table>

1MM are appointed in Metropolitan cities while JM IC are appointed in non-metropolitan areas.
Section 435 was enforced with effect from 18.05.2016 and special courts were established, from time to time, for different states. The process of establishing special courts started in 2016 and completed in 2018. By exercising its power to establish the special courts, the Central Government established, vide various notifications, special courts for the trial of specific offences. No special court has been established for the trial of other offences. In other words, the existing courts of the MM or JMIC cannot try the other offences under the Act as they are not special courts because they have not been designated as such by the Central Government. This anomaly has resulted in the hasty manner in which the concept of special court is sought to be achieved.

**SECTION 436 NOT SUITABLY AMENDED**

The proverb, “an act done is haste is waste”, is amply demonstrated by the amendments carried out in section 435 by the 2017 Amendment Act. In the scheme of the Act section 436 is an intrinsic part of section 435 in as much as section 436 provides for the kinds of offences to be tried by the special courts. Sub-section (1) of section 435, before the 2017 amendment, contained in its body the nature of offence to be tried by Special Court, which specifically read as under:

“The Central Government may for the purpose of providing speedy trial of offences punishable under this Act with imprisonment of two years or more, by notification, establish or designate as many special courts as may be necessary.”

Accordingly, section 436(1)(a) provided that all offences specified under sub-section (1) of section 435 shall be triable only by the special court.

The nature of offence triable by special courts, as amended by the 2017 Amendment Act, is specified under sub-section (2) of section 435 which provides for special court for specific offence and the court of MM or JMIC for other offences. The 2017 Amendment Act did not suitably amend section 436 to reflect the intention of the amended section 435. This is a legislative error which has the potential of dragging the cases for years.

**NO ENABLING PROVISION TO SAVE THE PENDING PROSECUTION**

With the enforcement of section 435 and related sections w.e.f. 18.05.2016, the fate of the pending prosecutions, initiated under the Act, as of 17.05.2016 before various courts of the MM or JMIC are in a fix. There is no enabling provision to save the continuing of these prosecutions or to transfer the same to the designated special courts. Section 465 of the Act saves certain pending suits, actions and prosecutions instituted under the repealed enactments i.e. Companies Act, 1956 and Registration of Companies (Sikkim) Act, 1961. The relevant provision, for the purposes of this article, saving pending prosecutions is sub-clause (i) of sub-section (2), which reads as under:

“(i). any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said court.”

To illustrate, if a prosecution was initiated before the MM in the year 2015 under the Act was pending as on 18.05.2016, what will happen to this pending case after 18.05.2016 where special courts have been established? The repealing section talks about provisions in the repealed Acts and not about the provisions of the Act repealed by the Act. This is another area of stagnating litigation where the determination of the proper court itself would take years, given hierarchy of our court system. This needs to be properly addressed.

**WHETHER SPEEDY TRAIL ENSURED**

The legislative objective behind the establishment of special courts is to have speedy trial of the offences. Whether the existing provision achieves this objective leaves a lot to be decided. Firstly, there is no time frame for the completion of trial by the special court whereas the commercial courts, which were also constituted for the purpose of speedy trial of commercial cases have a fixed time frame for the completion of the cases. Secondly, there are either single or two special courts in every state which practically puts all the offences committed in a particular area before a single judge, which may invariably result in overcrowding of the court. Thirdly, hitherto litigants were having the liberty to approach the court...
in the place where the offence was committed and not they have to run to a particular city in the State. Fourthly, the judges presiding over the special courts are not specifically appointed or recruited for the purpose but were simply designated to try the offences committed under the Act in addition to the routine offences they were trying under the IPC and other laws. In this background it is anybody’s guess as to how speedy trial is to be achieved.

THE KINDS OF OFFENCES UNDER THE ACT

The offences under the Act can be broadly classified into three categories, namely, (i) compliance default, (ii) disclosure default and (iii) fraud and mis-statements. The punishment accordingly varies from fine to imprisonment or with both. The punishment provided for the offences are as under:

(i) Only fine
(ii) Only imprisonment
(iii) Imprisonment and fine
(iv) Imprisonment or fine or both.

The offence triable by a special court which is Sessions Court is such offences for which the punishment is imprisonment of two years or more. Here the statute does not specify any fine either in lieu of [imprisonment or fine] or as an addition to [imprisonment and fine] the punishment of imprisonment. It is absolutely imprisonment for two years or more i.e. the minimum punishment is two years of imprisonment. The term of imprisonment, in nearly 95% of the offences punishable with imprisonment is specified in a range i.e. “which may extend to ….. years” or “not less than ….. years but may be extended to ….. years”. In such a circumstance, unless the minimum punishment of imprisonment is two years the offence cannot go to a sessions court. On the other hand, since 95% of the offences visited with punishment of imprisonment falls under the category of “other offences” they can be tried only by the court of MM or JMIC and not by the Sessions court.

OFFENCES UNDER THE IBC

Section 236 of the IBC provides for the trial of offences committed under the IBC by the special courts established under the Act.

The following are the offences triable by special courts in corporate insolvency:

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of offence</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>68</td>
<td>Concealment of property by corporate debtor</td>
<td>Imprisonment of not less than 3 years but may extend to 5 years or with fine not less than Rs.1 lakh but not more than Rs.1 crore or with both [Officer will be punished]</td>
</tr>
<tr>
<td>69</td>
<td>Transactions defrauding creditors</td>
<td>Imprisonment of not less than one year but may extend to 5 years or with fine not less than Rs.1 lakh but not more than Rs.1 crore or with both [Corporate debtor as well as the Officer will be punished]</td>
</tr>
<tr>
<td>70</td>
<td>Misconduct in the course of insolventy resolution process</td>
<td>Imprisonment of not less than 3 years but may extend to 5 years or with fine not less than Rs.1 lakh but not more than Rs.1 crore or with both [Officer will be punished]</td>
</tr>
<tr>
<td>71</td>
<td>Falsification of books of corporate debtor</td>
<td>Imprisonment of not less than 3 years but may extend to 5 years or with fine not less than Rs.1 lakh but not more than Rs.1 crore or with both [Any person]</td>
</tr>
<tr>
<td>72</td>
<td>Willful and material omissions from statements relating to the affairs of the corporate debtor</td>
<td>Imprisonment of not less than 3 years but may extend to 5 years or with fine not less than Rs.1 lakh but not more than Rs.1 crore or with both [Officer will be punished]</td>
</tr>
</tbody>
</table>

The following offences are triable by special courts in insolvency proceedings against individuals and partnership firms:

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of offence</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>184</td>
<td>Providing false information</td>
<td>Imprisonment of a term up to one year or with fine up to Rs.5 lakh or with both [Debtor or creditor, as the case may be, will be punished]</td>
</tr>
<tr>
<td>185</td>
<td>Contravention of provision by insolvency professional</td>
<td>Imprisonment of a term up to six months or with fine not less than Rs.1 lakh which may extend to Rs.5 lakhs or with both [IRP will be punished]</td>
</tr>
<tr>
<td>186</td>
<td>False information, concealment etc. by bankrupt</td>
<td>Imprisonment varying from six months to two years and fine up to Rs.5 lakhs or with both.</td>
</tr>
<tr>
<td>187</td>
<td>Offences by bankrupt trustee</td>
<td>Imprisonment which may extend to 3 years or with fine not less than three times the amount of loss caused.</td>
</tr>
</tbody>
</table>

CONCLUSION

Criminal trial and justice delivery system under the two major legislations which are corporate as well as economic growth engines, are now in the hands of special courts. The intention of the Government to establish special courts for speedy trial of offences is laudable. However, the manner in which the same is implemented is not satisfactory. Without doing a proper homework or having a well chalked-out implementation programme, the mere hasty legislative enthusiasm not only undermines the good intention but also derails the smooth functioning of the justice delivery system. The need of the hour is to iron out the anomalies pointed out above. Unless this is done the avowed objective of speedy trial will remain only as a big screen pipe dream.
Offences and Penalties Under The Companies Act, 2013 and Role of Company Secretary

An attempt has been made in this article to analyze the substantive provisions of the Companies Act, 2013 (as amended by the Companies (Amendment) Act, 2017 and the Companies (Amendment) Ordinance, 2018) concerning the offences and defaults by the companies and officers in default and the mechanism under the Act to deal with them and the role of a Company Secretary in such scenario.

INTRODUCTION

One of the important changes brought in by the Companies Act, 2013 compared to the erstwhile Companies Act, 1956 is the manner of dealing with non-compliances. The constitution of Special Courts as judicial authorities, National Company Law Tribunal ("NCLT") as administrative cum quasi-judicial authority and delegation of power of adjudication of penalties to Registrar of Companies ("ROC") are the key changes brought in by the Act in the Indian corporate regime. Further, with the intent to promote the ease of doing business in India and ensure better corporate compliance, the Companies Act, 2013 was again amended by promulgation of the Companies (Amendment) Ordinance, 2018 to reclassify and decriminalize certain procedural or technical non-compliances. This article is an attempt to analyze the substantive provisions of the Companies Act, 2013 (as amended by the Companies (Amendment) Act, 2017 and the Companies (Amendment) Ordinance, 2018) ("Act") concerning the offences and defaults by the companies and officers in default and the mechanism under the Act to deal with them and the role of a Company Secretary in such a scenario.

Before we analyze the provisions of the Act, let us first understand the meaning of terms - civil law and criminal law. A civil law is that branch of law which deals with private disputes or defaults with an objective to resolve or redress and to make good the loss or damages suffered by one party on account of any act or omission by other party. On the other hand, a criminal law is that branch of law which deals with offences with an objective to punish the offender and is reflection of the public policy of a country. An offence is an act or omission made punishable by any law, whereas a default is a non-compliance of any provision of law whether it be an omission to act or failure to act within the time. The nature of any act or omission, its gravity and its impact on general public or affected persons are some of the key factors which a legislature will take into consideration before classifying any act or omission as an offence or as a default.

Whether the Companies Act, 2013 ("Act") is a civil law or criminal law? The answer is – it is a mixture of both civil as well as criminal provisions with majority being criminal. The civil and criminal provisions under the Act can be identified by observing the language used by Act for consequences of non-compliances/contravention of its provisions. The words “liable to penalties” denote civil nature of non-compliances whereas the words “punishable with fine and/or imprisonment and/or both” denote criminal nature of non-compliances.

The Act has clearly laid down the mechanism and the forum for speedy and smooth administration of judicial activities under the Act. The power of adjudication of civil non-compliances (defaults liable for penalties) is being vested with the ROC and the power of adjudication of criminal non-compliances (offences punishable with fine/imprisonment) is being vested with the special courts with sub-delegation of power of compounding of offences to Regional Director and NCLT. The broad judicial structure of the Act is depicted herein below:

**PENALTIES UNDER THE ACT**

Considering the non-compliance being procedural or technical or minor in nature, the Act has classified 35 instances of non-compliance as civil defaults liable for prescribed amount of penalties. These 35 instances include 16 instances which...
have recently been decriminalized pursuant to promulgation of Companies (Amendment) Ordinance, 2018 on the basis of suggestion of report of Committee constituted to review offences under the Act headed by Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs (“Offence Review Committee”). The list of 35 instances of civil defaults or failures is at Annexure – A.

Pursuant to provisions of section 454A of the Act (introduced by the Companies (Amendment) Ordinance, 2018), the amount of penalty payable for any second or subsequent defaults shall be twice the amount prescribed under the Act in case the same default has been committed again within a period of 3 years from the date of order imposing penalty for the first or earlier default.

Further, in addition to imposing penalties, the Act also contains certain provisions providing for civil liability of making good the loss or damages suffered by any person on account of any action or omission. For e.g. section 35 - civil liability for misstatement in prospectus, section 147(3) - civil liability of auditors for misleading statement in audit reports, etc.

It is important to note that the default or non-compliances of provisions of the Act also attracts restrictions, ineligibility or withdrawal of benefits provided under the Act in addition to liability to pay penalties. For e.g. default or failure in compliance with the provisions of section 92 (Annual Return) and/or 137 (filing of financial statements) will, depending upon the period of default or failure, result into a) withdrawal of exemptions available to a private company, b) company becoming ineligible to undertake buy-back of its equity shares or other specified securities, c) disqualification of directors, and d) company being classified into an inactive company.

ADJUDICATION OF PENALTIES

Section 454 of the Act read with the Companies (Adjudication of Penalties) Rules, 2014 deals with the manner and procedure of adjudication of penalties. The Registrar of Companies (ROC) has been shoddered with the responsibility of adjudicating officer for their respective jurisdiction. The Act envisages a natural justice based mechanism of adjudication of penalties whereby the ROC has been mandated to provide reasonable opportunity of being heard to the Company and Officer in default before imposing any penalty. In case any person is aggrieved by order of the ROC imposing penalties, he may prefer an appeal to the concerned regional director within a period of 60 days and the decision of regional director on the matter shall be final and binding.

Although the Act has provided the ROC with the power to adjudicate the penalties, yet a question still revolves around such power of the ROC, i.e., whether the power of the ROC under section 454 is subject to any period of limitation and whether the provisions of Limitation Act, 1963 will be applicable to the action of the ROC?

OFFENCES UNDER THE ACT

Except for 35 instances of defaults listed herein, all other acts or omissions under the Act have been classified as offences punishable with a) fine only, or b) fine or imprisonment, or c) fine or imprisonment or both, or d) imprisonment only or e) fine and imprisonment as may be prescribed under the relevant sections. Further, wherever any section of the Act is silent on quantum of punishment or penalty for non-compliances of such section, section 450 of the Act comes into play and makes all such non-compliances punishable with fine which may extend to Rs. 10,000 and in case of continuous contravention, a further fine which may extend to Rs. 1,000 per day after the first during which the contravention continues. Consequently, the general character of the Act remains criminal.

Broadly the offences under the Act are classified, for the purpose of punishment, into two categories, namely, a) offences involving frauds and b) other offences. The offences involving frauds are subject to punishment prescribed under section 447 of the Act. There are 17 sections under the Act which refer to section 447 for punishing fraudulent conduct (Source: Report of Offence Review Committee). Further, the Companies (Amendment) Ordinance, 2018 has inserted sub-section 2 of section 86 which refers to section 447 for punishing fraudulent conduct thus, making a total of 18 sections under the Act where the punishment prescribed under section 447 gets attracted. The other offences are punishable with such quantum of fine and/or imprisonment as prescribed under the respective sections.

Further, the offences under Act are also classified into a) compoundable offence and b) non-compoundable offence. In accordance with section 441(6) of the Act, an offence punishable under the Act with imprisonment only or with imprisonment and fine is a non-compoundable offence. Accordingly, all other offences, i.e., offences punishable with a) fine only, or b) fine or imprisonment and c) fine or imprisonment or both are compoundable offences under the Act.

SECTION 447 – PUNISHMENT FOR FRAUDS

The punishment of offences involving frauds is briefly outlined below:

| Material Frauds not involving public interest | Imprisonment for a term which shall not be less than 3 years but which may extend to 10 years and fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the frauds. |
| Material Frauds involving public interest | Imprisonment for a term which shall not be less than 3 years but which may extend to 10 years and fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the frauds. |
| Other Frauds not involving public interest | Imprisonment for a term which may extend to five years or fine which may extend to 50 lakhs* rupees or both. |

*increased from Rs. 20 lakhs to Rs. 50 lakhs by the Companies (Amendment) Ordinance, 2018.
It is important to note that pursuant to provisions of section 441 of the Act, the offences involving material frauds are non-compoundable offences and pursuant to provisions of section 439 of the Act, all the offences involving frauds are cognizable offences within the meaning of Code of Criminal Procedure, 1973.

ROLE OF COMPANY SECRETARY

The Company Secretary has a vital role to play in the event of invocation of any action under the Act. The current regulatory scenario demands the Company Secretary to be more vigilant and diligent specifically about the applicability of multiple laws and timely compliances there under. The role which a Company Secretary can play is briefly discussed below:

1. To ensure timely compliances of the provisions of the Act to avoid any action for default or failure;
2. To represent the Company before the ROC, RD or NCLT, in the event of any action for default or failure;
3. To develop a robust internal compliance system which generates the details of compliances undertaken and any compliance lapses in a timely manner;
4. To initiate the compounding procedure in the event of any non-compliance(s) comes to light and to avoid recurrence of such non-compliances in future,
5. To ensure timely and appropriate disclosure pertaining to penalties or compounding offences or action by any authorities.

Since the Practicing Company Secretaries are also covered under section 447 of the Act, they should ensure that they are not certifying any returns or issuing any report which contains any false certification or information or omits any material information or facts.

WAY FORWARD – SUGGESTION

After coming into force of the Companies (Amendment) Ordinance, 2018, the Companies Act, 2013 has undergone major changes in the manner of dealing with the offences and penalties and the introduction of e-adjudication will begin a new chapter in the history of Indian corporate world and will speed up the disposal of ongoing and upcoming cases. To further promote the drive of ease of doing business in India, the concept of “settlement of civil matters” as is currently existing under the securities laws may also be introduced under the Companies Act, 2013 enabling the companies and officer in default to voluntary accept the occurrence of defaults and to settle the same in accordance with the settlement term agreed between the companies/officer in default and the ROC.

CONCLUSION

The amendments brought in by the Companies (Amendment) Act, 2017 and the Companies (Amendment) Ordinance, 2018 have struck a proper balance between the object of promoting ease of doing business in India by decriminalizing procedural or technical defaults, reducing penalties for One person company and Small Company to half of the amount payable by normal companies, expanding the jurisdiction of regional director for entertaining compounding applications and the object of ensuring better corporate compliance by mandating the timely compliance of the Act and disallowing benefits to from the liability of penalty or any other action under the Act for such default or failure.

This provision has far reaching impact on the level of compliances of Indian corporates. It is noteworthy, specifically for private companies, as default in compliance with the provisions of section 92 or section 137 will take away the exemption benefits available to such private companies besides any other action for such default.

Note: Material Frauds means the fraud involving an amount of at least 10 lakh rupees or 1% of the turnover of the company, whichever is lower.

It is important to note that pursuant to provisions of section 441 of the Act, the offences involving material frauds are non-compoundable offences and pursuant to provisions of section 439 of the Act, all the offences involving frauds are cognizable offences within the meaning of Code of Criminal Procedure, 1973.

JUDICIAL STRUCTURE FOR DEALING WITH OFFENCES UNDER THE ACT

Pursuant to section 435 of the Act, the special courts established or designated by the Central Government have only been given power to prosecute and try offences punishable under the Act. However, in order to avoid lengthy and time consuming prosecution, the Act has envisaged the mechanism for compounding of offences under section 441 of the Act and has empowered the regional directors and NCLTs to exercise such compounding power. The brief judicial structure of the Act concerning offences is depicted below:

Note: The pecuniary compounding jurisdiction of regional director has been widened from Rs. 5 Lakh to Rs. 25 Lakh by the Companies (Amendment) Ordinance, 2018.

SECTION 403 – BE CAUTIOUS!!!

One of the significant changes brought in by the Companies (Amendment) Act, 2017 is the amendment in section 403 of the Companies Act, 2013. Pursuant to said amendment, the non-offence period of 270 days has been omitted from the Companies Act, 2013 and the filing of forms, returns or documents within the time prescribed under the relevant provision has been made mandatory. Accordingly, the non-filing of forms, returns or documents within the time prescribed under relevant provision (for e.g., Form AOC-4 within 30 days of date of AGM) is now considered as a default or failure and the payment of additional fees does not absolve the Company
defaulting companies and the Company Secretary will have to play a crucial role in achieving these objectives.

### Annexure A

**LIST OF DEFAULTS/Failure ATTRACTING CIVIL PenALTIES**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Section</th>
<th>Subject Matter/nature of default</th>
<th>Quantum of Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4(5)</td>
<td>Reservation of name by furnishing wrong or incorrect information (in case company is yet not incorporated)</td>
<td>Up to Rs. 1 Lakh</td>
</tr>
<tr>
<td>2</td>
<td>10A</td>
<td>Failure to file declaration of commencement of business</td>
<td>Rs. 50,000 (Company) and Rs. 1,000 per day subject to maximum of Rs. 1 Lakh (Officer in default)</td>
</tr>
<tr>
<td>3</td>
<td>12</td>
<td>Registered office of the Company</td>
<td>Rs. 1,000 for every day subject to maximum of Rs. 1 Lakh</td>
</tr>
<tr>
<td>4</td>
<td>15</td>
<td>Failure to note alteration in copy of memorandum or articles</td>
<td>Rs. 1,000 for every copy circulated without noting alteration</td>
</tr>
<tr>
<td>5</td>
<td>17</td>
<td>Failure to furnish copy of memorandum or articles</td>
<td>Rs. 1,000 for every day or Rs. 1 Lakh, whichever is less</td>
</tr>
<tr>
<td>6</td>
<td>33</td>
<td>Issue of application without abridged prospectus or failure to furnish copy of prospectus</td>
<td>Rs. 50,000 for each default</td>
</tr>
<tr>
<td>7</td>
<td>39</td>
<td>Failure to file return of allotment or to achieve minimum subscription within 30 days of issue of prospectus</td>
<td>Rs. 1,000 for every day of default or Rs. 1 Lakh, whichever is less</td>
</tr>
<tr>
<td>8</td>
<td>42(9)</td>
<td>Failure to file return of allotment of private placement</td>
<td>Rs. 1,000 for every day subject to maximum of Rs. 25 Lakh</td>
</tr>
<tr>
<td>9</td>
<td>42(10)</td>
<td>Private placement of securities in contravention of section 42</td>
<td>Amount raised through private placement or Rs. 2 Crore, whichever is lower</td>
</tr>
<tr>
<td>10</td>
<td>53</td>
<td>Issue of shares at discount in non-compliance of section</td>
<td>Amount equivalent to amount raised through issuance or Rs. 5,00,000 – whichever is lower and refund of money along with interest @12% p.a.</td>
</tr>
<tr>
<td>11</td>
<td>60</td>
<td>Failure to publish authorized, subscribed and paid up capital</td>
<td>For each default Rs. 10,000 (Company) and Rs. 5,000 (Officer in default)</td>
</tr>
<tr>
<td>12</td>
<td>64</td>
<td>Failure/delay in filing of notice of alteration of share capital</td>
<td>Rs. 1,000 per day or Rs. 5,00,000 – whichever is less</td>
</tr>
<tr>
<td>13</td>
<td>91</td>
<td>Closure of register of members in contravention of section 91</td>
<td>Rs. 5,000 for every day subject to maximum of Rs. 1 Lakh</td>
</tr>
<tr>
<td>14</td>
<td>92*</td>
<td>Failure/delay in filing of annual return</td>
<td>Rs. 50,000 and for continuous failure, further penalty of Rs. 100 per day subject to maximum of Rs. 50,00,000.</td>
</tr>
<tr>
<td>15</td>
<td>94</td>
<td>Refusal of inspection or making of any extract of register of member and annual return</td>
<td>Rs. 1,000 for every day subject to maximum of Rs. 1 Lakh</td>
</tr>
<tr>
<td>16</td>
<td>102</td>
<td>Failure to disclose interest in special business</td>
<td>Rs. 50,000 or 5 times of the amount of benefits – whichever is higher</td>
</tr>
<tr>
<td>17</td>
<td>105</td>
<td>Default in providing proxy clause in notice of general meeting</td>
<td>Rs. 5,000</td>
</tr>
<tr>
<td>18</td>
<td>111</td>
<td>Failure to circulate members resolution</td>
<td>Rs. 25,000</td>
</tr>
<tr>
<td>19</td>
<td>117*</td>
<td>Failure / delay in filing certain resolutions (MGT-14)</td>
<td>Rs. 1,00,000 and for continuous default, further penalty of Rs. 500 per day subject to maximum of Rs. 25,00,000 (Company) and Rs. 5,000 and for continuous default, further penalty of Rs. 500 per day subject to maximum of Rs. 5,00,000 (Officer in default)</td>
</tr>
<tr>
<td>20</td>
<td>118</td>
<td>Non-compliances relating to minutes of meetings</td>
<td>Rs. 25,000 (Company) and Rs. 5,000 (Officer in default)</td>
</tr>
</tbody>
</table>

* In case of OPC or Small Company, the amount of penalty shall not be more than one-half of the penalties prescribed under the specified sections.

The non-compliances in bold are result of decriminalization of offences pursuant to promulgation of the Companies (Amendment) Ordinance, 2018.
Critical Analysis of Restructuring of Offences Under Companies Act 2013

The main aim to restructure the corporate offence is to de-burden the courts dealing with procedural nature offences so that cases of more serious nature especially non-compoundable offence involving fraud could be pursued with more accuracy.

However, in order to review the existing regulatory mechanism to develop and foster a better corporate compliance environment, the Government pursued to constitute a panel committee of ten-members under the Chairmanship of Injeti Srinivas, Secretary, Ministry of Corporate Affairs (MCA). The Committee recommended virtual “decriminalization” of several offences under the Companies Act to reduce the legal and court battles, which companies have to face even if the offence committed is not serious but merely a lapse. In other words, the offences which can be rectified by levy of penalty instead of filing of prosecution in courts. This is so that courts will be more focused on fraud under the nature of Section 447 of the Companies Act, 2013. As there are some entities that would seek gains at the cost of legitimate rights of others, sometimes by fraudulent behavior or through violation of the legal regime and therefore, there should be a procedure that enables application of penalties promptly and effectively.

Therefore, the panel proposed to shift the technical or procedural lapses (non-serious offences) to in-house adjudication process. So basically the members recommended restructuring of corporate offences, in the nature of civil liability in order to relieve the Special Courts from adjudicating routine offences and also to de-clog the NCLT among several other proposals related to corporate compliance.

President Ram Nath Kovind promulgated an Ordinance to amend the Companies Act, 2013, which made penal provisions less onerous for procedural lapses and technical breaches. The Companies (Amendment) Ordinance, 2018[1] which has come into force from 02.11.2018 modernizes the penalty provisions for minor offences and is expected to cut down the number of cases reaching Company Law Tribunals. The said Ordinance shall come into force at once. The major changes recommended by the Committee have been accepted, in order to strengthen the enforcement of law.

The Ordinance shall provide much relief to the stakeholders especially the Corporates, which no longer have to approach courts for minor violation of the provisions of the Act, but can correct them through simple procedures. The amendment may result to make robust corporate compliance framework and enhanced corporate governance and also reduce the burden of Special Courts and NCLT simultaneously.

WHY THE COMMITTEE WAS CONSTITUTED?

The core principle behind the constitution of the Committee was to identify those compoundable offences, which are technical or procedural in nature; attract minimum non-compliance liability and where public interest is not involved. Such compoundable offences are supposed to be brought within the ambit of in-house adjudication mechanism so that the Court will not have

---

2. Crl. A. No. 27 of 1996 (Arising out of SLP (Crl.) No. 2155 of 1991)
3. Punishment for Fraud.

---

* LLM Student, National Law Institute University
Critical Analysis of Restructuring of Offences Under Companies Act 2013

The Companies (Amendment) Ordinance, 2018 modernizes the penalty provisions for minor offences and is expected to cut down the number of cases reaching Company Law Tribunals.

