VOL 46 | NO. : 11 | Pg. 1-168 | NOVEMBER 2016 | ₹100/- (Single Copy)

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

FOCUS ON...

COMPETITION LAW

ICSI
THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
Website : www.icsi.edu


Best Practice Based?
Worldclass?
On cloud?
On Premise?
Secure?
Many Questions
Easy To Use?
India Compliant?
Customizable?
Answer
Board App
Meet Us At
17 -19 Nov 2016, Gandhinagar, Gujrat
44th National Convention of Company Secretaries
To request for a trial , register on http://boardapp.prosares.com/register
Board App
Available On Premise
Available On Cloud
Available on the App Store
GET IT ON Google Play
Brought To You By
PROSARES
On Time I On Spec I Always
Prosares Solutions Pvt Ltd
info@prosares.com
+91-9833585902
Exclusive Marketing Partners
ZEULANTIS SOLUTIONS
Zeulantis Solutions
info@zeulantis.com
+91-9967014014

The Council

11

Editorial Advisory Board

CONTENTS

ICSI

ISSN 0972-1983

CHARTERED SECRETARY®

[Registered under Trade Marks Act, 1999]

Vol. : XLVI ■ No. 11 ■ Pg 1-168 ■ November-2016

QR Code/Weblink of Chartered Secretary Journal
https://www.icsi.edu/JournalsBulletins/CharteredSecretary.aspx

Annual Subscription

Inland : Rs. 1000 (Rs. 500 for Students of the ICSI)
Foreign : $100; £60 (surface mail) Single Copy : Rs. 100

'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. ■ ■ The write ups of this issue are also available on the website of the Institute.

Edited, Printed & Published by

Dr. S.K.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 (2016)(11/--- (Page No.)

mpprinters

Design & Printed at
M. P. Printers
B-220, Phase II, Noida-201305
Gautam Budh Nagar, U. P. - India
www.mpprinters.co.in

1 National Symposium on GST held at Jaipur - Chief Guest Arjun Ram Meghwal (Hon'ble Union Minister of State for Finance and Corporate Affairs) seen lighting the lamp to mark the inauguration.

2 , 3 Address by CS (Dr.) Shyam Agrawal and Chief Guest Arjun Ram Meghwal.

4 ICSI – NSE Joint workshop on Secretarial Audit – Sitting on the dais from Left: CS Dinesh C Arora, Prasanta Mahapatra (GM, SEBI), Dr. V R Narasimhan (Chief Regulations, NSE), CS Mamta Binani, Chief Guest Naved Masood (Former Secretary, MCA), CS Vineet K Chaudhary and CS Alka Kapoor.

5, 12 Address by CS Alka Kapoor, Dr. V R Narasimhan, Naved Masood, CS Mamta Binani, Prasanta Mahapatra, CS Dinesh C Arora, Avinash Kharkar (Head Listing, NSE) and CS Vineet K Chaudhary.

13-14 Cross section of the invitees, dignitaries and delegates at the workshop.


15


16


17


18


19


20

21


22


23


24

15▸ ICSI – BSE joint Seminar on Secretarial Audit – A Dynamic Mechanism to ensure Governance and Compliance – Standing From Left: Nehal Vora (Chief Regulatory Officer, BSE Ltd) , Prasanta Mahapatra (General Manager, SEBI), Ashish Kumar Chauhan (MD and CEO, BSE Ltd.) and CS Makarand M Lele.

16-19▸ Address by CS Makarand M Lele, Ashish Kumar Chauhan, Prasanta Mahapatra and Nehal Vora.

20▸ A view of the invitees, dignitaries and delegates.

21▸ SIRC – Hyderabad Chapter –National Training Program on Emancipate Women Prodigy to Rule the Roost – Release of ICSI – Complykaro Report on Implementation of Prevention of Sexual Harassment at Workplace – Standing from Left: CS S. Kavitha Rani Sakhamuri, CS Mahadev Tirunagari, CS Ahalada Rao V, Daggubati Purandhareswari (Former Minister of State for HRD), Sailaja Kiran (MD, Margadarshi Chit Funds Pvt. Ltd.), Meenakshi Datta Ghosh (IAS [Retd.] Former Secretary, Government of India), CS Mamta Binani, CS Ramakrishna Gupta R and Vishal Kedia (Founder & Director, Complykaro Services Private Limited).

22▸ Institute Of Directors (India) – 16th London Global Convention on Corporate Governance & Sustainability - Board's Evolving Role in an Uncertain Global Economy – Lord Swraj Paul seen with ICSI representatives –Standing from Left: CS Ashish C Doshi, CS Vineet K Caudhary, Rt. Hon. Lord Swraj Paul of Marylebone, PC, Founder & Chairman, The Caparo Group Plc, UK, CS Mamta Binani, CS Dinesh C Arora and a Member of the Institute.

23▸ UK Parliament – House of Commons – Indo-UK Meet in progress.

24▸ Group photo of ICSI delegation (CS Mamta Binani and CS Atul H Mehta) with Council Members of Corporate Secretaries International Association(CSIA).

25

26

27

28

29

30

31

32

25▸ NIRC - Bhilwara Chapter - National Symposium on GST – Release of backgrounder – Standing from Left: CS Sanjana Jain, CS Nitin Mehta, CS (Dr.) Shyam Agrawal, Chief Guest Subhash Bahedia (MP), Guest of Honour R. L. Nolkha (Chairman, Nitin Spinners Ltd.), CS V. S. Tapadia and CS P. K. Mittal.

26▸ NOIDA Chapter – Full day seminar on GST - Sitting on the dais from Left: CS Ravi Bhushan Kumar, CS Vineet K Chaudhary, Chief Guest Vinod Goel (IRS, Commissioner Excise and Services Tax(Retd.), Guest of Honour CS P K Mittal, Pradeep Yadav (Additional Commissioner(Grade 2) – Commercial Tax Department, Gautam Budh Nagar, UP) and R. P. Pandey (Joint Commissioner – Commercial Tax Department, Gautam Budh Nagar, UP).

27▸ North Eastern Chapter, Guwahati - Seminar on Goods and Services Tax – Sitting on the dais from Left: CS Pravin Chhajer, CS Amit Pareek, CS (Dr.) Shyam Agrawal, Justice P. K Saikia (NCLT Member, Guwahati), CS Biman Debnath. CS Vivek Sharma addressing.

28▸ EIRC – Ranchi Chapter - Seminar on GST – Sitting on the dais from Left: CS Sanjay Mundhra, CS Sanjeev Kumar Dikshit, CS Sandip Kumar Kejriwal and CS Subhash Bharti.

29▸ Punjab State Conference on CS - A Corporate Strategist hosted by Ludhiana Chapter - CS Rajiv Bhambri addressing. Others sitting from Left: CS Depesh Kumar, CS Nitesh Sinha, CS Pavan Kumar Vijay, CS Nesar Ahmad, CS Satwinder Singh, CS Rajiv Bajaj, CS Manish Gupta and CS Jatin Singal.

30▸ NIRC - Gurgaon Chapter - Full Day Seminar - Sitting on the dais from Left: CS Rajeev Sunaria, CS Dhananjay Shukla, D.C. Yadav (Social Worker), Rao Narbir Singh(Hon'ble Minister for PWD, Govt. of Haryana, Chandigarh), CS Satwinder Singh, CS Rajiv Bajaj and CS Devender Suhag.

31▸ SIRC – 41st Southern India Regional Conference – On the dais from Left: CS Ramakrishna Gupta, CS Ramasubramaniam C, CS Sivakumar P, Chief Guest Dr. K N Raghavan, CS Syam Kumar R, CS Ahalada Rao V and CS Gopalakrishna Hegde.

32▸ Rajkot Chapter – 48th CS Day - Seminar on an Overview of Security Market and Investor Protection Mechanism - Seen from Left: CS Samir Pathak, Dushyant Paneri of BSE Ltd, Dr. Raniga (SEBI Resource person), CS Kartik Bavishi of BSE Ltd. and CS Purvi Dave addressing.

CS DAY (48th Foundation Day Celebration of ICSI at Kolkata)


33


34


35


36


37


38


39


40

33▸ CS Day (48th Foundation Day Celebration of ICSI at Kolkata) – Chief Guest Derek O'Brien (MP & Leader, All India Trinamool Congress Parliamentary Party, Rajya Sabha) being welcomed and escorted by CS Vineet K Chaudhary, DVNS Sarma and CS Mamta Binani.

34▸ Release of the Souvenir brought out on the occasion – On the dais from Left: CS Dinesh C Arora, CS S K Agrawala, Dr. Rajesh Kumar (IPS, ADGP, CID,W.B.), CS Mamta Binani, Dwarika Prasad Tantia (Chairman, GPT Infra Projects Ltd.), CS R Krishnan, Sajan Kumar Bansal (MD, Skippers Ltd.) and CS Sandip Kumar Kejriwal.

35▸ Chief Guest Derek O'Brien addressing.

36▸ A view of the Chief Guest, Guests of Honour , Past President, Central Council Members, Secretary, ICSI and other dignitaries present on the CS Day celebration.

37, 38▸ Glimpses of the cultural programmes organised on the day.

39▸ Rendition of the National Anthem – Standing with the performers from Left: CS Sandip Kumar Kejriwal, CS Dinesh C Arora, CS S K Agrawala, CS Mamta Binani, Rajesh Sharma (Govt. Nominee on the Central Council of ICSI) and CS Anil Murarka.

40▸ Group photo of rank holder students of ICSI during 'Kolkata Darshan'.


41


42


43


44


45


46


47


48


49

41▸ HT Shine HR Conclave held at Mumbai – A view of the dignitaries – Standing among others CS Mamta Binani (standing 4th from right), CS Mahavir Lunawat (standing 2nd from right) and CS Atul H Mehta (standing right).

42▸ A view of the invitees, dignitaries and delegates at the HR conclave.

43▸ NIRC - Celebration of CS Day – Panel Discussion among the Past Presidents of ICSI – Panelists sitting from Left: CS Pavan Kumar Vijay, CS O P Dani, CS Ranjeet Pandey (Moderator of the panel discussion), CS (Dr.) G B Rao, CS Nesar Ahmad and CS Virender Ganda (Past Presidents, ICSI).

44▸ NIRC – Celebration of CS Day – Motivational Talk – Group photo - CS (Dr.) Pawan G. Agrawal (Motivational Speaker, Mumbai) seen with Chairman, NIRC, Council Members-ICSI, Past Presidents-ICSI, Regional Council Members, NIRC, Past Chairmen of NIRC and Former Secretaries-ICSI.

45▸ WIRC - GOA Chapter - Symposium on Companies Act, 2013 Recent Amendments & NCLT & NCLAT - CS Mamta Binani addressing. Others sitting from Left: CS Vineet K Chaudhary, Trupti Sharma (ROC, GOA), K.Anpazhakam (Commissioner,Customs,Central Excise & Service Tax), CS Makarand M Lele and CS Girija Nagvekar.

46▸ Group photo of Office Bearers and Members of the Managing Committee of Goa Chapter with President, ICSI and RoC, Goa – from Left: CS Pratika Shenvi Dessai, CS Urjita Damle, CS Teja Gadekar, Trupti Sharma (RoC, Goa), CS Mamta Binani, CS Girija Nagvekar, CS Shweta Kharangate, CS Shilpa Dhulapkar and CS Beena Mahambrey.

47▸ Indore Chapter - National Symposium on Goods & Services Tax at Indore - CS Ashish Garg addressing the gathering.

48▸ A view of the gathering.

49▸ EIRC - Bhubaneswar Chapter - Pledge taking ceremony on the occasion of National Integration Day.

ARTICLES

PART-1 : ARTICLES ON COMPETITION LAW

Competition compliance is a form of regulatory compliance and involves compliance with the rules of competition. The competition law doesn't present any straight-jacketed principle and its violation leads to severe penalties and damage to reputation of the enterprise. Compliance with it on the other hand mitigates the risk associated with heavy fines and increases the goodwill of the enterprise. Traditionally the antitrust authorities have focused on creating the fear of compliance by imposing penalties but now their focus have shifted towards engendering the culture of compliance. However, the antitrust authorities are resource constrained so they encourage enterprises to adopt Competition Compliance Programme (CCP). A CCP is the commitment of a company to comply with the provisions of the Competition Act by establishing a formal internal framework. It helps the enterprise in identifying, assessing, mitigating and reviewing their competition law risks. With the adoption of CCP, Company Secretaries can add real value by becoming pro-active compliance officers of the enterprise using their knowledge of statutory compliance. Establishing a strong ethical culture through an active CCP goes a long way in building corporate image and in identifying the boundaries of permissible conduct.

The process of regulation of combination has been fairly institutionalized in India by successive amendments in the statutory framework since its enforcement started. The Combination Regulations now exclude certain categories of corporate acquisitions including hostile takeovers or amalgamations, which are efficiency enhancing and being below specified levels may not raise competition concerns. The Regulations now provide the much needed clarity for the Industry. The article, while briefly explaining these provisions also illustrates some cases of these categories of combinations where a detailed scrutiny had to be made by CCI before granting approval to highlight the lines of demarcation between innocuous and strategic acquisitions, takeovers or amalgamations.

Filing deadlines are not a necessary feature of a modern merger control regime. In the last 5 years of merger regime, the CCI has approved 98% of the notices filed and these too in less than 30 days of filing of a valid/complete notice. Thus, there is realization more than before that most of the mergers are benign and they enhance performance of corporate entities. Accordingly, it is high time for the CCI to revisit the mandate and take steps to abolish filing deadline by amending the law.

Competition Commission of India (CCI) is aggressive and assertive in its enforcement outlook levying hefty fines for violations. It is imperative that every company and its officers in charge are aware of the canons of competition law while conducting business. Competition law is all pervasive and it percolates to every level of a company, whether at the level of board of directors, senior management, project managers, suppliers, distributors and all other business partners. The CCI has power to levy fines, both on individuals and at the company / group level. As such, the CCI has started levying fines on not only the delinquent enterprises but also on the officers in charge. This is due to a lack of prevalence of proper and periodic competition law compliance audit mechanism in India. This article signifies the mandatory requirement of competition law compliance by corporates in India under various statutory provisions, in addition to highlighting the fact that competition law compliance audit is an integral part of secretarial audit.

Under the Competition Act, 2002, the Competition Commission of India has been established with the objective to prevent activities that have an adverse effect on competition in India. It is the core pillar of the Act which has tools to implement and enforce competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market. The article analyses some important judicial precedents which cover situations where proceedings before the CCI were attempted to be stalled or delayed by invoking writ jurisdiction of High Courts and by adopting other legal mechanism. The article highlights the guiding principles (apart from the binding impact) laid down by the precedents prominent being :- taking a prima facie view and issuing a direction to the Director General for investigation would not be an order appealable under Section 53A ; The Commission, being a statutory body entitled to form its opinion without any assistance from any quarter or even with assistance of experts or others; while passing directions and orders dealing with the rights of the parties in its adjudicatory and determinative capacity, it is required of the Commission to pass speaking orders, upon due application of mind, responding to all the contentions raised before it by the rival parties; The Commission, in cases where the inquiry has been initiated by the Commission suo motu, shall be a necessary party and in all other cases the Commission shall be a proper party in the proceedings before the Competition Tribunal; The writ jurisdiction of High Courts under Article 226 cannot be challenged etc. . The basic learning is that expeditious disposal of matters before the Commission and the Tribunal is imperative and hence burdening the Tribunal with appeals against non-appealable orders would defeat the object of the Act, as a prolonged litigation may harm the interest of free and fair market and economy. The Apex Court has laid the core guidelines in this regard in the case of C.C.I Vs. Steel Authority of India Ltd & Anr (2010) and hence this has lessened the pressure of intervening litigation in respect of proceedings before CCI.

Overview of Competition and Consumer Laws in India

P-44

Dr. Rajkumar S Adukia

The rationale of fair competition is that the widest possible choices are available at the most competitive prices. The main purpose of competition law is to ensure that the competition remains fair and eventually promotes consumer welfare. Because there is competition in all sectors, the boon of competition law, consumer laws and sector specific regulators is needed to protect the consumers. Consumer Laws complement Competition Law. While Consumer protection Law bring in direct individual relief to the consumers, Competition Law minimizes market manipulation and corruption and thereby ensures consumer welfare. Competition and consumer protection play a vital role in promoting economic growth. Competition legislations therefore aim to overcome anticompetitive environment in an economy by applying a set of market rules that guarantee a level playing field for all businesses.

Antitrust issues in Pay-for-delay

P-49

Sachin Batra and Ruchi Jain

In the recent years, the realm of Intellectual Property Rights which was otherwise protected from the scrutiny of antitrust authorities has witnessed a growing interest of such authorities on account of the pay for delay strategy adopted by the patent holders, particularly the pharmaceutical companies. For the pharma companies, the massive investment and long research processes lead to the formation of a heavily patented industry. Companies obtain patents to ensure protection of their intellectual work and to recoup previous investment. Patents are also essential for the generic companies. Generics develop and market drugs that bear the same active ingredient and are comparable to an authorized originator's drug. Both originators and generics wish to make the previous R&D worthwhile through product profits, which could lead to aggressive business strategies with potentially anti-competitive effects. As a result, it impairs potential competition and is therefore frowned upon by the antitrust authorities. In some patent disputes where the originator initiated the procedure against certain generics, the originator ended up paying to the alleged infringer, resulting in the generics' delaying or giving up launch of generic drugs. This behaviour has been named "pay-for-delay" or "reverse payment". Attention from the US competition authority on pay-for-delay deals has existed for years and now these are viewed seriously by competition authority in India as well. This article explores the case laws in European Union and United States on the subject.

Liability of individuals under the Competition Act, 2002

P-52

Deeksha Manchanda

The article discusses the position of law under the Competition Act, 2002 with respect to imposition of penalty on an individual. The article describes the scope of the provision under which the penalty can be imposed and the enforcement trends relating to the same. The aim of the article is to provide officers in charge of companies the scope of the powers of the CCI as well as methods by which they can mitigate the risk of fine being imposed on them. The article also discussed the procedural aspects in order to provide individuals some clarity as to when and how to present their defences before CCI.

Competition Law – A paradigm shift in the competition landscape for sustainable economic resilience

P-55

G Krishna Murty

The present competition law is a new generation law that provides openness in economy and throws challenges with regard to co-ordination, harmonization of various laws *vis-à-vis* the Act. The main challenge will be creating awareness about the fair play competition among public. This Article while presenting critical analysis on the nitty-gritty of the provisions of the Act, makes a critical appraisal of the deficiencies on important aspects throwing special focus on decided cases where the essence of the Act is interpreted brushing off the conflicting views of CCI and CAT in terms of demarcation of their powers. It also throws light on aberrations in certain provisions of the Act and anomalies in the regulations framed thereunder. In addition, it sought the attention of the implementing agency to address the potential grey areas and to initiate measures for formulating a National Competition Policy to achieve a sustainable economic resilience and to let the law go a long way in the global competition landscape.

Competition is the way of life for Business, but "All that is Traditionally Practised" to get competitive edge, may not be permissible in law

P-63

Dr. Mahesh Thakar

No country in the world can afford to ignore or restrict industrial growth and enterprises constitute the pioneering force for such activity. At the same time, in democratic countries like India, the constitutional mandate of social and economic justice also deserves equal weightage. The directive principles of state policy mandate that the operation of economic system does not result in the concentration of wealth and means of production to the common detriment. The above policy can be actually implemented through legislation only and India has right since independence through the laws like Industrial Development and Regulation (IDR) Act, MRTP Act and now through Competition Act has made significant move in that direction. Competition Act 2002 reflects the global vision for industrial growth with India specific perspective. The law while respecting the freedom to carry on business prohibits anti-competitive agreements, combinations which have adverse effect on competition arising out of amalgamation and mergers and horizontal and vertical agreements which defeat competition. Adjudicatory mechanism in form of Competition Commission of India and Competition Appellate Tribunal has been provided for and several landmark directives have also been given by the Commission.

Provisions relating to prohibition of anti - competitive agreements & abuse of dominant position under the Competition Act, 2002

P-69

Dr. Rajeev Babel

The main objective of competition law is to promote efficiency using competition as one of the means of assisting in creation of market responsive to consumer preferences. The advantages of perfect competition are threefold: Allocative Efficiency, Productive Efficiency, and Dynamic Efficiency. The agreements which are prohibitive in nature have been divided into two categories; Horizontal Agreements and Vertical Agreements. Once it is established that an agreement as listed in section 3(3) exists, it will be presumed that the agreement has an appreciable adverse effect on competition within India; the onus to rebut this presumption would lie upon the Opposite Parties which may be rebutted in light of the factors enumerated in section 19(3). Dominant position means a position of strength, enjoyed by an enterprise, in the relevant market, in India. Dominant position by itself is not prohibited, however abuse of dominant position is a violation of section 4.

Role of Competition Commission of India (CCI) in prevention of abuse of dominant position - Some Important Rulings

P-73

Delep Goswami and Anirrud Goswami

In the corporate world, the term "competition" is generally understood to mean a process whereby the commercial enterprises compete with each other to win over/secure customers for their products and services and in the process outsmart each other and even eliminate the rivals. In fact, an effective competitive business environment, duly supported by competition law and policy, is one of the essential elements of a thriving market economy and it benefits the customers by allowing them to access wider range of better products at lower prices which unfortunately cannot be a possibility if monopoly were allowed to prevail. In this regard, the provisions of the Competition Act, 2002, regulate the activities of virtually all the commercial trade and services and these are regulated by the rulings and decisions rendered by the Competition Commission of India (CCI). To understand the unique role being played by the CCI in ensuring competitive environment and to discipline erring companies by preventing abuse of dominant position, in this article, reference has been made only to some important rulings which will throw light on the role of the CCI and the importance and significance of the orders passed by it.