**ANALYSIS OF MAJOR CHANGES UNDER THE ORDINANCE**

The Ordinance posted on the Government’s e-gazette website amends 32 provisions of the Act to introduce an in-house adjudication system for minor offences. The minor corporate offences will no longer be tried in a court, but will be decided upon by Government officials under a toned down penalty framework. The analysis of major changes incorporated after the recommendation adopted in the Companies (Amendment) Ordinance, 2018 are discussed hereunder:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Section</th>
<th>Amendment</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Section 2(41) Definition of Financial Year</td>
<td>The word ‘Tribunal’ in the first proviso is replaced with ‘Central Government’.</td>
<td>NCLT need not to be burdened with the disposal of cases of compoundable offences; consequently there will be an early identification of defunct company and ROC will not have to wait for the period of two years, in order to strike off the name of the company.</td>
</tr>
<tr>
<td>2</td>
<td>Section 10A Comencement of business etc.</td>
<td>Section 11 which was omitted under Companies (Amendment) Act, 2015 is reintroduced as Section 10A after doing away with the requirement of minimum paid up capital.</td>
<td>There will be an early identification of defunct company and ROC will not have to wait for the period of two years, in order to strike off the name of the company.</td>
</tr>
<tr>
<td>3</td>
<td>Section 12 Registered Office of the Company</td>
<td>New sub-section (9) is inserted to Section 12</td>
<td>During the inquiries and investigations, it has been found that many companies merely exist as ‘paper companies’ and therefore nonmaintenance of registered office is made one of the grounds of striking off the name of company.</td>
</tr>
<tr>
<td>4</td>
<td>Section 14 Alteration of Articles</td>
<td>The word “Tribunal” in the second proviso to Section 14(1) is replaced with “Central Government”</td>
<td>In order to ensure speedy disposal of cases, NCLT need not to be burdened with petitions of conversion of public to private companies. Now, Central Government can delegate the power to any authority under section 458.</td>
</tr>
<tr>
<td>5</td>
<td>Section 77 Duty to register charges, etc.</td>
<td>In the first proviso to Section 77(1) the word ‘three hundred’ is replaced with ‘sixty’. Additional period extendable up to 60 days for registration after payment of ad valorem fees as may be prescribed.</td>
<td>There was reasonably long period of time for reporting the creation of charges. Consequently, there was a delay in the prosecution of serious and grave offences (non-compoundable offences). Therefore, there was a need to amend the Act.</td>
</tr>
</tbody>
</table>

Another major objective is to de-burden the courts from dealing with procedural nature offences so that cases of more serious nature especially non-compoundable offence involving fraud could be pursued with more accuracy. Also, the pendency of cases was increasing before the courts and therefore, it was required to transfer some of the jurisdiction of offences to other authority.

Annexure 1 of the report of the Committee deals with pendency of cases pertaining to offences under the Companies Act in the trail courts as on 30.06.2018. The report reflects the region-wise pendency of prosecutions in the nature of compoundable and non-compoundable offences filed within the jurisdiction of Regional Directors. As per the figures available in the report, total 6,391 number of applications are pending before courts for withdrawal (in case of compoundable offences). Apart from this, the average number of pending compoundable cases is approximately thirty times of the pending cases in the nature of non-compoundable offences. This shows that the major span of time of the court was consumed in dealing with the compoundable offences; consequently there was a delay in the prosecution of serious and grave offences (non-compoundable offences). Therefore, there was a need to amend the Act.

4. This is an average figure of total number of region mentioned in the report of the Committee.

5. Delegation by Central Government of its powers and functions.
In order to ensure that the serious offenders are brought to book, it is necessary to free the courts from dealing with offences, which are in the nature of procedural and technical lapses and can be effectively handled through an in-house adjudication. There was no intent to dilute the scope of the enforcement action relating to serious corporate offences, including frauds. On the contrary, it was to strengthen the enforcement of law against serious offences by de-burdening the courts of matters other than serious corporate offences. In order to make robust governance structure, various Committees have been set up till date for proper judicial and offence management. Scandals can be effectively handled by the courts only, when they have enough time to deal with them. If court would be indulged in the procedural issues which attract minimal compliance requirement, then not only the court would be burdened with pending cases, but the accuracy of the court would be affected too. Ordinance has brought forth liberalization in the provision with respect to the offence committed under the Act and the main objective behind the ordinance is to promote the ease of doing business along with better corporate compliance. With the shifting of jurisdiction of 16 types of corporate offences from the Special Courts to in-house adjudication, it is expected that it would reduce the caseload of Special Courts by over 60 per cent. The new system will speed up the adjudication process and a large number of cases relating to minor violations of company law, which is pending in courts, will be dropped as a result of the Ordinance. With the speedy disposal of cases, the objective of ease of doing business in India seems to be feasible.

**CONCLUSION**

In order to strengthen the corporate compliance norms, several provisions of the Act are made more stringent (in terms of penal provisions) than before and therefore, the company secretary has to be more vigilant and cautious, while complying with the statutory and regulatory compliance requirement of the Act.

Hence, it can be said that earlier the role of Company Secretary was quite restrictive and mainly administrative in nature, but now it has been developed into much more than the basic statutory requirement. Government has taken one step forward towards robust Corporate Governance structure and so enhanced the role of company secretary accordingly.

**ROLE OF OFFICER OF THE COMPANY-COMPANY SECRETARY**

The Company Secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements. The Board members, relies on the company secretary to advise them not only on directors’ statutory duties under the law, disclosure obligations and listing rule requirements, but also in respect of corporate governance requirements and practices and effective board processes. As the importance of effective corporate governance continues to be critical in today’s environment, there has been increased focus on the role of Company Secretary. It has become more prominent now with the promulgation of Companies (Amendment) Ordinance, 2018. In order to strengthen the corporate compliance norms, the Ordinance has brought forth liberalization in the provision with respect to the offence committed under the Act and the main objective behind the ordinance is to promote the ease of doing business along with better corporate compliance.

The Ordinance posted on the Government’s e-gazette website amends 32 provisions of the Act to introduce an in-house adjudication system for minor offences. The minor corporate offences will no longer be tried in a court, but will be decided upon by Government officials under a toned down penalty framework.

**REFERENCES**

- egazette.nic.in/WriteReadData/2018/191731.pdf
- ebook.mca.gov.in/default.aspx
Understanding Fraud and Building Fraud Prevention Mechanisms

After the Harshad Mehta scam, people believed that a scandal of that magnitude was unlikely to hit the country or markets again. But this has not been the case. One after another, frauds, scams and scandals have continued to be uncovered, often beating the former one in terms of magnitude. Specific mention of fraud has therefore found its way in the scheme of the Companies Act, 2013 to implicate any person involved who intends to deceive or gain undue advantage of or injure interests of someone in relation to the affairs of a company or body corporate. This article looks at understanding fraud, who can be involved in it, its consequences and how prevention mechanisms can be built to prevent it.

Komal Shah, ACS
Company Secretary, Consultant,
iPleaders & LawSikho*, NewDelhi
komalsah4@gmail.com

Understanding who can commit fraudulent acts and possible motives can help install appropriate prevention mechanisms. This can include directors or any of the employees or even auditors or external consultants. For the purposes of this article, we will limit the discussion to directors and employees, since the company can be considered to be quite vulnerable to consequences of their actions.

The motives of such commission can be many – greed, intention to bring disrepute to the company on account of being ousted, and in some cases, just the thrill of having power enough to circumvent or make others circumvent the law. There may even be ‘Robinhood’ fraudsters who believe they are just increasing the balance in the society by defrauding the rich and bringing the benefits to the less fortunate.

SOME EXAMPLES OF FRAUD

By promoters / directors
• Deceiving investors and making them invest in the company on the basis of fraudulent documents or financial statements or false assurances or ponzi schemes. Funds procured in this way will generally not be used for the purposes stated to the investors. Senior management can typically be involved in this. Further, this can also improve the share price, since a big investment will give the impression of demand for the shares. Promoters, who tend to hold a large stake in the company can benefit from this. [Saradha chit fund scam]

• Deceiving lenders - banks or financial institutions to lend money to the company, which can then be used for purposes other than those stated to the lenders. Usually

Understanding who can commit fraudulent acts and possible motives can help install appropriate prevention mechanisms. This can include directors or any of the employees or even auditors or external consultants.

committed in collusion with bank/financial institution officials, this type of fraud can benefit promoters or senior management. [Kingfisher Airlines / IDBI Bank]^2

- Deceiving customers by devising schemes which would give the customer an incorrect impression about the products and services of the company and thus deceiving them into buying such products or services. [Speak Asia scam]^3

- Deceiving government/regulators by false submissions or resorting to tax evasion mechanisms. [Recent GST fraud]^4

By Senior Management/Employees

- Getting a kickback of any sort from any supplier of the company or a lender who lends at rates higher than the market rate. This amounts to gaining an undue advantage at the cost of the company

- Payment systems or identity theft frauds by the employees. This can include making fake payments to related parties or other fictitious entities for work that may not have been done at all. This can typically involve employees working in the accounting/finance or information technology departments who can swing the payment systems of the company in their favour

- Stealing and leaking of confidential information to secure personal benefits

- Outright forgery where employees can use signature of their managers or directors to make company transactions for personal benefit

- Stealing company products every so often and using these for personal benefits. This can happen in case of factory employees involved in the bulk production of standardised items

FRAUD BY PROMOTERS/DIRECTORS

Directors are expected to perform in the best interests of the company. However, the kind of power that they wield in the functioning of the company puts them in a position where it is not difficult for them to bend the rules. It is difficult to have an entire board of directors acquiesce to fraudulent activities, but it is possible that even a single director’s intentions to gain an undue advantage out of stakeholders’ money can result in fraud of a significant amount.

Will Fraud by Just One Director Make the Other Directors Liable?

Executive directors can usually be caught in the net of suspicion of fraud, since they are hands on involved in the day to day operations of the company and are aware of where there are loopholes in the systems prevalent within the company. However, the non-executive directors or the independent directors cannot escape responsibility simply by virtue of their position. Section 2(60) of the Act implicates ‘every director’ in respect of a contravention of the provisions of the Act (including Section 447 – Fraud as discussed above) who consented to the fraud or is aware of the contravention can become covered within the term ‘officer who is in default’.

The method of awareness is also provided for – this must be either by participating in board proceedings without objecting to the same or even by virtue of receipt of proceedings of the board. ‘Proceedings of the board’ can normally be understood to mean the minutes, but can it also include board papers? What if an independent director receives board papers relating to details of the annual financial statements? Often board papers can be so bulky that they comprise of an entire lever arch file. Can the director be expected to reasonably read everything and will this prove his ‘awareness’ of the fraud? These are some questions to be pondered.

Resignation may seem to be the immediate recourse to a non-executive director, but that does not absolve someone from liability, since the proviso to Section 168(2) of the Act clearly provides that the director who has resigned shall be liable even after his resignation, for the offences which occurred during his tenure.

WHAT CAN THE COMPANY SECRETARY DO ABOUT IT?

Here is where the attendance registers, board papers and minutes which you thought were mundane, suddenly become relevant. Attendance at the board meeting promptly brings a director within the ‘awareness’ purview discussed above. A recording of who attended the meeting, where they did not participate in the discussion and voting and where they dissented is very relevant to affixing liability.

---

^2 https://www.livemint.com/Companies/smvjflMWKki5sX6RZ5o9Mlk/The-cases-against-Vijay-Mallya-and-Kingfisher-Airlines.html
The board papers need to be concise and clear. Board papers circulated over a period of time, if efficiently compiled, might be instrumental in throwing up a red flag for a director, and might result in an independent director either recording his dissent or in extreme cases, resignation.

Interestingly, the SS- 1: Secretarial Standard on Meetings of the Board of Directors requires that the draft minutes need to be circulated to all the members of the board of directors, not only those who attended the meeting. Thus the proceedings of the Board can be available even to those who did not attend the meeting and they can therefore be considered to be aware of a contravention. It certainly makes sense to have your minutes fairly detailed and also for the directors who receive the draft, to read it thoroughly.

In a Fraud by a Director, is the Company the Fraudster or the Victim?
When directors are acting on behalf of the company, if they deceive third parties, the company will also be penalised for this. In most legislations, the sections speaking about the offences by companies implicate the company and the officers in default. Although the company might be able to recover the loss from the director, this would be at a later stage. Initially, the company will have to make good the losses of the third parties or pay the penalties for the violations.

In a 2013 UK case Jetivia SA & anor v. Bitta (UK) Limited (in liquidation) & ors [2013] EWCA Civ 968 the UK Court of Appeals decided that where the directors had acted to deprive the company of its assets and thus made it default in VAT payments to the UK HMRC, the company was the victim and did have a claim towards the breach of fiduciary duties owed to it by its directors.

Consequences of Fraud by Directors
Section 447 seeks to penalise any person guilty of fraud involving amounts of at least ten lakh rupees or one percent of the turnover, whichever is less, with imprisonment from six months to ten years and fine ranging from the amount involved in the fraud to three times such amount. If the fraud involves public interest, the imprisonment will not be less than three years.

If the amount involved is less than ten lakh rupees or one percent of the turnover whichever is lower and the fraud does not involve public interest, the punishment shall be imprisonment up to five years or fine up to fifty lakh rupees or both. It must be noted that the liability will be personal here i.e. the personal assets will be used to pay up the penalty. The fact that the Companies Amendment Ordinance, 2018 increased the penalty in these cases from twenty lakh rupees to fifty lakh rupees shows a clear intention to set a punishment which is heavily deterrent for the fraudsters.

It is not just the above penalty that is relevant. If a director is found to be guilty of fraud and sentenced to imprisonment for six months or more, he would need to wait five years to be over after the expiry of the sentence to become a director of any other company. If the fraud involved public interest, this would take in minimum eight crucial years out from the career of anyone seeking to become a director of a company again.

EMPLOYEES (INCLUDING MIDDLE AND SENIOR LEVEL MANAGEMENT BELOW THE BOARD LEVEL)
Employees in today’s world are not the ones to put their heads down and do as directed. Greed can take its play and you can have a Whale for an employee. Where employments are at a senior managerial level, they can go on to impact the functioning of the board and consequently, their confirmations to the shareholders.

CORPORATE GOVERNANCE MECHANISMS TO PREVENT FRAUD FROM SPROUTING
The Act has elaborate deterrent sections and penalties for fraudulent activities, particularly where unwary investors are made to place their money in untrustworthy hands. The sudden ‘awakening’ and action by the regulators can also make someone cautious. There are also a host of forensic audit techniques and methods available for analysing how exactly the fraud was born and implemented. But these are all relevant after it is discovered that a fraud actually took place and after discovery of who was involved in it. How do you curb the seed of fraud from sprouting in the first place? Some mechanisms can be as under:

Screening and Background Checking
If you are going to place such substantial power in the hands of a director (refer Section 179 (1) of the Companies Act, 2013) and involve a senior employee in the functioning of the company from scratch, it is only appropriate that there be abundant screening, background checking and verification before someone is recommended for and appointed to director and senior managerial level positions. In case of regulated entities, particularly, there would be some kind of ‘fitness and probity’ norms for someone to be appointed as directors. Further, in cases where foreign nationals are appointed as directors, this checking would be exhaustive since criminals in a country might flee and join entities in other countries.

Strong Internal Controls
The importance of strong internal control systems can never be underestimated. In the London Whale story it was...
established that JP Morgan incurred a loss more because of the risk management systems in the bank were not adequately geared to prevent this from happening. The BFSI (Banks, Financial Services, Insurance) sector entities are required to follow regulatory directions in relation to internal audit and risk management systems since a lot of money changes hands in these entities and there is substantial public stake involved.

Nevertheless, the Companies Act, 2013 also realizes the importance of internal controls. Section 134(5)(e) of the Act requires the directors of a listed company to confirm, in their responsibility statement, that they had laid down internal financial controls to be followed by the company and that such controls are adequate and operating effectively. Section 134(5)(f) further requires them to confirm that they had devised proper systems to ensure compliance with provisions of all applicable laws and that such systems are adequate and operating effectively.

As per regulation 17(8) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), the CEO and CFO are required to furnish a compliance certificate to the board of directors confirming their responsibility to maintain adequate internal controls pertaining to financial reporting and that they have evaluated the effectiveness and disclosed any deficiencies and design and operation of such internal controls to the auditors and the audit committee. The board of directors will therefore, rely on such certificate. If this is fraudulently provided, chances are, the responsibility statement as discussed above will turn out to be incorrect too. Although in many cases, the CEO and CFO both will also hold the positions of directors.

Clearly laid down internal control systems and techniques such as established policies and procedures, maker-checker processes (separate people to generate and authorise transactions), limits on operation, block leaves, etc. can all contribute towards reducing the possibilities of fraud and early detection. Since certain internal controls like maker-checker and transaction limits can be installed through software systems, this is one of the very few fear or bias free fraud prevention mechanisms.

Secretarial Standard on Meetings of the Board of Directors requires that the draft minutes need to be circulated to all the members of the board of directors, not only those who attended the meeting. Thus the proceedings of the Board can be available even to those who did not attend the meeting and they can therefore be considered to be aware of a contravention. It certainly makes sense to have your minutes fairly detailed and also for the directors who receive the draft, to read it thoroughly.

Whistle Blowing
That an established vigil mechanism and its reporting methods finds a specific mention in the provisions of section 177(9) of the Act and that the LODR requires listed entities to devise effective whistle blower mechanism reflects on how necessary the lawmakers think these systems are. It is so important that the Act expressly requires that whistleblowers be provided direct access to the Chairman of the Audit Committee and for adequate safeguards to avoid victimisation of the whistleblowers. The ineffective protection mechanisms for whistleblowers might result in creating an atmosphere of fear for whistleblowers. However, it still doesn’t stop some crusaders from going ahead and blowing off the lid of corruption. The stronger the protection to the whistle blowers, more can be the chances of early fraud detections.

Remuneration
Remuneration seems to be a strange item to include in fraud prevention mechanisms, but the feeling of not being adequately remunerated can be one reason why a director or senior employee can be driven to ‘take what they are due’ from an entity irrespective of whether the means are acceptable. Appropriate board evaluation and remuneration policies can result in establishing a measure for rewards against performance.

The metrics should neither be so lenient that the management can achieve it easily nor should they be so strict to seem an insurmountable barrier. Once the yardstick is clear in the minds of the management and employees, they will want to beat it and achieve the remuneration they desire. If that happens, there would be less chances of fraud.

Exit Checks and Claw backs
Exit interviews, particularly when employees are performing and are remunerated well, can raise red flags about possible involvement in fraud. Somewhere there are likely to be some answers which do not add up. The organisation can then investigate.

Claw back provisions in employment agreements, which enable the company to recover incentive and additional compensation paid to executives are an effective deterrent tool, since executive compensation tends to be largely performance linked. Claw back provisions would provide for recovery of such compensation (usually other than the base salary) in case of fraudulent misrepresentation or misstatements.

CONCLUSION
The biggest fraud prevention mechanisms are, in reality growth oriented companies which have appropriate recognition and remuneration mechanisms and thus, a high employee morale. A positive community environment is difficult to quit, and even more difficult to ditch. It is therefore essential for a company to strive towards creating a high engagement, where an employee would not only feel a sense of achievement and being appropriately rewarded, but also get a feeling of loss in defrauding and leaving the environment. Such high engagement surrounding can only be created top down, with managers at all levels inculcating a community feeling in people below them. Such an environment is where fraud is unlikely to enter.
Offences under Companies Act, 2013 and Insolvency and Bankruptcy Code, 2016

The promulgation of The Companies (Amendment) Ordinance, 2018 has provided a much needed relief to the corporates and professionals by decriminalising a host of offences by re-categorisation of certain ‘acts’ punishable as compoundable offences to ‘acts’ carrying civil liabilities. It is evident that the Indian government is leaving no stone unturned in its aim to improve the Ease of Doing Business in India. The present article provides a comprehensive list of Offences and Penalties under the Companies Act, 2013 as amended and also Insolvency and Bankruptcy Code, 2016 (IBC).

INTRODUCTION

The Companies Act, 2013, to promote the development of the economy, to encourage transparency and accountability, to promote high standards of corporate governance, to recognise new concepts and procedures to support business while protecting interests of all the stakeholders, to set up institutional structure in the form of various authorities, to enforce stricter action against fraud and gross non-compliance with company law provisions, came into effect on 12th September, 2013. Several new concepts such as One Person Company, Entrenchment of Articles of Association, Corporate Social Responsibility, Internal Audit, Rotation of Auditors, Independent, Woman and Resident Director, Key Managerial Personnel, Secretarial Audit, Class Action Suits, Registered Valuers, Special Courts, Mediation and Conciliation, Punishment for Fraud, Dormant Company, etc., were introduced under the Companies Act, 2013. On the other hand The Insolvency and Bankruptcy Code, 2016 (IBC) is a significant reform (having overriding effect over existing laws on matters pertaining to Insolvency and Bankruptcy) effective from 28th May, 2016, amends the laws relating to re-organisation and insolvency of corporate persons, partnerships and individuals. The code marks the distinction between insolvency and bankruptcy. The code aims at reducing time to resolve insolvency, developing investor confidence, simplifying complex judicial frame work, addressing NPA situation and developing the credit market.

WHAT IS AN OFFENCE? HAS IT BEEN DEFINED UNDER COMPANIES ACT OR INSOLVENCY CODE?

The answer is No. None of the above legislations define the term Offence. We derive the definition of Offence from the General Clauses Act. The General Clauses Act defines the term ‘Offence’ as “any act or omission made punishable by any law for the time being in force. Compliance to the provisions of the relevant laws is defined as Good Governance. While Non-compliance resulting into punishment is termed as an Offence. Offences can be classified as Civil and Criminal and further as Compoundable and Non-Compoundable. The Companies Act, 2013 as well as the Insolvency and Bankruptcy Code (IBC), 2016 clearly prescribe fine, imprisonment or both for non-compliance of the relevant provisions. The Companies Act, 2013, poses various obligations to be discharged by the Companies, Directors, Managers and other Officials. Non-compliance of such obligations attracts punishment which may be imprisonment and/or fine/penalty. The new Companies Act, 2013 has come up with more stringent punishment and penalties for non-compliance of various provisions and rules made thereunder as compared to the former Companies Act, 1956. Therefore, Companies and other responsible person(s) must look at the same for ascertaining the implications of the actions done/to be done by themselves so that the requisite compliance should be in place within the prescribed time.

The Insolvency and Bankruptcy Code, 2016 (IBC) also poses various obligations to be discharged by the Corporate Debtor, Officers, Creditors, Debtors and Insolvency Resolution Professional, on or after the insolvency commencement date. The Code prescribes for punishment which may be imprisonment and/or fine/penalty for non-compliance of such obligations. The Code specifies that a Director of the company can be liable to contribute to the assets of the corporate debtor if such director knew that the company has no prospect of avoiding commencement of CIRP and he/she did not exercise any due diligence in minimizing potential loss to creditors. Person(s) party to any business of the debtor carried on with the intent to defraud creditors or any other fraudulent purposes may be liable to contribute to the assets of the company.
The Code specifies that a Director of the company can be liable to contribute to the assets of the corporate debtor if such director knew that the company has no prospect of avoiding commencement of CIRP and he/she did not exercise any due diligence in minimizing potential loss to creditors. Person(s) party to any business of the debtor carried on with the intent to defraud creditors or any other fraudulent purposes may be liable to contribute to the assets of the company.

OFFENCES AND PENALTIES

The Offences under Companies Act, 2013 can be divided into different categories. These categories are:

i) Non-compliance of the orders of CG/NCLT/RD/ROC.

ii) Non-compliance in maintenance of certain records in the registered office of the Company.

iii) Defaults on account of non-disclosures of interest of persons to the Company, which vitiates the records of the Company.

iv) Defaults related to corporate governance norms.

v) Technical defaults relating to intimation of certain information by filing forms with RoC or in sending of notices to the stakeholders.

vi) Defaults involving substantial violations which may affect the going concern nature of the Company or are contrary to larger public interest or otherwise involve serious implications in relation to the stakeholder.

vii) Default related to liquidation proceedings.

viii) Defaults not specifically punishable under any provision but made punishable through an omnibus clause.

- The Insolvency and Bankruptcy Code, 2016 (IBC) imposes punishment and penalties for offences committed by an officer of the Corporate Debtor, such as concealment of property; making transactions to defraud the creditors; misconduct on or after the commencement of insolvency resolution process; falsification of books, papers and securities; for wilful and material omissions from statements; misrepresentations to creditors, etc.

- Such Officer (Here the Officer means an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 or a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, as the case may be) shall be punishable with imprisonment of not less than 3 years which may extend to 5 years, or with fine of not less than 1 lakh rupees, which may extend to 1 crore rupees, or with both. However, such officer cannot be punished, if he proves that he/she had no intention to defraud or to conceal the state of affairs of the Corporate Debtor.

- The quantum of punishment for offences committed under individual insolvency (such as providing false information), can vary based on the nature of the offence. If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent, such person can be punished with a penalty of Rs. 1 lakh, which may extend to Rs. 1 crore.

A Comprehensive list of Offences and Penalties under Companies Act, 2013 and Insolvency and Bankruptcy Code, 2016 (IBC) is reproduced herein below:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PENALTY</th>
<th>Sl. No.</th>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4(5) Reservation of name</td>
<td>If the name was reserved by giving incorrect information and if the company has not been incorporated the reserved name shall be cancelled.</td>
<td>The applicant: shall be liable to a penalty up to 1 lakh rupees.</td>
<td>1</td>
<td>65 Fraudulent or malicious initiation of proceedings</td>
<td>If any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be.</td>
<td>Minimum 1 lakh Rupees, Maximum 1 crore rupees.</td>
</tr>
<tr>
<td>2</td>
<td>7 Incorporation of Company</td>
<td>If any person furnishes any false or incorrect information or suppresses any material information, in any of the documents filed with the Registrar in relation to the registration of a company.</td>
<td>The person shall be liable for fraud under section 447.</td>
<td>2</td>
<td>68 Punishment for concealment of property</td>
<td>Where any officer of the corporate debtor has,— (i) within the twelve months immediately preceding the insolvency commencement date,— (a) wilfully concealed any property or part of such property of the corporate debtor or concealed any debt due to, or from, the corporate debtor, of the value of ten thousand rupees or more; or</td>
<td>Imprisonment:- Minimum 3 years, Maximum 5 years, or</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
</tr>
<tr>
<td>-------</td>
<td>---------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------</td>
<td>---------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If after incorporation, it is proved that, the company was incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information.</td>
<td>The promoters, the first directors and professional engaged for incorporating the company, shall be liable for fraud under section 447.</td>
<td></td>
<td></td>
<td>(b) fraudulently removed any part of the property of the corporate debtor of the value of ten thousand rupees or more; or (c) wilfully concealed, destroyed, mutilated or falsified any book or paperaffecting or relating to the property of the corporate debtor or its affairs, or (d) wilfully made any false entry in any book or paper affecting or relating to the property of the corporate debtor or its affairs; or (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the corporate debtor or its affairs; or (f) wilfully created any security interest over, transferred or disposed of any property of the corporate debtor which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the corporate debtor; or (g) wilfully concealed the knowledge of doing by others of any of the acts mentioned in clauses (c), (d) or clause (e); or (ii) at any time after the insolvency commencement date, committed any of the acts mentioned in sub-clause (a) to (f) of clause (i) or has the knowledge of doing by others of any of the things mentioned in sub-clauses (c) to (e) of clause (i); or (iii) at any time after the insolvency commencement date, taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed.</td>
<td>Fine:- Minimum 1 lakh rupees, Maximum 1 crore rupees, or Both.</td>
</tr>
<tr>
<td>3</td>
<td>*10A</td>
<td>If a company incorporated after commencement of the Companies (Amendment) Ordinance, 2018, effective from, 2/11/2018, having share capital has not:- a) filed a declaration by a Director in the prescribed form and verified in the prescribed manner declaring that every subscriber to the Memorandum has paid the value of the shares agreed to be taken on the declaration date, with the Registrar of Companies and b) filed verification of its registered office with the Registrar of Companies</td>
<td>Company Fine: 50 thousand rupees Officer in default: Minimum 1 thousand rupees per day for continuing default, Maximum 1 lakh rupees</td>
<td></td>
<td>69</td>
<td>Punishment for transactions defrauding creditors</td>
<td>Imprisonment:- Minimum 1 year, Maximum 5 years, or Fine:- Minimum 1 lakh rupees, Maximum 1 crore rupees, or Both.</td>
</tr>
<tr>
<td>4</td>
<td>*12</td>
<td>If: a newly incorporated company does not establish its registered office within 30 days of incorporation or a company does not affix or paint its name and registered office address outside of every office or a company does not print its name,</td>
<td>Company and Officer in default: penalty of 1 thousand rupees every day, Maximum 1 lakh rupees.</td>
<td></td>
<td>70</td>
<td>Punishment for misconduct in course of corporate</td>
<td>Imprisonment:- Minimum 1 year, Maximum 5 years, or Fine:- Minimum 1 lakh rupees, Maximum 1 crore rupees, or Both.</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>-------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>registered office address, CIN, Telephone, E-mail or website address on its billheads and other official publications or does not get its name printed on hundies, promissory notes, bills of exchange or Does not give Notice of change of the situation of the registered office to the Registrar.</td>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>* The Registrar of Companies on being satisfied that, the company is not carrying on any business or operations, may cause physical verification of registered office of the company in the prescribed manner and on finding that, it is not maintaining any registered office, initiate action for the removal of name of the company.</td>
<td></td>
<td></td>
<td>Insolvency resolution process</td>
<td>Imprisonment:- Minimum 3 years, Maximum 5 years, or Fine:- Minimum 1 lakh rupees, Maximum 1 crore rupees, or Both</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>15</td>
<td>Alteration of Memorandum or Articles to be Noted in Every Copy</td>
<td>Fine:- Minimum 1 lakh rupees, Maximum 5 lakhs rupees, or Both.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>If alteration made in the memorandum or articles of a company is not noted in every copy of the memorandum or articles.</td>
<td>Company and Officer in Default: A penalty of 1 thousand rupees for every copy of the memorandum or articles issued without such alteration.</td>
<td>5</td>
<td>71</td>
<td>Punishment for falsification of books of corporate debtor</td>
<td>Imprisonment:- Minimum 3 years, Maximum 5 years, or Fine:- Minimum 1 lakh rupees, Maximum 1 crore rupees, or Both.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If On or after the insolvency commencement date, any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, book of account or document belonging to the corporate debtor with intent to defraud or deceive any person.</td>
<td>5</td>
<td>71</td>
<td>Punishment for falsification of books of corporate debtor</td>
<td>Imprisonment:- Minimum 3 years, Maximum 5 years, or Fine:- Minimum 1 lakh rupees, Maximum 1 crore rupees, or Both.</td>
<td></td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>--------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>6</td>
<td>Section 16- Rectification of name of company</td>
<td>If a Company is registered with an identical name of an existing company or an existing Trade Mark and does not change the name after receipt of a direction from the Government.</td>
<td>Company: 1 thousand rupees every day during which the default continues. Officer in Default: Minimum 5 thousand rupees, Maximum 1 lakh rupees.</td>
<td>6</td>
<td>72 Punishment for wilful and material omissions from statements relating to affairs of corporate debtor.</td>
<td>Where an officer of the corporate debtor makes any material and wilful omission in any statement relating to the affairs of the corporate debtor.</td>
<td>Imprisonment:- Minimum 3 years, Maximum 5 years, or Fine:- Minimum 1 lakh Rupees, Maximum 1 crore rupees, or Both.</td>
</tr>
<tr>
<td>7</td>
<td>Section 17- Copies of memorandum, articles, etc., to be given to members</td>
<td>If on request of member, company has not provided them a copy of: Memorandum, Articles, every agreement and every resolution.</td>
<td>Company and Officer in Default Fine: 1 thousand rupees every day during which such default continues or 1 lakh rupees, Whichever is less.</td>
<td>7</td>
<td>73 Punishment for false representations to creditors</td>
<td>Where any officer of the corporate debtor — (a) on or after the insolvency commencement date, makes a false representation or commits any fraud for the purpose of obtaining the consent of the creditors of the corporate debtor or any of them to an agreement with reference to the affairs of the corporate debtor, during the corporate insolvency resolution process, or the liquidation process; (b) prior to the insolvency commencement date, has made any false representation, or committed any fraud, for that purpose.</td>
<td>Imprisonment:- Minimum 3 years, Maximum 5 years, or Fine:- Minimum 1 lakh Rupees, Maximum 1 crore rupees, or Both.</td>
</tr>
<tr>
<td>8</td>
<td>26 Matters to be stated in prospectus</td>
<td>If a public company issues prospectus in contravention of the provisions of the section.</td>
<td>Company: Minimum 50 thousand rupees, Maximum 3 lakh rupees. Others: Every person who is knowingly a party to the issue of such prospectus shall be punishable with: Imprisonment: Maximum 3 Years or Fine: Minimum 50 thousand rupees, Maximum 3 lakh rupees Or with both.</td>
<td>8</td>
<td>74 Punishment for contravention of moratorium or the resolution plan</td>
<td>Where the corporate debtor or any of its officer violates the provisions of moratorium, any such officer who knowingly or wilfully committed or authorised or permitted such contravention.</td>
<td>Imprisonment:- Minimum 3 years, Maximum 5 years, or Fine:- Minimum 1 lakh Rupees, Maximum 3 lakhs rupees, or Both.</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>39</td>
<td>Allotment of securities by company</td>
<td>1 thousand rupees every day during which such default continues or 1 lakh rupees, whichever is less.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>42</td>
<td>Offer or invitation for subscription of securities on private placement</td>
<td>Penalty: 1 thousand rupees every day but not exceeding twenty-five lakh rupees. The amount involved in the offer or invitation or 2 crore rupees, whichever is lower.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>*53</td>
<td>Prohibition on issue of shares at a discount</td>
<td>Company and Officer in default: Equal to amount raised through issue of shares or 5 lakhs whichever is less. The company shall refund the amount raised along with interest @ 12% p.a. from the date of issue of such shares.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**INSOLVENCY AND BANKRUPTCY CODE, 2016**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>75</td>
<td>Punishment for false information furnished in application</td>
<td>Where any person furnishes information in the application made under section 7, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material. Fine:- Minimum 1 lakh rupees, Maximum 1 crore rupees.</td>
</tr>
<tr>
<td>10</td>
<td>76</td>
<td>Punishment for non-disclosure of dispute or payment of debt by operational creditor</td>
<td>Where an operational creditor has wilfully or knowingly concealed in an application made by him under section 9 the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final repayment of the unpaid operational debt; or any person who knowingly and wilfully authorised or permitted such concealment. Imprisonment:- Minimum 1 year, Maximum 5 years, or Fine:- Minimum 1 lakh rupees, Maximum 1 crore rupees, or Both.</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>PENALTY</td>
<td></td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>64 Notice to be given to Registrar for alteration of share capital</td>
<td>If a company fails to give notice of alteration of share capital to the Registrar of Companies.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Company and Officer in default: Minimum 1 thousand rupees per day for continuing default. Maximum 5 lakhs rupees.</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>77 Punishment for providing false information in application made by corporate debtor</td>
<td>Where a corporate debtor provides information in the application made by him, which is false in material particulars, knowing it to be false and omits any material fact, knowing it to be material or any person who knowingly and willfully authorised or permitted the furnishing of such information.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Imprisonment: Minimum 3 years, Maximum 5 years, or Fine: Minimum 1 lakh rupees, Maximum 1 crore rupees, or Both.</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Section 74 Payment of deposits, etc., accepted before commencement of this Act</td>
<td>If a Company fails to repay deposit or interest thereof, within the time specified.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Company (In addition to the payment of the amount of deposit or part thereof and the interest due) Fine: Minimum 1 crore rupees, Maximum 10 crore rupees. Officer: Imprisonment: Maximum 7 years or Fine: Minimum 25 lakh rupees, Maximum 2 crore rupees, or with both.</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>76A Punishment in contravention of section 73 or section 76</td>
<td>If an insolvency professional deliberately contravenes the provisions of the insolvency and bankruptcy for individuals and partnership firms.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Imprisonment: Maximum 6 months, or Fine: Minimum 1 lakh Rupees, Maximum 5 lakh rupees, or Both.</td>
<td></td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>-------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| 16     | *86     | Punishment for contravention If a Company contravenes the provisions of registration, modification and satisfaction of Charge(s). | Company: Minimum 1 lakh rupees, Maximum 10 lakh rupees.  
Officer in default: Imprisonment: Maximum 6 months or Fine: Minimum 25 thousand rupees, Maximum 1 lakh rupees, or with both.  
If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information required to be registered in accordance with the provisions of Section 77 (Duty to Register Charges, etc.) |
| 14     | 186     | Punishment for false information, concealment, etc., by bankrupt If a bankrupt knowingly makes a false representation or wilfully omits or conceals any material information while making an application for bankruptcy by a debtor.  
If the bankrupt fraudulently has failed to provide or deliberately withheld the production of, destroyed, falsified or altered, his books of accounts, financial information and other records under his custody or control.  
If the bankrupt has contravened the restrictions under section 140 or the provisions of section 141.  
If the bankrupt has failed to deliver the possession of any property comprised in the estate of the bankrupt under his possession or control, which he is required to deliver under section 156.  
If the bankrupt has failed to account, without any reasonable cause or satisfactory explanation, for any loss incurred of any substantial part of his property comprised in the estate of the bankrupt from the date which is twelve months before the filing of the bankruptcy application.  
If the bankrupt has absconded or attempts to absconds after the bankruptcy commencement date. | Imprisonment:- Maximum 6 months, or Fine:- Maximum 5 lakhs rupees, or Both.  
Imprisonment:- Maximum 1 year, or Fine:- Maximum 5 lakhs rupees, or Both.  
Imprisonment:- Maximum 6 months, or Fine:- Maximum 5 lakhs rupees, or Both.  
Imprisonment:- Maximum 6 months, or Fine:- Maximum 5 lakhs rupees, or Both. |
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PENALTY</th>
<th>Sl. No.</th>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Section 88-Register of members, etc.</td>
<td>If a Company fails to maintain register of members, debenture-holders or other security holders or fails to maintain them in accordance with the provisions of the Section.</td>
<td>Company and Officer in default: Fine: Minimum 50 thousand rupees, Maximum 3 lakh rupees, For continuing failure : Fine: 1 thousand rupees every day.</td>
<td>15</td>
<td>187 Punishment for certain actions</td>
<td>If a bankruptcy trustee, — (a) has fraudulently misapplied, retained or accounted for any money or property comprised in the estate of the bankrupt; or (b) has wilfully acted in a manner that the estate of the bankrupt has suffered any loss in consequence of breach of any duty of the bankruptcy trustee in carrying out his functions under section 149-</td>
<td>Imprisonment:- Maximum 3 years, or Fine:- If loss is quantifiable minimum 3 times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention, If loss is not quantifiable- Maximum 5 lakhs rupees, or Both.</td>
</tr>
</tbody>
</table>
| 18     | *90 Register of significant beneficial owners in a company | If any individual holding beneficial interest, of not less than 10 percent fails to make a declaration to the company, specifying the nature of his interest and other particulars. If the company fails to maintain the register and file the return of significant beneficial owners of the company and changes therein with the Registrar of Companies. | Individual Imprisonment: Maximum one year or Fine: Minimum 1 lakh rupees, Maximum ten lakh rupees or both. | 16 | 220 Appointment of disciplinary committee. | Where any insolvency professional agency or insolvency professional or an information utility has contravened any provision of this Code or rules | Penalty:- 3 times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention, or 3 times the

---

Companys Act, 2013

Insolvency and Bankruptcy Code, 2016
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If any person wilfully furnishes any false or incorrect information or suppresses any material information in the declaration made by him pursuant to (1) of the Section.</td>
<td>Additional fine: Maximum 1 thousand rupees every day for continuing default. Company and officer in default: Minimum Ten lakh rupees, Maximum fifty lakh rupees. And additional fine Maximum 1 thousand rupees every day for continuing default. He shall be liable for fraud.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>19 *Section 92-Annual Return if a Company fails to file copy of Annual Return within prescribed time.</td>
<td>Company and Officer in default: Fine: 50 thousand rupees Additional fine: Minimum 100 rupees per day for continuing default. Maximum 5 lakh rupees.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>20 Section 94-Place of keeping and inspection of registers, returns, etc. If a Company refuses to inspect or to give copy of registers or to take extract therefrom.</td>
<td>Company and officer in default: 1 thousand rupees every day subject to a maximum of 1 lakh rupees.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>21 *Section 102-State-ment to be annexed to notice If the explanatory statement providing required information is not attached with the notice of General meeting.</td>
<td>Fine: 50 thousand rupees or 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>17 235A Punishment where no specific penalty or punishment is provided If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code.</td>
<td>Fine: Minimum 1 lakh rupees, Maximum two crore rupees.</td>
<td>amount of the unlawful gain on account of such contravention, whichever is higher. Where such loss is not quantifiable, Maximum penalty 1 crore rupees. The Disciplinary Committee may suspend, or cancel the registration of insolvency professional agency or information utility as the case may be.</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>22</td>
<td>*105 Proxies</td>
<td>If a company makes a default in providing a declaration regarding appointment of proxy in a notice calling for general meeting.</td>
<td>Officer in default: 5 thousand rupees.</td>
</tr>
<tr>
<td>23</td>
<td>*Section 117-Resolution and agreements to be filed</td>
<td>If a company fails to file the resolution or the agreement before the expiry of the period specified.</td>
<td>Company: Fine: 1 lakh rupees, Additional Fine: Minimum 5 hundred rupees per day for continuing default, Maximum 25 lakh rupees. Officer in default including liquidator, if any, Fine: 50 thousand rupees. Additional Fine: 500 rupees per day for continuing default, Maximum 5 lakh rupees. Officer in default: 50 thousand rupees. Additional Fine: 500 rupees per day for continuing default, Maximum 5 lakh rupees.</td>
</tr>
<tr>
<td>24</td>
<td>Section 118-Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot</td>
<td>If a Company does not comply with the provisions of maintenance of minutes of General Meeting, meeting of Board of Directors or of every committee of the Board and every resolution passed by postal ballot. If a person is found guilty of tampering with the minutes of the proceedings of meeting.</td>
<td>Company: 25 thousand rupees. Officer in default: 5 thousand rupees. Imprisonment: Maximum two years and Fine: Minimum 25 thousand rupees, Maximum 1 lakh rupees.</td>
</tr>
<tr>
<td>25</td>
<td>*121 Report on annual general meeting</td>
<td>If a listed public company fails to file the report with the Registrar of companies regarding conducting of its annual general meeting within the prescribed time.</td>
<td>Company: Fine: 1 lakh rupees. Additional fine: 500 rupees per day for continuing default, Maximum 5 lakh rupees. Officer in default: 25 thousand rupees. Additional fine: 500 rupees per day for continuing default, Maximum 1 lakh rupees.</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>26</td>
<td>Section 127- Punishment for failure to distribute dividends</td>
<td>Where a dividend has been declared by a company but has not been paid.</td>
<td>Every director of the company, knowingly a party to the default, shall, be punishable with imprisonment Maximum 2 years and with fine of 1 thousand rupees every day for continuing default. Company: shall pay a simple interest at the rate of 18% p.a. during the period of default.</td>
</tr>
<tr>
<td>27</td>
<td>Section 128- Books of account, etc., to be kept by company</td>
<td>If the officer in charge of the company makes default in maintaining the accounts of the Company in accordance with the provisions of this Section.</td>
<td>Officer in default: Imprisonment: Maximum 1 year or Fine: Minimum 50 thousand rupees, Maximum 5 lakh rupees or both.</td>
</tr>
<tr>
<td>28</td>
<td>132 Constitution of National Financial Reporting Authority</td>
<td>If any member or firm of chartered accountants is found to have committed any professional or other misconduct.</td>
<td>Individual: Fine Minimum 1 lakh rupees, Maximum 5 times of the fees received. Firms: Minimum 5 lakh rupees, Maximum ten times of the fees received.</td>
</tr>
<tr>
<td>29</td>
<td>Section 134- Financial Statement, Board’s report, etc.</td>
<td>If a Company does not authenticate the financial statements in accordance with the provisions of the Section. If a Company does not provide the disclosures and details required in the Board’s Report.</td>
<td>Company: Fine: Minimum 50 thousand rupees, Maximum 25 lakh rupees. Officer in default: Imprisonment: Maximum 3 years Or Fine: Minimum 50 thousand rupees, Maximum 5 lakh rupees, Or both.</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>30</td>
<td>*Section 137- Copy of financial statement to be filed with Registrar</td>
<td>If a company fails to file the copy of the financial statements with the Registrar.</td>
<td>Company: Fine: 1 thousand rupees every day for continuing failure not exceeding 10 lakh rupees. Officers in default: In Case of the managing director and the Chief Financial Officer of the company, if any, or in their absence other director(s), fine: 1 lakh rupees, Additional fine: Minimum 100 rupees per day for continuing default, Maximum 5 lakh rupees.</td>
</tr>
<tr>
<td>31</td>
<td>*140 Removal, Resignation of Auditor and Giving of Special Notice</td>
<td>If the resigning auditor fails to file the resignation statement with the company, Registrar of Companies and Comptroller and Auditor-General of India, required if any.</td>
<td>Fine: 50 thousand rupees or an amount equal to the remuneration the auditor, whichever is less. Additional fine: 500 rupees per day for continuing default, Maximum 5 lakh rupees.</td>
</tr>
<tr>
<td>32</td>
<td>*165 Number of Directorships</td>
<td>If a person acts as a director in more than twenty companies excluding Dormant company(s). One can act as a director in only ten public companies. While calculating ten public companies private companies either holding or subsidiary company of a public company shall be included.</td>
<td>Fine: 5 thousand rupees per day for continuing default.</td>
</tr>
<tr>
<td>33</td>
<td>Section 178 – Nomination and Remuneration Committee and</td>
<td>If a Company defaults in: Complying with the provisions of Section 177 with regard to constitution of Audit Committee, disclosure of its composition in Board’s report, approval of related party transaction(s), establishing a vigil mechanism. If a Company does not constitute a Nomination and Remuneration Committee</td>
<td>Company: Fine: Minimum 1 lakh rupees, Maximum 5 lakh rupees. Officer in default: Imprisonment Maximum 1 year or</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td>Stakeholders Relationship Committee</td>
<td>Committee and Stakeholders Remuneration Committee and Formulate and adopt a Nomination and Remuneration Policy and place it on the website, if any, of the company.</td>
<td>Fine: Minimum 25 thousand rupees, Maximum 1 lakh Rupees or both</td>
</tr>
<tr>
<td>34</td>
<td>Section 185 – Loan to Directors, etc.</td>
<td>If a Company gives loans, or give any guarantee or provide any security to any director or any person in whom any of the director of the company is interested in contravention of the provisions of the Section.</td>
<td>(The director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person) Imprisonment: Maximum 6 months or Fine: Minimum 5 lakh rupees, Maximum 25 lakh rupees or both.</td>
</tr>
<tr>
<td>35</td>
<td>Section 186 – Loan and Investment by Company</td>
<td>If a Company gives loans or give any guarantee or provide security or makes Investment in contravention of the provisions of the Section.</td>
<td>Company: Fine: Minimum 25 thousand Rupees, Maximum 5 lakh Rupees. Officer in default: Imprisonment Maximum 2 years and Fine: Minimum 25 thousand rupees, Maximum 1 lakh Rupees.</td>
</tr>
<tr>
<td>36</td>
<td>Section 188 – Related Party Transactions</td>
<td>If Any director or any other employee of a company, who entered into or authorised the contract or arrangement in violation of the provisions of Section 188.</td>
<td>Listed Company: Imprisonment: Maximum 1 year Fine: Minimum 25 thousand rupees, Maximum 5 lakh Rupees or both. Other Company: Fine: Minimum 25 thousand rupees, Maximum 5 lakh Rupees.</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>37</td>
<td>Section 189 - Register of contracts or arrangements in which directors are interested</td>
<td>If a Company fails to maintain Register of contracts or arrangements in which directors are interested as defined under Section 184 or 188.</td>
<td>Every Director in default shall be liable to a penalty of 25 thousand Rupees.</td>
</tr>
<tr>
<td>38</td>
<td>197* Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits</td>
<td>If any person makes any default in complying with the provisions of the Section.</td>
<td>Individual: Fine: 1 lakh rupees Company: 5 lakh rupees.</td>
</tr>
<tr>
<td>39</td>
<td>Section 203* Appointment of Key Managerial Personnel</td>
<td>If a Company contravenes the provisions for appointment of Key Managerial Personnel. Whole-time key managerial personnel, who held office in contravention of the provisions of the Section.</td>
<td>Company: Fine: 5 lakh rupees Office in default: Fine: 50 thousand rupees and Additional fine: 1 thousand rupees per day For continuing default, Maximum 5 lakh rupees.</td>
</tr>
<tr>
<td>40</td>
<td>Section 204 - Secretarial audit for bigger companies</td>
<td>If a Company fails to attach secretarial audit Report to Board’s Report in the prescribed form. If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section.</td>
<td>Company and Officer of the company or the company secretary in practice: Fine: Minimum 1 lakh rupees, Maximum 5 lakh rupees.</td>
</tr>
<tr>
<td>41</td>
<td>Section 206 – Power to call for information, inspect books and conduct inquiries</td>
<td>If a company fails to furnish any information or explanation or produce any document to the Registrar of Companies.</td>
<td>Company and Officer in default: Fine: Maximum 1 lakh rupees and For continuing default: additional fine Maximum 5 hundred rupees every day.</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>42</td>
<td>*238 Registration of Offer of Schemes Involving Transfer of Shares</td>
<td>If any director issues a circular which has not been presented for registration and registered in accordance with the provisions of the section.</td>
<td>The Director shall be punishable with fine 1 lakh rupees.</td>
</tr>
<tr>
<td>43</td>
<td>Section 405 – Power of Central Government to direct companies to furnish information or statistics</td>
<td>If any Company fails to provide to Central Government, all material information with regard to all its working and statistics etc.</td>
<td>Company: Fine: 25 thousand rupees. Officer in default: Imprisonment: 6 Months or Fine: Minimum 25 thousand Rupees, Maximum 3 lakh rupees or both.</td>
</tr>
<tr>
<td>44</td>
<td>*446B Lesser penalties for one person companies or small companies</td>
<td>If a One Person Company or a small company fails to file Annual Return or resolutions or agreements or financial statements.</td>
<td>Company and Officer in default: Maximum one half of the penalty provided for not filing such documents.</td>
</tr>
<tr>
<td>45</td>
<td>447 Punishment for Fraud</td>
<td>Any person who is found guilty of fraud involving an amount of at least ten lakh rupees or 1 per cent of the turnover of the company, whichever is lower. Where the fraud involves an amount less than ten lakh rupees or 1 per cent. of the turnover of the company whichever is lower, and does not involve public interest.</td>
<td>Imprisonment: Minimum Six months, Maximum ten years and Fine: Not less than the amount involved in the fraud, Maximum 3 times the amount involved in the fraud. Imprisonment: Maximum 5 years or Fine: Maximum 50 lakh rupees or with both.</td>
</tr>
<tr>
<td>46</td>
<td>448 Punishment for False Statement</td>
<td>If in any return, report, certificate, financial statement, prospectus, statement or other document any person makes a statement which is false in any material particulars.</td>
<td>The person shall be liable for fraud under section 447.</td>
</tr>
<tr>
<td>47</td>
<td>Section 449 – Punishment for false evidence</td>
<td>If any person intentionally gives any false evidence upon any examination on oath or solemn affirmation or in any affidavit, deposition or solemn affirmation.</td>
<td>Imprisonment: Minimum 3 years, Maximum 7 Years Fine: 10 lakh Rupees.</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>SECTION</td>
<td>OFFENCE</td>
<td>PENALTY</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>48</td>
<td>Section 450 – Punishment where no specific penalty or punishment is provided</td>
<td>If a Company or any officer, or any other person contravenes any of the provisions of this Act, subject to which any approval, direction or exemption in relation to any matter has been accorded and for which no penalty or punishment is provided elsewhere.</td>
<td>Company and Officer or any other person in default: Fine: Maximum 10 thousand Rupees. For Continuing default: Additional fine Maximum 1 thousand rupees for every day.</td>
</tr>
<tr>
<td>49</td>
<td>Section 451 – Punishment in case of repeated default</td>
<td>If a Company or any officer commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second time within a period of 3 years.</td>
<td>Company and Officer in default: Twice the amount of fine for such offence in addition to any imprisonment provided for that offence.</td>
</tr>
<tr>
<td>50</td>
<td>Section 453 – Punishment for improper use of “Limited” or “Private Limited”</td>
<td>If any Person makes an improper use of the word limited or Private limited before incorporation of the Company.</td>
<td>Fine: Minimum 5 hundred rupees, Maximum 2 thousand rupees every day.</td>
</tr>
<tr>
<td>51</td>
<td>Section 454* -Adjudication of Penalties</td>
<td>If a company or any officer does not pay the penalty imposed by the adjudicating officer or the Regional Director.</td>
<td>Company: Fine Minimum 25 thousand rupees, Maximum 5 lakh rupees. Officer in default: Fine: Minimum 25 thousand rupees, Maximum 1 lakh rupees. Or Imprisonment: 6 months or Both.</td>
</tr>
<tr>
<td>52</td>
<td>454A* Penalty for repeated default</td>
<td>If a company or its officer or any other person commits the same default within a period of three years from the date of order imposing penalty for earlier offence was passed by the adjudicating officer or RD.</td>
<td>Company or Officer in default or Other Person: For the second and every subsequent defaults for an amount equal to twice the amount provided for such default under the relevant provision of the Act.</td>
</tr>
</tbody>
</table>

*Vide Companies (Amendment) Ordinance, 2018.
CURRENT SCENARIO

The Ministry of Corporate Affairs (MCA) had constituted a high level Committee in July, 2018 to review the existing framework dealing with offences under the Companies Act, 2013, and related matters and make recommendations to promote better corporate compliance. The Committee submitted its report on 27th August, 2018, undertaking a detailed analysis of all penal provisions, which were then broken down into eight categories based on the nature of offences. The Committee recommended that the existing rigour of the law should continue for serious offences, covering six categories, whereas for lapses that are essentially technical or procedural in nature, mainly falling under two categories may be shifted to in-house adjudication process. The Committee observed that this would serve the twin purposes of promoting ease of doing business and better corporate compliance.

Moving ahead with the recommendations of the high level committee in its Report dated 27-August-2018, on Restructuring of Corporate Offences to relieve Special Courts from adjudicating routine offences; Declogging the NCLT (thereby enlarging the jurisdiction of Regional Director (“RD”) by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act, vesting in the Central Government the power to approve the alteration in the financial year of a company under section 2(41), vesting the Central Government the power to approve cases of conversion of public companies into private companies) and several recommendations related to corporate compliance and corporate governance, the Companies (Amendment) Ordinance, 2018 was promulgated and made effective from 2nd November, 2018, which provides the much needed relief to the corporate and professionals by decriminalising a host of offences. Considering re-categorisation of certain ‘acts’ punishable as compoundable offences to ‘acts’ carrying civil liabilities, the Ordinance is meant to promote ease of doing business in India.

Other corporate governance related reforms include re-introduction of declaration of commencement of business provision; greater accountability with respect to filing documents related to creation, modification and satisfaction of charges; non-maintenance of registered office to trigger de-registration process; holding of directorships beyond permissible limits to trigger disqualification of such directors.

Further, during examination of such recommendations, the Ministry of Corporate affairs noted that certain other amendments of urgent nature would be required to strengthen the corporate governance and enforcement framework. Therefore, the Ministry has proposed 20 new amendments to the Companies Act, 2013, and asked for the suggestions/comments on the proposed amendments along with justification in brief.

The Companies Amendment Act, 2017, which got President’s assent on January 3, 2018, also aimed at addressing difficulties in implementation owing to stringent compliance requirements; facilitating ease of doing business in order to promote growth with employment; harmonisation with Accounting Standards, the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder; rectifying omissions and inconsistencies in the Act. Through the Amendment Act, several amendments have been made to the penal provisions under Companies Act, 2013 (Act, 2013) such as the newly inserted Section 446A (Factors for determining level of punishment) which prescribes that, the court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to certain factors for determining level of punishment. 446B (Lesser penalties for One Person Companies or small companies) a liberal regime of reduced penalty for One Person Companies or small companies for procedural and technical non-compliances. Section 447 (Punishment for fraud) – the ambit of Section 447 was too broad and would result in minor infractions being punished with severe penalties, which are non-compoundable. Accordingly, punishment has been provided based on amount involved in the fraud and public interest.