"Combinations" under Competition Commission of India

P-77

Deepika Vijay Sawhney

"Combinations" under the Competition Act covers Mergers, Amalgamation of Companies or Acquisition of control, shares, voting rights or assets. But not all types of Combinations need to be reported or require prior approval of CCI. The Act provides for thresholds of assets and turnovers for mandatory reporting to the Commission. These thresholds are sufficiently high to keep small size combinations which are unlikely to have any appreciable adverse effect on competition in markets in India. In addition to these thresholds, some exemptions are also provided under the Combination Regulations.

Fair Competition: The Engine of Economic Development

P-83

Dr. Devendra Jarwal

The Competition Laws are seen as social as well as economic legislation. On the one hand it lays rule for competition among market players and on the other hand it provides security to weaker organisation and consumers against the unfair trade practices. This paper highlights the need for the competition laws and its impact upon the economic development. The evolution and structure of competition laws as prevailed in India have also been discussed in this article. The article ends with the conclusion that Fair Competition stimulates increased efficiency in innovation, production and resource use, which in turn, leads to enterprise development and increased aggregate welfare with overall economic development.

PART-2 : OTHER ARTICLES

Dissemination of Price Sensitive Information - Continuous Disclosure Requirements for Listed Entities under Listing Regulations

P-87

Khushro Bulsara

SEBI notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) on September 2, 2015 and the same was made effective after 90 days. This is one of the biggest and most comprehensive overhaul of the erstwhile Listing Agreement that embodied an agreement between the Exchange and the Company by spelling out the company's duties and responsibilities. However, the important provisions of the LA have been amplified and many lacunae in the earlier LA have been now plugged in the LR. By basing the LR on the OECD principles that have now been adopted by the G20 (thus giving them a global acceptance of a high stature) the Regulation has become a seminal piece of law enacted by SEBI after a long consultation process with relevant intermediaries. Regulation 30 that deals with disclosure of price sensitive information is one of the most important regulations within the LR and has been dealt with at length in the LR. Therefore it was felt suitable to base the article on this important, relevant and critical Regulation.

Valuation of Goods & Services : Section 15 GST Model Act & GST (Determination of the Value of Supply of Goods and Services) Rules, 2016.

P-90

Pradeep K Mittal

An attempt has been made here to explain "transaction value" as appearing in Section 15 of GST Act and more particularly in relation to "Goods". Since "transaction value", appearing in Section 15 of the Goods and Services Tax Act, 2016 is, more or less, a replica of Section 4 of the Central Excise Act, 1944, the interpretation rendered by the Courts and CESTAT in relation to Section 4 and other related rules under Central Excise Act, 1944 are relevant for GST too.

Regulating Research Analysts - An in-depth study of Securities and Exchange Board of India (Research Analysts) Regulations, 2014

P-94

Rahul P Sahasrabuddhe

Research Analysis is a very important aspect of capital market industry and no intermediaries especially, Stock Brokers, Underwriters, Merchant Bankers, Portfolio Managers, Mutual

Funds, Debenture Trustees, bankers to an issue and others would like to take investment decisions without having a very strong in-house research department. In spite of being an inalienable part of Capital Market in particular and Indian economy in general, till November 29, 2014, there was no direct Regulations as such, regulating the conduct of RA. However, SEBI vide gazette notification dated September 1, 2014 issued Securities and Exchange Board of India (Research Analysts) Regulations, 2014 and brought research analysts under its direct regulatory control. These regulations came into existence with effect from November 30, 2014. Research Analysts are required to conduct an annual audit of its compliance processes. Practising Company Secretaries are recognized to conduct such audit. This Article makes an in-depth study of the RA Regulations.

RESEARCH CORNER P-99

- **Literature Review Competition on Significant Aspects of Indian Companies Act, 2013 (Chapters XI – XXIX)** P-100
- **All India Research Paper Competition on The Financial Resolution and Deposit Insurance Bill, 2016** P-102
- **Two Days Non-Residential Research Colloquium on Indian Companies Act – Decoding unsolved Mysteries** P-104

LEGAL WORLD P-107

- **LMJ: 13:11:2016** In amalgamation, the amalgamating company ceases to exist and loses its identity as an independent person, with effect from the appointed date, after amalgamating with the amalgamated company.[SC]
- **LW: 67:11:2016** The question whether a single act of oppression would enable the CLB to intervene or oppression must be the cumulative result of continuous acts. [SC]
- **LW: 68:11:2016** Allegations as to violations of copyright in a brand name is not akin to abuse of dominance. [CCI]
- **LW: 69:11:2016** We find substance in the stand taken by the respondent-Authorities that the appellant was not in the business of 'manufacturing' tea but was merely blending and packing tea, which does not amount to 'manufacturing' of tea.[SC]
- **LW: 70:11:2016** Considering the arguments of both sides, in our opinion, the Division Bench was right in observing that, in the facts of the present case, an order of reinstatement must be eschewed, being inequitable. The workmen, however, must be compensated in lieu of reinstatement. [SC]
- **LW: 71:11:2016** Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. [Del]
- **LW: 72:11:2016** Since, it is the case of appellant that deceased had come to the premises of the appellant to meet her friend, therefore, the necessary ingredient of 'accident taking place during the course of employment' has to be considered by the trial court in right perspective, after the evidence is led by the parties.[Del]
- **LW: 73:11:2016** Without leading evidence and merely by cross-examination of the witnesses of the respondent / plaintiff /shipper / consignor, a carrier cannot say that it has discharged its onus of proof. [Del]

FROM THE GOVERNMENT P-117

- Relaxation of additional Fees and extension of last date of filing AOC-4, AOC-4 (XBRL), AOC-4 (CFS) and MGT-7 e-forms under the Companies Act, 2013-regarding.
- Constitution of Steering Committee for conducting 'National Corporate Social Responsibility Award' of Ministry of Corporate Affairs.
- National Advisory Committee on Accounting Standards
- Companies (Incorporation) fourth Amendment Rules, 2016.
- Disclosures in case of listed insurance companies
- Disclosure of financial information in offer document/ placement memorandum for InvITs
- Facilitating transaction in Mutual Fund schemes through the Stock Exchange Infrastructure
- Bullion as collateral
- Exclusively listed companies of De-recognized/Non-operational/exited Stock Exchanges placed in the Dissemination Board (DB).
- Investments by FPIs in Government securities
- Foreign Direct Investment (FDI) Policy on Other Financial Services

OTHER HIGHLIGHTS P-131

- Members Admitted/Restored
- Certificate of Practice Issued/cancelled
- Licentiate ICSI Admitted
- Company Secretaries Benevolent Fund
- List of Practising Members/Companies Registered for Imparting Training
- Regional News
- Guidelines for Change in Name of Proprietorship Concern/Firm of Company Secretary(ies)
- Revision in the Annual Membership fee, Entrance Fee and Certificate of Practice fee for Associate and Fellow Members
- Revolving Fund Schemes for becoming life members of CSBF
- Ethics & Code of Conduct Corner
- Ethics & Sustainability Corner
- GST Corner
- CG Corner
- 1st Global Congruence to Promulgate ICGD
- 44th National Convention of Company Secretaries

'How does one become a butterfly? ....

You must want to learn to fly so much that you are willing to give up being a caterpillar.'

Esteemed Professional Colleagues

I hope all of you must be feeling rejuvenated and enlivened after enjoying festivities with family and friends in the month of October.....May the joy experienced by all of us takes us to new heights in our personal and professional lives!!

'Make in India' initiative launched by Hon'ble Prime Minister Sh. Narendra Modi ji in September 2014 has indeed given a push to budding entrepreneurs and Start-ups across the length and breadth of the country. As a result, today's market scenario in India is witnessing immense economic activity and aggressive competition. This calls for a level playing ground so that competition may be protected and monopoly may be curbed. In fact, our constitution gives a hint against monopoly in Articles 38 and 39. The Directive Principles of State Policy in those Articles lay down, inter alia, that, the State shall strive to promote the welfare of the people by securing and protecting, as effectively, as may be, a social order in which justice - social, economic and political - to inform all the institutions of the national life. The MRTP Act, 1969 has its roots in these Articles of the Constitution only. Thereafter, Competition Act, 2002 has come into force to replace the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 as it was felt that MRTP had become obsolete pertaining to latest developments in international arena relating to competition laws. Therefore, the Competition Act, 2002 was enacted with the purpose of laying down a competition law regime which meets and suits the demands of the changed economic scenario in India and abroad.

The Competition Commission of India (CCI) being a statutory body is well equipped to look after matters of Competition Law. In recent times, it has investigated numerous cases having a noteworthy impact on competition in India today. CCIs foremost endeavour is to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect interests of consumers and to ensure freedom of trade carried on by other participants in markets.

A fair playing ground for business in India will not only encourage foreign investment inflow in India but will also encourage native entrepreneurs and start-ups. Despite, the need to trace out certain grey areas such as jurisdictional issues, Competition Law is a compelling legislation having emerged in India today.

As far as compliance of Competition Law is concerned, Competition authorities, the world over, are encouraging companies to ask for advice from professional experts to assist them in designing, implementing and maintaining an effective compliance program. We, the Company Secretaries, being Compliance experts are most suitable professionals to play a wider role in enforcement and compliance of Competition law. We are the Governance professionals, having expertise in providing total compliance solutions and imbibing good Corporate Governance practices in the veneer of company strategy, formulation, implementation and other aspects of company policies as a coherent whole. Therefore, it is of utmost importance that this law is discussed and analysed in detail. In these underpinnings, the core theme of this issue has been taken up as "Competition Law".

I would now take the opportunity to apprise esteemed readers about initiatives taken by the Institute in its journey towards excellence in the month gone by:

Suggestions/Representations Submitted

With a view to explore professional opportunities for our esteemed members and participate in vibrant initiatives of the Government in ensuring better governance, the Institute submitted its suggestions and representations to:

- Ministry of Shipping
- Reserve Bank of India
- Food Safety and Standards Authority of India
- Pension Fund Regulatory and Development Authority
- Insurance Regulatory and Development Authority of India
- Telecom Regulatory Authority of India
- Government of Kerala
- Government of West Bengal

CSIA Council Meeting at Bangkok

ICSI representatives zealously participated in the Council Meeting of Corporate Secretaries International Association (CSIA) hosted by Thai Listed Company Association (TLCA) at Bangkok on October 27 and the Stock Exchange of Thailand Office on October 28. On October 27, a Corporate Governance roundtable was also organised which was attended by esteemed representatives from 15 member countries of CSIA.

London Global Convention on Corporate Governance and Sustainability

ICSI was an Associate Partner with the Institute of Directors (IoD) for the '16th London Global Convention 2016' held on 17-19 October in London. The plenary session was addressed by myself on behalf of ICSI on 'Enhancing Effectiveness of Tomorrow's Boards'. Based on the contemporary theme, 'Board Evolving Role in an Uncertain Global Economy', the Convention was attended by over 300 global participants from regulators, industry and academia.

44th National Convention of Company Secretaries

I urge those esteemed members who have not yet managed to register themselves for upcoming 44th National Convention in Gandhinagar, Gujarat on November 17-19, 2016 at the earliest. For your convenience, we have upgraded and automated 'Online Delegate Registration Module' to enable all stakeholders to register with minimum entry fields.

CS Day Celebrations

To commemorate the day when our profession was imparted statutory recognition, the Institute celebrated its 48th CS day on October 04. The day witnessed celebrations across the Regional Office(s) and Chapter(s) with a mega event held at Gorky Sadan Auditorium, Kolkata in the august presence of Mr. Derek O' Brien, MP & Leader, All India Trinamool Congress, Rajya Sabha, the Chief Guest for the programme. The celebrations served as reminiscence to the journey of ICSI from a little strand to a premier Institute at global platform.

Workshop on Secretarial Audit

The National Stock Exchange has approached ICSI for Pan-India conduct of a series of workshops on Secretarial Audit. First such joint workshop was organized on October 14 at New Delhi, Sh. Naved Masood, Former Secretary, Ministry of Corporate Affairs, being Hon'ble Chief Guest. Dr. V R Narasimhan, Chief Regulations, National Stock Exchange presented observations and expectations of NSE on the Secretarial Audit Reports.

Programme on Secretarial Audit

The Institute organised a programme on Secretarial Audit in association with Bombay Stock Exchange Ltd. on the theme 'A Dynamic mechanism to ensure Governance & Compliance' at BSE International Convention Hall, Fort, Mumbai on October 17. Inaugural session of the programme was addressed by Sh. Ashishkumar Chauhan, Managing Director & CEO, BSE Ltd. The programme witnessed a gathering of approximately 450 participants.

Suggestions on Pre-Budget Memorandum

Annual Budget exercise is round the corner. We had received a communication from the Ministry of Finance (MoF) inviting suggestions for Union Budget 2017-18 regarding proposed changes in Direct and Indirect Taxes. We are pleased to share with you that the Institute submitted its suggestions in the form of Pre-Budget Memorandum to Ministry of Finance.

Regulations/Rules under Insolvency and Bankruptcy Code, 2016

The Ministry of Corporate Affairs had invited public comments on the following regulations/Rules made under The Insolvency and Bankruptcy Code, 2016 during October, 2016:

- Draft Insolvency and Bankruptcy (Liquidation of Insolvent Corporate Persons) Regulations, 2016
- Draft Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- Draft Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016
- Insolvency and Bankruptcy (Model Bye-Laws of Insolvency Professional Agencies) Regulations, 2016
- Insolvency and Bankruptcy (Registration of Insolvency Professionals) Regulations, 2016
- Insolvency and Bankruptcy (Registration of Insolvency Professional Agencies) Regulations, 2016

The Institute had invited comments from its esteemed Members, Regional Councils and Chapter Offices. The consolidated views were presented to the Ministry for consideration.

ICSI submitted views on Consumer Grievance Redressal Mechanism to MCA

MCA sought our Institute's views for the mechanism for mandating Consumer Complaint Redressal Mechanism by the Companies under the Companies Act, 2013. After due deliberations, the Institute has submitted its suggestions/views in the month of October.

Dubai Webinar on GST

The Institute organized an International Financial Webinar on 'GST and its Impacts to NRI & Global Business Community' on October 01. It was addressed by myself and Sh. Rohit Surana. This webinar elicited an overwhelming response, considering which we are in the process of organizing more such international webinars in the areas of contemporary interest with special focus on NRIs & Global Business Community.

Representation to MCA on Extension of Date for Submission of Annual Forms

On request of our professional colleagues, a representation was submitted to the Ministry of Corporate Affairs in October for extension of last date for filing of annual forms i.e. MGT-7, AOC-4 and AOC-4 CFS. We are thankful to the Ministry for considering our representation and extending this date till November 29, 2016.

Preparatory Meeting for SAARC Women Economic Forum of ASSOCHAM

ASSOCHAM, India's oldest and APEX Chamber for Commerce & Industry has proposed to organise the SAARC Women Economic Forum, Annual Meet in December 2016. In this regard, I on behalf of ICSI attended preparatory Meeting of the Women Members on October 14 at New Delhi and expressed ICSI's views on the issues faced by women on economic as well as social front and opportunities available to them.

Association with Khadi & Village Industries Commission

Khadi represents the country's self-reliance, legacy, tradition and the pride of rural productivity. ICSI has associated with Khadi & Village Industries Commission (KVIC) to take numerous initiatives for promotion of Khadi. Due to this, KVIC has decided to extend 25 per cent special discount to all members and students of ICSI on their purchase from 'Khadi India' sales outlets. We are sure that would put its drop in the ocean and support 'Make in India' initiative of the Government of India.

National Training Programme for Women Empowerment

The Institute organized a National Training Programme for Women Empowerment on the theme 'Emancipate Women Prodigy to Rule the Roost' on October 07-08 at Hyderabad. Smt. Daggubati Purandhareswari, Former Minister of State for Human Resource Development, Government of India graced the occasion as the Chief Guest.

Eminent speakers shared their knowledge on themes such as Enterprising – Entrepreneurial Skills, Women Directors – Opportunities & threats, Transforming & Transcending Professionals, Women Prodigy to Rule the Roost, Appreciation of Listing Regulations, etc.

GST Awareness Programmes

With a view to sensitize our stakeholders regarding Goods and Services Tax (GST), ICSI is organizing a series of programmes including GST Awareness Programmes, GST Awareness Walks, Webinars, Seminars, Workshops, Study Circle Meets, Panel Discussions, etc. Pan-India. In line with this, programmes were organized during the month of October by Indore, Guwahati, Bhilwara, Jaipur and Udaipur Chapters.

Knowledge Series on GST

With the objective of analyzing the detailed provisions under GST vis-à-vis provisions under existing indirect tax regime, ICSI has joined hands with PHD Chamber as an associate partner for conducting the second Knowledge Series on Goods & Services Tax. During October, two full day seminars in this series were conducted on October 07 and 21 respectively.

Second Series of Master Classes on GST

The Institute launched Second Series of Master Classes on GST in the month of September. This October, four sessions in this series on sub-themes Transitional provisions under the Model GST Law, Integrated Goods & Services Tax, Returns & Records under the Model GST Law and Show cause, Adjudication, Revision, Review & Appeals were convened. The videos of the same are available on our website.

Webinar on Simplified Process for Incorporating Company Electronically (SPICE)

As an initiative of Government Process Re-engineering (GPR), the Ministry of Corporate Affairs vide its notification dated October 01, 2016 launched Simplified Process for Incorporating Company Electronically (SPICE) through the Companies (Incorporation) fourth Amendment Rules, 2016. Its main aim is to provide speedy incorporation related services within stipulated time frames in line with international best practices. Keeping this in view, ICSI hosted a webinar addressed by senior officials of Ministry of Corporate Affairs on October 07 to familiarize the stakeholders about SPICE at ICSI HQ.

Course on International Business Taxation

Appreciating the response to our online Courses, ICSI launched an online course on 'International Business Taxation' for our members, students as well as non-members. We are pleased to share that the first batch of the Course from October 15-23, 2016 fetched an inspiring response from the participants.

Survey Report on 'Implementation of Sexual Harassment at Workplace'

The Institute released a report on the survey encapsulating and analysing responses from 614 organisations on 'Implementation of Sexual Harassment at Workplace' at Hyderabad on October 7. The report was released by the gracious hands of Hon'ble Smt. Daggubati Purandhareswari, Former Minister of State for Human Resources, Govt. of India, Smt. Sailaja Kiran, MD, Margadarshi Chit Funds Pvt. Ltd. and Smt. Meenakshi Datta Ghosh, IAS (Retd.), Former Secretary Govt of India and myself. Comply karo Services Pvt. Ltd was the associate partner of ICSI in this research.

'Precious You' – Monthly Webcast Series

I am happy to share that my interaction series with my dear students 'Precious You' is being very well received. The October series of `Precious You' focussed on magnetism of motivation for our personality development. For your reference, the video versions of all 'Precious You' webcasts of this year have been made available on President's Corner on ICSI website and Youtube also.

Online Applications for Associate Membership

For convenience of our members, an online module has been made live for accepting new ACS applications. Now all supporting documents for new ACS membership under self-attestation may be submitted by online mode, this will result in significant simplification of the procedure for accepting & processing such applications.

MoU Management Application Software

The Institute has developed and implemented an Application Software to facilitate signing of MoU and maintenance of data regarding MoU's. Through this application, a centralized data base of MoU's and the related activities would be maintained which would enable the stakeholders of the Institute to fetch information regarding various MoU's dynamically from this database through the ICSI website on instantaneous basis.

Agencies approved for imparting 15 days specialized training

The Institute has approved 10 agencies for imparting 15 days specialized training to CS students under Regulation 50(b) of The CS Regulations 1982. These are Export Promotion Council, Export Credit Guarantee Corporation, Reputed NGOs (with specific approval of TEFC), International organisations like United Nations or UN affiliated offices, Secretariat of Lok Sabha/Rajya Sabha/ Assembly, Bankruptcy Insolvency Board, Real Estate Regulatory Authority (RERA), Labour Department, NCLT/NCLAT (in place of Company Law Board) and other statutory body or regulatory body.

Release of EDP Module

The Institute has earlier launched 15 days academic programme for all Executive pass students which includes a 5-day Professional Entrepreneurship Development Programme (PEDP). In order to supplement the learning, ICSI released a module on 'Entrepreneurship Development Programme' during the month of October. We are sure that this module will assist in inculcating a balanced learning approach in the students.

CS Olympiad

In furtherance of the Memorandum of Understanding (MoU) with the Science Olympiad Foundation (SOF), the CS Olympiad was successfully conducted in two phases i.e. on 15 September and 4 October 2016 in 29 States/UTs across 400 Cities with about 1300 schools and more than 36,000 student enrolments. We wish to thank all esteemed members and students of the Institute for their efforts in propagating the details about CS Olympiad among the prospective students and schools across India.

Training Programmes for Peer Reviewers

During the month of October, 2016, training programmes for Peer Reviewers were conducted in Kolkata and Raipur.

Felicitation Programme of Rank holders

As a path-breaking initiative, the Institute felicitated the Rank Holders of June, 2016 Examination of CS Course during the Foundation day Celebrations at Kolkata on 4 October. We are glad to share that the feedback from the students and guardians has been overwhelming, it calls for the need for continuing such initiatives in future too.

ICSI Study Centre Scheme

The objective of the Study Centre Scheme is to eliminate distance barrier at student's end for availing the services of the Institute by opening Study Centres in cities/areas, where the Institute's Chapters are not in existence. Apart from providing basic services, the Study Centres shall also impart coaching facilities. Till date, total 29 Study Centres have been opened at reputed Colleges/ Universities all over India. ICSI has opened two more study centres at Hindu College, Chennai and New Law College, Ahmednagar, Maharashtra in the month of October.

ICSI Signature Award Scheme

ICSI Signature Award Scheme was initiated in January, 2016 to honour top rank holders in B.Com stream of reputed universities and specialised programmes of IITs/IIMs with a Gold Medal and Certificate. Till date, 12 MOUs have been signed with eminent institutes located throughout the length and breadth of the country. In the month of October, the Institute has signed a MoU with IIM, Raipur. Further, the topper of Alagappa University, Tamilnadu and Kumaun University, Uttarakhand were bestowed with ICSI Signature Award Gold Medal in October 2016.