The Bankruptcy Code (IBC) has had a profound effect and also brought about a dramatic change in the entire business and litigation landscape of the country. There are some issues in smooth implementation of the Code, which are constantly being plugged by legislative and regulatory changes. The Government has been introducing changes vide amendments in the Code to put in place safeguards which would prevent unscrupulous and undesirable persons from misusing or vitiating the provisions of the Code, sweeping changes to the both substantive as well as procedural aspects relating to the insolvency process, to keep-out such persons who have wilfully defaulted or are associated with non-performing assets, or are habitually non-compliant from being associated with the process of restructuring. The legislature has inserted a model timeline for the corporate insolvency resolution process in order to help guide stakeholders navigate through the process.

CONCLUSION

It is evident that the Indian Government is leaving no stone unturned in its aim to improve the Ease of Doing Business in India. The legislature, RBI, SEBI, and the judiciary have presented a unified front, unprecedented in India so far. Any apparent loopholes are being plugged at the earliest and the law is evolving rapidly. The Code has started an interesting journey and is a step in the right direction. The success of the Code would, however, be measured upon implementation, which hinges primarily on a tectonic shift in the mind-set of its stakeholders.

In tune with legal developments in the country, guided by recent pronouncements of the Apex court it would be appropriate for the law to provide a regime of penalties for companies. These would be mandatory in nature since it would not be feasible to imprison an artificial person such as a company. At the same time a clear regime for identification of the officers in default is necessary. The liability of such individuals as also other officers of the company in default has to be provided for. Equally important would be the role of qualified professional such as the accountant, the auditor, lawyer, company secretary providing corporate advice. Such individuals should also be held liable for wrong doing if it can be established that they had not specifically advised against actions or behaviour violative of the law.
ICSI – CCGRT INVITES RESEARCH PAPERS ON CHAMPION SECTORS
ICSI – CCGRT INVITES

Research Papers on Champion Sectors

We are pleased to inform you that the Institute has taken initiative to conduct industry specific research to identify new areas, where the Company Secretaries can render their professional services. In this regard, it may be noted that the Research Cell is in the process of completing the Sector Specific Research Reports on following industry specific sectors:

1. Real Estate Sector
2. Hotel Industry
3. NBFC Sector
4. Banking Industry
5. IT and ITeS
6. Tourism Sector
7. Oil and Gas Industry
8. Pharmaceutical sector
9. Power
10. Insurance
11. Automobile
12. Education
13. Food and Food Processing
14. Telecommunication
15. Transport and Logistics
Objective:

The purpose of this initiative is to identify expertise in each of the above sectors and try to find out comprehensive and definitive solutions in the specified sector. Since research in all disciplines and subjects, must begin with a clearly defined goal, this activity is also designed keeping some objectives in mind.

Coverage:

Keeping in mind your experience in any of the above sector(s), we invite you to share your expert experience pertaining to any of the above sector in the areas as specified below:

1. Commercial Transactions
2. Business Transactions
3. Agreements, and
4. Corporate Transactions.

We also request you to share specimen documents, if any.

Structure

Authors are required to follow following structure while developing their papers:

a. Background
b. Objectives
c. Analysis
d. Case studies/any other relevant data
e. Role of Company Secretaries
f. Role of ICSI
g. Conclusions
h. Note: The above suggested structure is advisory only. Authors may adopt their own style while developing their paper.

Paper Guidelines

- Original papers on each specified sector are invited from Company Secretaries in employment & practice, Chartered Accountants, Advocates, Academicians, merchant bankers, doyens from industry and interested folk.
- The paper must be accompanied with the author’s name(s), affiliations(s), full postal address, email ID, and telephone/fax number along with the title of the paper on the front page and membership details of professional bodies, if any.
- Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, without any maximum limit of words.
- The text should be typed in MS-Word.
- The author/s’ name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.
- Tables / Exhibits should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 / Exhibit 1, Exhibit 2 etc.
- All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
- Participants should email their correspondence on the following email id: research@icsi.edu and/or prasant.sarangi@icsi.edu latest by 25.12.2018.
- There is no restriction on number of papers. One participant can submit more than one Papers in specified domain.

Further Information for Authors / Participants

- The decision of the Committee will be final and binding on the participants.
- The Institute of Company Secretaries of India reserves the right to publish or refer the selected papers for various publications viz; Souvenirs, Books, Study materials published by the institute or in any seminar / conference / workshop / Research Programs conducted by institute either on its own or jointly with other organizations and also in regular course of activities of ICSI.
- The papers will be scrutinized by a Committee.
- ICSI reserves all intellectual property rights including in particular copyright, trade mark, design and other intellectual rights. The authors are not entitled for any remuneration or compensation or royalty. The participants / authors shall submit the Declaration Form to the institute at the time of submission of paper.
- ICSI reserve all the rights for finalization and selection of papers and awarding rewards, credit hours.
Nasdaq Boardvantage

Designed for Boards and Leadership Teams

Nasdaq Boardvantage can help streamline meeting process, accelerate decision-making and strengthen governance. Used by public, private and non-profit organizations worldwide, including over half of the Fortune 500, Nasdaq Boardvantage combines functionality with security, ease-of-use and mobility.

To learn more, visit us at business.nasdaq.com/Intel/board-leadership-solutions or contact us at: corporatesolutions@nasdaq.com

@MyCorpSolutions  Nasdaq Corporate Solutions

©2018. Nasdaq, Inc. 0986-Q18
LEGAL WORLD

- WORKMEN OF ROHTAS INDUSTRIES LTD v. ROHTAS INDUSTRIES LTD [SC]
- TRANSMISSION CORPORATION OF ANDHRA PRADESH LTD v. EQUIPMENT CONDUCTORS & CABLES [SC]
- SAS HOSPITALITY PVT LTD & ANR v. SURYA CONSTRUCTIONS PVT LTD & ORS [DEL]
- K. J. SUMRESH & ANR v. TEAMLEASE STAFFING SERVICES PVT. LTD. & ANR [NCLAT]
- RAJASTHAN CYLINDERS & CONTAINERS LTD v. UOI & ORS [SC]
- TAMIL NADU CONSUMER PRODUCTS DISTRIBUTORS ASSOCIATION v. FANGS TECHNOLOGY PVT LTD & ANR [CCI]
- COAL INDIA LTD v. NAVIN KUMAR SINGH [SC]
- DREDGING CORPORATION OF INDIA v. MERCATOR LTD [DEL]
- GOVT OF N.C.T OF DELHI v. YASIKAN ENTERPRISES PVT. LTD [DEL]
WORKMEN OF ROHTAS INDUSTRIES LTD v. ROHTAS INDUSTRIES LTD [SC]

Writ Petition No.5222 of 1985

Ranganath Misra & G.L.Oza, JJ [Decided on 27/04/1987]

Equivalent citations: 1987 SCR (2)1216; 1987 SCC (2) 588; IT 1987 (2) 283; 1987 SCALE (1)894; (1987) 62 Comp Cas 872.

Companies Act, 1956- wagers of workmen- priority of payment- finished goods hypothecated with secured creditor- realisation of sale proceeds - whether workmen wages get priority over secured creditors claim-Held, Yes.

Brief facts:
In spite of the directions of the Supreme Court to pay the workers’ salaries and wages in three instalments, the same was not paid. It was brought to the notice of the Court that notwithstanding that order of the Court, the State of Bihar has issued a notification wherein this industry has been declared to be a sick industry and by this Notification the Bihar Government has declared the company in liquidation to be a relief undertaking for one year from the date of issue of the notification. On the basis of this an attempt was made to suggest that the liability of the industry for payment to the workers cannot be enforced. In this circumstances, the workmen approached the Supreme Court for the release of their dues.

Decision: Petition allowed.

Reason:
The State of Bihar frankly conceded that so far as the liability of payment of wages to the workers is concerned the State Government wants that it should be paid. As directed by this Court a report had been submitted by the Official Liquidator in the case of this industry. This report shows that the products produced by this industry which are lying in stocks are of the value of Rs.91,77,000. This report also discloses that from the month of May, 1984 till 8th July, 1984 when this industry closed down an amount of Rs.89,00,000 remains to be paid to the workers as their salaries and emoluments.

The learned counsel appearing for the State Bank of India and other financial institutions attempted to contend that these goods which are the finished products lying in stock are pledged with these Banks and, therefore, they have a prior claim over the sale proceeds of these stocks and it was, therefore, contended that this could not be sold and the workers could not be paid off. On the other hand it was suggested that in fact a scheme has been drawn up to review the industry in the interests of the workers and the society in general and in that scheme of starting the industry again financial problems may arise and if this stock is sold out and the money collected therefrom-are paid out to the workers then it may create difficulties.

It is no doubt true that these’ products the stock of which have been shown’ in the report and the value of which has been shown by the Liquidator as Rs.91,77,000 is pledged with Banks, is a priority in law in favour of the Banks but it also could not be disputed that these stocks were the products of this industry before its closure and, therefore, the workers also contributed their labour and it is the result of their hard-work that these stocks could be pro-duced and in our opinion therefore, it could not be said that the wages and emoluments for the period up to closure would not rank in priority.

It is also significant that after the closure in July, 1984, till today in spite of the order passed by this Court the workers have not been paid. Their subsistence and living is also perhaps of paramount importance and has to rank with highest priority. It is in view of this as it appears, that the Government of India is keen to have a scheme for revival of this industry. Learned counsel for the State of Bihar also frankly conceded that so far as payment to the workers is concerned the State Government also desires that they should be paid their salaries. It is no doubt true that at present there are no assets available out of which the whole payment of all the dues to the workers from May 1984 till today could be done but from out of these assets the products which are lying in stocks valued at Rs.91.77,000 the salaries and the dues of the workers from May 1984 till the date of closure could be made. It was contended that in case these stocks are liquidated and the amount collected are paid off to the workers, difficulty may arise as this asset which has been taken into account will not be available for the scheme of restarting the industry.

Looking to all the circumstances and taking a broad and humane view of the situation we are of the opinion, that it would be just and proper that these goods which are lying in stock should be sold and out of the sale proceeds the workers should be paid their dues up to the date of closure (from May 1984 to July 1984 i.e. 8th July, 1984) so that at least they will get something for subsistence.

Learned counsel for the State Bank of India pointed out that his client has paid for the insurance of certain assets and for loss thereof in whole or in part, the insurance has paid for the loss. The Official Liquidator may keep that amount separately and allow the State Bank to adjust the same against its insurance. So far as the pledge and the priority of the financial institutions are concerned, we have no doubt that they have other sufficient securities and properties of the Company and, therefore, if this stock of finished products are sold to meet the basic requirements of the workers, their interests would not be in jeopardy.

Apart from it, we also hope and trust that if the loss of this amount of Rs.91,77,000 somehow comes in way of the scheme of restarting of the industry, the Government of India would find funds to save the situation and help early revival of the Company. We therefore direct that these stocks which are lying with the industry valued at Rs.91,77,000 shall immediately be dis-posed of and out of this the wages and other dues of the workers for the period from May 1984 till 8th July, 1984, shall be met. The balance, if any, will be utilised for meeting other pressing demands in the discretion of the Official Liquidator subject to orders of the Court. We are sure that the Official
Liquidator will ensure that the disposal fetches the best of rates. We may also make it clear that issuance of the notification by the Bihar State Government will not come in the way of sale of these assets and payment to the workers.

**LW 81:11:2018**

**TRANSMISSION CORPORATION OF ANDHRA PRADESH LTD v. EQUIPMENT CONDUCTORS & CABLES [SC]**

Civil Appeal No. 9597 of 2018

A.K. Sikri & Ashok Bhushan, JJ. [Decided on 23/10/2013]

**Insolvency and Bankruptcy Code, 2016- time barred claim rejected by arbitral council- operational creditor filed petition before NCLT- Corporate debtor refuted the claim- dismissed by NCLT- on appeal allowed by NCLAT- Whether sustainable-Held, No.**

**Brief facts:**

Respondent took two sets of claims before the Arbitral Council viz claims with respect to invoices 1-53 and claims with respect to invoices 54-82. Insofar as claim under Invoice Nos. 1-53 is concerned, the same was specifically rejected by the Arbitral Council on the ground that it had become time barred. The respondent challenged the said part of the award of the Arbitral Council, but was not successful. On the basis of certain observations made by the High Court of Punjab and Haryana in its decision dated January 29, 2016, the respondent attempted to recover the amount by filing execution petition before the Civil Court, Hyderabad. However, that attempt of the respondent was also unsuccessful inasmuch as the High Court of Judicature at Hyderabad categorically held that since that particular amount was not payable under the award, execution was not maintainable. After failing to recover the amount in the aforesaid manner, the respondent issued notice to the appellant under Section 8 of the IBC treating itself as the operational creditor and appellant as the corporate debtor. The appellant specifically refuted this claim. In spite thereof, application under Section 9 was filed before the NCLT, Hyderabad which was dismissed by it vide order dated April 09, 2018. It is in appeal against the said order, the NCLAT has now passed the impugned order.

**Decision: Appeal allowed.**

**Reason:**

Though, in the first brush, it appears that matter is still at the stage of admission and the aforesaid order is an interim order, a careful reading thereof would clearly bring out that the NCLAT perceives that the appellant herein owes money to the respondent and for this reason a chance is given to the appellant to settle the claim of the respondent, otherwise order would be passed initiating Corporate Insolvency Resolution Process (for short, ‘CIRP’). According to the appellant, no amount is payable and the order in question is causing serious prejudice to the appellant which is asked to settle the purported claim, failing which, to face insolvency proceedings. It may also be recorded at this stage itself that the appeal pending before NCLAT is filed by the respondent herein which is against the Orders dated April 09, 2018 passed by the National Company Law Tribunal (for short, ‘NCLT’), Hyderabad. By the said order, the NCLT has dismissed the petition filed by the respondent herein under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘IBC’). To put it briefly at this stage, the NCLT, after detailed deliberations, has come to the conclusion that the Company Petition filed by the respondent was not maintainable as the claims which were preferred by the respondent against the appellant and on the basis of which respondent asserts that it has to receive monies from the appellant are not tenable and in any case these are not disputed claims. This assertion is based on the fact that these very claims of the respondent were subject matter of arbitration and the award was passed rejecting these claims as time barred. Moreover, the company petition itself suffers various fundamental defects. On that basis, NCLT held that there is a valid dispute, rather no dispute as issue in question was substantially dealt with by various courts as mentioned in the order passed by NCLT.

The NCLAT has not discussed the merits of the case and also not stated how the amount is payable to the respondent in spite of the aforesaid events which were noted by the NCLT as well. Notwithstanding, it has given wielded threat to the appellant by giving a one chance, ‘to settle the claim with the appellant (respondent herein), failing which this Appellate Tribunal may pass appropriate orders on merit’. It has also stated that though the matter is posted for admission on the next date, the appeal would be disposed of at the stage of admission itself. There is a clear message in the aforesaid order directing the appellant to pay the amount to the respondent, failing which CIRP shall be initiated against the appellant.

The only argument advanced by learned counsel for the respondent before this Court was that the High Court of Punjab and Haryana while setting aside the remand order passed by the Additional District Judge did not hold that Invoice Nos. 1-57 are time barred. Therefore, the respondent had a valid claim under those invoices. This argument cannot be countenanced. As of today, there is no award of the Arbitral Council with respect to invoices at Sl. Nos. 1-57. There is no order of any other court as well qua these invoices. In fact, Arbitral Council specifically rejected the claim of the respondent as time barred.

It is pertinent to mention that respondent had moved an application before the Arbitral Council for determination of amount to be paid by the appellant. However, this application was specifically dismissed by the Arbitral Council as not maintainable.

In a recent judgment of this Court in Mobilox Innovations Pvt Ltd v. Kirusa Software Private Limited (2018) 1 SCC 353, this Court has categorically laid down that IBC is not intended to be substitute to a recovery forum. It is also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked. The aforesaid principle squarely applied to the present case.

As a result, we allow this appeal and set aside the impugned order dated September 04, 2018 passed by the NCLAT. In a normal course, the matter should have been remanded back to the NCLAT for deciding the appeal of the respondent herein filed before the NCLAT, on merits. However, as this Court has gone into merits and found that order of the NCLT is justified, no purpose would be served in remanding the case back to the NCLAT. Consequence would be to dismiss the Company Appeal (80) (Insolvency) No. 366 of 2018 and miscellaneous applications filed by the respondent before the NCLAT. No order as to costs.
the alteration of the register of members under Section 59 of the 2013 Act. Thus, while the power to issue share capital vests in the company, the said power, without the section implementing the said issuance, is of no effect, and has no consequence. Any dispute in respect of rectification of the register of members under Section 59, can be raised by any person aggrieved to the Tribunal i.e., the NCLT.

The bar contained in Section 430 of the 2013 Act is in respect of entertaining “any suit”, or “any proceedings” which the NCLT is “empowered to determine”. The NCLT in the present case would be empowered to determine that the allotment of shares in favour of the Defendant Nos.5 to 9 was not done in accordance with the procedure prescribed under Section 62 of the 2013 Act. The NCLT is also empowered to determine as to whether rectification of the register is required to be carried out owing to such allotment, or cancellation of allotment ordered, if any. The NCLT can also determine if in the interregnum, the Defendant Nos.5 to 9 ought to exercise any voting rights. The NCLT would be empowered to pass any such orders as it thinks fit, for the smooth conduct of the affairs of the company, which would include an injunction order protecting the assets of the Defendant No.1 Company. The NCLT would also be empowered to oversee and supervise the working of the company, and also appoint such persons as it may deem necessary to regulate the affairs of the company.

The allegations in the present case relate to non-compliance of the stipulations in Section 62 of the 2013 Act. The non-compliance of any conditions contained in Section 62 of the 2013 Act also constitutes mismanagement of the company, inasmuch as under Section 241 of the 2013 Act, the conduct of affairs of the company “in a manner prejudicial” to any member or “in a manner prejudicial to the interest of the company”, would be governed by the same. The jurisdiction to go into these allegations, vests with the Tribunal under Section 242 of the 2013 Act. Under Section 242(2), the NCLT has the power to pass “such order as it thinks fit”, including providing for “regulation of conduct of affairs of the company in future”. These powers are extremely broad and are more than what a Civil Court can do. Even if in the present case, the Court grants the reliefs sought for by the Plaintiff, after a full trial, the effective orders in respect of regulating the company, and administering the affairs of the company, cannot be passed in these proceedings. Such orders can only be passed by the NCLT, which has the exclusive jurisdiction to deal with the affairs of the company.

The Legislative scheme having been changed, with the amendments which have brought about and for all the reasons stated herein above, this Court holds that the present suit is liable to be rejected leaving the Plaintiff to avail its remedies, in accordance with law before the NCLT.

LW 83:11:2018
K. I. SUWRESH & ANR v. TEAMLEASE STAFFING SERVICES PVT. LTD. & ANR [NCLAT]

Company Appeal (AT) No.30 of 2018 & CA 167 of 2018

A.I.S. Cheema (JM) & Balvinder Singh (TM). [Decided on 24/10/2018]

Companies Act, 2013- amalgamation- allowed by NCLT- objection raised based on alleged non-receipt of notice- not raised before
NCLT- on merits dismissed by NCLAT.

**Brief facts:**
These appeals arise out of the order of merger passed by NCLT Chennai and NCLT Mumbai. The appellants challenge the amalgamation of the companies on the ground that they were not put to notice of the amalgamation.

To put the case of the Appellants in a nutshell, their grievance is that they were holding 100% equity shares in the transferor Company No.1 - ASAP Info Systems Private Limited and there was Share Purchase Agreement (‘SPA’, in short) dated 04.07.2016 between them and the transferee Company whereby the 100% shareholding was to be transferred by them to the transferee Company. Their grievance is that the payments were to be made by the Transferee Company in tranches and after initial payment, there has been default. According to the Appellants they ought to have been treated either as shareholder or creditors of the transferee Company and in either case they were entitled to Notice. It is claimed that no Notice was given to them and hence they are aggrieved by such amalgamation.

**Decision: Appeal dismissed.**

**Reason:**
The learned Counsel for the Respondents rightly submitted that with such Affidavits executed by the Appellants in May, 2017, on record, it is clear and apparent that the Appellants had knowledge. The Appellants clearly had knowledge and information regarding the scheme of amalgamation of these Companies and had given their No Objections, even if they relate to Appellant No.1 in capacity of Director of Lakshmi Car Zone Limited. We are not impressed by the arguments on behalf of the Appellants that they had different capacity as the 100% shareholders of the transferor Company No.1 which had entered into the Share Purchase Agreement and thus in that capacity Notice should have been given to them and their objections or no objections should have been taken. At the time of arguments, Counsel for the Appellants accepted that Diary No.4167 shows that the audited balance sheet (Page – 42) as available was till 31.03.2016 and the Share Purchase Agreement was of subsequent date of 04.07.2016. Although it is argued that the Share Purchase Agreement being subsequent, the Auditors may not have known about the same and so did not refer, we find from the certified copy of record of proceedings before NCLT, Chennai filed with Diary No.4167 that the Official Liquidator in his Report para – 6 noted that the CA did record that there was change in management in the month of August, 2016 in respect of transferee Company No.1. Para – 4 of the Report of Official Liquidator shows that both the transferor Companies were wholly owned subsidiaries of transferee Company. What appears is that after the Appellants executed the SPA, they handed over their shares and admitted that they had resigned as Directors on 01.01.2017. In fact, the Appellants even approved the balance sheet of the transferor Company No.1, as on 31st March, 2016 by signing the same on 31.08.2016 as can be seen from Page – 66 of Diary No.4167 (Volume – 1). What appears after going through such documents is that the Appellants were clearly aware of the proceedings relating to the scheme of amalgamation and had no difficulties initially but it appears that, as their transaction based on SPA landed in difficulties and so, now they want to raise grievances to the scheme of amalgamation on the plea that Notice to them also was necessary. Going through the material on record, we do not find that there is any substance in the grievance raised by the Appellants. Dispute relating to SPA is before Arbitration and Transferee Company is facing it. If Appellants had difficulty, they never went before NCLT to raise Objections although they knew about the amalgamation process going on. This being so, we are proceeding to reject both the Appeals.

**LW 84:11:2018**

**RAJASTHAN CYLINDERS & CONTAINERS LTD v. UOI & ORS [SC]**

Civil Appeal No. 3546 of 2014 with batch of appeals

Ashok Bhushan & A.K.Sikri, J. [Decided on 01/10/2018]

Competition Act, 2002- sections 3 & 4 - cartelisation and bid rigging- supply of gas cylinders to oil companies- oligopoly market- identical price or similar price quoted by cylinder suppliers- CCI imposed heavy penalty – COMPAT reduced the penalty- whether constitutes collusive bidding- Held, No.

**Brief facts:**
All these appeals are filed against the orders passed by the Competition Appellate Tribunal (‘COMPAT’). The COMPAT by the said judgment has upheld the findings of the Competition Commission of India (‘CCI’) that the appellants/suppliers of Liquefied Petroleum Gas (LPG) Cylinders to the Indian Oil Corporation Ltd. (‘IOCL’) had indulged in cartilisation. The CCI, as a result, imposed severe penalties in the form of fines. While maintaining the order of the CCI insofar as it found the appellants guilty of contravention of Section 3(3) (d) and also under Section 3(3) (a) of the Act, the COMPAT has reduced the amount of penalty. These suppliers have filed the instant appeals on the ground that there was no cartilisation and they have not contravened the provisions of the Act. On the other hand, CCI has also come up in appeal challenging latter part of the order whereby penalties inflicted on the suppliers stand reduced. For the sake of convenience these suppliers will be referred to as the appellants hereinafter.

**Decision:Appeals allowed.**

**Reason:**
In these appeals, the Court is concerned with the alleged agreement entered into between the appellants falling in clause (d) of sub-section (3) of Section 3, which talks of bid rigging or collusive bidding. We may point out at the outset that all these appellants are manufacturing gas cylinders of a particular specification having...
The manner in which tendering process takes place would show was
necessary to keep all parties afloat and this explains why all
manufacturers to be in the fray in its own interest. Therefore, it
they would have shut their shops. However, IOCL wanted all
IOCL left some manufacturers empty handed, in all likelihood,
pool of manufacturers so that the supply of this essential product
in some State or the other which was aimed at ensuring a bigger
the participants in the bidding process were awarded contracts
under the appellants which have already been taken note of.
attendant circumstances are argued in detail by the counsel for
whether there was a possibility of such an agreement having
towards market conditions even when we proceed on the basis
that meeting did take place. Possibility of such an agreement has
been inferred by the CCI on the grounds that identical bidding
takes place thereafter and various suppliers gave such a bid
despite varying cost and also that they have appointed common
changes etc. as pointed out above.
It is clear that as far as CCI is concerned, it has come to the
conclusion that there was a cartelisation among the appellants
herein and a concerted decision was taken to rig the bids which
were submitted pursuant to the tenders issued by IOCL. On
the other hand, the appellants argue that there was no such
agreement and even if the bids of many bidders were identical
in nature, the bids were driven by market conditions. Their plea
is that there was a situation of oligopsony and the modus which
was adopted by IOCL in floating the tenders and awarding the
contracts would show that the determination of price was entirely
within the control of the IOCL. As per them, the way price was
determined for supply of these cylinders, it had become an open
secret known to everybody. Therefore, there was no question
of any competition and no possibility of adversely affecting that
competition by entering into any contract.
We may say at the outset that if these factors are taken into
consideration by themselves, they may lead to the inference that
there was bid rigging. We may, particularly, emphasise the fact
that there is an active trade association of the appellants and
a meeting of the bidders was held in Mumbai just before the
submission of the tenders. Another very important fact is that
there were identical bids despite varying cost. Further, products
are identical and there are small number of suppliers with few
new entrants. These have become the supporting factors which
persuaded the CCI to come to the conclusion that these are
suggestive of collusive bidding.
However, that is only one side of the coin. The aforesaid factors
are to be analysed keeping in mind the ground realities that
were prevailing, which are pointed out by the appellants. These
attendant circumstances are argued in detail by the counsel for
the appellants which have already been taken note of.
Thus, the appellants appear to be correct when they say that all
the participants in the bidding process were awarded contracts
in some State or the other which was aimed at ensuring a bigger
pool of manufacturers so that the supply of this essential product
is always maintained for the benefit of the general public. Had
IOCL left some manufacturers empty handed, in all likelihood,
they would have shut their shops. However, IOCL wanted all
manufacturers to be in the fray in its own interest. Therefore, it
was necessary to keep all parties afloat and this explains why all
50 parties obtained order along with 12 new entrants.
The manner in which tendering process takes place would show
that in such a competitive scenario, the bid which the different
bidder would be submitting becomes obvious. It has come on
record that just a few days before the tender in question, another
tender was floated by BPCL and on opening of the said tender
the rates of L-1, L-2 etc. came to be known. In a scenario like
this, that obviously becomes a guiding factor for the bidders to
submit their bids.
When we keep in mind the aforesaid fact situation on the ground,
those very factors on the basis of which the CCI has come to the
conclusion that there was cartelisation, in fact, become
valid explanations to the indicators pointed out by the CCI. We
have already commented about the market conditions and small
number of suppliers. We have also mentioned that 12 new entrants
cannot be considered as entry of very few new suppliers where
the existing suppliers were only 50. Identical products along with
market conditions for which there would be only three buyers,
in fact, would go in favour of the appellants. The factor of repetitive
bidding, though appears to be a factor against the appellants,
was also possible in the aforesaid scenario. The prevailing
conditions in fact rule out the possibility of much price variations
and all the manufacturers are virtually forced to submit their bid
with a price that is quite close to each other. Therefore, it became
necessary to sustain themselves in the market. Hence, the factor
that these suppliers are from different region having different
cost of manufacture would lose its significance. It is a situation
where prime condition is to quote the price at which a particular
manufacturer can bag an order even when its manufacturing cost
is more than the manufacturing cost of others. The main purpose
for such a manufacturing would be to remain in the fray and not
to lose out. Therefore, it would be ready to accept lesser margin.
This would answer why there were near identical bidders despite
varying cost.
To recapitulate, the two prime factors against the appellants,
which are discussed by the CCI, are that there was a collusive
tendering, which is inferred from the parallel behaviour of the
appellants, namely, quoting almost the same rates in their bids.
On a holistic view of the matter, we find that the appellants have
been able to discharge the onus by referring to various indicators
which go on to show that parallel behaviour was not the result of
any concerted practice.
In Dyestuffs, the European Court held that parallel behaviour
does not, by itself, amount to a concerted practice, though it may
provide a strong evidence of such a practice. Nevertheless, it is
a strong evidence of such a practice. However, before such an
inference is drawn it has to be seen that this parallel behaviour
has led to conditions of competition which do not correspond to
the normal conditions of the market, having regard to the nature
of the products, size and volume of the undertaking of the said
market. Thus, we examine the matter from the stand point
of market economy where question of oligopsony assumes
relevance. Whenever there is a situation of oligopsony, parallel
pricing simplicitor would not lead to the conclusion that there
was a concerted practice there has to be other credible and
corroborative evidence to show that in an oligopoly a reduction
in price would swiftly attract the customers of the other two or
three rivals, the effect upon whom would be so devastating that
they would have to react by matching the cut.
After taking note of the test that needs to be applied in such
cases, which was laid down in Dyestuffs and accepted in
Excel Crop Care Limited, we come to the conclusion that the
inferences drawn by the CCI on the basis of evidence collected
by it are duly rebutted by the appellants and the appellants
have been able to discharge the onus that shifted upon them.
on the basis of factors pointed out by the CCI. However, at that stage, the CCI failed to carry the matter further by having required and necessary inquiry that was needed in the instant case.