Student Member Application Software Hosting (SMASH) Project

Further to the launch of 12 modules in the first phase of SMASH project, the Institute has successfully launched additional seven modules such as Executive Registration, Exemption (qualification based), Switch Over, Revert Switch Over, Denovo, Extension, Duplicate Receipt & New features of receipt module etc. under second phase of SMASH Project. Now, registration for both Foundation and Executive programmes are accepted through SMASH only.

Celebrating the Spirit of Womenhood in ICSI

To share with my ICSI fraternity, I happened to visit Goa Chapter of ICSI and came to know that it was an All Women Managing Committee. It sounded so pleasant to me as the Chapter is being very well managed and it's one of its kind Managing Committee not only in ICSI but in India too. I wish representation of women in all Institutions in India makes the scene and especially the Board rooms which are struggling with gender-diversity issues world over.

Epilogue

As I am writing this epilogue, I can feel the chill in the morning breeze which made me to peep out of my window to witness spectacular entry of 'autumn' season, which is working its magic and is making the leaves to turn golden from green. The season that is welcomed in India after a dreary summer and showers of monsoon. Striking signs of autumn wildlife are visible too, with squirrels showing up in abundance to pile their food up for the frosty winter ahead.

Autumn also reminds me of a very famous poem "Said a Blade of Grass", written so meticulously by Khalil Gibran, the American sculptor, poet and artist, chiefly known in the English-speaking world for his 1923 book The Prophet. Gibran is the third best-selling poet of all time, after Shakespeare and Lao-Tzu.

"Said a Blade of Grass"

Said a blade of grass to an autumn leaf,
"You make such a noise falling! You scatter all my winter dreams."

Said the leaf indignant,
"Low-born and low-dwelling! Songless, peevish thing!
You live not in the upper air and you cannot tell the sound of singing."

Then the autumn leaf lay down upon the earth and slept.
And when spring came she waked again - and she was a blade of grass.

And when it was autumn and her winter sleep was upon her,
and above her, through all the air the leaves were falling,
she muttered to herself,
"O these autumn leaves! They make such noise! They scatter all my winter dreams."

This poem visualizes the story of a blade of grass and a leaf wherein a blade of grass is angry upon a leaf as his noise makes his cosy sleep to disturb due to which he can't relish his winter dreams, but, the leaf is angry to the blade of grass too and says that the blade of grass is low born and low dwelling due to which it can't visualize sound of singing as felt living in upper air.

God somewhere seemed to hear the conversation of the two and interchanges them in the next season to take place of each other on re-birth. So, in the next season, the leaf falls down to the earth and is re-born as a blade of grass and the blade of grass is re-born as a leaf this time. Upon, becoming a blade of grass in the next birth, the attitude of the leaf is not of leaf now, but, imbibes viewpoint of a blade of grass itself. Now, he complains that the autumn leaf on the tree is disturbing his sleep and winter dreams.

The same applies to us also, we live in the world sometime in high level of condition, sometime happy and sometime sad though situations remain same but our positions change, which changes our attitude towards the same situations, therefore, to overcome this, we need to develop element of empathy amongst us and need to take care of each other. My dear friends, I had to read the above poem a few times to trace the real hidden meaning behind and its comprehension really reignited and firmed a spirit of humility in me.

It reminded me how often, in good times, we forget 'our times of struggles'. We forget our own difficult times of struggle and judge people who are struggling in their careers, relationships without being empathetic. Mother Teresa once said "If we have no peace, it is because we have forgotten that we belong to each other." We forget to understand people yet we demand to be understood every single time. We forget our moments of loneliness, and judge people who are alone. Every conflict that you go through in a relationship has an element of pride mixed into it. What is the middle letter of the word "pride"? I. What's the middle letter of the word "crime"? I. What's the middle letter of the word "sin"? I. Real happiness comes when 'I' am willing to humble myself and do what He wills with my life because middle letter of happiness is also I.

As Norman Vincent Peale said so beautifully "Realize that the World is a thrill with beauty and excitement. Keep yourself sensitized to it. Love the world, its beauty and its people." Love being an autumn leaf and blade of grass at the same time. My dear friends, let us start looking at the World with the lens of love and compassion and get a load of what others are going through. Empathy is the most ponderous skill we can practice. It will lead to greater success personally and professionally and will allow us to become happier the more we practice it.

While assaying one's attitude towards us, let's just keep in mind that if they repudiate us or act hawkish while responding us, it is not that they are really against us, but, they are just busy fighting their own battles and demons deep inside. Blessed are those who have already understood this simple but sententious phenomenon and seeing the world and its people with the magnifying glass of compassion, this world is a place worth living because of people like them...!!

Looking forward for your valuable feedback, ideas and suggestions to come together and take ICSI still further on its voyage towards excellence.

Happy reading!!
Best wishes

Yours sincerely

Mamta Binani

November 05, 2016
New Delhi

(CS MAMTA BINANI)
president@icsi.edu

COMPANY SECRETARIES BENEVOLENT FUND

The Company Secretaries Benevolent Fund (CSBF) provides safety net to Company Secretaries who are members of the Fund and their family members in distress.

CSBF

- Registered under the Societies Registration Act, 1860
- Recognised under Section 12A of the Income Tax Act, 1961
- Subscription / Contribution to Fund qualifies for the deduction under section 80G of the Income Tax Act, 1961
- Has a membership of about 11,000

Eligibility

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

How to join

- By making an application in Form A (available at www.icsi.edu/csbf) along with one time subscription of ₹7,500/-.
- One can submit Form A and also the subscription amount of ₹ 7500 ONLINE through Institute's web portal: www.icsi.edu. Alternatively, he can submit Form A, along with a Demand Draft or Cheque for ₹7500 drawn in favour of 'Company Secretaries Benevolent Fund', at any of the Offices of the Institute/ Regional Offices/Chapters.

Benefits

- ₹5,00,000 in the event of death of a member under the age of 60 years
- Upto ₹2,00,000 in the event of death of a member above the age of 60 years
- Upto ₹40,000 per child (upto two children) for education of minor children of a deceased member in deserving cases
- Upto ₹60,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

Contact

For further information/clarification, please write at email id csbf@icsi.edu or contact Mr. Saurabh Bansal, Executive on telephone no.011-45341088.

For more details please visit www.icsi.edu/csbf

1
ARTICLES

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 ak.sil@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)

Competition Compliance: New Paradigm for Company Secretaries

Anil Kumar Bhardwaj[1]
Adviser Economics
Competition Commission of India
New Delhi
anil.b@cci.gov.in

Maria Khan[1]
Research Associate
Competition Commission of India
New Delhi
maria.khan@cci.gov.in

INTRODUCTION

As enterprises become global and the world contracts into a local global market, new rules, regulations and laws continue to develop and intensify. Whatever be the size of the enterprise, it is subjected to the same rules laid out by different local/ national or international regimes. Even if the regulation is not supportive of trade, the business and the consumer, have to adhere to these. The enterprises need to comply with this complex web of continuously evolving regulations in order to survive. This brings forth the role of active compliance.

> An effective competition compliance programme should be able to identify, assess, mitigate and review the possible risk of infringement of the Act. The main principle of the CCP should be set out in simple and easy to understand language. The relevant procedures should provide a mechanism whereby an employee is able to seek guidance if he suspects that a particular transaction may transgress the provisions of the Act. The system should enable easy access to a reporting procedure in case of any suspicion that a business practice may cause infringement.

In common parlance, compliance is defined as conforming to a rule such as regulation, policy or law. The European commission defines compliance as respecting the law. From the perspective of enterprises, it means adhering to the laws and regulations governing them. Violation of any statute often leads to severe punishments and penalties. The most important form of regulatory compliance is complying with the provisions of the competition regime. Why? Because competition law is a convolution of legal and economic principles. This law does not present straight jacketed principles. Many business practices that were considered normal, prior to enforcement of competition law may now be susceptible to be interpreted as violative of the Act, thereby inviting huge penalties. For example, appointing dealers and distributors with specific geographic allocation has been a business norm. However, under section 3 (3) (c), *'sharing of market or source of production or provision of services by way of allocation of geographical area of market, ………… shall be presumed to have an appreciable adverse effect on competition'.* Similarly those who have lived in the phase of Monopolies and Restrictive Trade Practices (MRTP) Act 1969 and still consider Competition regime as an extension of that regime, need to decode the new rule whereby dominance is now not bad, but the abuse of dominance is[2]. Furthermore, the penalties under the Competition Act 2002 (The Act) are heavy, and there is a loss of reputation of enterprise if it faces an enquiry under the provisions of the Act. Therefore, businesses need to comply with the competition rules.

IMPORTANCE OF COMPETITION

Adam Smith in his famous book, The *Wealth of Nations*[3] explains that *"It is not from the benevolence (kindness) of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest."* So, it can be argued that self-interest is the driving force behind economic activity and the market system forces it to produce a behavior that benefits others. Though the self-interest *per-se* has negative connotations, sometimes it does cause

[1] The views presented in this Article are personal and do not reflect the views of the Competition Commission of India in any manner whatsoever.

[2] Under Section 4 of the Competition Act 2002 (as amended)

[3] An Inquiry into the Nature and Causes of Wealth of Nations, 1776

negative outcomes, but most of the times the private pursuance of self-interest is balanced by the competitive forces arising out of fair competition. Thus, a societal benefit is derived through a process of competition among self-interest driven enterprises.

While self-interest is the motivator behind economic activity, competition is the default regulator of the market economy. Adam Smith described these complimentary forces of self-interest and competition as the 'invisible hand' that guides the resources towards their most efficient use. Accordingly, the Classical School views competition as the ordering force of a market. They believed that through competition resources are driven towards their most productive use and through competition, prices are forced to the lowest level which is sustainable over the long run (McNulty, 1968).

Competition is a crucial factor in driving the growth of businesses by bolstering their productivity and increasing their competitiveness. The most important benefit of competition is that it makes goods and services available at competitive prices. In this way, not only it benefits consumers but also producers as they themselves are consumers of inputs. If the prices of the inputs available to them are higher *vis-a-vis* their competitors in other markets, the business is likely to face difficulty in maintaining market share. The second benefit of competition is that it affects productivity and efficiency of the businesses (Alesina et al (2005); Aghion and Griffith (2005)). It engenders the firms to innovate as they are aware that their competitors are constantly trying to reduce cost. It ensures that more productive firms increase their market at the expense of less productive firms. As a result, low productive firms are pushed out of the market and are replaced by higher productive firms[4]. Such rivalry among competitors pushes the market players to produce goods of higher quality or provide better services while keeping a check on the prices. The third benefit of competition is that it drives innovation. Firms, in the race to outperform their competitors, aim to develop new technologies, products and services. Without competition, there would be lack of innovation and the economy would lag behind others and would lose international competitiveness. The fourth benefit of competition is that the competitive process is unbiased. It forces decisions to be based on market factors and makes the resources flow away from weak and uncompetitive sectors to the strongest and most competitive sector. In this way, the very operation of the competitive process helps in achieving the most competitive outcome possible.

To strive for competition, the government needs to enable competition rather than muting it through policy induced interventions. The process of competition is not only effected by the policies and statutes; it is also affected by market distortions caused by anti-competitive practices. Business enterprise, in their zeal to increase their profits may indulge in practices which hinders competition in the market. Given the tendencies of business to undermine the process of competition, the enactment of an economically sound competition law and the establishment of a competition regulator is imperative. Consequently, jurisdictions all over the world have come up with the antitrust regime. In India also, the competition regime started with the enactment of Competition Act, 2002 and Competition Commission of India is bestowed with the authority of enforcing it. The competition law promotes and enforces competition culture in the economy. As per the Act, the anti-competitive agreements[5] and abuse of dominance[6] are considered as potential impediments to free and fair competition in the markets and penalty is imposed wherever the Commission concludes that the enterprise has/ had indulged in anti-competitive practices resulting in appreciable adverse effect on competition (AAEC). The Commission also regulates combinations[7] which aim at *ex-ante* screening of mergers and acquisitions for possible anti-competitive effects. Violations of provisions of the Act in most of the cases result in severe penalties[8].

Global Competitiveness Report brought out by 'World Economic Forum' every year, highlights the importance of competition and innovation in fueling economic Growth. The Global Competitiveness Report (2016) (see figure 1) classifies the economies in three stages from stage 1 to stage 3 with two intermediate transition stages. One can see that as the economy grows from factor driven[9] economy to innovation driven economy the per capita income of the country grows from the range of $ 2000 to more than $17000. This clearly emphasizes that GDP of a country is strongly dependent on innovation which is spurred by fair competition.

Table 1: Subindex weights and income thresholds for stages of development

	STAGE OF DEVELOPMENT				
	Stage 1: Factor driven	Transition from stage 1 to stage 2	Stage 2: Efficiency driven	Transition from stage 2 to stage 3	Stage 3: Innovation driven
GDP per capita (US$) thresholds*	<2,000	2,000–2,999	3,000–8,999	9,000–17,000	>17,000
Weight for basic requirements	60%	40–60%	40%	20–40%	20%
Weight for efficiency enhancers	35%	35–50%	50%	50%	50%
Weight for innovation and sophistication factors	5%	5–10%	10%	10–30%	30%

Note: See individual country/economy profiles for the exact applied weights.
* For economies with a high dependency on mineral resources, GDP per capita is not the sole criterion for the determination of the stage of development. See text for details.

Figure -1: Source: Global Competition review 2016

Many studies also conclude that competition reforms lead to increase in economic performance. Kee and Hoekman (2007) observed that the number of domestic firms increased by 7.2 percent in the sectors in which competition law was effectively enforced. In Australia, the ushering of competition policy reforms boosted GDP by 2.5 percent, or US$20 billion, as a result of higher productivity and lower prices during the 1990s (Australian Productivity Commission 2005). Similarly, in case of United Kingdom, the enforcement of competition law led to US$112 million a year in direct consumer saving. Thus increasing consumer welfare (U.K. Office of Fair Trading, 2010). Werden (2008) found that effective cartel enforcement alone increased consumer savings from cartel enforcement in the United States to about US$1.85 billion between 2000 and 2007.

Given the long term benefits from competition *vis-à-vis* the risk of facing anti-competitive inquiry and in-turn heavy penalties, it is in the interest of enterprise themselves to imbibe the culture of competition compliance. Effective compliance has greater benefits than the gains achieved from non-compliance. Compliance statutes is not just a legal

[4] Schumpeterian principle of creative destruction. Creative destruction, a term coined by Joseph Schumpeter in "Capitalism, Socialism and Democracy" in 1942, describes the "process of industrial mutation that incessantly revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one.

[5] Section 3 of the Competition Act, 2002

[6] Section 4 of the Competition Act 2002

[7] Section 5 and 6 of the Competition Act, 2002

[8] Section 27 of the Competition Act, 2002

[9] Stage 1 'factor'-driven economies, where countries compete primarily on the use of unskilled labor and natural resources and companies compete on the basis of price as they buy and sell basic products or commodities; Stage 2 'efficiency'-driven economies, where growth is based on the development of more efficient production processes and increased product quality; Stage 3 'innovation'-driven economies, where companies compete by producing and delivering new and different products and services by using the most sophisticated processes. Source: http://growthchampions.org/growth/economic-growth/ accessed on October 21, 2016

obligation but it also brings up the positive rub-off through positive corporate image creating a long-term positive impact on business.

COMPETITION COMPLIANCE

Whether a business complies with competition law or not is depended upon a number of factors. Factors that encourage compliance are mainly fear of monetary penalty, damage to reputation, morality and a strong competition compliance culture. Drivers of non-compliance include uncertainty of law, market conditions, mixed signals regrading compliance from top management and a culture of non-compliance (OECD, 2011)[10] . It is in the interest of the competition regulator to mitigate the reasons that encourage non-compliance. If there is lack of sufficient awareness among business enterprise, then antitrust authorities should commit more of its resources towards training and advocacy. However, in jurisdictions where sufficient level of awareness of law exists, then antitrust regulator would need to pursue the strategy of vigorous enforcement.

COST ASSOCIATED WITH NON-COMPLIANCE

"It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently." —Warren Buffett

Non-Compliance proves to be very costly for enterprises. In India also, antitrust violations carry heavy punishment. The consequent cost accruing to the business may include one or more of the following:

- Damage to reputation of the business which had been built at a high cost
- Heavy Fines: Ten per cent of the average of the turnover for the preceding three years of violation, for anti-competitive agreements and abuse of dominance. In the case of a cartel there are provisions for imposing on each member of the cartel a monetary penalty of up to three times of its profit for each year of the continuance of such cartel or ten per cent of its turnover for each year of the continuance of such cartel, whichever is higher[11]
- In some countries, more stringent punishments are prescribed for antitrust violations including corporate sanctions. For example, in Brazil, the government imposes severe sanctions on violating enterprises, like putting an end to the public subsidies given to the enterprise[12].
- Abuse of dominance can also result in enforcement of mandatory division of the dominant enterprise[13].
- Award of compensation[14] to the affected parties which can be very large depending on the type of violation involved.
- Personal liability and penalty for employees who are found to be indulged in anti-competitive activities[15].
- Loss of resources in handling competition law infringement cases.
- Cost associated with loss of business (potential customers/ investors / joint venture partner) because of damage to reputation.

Benefits associated with compliance

If the firms comply with competition law, then they get the following benefits:

- Mitigate the risk of fine associated with antitrust violation in many countries

> It is in the interest of the competition regulator to mitigate the reasons that encourage non-compliance. If there is lack of sufficient awareness among business enterprise, then antitrust authorities should commit more of its resources towards training and advocacy. However, in jurisdictions where sufficient level of awareness of law exists, then antitrust regulator would need to pursue the strategy of vigorous enforcement.

- Help in building good reputation
- Avoid cost associated with lawsuits and compensation
- Gives a strong message to the community, being a law abiding company
- Saves resources (Management time and Money)
- Provides level playing field to the businesses

COMPETITION COMPLIANCE PROGRAMME

Traditionally, the antitrust authorities have relied on imposition of heavy fines and sanctions to promote and enforce competition compliance. However, as one of the objectives of the competition regulator is to 'promote and sustain competition in markets', it is imperative for the regulator to focus on improving compliance. Deterrence through fines and penalties is simply not enough and therefore there is a case for adapting a strategy that promotes compliance. Because deterrence doesn't address business or social perceptions of the morality of the conduct and hence doesn't always foster an ethical business culture[16]. So, the focus should be more on how to engender the culture of compliance rather than merely creating a fear of non-compliance by putting a heavy price on it.

World-over, the antitrust authorities are resource constrained and Competition Commission of India is no exception[17]; it is vital that the focus is more on encouraging enterprises for adapting Competition Compliance Programme (CCP). From the perspective of the enterprise, given the benefits arising out of adapting a robust and credible compliance programme far outweigh the costs, CCP results into a win-win situation. An active compliance program also improves awareness of the statutory provisions among its employees enabling them to detect situation where the enterprise itself may be a victim of anti-competitive practices carried out by its competitors and suppliers.

Simply put, a CCP is the commitment of a company to comply with the provisions of the Competition Act by establishing a formal internal framework to ensure that management and employees comply with

[10] Promoting Compliance with Competition Law, 2011
[11] Section 27 of the Competition Act, 2002
[12] Strengthening private sector capacities for competition compliance, UNCTAD (2016)
[13] Section 28 of the Competition Act
[14] Section 53 N of the Competition Act, 2002
[15] Section 48 of the Competition Act, 2002
[16] Zambia Competition and Consumer Commission
[17] The Competition Commission of India has only 106 working employees as on March 31, 2016. Source Annual Report 2015-16

competition law (Competition Commission of Singapore). The elements of CCP consist of training of staff about competition law, a competition checklist and a continual review of staff conduct by management. Implementation of CCP makes it evident that a company is committed to competition and communicates the same to all its employees. It is true that having an effective CCP comes with a cost but the benefits are so high that they outweigh the cost.

Objectives of CCP

The CCP should have the following four main objectives:

(i) Prevent violation of law, i.e., the Competition Act 2002 and all Rules, Regulations, Orders & notifications made there under.
(ii) Promote a culture of compliance, and
(iii) Encourage good corporate citizenship
(iv) Building up a positive corporate image and board

Figure 2: Objectives of CCP

Characteristics of CCP

When it comes to compliance programme, there is no such thing as, 'one size fits all'. The CCP needs to be tailor made depending on the size and as per the requirement of the enterprise. When a company starts a CCP, it needs to identify the risks faced by it. It should then develop a compliance programme that addresses these risks. The enterprise needs to define as a part of the programme a clear policy regarding competition. The programme needs to garner support from the top management and also requires a commitment on their part to enforce the compliance. The element of commitment can best be achieved by personal message from senior officers to staff in the business organisation stating their commitment to the compliance programme. It can also be done via Inclusion or reference to the compliance policy in the company's 'Mission Statement' or Code of Conduct and Ethics.

Figure 3: Components of a CCP

This would reflect seriousness of the compliance efforts. It would also show the seriousness of the management towards competition compliance as far as the competition authority is concerned. Without the commitment from the top management, any competition law compliance efforts would not be successful.

The Office of Fair Trade (2011)[18] in their guide on Competition Law Compliance asserts that the key task for a business is that it should be able to identify, assess, mitigate and review their competition law risks. The business needs to first identify the type of risk it is exposed to. For instance, it can be exposed to a risk of cartelization or abuse of dominance. It also needs to identify new risks when entering into a combination or introducing a new product. The business during the identification process must seek the help of specialist legal or other advisers. Secondly, a business needs to assess how serious its identified risks are. It can initiate a risk assessment exercise to evaluate the degree of exposure of its employees to competition law risk. The level of risks can be classified as high, medium and low. For instance, in case of risk of cartel activity, the staff who are at high risk can be those in managerial roles, involved in price setting, belonging to the sales and marketing department and those who meets up competitors in association meetings etc. The staff who are at medium risk are those who have managerial roles but do not have regular contact with competitors. It would also include staff from departments of finance, communication and operations. Low risk can be from back office, manual labour, clerical and the HR staff.