We are emphasising here that in such a watertight tender policy of IOCL which gave IOCL full control over the tendering process, it was necessary to summon IOCL. This would have cleared many aspects which are shrouded in mystery and the dust has not been cleared.

We, thus, arrive at a conclusion that there is no sufficient evidence to hold that there was any agreement between the appellants for bid rigging. Accordingly, we allow these appeals and set aside the order of the Authorities below. As a consequence, since no penalty is payable, appeals of the CCI are rendered infructuous and dismissed as such. All the pending applications stand disposed of.

**LW 85:11:2018**

**TAMIL NADU CONSUMER PRODUCTS DISTRIBUTORS ASSOCIATION v. FANGS TECHNOLOGY PVT LTD & ANR [CCI]**

Case No. 15 of 2018

Sudhir Mital, Augustine Peter & U.C. Nahta. [Decided on 04/10/2018]

**Competition Act, 2002- sections 3 & 4- sale of mobile phones- restrictions in dealership contract- whether constitute anti competition in mobile market – Held, No.**

**Brief facts:**

The Informant alleged the following against the OP:

- Distributors are not allowed to give any discount to the retailers and are forced to strictly comply with the pricing of OP-1, which is disclosed to the distributors from time to time.
- Distributors are not allowed to sell mobile phones / smartphones directly to corporate customers and have to seek the prior intimation / written consent from OP-1 to undertake such sales.
- Distributorship Agreement prohibits the distributors from doing business in Oppo and Honor brand of mobile phones, not only within the designated territory but also elsewhere.
- While sales of OP-1 has grown by 100 crores in a period of 2 years, the commission shared with the distributors has been reduced by 33%.

Based on the above submissions, the Informant has alleged that various clauses in the Distributorship Agreement are causing appreciable adverse effect on competition, resulting in foreclosure of competition by creating barrier to new entrant. Thus, as per the Informant, the conduct of the OPs have contravened the provisions of Section 3 (4) and Section 4 of the Act.

**Decision: Dismissed.**

**Reason:**

Based on the figures available in the GFK report for the year 2017-18, relied by the parties, it is observed that the market for smartphones in India is highly competitive with the presence of several competitors. There are several smartphone manufacturers such as Samsung, Micromax, Intex, Redmi, Lava, Oppo, Gionee, Lenovo, Motorola, Apple, HTC, Microsoft / Nokia, Sony / Sony Ericsson, LG, Huawei / Honor, and Xiaomi / MI etc. operating in the aforesaid relevant market. Given the presence of such large number of players in the relevant market along with reputed foreign brands, there is enough competitive constraints upon the OP-1 in the relevant market. Accordingly, OP-1 does not seem to have the ability to operate independently in the aforesaid relevant market and therefore, OP-1 does not seem to be dominant in the relevant market as delineated above. In the absence of dominance, no case of contravention of Section 4 of the Act is made out against OP-1.

With regard to the allegation of resale price maintenance (RPM) under provisions of Section 3(4) of the Act, the Commission observes that the Informant has not submitted any evidence to prove that OP-1 has imposed RPM on the members of the Informant. The Commission observes that the market share of OP-1 has declined from 14.4% to 12.1% during the period 2017 to 2018. The turnover of OP-1 seems to be lower when compared to its competitors. Further, the presence of many smartphone brands in the relevant market defined supra indicates that the degree of inter-brand competition is intense. Taking into account the above mentioned aspects, OP-1 does not seem to possess significant market power in order to impose competitive restraints vertically. Therefore, the Commission does not find any merit in the allegations of the Informant that OP-1 has contravened the provisions of Section 3(4) (e) of the Act.

On the issue of restriction imposed on its distributors in doing business with Oppo and Honor, OP-1 has submitted that this clause has been included in the Distributorship Agreement to avoid leakage of intellectual property and technical know-how of Vivo. OP-1 has also stated that the said restriction has been put only against the two aforesaid brands as these brands are familiar with the know-how and functioning of Vivo and they are its competitors not only in China but also at the global level. Further, OP-1 has submitted that its distributors are free to do business with other competing brands and that several distributors engaged by the OP-1 are dealing in other competing brands. In view of the said submission of OP-1, the Commission is of the view that the conduct of OP-1 does not appear to be anti-competitive. Therefore, the allegation of violation of the provisions of Section 3(4) (b) of the Act does not stand established.

**Employment Law**

**LW 86:11:2018**

**COAL INDIA LTD v. NAVIN KUMAR SINGH [SC]**

Civil Appeal Nos.6491-6492 of 2014

Dipak Misra, A.M. Khanwilkar, & D.Y. Chandrachud, JJ. [Decided on 25/09/2018]
Inter-company transfer on request- whether employee loses his service benefit of his transferor company- Held, No.

Brief facts:

These appeals emanate from the judgment and order passed by the Division Bench of the High Court of Jharkhand whereby the High Court upheld the decision of the Single Judge, with minor modifications and declared that the past service of the respondent in the previous company of the appellant could not be forfeited for all purposes in the event of an inter-company transfer on personal grounds at his request. The employer appellant is in appeal against the order.

Decision: Appeals dismissed.

Reason:

On a fair reading of clause 11 of the policy, there is nothing to indicate that the transferee would lose his past service rendered in the parent company for all purposes. The policy of forfeiture of seniority in the parent company, however, is limited to the executives who seek inter-company transfer on personal grounds. That is to ensure that no prejudice is caused to the executives already working in the transferred company. For that reason, the seniority of the executives seeking inter-company transfer on personal request is fixed as if he had entered the concerned Grade on the date of assumption of charge in the transferred company. It has been made explicitly clear that the executive seeking inter-company transfer on personal grounds will lose his past seniority in the Grade. No more and no less.

In the present case, there is no dispute that the respondent had rendered service in E-2 Grade on regular basis in DCC from where he was transferred to CMPDIL, on personal grounds. The service rendered by him in DCC can be and ought to be taken into account for all other purposes, other than for determination of his seniority in E-2 Grade in the new company i.e. CMPDIL. Indeed, his seniority in CMPDIL in E-2 Grade will have to be reckoned from the date of his assumption of charge on 15th May, 1991, but that can have no bearing while determining his eligibility criterion of length of service in E-2 Grade for promotion to E-3 Grade. For determining the eligibility for promotion to E-3 Grade, the service rendered by him in DCC in E-2 Grade with effect from 4th August, 1990, ought to be reckoned. The view so taken by the High Court commends to us. Hence, no fault can be found with the direction given by the High Court to assign notional date of promotion to the respondent in E-3 Grade with effect from 12th November, 1993.

As regards the Office Memorandum dated 5th June, 1985, the same does not militate against the respondent. It is a different matter that it addresses the difficulty expressed about the denial of opportunity of promotion to the executives who opted for inter-company transfer. On a fair reading of this Office Memorandum, it is discernible that the department has clarified the position that if the concerned executive has already completed service for a specified period including the period of service with the old company, would become entitled to be considered for promotion to the higher Grade. If so, not granting similar advantage to the executive who opted for inter-company transfer on personal request and who incidentally enters at number one position in the seniority in the new company would be anomalous. Concededly, what is affected in terms of the policy for inter-company transfer on personal request, is only the seniority position in the new (transferred) company – which would commence from the date of assuming office thereat. By no stretch of imagination, it can affect the length of service in E-2 Grade in the parent company. The two being distinct factors, neither the policy nor the office memorandum would be any impediment for reckoning the period of service rendered by the respondent from August, 1990 in DCC, albeit a case of inter-company transfer on personal request. As a result, these appeals must fail.

LW 87:11:2018

DREDGING CORPORATION OF INDIA v. MERCATOR LTD [DEL]

O.M.P.(Comm) 334-336 of 2018

Navin Chawla, J [Decided on 10/10/2018]

Arbitration and Conciliation Act, 1996- appeal - seat of arbitration London- venue changed to Delhi with parties’ consent- whether courts in Delhi have jurisdiction- Held, No.

Brief facts:

The respondent has challenged the jurisdiction of this Court to entertain these petitions under Section 34 of the Arbitration and Conciliation Act, 1996. The ground of challenge was that the seat of arbitration in the present petitions was London and therefore, Part-I and Section 34 of the Act will not be applicable to such arbitration proceedings. The Arbitration Agreement between the parties is contained in Clause 24 of the Time Charter Party Agreement(s) under which the seat of arbitration was fixed at London. However, the parties by agreement agreed to have the venue of arbitration at New Delhi.

Decision: Petition dismissed.

Reason:

A reading of the correspondence exchanged between the parties would clearly show that the parties did not arrive at a consensus for change of ‘Seat’ of arbitration from London to New Delhi though this was the initial request of the respondent. I cannot agree with the submissions made by the counsel for the petitioner that in the above correspondence the use of word ‘venue’ by the parties has to be construed as ‘seat’. In my opinion, the parties were very well aware of the distinction between the ‘seat’ and ‘venue’ and therefore, the respondent
insisted that while the ‘Seat’ of arbitration shall remain at London, it is only the ‘venue’ which can be shifted to New Delhi. The petitioner also agreed to the same as in its opinion the change of ‘venue’ would not require any amendment to the Charter Party Agreement, while a change in seat would have required such amendment.

Once the Arbitration Agreement was invoked by the respondent, though the petitioner wanted such change, the respondent refused. Thereafter, the parties only agreed to a change of ‘venue’ of arbitration from London to New Delhi. This was the consistent understanding of the petitioner itself, not only before the Arbitral Tribunal as recorded in its procedural order referred hereinabove, but also by its conduct of filing a petition under Section 68 of the (English) Arbitration Act, 1996 before the High Court of Justice at London.

Applying the judgment of Union of India v. Hardy Exploration and Production (India) INC 2018 SCC Online SC 1640 to the facts of the present case, not only clause 24 of the Charter Party Agreement(s) but also the conduct of the parties, gathered from the exchange of correspondence, their conduct before the Arbitral Tribunal as also the conduct subsequent to the passing of the Impugned Award, would lead to a conclusion that the parties agreed on the ‘Seat’ of arbitration to be at London.

In view of the above, this Court would lack jurisdiction to entertain the present petitions under Section 34 of the Act. The same are accordingly dismissed.

**Decision:** Petition allowed.

**Reason:**
The first submission of the Petitioner is that there was no arbitration clause with the company M/s Yasikan Enterprises Pvt. Ltd. The contract was awarded to the firm M/s Yasikan Enterprises, which was a sole proprietary concern. Accordingly in the absence of an arbitration agreement, the arbitration proceedings are void ab initio and the award is liable to be set aside.

The Respondent, on this issue, submits that the reference having been made by the Lieutenant Governor on the request of M/s Yasikan Enterprises Pvt. Ltd., the same does not deserve to be set aside.

As per Section 7 of the Act, every arbitration agreement has to be in writing between the parties. It also has to be signed by the parties. In the present case, there is no arbitration agreement signed between the Petitioner and M/s Yasikan Enterprises Pvt. Ltd. The company was not awarded the contract. The offer was submitted by M/s Yasikan Enterprises as a sole proprietary firm. It was signed by Mr. Jagdish Kumar as the sole proprietor.

The company being a distinct legal entity from the sole proprietorship, the arbitration clause, does not apply devolve upon the company. Moreover, the arbitration clause is an independent clause which is not assignable. This is clear from a reading of Delhi Iron and Steel Company Limited v. U.P. Electricity Board & Another (2002) 61 DRJ 280.

“17. So far as the arbitration clause is concerned it was held that this contract is personal in its character and incapable of assignment on that ground. However it is a settled law that an arbitration clause does not take away the right of a party of a contract to assign it if it is otherwise assignable.

18. While distinguishing between two clauses of assignment the Supreme Court observed that a right of obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities.

In other words, rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties.

19. As observed above the petitioner had the liability to perform all contracts of Victor Cables and all benefits arising therefrom and liabilities thereunder in all or in any form. It does not mean that he had also the obligation to get the dispute settled by way of arbitration as agreed by Victor Cables. These are two different and distinguished liabilities. The former is assignable where the latter is not. Thus the undertaking by the petitioner that “all contracts of Victor Cables Corporation and all benefits arising therefrom and liabilities thereunder in all or in any form shall be of the petitioner” was in the form of discharging all the liabilities of the Victor Cables and there was nothing personal about such contracts whereas clause of arbitration was personal in its character and was even otherwise incapable of assignment.

20. In view of the foregoing reasons the unilateral reference of the alleged disputes to the respondent No.2 and unilateral appointment of respondent No.2 as arbitrator are hereby held illegal and inoperable and set aside. Petition is allowed.”

Thus, the reference to arbitration was contrary to law. The award is liable to be set aside on this sole ground. However, this Court is also examining the matter on merits. After examining the merits the award was set aside on merits also.
ITC LIMITED

ITC Limited is one of India’s foremost multi-business enterprises with a portfolio encompassing Fast Moving Consumer Goods (FMCG), Hotels, Paperboards & Packaging, Agri-Business and Information Technology. The Company is looking for young, dynamic, diligent and result oriented individuals to join its Corporate Secretarial Department in Kolkata and build a successful career in the organisation.

Candidate should be a qualified Company Secretary with post qualification experience of 3-7 years in reputed listed entity dealing with all matters relating to Corporate Laws, Secretarial Functions, Stock Exchange compliances, etc.

Candidate should have strong conceptual base in Corporate Laws with a record of academic excellence and should possess excellent communication and drafting skills. Candidates possessing additional degree of LLB / Chartered Accountancy will be preferred.

ITC’s remuneration / business facilities package, is designed to attract the best talent.

Interested candidates can forward their resume to CHR.Careers@itc.in within 30 days of this advertisement.

Registered Office: ITC LIMITED, Virginia House, 37, Jawaharlal Nehru Road, Kolkata
4 FROM THE GOVERNMENT

- THE COMPANIES (AMENDMENT) ORDINANCE, 2018
- RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING OF FORMS MGT-7 (ANNUAL RETURN) AND AOC-4 (FINANCIAL STATEMENT) UNDER THE COMPANIES ACT, 2013 - STATE OF KERALA - REG.
- RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING OF FORMS MGT-7 (ANNUAL RETURN) AND AOC-4 (FINANCIAL STATEMENT) UNDER THE COMPANIES ACT, 2013 - REG.
- AMENDMENTS IN SCHEDULE III TO THE COMPANIES ACT, 2013
- AMENDMENT TO NOTIFICATION NO. S.O. 831 (E) DATED THE 24TH MARCH, 2015
- ESTABLISHMENT OF THE OFFICE OF ROC CUM OC AT DEHRADUN
- ESTABLISHMENT OF THE OFFICE OF ROC AT VIJAYAWADA
- PARTICIPATION OF ELIGIBLE FOREIGN ENTITIES (EFES) IN THE COMMODITY DERIVATIVES MARKET
- MONTHLY REPORT OF FPI REGISTRATION ON SEBI’S WEBSITE
- UNIFORMITY IN THE PROCEDURE FOR OBTAINING SAMPLES OF GOODS AT THE EXCHANGE ACCREDITED WAREHOUSES
- TOTAL EXPENSE RATIO (TER) AND PERFORMANCE DISCLOSURE FOR MUTUAL FUNDS
- STREAMLINING THE PROCESS OF PUBLIC ISSUE OF EQUITY SHARES AND CONVERTIBLES

CHARTERED SECRETARY | NOVEMBER 2018
The Companies (Amendment) Ordinance, 2018

[Issued by the Ministry of Law and Justice (Legislative Department) dated 02.11.2018 and published in the Gazette of India Extraordinary, Part - II, Section - I dated 02.11.2018]

Promulgated by the President in the Sixty-ninth Year of the Republic of India.

An Ordinance further to amend the Companies Act, 2013. WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. Short title and commencement
   (1) This Ordinance may be called the Companies (Amendment) Ordinance, 2018.
   (2) It shall come into force at once.

2. Amendment of Section
   In Section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (41), -
   (a) for the first proviso, the following provisos shall be substituted, namely:-
      “Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its assets outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year;
      Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;
   (b) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted.

3. Insertion of new Section 10A
   After Section 10 of the principal Act, the following Section shall be inserted, namely:-
   “Commencement of business, etc. 10A.(1) A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless-
   (a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
   (b) the company has filed with the Registrar a verification of its registered office as provided in sub section (2) of section 12.
   (2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.
   (3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies Wider Chapter XVIII.

4. Amendment of Section 12
   In Section 12 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:-
   “(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”.

5. Amendment of Section 14
   In Section 14 of the principal Act,-
   (i) in sub-section (i), for the second proviso, the following provisos shall be substituted, namely:-
      “Provided further that any alteration 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: Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;
   (ii) in sub-section (2), for the word “Tribunal”, the words “Central Government” shall be substituted.

6. Amendment of Section 53
   In Section 53 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:-
“(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares a discoWit or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”.

7. Amendment of Section 64
In Section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-
“(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.”.

8. Amendment of Section 77
In Section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:-
“Provided that the Registrar may, on an application by the company, allow such registration to be made-
(a) in case of charges created before the commencement of the Companies (Amendment) Ordinance, 2018, within a period of three hundred days of such creation; or
(b) in case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2018, within a period of sixty days of such creation,
on payment of such additional fees as may be prescribed:
Provided further that if the registration is not made within the period specified-
(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2018, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such adva/orem fees as may be prescribed.”.

9. Amendment of Section 86
Section 86 of the principal Act shall be numbered as sub section (l) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-
“(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of Section 77, he shall be liable for action under Section 447.”.

10. Substitution of new Section for Section 87
For Section 87 of the principal Act, the following section shall be substituted, namely:-
“Rectification by Central Government in Register of charges 87. The Central Government on being satisfied that-
(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or
(b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of Section 82 or Section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.”.

11. Amendment of Section 90
In Section 90 of the principal Act,-
(i) for sub-section (9), the following sub-section shall be substituted, namely:-
“(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:
Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;
(ii) in sub-section (10),
(a) after the word “punishable”, the words “with imprisonment for a term which may extend to one year or” shall be inserted;
(b) after the words “ten lakh rupees”, the words “or with both” shall be inserted.

12. Amendment of Section 92
In Section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-
“(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.”.

13. Amendment of Section102
In Section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-
“(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other
key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.”.

14. Amendment of Section 105
In Section 105 of the principal Act, in sub-section (3), for the words “punishable with fine which may extend to five thousand rupees”, the words “liable to a penalty of five thousand rupees” shall be substituted.

15. Amendment of Section 117
In Section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-
“(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

16. Amendment of Section 121
In Section 121 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:-
“(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

17. Amendment of Section 137
In Section 137 of the principal Act, in sub-section (3),-(a) or the words “punishable with fine”, the words “liable to a penalty” shall be substituted;
(b) for the words “punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” shall be substituted.

18. Amendment of Section 140
In Section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:-
“(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

19. Amendment of Section 157
In Section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-
“(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

20. Substitution of new Section for section 159
For Section 159 of the principal Act, the following section shall be substituted, namely:-
“Penalty for default of certain provisions.159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”.

21. Amendment of Section 164
In Section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:-
“(i) he has not complied with the provisions of sub section (1) of section 165.”.

22. Amendment of Section 165
In Section 165 of the principal Act, in sub-section (6), for the portion beginning with “punishable with fine” and ending with “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues" shall be substituted.

23. Amendment of Section 191
In Section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-
“(5) If a director of the company makes any default in complying with the provisions of this Section, such director shall be liable to a penalty of one lakh rupees.”.

24. Amendment of Section 197
In Section 197 of the principal Act,-
(a) sub-section (7) shall be omitted;
(b) for sub-section (15), the following sub-section shall be substituted, namely:-
“(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.

25. Amendment of Section 203
In Section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-
“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.”.

26. Amendment of Section 238
In Section 238 of the principal Act, in sub-section (3), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of one lakh rupees” shall be substituted.

27. Amendment of Section 248
In Section 248 of the principal Act, in sub-section (1),
(a) in clause (c), for the word and figures “section 455,”, the words and figures “section 455; or” shall be substituted;
(b) after clause (c) and before the long line, the following clauses shall be inserted, namely:-
“(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or
(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.”.

28. Amendment of Section 441
In Section 441 of the principal Act,-
(a) in sub-section (1), in clause (b), for the words “does not exceed five lakh rupees”, the words “does not exceed twenty-five lakh rupees” shall be substituted;
(b) for sub-section (6), the following sub-section shall be substituted, namely:-
“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.”.

29. Amendment of Section 446B
In Section 446B of the principal Act, for the portion beginning with “punishable with fine” and ending with “specified in such sections”, the words “liable to a penalty which shall not be more than one half of the penalty specified in such sections” shall be substituted.

30. Amendment of Section 447
In Section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.

31. Amendment of Section 454
In Section 454 of the principal Act,-
(i) for sub-section (3), the following sub-section shall be substituted, namely:-
“(3) The adjudicating officer may, by an order-
(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and
(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.”;
(ii) in sub-section (8),
(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the “Regional Director”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted.

32. Insertion of a new Section 454A
After Section 454 of the principal Act, the following section shall be inserted, namely:-
“Penalty for repeated default. 454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act”.

RAM NATH KOVIND
President of India

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.
FROM THE GOVERNMENT

[Issued by the Ministry of Corporate Affairs vide General Circular No. 09/2018 dated 05.10.2018.]

1. keeping in view the requests received from various stakeholders stating that due to heavy rains and floods in the State of Kerala, the normal life/work was affected, it has been decided to relax the additional fees payable to companies having registered office in the State of Kerala on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e-Form MGT-7 upto 31.12.2018, wherever additional fee is applicable.

2. This issues with the approval of the competent authority.

K. M. S. NARAYANAN
Assistant Director

[Issued by the Ministry of Corporate Affairs vide General Circular No. 10/2018 dated 29.10.2018.]

1. Keeping in view the requests received from various stakeholders seeking extension of time for filing financial statements for the financial year ended 31.03.2018 on account of various factors, it has been decided to relax the additional fees payable by companies on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e-Form MGT-7 upto 31.12.2018, wherever additional fee is applicable.

2. This issues with the approval of the competent authority.

K. M. S. NARAYANAN
Assistant Director

[Issued by the Ministry of Corporate Affairs vide F. No. 17/62/2015-CL-V Vol-I dated 11.10.2018. To be published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) 

In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendments in Schedule III to the said Act with effect from the date of publication of this notification in the Official Gazette, namely:-

K. V. R. MURTY
Joint Secretary

[Issued by the Ministry of Corporate Affairs vide F. No. 01/04/2016-CL-I dated 24.10.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) vide Notification No. S.O. 5385 (E) dated 24.10.2018]

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 24th October, 2018 as the date on which the sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 of the said Act shall come into force.

K. V. R. MURTY
Joint Secretary

[Issued by the Ministry of Corporate Affairs vide F. No. 01/16/2013-CL-V dated 26.10.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) vide Notification No. S.O. 5459 (E) dated 26.10.2018]

1. In exercise of the powers conferred by section 454 of the Companies Act, 2013 (18 of 2013) read with the Companies (Adjudication of Penalties) Rules, 2014, the Central Government hereby makes the following amendment in the notification number S.O.831 (E) dated the 24th March, 2015, namely:—

(a) against serial number 4, under the heading “Designation” for the word “Nainital” the word “Dehradun” shall be substituted

(b) for serial number 16, the following shall be substituted, namely;—

“16. Registrar of Companies, Hyderabad
Whole State of Telangana”;

(c) after serial number 24, the following shall be inserted, namely;—

“25. Registrar of Companies, Vijayawada
Whole State of Andhra Pradesh”

2. This notification shall come into force with effect from 29.10.2018.

GYANESHWAR KUMAR SINGH
Joint Secretary

[Issued by the Ministry of Corporate Affairs vide F. No. 01/16/2013-CL-V dated 26.10.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) vide Notification No. S.O. 5458 (E) dated 24.10.2018]

1. In exercise of the powers conferred by sub-sections (1) and (2) of section 396 of the Companies Act, 2013 (18 of 2013) (herein after referred to as the said Act), the Central Government hereby establishes the office of the Registrar of Companies cum Official Liquidator at Dehradun, having

K. V. R. MURTY
Joint Secretary

Establishment of the office of ROC at Vijayawada

[Issued by the Ministry of Corporate Affairs vide F. No. 01/16/2013-CL-V dated 26.10.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) vide Notification No. S.O. 5457 (E) dated 26.10.2018]

1. In exercise of the powers conferred by sub-sections (1) and (2) of section 396 of the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act), the Central Government hereby establishes the office of the Registrar of Companies at Vijayawada, having territorial jurisdiction in the whole State of Andhra Pradesh for discharging the functions of the Registrar of Companies under the various provisions of the said Act and appoints the Registrar of Companies, Vijayawada as Registrar of Companies for the purpose of registration of companies and discharging the functions under the said Act in the State of Andhra Pradesh.

2. This notification shall come into force with effect from 29.10.2018.

Participation of Eligible Foreign Entities (EFEs) in the commodity derivatives market

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDM RD/DMP/CIR/P/2018/134 dated 09.10.2018.]

1. Currently, foreign entities are not permitted to directly participate in the Indian commodity derivatives market, even if they import/export various commodities from/to India. Such entities by virtue of their actual exposure to the various commodities in Indian market, are valuable stakeholders in the value chain of such commodities, and are also exposed to price uncertainty of Indian commodity markets. Therefore these foreign entities should be enabled to hedge their price risk in the Indian commodity derivatives market.

2. Taking cognizance of the fact that participation by such foreign participants would be conducive for the overall development of the commodity derivatives market in India, SEBI issued consultation paper on May 18, 2018 to discuss the suitable framework for allowing foreign participants to hedge their commodity exposure. Pursuant to feedback received from the market participants during the consultative process, it has been decided to permit foreign entities having actual exposure to Indian commodity markets, to participate in the commodity derivative segment of recognized stock exchanges for hedging their exposure. Such foreign entities shall be known as “Eligible Foreign Entities” (EFEs). The detailed regulatory framework for participation by the EFEs have been outlined at Annexure to the circular.

3. The provisions of this circular shall come into effect from the date of the circular.

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 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

5. The Exchanges are advised to:
   i. To make necessary amendments to the relevant bye-laws, rules and regulations.
   ii. Bring the provisions of this circular to the notice of the stock brokers of the Exchange and also to disseminate the same on their website.
   iii. Communicate to SEBI, the status of the implementation of the provisions of this circular.

6. This circular is available on SEBI website at www.sebi.gov.in under the category “Circulars” and “Info for Commodity Derivatives”.

Annexure: Regulatory framework for Eligible Foreign Entities (EFEs) in Commodity Derivatives Segment

I. Eligible Commodities:
All commodity derivatives traded on Indian Exchanges except for those contracts having underlying commodity defined as ‘Sensitive Commodity’ in terms of SEBI circular SEBI/HO/CDMRD/DMP/CIR/P/2017/84 dated July 25, 2017 or by any other stipulation by SEBI which are disclosed on Exchange websites.

II. Definitions:
1. “Eligible Foreign Entities” (EFEs) are the ‘Person resident outside India’ as defined in Foreign Exchange Management Act, 1999, and are having actual exposure to Indian physical commodity markets.
2. “Exchanges” under these guidelines would mean recognized stock exchanges having commodity derivatives segment.
3. “Clearing Corporations (CC)” under these guidelines would mean recognized clearing corporation undertaking the activity of clearing and settlement of trades in commodity derivative segment of a recognized stock exchange.
4. “Auditor” under these guidelines would mean statutory auditor or such other authority carrying equivalent function of auditing and assurance in the respective jurisdiction as may be applicable

III. Eligibility and Jurisdiction
1. Such EFEs shall have actual exposure to Indian physical commodity markets.
2. Such EFE is resident in a country/jurisdiction whose securities market regulator and/or commodity derivatives market regulator is a signatory to IOSCO’s MMoU
IV. Registration of EFEs

1. The EFEs desiring of taking hedge positions in Indian commodity derivatives market shall approach Authorized Stock Brokers (ASBs), from amongst the Brokers which are registered under SEBI (Stock brokers and sub-brokers) Regulations, 1992 having minimum net-worth of INR 25 Crores and are authorized by the Exchanges for opening of such accounts.

2. For ASBs, in addition to the minimum Net-worth criteria prescribed above the Exchanges shall frame further guidelines regarding the other eligibility criteria for the ASBs which shall be approved by their Risk Management Committees. While framing guidelines for ASBs, the Exchanges shall look into various aspects, some of which are illustrated as under:
   a. Appropriate arrangements with clearing bank and clearing member of the respective exchange and clearing corporation;
   b. Appropriate arrangements for receipt and remittance of money with a designated Authorized Dealer (AD) Category-I bank.
   c. Appropriate systems and procedures to comply with the FATF (Financial Action Task Force) Standards, PMLA (Prevention of Money Laundering Act, 2002) and SEBI circulars issued from time to time.
   d. Appropriate systems and procedures to handle the physical deliveries of the underlying commodities on behalf of EFEs.

3. An EFE can open trading account with only one of the ASBs and participate in the commodity derivatives trading through the said ASB. EFE shall place orders for trading only through their ASBs on the Exchange platform.

4. The EFES shall be responsible for complying with all the relevant laws.

5. EFES shall ensure that they submit the required documents as specified by the ASBs/Exchanges/SEBI or any other law enforcing agencies.

6. The ASBs shall be responsible for carrying out due-diligence and complete necessary formalities/documentations as specified by the Exchanges in this regard.

7. The ASBs shall capture the details of the overseas bank account designated by the EFE. EFE shall open a single non-interest bearing Rupee account with an AD Category-I bank in India for routing the receipt and payment for transactions.

8. The ASBs shall obtain appropriate declarations and undertakings from EFES including the one that they are in compliance with laws, rules and regulations of the jurisdictions where the EFES are located.

9. The ASB shall, at all times, ensure that the participation of EFE is in compliance with the applicable norms prescribed by SEBI, RBI or any other statutory authority in India. For this purpose the ASB shall obtain appropriate declarations and undertaking from EFES, from time to time, as may be prescribed by Exchanges and regulators.

V. Know Your Client (KYC) requirements

1. The EFE shall be required to meet the extant KYC requirements as per extant Indian Anti-Money Laundering Laws in line with extant KYC approach adopted for the equivalent category of Foreign Portfolio Investors (FPIs).

2. Such EFE shall also provide its valid Legal Entity Identifier (LEI) issued by organizations accredited by the Global Legal Entity Identifier Foundation (GLEIF), wherever available.

VI. Position Limit, documentation and other conditions

1. The position limits shall be governed by the hedge policy of the Exchanges and no separate client trading limits shall be allowed for EFEs. Exchanges shall issue a separate hedge code for easy identification of EFES.

2. Appropriate restrictions shall be placed by Exchanges to maintain market integrity.

3. The tenor of the hedge shall not be greater than the tenor of underlying exposure. At any point of time during the hedge period, hedging positions taken in derivatives contracts by EFE, across multiple Exchanges/Contracts, shall not exceed his/its actual exposure in the physical market.

4. Hedge limits for an EFE will be determined on a case to case basis, depending on applicant’s actual exposure to the commodity, hedging requirement and other factors which the Exchanges deems appropriate in the interest of market. The EFE shall approach the ASB of the relevant Exchanges for hedge limits in the format prescribed by Exchanges encompassing the following information –
   a. Details of import/ export to India during past three years, financial statements/ annual report of last three years, certified by auditor.
   b. Supporting proof of Import and/or Export in the form of invoice or shipping/cargo bills. In case of Export/Import commitments, documents like proof of export/ import commitments and any other relevant documents, duly certified by auditor.
   c. A certificate of import/export turnover of the EFE during the past three years duly certified by their auditor. Hedging limit shall be permitted up to the average of previous three financial years’ actual purchases/ sales or the previous year’s actual purchases/ sales turnover from/to India, whichever is higher, in respect of the desired commodities. In case an EFE has been in existence for less than 3 years, then the applicable time period for exposure calculation shall be for the
VII. Risk Management
1. Exchanges/CC shall put in place appropriate risk management systems for allowing EFE to take positions in eligible commodities.
2. The margins for any commodity prescribed by the Exchanges/CC for the other market participants shall also be applicable to EFE. As the hedge positions are expected to be larger than the normal client level limits, the Exchanges/CC shall, based on their assessment of the risks, levy additional margins including concentration margin wherever necessary, as may be prudent. Accordingly the ASB concerned shall ensure that appropriate margins are collected upfront from the EFE as risk mitigation.
3. Where, in the assessment of the ASB, the risk profile of EFE warrants margins in addition to the margin stipulated by the Exchanges/CC, the ASB shall collect such additional margins. The margins collected by the ASB at no time shall be less than those stipulated by the Exchanges/CC.

VIII. Monitoring of limits and physical exposure
1. The Exchanges shall put in place a mechanism to monitor the limits as well as physical exposure of an EFE, which may include seeking periodical reports from EFEs and ASBs covering the following aspects:
   a. Periodical statement of imports / exports undertaken and outstanding contracts, as certified by auditor,
   b. Audited summary of import or export details/documents in the form of invoice or shipping/cargo bills, containing information like Date of Dispatch, Tentative date of arrival, Quantity on that invoice/bill etc.
   c. Details of hedging positions in other Indian exchanges(if applicable), as certified by auditor,
   d. Where hedge limit is sanctioned based on prior import / export commitments/contracts, a report showing subsequent performance of such contracts and the corresponding hedging proposed to be undertaken, as certified by an auditor.
   e. EFE / ASB shall be required to submit a consolidated statement on an annual basis.
   f. Any other additional information as may be sought by the SEBI/ Exchanges from time to time.
2. The EFEs shall also be required to submit to the respective ASB a half-yearly certificate from their auditors as on March 31 and September 30, within sixty days from the said dates, to the effect that during the preceding six months, whether the derivative contracts entered into by the EFE exceeded or not exceeded the actual underlying exposure. In this regard, Exchanges shall develop an online system for such submission.
3. The Exchanges/ clearing corporations shall provide EFE wise information on day end open position as well as actual highest position to the respective ASBs. If the EFE exceeds the allocated hedge limit on any day, the concerned EFE shall be liable to such penal action as may be laid down by the SEBI/Exchanges. The ASB will be required to monitor this and bring transgressions, if any, to the notice of SEBI/Exchanges.
4. The positions shall be separately monitored by the respective Exchanges and such Exchanges shall augment their monitoring and surveillance capacity.
5. The ASBs shall also put in place necessary system to monitor hedge limits for such EFEs.

IX. Disclosure by the Exchanges:
The Exchanges on daily basis shall disclose on their website the hedge limit allocated to such EFEs, indicating the period for which approval is valid, in the particular commodity in an anonymous manner. This shall be on the similar lines of disclosures made by the exchanges for the domestic hedgers.

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/FPIC/CIR/P/2018/135 dated 11.10.2018.]

1. Regulation 7(2) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 specifies that the designated depository participant (DDP) shall endeavor to dispose of the application for grant of
certificate of registration as soon as possible but not later than thirty days after receipt of application by the DDP or, after the information called for under regulation 6 has been furnished, whichever is later.

2. For the purpose of transparency in the processing of applications for FPI registration, it has been decided that the average time taken by the DDPS in processing such applications be disseminated on SEBI’s website on a monthly basis.

3. In order to disseminate the aforesaid information on SEBI’s website, the DDPS shall provide the number of FPI applications received and the average time taken in processing the said applications during the immediate preceding month, to SEBI, by 5th working day of every month, in the following format:

<table>
<thead>
<tr>
<th>Name of DDP</th>
<th>No. of FPIs registered during the month</th>
<th>Average time taken for registration during the month</th>
<th>No. of applications pending for registration for more than 30 days of receipt of application</th>
<th>Reasons given regarding application(s) pending for more than 30 days</th>
</tr>
</thead>
</table>

4. This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992.

5. A copy of this circular is available at the web page “Circular” on our website www.sebi.gov.in, under the head “Legal Framework→Circulars” and “Info for Commodity Derivatives”.

VIKAS SUKHWAL
Deputy General Manager

12 Total Expense Ratio (TER) and Performance Disclosure for Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2018/137 dated 22.10.2018.]

A. Transparency in TER

In order to bring transparency in expenses, reduce portfolio churning and mis-selling in mutual fund (MF) schemes, the following shall be adhered to:

1. In terms of Regulation 52(1) of SEBI (Mutual Funds) Regulations, 1996, all scheme related expenses including commission paid to distributors, by whatever name it may be called and in whatever manner it may be paid, shall necessarily be paid from the scheme only within the regulatory limits and not from the books of the Asset Management Companies (AMC), its associate, sponsor, trustee or any other entity through any route.

2. MFs/ AMCs shall adopt full trail model of commission in all schemes, without payment of any upfront commission or upfronting of any trail commission, directly or indirectly, in cash or kind, through sponsorships, or any other route. However, upfronting of trail commission will be allowed only in case of inflows through Systematic Investment Plans (SIPs).

3. In respect of inflows through SIPs into MF schemes, a carve out has been considered only for new investors to the MF industry (to be identified based on PAN). The upfronting of trail commissions, based on SIP inflows, shall be up to 1% payable yearly in advance, for a maximum period of three years. Implementation of this would require system integration at RTA’s end. A detailed guideline would be issued in this regard.

4. However, in the interim, upfronting of trail commission based on SIP inflows at mutual fund level would be available subject to the following:
   a. The upfronting of trail commission may be for total SIP inflows of up to Rs. 5,000 per month, per investor, across all schemes of a mutual fund. For this purpose, unique investor at MF level should be identified based on PAN.
   b. Such upfronting of trail commission shall be up to 1% of the total SIP inflows for a maximum period of 3 years and shall be paid from AMC books.
c. The said commission shall be amortized on daily basis to the scheme over the period for which the payment has been made. A complete audit trail for payments made from the AMCs' books and amortized to schemes thereafter shall be made available for inspection.

d. The said commission should be charged to the scheme as ‘commissions’ and should also account for computing the TER differential between regular and direct plans in each scheme.

e. The commission paid shall be recovered on pro-rata basis from the distributors, if the SIP is not continued for the period for which the commission is paid.

The above interim measures shall be for a period of six months or the time by which the aforementioned system at paragraph 3 above is put in place, whichever is earlier.

5. In case of misuse of the carve out for SIPs, the same would be discontinued and appropriate action would be taken against the errant participants. Further, the need of this carve out would be reviewed by SEBI as and when required.

6. All fees and expenses charged in a direct plan (in percentage terms) under various heads including the investment and advisory fee shall not exceed the fees and expenses charged under such heads in a regular plan.

7. No pass back, either directly or indirectly, shall be given by MFs/AMCs/Distributors to the investors.

8. Training sessions and programmes conducted for distributors should continue and should not be misused for providing any reward or non-cash incentive to the distributors.

B. Additional TER of 30 bps for penetration in B-30 cities

1. In terms of Regulation 52(6A)(b) of SEBI (Mutual Funds) Regulations, 1996, additional TER can be charged up to 30 basis points on daily net assets of the scheme based on inflows from beyond top 30 cities (B 30 cities) subject to certain conditions. In this regard, it has been decided that the additional TER can be charged based on inflows only from retail investors from B 30 cities. Till the time the term ‘retail investor’ is defined, as an interim measure, the additional TER shall be based on inflows from individual investors from B 30 cities, keeping all other conditions of SEBI Circular(s) on charging of additional TER of 30 bps unchanged. Thus, inflows from corporates and institutions from B 30 cities henceforth will not be considered for computing the inflows from B 30 cities for the purpose of additional TER of 30 basis points.

2. The additional commission for B 30 cities shall be paid as trail only.

3. All applicable circulars on charging of additional TER of 30 basis points stand modified accordingly.

C. Disclosure of expenses

Paragraph A-2 (b) of Circular No. SEBI/HO/IMD/DF2/CIR/P/2016/89 dated September 20, 2016 on ‘Consolidated Account Statement’ has been modified as under:

“The scheme’s average Total Expense Ratio (in percentage terms) along with the break up between Investment and Advisory fees, Commission paid to the distributor and Other expenses for the period for each scheme’s applicable plan (regular or direct or both) where the concerned investor has actually invested in.”

D. Disclosure of scheme performance

AMCs shall disclose the performance of all schemes on the website of AMFI. AMFI shall facilitate the disclosure in the following manner:

1. In case of all schemes, the scheme returns vis-à-vis the benchmark return (Total Return Index) shall be disclosed in terms of CAGR for various periods viz. 1 year, 3 year, 5 year, 10 year and since inception.

2. In addition to the above, in case of schemes falling in categories such as overnight fund, liquid fund, ultra short duration fund, low duration fund, and Money Market Fund as defined in Circular dated October 6, 2017 on Categorization and Rationalization of Mutual Fund Schemes, scheme performance is also to be disclosed for a period of 7 days, 15 days, 1 month, 3 months and 6 months.

3. The said disclosure shall be made for all plans and shall be updated daily based on previous day NAV.

4. The said disclosure should be in investor friendly format with filtering feature based on scheme-type, plan-type, etc and sorting feature based on return periods.

5. The disclosure should include other important fields such as scheme AUM and previous day NAV.

E. Trustees and AMCs shall ensure compliance of the provisions mentioned at paragraph A, B, C and D above and trustees shall confirm the same to SEBI in the half yearly trustee report.

F. Applicability

1. All the provisions of the circular except for the provision at paragraph D on Disclosure of scheme performance shall be applicable with immediate effect.

2. The disclosure of scheme performance as provided at paragraph D shall be applicable within 30 days from date of issuance of the circular.

3. All other decisions of the Board with respect to ‘Review of Total Expense Ratio (TER) of Mutual Fund Schemes’ as mentioned in the press release dated September 18, 2018 issued by SEBI would be implemented pursuant to amendment to SEBI (Mutual Funds) Regulations, 1996.

G. 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 Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

HARINI BALAJI
General Manager
from 12 working days to 6 working days with effect from January 01, 2016, making Application Supported by Blocked Amount (ASBA) mechanism as the sole payment mechanism in public issues.

2. As a part of the continuing efforts to further streamline the process, it has been decided, in consultation with the stakeholders, to introduce the use of Unified Payments Interface (UPI) as a payment mechanism with Application Supported by Block Amount (ASBA) for applications in public issues by retail individual investors through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants). The proposed process would increase efficiency, eliminate the need for manual intervention at various stages, and will reduce the time duration from issue closure to listing by up to 3 working days.

3. Considering the time required for making necessary changes to the systems and to ensure complete and smooth transition to UPI payment mechanism, the proposed alternate payment mechanism and consequent reduction in timelines is proposed to be introduced in a phased manner as under:

3.1 **Phase I:** From January 01, 2019, the UPI mechanism for retail individual investors through intermediaries will be made effective along with the existing process and existing timeline of T+6 days. The same will continue, for a period of 3 months or floating of 5 main board public issues, whichever is later.

3.2 **Phase II:** Thereafter, for applications by retail individual investors through intermediaries, the existing process of physical movement of forms from intermediaries to Self-Certified Syndicate Banks (SCSBs) for blocking of funds will be discontinued and only the UPI mechanism with existing timeline of T+6 days will continue, for a period of 3 months or floating of 5 main board public issues, whichever is later.

3.3 **Phase III:** Subsequently, final reduced timeline will be made effective using the UPI mechanism.

4. **New entities / mechanisms part of the public issue process using UPI with ASBA**

**National Payments Corporation of India (NPCI):** NPCI, a Reserve Bank of India (RBI) initiative, is an umbrella organization for all retail payments in India. It has been set up with the guidance and support of the Reserve Bank of India (RBI) and Indian Banks Association (IBA);

**Unified Payments Interface (UPI):** UPI is an instant payment system developed by the NPCI. It enables merging several banking features, seamless fund routing & merchant payments into one hood. UPI allows instant transfer of money between any two persons’ bank accounts using a payment address which uniquely identifies a person’s bank a/c.

**Sponsor Bank:** Sponsor Bank means a Banker to the Issue registered with SEBI which is appointed by the Issuer to act as a conduit between the Stock Exchanges and NPCI in order to push the mandate collect requests and / or payment instructions of the retail investors into the UPI;

5. **Channels for making application**

5.1 For the purpose of public issues, UPI would allow facility to block the funds at the time of application. With the introduction of UPI as a payment mechanism, various channels for making application in public issue by various categories of investors, **in Phase I** would be as below:

<table>
<thead>
<tr>
<th>Category of Investor</th>
<th>Channel I</th>
<th>Channel II</th>
<th>Channel III</th>
<th>Channel IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Individual Investor (RII)</td>
<td>Investor may submit the bid-cum-application form, with ASBA as the sole mechanism for making payment, physically at the branch of a SCSB, i.e. investor’s bank, or online, if such facility is provided by the SCSB. For such applications, the existing process of uploading of bid and blocking of funds in investors account by the SCSB would continue.</td>
<td>Investor may submit the bid-cum-application form using the facility of linked online trading, demat and bank account (3-in-1 type accounts), provided by some of the brokers.</td>
<td>Investor may submit bid-cum-application form with any of the intermediary along with details of his/her bank account for blocking of funds. For such applications, the intermediary would upload the bid in stock exchange bidding platform and forward the application form to a branch of SCSB for blocking of funds.*</td>
<td>A RII would also have the option to submit bid-cum-application form with any of the intermediary and use his / her UPI ID for the purpose of blocking of funds.</td>
</tr>
</tbody>
</table>

| Qualified Institutional Buyer (QIB) | Not applicable | Not applicable | Not applicable | Not applicable |
| Non Institutional Investor (NII) | Not applicable | Not applicable | Not applicable | Not applicable |

5.2 *For Phase II and Phase III, the RIIIs will have the option to use only Channel I, II and IV for making application in a public issue.

6. **Timelines**

6.1 An indicative process flow for applications in public issue submitted by retail individual investor is placed at Annexure I.

6.2 The revised indicative timelines for various activities in Phase I & II are specified at Annexure II and Annexure III, respectively, to this circular. The timelines for Phase III will be notified subsequently.

7. **Process of becoming a Sponsor Bank**

7.1 Banks desirous of becoming Sponsor Bank and to be eligible to be appointed as a Sponsor Bank by the Issuer shall complete the following formalities:

7.1.1 Register with SEBI as Bankers to an Issue in terms of SEBI (Bankers to an Issue) Regulations, 1994;

7.1.2 UPI certification as specified, with NPCI;

7.1.3 Mock trial run of the systems with stock exchange and RTAs, and
7.1.4 Certify to SEBI about readiness to act as a Sponsor Bank and for inclusion of their name in SEBI’s list of Sponsor Bank, as per the format specified in Annexure IV.

7.2 Such Banks shall submit the aforesaid certification to SEBI, latest by December 15, 2018, for uploading the names of such Sponsor Banks on SEBI website.

8. Process of UPI 2.0 Certification by Self Certified Syndicate Banks (SCSBs)
8.1 All SCSBs offering facility of making application in public issues shall also provide facility to make application using UPI.
8.2 For this purpose, all SCSBs shall undertake necessary certification with NPCI.
8.3 Certify to SEBI about readiness to provide facility to investor to make application using UPI as an alternate payment mechanism, as per the format specified in Annexure V.
8.4 All SCSBs shall submit the aforesaid certification to SEBI, latest by December 15, 2018, for uploading the names of such SCSBs on SEBI website.

9. Validation by Depositories
9.1 The details of investor viz. PAN, DP ID / Client ID, entered in the Stock Exchange platform at the time of bidding, shall be validated by the Stock Exchange/s with the Depositories on real time basis.
9.2 Stock Exchanges and Depositories shall put in place necessary infrastructure for this purpose.

10. Number of applications per bank account
10.1 In order to ensure parity across the various channels for submitted applications, it has been decided that an investor making application using any of the aforesaid channel, shall use only his / her own bank account or only his / her own bank account linked UPI ID to make an application in public issues.
10.2 Applications made using third party bank account or using third party linked bank account UPI ID are liable for rejection.
10.3 Sponsor Bank shall provide the investors UPI linked bank account details to RTA for purpose of reconciliation.
10.4 RTA shall undertake technical rejection of all applications to reject applications made using third party bank account.

11. Obligations of the Issuer
11.1 The issuer shall appoint one of the SCSBs as Sponsor Bank to act as a conduit between the Stock Exchanges and NPCI in order to push the mandate collect requests and / or payment instructions of the retail investors into the UPI;
11.2 The Sponsor Bank appointed by the issuer may be the same as the bank with whom the public issue account has been opened.

12. Other requirements
12.1 The details of commission and processing fees payable to each intermediary and the timelines for payment shall be disclosed in the offer document.
12.2 The intermediaries shall provide necessary guidance to their investors in use of UPI while making applications in public issues.
12.3 All entities involved in the process shall co-ordinate with one another to ensure completion of listing of shares and commencement of trading in Phase I by T+6.
12.4 In Phase II, such entities shall aim to expeditiously complete the process of listing of shares and commencement of trading, in any case, not later than T+6.
12.5 The text of data fields required in the Application-cum-bidding-form relating to UPI and an illustrative Application-cum-bidding-form is placed at Annexure VI to this Circular.
12.6 Merchant bankers shall ensure that appropriate disclosures with respect to UPI are made in offer documents and advertisements in accordance with this circular. Format for the advertisement will be issued separately.
12.7 All entities involved in the process are advised to take necessary steps to ensure compliance with this circular.

13. The various provisions and indicative timelines, prescribed vide the following circulars, shall stand modified to the extent stated under this circular:
13.1 SEBI/CFD/DIL/ASBA/1/2009/30/12 dated December 30, 2009;
13.2 CIR/CFD/DIL/2/2010 dated April 06, 2010;
13.3 CIR/CFD/DIL/3/2010 dated April 22, 2010;
13.4 CIR/CFD/DIL/7/2010 dated July 13, 2010;
13.5 CIR/CFD/DIL/8/2010 dated October 12, 2010;
13.6 CIR/CFD/DIL/1/2011 dated April 29, 2011;
13.7 CIR/CFD/DIL/2/2011 dated May 16, 2011;
13.8 CIR/CFD/DIL/12/2012 dated September 13, 2012;
13.9 CIR/CFD/DIL/13/2012 dated September 25, 2012;
13.10 CIR/CFD/14/2012 dated October 04, 2012;
13.11 CIR/CFD/DIL/1/2013 dated January 02, 2013;
13.14 CIR/CFD/DIL/1/2016 dated January 01, 2016;

14. This circular shall be applicable for all Red Herring Prospectus filed for public issues opening on or after January 01, 2019.

15. This circular is being issued in exercise of the powers under section 11 read with section 11A of the Securities and Exchange Board of India Act, 1992.

16. This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Issues and Listing”.

NARENDRA RAWAT
Deputy General Manager

ANNOUNCEMENT

Quality Review Board of ICSI invites applications for Empanelment of “Quality Reviewers”

The Ministry of Corporate Affairs has constituted the Quality Review Board of ICSI to make recommendations to the Council with regard to the quality of services provided by the members of the Institute; to review the quality of services provided by the members of the Institute including secretarial services; and to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

With a view to carry out the abovementioned functions, the Quality Review Board contemplates to avail the services of senior members of the profession to assess the quality of services being rendered by Company Secretaries both in practice and in employment.

Eligibility criterion for Quality Reviewers-

A Quality Reviewer shall fulfil the criteria mentioned in para I or para II:-

I. An individual desiring to be empanelled shall:
   a) Be a Fellow member of ICSI; and
   b) Possess at least fifteen years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company; and
   c) Be currently in practice of the profession of company secretaries."

II. An individual desiring to be empanelled
   a) Shall be empanelled as Peer Reviewer in terms of the Guidelines for Peer Review of Attestation Services by PCS and has completed minimum 2 assignments of Peer Review.

Provided that the term of Quality Reviewer shall be three years subject to maximum six (6) months from the date of surrender of Certificate of Practice.

The Quality Review Board shall pay to the Quality Reviewer a consolidated fee of Rs. 25,000/- per quality review assignment to cover the cost of travel, local transport, accommodation and food, taxes, communications, printing, cost of submission of report etc. subject to submission of Final Report to the satisfaction of the Board.