The third step involves mitigation of the identified risk depending upon the level of exposure. The business can set up appropriate policies, procedures and conduct trainings on competition law for the employees exposed to the risk. This is done to ensure that the identified risk doesn't occur and if they do, its employees are well equipped to deal with them as and when they occur. The training must be tailor made and it should make clear the type of activities to be avoided, how to and whom to report competition law concerns and risks as they arise. In cases of risk associated with cartel activity, the training programme apart from the main provisions of competition law must also include the benefits that can be accrued by seeking leniency. Leniency provisions[19] are also termed as lesser penalty regulations which help the enterprises in seeking penalty waiver if the enterprise finds itself in a situation where it has transgressed the provisions of the Competition Act. Lesser penalty provisions have helped many corporations in saving themselves from the severe penal action. On the enforcement side, these provisions have also helped in the detection of numerous cartels across many jurisdictions.

However, training of employees in itself is not enough, there is a need to inculcate competition culture in the day to day activities. It is therefore necessary to put in place proper procedures and policies to minimize the risk of infringement. For instance, the business can set up a code of conduct for employees making it explicit that infringement of the provisions of the Act would result in breach of the code. The code may specify that such breach would be viewed as a serious misconduct and will invite disciplinary action or even dismissal. The code should send a strong message of the severity in cases of violation. It may also develop a system in which any employee, before his/ her participation in the regular or the special meeting of the trade association, undertakes a competition compliance audit/ assessment of the agenda to avoid becoming part of any malfeasance. The enterprise may also come up with the dos and don'ts list to

[18] OFT Guidelines on "How your business can achieve compliance with competition law", 2011

[19] Section 46 of the Competition Act, 2002 and CCI (Lessor Penalty) Regulations 2009

ensure competition compliance (See Box 1). The compliance prorgamme should put in place a strict procedure for actions pursuant to observation regarding any suspected violation of the provisions of the Act. The business should instill a culture of confidentiality so as to ensure that their employees do not discuss commercially sensitive matters with outsiders in general and competitors in particular. Creating a system of reward for good adherence is also quite helpful in achieving the objectives of the compliance programme. The employees can be rewarded through appropriate recognition in appraisal, promotion or bonus. CCP should identify and appoint nodal officers with the business units. Such nodal officers should be champions of competition compliance within the identified units and should own the responsibility to ensure strict adherence to compliance.

The fourth step is concerned with the review of all the above steps from time to time. Since the risk expose to the business may change as the business further develop, it is necessary that there is a regular review of all the stages. A static compliance programme towards risk management may not serve the purpose; instead it may even turn out to be counterproductive. This would ensure that the top management remain committed to competition law compliance. It would also ensure that the risk identified have not changed or their assessment has not changed or the process of risk mitigation remain effective or not. The review process also gives a scope of improvement of the CCP. It depends on the business on how frequently the review of the process needs to be carried out. The review can be at regular interval or it can be out of regular cycles if the business suspects violation of competition law.

In short, the compliance programme so designed as emphasized above should be able to identify, assess, mitigate and review the possible risk of infringement of the Act. The main principle of the CCP should be set out in simple and easy to understand language. The relevant procedures should provide a mechanism where by an employee is able to seek guidance if he suspects that a particular transaction may transgress the provisions of the Act. The system should enable easy access to a reporting procedure in case of any suspicion that a business practice may cause infringement.

Box 1 : Dos and Don'ts List for Members of Trade Associations

Dos

- Members should be aware about statutory provisions and obligations under the Competition Act
- Develop a Competition Law compliance policy for the association.
- Appoint or nominate an officer to administer the compliance efforts of the association.
- Make sure that membership of the association is granted on the basis of an objective and qualitative criteria.
- There are no entry or exit barrier on members or membership.
- Set up a code of conduct for members that entails enforcement of ethical and fair market practices

Don'ts

- Don't advise or require that members set particular prices for their products or services.
- Don't impose terms and conditions on members for selling their products
- Don't help members in dividing up their sales territories. For example by either geographic areas, types of customers or types of products or any other criteria
- Don't set or advise production targets for members.
- Don't coordinate or facilitate collusive tendering by members.
- Don't help or facilitate sharing of competitively sensitive information by members. For example, information relating to the price and quantities of members' products or services is generally competitively sensitive.
- Don't organise or support a boycott by members against targeted businesses or individual.
- Never set up such rules or codes that restricts or reduces competition among members,
- Don't carry out activity(ies) of coordinated conduct by members of a trade association, such as fixing or 'freezing' prices or agreeing on trading conditions

The CCP should also enable and ensure confidentiality because if it is not the case, then the employees may not turn up to inform about alleged infringement, especially if people at senior/decision making position are involved. Contacting the nodal Officer to inform verbally in the first instance may work towards building trust and confidentiality. In all cases of possible transgression, documentation should follow with well-established procedure for corrective action.

COMPETITION COMPLIANCE MANUAL

The manual should be a comprehensive document and in layman terms it should create awareness amongst enterprises on the main provisions of the competition law. It should include guidance on preventive compliance, compliance during inquiry and investigation and compliance after final order. Within preventive compliance the manual should focus on ;

- The information that can be legitimately exchanged. A clear and distinct code defining confidential or commercially sensitive information that should not be discussed or shared with. Pricing and discount policy including direct and indirect price fixing (including re-sale price maintenance, where applicable).
- Behaviour of an enterprise in dealing with its competitor
- Behaviour of an enterprise in dealing with trade associations
- Behaviour of an enterprise in

Figure 4: Competition Compliance Manual

dealing with agents, third parties, suppliers, distributors etc.
- Behaviour of a Dominant enterprise
- Compliance with regulatory provisions i.e combinations
- Consequences of non-compliance

A company may still come under scanner of competition regulator and hence the compliance manual should contain specific provisions regarding the leniency programme and how to avail of it. The aspects of compliance during interim orders and during search and seizure also need to be covered in the manual. The manual should highlight the importance of filling the affidavit of compliance and the consequences of non-compliance to competition law in case of any order by competition regulator. The compliance manual should be developed keeping the need of the business in focus as each industrial sector is different and the competition issues would thus differ.

ROLE OF COMPANY SECRETARY IN COMPETITION COMPLIANCE

The responsibilities of the modern day company secretary have evolved from that of a 'note taker' at board meetings to someone who handles much broader responsibility as a 'Board advisor'. The Board, and the CEO, relies on the company secretary to advise them not only on statutory duties under the law, disclosure obligations and listing rule requirements but also in respect of corporate governance requirements and effective board processes.

Company secretaries can add real value to their role by becoming pro-active compliance officers of the enterprise using their knowledge of various statutory compliance requirements. The role of a compliance officer, sometimes called a compliance manager, is to make sure that a company is conducting its business in full compliance with all national and international laws and regulations that pertain to its particular industry, as well as professional standards, accepted business practices, and internal standards.

Competition compliance provides a very important opportunity to the Company Secretaries as the Act requires knowledge and understanding of both the law and economics. Active CCP will require professionals that can implement compliance program and also have access to top management. Given their role as the compliance officers to the company secretary, promoting adoption of CCP is not only beneficial for the profession but will also help in improving the standard of corporate governance in the company(ies).

INTERNATIONAL PRACTICE

In some countries like Italy, United Kingdom etc. an active CCP acts as a mitigating factor while evaluating the penalty or the punishment, if there is any transgression of the law. However, the same is not applicable in all countries. For instance, Germany doesn't provide any reward for having a CCP as it considers that complying with competition is the legal obligation of an enterprise. In the early eighties, the European Commission considered having a compliance programme as a mitigating factor but now it is no longer the case. *"In other words it means that there would be no reduction in fine or other preferential treatment for having a failed compliance programme[20]"* (Joaquín Almuñia, 2010). However, the Competition Act, 2002 is silent on whether having CCP would prove to be a mitigating factor in cases of contravention, yet the importance and advantage of having a CCP can't be overlooked upon.

CONCLUSION

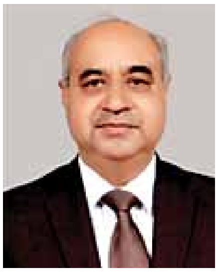
Compliance with competition law poses a lot of challenges as the law is a confluence of economics and legal knowledge. 'Rule of Reason' approach adopted by competition regimes, world-over, necessitates that enterprise put in place a framework that evaluates all commercial activities through the prism of CCP. Regular reviews and self-assessment of the business practices will help the enterprise to avoid any infringement. The age old wisdom that 'prevention is better than cure' applies to the competition compliance as well. Establishing a strong ethical culture through an active CCP goes a long way in building corporate image. Benefits accruing to business from ensuring compliance outweighs the cost associated with non-compliance. Having a compliance programme gives a strong indication to the regulatory authorities about the commitment of the business is to the cause of competition but it also insulates the enterprise from the hazards of infringements. Establishing a sound CCP helps the enterprises in identifying the boundaries of permissible conduct and provides it with an inbuilt alarm system which would raise red flags in the event of possible transgression. CCP also provides opportunity for Company Secretaries to establish themselves as compliance officers and implement good corporate governance. CS

REFERENCES

Aghion, P., and R. Griffith. (2005): Competition and Growth: Reconciling Theory and Evidence: Cambridge, MA: MIT Press.
Alesina, A., G. Ardagna, G. Nicoletti, and F. Schiantarelli (2005): "Regulation and Investment, " Journal of the European Economic Association , 3 (4): 791–825.
Gregory J. Werden (2008): "Assessing the Effects of Antitrust Enforcement in the United States", De Economist, Volume 156, pp 433–451
Kee, H. L., and B. Hoekman. (2007): "Imports, Entry and Competition Law as Market Disciplines," European Economic Review, 51 (4): 831–58.
Klaus Schwab (2016): " The Global Competitiveness Report 2016-2017, " World Economic Forum
OECD (2011): "Promoting Compliance with Competition Law", Policy Roundtables, OECD Publishing, DAF/COMP(2011)20
Office of Fair Trading (2011): "How Your Business can Achieve Compliance with Competition Law".
Paul J. McNulty (1968): "Economic Theory and the Meaning of Competition", The Quarterly Journal of Economics, Vol. 82, No. 4, pp. 639-656
Productivity Commission Enquiry Report (2005): "Review of National Competition Policy Reforms", Government of Australia

[20] http://europa.eu/rapid/press-release_SPEECH-10-586_en.htm

Competition Law – Treatment of Acquisitions, Takeovers and Amalgamations in India



M.M Sharma*
Head-Competition Law and Policy
Vaish Associates Advocates
New Delhi
mmsharma@vaishlaw.com

ACQUISITIONS AND TAKEOVERS

There is not much difference between the two terms 'acquisitions' and 'takeovers'. Acquisition is a genus of which takeovers are species. Every takeover will be an acquisition whereas every acquisition may not be a takeover. There is no tangible difference between an acquisition and a takeover; both words can be used interchangeably - the only difference is that each word carries a slightly different connotation. Typically, takeover is used with reference to a "hostile" takeover where the company being acquired is resisting. In contrast, acquisition is frequently used to describe more friendly acquisitions, or used in conjunction with the word merger, where both companies are willing to join together.

The process of regulation of combination has been fairly institutionalized in India by successive amendments in the statutory framework since its enforcement started. The Combination Regulations now exclude certain categories of corporate acquisitions including hostile takeovers or amalgamations, which are efficiency enhancing and being below specified levels may not raise competition concerns. The Regulations now provide the much needed clarity for the Industry. The article, while briefly explaining these provisions also illustrates some cases of these categories of combinations where a detailed scrutiny had to be made by CCI before granting approval to highlight the lines of demarcation between innocuous and strategic acquisitions, takeovers or amalgamations.

HOSTILE TAKEOVERS IN INDIA

The M&A activities in India have majorly been comprised of friendly deals. Since the economic liberalization in 1991, India has experienced only a handful of hostile takeover attempts, in the 80s & 90s (Swaraj Paul-Escorts/ DCM; Raasi Cements-India Cements-Sri Vishnu Cement Ltd.). There is a common view held amongst Economists that hostile takeovers by foreign enterprises are difficult to occur in India because of (i) the prevalence of controlling shareholders in most Indian corporations and the significant shareholding of Indian financial institutions that generally side with controllers (ii) the necessity of obtaining onerous Government approvals for foreign acquisitions that would make hostile takeovers impossible, and (iii) provisions in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997, as amended in 2015, ("Indian Takeover Code") favouring existing controlling shareholders.

The Takeover Code, as such, presents no direct barrier to a hostile acquisition. Indeed the concept of "open offers" and "creeping acquisition" limits create a mechanism by which hostile takeovers can be accomplished, while balancing the need for shareholders to be paid a control premium. The Takeover Code, in fact, is aimed to balance the needs for such acquisitions with protections to the investors. The new Regulations made in 2002 are a finer version of the earlier Code and largely aim at benefiting the investing community.

In India takeovers, especially hostile ones are still taken in negative sense. One should not forget the important role played by takeover. It helps to unlock the hidden value of the shares and also put pressure on the management to work efficiently and thus contribute in Corporate Governance.

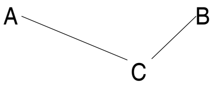
Competition law, however, does not differentiate between friendly or hostile takeovers/acquisitions. The difference is irrelevant to Competition Commission of India ("CCI/ Commission") for the purposes of regulation of combinations under the Act. The Act requires a scrutiny of all such acquisitions or takeovers, whether hostile or otherwise, to see if they may have an appreciable adverse effect on competition (AAEC) in the relevant markets in India or not.

WHAT IS AMALGAMATION?

Amalgamation is the combination of one or more companies into a new entity. An amalgamation is distinct from a merger because neither of the combining companies survives as a legal entity; a completely

* The views expressed herein are personal. views of the author.

new entity is formed to house the combined assets and liabilities of both companies. This sense of the term amalgamation has generally fallen out of popular use, and the terms "merger" or "consolidation" are often used instead. This can be explained with a simple diagram.



In the above diagram, company "A" amalgamates with company "B" to form a new company "C".

Generally, amalgamation is done between two or more companies engaged in the same line of activity or has some synergy in their operations. Again the companies may also combine for diversification of activities or for expansion of services.

"Transferor" company means the company which is amalgamated into another company; while "transferee" company means the company into which the transferor company is amalgamated. The transferor company, or weaker company, is absorbed into the transferee company, or stronger company, forming an entirely different company.

Amalgamation is more common in countries such as India than, say, in the United States.

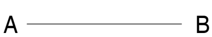
Types of Amalgamation

There are two types of amalgamations -

1. An amalgamation in the nature of a merger pools the companies' assets and liabilities as well as the shareholders' interests and the business of the companies. All assets of the transferor company become that of the transferee company. The business of the transferor company is carried on after the amalgamation. No adjustments are made to book values. Shareholders of the transferor company holding a minimum of 90% face value of equity shares become shareholders of the transferee company.
2. An amalgamation in the nature of purchase occurs when conditions for amalgamation in the nature of merger are not met. One company is acquired by another, and shareholders of the transferor company do not continue having proportionate share in the equity of the combined company or the business of the transferor company is not intended to continue. If the purchase consideration exceeds the net asset value (NAV), the excess amount is recorded as goodwill; if not, it is recorded as capital reserves.

How Is Amalgamation Different From a Merger?

Amalgamation is different from merger because neither of the two companies under reference exists as a legal entity. Through the process of amalgamation a completely new entity is formed to have combined assets and liabilities of both the companies. In merger, one company simply merges with the other company. In the diagram below, for instance, the transferor company "A" is generally the weaker company; the transferee company "B" is the stronger one. Thus



Reasons To Amalgamate

Amalgamation is done as a method of acquiring cash resources, eliminating competition, saving on taxes or influencing the economies of large-scale operations. Amalgamation increases shareholders' value, reduces risk by diversification, improves managerial effectiveness and helps achieve company growth and financial gain.

COMPETITION ACT, 2002 AND ACQUISITIONS, TAKEOVERS AND AMALGAMATIONS

Corporate acquisitions including hostile takeovers or amalgamations, between parties whose combined assets or turnover are above the prescribed thresholds under section 5 of the Competition Act, 2002 ("the Act") qualify to be called as "combinations". The thresholds prescribed are high and have been further raised by fifty per cent in March 2016 through notification by the Government of India.

"Combination" under the Act refers to such mergers, amalgamations and acquisitions of control, shares, voting rights or assets, between firms, which collectively cross the thresholds in terms of assets or turnover.

It is an *ex ante* regulation and the approval of the CCI under the Act is the first and foremost legal requirement before the parties enter into any strategic restructuring which may result into a combination.

Further, the Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011, as amended from time to time, ("Combination Regulations") serve as the implementing regulations; while the Competition Commission of India (General) Regulations, 2009 also clarify and streamline the procedure for notification and regulation of combinations.

Regulation of combination- The substantive test applied for merger control in India is whether the combination shall cause appreciable adverse effect on competition (AAEC) within the relevant market in India.

When such transactions are exempt from filing before CCI in India?

Acquisition of "minority shareholding": If the acquisition of a minority shareholding leads to acquisition of joint or sole control and such acquisition also exceeds the prescribed thresholds, then the same will be required to be notified to the CCI.

Orders of CCI have again provided some guidance on this issue. CCI has assumed jurisdiction even in case of acquisition of minority shareholding because of the acquisition of affirmative rights. For instance, in one case (Cairnhill CIPEF Ltd. /Cairnhill CGPE Ltd. Order dated 25.6.2015), CCI held that even an acquisition of a mere 11.1% equity shareholding in the target enterprise would result in joint control since certain affirmative rights were granted to acquirers, such as the right to appoint the directors on the board of directors of the target enterprise; the affirmative rights on commencement of new business. Thus, the acquisition would not be termed as a solely investment decision and hence not covered for exemption under category I in Schedule I of the Combination Regulations.

Lately, the Commission has provided further clarity by amending Schedule I, further in January, 2016. The latest position in this regard is as under.

Categories of acquisitions, takeovers & amalgamations exempted under Combination Regulations

As per Schedule I, of the Combination Regulations Amendment, 2016, the following categories of acquisitions are exempted from notification:

1. Acquisition of shares or voting rights, solely as an investment or in the ordinary course of business, provided the total shares or voting rights held by the acquirer remains below 25% of the total shares or voting rights of the acquired company.

   [Explanation: - The acquisition of less than 10% of the total shares or voting rights of an enterprise shall be treated as solely as an investment.

   Provided that in relation to the said acquisition.

   A. The Acquirer has ability to exercise only such rights that are exercisable by the ordinary shareholders of the enterprise whose shares or voting rights are being acquired to the extent of their respective shareholding; and

   B. The Acquirer is not a member of the board of directors of the enterprise whose shares or voting rights are being acquired and does not have a right or intention to nominate a director on the board of directors of the enterprise whose shares or voting rights are being acquired and does not intend to participate in the affairs or management of the enterprise whose shares or voting rights are being acquired.]

1A. An acquisition of additional shares or voting rights of an enterprise by the acquirer or its group, where the acquirer of its group, prior to acquisition, already holds twenty five per cent (25%) or more shares or voting rights of the enterprise, but does not hold fifty per cent (50%) or more of the shares or voting rights of the enterprise, either prior to or after such acquisition:

Provided that such acquisition does not result in acquisition of sole or joint control of such enterprise by the acquirer or its group.

2. An acquisition of shares or voting rights, referred to in sub-clause (i) of sub-clause (ii) of clause (a) of Section 5 of the Act, where the acquirer, prior to acquisition, has fifty percent (50%) or more shares or voting rights in the enterprise whose shares or voting rights are being acquired, except in the cases where the transaction results in transfer from joint control to sole control.
3. An acquisition of assets, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of Section 5 of the Act, not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business, not leading to control of the enterprise whose assets are being acquired except where the assets being acquired represent substantial business operations in a particular location or for a particular product or service of the enterprise, of which assets are being acquired, irrespective of whether such assets are organized as a separate legal entity or not.
4. An acquisition of stock-in-trade, raw materials, stores and spares, trade receivables and other similar current assets in the ordinary course of business.
5. An acquisition of shares or voting rights pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue shares, not leading to acquisition of control.
6. Any acquisition of shares or voting rights by a person acting as a securities underwriter or a registered stock broker of a stock exchange on behalf of its clients, in the ordinary course of its business and in the process of underwriting or stock broking, as the case may be.
7. An acquisition of shares or voting rights or assets, by one person or enterprise, of another person or enterprise within the same group, except in cases where the acquired enterprise is jointly controlled by enterprises that are not part of the same group.
8. A merger or amalgamation of two enterprises where one of the enterprises has more than fifty per cent (50%) shares or voting rights of the other enterprise, and/ or merger or amalgamation of enterprises in which more than fifty per cent (50%) shares or voting rights in each of such enterprises are held by enterprise(s) within the same group:

   Provided that the transaction does not result in transfer from joint control to sole control.
9. Acquisition of shares, control, voting rights or assets by a purchaser approved by the Commission pursuant to and in accordance with its order under section 31 of the Act.

EXAMPLES IN INDIA

Given below are few examples of prominent acquisitions, hostile takeovers and amalgamations, which, were notified and approved by the Competition Commission of India ("CCI/ Commission").

Acquisition

Etihad Airways PJSC/Jet Airways India Limited- [C-2013/05/122]

The proposed combination related to the acquisition of 24 per.cent equity interest in Jet Airways India Limited ("Jet") by Etihad Airways PJSC ("Etihad") and in relation to all the rights and benefits which the parties commercially agreed upon. CCI observed that the Jet and Etihad had entered into a composite combination with the common/ultimate objective of enhancing their airline business through joint initiatives. The effect of these agreements established Etihad's joint control over Jet, more particularly over the assets and operations of Jet. CCI concluded that the proposed deal would change the competitive landscape in a way that is most likely to benefit to the Indian aviation passenger. The CCI thus approved the proposed acquisition holding that it does not lead to any appreciable adverse effect on competition in the market.

Hostile Takeovers

Standard Greases and Specialties Pvt. Ltd. - [C-2015/10/317]

The proposed combination related to the acquisition of shares of Tide Water Oil Company (India) Limited by the Acquirer, *inter alia*, through open offer under the relevant provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011("Takeover Code") and other market purchases. Standard Greases currently holds 23.24% along with other persons acting in concert, would hold up to 50.935% of the share capital of Tide after the proposed combination.

With respect to horizontal overlaps, CCI noted that both Standard Grease and Tide are engaged in the business of manufacture and sale of grease, lubricants and coolants which are used for automotive and industrial purposes. In this regard, it has been submitted by Standard Grease that the market share of Standard Grease and Tide in the business of manufacture and sale of grease and lubricants in India would not be significant. Moreover, there are number of competitors engaged in the manufacture and sale of grease and lubricants. The CCI thus approved the proposed acquisition and holding that it does not lead to any appreciable adverse effect on competition in the market.

EMC Limited [C-2015/07/293]

The proposed combination related to acquisition of 19.77 per.cent shareholding of McNally Bharat Engineering Company Limited (MBECL) by EMC. The proposed transaction also triggered an open offer under the provisions of the Takeover Code. EMC along with Williamson Magor & Co. Limited (one of the Promoter group companies of MBECL), are required to jointly make an open offer to the public shareholders of MBECL to acquire up to 26 percent of the shares in MBECL. MKN Investment Private Limited ('MKN'), a promoter group company of EMC, subscribed 12.32% of the share capital of MBECL in the month of March, 2015.

Post the subscription of shares by EMC and the acquisition of the shares in the open offer, MBECL would be under the joint control of EMC and its Promoter group.

As far as horizontal overlaps between the EMC/Promoter Group and MBECL for supplying substations of capacity up to 400 KV, a sub-segment of the broader T&D equipment market, the market share of EMC was in the range of 5-10 % and the market share of MBECL was only 0-5%. It is further stated that there are a large number of other players active in the supply of sub-stations. Further, the insignificant market share of EMC ranging 0 to 5 per.cent in the overall transmission and distribution sector, rules out the possibility of any vertical foreclosure. The CCI thus approved the proposed acquisition and holding that it does not lead to any appreciable adverse effect on competition in the market.

Amalgamation

Ashley Services Limited (ASL)/Ashley Holdings Limited (AHL)/Ashley Investments Limited (AIL)/Ashok Leyland Project Services Limited (ALPSL) –[C-2013/05/123]

The proposed combination related to amalgamation of AHL, AIL and ALPSL into ASL, pursuant to the scheme of amalgamation approved by the Board of Directors of the respective parties.

The proposed combination was considered under Section 5(c) of the Competition Act, 2002. The instant amalgamation is proposed as a measure of restructuring of the parties within the Ashok Leyland Group, pursuant to which ASL would become a 100 per cent subsidiary of Ashok Leyland Limited.

The CCI noted that the parties belong to the same group and the said amalgamation is a measure of restructuring of the parties within the Ashok Leyland Group. The proposed combination would, therefore, not likely to raise any adverse competition concern in India. CS

Abolish Mandate of Merger Filing with CCI in 30 Days

G R Bhatia*

Partner & Head-Competition Law Practice, Luthra & Luthra Law Offices, New Delhi

gbhatia@luthra.com

INTRODUCTION

Realizing that India is one of fastest growing economy of the world and recognizing that growth process is driven *inter-alia* by inorganic mergers and acquisitions mode, the Indian Competition Act, 2002 obligates the Competition Commission of India (CCI) to regulate business restructuring which in parlance of law is known as 'combinations'. This dimension of law is in force with effect from 1st June, 2011. The term 'combination' is not defined but broadly it refers to:

(i) acquisition of control, shares, voting rights or assets by one or another person/enterprise; and

(ii) merger and amalgamation between or amongst enterprises.

> Filing deadlines are not a necessary feature of a modern merger control regime. In the last 5 years of merger regime, the CCI has approved 98% of the notices filed and these too in less than 30 days of filing of a valid/complete notice. Thus, there is realization more than before that most of the mergers are benign and they enhance performance of corporate entities. Accordingly, it is high time for the CCI to revisit the mandate and take steps to abolish filing deadline by amending the law.

Entering into combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such a combination is 'void'[1]. Noting that small size combination are less likely to have appreciable adverse effect on competition, the Act provides for high thresholds in terms of 'assets/turnover' and only when these are crossed, the acquirer/parties to mergers are mandated to report the transaction for prior approval of the Competition Commission of India. In order to further reduce the number of filings for the ease of business and to ensure quick and swift review of combination cases, the CCI in its Combination Regulations has carved out certain categories of transaction which need not normally be filed with the CCI as those transactions are ordinarily not likely to cause appreciable adverse effect on competition in India[2].

No combination can be consummated until the expiry of 210 days from the day of filing of valid notice or the approval of the Competition Commission of India. Thus, like many other matured jurisdictions, India also has a suspensory regime[3].

The law further mandates that acquirer(s) or parties to merger shall give notice within 30 days of:

(a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

(b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.

Hitherto, the scope of 'other document' used to be broader and ambiguous. However from January, 2016 onwards its scope has been narrowed down to public announcement under Takeover Regulations to SEBI alone.

FAILURE TO FILE NOTICE IN TIME

Section 43A of the Act provides that the CCI shall impose penalty on an enterprise/person which fails to give notice of reportable transaction within thirty working days and that penalty may extend to one percent of the total turnover or the assets, whichever is higher, of such a combination. This provision has not remained dormant and infact the CCI has imposed penalty in umpteen number of belated filings.

A few of these are discussed hereunder:

*Former ADG, CCI/MRTPC. The views expressed herein are the personal views of the author.

1 Section 6(1) of the Act.

2 Schedule 1 of the Competition Commission of India (Procedure in Regard to Transaction of Business Relating to Combinations) Regulations, 2011.

3 Section 6(2A) of the Act.

a. GE agreed to acquire the thermal power, renewable power and grid businesses of Alstom S.A. The acquisition documents were signed on 4th November 2014 and the parties notified the CCI on 24th November 2014. The CCI cleared merger, but initiated proceedings against GE for missing the 30 day filing deadline imposed by India's rules which, according to the CCI, began when GE publicly notified the deal to India's stock exchanges in May 2014 by way of a public announcement and imposed a fine of INR 5,00,00,000 (5 crores)[4].

b. Johnson and Johnson Innovation Limited, Ethicon Endo-surgery Inc and Google Inc,. entered into an agreement for the formation of a joint venture i.e. Warren Robotics Limited to carry out research and development in respect of robotic systems for surgical intervention. For the purposes of the same, the parties entered into a Share Purchase Agreement dated 24th March 2015 ("SPA 1") which was subsequently modified by an amendment dated 15th May 2015 ("SPA 2"). The parties thereafter notified the CCI on 5th June 2015 i.e. within the 30 day time limit for notification after SPA2.

   While the parties contended that the time limit would have started only after the execution of the final version of the agreement i.e., SPA2, the CCI was of the view that the 30 day time limit would be reckoned from the date the first binding agreement i.e. SPA1 and as such there was a delay of 43 days in filing. The CCI hence imposed a fine of Rs. 5 lakhs only[5].

c. The CCI also imposed a fine of INR 3,00,00,000 (INR 3 crore) on Tesco Overseas Investments Limited for its acquisition of 50% of the issued and paid-up equity share capital of Trent Hypermarket Limited. Tesco notified pursuant to the execution of Joint Venture Agreement and Share Purchase Agreement between TOIL, THL and Trent Limited, on 21st March 2014. The CCI however noted that prior to the execution of the said agreement, Tesco vide its application dated 17th December 2013 had sought the approval of the Department of Industrial Policy and Promotion, Ministry of Commerce & Industry and Foreign Investment and Promotion Board, Ministry of Finance for the acquisition of fifty percent of the issued and paid-up equity share capital of THL. The said application was treated as a trigger and hence a fine for belated filing was imposed[6].

As evident from the cases discussed above – the non compliance was merely a formality and procedural in nature. The notifications were filed with the CCI. The CCI had sufficient time to review the transaction and consummation of transactions occurred only after clearance was obtained. The CCI also found that no appreciable adverse effect on competition emanates from the proposed combinations. While strict action is needed in case transaction is completed without approval but imposing penalty for failure to file notice within given time is bit overzealous.

IS THIS RIGID APPROACH NEEDED?

Around 120 jurisdictions worldwide have merger control laws and a majority of jurisdictions have suspensory rule[7] in place. Further, most of suspensory jurisdictions do not mandate parties to file notice within the given time. Only few jurisdictions have mandate of filing notice within the mandate timelines which is in fact not in consonance with the International Competition Network's (ICN) Recommended Practices for Merger Notification Procedures, which states:

"Jurisdictions that prohibit closing until there has been an opportunity for the competition agency to review the transaction should not impose a deadline upon the parties to file notification within a specified time … Parties will have the incentive to file promptly after reaching an agreement because they know they will be unable to close their transaction until it has been reviewed." [8]

POSITION IN OTHER JURISDICTIONS

Filing deadlines are not a necessary feature of a modern merger control regime. The European Commission (EC) abolished its one-week filing deadline in 2004, citing that practice had shown that a strict enforcement of the deadline was neither realistic nor necessary. Commenting on the reform proposals in 2002, the International Chamber of Commerce (ICC) described the requirement as a "straightjacket" on parties which complicated the planning of parallel notifications (notably in the US and Europe).

The Brazilian competition agency (CADE) took similar action in 2012 when it removed its 15 business day filing deadline.

POSITION IN INDIA

In the last 5 years of merger regime, the CCI has approved 98% of the notices filed and these too in less than 30 days of filing of a valid/complete notice. Thus, there is realization more than before that most of the mergers are benign and they enhance performance of corporate entities. Thus in the backdrop of suspensory provision, it is ridiculous to continue with filing timelines. The pitfalls of filing timelines are:

(i) a filing deadline could actually disadvantage the parties and even the reviewing authority as it can be difficult for the parties to file a high quality notification on time, resulting in filing of deficient/incomplete notices and CCI issuing defect notices;

(ii) it curtails the flexibilities of the parties to modify the structure once a filing clock has triggered.

Some of the obvious benefits of removal of timeline would be:

(i) it will reduce the burden of regulatory approvals required to be undertaken by a combining party;

(ii) the cases before the CCI dealing with gun jumping will be substantially reduced which will enable the CCI to focus on review of transactions as opposed to complaints of belated filings which are only procedural in nature;

(iii) reduce interpretational difficulties as to when the obligation to file notice has triggered;

(iv) the parties can make a filing as per their convenience and provide complete information reducing the need of defects notices;

(v) will ensure synchronization in case multijurisdictional transactions; and

(vi) merger regulation in India will fall in line with global trend and will elevate India's position in relation to ease of doing business.

WHAT SHOULD THE CCI DO?

As evident, the thirty day time limit serves no practical purpose and is a hindrance for the stakeholders as well for the regulator. The CCI has not allowed its reforms rabbit to become turtle in the past. Accordingly, it is high time for the CCI to revisit the mandate and take steps to abolish filing deadline by amending the law. Until modification, the CCI ought not frown upon belated filings alone as procedure and practices relating to merger regulation fall within its own domain. CS

[4] Reference may be made to order dated 16.02.2016 in Combination Registration No. C-2015/01/251

[5] Reference may be made to order dated 30.12.2015 in Combination Registration No. C-2015/06/283

[6] Reference may be made to order dated 27.05.2014 in Combination Registration No. C-2014/03/162. It is however relevant to note that when this order was passed, "other document" in Section 6(2) as per Regulation (8) also included, "Provided further that where such a document has not been executed but the intention to acquire is communicated to the Central Government or State Government or a Statutory Authority, the date of such communication shall be deemed to be the date of execution of the other document for acquisition"

[7] Suspensory Rule means parties cannot implement the transaction only after the approval of the competition regulator.

[8] ICN Recommended Practices for Merger Notification and Review Procedures

Competition Law Compliance Audit of Corporates in India – An Integral Part of Secretarial Audit

Sathyanarayana Reddy P
Research Scholar,
Department of Corporate Secretaryship, Alagappa University
Karaikudi
ps_nreddy@yahoo.co.in

Dr. V. Balachandran, FCS
Professor of Corporate Secretaryship & Registrar, Alagappa University, Karaikudi
drvbchand@gmail.com

INTRODUCTION

A series of legal and economic developments have highlighted the importance of competition law or competition compliance in India. On June 1, 2011, the merger control provisions of the Indian Competition Act, 2002 (the Competition Act) and the supporting Competition Commission of India (CCI) (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 came into force. The provisions of the Competition Act relating to anti-competitive agreements and abuse of a dominant position have been in operation since May, 2009.

> Competition law is all pervasive and it percolates to every level of a company, whether at the level of board of directors, senior management, project managers, suppliers, distributors and all other business partners. The CCI has power to levy fines, both on individuals and at the company / group level. As such, the CCI has started levying fines on not only the delinquent enterprises but also on the officers in charge. This is due to a lack of prevalence of proper and periodic competition law compliance audit mechanism in India.

The CCI has powers to investigate and sanction agreements and commercial practices liable to have an "Appreciable Adverse Effect" (AAE) on competition in India. An increasingly worrying aspect of corporate compliance in recent years has been the prevalence of competition infringements. The impact of non-compliance will result in levy of penalties and fines and huge reputational loss in the future. The companies also lose credibility, if found violating the Competition Compliance and the costs of violations are extremely high. Audits can be a useful tool to assess whether a business is exposed to a risk of violation of competition laws.

INDIAN COMPETITION LAW ENFORCEMENT FRAMEWORK

Section 3 of the Competition Act prohibits two categories of agreements, i.e. horizontal agreements (between businesses at the same level in the supply chain such as two manufacturers); and vertical agreements (between businesses at different levels in the supply chain, such as a manufacturer and retailer). The CCI has sufficiently wide jurisdiction to apprehend agreements and arrangements taking place outside India, provided that they have an AAE on competition in India. Horizontal arrangements relating to price, production, supply, or market sharing are presumed anticompetitive under the Competition Act.

Section 4 of the Competition Act prohibits companies with market power (a dominant position) from abusing that position. Market shares are a starting point for determining dominance, but neither the Competition Act nor guidance from the CCI provides a "bright line" market share test for determining when a company may be considered dominant for Indian competition law purposes. It is not the holding of a dominant position that is unlawful; only its abuse can be sanctioned. Companies with a significant market position in India will therefore need to consider whether their commercial practices may be considered abusive. Examples of such potentially abusive conduct include predatory (below cost) pricing, discriminatory pricing, denial or restriction of market access, and tying or bundling.

WHAT IS A COMPETITION COMPLIANCE AUDIT?

A Competition Compliance Audit is a review of business activities and practices aimed to detect actual or potential violations of competition laws. It is important to distinguish a procedural audit from a substantive audit. A procedural audit examines whether the company has in place and has implemented best practices and procedures to monitor, escalate, and take action on actual or potential violations. A substantive audit focuses on whether, in fact, there is a risk of actual or potential violation of substantive legal prohibitions. A competition audit comprises of a review of agreements, company documents, contracts including electronic files and interviews with relevant employees and key officers of the company.

A good Competition Compliance Audit can further assist in revealing the major breaches and thereby strengthens the compliance programme. In case an enterprise initiates an in-house programme, it is advisable that the document need to be audited by an outside agency and in case the Audit or compliance is outsourced, a peer review/audit of compliance programme by yet another agency would be more appropriate. Competition audits can also help to identify business practices that present risks and assess the effectiveness of a company's competition compliance and training.

A compliance audit, if undertaken in conjunction with the design or tune-up of a corporation's compliance program, provides an opportunity to conduct a comprehensive examination of a corporation's competition record, past and present. An audit is also an effective means of understanding a corporation's competition law concerns and risks, particularly if it is contemplating the inauguration of a Competition Act compliance program. Auditing and reporting mechanisms function to prevent and detect anti-competitive conduct. They also go to the satisfaction of board governance obligations and provide both employees and managers with tangible evidence that there is a check on their activities.

The competition law compliance audit should begin by defining the scope of investigation, identifying the audit team and be followed by a review of the company's pertinent corporate records. The audit team should approach the job with an attitude that every piece of paper reviewed may someday turn up in adverse hands, and this may happen years after it was originally created. For this reason, all potentially relevant files and documents should be made available to the audit team for review.

The document review may reveal potential competition law problems and will give the audit team the necessary background to determine whether to conduct interviews of employees who deal with competitors, customers or suppliers, and the scope of those interviews. If interviewed, employees should be asked to supply full information about questionable documents and about sensitive areas of operations. Whether interviews are necessary in any case depends in large part on the results of the document review.

COMPETITION LAW COMPLIANCE BY CORPORATES IN INDIA

The Competition Act, 2002 operates on a "self-assessment" basis, meaning that businesses must determine for themselves whether its agreement, conduct, M&A transaction will be lawful or could breach the provisions of the Act particularly in view of the fact that there are no block exemptions, market share based test to evaluate anti-competitive conduct as prevalent in other matured jurisdictions such as European Union. Further, the Act applies not only to activities in India, but also to activities outside of India that affect competition within India. Hence, all businesses (large and small) are covered by the Act. In this context, it is for businesses to carry out self-assessment of their business practices and take steps to ensure that their practices, business contracts and dealings etc. comply with the provisions of the Act.

Ensuring compliance with competition law, rules etc. is crucial, during strategic business decisions, as the consequences of non-compliance may be serious for concerned companies in terms of investigation by Competition Commission of India (CCI), hefty financial penalties, agreements being unenforceable and void, adverse publicity, damages, possibility of being sued for damages by those harmed by unlawful behaviour, etc. In the event of violation of competition law, business can face significant financial penalties, third party actions and loss of reputation and goodwill. Compliance with competition law is more than just good corporate governance, as it reduces the risk of the company being subject to an investigation by the Competition authorities. All companies are subject to competition rules, with no differentiation according to their size. Being small is no excuse for not complying with the applicable competition rules.

COMPETITION AUDIT UNDER COMPETITION COMPLIANCE PROGRAMME FOR ENTERPRISES

The Competition Commission of India has issued "Competition Compliance Programme for Enterprises" (CCPE) which explains both the law and provides detailed how-to guidance on programs and it stipulates on auditing as follows:

"An effective Compliance Programme may also include a system of audit. At the time of the start of the compliance programme an internal audit of procedures and documents, including email, may be introduced. This may be repeated at intervals to ascertain if the policy is working. The nature of such audit will have to be tailored to the nature of the enterprise concerned."

"While auditing the procedures, documents and emails of each and every employee may be a herculean task it would be always possible to identify those individuals who are most at risk and to conduct an audit of a "snap shot" of their emails on a given day. External legal advisers could be employed to do such auditing to avoid embarrassment to the employees concerned while auditing their correspondence/e-mail."

It also advises not to do the program in isolation, but to "integrate the Competition Compliance Programme into the overall compliance programmes of the enterprise. The existence of a strong Compliance Programme reflecting the eagerness of the management to comply may temper the severity of the punishment that may be meted out for violation."

ROLE OF A COMPETITION COMPLIANCE OFFICER UNDER CCPE

Competition Compliance Programme for Enterprises **(CCPE)**, which is a suggested framework for compliance of the Competition Act, 2012 by Enterprises envisages that "in order to ensure effectiveness of compliance programme, it is desirable that a Compliance Officer with appropriate delegation of authority be appointed to enforce the Compliance Programme. The Compliance Officer should preferably be an independent professional with expertise and core competency in compliance and compliance management. He should be a focal point and in charge of designing a program, motivating officers and employees, managing any accompanying administrative / organizational issue, preparing compliance manual, and auditing compliance."

COMPETITION COMPLIANCE BY DIRECTORS THROUGH DIRECTORS' RESPONSIBILITY STATEMENT

Section 134(3)(c) read with Section 134(5)(f) of the Companies Act, 2013 requires that there shall be attached to financial statements laid before a company in general meeting, a report by its Board of Directors, which shall include the Directors' Responsibility Statement, which shall state that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. As Competition law is applicable to all companies, the directors of corporates in India are required to achieve compliance with the provisions of Competition Law, as well.

COMPETITION COMPLIANCE BY A COMPANY SECRETARY IN EMPLOYMENT

Section 205(1)(a) of the Companies Act, 2013 stipulates the functions of the company secretary, which shall include to report to the Board of Directors about compliance with the provisions of the Companies Act, the rules made thereunder and "other laws applicable to the company." As Competition law is applicable to all companies, the Company Secretaries in Employment of Corporates in India are required to attain compliance with the provisions of Competition Law, in addition to other applicable laws.

COMPETITION COMPLIANCE UNDER THE SECRETARIAL STANDARD-1

Annexure 'A' to Para 1.3.8 of Secretarial Standard-1 (SS-1) on "Meetings of the Board of Directors" issued by the Council of the Institute of Company Secretaries of India (ICSI) and approved by the Central Government u/s. 118(10) of the Companies Act, 2013, which is effective from 1st July, 2015 contains an illustrative list of items of general business which shall not be passed by circulation and shall be placed before the Board at its meeting includes

> Ensuring compliance with competition law, rules etc. is crucial, during strategic business decisions, as the consequences of non-compliance may be serious for concerned companies in terms of investigation by Competition Commission of India (CCI), hefty financial penalties, agreements being unenforceable and void, adverse publicity, damages, possibility of being sued for damages by those harmed by unlawful behaviour, etc. In the event of violation of competition law, business can face significant financial penalties, third party actions and loss of reputation and goodwill.

"specifying list of laws applicable specifically to the company" and considering the Compliance Certificate to ensure "compliance with the provisions of all the laws applicable to the company." These points ineluctably entail compliance with the competition laws.