Interested persons may kindly apply in the format available at https://goo.gl/TJQVsd and send it to Director, Professional Development, Perspective Planning & Studies, The Institute of Company Secretaries of India, C-36, Sector-62, Noida-201 309.
NEWS FROM THE INSTITUTE

- MEMBERS RESTORED DURING THE MONTH OF SEPTEMBER 2018
- LIST OF MEMBERS WHOSE REMOVAL OF NAME FROM REGISTER OF MEMBERS REVOKED W.E.F. 01-09-2018
- KNOW YOUR MEMBER (KYM)
- OBITUARIES
### Members Restored During the month of September 2018

<table>
<thead>
<tr>
<th>SL. NO.</th>
<th>NAME</th>
<th>ACS/FCS NO.</th>
<th>COP NO.</th>
<th>REGN.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MS. SWATI</td>
<td>A - 34233</td>
<td>16472</td>
<td>NIRC</td>
</tr>
<tr>
<td>2</td>
<td>MS. ARTI CHABRIA</td>
<td>A - 16226</td>
<td>18014</td>
<td>WIRC</td>
</tr>
<tr>
<td>3</td>
<td>MS. PURNIMA MOHD ANWAR MULANI</td>
<td>A - 51537</td>
<td>19640</td>
<td>WIRC</td>
</tr>
<tr>
<td>4</td>
<td>SH. SHARAD RAJWANSHI</td>
<td>F - 5025</td>
<td>3621</td>
<td>NIRC</td>
</tr>
<tr>
<td>5</td>
<td>SH. VISWANATHAN RAJAN</td>
<td>F - 3520</td>
<td>3571</td>
<td>SIRC</td>
</tr>
<tr>
<td>6</td>
<td>MR. AJITBHAI MAHADEVBHAI VANOL</td>
<td>A - 30274</td>
<td>14905</td>
<td>WIRC</td>
</tr>
<tr>
<td>7</td>
<td>SH. VINIT SIKKA</td>
<td>F - 7292</td>
<td>7574</td>
<td>SIRC</td>
</tr>
<tr>
<td>8</td>
<td>MS. REETU AGGARWAL</td>
<td>A - 44650</td>
<td>20653</td>
<td>WIRC</td>
</tr>
<tr>
<td>9</td>
<td>MS. SHRIDEVI SHRIDATTA KULKARNI</td>
<td>A - 32430</td>
<td>18072</td>
<td>WIRC</td>
</tr>
<tr>
<td>10</td>
<td>MS. CHARUL DILIP CHOWDHARY</td>
<td>A - 24210</td>
<td>11301</td>
<td>EIRC</td>
</tr>
<tr>
<td>11</td>
<td>MS. MANUJAR ARORA</td>
<td>A - 42656</td>
<td>16050</td>
<td>EIRC</td>
</tr>
<tr>
<td>12</td>
<td>MR. VINAY BELURU RAJU PATEL</td>
<td>A - 53824</td>
<td>19893</td>
<td>SIRC</td>
</tr>
<tr>
<td>13</td>
<td>MR. SASI KUMAR GOPAL</td>
<td>A - 29379</td>
<td>20027</td>
<td>SIRC</td>
</tr>
<tr>
<td>14</td>
<td>MS. RUCHI AGARWAL</td>
<td>F - 8239</td>
<td>8941</td>
<td>SIRC</td>
</tr>
<tr>
<td>15</td>
<td>SH. VIKASH KUMAR SHARMA</td>
<td>F - 7786</td>
<td>8617</td>
<td>EIRC</td>
</tr>
<tr>
<td>16</td>
<td>MS. KIRANDEEP KAUR</td>
<td>A - 51455</td>
<td>19105</td>
<td>NIRC</td>
</tr>
<tr>
<td>17</td>
<td>MR. SANDIP SINGH</td>
<td>A - 47041</td>
<td>17897</td>
<td>EIRC</td>
</tr>
<tr>
<td>18</td>
<td>MR. DHEERAJ KUMAR SHARMA</td>
<td>A - 45761</td>
<td>17918</td>
<td>NIRC</td>
</tr>
<tr>
<td>19</td>
<td>MS. NUPUR CHAKRABORTY</td>
<td>A - 45714</td>
<td>16927</td>
<td>WIRC</td>
</tr>
<tr>
<td>20</td>
<td>MS. JOYTI GUPTA</td>
<td>A - 42265</td>
<td>16512</td>
<td>SIRC</td>
</tr>
<tr>
<td>21</td>
<td>MS. PREETI SHARMA</td>
<td>A - 48336</td>
<td>17697</td>
<td>NIRC</td>
</tr>
<tr>
<td>22</td>
<td>MS. DARVESH GAUTAMI</td>
<td>A - 36627</td>
<td>16028</td>
<td>SIRC</td>
</tr>
<tr>
<td>23</td>
<td>MR. ABHIJEET DEEPAK SHITOLE</td>
<td>A - 38276</td>
<td>14296</td>
<td>WIRC</td>
</tr>
<tr>
<td>24</td>
<td>MS. ANNU SHARMA</td>
<td>A - 52860</td>
<td>19564</td>
<td>NIRC</td>
</tr>
<tr>
<td>25</td>
<td>MS. NEERAJ BALA</td>
<td>A - 39747</td>
<td>20031</td>
<td>EIRC</td>
</tr>
<tr>
<td>26</td>
<td>MS. PRITI SHARMA</td>
<td>A - 41775</td>
<td>16375</td>
<td>NIRC</td>
</tr>
<tr>
<td>27</td>
<td>MS. TAKKELA SASIKALA</td>
<td>A - 44875</td>
<td>18342</td>
<td>SIRC</td>
</tr>
<tr>
<td>28</td>
<td>MR. AMTESHVAR SINGH</td>
<td>A - 45794</td>
<td>17623</td>
<td>SIRC</td>
</tr>
<tr>
<td>29</td>
<td>MR. JEEVAN KUMAR</td>
<td>A - 50761</td>
<td>18476</td>
<td>SIRC</td>
</tr>
<tr>
<td>30</td>
<td>MS. RINKU JHA</td>
<td>A - 44215</td>
<td>18690</td>
<td>NIRC</td>
</tr>
<tr>
<td>31</td>
<td>MS. NEHA GUPTA</td>
<td>F - 9109</td>
<td>10229</td>
<td>NIRC</td>
</tr>
<tr>
<td>32</td>
<td>SH. PAVAR RAMACHANDRA RANADIWANY</td>
<td>A - 7790</td>
<td>18137</td>
<td>SIRC</td>
</tr>
<tr>
<td>33</td>
<td>MR. RATNESH KUMAR PANDEY</td>
<td>A - 33772</td>
<td>20978</td>
<td>WIRC</td>
</tr>
<tr>
<td>34</td>
<td>SH. S HARIHARAN</td>
<td>F - 317</td>
<td>2838</td>
<td>SIRC</td>
</tr>
<tr>
<td>35</td>
<td>MR. SHIV SHARMA</td>
<td>A - 41172</td>
<td>18911</td>
<td>NIRC</td>
</tr>
<tr>
<td>36</td>
<td>MR. AMIT JAIN</td>
<td>A - 38574</td>
<td>14556</td>
<td>NIRC</td>
</tr>
<tr>
<td>37</td>
<td>MR. MEHUL TARUNKUMAR CHOUHARY</td>
<td>A - 55329</td>
<td>20455</td>
<td>WIRC</td>
</tr>
<tr>
<td>38</td>
<td>MR. PRITHPAL BHATIA</td>
<td>A - 50077</td>
<td>18229</td>
<td>NIRC</td>
</tr>
<tr>
<td>39</td>
<td>MS. ZUBY NAAZ</td>
<td>A - 51793</td>
<td>19077</td>
<td>NIRC</td>
</tr>
<tr>
<td>40</td>
<td>SH SHYAMAL YOGESH RAVAL</td>
<td>A - 19007</td>
<td>13297</td>
<td>WIRC</td>
</tr>
<tr>
<td>41</td>
<td>MS. SALONI VERDA</td>
<td>F - 7724</td>
<td>7263</td>
<td>SIRC</td>
</tr>
<tr>
<td>42</td>
<td>MS. POOJA SONI</td>
<td>A - 34355</td>
<td>15552</td>
<td>WIRC</td>
</tr>
<tr>
<td>43</td>
<td>MS. SUSMITA SEN</td>
<td>A - 34368</td>
<td>14098</td>
<td>EIRC</td>
</tr>
<tr>
<td>44</td>
<td>SH. ANKUR GOYAL</td>
<td>A - 26005</td>
<td>18993</td>
<td>NIRC</td>
</tr>
<tr>
<td>45</td>
<td>MRS. ANUSHKA VERMA</td>
<td>A - 29227</td>
<td>11277</td>
<td>EIRC</td>
</tr>
<tr>
<td>46</td>
<td>MS. SURBHI SHARMA</td>
<td>A - 44570</td>
<td>17170</td>
<td>NIRC</td>
</tr>
<tr>
<td>47</td>
<td>MS. RACHANA SHREEBHAGAN AGARWAL</td>
<td>A - 46907</td>
<td>20294</td>
<td>WIRC</td>
</tr>
</tbody>
</table>

### List of members whose removal of name from Register of Members revoked w.e.f. 01-09-2018

<table>
<thead>
<tr>
<th>SI No.</th>
<th>MEMBER NO.</th>
<th>MEMBER’S NAME</th>
<th>REGN.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ACS - 3641</td>
<td>SH. KEWAL KRISHAN GUPTA</td>
<td>NIRC</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 [http://www.icsi.edu/Member.aspx](http://www.icsi.edu/Member.aspx)

---

**NOTICE**

The last date for payment of annual membership fee was 31-08-2018 and for renewal of certificate of practice was 30-09-2018. The members who have not paid their annual membership fee and/or certificate of practice fee by the last date are required to restore their membership and/or certificate of practice by paying the requisite entrance and restoration fees along with the applicable annual membership fee and annual certificate of practice fee with GST@18% on the total fee payable. Members are required to submit Form–BB for restoration of membership and Form-D for restoration of certificate of practice duly filled and signed. For more clarification, may please write at jitendra.kumar@icsi.edu (for restoration of membership) and vidhya.ganesh@icsi.edu (for restoration of certificate of practice).

---

**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.edu/student/Portals/0/Manual/KYM_Usermanual.pdf](https://www.icsi.edu/student/Portals/0/Manual/KYM_Usermanual.pdf)

---

**OBITUARIES**

Chartered Secretary deeply regrets to record the sad demise of the following Members:

- **CS N R Sridharan** (10.12.1949 – 15.08.2018), a Fellow Member of the Institute from Chennai.
- **CS S N Suresh** (13.01.1951 – 08.10.2017), a Fellow Member of the Institute from Bangalore.
- **CS T D M Raja** (04.08.1937 – 08.02.2018), a Fellow Member of the Institute from Kochi.
- **CS Arun Jain** (22.09.1955 – 31.07.2017), an Associate Member of the Institute from Gurgaon.
- **CS Vandana Arora** (18.02.1968 – 20.09.2018), an Associate Member of the Institute from Mumbai.
- **CS Sridhar Narayanan Subbiah** (17.08.1962 – 26.07.2018), a Fellow Member of the Institute from Mumbai.
- **CS George Pattaseril Uthup** (02.02.1936 – 15.04.2018), a Fellow Member of the Institute from Kottayam.
- **CS S K Jolly** (01.01.1939 – 25.09.2018), an Associate Member of the Institute from Kottayam.

The almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss. May the departed souls rest in peace.
MISCELLANEOUS CORNER

- ETHICS & SUSTAINABILITY CORNER
- GLOBAL CONNECT
- CG CORNER
- NOTIFICATION
- GST CORNER
- CERTIFICATE COURSE IN GOODS & SERVICES TAX
Invoking the Inner Light
Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

orridors lit up with series of lamps, diyas, candles; floors outside the door decorated with beautiful rangolis; all the balconies, roofs and walls of the house glittering with candles or lightings; houses cleaned and renovated; people wearing new dress and greeting everyone with smile on the faces and sweets in hand—this describes the scene in every household during one of the most prominent festival celebrated in India and by Indians in many parts of the world- Deepawali or Diwali.

We all had celebrated Deepawali with a lot of zeal and happiness in the last month. Marking as the end of one calendar year as per the Hindu lunar calendar and the beginning of the New Year, this festival fills our lives with joy and newness. There are numerous folklores that narrate the importance of this festival of lights. Each of these symbolizes the spiritual significance of this day.

Deepawali is the festival which celebrated to mark the victory of the good over the evil, light over darkness, as a 5 day extravaganza all over the country. Celebrated on the new moon night of the month of Kartik in October/November, it is primarily a harvest festival. Almost all ancient cultures of the world have certain harvest festivals at this time of the year – for instance, Halloween of the preChristian Europe, Sukkot of the Jews. But in India, it is a full five day affair, with many important events falling during this period that add on to the already weighty importance of Diwali. There are wonderful interesting epic legends that bring the joy and meaning of life alive by creating a visual panorama through various events marking this day. But all of these have a very subtle message to follow in our lives. Let’s have a look at the very interesting epical significance of this festival along with message it has to convey:

1. **Coming back home or attainment of liberation**-
   - Deepawali is celebrated on the occasion of the return of Lord Shree Rama with his wife Shree Sita and younger brother Shree Lakshman, from his long fourteen years of exile in the forest, twenty days after killing Ravana. This is also celebrated as the day of coronation of Lord Rama and Sita as the Emperor and Empress of Ayodhya (A + yudhya), which means a state of no more fight or conflict, as the soul has already been liberated from the vices which caused conflicts, marking the beginning of Rama-Rajya.
   - For some, Diwali also celebrates the return of Pandavas after 12 years of exile and one year of Agyatavas in Mahabharata.
   - Hence it is celebrated as a new beginning of a journey on the path of spiritual awareness (Ganesha), leading to knowledge (Saraswati or siddhi), prosperity and fortune (riddhi or Maha Lakshmi), worshipped in different forms of deities.
   - In other religions too, this day is celebrated as the day of liberation or freedom. The Jain Prophet, Mahavira, the last of the Tirthankar of this era, is believed to have attained Nirvana or liberation on this day.
   - Diwali for Sikhs marks the Bandi Chhor Divas, when Guru Har Gobind Singh freed himself and some Hindu kings who held strings of the cloth that Guru Har Gobind was wearing (as per the condition put forth for their freedom), from the Gwalior Fort, from the prison of the Mughal emperor, Jahangir, and arrived at the Golden Temple in Amritsar. Ever since then, Sikhs celebrate this day with the annual lighting up of Golden Temple, fireworks and other festivities. In the post-Guru Gobind Singh era, Sarbat Khalsa used to meet on Diwali and Baisakhi to discuss important issues concerning Sikh community.

2. **Rituals performed on Diwali**-
   It is customary to clean each and every corner of the house and remove the old, unwanted and broken things from the house and bring in new ones. People wear new dresses on this day. On this darkest night, lots of earthen (or nowadays electric) lamps are lighted all over the house to dispel darkness, making it the festival of lights. Usually a bigger lamp is lighted first and all other smaller ones are lit either with this bigger one or with other already lit smaller lamps. Also, people express their joy by making special dishes, making and sharing sweets, and bursting fire crackers of many kinds. They invite and go to friends and neighbors too.
   - The darkest night or the last night of the month symbolizes the end of ignorance and marks the beginning of the new phase of enlightenment celebrated as the New Year on the next day.
   - Cleaning of the house and removing old things and bringing new ones denotes that to celebrate a new beginning, it is important to cleanse the mind, let go of the past and to forgive and forget the old rivalries, negative and unwanted memories and adopt newness in our consciousness and relations.
   - Wearing new dress is equivalent to acquiring a new (actually original, but long forgotten) identity or
Invoking the Inner Light

According to Hindu mythology, Ganesha represents good omen to embark on something new. So worshipping Ganesh means to receive blessings and a life of fulfillment and all attainments by removal of all obstacles through true knowledge and its application. This awareness is what brings knowledge, purity, peace, prosperity and happiness in life. Good feelings for others. Also, enlightenment automatically brings peace and invites prosperity in life.

- Lighting up of earthen lamps also has a similar meaning. It symbolizes that the light (knowledge) of awareness of the soul is ignited within this body (primarily made of the element Earth). The bigger lamp denotes the Supreme Consciousness which is instrumental in lighting up the smaller one- the souls in human body. Also, the already enlightened souls then become instrumental in lighting up the other ones still engaged in body consciousness. It is also ensured that on this day, the lamps or lights should not be turned off. But it gives us a message that our awareness of who we truly are should never be turned off. This awareness of good fortune and prosperity comes to those who have a clean heart and mind and are blessed with mental, physical and material well being during the year ahead.

- Making special dishes and particularly sweets and distributing among people, friends and neighbors means to make special efforts to re-unite with everyone around and making our relations sweet by creating sweet memories of togetherness. Speaking sweet words and celebrating each moment together.

- Bursting of fire crackers symbolizes bursting of our ego and differences with others and spreading the light and happiness to others as well.

3. **Lakshmi- Ganesh- Saraswati puja**

This day is also significant as a day to honour and welcome the 4 armed deity, Shree Maha Lakshmi, considered to be the goddess of wealth in the Hindu mythology and the goddess of abundance and fortune for Buddhists. The 5-day festival of Diwali begins on the day Goddess Lakshmi was born from the churning of cosmic ocean of milk by the Devas (deities) and the Asuras (demons); while the night of Diwali is the day Lakshmi chose Lord Vishnu as her husband and they were married. Other Hindus believe that Diwali is the day Lord Vishnu came back to Lakshmi and their abode in the Vaikuntha; so those who worship Lakshmi receive the benefit of her good mood, and therefore are blessed with mental, physical and material wellbeing during the year ahead.

Along with her, Lord Ganesha (respected even by deities), the son of God Shiva and His consort goddess Parvati, and who symbolizes ethical beginnings and fearless remover of obstacles, is also worshipped and welcomed on this day as he is considered to be the bestower of Riddhi and Siddhi (wealth and attainment or enlightenment) to all.

Saraswati, who embodies music, literature and learning and Kubera, who symbolizes book-keeping, treasury and wealth management are also welcomed and worshipped on this day along with Maha Lakshmi and Ganesha.

- This symbolizes that good fortune and prosperity comes to those who have a clean heart and mind and good feelings for others. Also, enlightenment automatically brings peace and invites prosperity in life.

- Birth of Lakshmi or fortune and prosperity shown as churning of cosmic ocean denotes the result of churning the ocean of our thoughts which has both the good (sui) and evil (asur). When we choose the good over evil, then we become the owners of good fortune.

- Maha Lakshmi depicted with the pot of wealth and showering wealth, sitting or standing on the lotus flower, holding lotus in her arms and ridding an owl represents attaining and holding the true spiritual and ethical wealth in our intellects and bestowing it to or sharing it with others. It is only possible retain such spiritual wealth when we detach ourselves from the influence of the negativites outside and around us and maintain a pure intellect- shown as a lotus flower. Owl represents ability to move and prevail even in darkness, soul-spirit, foresightedness and keeper of sacred knowledge. The ancient Greeks revered the goddess Athena, who was supposed to be the goddess of wisdom and guardian of the Acropolis. Her symbol was the owl, so the bird became a symbol of higher wisdom. The owl was a bird of prophecy and wisdom in many ancient cultures. But if not handled properly, it can lead to drain of wisdom resulting in failure and dull-headedness. This means that material wealth if not coupled with spiritual and ethical wealth can lead to drainage of the material wealth too.

- Ganesha represents good omen to embark on something new. So worshipping Ganesh means to receive good wishes upon the determination of having new consciousness. Also, he is believed to remove obstacles, and he is known to have 2 wives- Riddhi and Siddhi, whose significance is explained above. So, welcoming Ganesh means to have a life of fulfillment and all attainments by removal of all obstacles through true knowledge and its application. Which is why Saraswati, the goddess of knowledge is also worshipped along with Lakshmi and Ganesha.

- When we think of Kali, values of strength, fearlessness, complete destruction of evil comes in our mind.

4. **All night meditation**

In Kali Puja, Hindus in India’s eastern region, such as Odisha and West Bengal, worship the goddess Kali instead of Lakshmi, and call the festival Kali Puja. It is prescribed that on this day, a worshipper should meditate throughout the night until dawn.

- When we think of Kali, values of strength, fearlessness, complete destruction of evil comes in our mind. She represents the form of goddess of Time, Creation, Destruction and Power. **Kal** means the changing aspect of time which brings things to life and death. So the worship of Kali is considered to grant liberation. Actually, it means to attain liberation from the fear or sorrow of death and destruction of
Also, all night meditation is identical to real awakening during the time of ignorance. One who awakens the self automatically comes out of the darkness of ignorance.

5. **Chopard Puja**

This is also considered as the end of the financial year for traditional merchants even today and old account books are balanced and new ones started. This day is also called **Chopard Puja** i.e. respecting or worshipping the account books.

- Closing of old account books is related to finishing our old sanskaras of negativity and closure or settlement of our old karmic accounts with others and embarking on a fresh start with creation of new positive karmic accounts of happiness with one another. It also reminds us to check what went wrong ethically in the past year and take resolutions to conduct business, work and dealings in a better, positive and ethical way for the next year.

6. **Boon of Knowledge by Yama**

It is also believed that the young, patient, determined and seeker Nachiketa was sent to the door of Yama by his own father Vájashravasa, out of frustration by his constant questioning during a yagya set up by Vájashravasa. A guilty Yama who kept Nachiketa, a Brahmin guest, waiting for 3 days, promised to grant 3 boons to Nachiketa, who asked for the highest knowledge against all material attainments, as his last boon, even when tempted with wealth, women and even eternal life! The more Yama tempted him, the more resolved he got to get the truth about “after death”.

- Once again, through a folklore, attainment of true knowledge is the key to mark this day. As mentioned in the scriptures, the knowledge Yama gave to Nachiketa was of the soul, which is immortal and doesn’t die even after death of the body.

7. **Other festivals related to Diwali**

Through many more stories and folklores related to other festivals in association with Diwali, similar message of attainment of new knowledge, awakening of the soul, victory of good over evil, life over death, liberation over bondages in life, surrendering ego and attaining blessings is conveyed.

- 2 days before this grand welcoming of Lord Rama and Sita, goddess Maha Lakshmi with Lord Ganesh and goddess Sarawati, is celebrated as **Dhanteras**, when everyone goes for shopping some form of metal, particularly gold or silver, denoting good fortune ready to enter the house or life of the people.

- It also marks as the day of victory over Yama (divinity of death) as per an ancient story where Yama, who came disguised as a serpent, was refrained from entering into the house by a wife devoted to save her husband's life from Yama. She kept Yama waiting on the pile of gold with lamps lighting all over the house and kept her husband awake all night by singing melodious stories and songs. As a result, Yama whose eyes got blinded by the dazzle of those brilliant lights and gold, could not enter the house and sat there whole night listening to the melodious songs. In the morning he quietly went away.

- A day before Diwali is celebrated as **Narak Chaturdashi**. It is believed that this day marks the killing of the demon Naraksur by Lord Krishna.

- Also, on this day, the charitable but proud king Bali surrendered and offered his head to Lord Vishnu to keep his foot, who guised as a dwarf brahmana- Yamana, asked for only as much land as he could cover in three steps, but later expanded to cover the earth in one step and the heavens with the second. When Lord Vishnu put his foot on Bali’s head, Bali was pushed down to the nether worlds, the narak. But for his generosity, Lord Vishnu granted him the lamp of knowledge and allowed him to return to earth every year to light millions of lamps to dispel the darkness of ignorance and spread the light of knowledge.

- The day after Diwali is celebrated as **New Year or Govardhan Puja** which symbolizes respect for the ecology and elements of nature as a part of eco-system which is responsible for our sustenance of this planet.

- The fifth day is celebrated as Bhai Dooj or Bhaiya Dooj, and brothers visit their sister’s home. Sisters put the auspicious tilak on their brothers’ forehead, pray for them, and they eat delicious dishes and sweets together. The tilak represents victory and eating sweets together denotes sweetness in relationships.

Therefore, in these days when life is in the fast lane, pressure of work and liabilities in relationships piles up, Diwali season stands out in its importance to give it a perspective, attain knowledge, remain in true self awareness, sit back and enjoy personal relationships, reflect back on the year gone by and close all old negative karmic accounts, resolve to work hard for the next year and create new healthy and sweeter relations, and conduct business in an ethical and moral way. Thus after this Diwali, let bygones be bygones, forge new friendships and strengthen old ones.
Organised by Institute Of Directors, India

In Association with Institute Of Company Secretaries of India

Build Tomorrow’s Boards

The Institute of Company Secretaries of India
D-33, Sector-62, Noida - 201 301
T: 0120-408 2142
E: sonu.lakhani@icsi.edu

Golden Peacock Awards

Theme:
The Board’s Ethics and Emerging Risk strategies in Uncertain ‘Times’

2nd Singapore Global Convention on Corporate Ethics & Risk Management

05 - 07 December, 2018
Hotel InterContinental, 80 Middle Road, Singapore

Galaxy of Speakers

Goyal K. V. Rao
Resident, TATA Sons
Singapore

Osman Sultan
CEO
Du Telecom, UAE

Mutthukrishnan Ramaswam
President
Singapore Exchange Limited
Singapore

Atul Temumkar
Chairman and Chariman
Global School’s Foundation & GIIS
Singapore

K. V. Rao
Director
TATA Sons
Singapore

S Ramakrishnan
Managing Director
DuMers
Singapore

CS Makarand Lele
President
ICSI and Secretary, CSA

CONFERENCE HIGHLIGHTS

• Two days of information packed sessions
• Top technical speakers loaded with professional experience
• Presentation of Golden Peacock Awards
• Business case study presentations by the top companies on ‘Corporate Ethics & Risk Management’
• Study Tour to GIIS Smart Campus’

Special Fee for ICSI Members
Rs 15,000/-
( Including GST )

Also get 10 Program Credit Hours

Limited Seats
Register Today

www.iodglobal.com
ICSI INVITES APPLICATIONS FOR PARTICIPATION IN CORPORATE SECRETARY’S TOOL KIT TRAINING OF TRAINERS (TOT) PROGRAMME

Limited Seats (first cum first serve basis)
Award of Certificate on Successful completion

Schedule

Venue
The Claridges, 12 Dr APJ Abdul Kalam Road, New Delhi - 110011

Date
14-16 January, 2019

Days
Monday to Wednesday

Time
11:00 AM to 7:00 PM (14 January) & 9:00 AM to 6:00 PM (15 & 16 January)

Participation Fees
Rs. 17,700/- inclusive of 18% GST
(Cost of accommodation on twin sharing basis and all meals i.e. breakfast, lunch, dinner for 2 nights and 3 days, programme kit etc.)

Broad Coverage

• Corporate Secretary’s role in the Corporate Governance Framework
• Experiential Learning Cycle
• Identify skills needed to manage relationships within a governance system
• The Value of an In-House Corporate Secretary
• Governance, Adult Learning, and the Corporate Secretary

10 PCH for ICSI Members
Mandatory attendance for all sessions

GLOBAL CONNECT
INTRODUCTION
ICS is organising three days residential Corporate Secretary’s Tool Kit Training of Trainers (TOT) in association with Corporate Secretaries International Association (CSIA) which is a joint project of CSIA and International Finance Corporation (IFC), on January 14-16, 2019 at New Delhi.

ABOUT CSIA & IFC
CSIA is an international federation of professional bodies having 15 members countries. ICSI is the founder member of CSIA. All CSIA members share a common interest in the promotion of good governance practices and enhancing the profile of professionals who serve as corporate secretaries and governance professionals. CSIA is also actively engaged in creating a global professional association enabling industry professionals globally to work more effectively towards shaping corporate governance and developing unified best practices.

The International Finance Corporation is an international financial institution that offers investment, advisory, and asset-management services to encourage private-sector development in developing countries. The IFC is a member of the World Bank Group.

ABOUT CS TOOLKIT
The CS Toolkit has been designed as a practical guide for governance professionals and this is where its true value lies. The essential principles are non-jurisdictional and universally applied to listed and unlisted companies and to the private, public, and not-for-profit sectors. It has been well received as a world-class product, already in high demand. It aims to clarify the duties of Corporate Secretaries, develop their skills and emphasise their role in developing good corporate governance practices in their organisations.

OBJECTIVES OF CS TOOLKIT
(a) To cover the full spectrum of a corporate secretary’s roles, functions, and responsibilities, which are at the core of an organisation’s governance structure and its governance system;
(b) To clarify the potentially expansive duties of corporate secretaries and enhance their skills; and
(c) To emphasise the corporate secretaries’ role in developing good corporate governance practices in their organisations, informed by internationally recognized standards of good practice, drawing on examples from both developed and emerging markets

ELIGIBILITY CRITERIA FOR PARTICIPATION IN TOT
An Indian individual desiring to be empanelled as participant of the ToT shall fulfil the following criteria:

i. Be a Fellow member of ICSI; and
ii. Be currently active in profession of Company Secretary either in practice or in employment; and
iii. Possess at least ten years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company; and
iv. Contributed towards promotion of Profession of Company Secretary (e.g. Faculty of training programme, Speaker at National Level Programme, written article in magazine of public repute, written book etc. and provide the details of same). Person needs to provide note on his exposure as trainer in the field of Corporate Governance.

Participant needs to provide an undertaking to impart Corporate Governance training not more than five, in next two years after this ToT.”

ICSI Reserve the right to accept the application.

REGISTRATION
Interested members may kindly register by following the link https://goo.gl/p3qXbz latest by 30th November, 2018. Please read the eligibility criteria carefully before registering the ToT.

After receiving application, the Institute will confirm the acceptance of application to respective person. For all non accepted applications fee will be refunded to respective account through which payment was made.