COMPETITION COMPLIANCE UNDER ERSTWHILE CLAUSE 49 OF THE EQUITY LISTING AGREEMENT

Re-Revised Clause 49(II)(D)(3) of the erstwhile Equity Listing Agreement stipulates that the Board shall periodically review compliance reports of "all laws applicable to the company", prepared by the company as well as steps taken by the company to rectify instances of non-compliances.

Clause 49(IX)(A)(2) requires the CEO or the Managing Director or Manager or in their absence, a Whole Time Director and the CFO shall certify to the Board that they have reviewed the financial statements and the cash flow statement for the year and that to the best of their knowledge and belief these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, "applicable laws and regulations." Even then prevailing clauses conceived of compulsory compliance of competition laws by implication.

COMPETITION COMPLIANCE UNDER THE SEBI (LODR) REGULATIONS, 2015

Regulation 4(1)(g) under Chapter II of the SEBI (LODR) Regulations, 2015 stipulates that "the listed entity shall abide by all the provisions of the applicable laws" including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognized stock exchange(s) in this regard and as may be applicable.

Regulation 17(3) under Chapter IV of the SEBI (LODR) Regulations, 2015 stipulates that "the board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity," prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.

Regulation 67(2) under Chapter VII of the SEBI (LODR) Regulations, 2015 stipulates that "the listed entity shall comply, at all times, with the rules / regulations / laws of the country of origin." These three regulations imply the requirement of compliance with national competition laws and also competition laws of the country of origin, by all the listed entities.

COMPETITION LAW COMPLIANCE AUDIT IS AN INTEGRAL PART OF SECRETARIAL AUDIT

Section 204(1) of the Companies Act, 2013 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (a) every listed company, (b) every public company having a paid-up share capital of Rs.50 crore or more or (c) every public company having a turnover of Rs.250 crore or more are required to obtain a Secretarial Audit Report from a member of the Institute of Company Secretaries of India holding a certificate of practice, in the format prescribed in Form MR-3 to be annexed with the Board's report.

Section 143 of the Companies Act, 2013 deals with powers and duties of Statutory Auditors. Sub-section (14) of the section provides that the provisions of this section shall *mutatis mutandis* apply to the Company Secretary in Practice conducting Secretarial Audit Under Section 204. Where any of the matters required to be included in the audit report u/s. 204 is answered in the negative or with a qualification, the report shall state the reasons therefor.

The Secretarial Audit Report shall be required to be made in Form MR-3 and it shall be annexed with its Board's report made in terms of sub-section (3) of section 134. In terms of Form MR-3, the Secretarial Auditor needs to examine and report on the compliance of the specified five specific laws. In addition, Form MR-3, Point (vi) also refers to "Other laws as may be applicable specifically to the company." By virtue of the Point (vi) to the Form MR-3 of Secretarial Audit Report, conducting a competition law compliance audit has become inevitably an integral part of secretarial audit.

The Council of the ICSI at its 226th meeting held on 21st November, 2014 decided on the scope of Secretarial Audit with regard to Point (vi) of MR-3 on "Other laws as may be applicable specifically to the company," which includes, among other things, "examining and reporting whether the adequate systems and processes are in place to monitor and ensure compliance with general laws like labour laws, competition law, environmental laws, etc."

"The Competition Act, 2002" has been included in Sr. No.19 of the 'Illustrative List Of Laws Applicable To Companies', in the Annexure-1 to the 'Guidance Manual on Quality of Audit & Attestation Services' (A Referencer for Company Secretaries) issued in April, 2015 by the 'Quality Review Board' of the Institute of Company Secretaries of India, established by the Ministry of Corporate Affairs Under Section 29A of the Company Secretaries Act, 1980.

Chapter-9 of 'Guidance Note on Secretarial Audit' (Release 1.3) issued by ICSI deals with Competition Law Compliance Audit of Corporates in India. It provides 3 general inclusive checklists for anti-competitive agreements, abuse of dominance and regulation of combinations, which may be followed while carrying out assessment of agreements, abuse of dominant position and combinations from Competition Law Compliance perspective.

Page Nos.229 to 250 of Chapter/Lesson 7 of Part-B of Paper 2 of Module 1 of Professional Programme of ICSI (A Study Material with the Amendments Made upto June, 2016) titled "Secretarial Audit, Compliance Management and Due Diligence" deals with Competition Law Due Diligence, which contains the broad aspects of due diligence relating to competition law including anti-competitive agreement, abuse of dominance, regulation of combinations, and the relevant checklists, importance of competition compliance programme, etc.

WHEN A COMPETITION AUDIT IS APPROPRIATE?

Some businesses will elect to conduct a competition audit as a matter of routine compliance, while others may reserve such exercises for high risk areas of the business or if there is reason to believe that a special examination is warranted. Competition compliance is an important business issue and the arguments for investment in a competition compliance culture are compelling. A competition audit may uncover actual or potential competition violations, allowing a company to take corrective action that avoids a high-cost regulatory investigation or litigation. Certain industries tend to be particularly prone to competition issues and scrutiny.

The CCI is investigating particular industries presenting competition issues, including airlines, cement, financial services, motion pictures, real estate, shipping, technology, and telecoms. Businesses dealing in commoditized sectors or more mature markets or facing low margins are likely to be subject to particular scrutiny given the obvious risk of collusion in such markets. Other areas for future enforcement could likely include the energy and pharmaceutical sectors. These sectors are vital to the economy, health, and development of India and have been the subject of recent competition inquiries in Europe and the United States. It would not be surprising if, in the future, the CCI followed its international competition brethren with inquiries in these areas.

WHO SHOULD CONDUCT A COMPETITION AUDIT?

It is important that Company Secretaries (CS) are appointed to conduct a competition audit and they are familiar with the basic principles of competition law. First, specific competition expertise is often a requisite for recognizing some of the subtleties of competition issues. Second, if those conducting the audit are not Company Secretaries, communications produced during and for the purposes of the audit will not be subject to protection from disclosure on grounds of legal privilege where that applies. A company has various options in terms of the choice of CS, including in-house CS, external CS, and specialist external CS appointed for the audit.

The choice of team will depend on the circumstances of the case. Often a team comprising both in-house, external, and specialist CS may bring an optimal combination of expertise and experience. While inside Compliance Officer know most about a company's operations and have an existing rapport with company managers, their position of trust and confidence within the company may be compromised, if they become involved in reviewing employees' personal and business files. For this reason, the investigative activities contemplated by a compliance audit may be undertaken by an outside Practicing Company Secretary, with the active involvement of in-house Compliance Officer in the design of the audit and post-audit evaluation process.

SCOPE OF A COMPETITION AUDIT

It is essential that the scope and objectives of the audit be defined and agreed at the outset. An un-focused, ill-defined review is likely to cause concern among staff and may prove counterproductive. It may be that the audit focuses on certain business units which are prone to higher levels of risk or which are located in jurisdictions where the local regulators are known to be targeting the sector. In any case, there should be a well-conceived prioritization of areas of potential review.

In terms of geography, the scope of audit will be driven by the nature of the company's operations. Where a company has multiple physical locations, or its headquarters are outside the country which is the focus of the audit, it may be appropriate to conduct a review of the largest office or headquarters at the outset to send a message that the activity is serious and everyone will be subject to the same process.

In terms of time period i.e., how far back in time the company wants to review, a starting point is to go back around five years, but the scope of review should be fact-driven. This is largely consistent with the limitation periods worldwide, but it should be borne in mind that unlawful practices may have a much longer history, so an initial investigation may prompt the need for a wider or more targeted examination.

ANNOUNCEMENT OF A COMPETITION AUDIT

It is usual to announce an audit and advisable to have the procedure endorsed by a senior business representative of the company. This aims to serve a number of objectives: (i) to communicate that the review has high level support; (ii) to authorize Company Secretary to proceed; (iii) to establish that communications with Company Secretary are subject to any applicable legal privilege where conducted for the purposes of the audit; (iv) to reassure staff that the audit is being undertaken for the benefit of the company and that individuals are not suspected of being involved in unlawful activity; and (v) to seek to generate commitment and cooperation by all involved in the organization.

REVIEW OF DOCUMENTS IN A COMPETITION AUDIT

Document review will tend to be the most resource-intensive part of the process. The objectives and scope of the audit will determine which hard copy and electronic files should be reviewed. The categories of documents that are subjected to review may be modified depending on the scope and focus of the audit itself and by substantive area of inquiry such as pricing; IP licensing and strategy, cooperation arrangements with competitors, marketing, industry statistics and market intelligence, etc.

EMPLOYEE INTERVIEWS TO ASSESS COMPETITION COMPLIANCE HEALTH

Practical and cost constraints will mean that a process of selection will be necessary when determining who within the business should be interviewed. Senior management should be given an opportunity to express any concerns or raise questions about competition compliance. Mid-level management and employees who have roles which are directly facing customers or competitors should also be considered for interview.

However, conducting such interviews in India being at nascent stage of competition enforcement can be a challenging task, especially where business practices which previously escaped legal sanctions, suddenly become competition law infringements. Such practices, such as, bid rigging may be endemic across an industry and it can be difficult for old habits to die. Particular care and sensitivity is therefore needed when conducting interviews to avoid any suggestion that individuals are suspected of engaging in unlawful conduct.

COMPETITION AUDIT REPORT

Once an audit has been conducted, and valuable resources have been invested in so doing, management will want to receive the findings and recommendations of Company Secretary. Consideration should be given as to the most appropriate means of communicating the findings, in consultation with the Company Secretary. The obvious disadvantage to a written report is that the findings and statements may be subject to disclosure in court, regulatory proceedings, and investigations in the future. Steps can be taken to minimize the risk of inadvertently losing any protection on grounds of applicable legal privilege or similar rules, but even the greatest care cannot eliminate the risk that the company will be required to disclose the report or that it will be made available inadvertently.

CONFIDENTIALITY

As noted above, documents produced during or as a result of the audit may be subject to disclosure in court, regulatory, or investigatory proceedings in the future in India or potentially in other jurisdictions. Legal professional privilege is the principal means by which a party may resist disclosure sought by an opposing party in litigation or by a government or regulatory authority. However, the precise scope of legal privilege tends to differ depending on the jurisdiction, regulatory procedure, etc. Legal advice should be sought in determining the scope of applicable privilege, if any, in specific situations to seek to avoid unwarranted disclosure or regulatory challenge for an unjustified claim of privilege.

The issue is more complicated in competition proceedings where Indian law is involved as there is no express recognition of the concept of legal privilege in the Competition Act. Necessary steps should be taken in the context of an audit to seek to avoid inadvertent disclosure of confidential documents. However, it should always be kept in mind that documents may be open to disclosure before adverse third parties, despite the care taken.

> Competition compliance is an important business issue and the arguments for investment in a competition compliance culture are compelling. A competition audit may uncover actual or potential competition violations, allowing a company to take corrective action that avoids a high-cost regulatory investigation or litigation. Certain industries tend to be particularly prone to competition issues and scrutiny.

PRIVACY AND DATA PROTECTION WHILE CONDUCTING COMPETITION AUDIT

Different jurisdictions have different rules on data protection and employee privacy which should be checked before conducting any searches of employee documents and electronic files. There is no specific law in India that deals with employee data protection in the context of competition or similar inquiries, despite having an international obligation under Article 39 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS), which enjoins India being a member of WTO to make laws to protect data / information.

The proposed new legislation called as the Personal Data Protection Bill, 2014 as introduced in the Rajya Sabha on the 28th November, 2014 is yet to see the light of the day. However, the relevant laws in India dealing with data protection are provided particularly u/s. 43A and 72A of the Information Technology Act, 2000 read with the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 and the Indian Contract Act, 1872 apart from other sectorial laws.

In some cases it will be necessary to obtain specific employee consent before conducting a review of personal files. Even where specific legal and regulatory consents are not required, the company may consider that, as a matter of internal protocol, it is desirable to obtain personal consents before searching through employee systems given the intrusive nature of such an exercise.

COMPETITION AUDITS AS PART OF COMPETITION COMPLIANCE STRATEGY IN INDIA AND BEYOND

Competition audits are not, of course, a substitute for an effective competition compliance and training program. If the audit uncovers a risk or actual violation of competition laws, by definition, other preventative steps have not been effective. The audit itself may suggest areas where the existing compliance program can be improved. If the audit uncovers an actual or potential competition violation, then a Company Secretary should be involved in the assessment of the extent and gravity of the risk and necessary steps to be taken.

As part of its competition law 'advocacy' the CCI has already emphasized the importance of competition law compliance programs and encouraged businesses to raise awareness of competition law compliance among their employees, especially those in sales and marketing functions to develop a model code of compliance for industry associations to ensure that they do not become conduits for cartelization or inadvertently discuss subjects that could lead to a violation of competition law.

Competition authorities worldwide have also given guidance on the features of effective compliance programs. An increase in cooperation between authorities worldwide requires implementation of effective and integrated global compliance programs that are sensitive to the needs of the organization and the specific risks it faces, wherever it does business. Insights that companies have gained internationally can be useful when grappling with the evolving compliance challenges in India and integrating those efforts worldwide.

CONCLUSION

Compliance audit is one of the essential elements of a credible and effective competition compliance program. Robust competition compliance initiatives like policy and procedures, education and training and competition compliance audit can to a great extent mitigate the risk and also assist in taking timely actions in case of default. The competition audit is one of the most underrated and underutilized tools in the competition compliance toolbox. Too many companies fail to employ this useful device because they fear that conducting an audit is costly, time-consuming and disruptive. But none of those fears are necessarily the case, and the costs and time spent on an audit may mitigate other risks to the company, such as competition litigation risks.

Depending on the size of the company, it may be advisable to conduct a company-wide competition law compliance audit of processes and procedures in the course of implementing any compliance programme. Given today's rigorous competitive environment, a robust competition compliance programme is an absolute must for enterprises. A compliance program needs to be monitored, with auditing and reporting mechanisms to prevent and detect breaches of the program at all levels, including senior management. Competition audits are a core component of an effective competition compliance program and a cost-effective way to assess a company's compliance health. In this age of aggressive competition enforcement in jurisdictions around the world, a failure to understand a company's competition compliance health is a mistake that a few can afford to make. CS

REFERENCES

1. *The Competition Act, 2002*
2. *The Companies Act, 2013*
3. *The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*
4. *The CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011*
5. *Competition Compliance Programme for Enterprises*
6. *Guidance Manual on Quality of Audit & Attestation Services*
7. *Guidance Note on Secretarial Audit*
8. *The Information Technology Act, 2000 & the IT (RSPPSPDI) Rules, 2011*
9. *The Personal Data Protection Bill, 2014*
10. *The Trade-Related Aspects of Intellectual Property Rights (TRIPS)*

Proceedings before the Competition Commission - Important Judicial Precedents

Amit K Vyas*, FCS
Vice President-Legal
Mahyco, Mumbai
amit.vyas@mahyco.com

BRIEF INTRODUCTION

The Competition Act, 2002(hereinafter referred to as the Act) was enacted by the Parliament of India in the year 2002, and it governs the competition law in India. It replaced the vintage and outdated Monopolies & Restrictive Trade Practices Act 1969 (the MRTP Act) which was a typical "command and control law'. The MRTP Act reflected the 'business vary pro-socialist mindset which treated business growth as being capitalist and profit making as an evil. It was in 1991 that widespread economic reforms were undertaken in the country and consequently the march from "Command-and-Control" economy to an economy based more on free market principles commenced its stride. With economic liberalisation fast taking roots in India the MRTP Act 1969 had to rightly give way to a new law namely the Competition Act, 2002.

> The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. The Act has been in existence for over a decade now and it has generated substantial case laws on diverse aspects of its provisions. This article unfolds some of the more important cases which highlight the hindrances in course of the Competition Commission proceedings.

Under this legislation, the Competition Commission of India (hereinafter referred to as the CCI) was established to prevent activities that have an adverse effect on competition in India. It is a tool to implement and enforce competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market. The Competition Act, 2002 was amended by the Competition (Amendment) Act, 2007 and again by the Competition (Amendment) Act, 2009.

This Act seeks to prevent trade practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

As per the Supreme Court of India (Civil Appeal No. 7999 of 2010) "The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. The advantages of perfect competition are three-fold: allocative efficiency, which ensures the effective allocation of resources, productive efficiency, which ensures that costs of production are kept at a minimum and dynamic efficiency, which promotes innovative practices."

SOME INTERESTING CASES WHICH HIGHLIGHT THE HINDRANCES IN COURSE OF THE COMPETITION COMMISSION PROCEEDINGS

This article discusses some important cases which analyse how proceedings before the CCI under the Act have been targeted by invoking writ jurisdiction and other legal mechanism , with a view to delay or thwart the investigation/ proceedings.

1. Supreme Court decision

Competition Commission of India. v. Steel Authority of India Ltd & Anr (2010) 10

* Views expressed herein are strictly personal.

SCC 744 (SC)

Facts in brief:

- Jindal Steel & Powers Ltd. (for short the `informant') invoked the provisions of Section 19 read with Section 26(1) of the Act by providing information to the Commission alleging that M/s. Steel Authority of India Ltd. (for short `SAIL') had, inter alia, entered into an exclusive supply agreement with Indian Railways for supply of rails. The SAIL, thus, was alleged to have abused its dominant position in the market and deprived others of fair competition and therefore, acted contrary to Section 3(4) (Anti-competitive Agreements) and Section 4(1) (Abuse of dominant position) of the Act.
- This information was registered by the Commission which directed SAIL to submit its comments in respect of the information received by the Commission. A notice was issued to SAIL enclosing all information submitted by the informant. When the matter was taken up for consideration by the Commission SAIL requested extension of six weeks time to file its comments. Finding no justification in the request of the SAIL, the Commission declined the prayer for extension of time. In this order, it also formed the opinion that prima facie case existed against SAIL, and resultantly, directed the Director General, appointed under Section 16(1) of the Act, to make investigation into the matter in terms of Section 26(1) of the Act. It also granted liberty to SAIL to file its views and comments before the Director General during the course of investigation.
- Despite these orders, SAIL filed an interim reply before the Commission along with an application that it may be heard before any interim order is passed by the Commission in the proceedings. The Commission only reiterated its earlier directions made to the Director General for investigation and granted liberty to SAIL to file its reply before the Director General. The correctness of these directions was challenged by SAIL before the Competition Appellate Tribunal (for short, the `Tribunal'). The Tribunal stayed further proceedings before the Director General by an interim order .
- Apart from SAIL the Commission filed an application before the Tribunal seeking impleadment in the appeal filed by SAIL. It also filed an application for vacation of interim orders which had been issued by the Tribunal.
- The application of the Commission for impleadment was dismissed, as in the opinion of the Tribunal the Commission was neither a necessary nor a proper party in the appellate proceedings before the Tribunal. Resultantly, the application for vacation of stay also came to be dismissed.
- The appeal against the order was held to be maintainable in terms of Section 53A of the Act. While setting aside the said order of the Commission and recording a finding that there was violation of principles of natural justice, the Tribunal granted further time to SAIL to file its reply in addition to the reply already filed by SAIL.

Core issues & Decision by the SC

Core issues	**Decision**
Whether the directions passed by the Commission in exercise of its powers under Section 26(1) of the Act forming a prima facie opinion would be appealable in 16 terms of Section 53A(1) of the Act?	In terms of Section 53A(1)(a) of the Act appeal shall lie only against such directions, decisions or orders passed by the Commission before the Tribunal which have been specifically stated under the provisions of Section 53A(1)(a). The orders, which have not been specifically made appealable, cannot be treated appealable by implication. For example taking a prima facie view and issuing a direction to the Director General for investigation would not be an order appealable under Section 53A.
What is the ambit and scope of power vested with the Commission under Section 26(1) of the Act and whether the parties, including the informant or the affected party, are entitled to notice or hearing, as a matter of right, at the preliminary stage of formulating an opinion as to the existence of the prima facie case?	Neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor any party can claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act that a prima facie case exists for 18 issuance of a direction to the Director General to cause an investigation to be made into the matter. However, the Commission, being a statutory body exercising, inter alia, regulatory jurisdiction, even at that stage, in its discretion and in appropriate cases may call upon the concerned party(s) to render required assistance or produce requisite information, as per its directive. The Commission is expected to form such prima facie view without entering upon any adjudicatory or determinative process. The Commission is entitled to form its opinion without any assistance from any quarter or even with assistance of experts or others. The Commission has the power in terms of Regulation 17 (2) of the Regulations to invite not only the information provider but even `such other person' which would include all persons, even the affected parties, as it may deem necessary. In that event it shall be `preliminary conference', for whose conduct of business the Commission is entitled to evolve its own procedure .
Whether it is obligatory for the Commission to record reasons for formation of a prima facie opinion in terms of Section 26(1) of the Act	In consonance with the settled principles of administrative jurisprudence, the Commission is expected to record at least some reason even while forming a prima facie view. However, while passing directions and orders dealing with the rights of the parties in its adjudicatory and determinative capacity, it is required of the Commission to pass speaking orders, upon due application of mind, responding to all the contentions raised before it by the rival parties.
Whether the Commission would be a necessary, or at least a proper, party in the proceedings before the Tribunal in an appeal preferred by any party?	The Commission, in cases where the inquiry has been initiated it suo moto, shall be a necessary party and in all other cases the Commission shall be a proper party in the proceedings before the Competition Tribunal. The presence of the Commission before the Tribunal would help in complete adjudication 19 and effective and expeditious disposal of matters. Being an expert body, its views would be of appropriate assistance to the Tribunal. Thus, the Commission in the proceedings before the Tribunal would be a necessary or a proper party, as the case may be.

At what stage and in what manner the Commission can exercise powers vested in it under Section 33 of the Act to pass temporary restraint orders?	During an inquiry and where the Commission is satisfied that the act is in contravention of the provisions stated in Section 33 of the Act, it may issue an order temporarily restraining the party from carrying on such act, until the conclusion of such inquiry or until further orders without giving notice to such party, where it deems it necessary. The power under Section 33 of the Act to pass temporary restraint order can only be exercised by the Commission when it has formed prima facie opinion and directed investigation in terms of Section 26(1) of the Act, as is evident from the language of this provision read with Regulation 18(2) of the Regulations. The Commission, while recording a reasoned order inter alia should : (a) record its satisfaction (which has to be of much higher degree than formation of a prima facie view under Section 26(1) of the Act) in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed; (b) It is necessary to issue order of restraint and (c) from the record before the Commission, it is apparent that there is 20 every likelihood of the party to the lis, suffering irreparable and irretrievable damage or there is definite apprehension that it would have adverse effect on competition in the market.
V. Important observations_	" First, expeditious disposal of matters before the Commission and the Tribunal is an apparent legislative intent from the bare reading of the provisions of the Act and more particularly the Regulations framed there under. Second, if every direction or recording of an opinion are made appealable then certainly it would amount to abuse of the process of appeal. Besides this, burdening the Tribunal with appeals against non-appealable orders would defeat the object of the Act, as a prolonged litigation may harm the interest of free and fair market and economy. Finally, we see no ambiguity in the language of the provision, but even if, for the sake of argument, we assume that the provision is capable of two interpretations then we must accept the one which will fall in line with the legislative intent rather than the one which defeat the object of the Act. For these reasons, we have no hesitation in holding that no appeal will lie from any decision, order or direction of the Commission which is not made specifically appealable under Section 53A(1)(a) of the Act"

2. Other important High Court orders

1. Telefonaktiebolaget lm Ericsson* v. *Competition Commission of India W.P. (C) 464/2014 & CM Nos.911/2014 & 915/2014 (Del)

Core issue	Decision
Does the fact that the dispute is a subject matter of civil suits mean that it cannot be entertained by the CCI?	Ericsson had argued that the CCI could not consider the matter as the Ericsson and Micromax/ Intex disputes were already the subject matter of pending suits. The HC held that this contention held no merit, since CCI proceedings are not in the nature of private lis but have a wider object of preventing adverse competition in India. As a result, the suit proceedings and the CCI proceedings can take place alongside each other. Further, CCI's consideration of the dispute would be in a different scope, with more focus on examining whether Ericsson has abused its dominant position. The other contention which the court considered was that since some issues before the civil court and the CCI were common and S. 61 bars the jurisdiction of the civil court where CCI or COMPAT is empowered, the subject matter is outside the scope of the Competition Act. This contention was rejected on the basis that only the CCI (and not the civil court) could decide the matter of abuse of dominance. While relevant facts pleaded before both forums may be similar, this does not amount to the civil court adjudicating the question of dominance abuse.

2. Hyundai Motor India Limited* v. *The Competition Commission Of India on 26 April, 2011 (Writ Petition Nos.31808 and 31809 of 2012 and 26986 of 2014 delivered on 4TH Feb 2015 (Mad)

The Madras High Court clubbed together the writ petitions filed as they involved similar questions of law.

Core issues	Decision
Whether the DG of the CCI has suo motu power to initiate investigation?	The statement of objects and reasons of the Competition Act, 2002 states that the DG would be able to act only if so directed by the CCI but will not have any suo motu powers for initiating investigations. Therefore, it is clear that the role of the Director General is actually to assist the Competition Commission in the effective discharge of its duties. The Director General under the Act is not competent to give any opinion except conducting an investigation and assisting the Commission in the enquiry initiated under Section 19. As per Section 19 (1) (a) of the Act, the CCI can inquire into any alleged contravention upon receipt of any information from any person. The term 'Person' as defined in Section 2 (l) of the Act, the court concluded that 'person' includes every artificial juridical person and hence DG would be covered by the definition order from the magistrate of relevant jurisdiction in order to conduct 'search' and 'seizure' operations.

Whether formation of a prima facie opinion was a sine qua non for passing the Impugned Order by the CCI?	The HC cited the judgement in Competition Commission of India v. Steel Authority of India Limited [(2010) 10 SCC 744], wherein the Hon'ble the Supreme Court held that the Commission must record its reasons for forming a prima facie opinion with reference to the information furnished to the Commission. After pointing out in para 93 of its decision that the functions performed by the Commission are in the nature of preparatory measures in contrast to the decision making process, the Supreme court nevertheless held in para 97 that at the stage of forming a prima facie view under section 26 (1), the Commission should record minimum reasons for formation of a prima facie opinion. Therefore, it is contended by the petitioner that since the order dated 26.04.2011 does not contain any reason and does not reflect the formation of a prima facie opinion, the impugned proceedings are vitiated.
Whether the DG has acted in excess of its jurisdiction vested to him under the Act?	In this case all that the Director General did was to simply place additional information before the Commission. The Commission then passed an order on 26.04.2011. Thereafter, the Director General issued a notice to the writ petitioner on 04.05.2011, only in compliance of the directions issued under Section 41(1). The moment the Commission passed an order directing him to expand the scope of the investigation Section 41(1) came into play

3. *Google Inc. & Ors* v. *Competition Commission Of India ;27 April, 2015 (Delhi HC) LPA No. 733/2014)(Del)*

Facts in brief:
A complaint was filed before the CCI that Google Inc. has abused its dominant position in the internet advertising space by promoting its vertical search services like YouTube, Google News, Google Maps, etc. In other words, these services would appear predominantly during a search result on Google, irrespective of their popularity or relevance. On April 15th, 2014 the CCI ordered Director General (DG) under Section 26(1) of the Competition Act, 2002 (Act) to investigate into the affairs of Google Inc. As per Section 26(1), the CCI orders an investigation on the basis of prima-facie opinion and at this stage, the Act does not provide any right of being heard to the parties.

Therefore, Google Inc had filed an application before the CCI for recall of its order dated April 15th, 2014. However, the application was rejected on the ground that CCI lacked jurisdiction to entertain any such application.

Further, the three appellants i.e. i) Google Inc., California, United States of America (USA), ii) Google Ireland Ltd. and, iii) Google India Pvt. Ltd., Bangalore, filed the writ petition impugning, the order dated 15th April, 2014 of the CCI. The CCI dismissed the application filed by the appellants for recall of the order dated 15th April, 2014 as not maintainable and restrained the CCI from carrying out any further proceedings against the appellants pursuant to the order dated 15th April, 2014.

Core Issues (interalia)	Decision by the HC
Whether an administrative body like CCI had inherent powers to review or recall its order passed under section 26(1) in the absence of any specific provisions in the Competition Act, 2002?	The HC held that it is up to the CCI to also upon being so called upon to recall/ review its order under Section 26(1) of the Act to decide whether to, pending the said decision, stall the investigation or not, as observed hereinabove also. The jurisdiction of review/recall would be exercised only if without entering into any factual controversy, CCI finds no merit in the complaint/reference on which investigation had been ordered. The application for review/recall of the order under Section 26(1) of the Act is not to become the Section 26(8) stage of the Act;
Whether Writ Petition filed against CCI order directing investigation is maintainable?	The HC held that the remedy of Article 226 would definitely be available in such case. Even otherwise, the remedy under Article 226 of the Constitution of India has been held to be a part of the basic structure of our constitution. The rule of availability of alternative remedy being a ground for not entertaining a petition under Article 226 is not an absolute one and a petition under Article 226 can still be entertained where the order under challenge is wholly without jurisdiction or the like. Supreme Court[3] held that if a wrong and illegal administrative act can in the exercise of powers of judicial review be set aside by the Courts, the same mischief can be undone by the administrative authority by reviewing such an order if found to be ultra vires and that it is open to the administrative authority to take corrective measure by annulling the palpably illegal order.

4. *Aamir Khan Productions Private Ltd.* v. *Union of India (2010)4CompLJ580 (Bom.)*

Facts in brief:
The matter involved the allegation of 'cartelisation' against certain associations/ organizations which is violative of provisions of Section 3(3) of Competition Act 2002. It was also alleged that these Associations/Enterprises, who jointly control approximately 100% of the market share for production and distribution of Hindi Motion Pictures exhibited in Multiplexes, by organizing themselves under the umbrella of UPDF, took a collective decision not to release films to the Multiplexes from 4th April 2009 onwards with the objective to extract higher revenue sharing ratio from the members of the informant and this cartel like activity has appreciable adverse effect on competition in India.

The Commission took cognizance of the matter under Section 19 of the Act and on forming an opinion under Section 26(1) that there

> The practice of litigants raising constitutional issues to directly approach the High Court and thus subvert the jurisdiction of the Tribunals is not correct. The Tribunal can decide all such issues and even jurisdictional issues can also be decided by the Tribunal. The only exception is that the Tribunal cannot decide the constitutional validity of the statute under which the Tribunal is established.

exists a *prima facie* case, it issued directions to Director General (DG) to investigate into the matter. After conducting investigation, the DG submitted his report dated 24/9/09 and also a supplementary report dated 27/11/09 to the Commission. As per the findings of the D.G. in these reports, the allegations made in the information have been found to be substantiated and accordingly show notices were issued.

In both these petitions under Article 226 of the Constitution of India, the petitioners challenged the separate show because notices dated 21st December 2009 issued by the Competition Commission of India, Respondent No.2 herein, under Section 26(8) read with Section 3(3) of the Competition Act, 2002.

The petitioners in both these petitions challenged the said show cause notices mainly on the ground that under the Competition Act the Commission does not have any jurisdiction to initiate any such proceedings in respect of films for which the provisions of the Copyright Act, 1957 contain exhaustive provisions. In support of this submission, their counsel made reference to the provisions of Sections 60, 61 and 62 of the Competition Act, 2002. Section 61 provides for exclusion of jurisdiction of civil Courts in respect of any matters which the Commission or the Appellate Tribunal is empowered by the Competition Act to determine. Section 60 gives the Act overriding effect over other laws. Section 62 of the Competition Act, 2002, reads as under: - Section 62. Application of other laws not barred - The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

The petitioners challenged the jurisdiction of the Commission to initiate any proceedings under the Competition Act against the petitioners on the following main grounds:-

(a) Sub-section (1) of Section 3 of the Competition Act prohibits an anti-competitive agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The right to release a film can never be considered as goods or services and, therefore, the Competition Act, 2002 can never apply to a dispute regarding the distribution rights in relation to films.

The High Court dismissed the petitions on the following grounds:

(i) Every Tribunal has the jurisdiction to determine the existence or otherwise of the jurisdictional fact, unless the statute establishing the Tribunal provides otherwise. On a bare reading of the provisions of the Competition Act, 2002, it is clear that the Competition Commission has the jurisdiction to determine whether the preliminary state of facts (on which the further exercise of its jurisdiction depends) exists. There is nothing in the Competition Act, 2002 to indicate that the Competition Commission is not invested with the jurisdiction to determine such jurisdictional fact .

(ii) The question whether the Competition Commission has jurisdiction to initiate the proceedings in the fact situation of these cases is a mixed question of law and fact which the Competition Commission is competent to decide. The matter is still at the stage of further inquiry. The Commission is yet to take a decision in the matter. There is no reason to believe that the Competition Commission will not consider all the contentions sought to be raised by the petitioners in these petitions.

(iii) It cannot be said that requiring the petitioners to appear before the Competition Commission will subject the petitioners to lengthy proceedings and unnecessary harassment.

(iv) In case the final decision of the Competition Commission is adverse to the petitioners, the petitioners will have right to challenge the same in an appeal before the Competition Appellate Tribunal established under Section 53A of the Competition Act and the said Appellate Tribunal is headed by a former Judge of the Supreme Court of India.

(v) The contention that the Competition Commission has already pre-judged the issue also cannot be accepted. Under Sub-section (1) of Section 26, the Commission directed an investigation by Director General into the complaint of FICCI-Multiplex Owners' Association. Under Sub-section (3) thereof, the Director General submitted a report of his findings that there is contravention of Section 3(3) of the Act and under Sub-section (4); the Commission forwarded a copy of the report to the petitioners. After consideration of the petitioners' objections, the Commission has formed an opinion under Sub-section (8) that further inquiry is called for. Hence all that the Commission is doing is to hold an inquiry into such contravention as reported by the Director General. All the authorities including disciplinary authority in service matters initiate departmental inquiries upon receiving preliminary inquiry report of subordinate officer indicating misconduct having been committed, but once the inquiry is held by observing the applicable statutory provisions and the principles of natural justice, the concerned disciplinary authority takes a final decision in the matter in accordance with law. Hence, mere issuance of a show cause notice under Section 26(8)/Section 27, like issuance of a charge-sheet in a departmental inquiry, cannot be treated as pre-judging the issue, merely because the petitioners had raised some of the legal contentions in the replies to the notice issued by the Director General of Investigation and thereafter also the Commission has issued show cause notices. That can never mean that the Competition Commission will not consider the petitioners' objections against maintainability of the proceedings.

(vi) The question whether the Competition Commission has jurisdiction to initiate the proceedings in the fact situation of these cases is a mixed question of law and fact which the Competition Commission is competent to decide. The matter is still at the stage of further inquiry. The Commission is yet to take a decision in the matter. There is no reason to believe that the Competition Commission will not consider all the contentions sought to be raised by the petitioners in these petitions including the contention based on sub-section (5) of Section 3 of the Competition Act .

5. The Bombay High Court in Kingfisher Airlines Ltd.* v. *The Competition Commission of India and others, Writ Petition No.1785 of 2009, [2011]108SCL621(Bom) has considered a premature challenge to proceedings under the Competition Act and has refused to interfere in its extraordinary jurisdiction under Article 226 of the Constitution of India.

POWER OF HIGH COURT OVER TRIBUNALS AND CCI (ARTICLE 226 OF THE CONSTITUTION)

Article 226 empowers the High Courts to issue certain writs throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

In L. Chandra Kumar v Union of India, AIR 1987 SC 1125 (paras 90 and 93); State of Orissa V. Bhagaban Sarangi (1995) 1 SCC 399; Special Director and another v Mohd. Ghulam Ghouse, AIR 2004 SC 1467 (para 5), Waryan Sing V. Amarnath (AIR 1954 SC 215) the Apex Court dealt with the following basic questions :

Core Issue No-1)-Can the Commission decide on constitutional, Legal and jurisdictional issues? Any exceptions to this?
Resolution : The practice of litigants raising constitutional issues to directly approach the High Court and thus subvert the jurisdiction of the Tribunals is not correct. The Tribunal can decide all such issues and even jurisdictional issues can also be decided by the Tribunal. The only exception is that the Tribunal cannot decide the constitutional validity of the statute under which the Tribunal is established

Core Issue No-2:- Does the Act bar recourse to the writ jurisdiction of the High Court under Article 226 of the Constitution since it gives a statutory right to appeal to the Supreme Court (Section 53T)?

Resolution : The power of superintendence conferred on High Court by this Article is wider than the power conferred on High Court to control the inferior courts through writs under Article 226. It is not confined only to administrative superintendence but also judicial superintendence over all sub ordinate courts within its jurisdiction. Even though the laws enacted for the formation of the tribunals for whatsoever purposes, ousting or taking away the jurisdiction of the High Courts and provides appeal directly to Supreme Court against the order of such tribunals, such decisions or orders of such tribunals will be subject to the scrutiny before Divisional Bench of the High Courts which have the jurisdiction over such tribunals the power of superintendence conferred on high court being extra ordinary to be exercised sparingly and only in appropriate cases in order to keep subordinate courts, within the bounds of their authority and not for correcting mere error of facts, however erroneous they may be. Further the Supreme Court held that-the main grounds on which the high court usually interferes are when the inferior courts act arbitrarily or act in excess of jurisdiction vested in them or fail to exercise jurisdiction vested in them or act in violation of the principles of Natural Justice (Santosh V. Mood Singh ; AIR 1958 SC 321); CS

References: - http://www.cci.gov.in ; http://compat.nic.in

ARTICLE

Overview of Competition and Consumer Laws in India

Dr. Rajkumar S. Adukia, ACS
Mumbai
rajkumarradukia@caaa.in

INTRODUCTION

When you enter 'competition' in the search engine Google, you will get various meanings of the term. However, the term competition and the need for legislations to govern it, is best reflected in this definition describing Competition - "the activity or condition of striving to gain or win something by defeating or establishing superiority over others". Since competition involves rivalry to gain supremacy over others, it may be misused and ultimately adversely affect consumers.

> While Consumer protection Laws bring in direct individual relief to the consumers, Competition Law minimizes market manipulation and corruption and thereby ensures consumer welfare. Competition and consumer protection play a vital role in promoting economic growth. Competition legislations therefore aim to overcome anti-competitive environment in an economy by applying a set of market rules that guarantee a level playing field for all businesses.

The rationale of fair competition is that the widest possible choices are available at the most competitive prices. The main purpose of competition law is to ensure that the competition remains fair and eventually promotes consumer welfare. Because there is competition in all sectors, the boon of competition law, consumer laws and sector specific regulators is needed to protect the consumers.

Consumer Law complements Competition Law. While Consumer protection Laws bring in direct individual relief to the consumers, Competition Law minimizes market manipulation and corruption and thereby ensures consumer welfare. Competition and consumer protection play a vital role in promoting economic growth. Competition legislations therefore aim to overcome anticompetitive environment in an economy by applying a set of market rules that guarantee a level playing field for all businesses.
Currently, there is a dual agency system prevalent in India. Informally, there is interaction and coordination between the Competition Commission of India (CCI) and Department of Consumer Affairs as both aim at consumer welfare.

Internationally, the United Nations Conference on Trade and Development (UNCTAD) is a permanent intergovernmental body established by the United Nations General Assembly in 1964 to deal with trade, investment, and development issues. UNCTAD's goals are to: "maximize the trade, investment and development opportunities of developing countries and assist them in their efforts to integrate into the world economy on an equitable basis." The objective of UNCTAD's work on competition and consumer policies is to ensure that partner countries enjoy the benefits of increased competition, open and contestable markets, private sector investment in key sectors and ultimately that consumers achieve improved welfare.

Additionally, the International Competition Network (ICN) provides competition authorities in various countries with a specialized yet informal venue for maintaining regular contacts and addressing practical competition concerns. ICN is the only international body devoted exclusively to competition law enforcement and its members represent national and multinational competition authorities. The Competition Commission of India and Competition Appellate Tribunal are both members of ICN.

COMPETITION LEGISLATION IN INDIA

In India, the earlier Monopolies and Restrictive Trade Practices Act of 1969 (MRTP Act 1969), which had been enacted to prevent concentration of economic power, had the directive of controlling monopolies and prohibiting monopolistic and restrictive trade practices. In 1984, consumer protection provisions in the form of unfair trade practices were added to the MRTP Act 1969. Later, Consumer Protection Act, 1986 was passed to govern rest of consumer protection issues. However, the MRTP Act was repealed in 2009 after enforcement of Competition Act, 2002.

The Competition Act, 2002 was passed by the Parliament in the year 2002, to which the President accorded assent in January, 2003. The Competition Act, 2002 received assent of the President of India on January 13, 2003 and was published in the Gazette of India dated January 14, 2003. It was subsequently amended by the Competition (Amendment) Act, 2007. The Monopolies and Restrictive Trade Practices Act, 1969 [MRTP Act] was repealed and replaced by the Competition Act, 2002, with effect from 01st September, 2009 [Notification Dated 28th August, 2009].

Pursuant to the Act, the Competition Commission of India (CCI) was established on 14th October, 2003. The CCI is a statutory authority established under The Competition Act, 2002 as a body of the Government of India responsible for enforcing "The Competition Act" throughout India. The duty of the Commission is to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India.

The Competition Appellate Tribunal (COMPAT) was established on 15th May 2009 and became fully operational on 20th May 2009. It is a statutory organization established under the provisions of the Competition Act, 2002 to hear and dispose of appeals against any direction issued or decision made or order passed by the CCI under particular sections. It can also adjudicate on claim for compensation that may arise from the findings of the CCI or the orders of the Appellate Tribunal in an appeal.

While the Competition Act was passed in 2002, it has been put into force in stages. The provisions of the Competition Act relating to anti-competitive agreements and abuse of dominant position were notified on May 20, 2009. Provisions of the Act dealing with combination, mergers and acquisitions came into force from June 1st 2011 by notification S.O.479(E) dated 4th March 2011.

Various regulations and rules were also laid down by the Competition Commission of India (CCI):

CCI Regulations

- CCI (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011
- CCI (Manner of Recovery of Monetary Penalty) Regulations, 2011
- CCI (Determination of Cost of Production) Regulations, 2009
- CCI (Lesser Penalty) Regulations, 2009
- CCI (Meeting for transaction of Business) Regulations, 2009
- CCI (General) Regulations, 2009
- CCI (Procedure of Engagement of Experts and Professionals) Regulations, 2009

CCI Rules

- CCI (Salary, allowances, others terms and conditions of service of the secretary and officers and other employees of the commission and the number of such officers and other employees) Rules, 2009
- CCI (DG Recruitment) Rules, 2009
- CCI (Number of additional, Joint, Deputy or Assistant Director-General, other officers and employees, their manner of appointment, qualification, salary, allowances and other terms and conditions of service) Rules, 2009
- CCI (Form of Annual Statement of Accounts) Rules, 2009
- CCI (Form and time of preparation of annual report) Rules, 2008
- CCI (Return on measures for the promotion of Competition Advocacy, awareness and training on Competition issues) Rules, 2008
- CCI (Term of the selection committee and the manner of selection of panel of names) Rules, 2008
- CCI (Salary, allowances and other terms and conditions of service of chairperson and other members) Rules, 2003
- CCI (Oath of Office and of Secrecy for Chairperson & Other Members) Rules, 2003
- CCI (Selection of Chairperson and other members of the Commission) Rules, 2003

Various regulations and rules were laid down by the Competition Appellate Tribunal (COMPAT):

COMPAT Regulations

The Competition Appellate Tribunal (Procedure) Regulations, 2011

COMPAT Rules

- Competition Appellate Tribunal (Form and fee for filing an appeal and fee for filing compensation applications) Rules, 2009
- Competition Appellate Tribunal (Salaries & Allowances and other terms and condition of Service of Chairperson & Members) Rules, 2009
- Competition Appellate Tribunal (Salaries & Allowances and other terms and condition of Service of Chairperson & Members)Amendment Rules, 2009
- Competition Appellate Tribunal (Salaries & Allowances and other terms and condition of Service of Chairperson & Members) Further Amendment Rules 2009
- Competition Appellate Tribunal (Recruitment,salaries & other terms and conditions of service of officers and other employees) Rules, 2010.