For more details you may contact Directorate of Professional Development, Perspective Planning & Studies at mahesh.airan@icsi.edu/0120-4082142/38.

CS Makarand Lele
President, ICSI & Secretary, CSIA
An Overview of the London Visit of ICSI delegation led by CS Makarand Lele, President ICSI

Overview

- H.E. Shri Charanjeet Singh, Deputy High Commissioner, High Commission of India, UK
- Mr. Neil Stevenson Managing Director, Global Implementation, International Integrated Reporting Council
- Ms. Lakshmi Kaul, CII UK & EU Head
- Ms. Prerna Sian, CEO VAAHAN
- IOD Global Business Meet & Welcome Dinner, House of Lords London
- IOD 18th London Global Convention on Corporate Governance & Sustainability
- NRI Institute Celebration of 30th Year of Excellence and Parvasi Divas: Theme “Indian’s of the World”
- Dr. Mohan Kaul Founder President of Indian Professionals Forum & Ex Chair Commonwealth Investment, UK Chairman Emeritus of the Commonwealth Business Council
- Visit to OMPEG Annual Event, Slough, UK

18th London Global Convention

- The Event was a Bouquet of World Business Leaders, Politicians and Influencers of Global Business who extended their insights at the event
- The Rt. Hon. Lord Swraj Paul of Marylebone, PC & Founder and Chairman, The Caparo Group Plc., UK, Hon Lord KaranBillimoria
- Prof. (Judge) Mervyn E. King SC Chairman, King Committee on Corporate Governance & Former Judge, Supreme Court of South Africa were some of the key attendees

CS Makarand Lele, President, ICSI addressed the delegates on Session-Future of the Strategic Board: Shared Leadership Issues during the 18th London Global Convention-2018.
Meeting with H.E. Shri Charanjeet Singh  
Deputy High Commissioner of India, High Commission of India to UK

The Outcome of the Meeting is as under:

• Conducting Webinar(s) at London/India, for Educating and Hand Holding the Trade & Business Policy for Ease of Doing Business between India and UK
• Publishing News Letter with special attention to Ease of Doing Business in India
• Organising Joint Events at London on various Topics supporting the Indian Diaspora and UK organisations for the Indian Markets
• Enhancing visibility of CS - Your Gateway for Business in India

Meeting with Mr. Neil Stevenson  
Managing Director, Global Implementation, International Integrated Reporting Council (IIRC)

The Outcome of the Meeting is as under:

• Mutual association between IIRC & ICSI
• IIRC agreed to penetrate Governance & Compliance Board Reporting Statement (GCBRS) in India with help of ICSI
• Program on GCBRS by ICSI and IIRC
Meeting with Ms. Lakshmi Kaul  
CII UK & EU Head

The Outcome of the Meeting is as Under:

- Sharing of ICSI publication with CII-UK for further dissemination
- ICSI will organise the webinar on the relevant topics.
- Joint Event of CII - UK and ICSI

Meeting with Ms. Prerna Sian  
CEO, Vaahan

The Outcome of the Meeting is as under:

- Vaahan has a reach and readership to the Indian Diaspora to about 30,000 copies and is a strategic publication partner with Jet Airways & Etihad
- Publishing of relevant information on International offerings & Policies to promote India - UK trade in the Magazines of both Organisations

Meeting with Dr. Mohan Kaul

The Outcome of the Meeting is as Under:

- Integration & Joint Event Creation with Indian Professional Forum
- Dr Kaul to Visit and Participate in the Awards Event and the 50th Year Celebration Finale Event
- MOU & Strategic Alliance with Indian Professional Forum

Meeting with First Secretary (Trade) of the Indian High Commission Shri Rahul Nangre during Annual Event of OMPEG

Overseas Maharashtrian Professionals & Entrepreneurs Group (OMPEG) Organised its Annual Event & Convention

NRI Pravasi Bharatiya Awards

- CS Makrand Lele, President, ICSI attended NRI Institute Celebration of 30th Year of Excellence and Parvasi Divas: Theme “Indian’s of the World”
Dear Professional Colleague

We are glad to share that ICSI President CS Makarand Lele re-elected as Secretary of “Corporate Secretaries International Association (CSIA)” for the year 2019.

His election took place in the Annual General Meeting of CSIA held on September 27, 2018. CSIA is an international federation of professional bodies representing various Corporate Secretaries Institutions across the globe.

All CSIA members share a common interest in the promotion of good governance practices and enhancing the profile of professionals who serve as corporate secretaries and governance professionals. CSIA creates platform for governance professionals to promote best practices in Corporate Secretarial, Corporate Governance and Compliance Services with a vision to be ‘The Global Voice of Corporate Secretaries and Governance Professionals’.

CS Makarand Lele assures the whole hearted support by the Institute to CSIA and affirms the great achievements in promotion of governance profession in the years ahead which will set a path towards good governance.

Yours faithfully,

(CS Ashok Kumar Dixit)
Officiating Secretary
The Institute of Company Secretaries of India
UK: BREXIT and companies legislation

The drafts of two statutory instruments made under the European Union (Withdrawal) Act 2018, have recently been published, the purpose of which is to prepare aspects of the UK’s company law framework for the UK’s departure from the European Union. These instruments before being laid before the Parliament, will go through the sifting process.

The first draft instrument is the European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2018 and the accompanying explanatory memorandum, which are available at:

https://assets.publishing.service.gov.uk/media/5bdaec1940f0b6051e77b6fc/SI_-_European_Public_Limited-Liability_Company_EU_Exit_Regs_2018.pdf

and

https://assets.publishing.service.gov.uk/media/5bdaeb4840f0b604c46bed18/EM_-_European_Public-Limited_Liability_EM_August_2018_CLEARED.pdf respectively.

These Regulations will provide a temporary framework for any European Public Limited Liability Companies that remain registered in the UK on the day the UK leaves the European Union.

The second draft instrument is the Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2018, with the accompanying explanatory memorandum. The purpose of this instrument is to amend the Companies Act 2006 and secondary legislation made under the Act, as well as revoking certain Regulations. The changes being made are described in the explanatory memorandum as miscellaneous. The said second draft instrument is available at: https://assets.publishing.service.gov.uk/media/5bdaeb4840f0b604c46bed18/EM_-_European_Public-Limited_Liability_EM_August_2018_CLEARED.pdf

South Africa: Companies Amendment Bill published

The Department of Trade and Industry has published a draft of the Companies Amendment Bill for public comments. The Bill will amend the current company law framework as found in the Companies Act, 2008 and Companies Regulations, 2011. Comments on the proposed Bill may be submitted within sixty (60) calendar days from the date of publication. Closing date for comments is 14th December 2018. The contact details of the designated person and the Companies Amendment Bill is available at: http://www.thedti.gov.za/gazzettes/41913.pdf

APPOINTMENTS

REQUIRED COMPANY SECRETARY

A full time qualified Company Secretary proficient in English and well acquainted with company law and legal matters with a minimum experience of 3 years, is required for four private limited Companies in Hyderabad, Telangana.

Interested candidates may send their applications with detailed resume giving information about professional experience to the following address:

The Manager, Human Resources
SKP Business Consulting LLP
VEN Business Centre, 135/1, Baner-Pashan link Road, Pashan, Pune-411021, India
Tel: +912067203800, Email: careers@skpgroup.com
NOTIFICATION

15th November, 2018

ELECTIONS TO THE MANAGING COMMITTEE OF THE CHAPTERS – 2018

Pursuant to Guideline 15 of the Company Secretaries Chapter Guidelines, 1983 (as amended), the Council has specified that constitution of the Managing Committee of Chapters having 25 or more members, will be done by poll and in case of Chapters with less than 25 members, will be done by nomination.

Every member of the Institute whose name is borne on the respective Chapter Register on 1st September 2018 shall be eligible to vote and/or stand for election to the Managing Committee of the Chapter; provided that his/her name has not been removed from the Register after the said date and before the date of election in accordance with the Company Secretaries Act, 1980, Rules and the Regulations made thereunder.

Provided that no member of the Institute, who is or has been elected as Chairman or had been Chairman, at any time in the past of any chapter of the ICSI, shall be eligible to contest election of the Managing Committee or be nominated as a member or Chairman of the Managing Committee of any Chapter.

Provided further that, in case, required minimum number of members are not available at any chapter to constitute Managing Committee in any particular year, the President, ICSI shall relax the above guidelines, on a case to case basis.

Elections to the Managing Committee of the Chapters shall be held on Saturday, the 22nd December 2018 in all the chapters (i) by single transferable vote in Grade A+ & A Chapters, (ii) Grade B, C & D Chapters – By simple Vote at Special General Meeting (iii) Chapters having less than 25 members – By Nomination.

The code of conduct as applicable for Elections to ICSI Central / Regional Councils – 2018 shall also be applicable for elections to the Managing Committee of Chapters.

Grade A+ and A Chapters are as under:
Grade A Chapters – (i) Faridabad (ii) Ghaziabad, (iii) Noida, (iv) Indore, and (v) Thane

In accordance with the Guideline 15.7 of the Company Secretaries Chapter Guidelines, 1983 (as amended), the Chairman of the Regional Council of the concerned Chapter(s) in consultation with the Chairman / Secretary of the Chapter(s) having less than 25 members shall recommend a panel of not less than 10 members of the Chapter in order of preference latest by 22nd December 2018 to the President of the Institute for nominating seven members to the Managing Committee of the Chapter(s).

<table>
<thead>
<tr>
<th>Number of Members to be elected by Chapter</th>
<th>Not more than Seven (07)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Last Date &amp; Time for filing of Nomination</td>
<td>Not later than 6.00 PM, Saturday, the 1st December 2018</td>
</tr>
<tr>
<td>at respective Chapter</td>
<td></td>
</tr>
<tr>
<td>Date &amp; Time for scrutiny of Nomination</td>
<td>6.00 PM, Thursday, the 6th December 2018</td>
</tr>
<tr>
<td>Date &amp; Time for withdrawal of Nomination</td>
<td>Upto 6.00 PM, Saturday, the 8th December 2018</td>
</tr>
<tr>
<td>Name of valid nominations to be displayed</td>
<td>7.00 PM, Saturday, the 8th December, 2018</td>
</tr>
<tr>
<td>in the Notice Board of the Chapter Office</td>
<td></td>
</tr>
<tr>
<td>Date &amp; Time of Election</td>
<td>22nd December 2018</td>
</tr>
<tr>
<td></td>
<td>Grade A+ &amp; A Chapters 8.00 AM to 8.00 PM</td>
</tr>
<tr>
<td></td>
<td>Grade B, C &amp; D Chapters 10.00 AM to 4.00 PM</td>
</tr>
<tr>
<td>Venue of Election</td>
<td>Chapter Office premises</td>
</tr>
<tr>
<td>(i) Counting of Votes and Declaration of</td>
<td>5.00 PM onwards on Saturday, the 22nd December 2018 in case of B, C &amp; D Chapters</td>
</tr>
<tr>
<td>Result</td>
<td>December 29, 2018 onwards for Election to Managing Committee of A+ &amp; A Grade Chapters at ICSI, C-36, Sector- 62, Noida</td>
</tr>
<tr>
<td>(ii) Counting of votes and Declaration of</td>
<td></td>
</tr>
<tr>
<td>Result</td>
<td></td>
</tr>
<tr>
<td>Nomination Fee</td>
<td></td>
</tr>
<tr>
<td>Grade A+ &amp; A Rs. 10,000+GST @ 18% = Rs. 11,800/-</td>
<td>Grade C Rs. 3,500+GST @ 18% = Rs.4,130/-</td>
</tr>
<tr>
<td>Grade B Rs. 5,000+GST @ 18% = Rs. 5,900/-</td>
<td>Grade D Rs. 2,500+GST @ 18% = Rs.2,950/-</td>
</tr>
</tbody>
</table>

For further clarifications, please contact Phone No. 0120 – 4082109 or email at chapterelections@icsi.edu.

Officiating Secretary, ICSI               New Delhi
1. Centre, States divide Rs 320 billion IGST in October; States to get over Rs 150 billion
   • As much as Rs 320 billion lying in the integrated goods and services tax (IGST) pool has been apportioned between the Centre and States in the month of October.
   • This is the fifth time that IGST funds have been divided between the Centre and States.
   • As much as Rs 290 billion was settled in September, Rs 120 billion in August, Rs 500 billion in June and Rs 350 billion in February this year.
   • When some substantial amount accrues to IGST pool it is apportioned between the Centre and States so that it does not lie idle with the Centre, the official said, adding Rs 320 billion had been apportioned this month.

2. GST council meet: Panel of 7 finance ministers to decide on calamity tax
   • The Indian government has set up a seven-member committee to debate a national disaster cess.
   • The panel will look into the “modalities for revenue mobilisation in case of natural calamities and disasters”, the finance ministry said in a media statement. Bihar Deputy Chief Minister Sushil Kumar Modi will be heading the panel, it added.
   The other members are:
   o Himanta Biswa Sarma, Finance Minister, Assam
   o T.M. Thomas Isaac, Finance Minister, Kerala
   o Sudhir Mungantiwar, Finance & Excise Minister, Maharashtra
   o Sashi Bhushan Behera, Finance & Excise Minister, Odisha
   o Manpreet Singh Badal, Finance Minister, Punjab
   o Prakash Pant, Finance Minister, Uttarakhand
   • Group of ministers will submit their report by October 31.
   • Finance Minister Arun Jaitley had said that the committee will have representation from the north-eastern states, coastal states and hilly states, which are relatively prone to disasters. “The view we take today will set a precedent for the country for a very long time,” he had said in a press conference after the 30th Goods and Services Tax Council meeting, adding that it was important to not implement a cess in haste.
   • The committee will suggest guidelines for such a cess with two factors in mind, said Jaitley. They are:
     ✓ Whether the tax should be levied pan-India, and if so, should it be on luxury and sin goods.
     ✓ If there should be a distinction for natural calamities where the National Disaster Relief Fund is deemed sufficient.
   • This comes after Kerala was affected by its worst flood in nearly a century. State Finance Minister Thomas Isaac had asked the central government to allow it to increase its share of the GST on some items or impose a national-level cess on select commodities to fund rehabilitation.

   • The mop-up touched Rs 1.01 trillion in October, up 6.6 per cent from September’s collection of Rs 944 billion.
   • Experts attributed this to pick-up in demand in the run-up to the festival season, and the closing of input tax claims for 2017-18. In April, Rs 1.03 trillion was collected.
   • According to the April-September data from the Controller General of Accounts, Central GST (CGST) collection in the first seven months (April-October) stands at Rs 2.64 trillion, which is just 44 per cent of the budgeted CGST revenue of Rs 6.04 trillion.

4. Festive season likely to drive GST collections past Rs 1 trillion in November
   • “With the current trend for GST mop-up, it is expected that the monthly collections could again touch Rs 1 trillion around November and December,” an official said.
   • The collections during November and December 2018 would reflect the sales and purchases made during the months of October and November 2018.
   • According to the official, people usually hold back their purchases till Ganesh Chaturthi, which marks the onset of festive season and fell in September this year. Besides, the revenue department’s initiative to plug loopholes in the system to curb evasion too would help in raising revenue.

5. Rate cut must be passed on for each packet size, says GST authority
   • Companies or dealers may have to cut prices of each stock keeping unit (SKU) of their products to pass on the benefits of any lower goods and services tax (GST) rate.
   • This comes from an order of the national anti-profiteering authority (NAA) in a case related to a Maggi noodles (Nestlé’s) dealer. A retailer of Maggi had alleged that despite reduction in the GST rate from 18% to 12% in November 2017, the base price of a 35g pack, also known as the Rs 5 (MRP) pack, was increased to bring it at par with the pre-rate change price, including taxes.
   • The (wholesale) dealer argued the benefit which had accrued in respect of the Rs 5 MRP pack had been passed on by reducing the price of the other pack of Maggi, the Rs 12 MRP one. Further, that price of the latter pack was reduced by Re 1, more than the total benefit arising on both types of packs, of 92 paisa.
   • Such a reduction, added the dealer, was made in light of the shortage of small-value currency notes and non-availability of coins less than a Re 1 value.
   • The complainant subsequently sought to withdraw the grouse in question but this request was rejected, stating investigation had already been undertaken by the authorities. The NAA has since held that the dealer had no liberty to arbitrarily decide in respect of which products he should pass on the benefit. A 35g Maggi pack was distinct from a 70g one; they could be bought by different customers. Hence, the benefit accruing to one customer cannot be given to another.
• The NAA has, therefore, told the dealer to deposit Rs 90,778, the amount considered 'profiteered' in sum, with annual interest of 18%, into the Consumer Welfare Fund, after refunding the retailer the 'profiteered' amount of Rs 2,253 (with interest). A similar ruling was given by it recently in a case involving Lifestyle International, on cosmetic products.

6. Tamil Nadu asks Government to settle Rs 56 billion IGST dues, give Rs 20 billion assistance.
• Tamil Nadu has asked the Ministry of Finance to settle Rs 54.26 billion Integrated Goods and Services Tax (IGST) for 2017-18 and the ad hoc settlement of IGST due for September 2018 immediately. Besides, the state also said that it should be compensated with a special assistance of Rs 20 billion for the unfair treatment that the state received under the 14th Finance Commission.
• Tamil Nadu Chief Minister Edapaddi K Palaniswamy on Monday met Prime Minister Narendra Modi in New Delhi and submitted a 20-point memorandum, seeking over Rs 400 billion for various schemes and projects. In the memorandum, it was stated that GST operates on the destination principle.
• The IGST collected is meant for distribution between the Centre and the states. Approximately, 50 per cent of the IGST will accrue to the Centre and 50 per cent to states. The states would receive IGST in proportion to the consumption of goods and services on the destination principle.
• However, a significant shortfall in the settlements of amounts due to Tamil Nadu was found and accordingly the state has asked the finance ministry for early settlement of the unsettled IGST to Tamil Nadu, which was to the tune of about Rs 56 billion.

7. Free IPL tickets to attract GST
• In response to an application filed by KPH Dream Cricket Pvt. Ltd., which owns and operates IPL cricket team Kings XI Punjab, the Punjab bench of the AAR has ruled that providing complementary tickets free of charge would be considered supply of service and therefore amount to levying of tax.
• The GST rate on sale of IPL tickets is 18 percent. The AAR also ruled that KPH Dream Cricket would be eligible to claim input tax credit on taxes paid for such complimentary tickets only to the extent of input and input service for such tickets.
• The AAR said when the applicant issues a complimentary ticket to any person, the applicant is “certainly displaying an act of forbearance by tolerating persons who are receiving the services provided by the applicant without paying any money, which other persons not receiving such complimentary tickets would have to pay for”.

8. Kerala firms with canteens to now pay GST on employee food bills
• Employers in Kerala who provide canteen facilities to employees will now have to pay the goods and services tax (GST) on food and beverages the latter buy. Appellate Authority of Advanced Ruling (AAAR) in the state has upheld the Advance Authority for Ruling (AAR) order to impose the tax.
• Experts said this will force companies to re-evaluate what facilities they provide employees. The central government had earlier said any service made by an employer to an employee, as part of a contractual agreement, would not come under the GST ambit.

9. Companies struggling for IGST refunds in hill states, especially J&K
• Companies are struggling to get refunds under the goods and services tax (GST) system in hilly areas, more so in Jammu and Kashmir.
• While they are getting only 29 per cent of the integrated GST (IGST) on inter-state movements of goods as refund, unlike 100 per cent of the excise tax in the pre-GST regime in hilly areas, the issue has become more contentious in Jammu and Kashmir because the units there were exempt from the service tax on inputs too.
• Also, procedural issues are not letting them get even 29 per cent refunds in J&K and other hilly states, say those who have units there.
• This will take a toll on employment generation in these states, they say.

10. Now, vehicle owners required to pay 18% GST for pollution check certificate
• Vehicle owners will have to pay a GST of 18 per cent to get their vehicles checked for pollution, the Authority for Advance Ruling (AAR) has said.
• The Goa bench of the AAR passed the ruling on an application filed by Venkatesh Automobiles on whether the service provided for issuing ‘Pollution under Control’ (PUC) certificate on behalf of the state government is exempted from the Goods and Services Tax (GST).
• “The activity of issuance of Pollution under Control certificate for vehicles issued by the applicant is not covered under SAC (Services Accounting Code) 9991 and is covered under residual entry and hence, should be taxed at 18 per cent GST,” the AAR said.
• Every vehicle plying on roads need a PUC certificate, which indicates that the emissions are in alignment with pollution norms and are not harmful to the environment.
• The AAR said that the government has authorized the applicant to issue PUC certificate on payments. “It is the service provided by the applicant to the customers on payment of service charges. Since the services of testing of pollution are provided on payment of service charge, GST is payable at an applicable rate,” the ruling said.

CONGRATULATIONS
Shri Dilip Kumar Pal, ACS, on his being awarded Ph.D. Degree by the University of Kalyani (a NAAC accredited A Grade University) with effect from 25.09.2018.
CERTIFICATE COURSE IN GOODS & SERVICES TAX

With a view to equip Company Secretaries with the skills and to develop their competencies in the area of GST, ICSI has signed an MoU with BSE Institute Limited (BIL) a wholly owned subsidiary of BSE Limited (formerly known as Bombay Stock Exchange), to offer a Certificate Course in GST to its Members and Professional Programme Students. The course provides a comprehensive insight about principles of GST as well as other nuances of the new indirect tax regime. It encourages the candidate to gain an understanding about the relevance of GST as well as of the preparations and challenges that lie ahead.

Course Structure & Assessment

The Certificate course in GST is an advanced level course and shall test a candidate’s knowledge of various concepts of GST. In order to give sufficient practical knowledge of GST, the course has been modeled with web based classes followed by an online examination.

Course Duration

- Duration of the course is 60 hours
- Web based classes of 6 hours each will be conducted every Saturday and Sunday
- The tentative date for launch of First batch of Certificate Course in GST is December 1, 2018.

Study Material

- Soft copy of the study material will be provided to the participants

Assessment

- An online examination will be conducted at the end of the course comprising of multiple choice or short questions
- Attendance of at least 60% is compulsory in order to appear in the online examination

Award of Certificate

- On successful completion of the course, a Certificate will be awarded by ICSI jointly with BSE Institute Limited.

Course Fee

- Rs. 7,500/- inclusive of GST (To be submitted online)

Interested participants may kindly go through the detailed brochure of the course uploaded on the link: https://www.icsi.edu/certificate-course-in-gst/.

For any queries kindly contact at 0120-4082137 or email at pmq@icsi.edu
MOVE TO DIGITAL BOARD AND COMMITTEE MEETINGS WITH EASE.

“We are using Dess Digital Meetings application for Board and Committee meetings for more than 2 years and found it very easy to use and feature rich."

CS Gorav Arora,
Divisional Head - Corporate Secretarial,
Apollo Tyres Ltd.

Dess Digital Meetings
The Trusted Meetings Solution Used By The Leading Boards

+91 97029 28562  info@dess.net

Advertisement Tariff

(With Effect from September 2018)

<table>
<thead>
<tr>
<th>BACK COVER (COLOURED)</th>
<th>COVER II/III (COLOURED)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non – Appointment</strong></td>
<td><strong>Non – Appointment</strong></td>
</tr>
<tr>
<td>Per Insertion</td>
<td>Per Insertion</td>
</tr>
<tr>
<td>₹ 1,00,000</td>
<td>₹ 70,000</td>
</tr>
<tr>
<td>4 Insertions</td>
<td>4 Insertions</td>
</tr>
<tr>
<td>₹ 3,80,000</td>
<td>₹ 1,52,000</td>
</tr>
<tr>
<td>6 Insertions</td>
<td>6 Insertions</td>
</tr>
<tr>
<td>₹ 5,28,000</td>
<td>₹ 3,69,000</td>
</tr>
<tr>
<td>12 Insertions</td>
<td>12 Insertions</td>
</tr>
<tr>
<td>₹ 10,20,000</td>
<td>₹ 7,14,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FULL PAGE (COLOURED)</th>
<th>HALF PAGE (COLOURED)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non – Appointment</strong></td>
<td><strong>Non – Appointment</strong></td>
</tr>
<tr>
<td>Per Insertion</td>
<td>Per Insertion</td>
</tr>
<tr>
<td>₹ 50,000</td>
<td>₹ 15,000</td>
</tr>
<tr>
<td>4 Insertions</td>
<td>4 Insertions</td>
</tr>
<tr>
<td>₹ 1,00,000</td>
<td>₹ 49,000</td>
</tr>
<tr>
<td>6 Insertions</td>
<td>6 Insertions</td>
</tr>
<tr>
<td>₹ 2,64,000</td>
<td>₹ 1,32,000</td>
</tr>
<tr>
<td>12 Insertions</td>
<td>12 Insertions</td>
</tr>
<tr>
<td>₹ 5,10,000</td>
<td>₹ 2,55,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PANEL (QTR PAGE) (COLOURED)</th>
<th>EXTRA BOX NO. CHARGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Insertion</td>
<td>For ‘Situation Wanted’ ads</td>
</tr>
<tr>
<td>15,500</td>
<td>100</td>
</tr>
<tr>
<td>(Subject to availability of space)</td>
<td>For Others</td>
</tr>
<tr>
<td>4,500</td>
<td>200</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>MECHANICAL DATA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Page - 18x24 cm</td>
</tr>
<tr>
<td>Quarter Page - 9x12 cm</td>
</tr>
</tbody>
</table>

*The Institute reserves the right not to accept order for any particular advertisement.
*The Journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month’s issue.

For further information write to:
The Editor

The Institute of Company Secretaries of India
Bharat Nirman Samarpan Purushottam Samarpan
In Pursuit of Professional Excellence

www.CSI.EDU

30% Attraction

made the study easier for me

REBATE ON THE TOTAL BILLING FOR 36 INSERTIONS IN 3 YEARS IN ANY CATEGORY

Spl.

Advertisement Tariff

Back Cover (COLOURED) Cover II/III (COLOURED)

Non – Appointment Non – Appointment
Per Insertion Per Insertion
₹ 1,00,000 ₹ 70,000
4 Insertions 4 Insertions
₹ 3,80,000 ₹ 1,52,000
6 Insertions 6 Insertions
₹ 5,28,000 ₹ 3,69,000
12 Insertions 12 Insertions
₹ 10,20,000 ₹ 7,14,000

Full Page (COLOURED) Half Page (COLOURED)

Non – Appointment Non – Appointment
Per Insertion Per Insertion
₹ 50,000 ₹ 15,000
4 Insertions 4 Insertions
₹ 1,00,000 ₹ 49,000
6 Insertions 6 Insertions
₹ 2,64,000 ₹ 1,32,000
12 Insertions 12 Insertions
₹ 5,10,000 ₹ 2,55,000

Panel (QTR Page) (COLOURED) Extra Box No. Charges

Per Insertion For ‘Situation Wanted’ ads
15,500 100
4,500 200

Mechanical Data

Full Page - 18x24 cm Hall Page - 9x24 cm or 18x12 cm Quarter Page - 9x12 cm
Introducing Governance Cloud™

Is your data currently hosted in a secure and compliant environment? Diligent have also released applications on Evaluations and Meeting Minutes so you can run all your Board meetings securely and compliantly. Sign up before 31 December 2018 and receive 60% discount off Diligent Boards.

Diligent has a number of clients in India including Indian Oil—read the case study below to learn how Diligent has helped them.

Indian Oil is very satisfied per Raju, “In the beginning, one of the things we also heard before choosing Diligent was that they provided excellent services, and we found this to be very true. And, we were really amazed by the Diligent Boards’ solution – it is so simple and easy to use.”

For more information or to request a demo, contact us today:

Singapore 800 130 1595
India 080-800-100-4374
info@diligent.com
diligent.com/au

Malaysia +60(3) 5922 1714
Hong Kong 852 3008 5657
diligent.com/hk

Governance Cloud from Diligent.
Creators of Diligent Boards.