IMPORTANT COMPONENTS OF COMPETITION ACT 2002

Competition Act, 2002 is a comprehensive enactment addressing contemporary concerns of competition and future possibilities that impact the sustainable economic development. Subsequently certain amendments were made to the Act in 2007 by The Competition (Amendment) Act, 2007. Later, the Competition (Amendment) Bill, 2012 was introduced in the Lok Sabha on December 7, 2012 and a report on the Bill by the Standing Committee on Finance was submitted to the Lok Sabha on February 17, 2014. However, the Bill has since lapsed due to the dissolution of the 15th Lok Sabha.

The Competition Act consists of 66 sections.

I. Preliminary (Sections 1 & 2)
II. Prohibition of certain agreements, abuse of dominant position and regulation of combinations (Sections 3 to 6)
III. Competition Commission of India (Sections 7 to 17)
IV. Duties, Powers and Functions of Commission (Sections 18 to 40)
V. Duties of Director General (Section 41)
VI. Penalties (Sections 42 to 48)
VII. Competition advocacy (Section 49)
VIII. Finance, Accounts and Audit (Sections 50 to 53)
VIII A Competition Appellate Tribunal (Sections 53A to 53U)
IX. Miscellaneous (Sections 54 to 66)

The Competition Act 2002 prohibits anti-competitive agreements, abuse of dominant position and regulates combinations (mergers and acquisitions) with a view to ensure that there is no adverse effect on competition in India.

Prohibition of Anti-Competitive Agreements

The Act prohibits agreements which cause or are likely to cause an appreciable adverse effect on competition within India. An anti-competitive agreement is an agreement having appreciable adverse effect on competition and they include, but are not limited to:-

- an agreement to limit production and/or supply;
- an agreement to allocate markets;
- an agreement to fix price;
- a bid rigging or collusive bidding;
- a conditional purchase/ sale (tie-in arrangement);
- an exclusive supply / distribution arrangement;
- a resale price maintenance; and
- a refusal to deal.

Section 2(c) of the Competition Act, 2002 defines Cartel as – an association of producers, sellers, distributors, traders or service providers who by agreement among themselves limit, control or attempt to control production, distribution sale or price of trade in goods or provision of services. Anti competitive agreements among cartels engaged in identical or similar trade of goods or provision of services in the following areas are prohibited. (Section 3(3)).

- Determining purchase or sale prices
- Limiting or controlling production / supply markets technical development, investment or provision of services
- Sharing of market / sharing of source of production by allocation of geographical areas, number of customer or types of goods or services
- Resorting to bid rigging or collusive bidding

Abuse of Dominance

Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or to affect its competitors or consumers or the market in its favour. Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players to compete with the dominant undertaking on merit. Abuse of dominant position includes:

- imposing unfair conditions or price,
- predatory pricing,
- limiting production/market or technical development,
- creating barriers to entry,
- applying dissimilar conditions to similar transactions,
- denying market access, and
- using dominant position in one market to gain advantages in another market.

Regulation of Combinations

A combination is required to be notified to the Competition Commission of India for its approval. Broadly, combination includes acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises where these exceed the thresholds specified in the Act in terms of assets or turnover.

If a combination causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India, it is prohibited and can be scrutinized by the Commission. The Act provides for thresholds in terms of assets/turnover for mandatory notification of combination to the Commission. These threshold limits are subject to revision every two years by the government, in consultation with the Commission through notification. Vide notification S.O. 675 (E) dated 4th March, 2016, the value of assets and turnover has been enhanced by 100% for notification of combination to CCI.

THRESHOLDS FOR FILING NOTICE				
		Assets		Turnover
Enterprise Level	India	> 2000 INR crore	OR	>6000 INR crore
	Worldwide with India leg	>USD 1 bn with at least >1000 INR crore in India		>USD 3 bn with at least >3000 INR crore in India
		OR		
Group Level	India	>8000 INR crore	OR	>24000 INR crore
	Worldwide with India leg	> USD 4 bn with at least >1000 INR crore in India		> USD 12 bn with at least >3000 INR crore in India

Vide Notification S.O 674(E) dated 4th March, 2016, the Central Government has exempted an enterprise, whose control, shares, voting rights or assets are being acquired if it has either assets of the value of not more than Rs. 350 crore in India or turnover of not more than Rs. 1000 crore in India from the provisions of 'Combinations' (section 5) of the Act for a period of five years from the date of publication of the notification in the official gazette.

Competition Advocacy

Competition Advocacy is defined as the ability of the competition office to provide advice, influence and participate in government economic and regulatory policies in order to promote more competitive industry structure, firm behavior and market performance. (World Bank).

According to the International Competition Network (ICN), Competition advocacy refers to those activities conducted by a competition authority related to the promotion of a competitive economic environment by means of non-enforcement mechanisms, mainly through its relationship with other

> If a combination causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India, it is prohibited and can be scrutinized by the Commission. The Act provides for thresholds in terms of assets/turnover for mandatory notification of combination to the Commission. These threshold limits are subject to revision every two years by the Government, in consultation with the Commission through notification.

Governmental entities and by increasing public awareness of the benefits of competition.

There is a direct relationship between competition advocacy and enforcement of a competition law and this connection is especially strong in transition and developing economies where an appropriate understanding or appreciation of the merits of competitive market economic systems is often lacking.
Section 49 of the Competition Act, 2002, empowers the Competition Commission of India (CCI) to undertake 'competition advocacy'. Advocacy role takes the Commission beyond being merely an 'enforcing authority' to be 'an advocate of competition' and to take suitable non-enforceable measures with an aim to create and strengthen awareness of the role of competition among market players and stakeholders, thereby encouraging compliance and reducing the need for enforcement action on erring enterprises.

Consumer protection laws or Consumer Laws are designed to ensure fair competition and the free flow of truthful information in the marketplace. Consumer Protection laws are a form of government regulation which aim to protect the interests of consumers.

The Department of Consumer Affairs under the Ministry of Consumer Affairs, Food and Public Distribution is responsible for the formulation of policies for consumer cooperatives, monitoring prices, availability of essential commodities, Consumer Movement in the country and Controlling of statutory bodies like Bureau of Indian Standards (BIS) and Weights and Measures.
The Consumer Protection Act, 1986 is the main legislation pertaining to Consumer protection. Other Legislations having a bearing on consumer protection and consumer welfare include:

- The Consumer Protection Rules, 1987
- The Consumer Protection Regulations, 2005
- Consumer Protection Rules of various States
- Supreme Court Rules relevant to Consumer Protection Act 1986
- Consumer Protection (Procedure for regulation of allowing appearance of Agents or representatives or Non-Advocates or Voluntary Organisations before the Consumer Forum) Regulations, 2014
- Consumer Welfare Fund Rules, 1992
- Bureau of Indian Standards Act, 1986.
- Bureau of Indian Standards (Recognition of Consumers' Associations) Rules, 1991
- The Essential Commodities Act, 1955
- Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980
- Regulation of Packaged Commodities.
- The Emblems and Names (Prevention of Improper Use) Act, 1952.
- Implementation of Standards of Weights and Measures - The Legal Metrology Act, 2009.
- Agricultural Products (Grading and Marketing) Act, 1937
- Industries (Development and Regulation) Act, 1951
- Competition Act, 2002
- Right to Information Act, 2005

Additionally various statutory bodies have been set up for the benefit of consumer welfare:

- Consumer courts set up for redressal of complaints under Consumer Protection Act 1986,
- Competition Commission of India set up vide The Competition Act, 2002 to prevent activities that have an adverse effect on competition in India etc.
- Securities and Exchange Board of India under SEBI Act, 1992 for remedying consumer grievances related to capital Market
- Insurance Regulatory and Development Authority under IRDA Act, 1999 for issues encompassed by the insurance sector
- Sectoral regulators – Health, Telecommunications, Energy, Infrastructure, Electricity; Information technology; Financial Services

CONSUMER PROTECTION ACT, 1986

The Consumer Protection Act, 1986 is a social welfare legislation which was enacted as a result of widespread consumer protection movement. It was enacted to provide a simpler and quicker access to redressal of consumer grievances. The main object of the Act is to provide for the better protection of the interests of the consumer and to make provisions for establishment of consumer councils and other authorities for settlement of consumer disputes and matter connected therewith. The Consumer Protection Act, 1986, applies to all goods and services, excluding goods for resale or for commercial purpose and services rendered free of charge and under a contract for personal service. The provisions of the Act are compensatory in nature. It covers public, private, joint and cooperative sectors. The Act enshrines the rights of the consumer such as right to safety, right to be informed, right to be heard, and right to choose, right to seek redressal and right to consumer education. The Consumer Protection Act, 1986 seeks to promote and protect the rights of consumers such as –

(a) the right to be protected against marketing of goods which are hazardous to life and property;
(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;
(d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
(f) right to consumer education

The Government had introduced the Consumer Protection (Amendment) Bill, 2011, in Lok Sabha on December 16, 2011, to facilitate quicker disposal of cases and to widen and amplify the scope of some of the provisions of the Act. However after this ball lapsed, a fresh Bill, namely, the Consumer Protection Bill, 2015 was introduced in Lok Sabha on August 10, 2015 by the Minister of Consumer Affairs, Food and Public Distribution. It was referred to the Parliamentary Standing Committee in August 2015 and the Committee gave its Report on 26th April, 2016. The Bill is currently pending in Parliament.

Significant features of the Bill are:

- Rights of Consumers have been listed in the Bill as follows:
  (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
  (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices;
  (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
  (d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;
  (e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
  (f) the right to consumer education.

- The Bill envisages setting up a Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers. It would be an executive agency and would prevent or act against unfair trade practices. CCPA would complement the role of sector regulators. The sector regulators are mainly standard setting bodies whereas the CCPA will be an executive agency that will be consumer centric and will ensure there is no consumer detriment at any stage.

- Consumer Disputes Redressal Commissions - Consumer Grievance Redressal Commissions are to be set up at the district, state and national levels.
- Consumer Mediation Cells - "Mediation" as an Alternate Dispute Resolution (ADR) mechanism has been added with a view to give resolution of consumer disputes through mediation thus making the process less cumbersome, simple and quicker. Consumer Mediation Cells will be attached to the redressal commissions at the district, state and national levels.
- Consumer Protection Councils – Consumer Protection Councils will be set up at district, state and national levels.

Consumer Courts under Consumer Protection Act 1986 and

Consumer Disputes Redressal Agencies

The Consumer Protection Act, 1986 provides for a three tier approach in resolving consumer disputes. There are 3 levels of consumer courts namely:

a) National Consumer Dispute Redressal Commission or National Commission: Value of claims above Rs.1 crore
b) State Consumer Dispute Redressal Commission or State Commission: Value of claims from Rs.20 lakhs to Rs.1 crore
c) District Consumer Disputes Redressal Forum or District Forum: Value of claims upto Rs.20 Lakhs

District Forum and State Commission are formed by States with the permission of the Central Government while the National Commission is formed by the Central Government.

The National Consumer Disputes Redressal Commission (NCDRC), India is a quasi-judicial commission in India which was set up in 1988 under the Consumer Protection Act of 1986. The NCDRC shall also have appellate and revisional jurisdiction from the orders of State Commissions or the District fora as the case may be. Any person aggrieved by an order of NCDRC, may prefer an appeal against such order to Supreme Court of India within a period of 30 days. The NCDRC also exercises administrative control over the State Commissions.

Councils have been setup in all states and at the center to promote and protect the rights and interest of consumers. These councils are advisory in nature and can play important role in recommending consumer oriented policies to the State and Central Governments.

Apart from the above other Grievance Redressal Mechanism for consumers include:

- Consumer Forum Network
- National consumer help line
- State consumer help line
- Consumer Resource And Grievance Redressal CORE Helpline
- Computerization and Computer Networking of Consumer Fourms (CONFONET)
- Alternative Disposal Mechanism
- Grievances under Emblems and Names (PIU) Act
- Grahak Suvidha Kendra (GSK)

Antitrust issues in Pay-for-delay

Sachin Batra
Manager, Tax and Regulatory Services, Pricewaterhouse Coopers Private Limited, Gurgaon.
sachin.batra@in.pwc.com

Ruchi Jain
Manager, Tax and Regulatory Services, Pricewaterhouse Coopers Private Limited, Gurgaon.
ruchi.jain@in.pwc.com

Our special thanks for valuable insights to Shweta Dubey, Director Regulatory Services PwC and Ex Deputy Director, Competition Commission of India (CCI).

CONCEPT INTRODUCTION

Pay-for-delay is a strategy, a patent holder agrees to pay a potential competitor (who has threatened to enter the market and challenge the patent), to delay its entry in the market. They are also often called as "reverse-payment" patent settlements because the payment flows in a direction opposite what is normally expected in patent litigation cases. Pay for delay strategy is mostly prevalent in pharmaceutical sector, however, it can be deployed in any other industry where products are result of invention and creation.

Competition policy and protection of intellectual property rights appear to be two different ends of the spectrum. Intellectual property rights create monopoly, abuse of which is the main concern of any competition law. While a balance may be struck regarding the diametrically opposite demand of these two laws, such precarious balance is distorted when the intellectual property right holder uses tactics to continue its monopoly beyond the protection offered by the intellectual property rights (IPR). Pay for delay mechanism is one such tactic deployed by IPR holders. This article attempts to understand the concept of pay for delay and its implications on the competitive landscape.

Pay-for-delay agreements in pharmaceutical sector are a kind of non-compete agreements between the branded drug manufacturers and the generic manufacturers to stifle competition from lower-cost generic medicines. The branded drug makers have been able to side-step competition by offering patent settlements that pay generic companies not to bring lower-cost alternatives in the market and/or will not enter the market for a specified/ pre-agreed period of time. These kind of deals (pay for delay, evergreen, product hopping) are entered for avoiding litigation between branded manufacturer and generics. These "pay-for-delay" patent settlements effectively block all other competition for the patented product, being anti-competitive in nature and keep competition off market.

In simple words, these are the deals in which pharmaceutical manufacturers with patents that are nearing expiration pay companies to delay the introduction of a generic version. Over the last decade, the drug makers have settled patent litigation by making large payments to potential competitors who, in turn, abandon suits/litigations that (if in favour of competitors) would increase competition. In today's scenario, these kind of settlements not only constitute a problem of antitrust enforcement, but also pose a risk in creating a proper balance between innovation and access to consumer.

WHY SUCH DEALS, IN FIRST PLACE?

Generic drug firms regularly challenge the validity of branded drug patents - especially when patents are nearing the end of their life - and some companies owning the original brands have been paying rivals not to market generic versions of them. In such deals, usually both owner as well as generic manufacturer have some or other advantages in monetary terms as well as monopoly.

CONCEPT UNDER US & EU LAWS

There were many cases filed in US Federal Trade Commission ("FTC") and European Commission, however, India's competition authority, the Competition Commission of India

("CCI") has also scrutinized and investigated pharmaceutical settlement agreement in few cases of pharmaceutical companies. In the United States, investigating and litigating "reverse payment" pharmaceutical patent settlements as a potential violation of the antitrust laws has been a Federal Trade Commission priority since the late 1990s.

According to a Federal Trade Commission (FTC) study, these anti-competitive deals cost consumers and taxpayers $3.5 billion in higher drug costs every year.

To understand how these settlements work, we need to look into the US Hatch-Waxman Act of 1984, which lowered the regulatory barriers preventing generic drug producers from entering pharmaceutical markets. But the Act had an important catch: The generic producer could not enter if it infringed on an innovator's drug patent.

Initially, generic competitors used the Hatch-Waxman Act to enter drug markets only after an innovator's patent naturally expired, on average 12 years after Food and Drug Administration approval. In time, generics grew bolder and began challenging drug patents before they expired, arguing that the patents were invalid and should be terminated early. After a few costly court battles, innovator companies and generic producers began settling their disputes out of court.

Under these pay-for-delay settlements, the innovator would share a portion of its monopoly profits if the generic dropped its patent suit and delayed entry. Courts must approve each settlement; if the settlement delays entry past the natural expiration of a drug's patent, it would be successfully attacked under antitrust laws as a restraint of trade. Thus the primary effect of these settlements is to prevent the early termination of existing drug patents.

INTERNATIONAL SCENARIO

The legality of the whole pay-for-delay proposition has been hotly contested by drugmakers in EU and the US. Drugmakers argue that settling patent litigation under specific terms is a way to set aside uncertain and costly lawsuits over their patents. They contend it does not keep patents off the market any longer than their patents would have. But the regulators were not much impressed with these arguments.

Since 2001, the FTC has filed a number of lawsuits to discontinue these practices, and it supports legislation to end such "pay-for-delay" settlements. However, these agreements were not treated as anti-competitive in a number of cases before Circuit Courts of US. This position has now changed with the US Supreme Court ruling in FTC v. Actavis on June 17, 2013[1].

FTC alleged that Actavis had unlawfully abandoned its patent challenge by agreeing to share in the "monopoly profits" of Solvay, and withdrawing its generic drug from the market. Solvay was simultaneously accused of attempting to extend its monopoly rights further than what its patent would have conferred if otherwise left as valid. Both the District Court and Eleventh Circuit dismissed FTC claims ruling that the settlements did not provide unreasonable restraints outside the scope of the

> The pharmaceutical industry depends on large costs of research and development for development of a successful product, and oftentimes the success rate for any given research & development project is rather low. Pharmaceutical company needs incentive and protection for all the cost, efforts and risk borne by it on the research and development of a particular product. Most of the jurisdictions need to strike balance between availability of cheap drugs to public at large and place for incentivizing inventions.

patents. Also, stated that 'although a patent holder may be able to escape the jaws of competition by sharing monopoly profits with the first one or two generic challengers, those profits will be eaten away as more and more generic companies enter the waters and furthermore ruled that, courts cannot require parties to litigate further in order to avoid antitrust liability.

The Supreme Court reversed the rulings of the lower courts and the majority decided that the antitrust question cannot be answered only by measuring the anti-competitive effects against patent law policy, but also by measuring against "pro-competitive" antitrust law policies. The Court insisted, "patent and antitrust policies are both relevant in determining the 'scope of the patent monopoly'—and consequently antitrust law immunity—that is conferred by a patent."

Due to the many factors and complexities that determine whether a reverse payment settlement causes anti-competitive harm (its size, its scale in relation to the owner's anticipated future litigation costs, its independence from other services for which it might represent payment, and the lack of any other convincing justification), the Court held, the FTC must still "prove its case as in other rule-of-reason cases" and thus, ruled that reverse payments are neither presumptively legal nor presumptively illegal. The Court refused to be more specific about how the lower court should resolve the case on remand and what factors should be weighed against one another in the analysis.

Danish Drugmaker Lundbeck[2] recently (September 2016) lost an appeal against European Union Court.

[1]Federal Trade Commission v. Actavis, inc., Et Al. No. 12–416. 570 U. S. (2013)

[2]Lundbeck v. European Union Commission T-472/13, T-471/13, T-471/13, T-469/13, T-467/13 and T-467/13

The top court ruled that the drugmaker's "pay-for-delay" deals breached EU antitrust rules by paying its rivals to delay sales of generic copies of its blockbuster anti-depressant from entering the market. The court in its ruling said that these agreements had restricted potential competition.

The companies were fined a combined 146 million euros ($165 million), 93.7 million euros of which was levied on Lundbeck in relation to its citalopram anti-depressant[3].

The Commission has another pay-for-delay case in the pipeline involving Teva and its subsidiary Cephalon, for delaying generic versions of its sleep disorder drug, which was nearing patent expiration.

As per the investigation of the court, it was discovered Cephalon intentionally defrauded the Patent and Trademark Office to secure an additional patent, which a court subsequently deemed invalid and unenforceable. Before this court finding, Cephalon was able to delay generic competition for nearly six years by filing patent infringement lawsuits against potential generic competitors. The company settled those lawsuits by allegedly paying the generic competitors to delay sale of their generic versions of said drug for another six years. Though, Cephalon defended saying that the payments were part of business partnerships it entered into with the generic drug companies that included supply agreements and research collaborations.

Teva Pharmaceutical's Cephalon and state attorneys general on August 04, 2016 announced a $125 million, 48-state settlement after an investigation into the company's delaying of generic versions of its top product[4].

CHALLENGES - INDIAN INDUSTRY

The pharmaceutical industry depends on large costs of research and development for development of a successful product, and oftentimes the success rate for any given research & development project is rather low. Pharmaceutical company needs incentive and protection for all the cost, efforts and risk borne by it on the research and development of a particular product. Most of the jurisdictions need to strike balance between availability of cheap drugs to public at large and place for incentivizing inventions.

One of the highlighted case (in India) of patent infringement brought by Swiss pharmaceutical company, Hoffman-La Roche against Cipla, raises concerns about the possible conflict between competition law and intellectual property. The focus of the proceeding is the alleged infringement by Cipla of Roche's patent on Erlotinib Hydrochloride Tablets ("Tarceva") by formulating to launch generic versions of Tarceva. Cipla filed a counter suit arguing that Roche's patent was invalid and as were the claims of infringement. In September 2012, Delhi High Court upheld the validity of Roche's patent but found Cipla had not infringed it[5].

On appeal, the division bench of the Delhi High Court, without considering the merits of the appeal, directed the parties to use mediation to reach settlement. If the parties were to reach a settlement that has the effect of incentivizing Cipla not to market its generic product (since Roche's patent has been upheld by the Delhi High Court), it is arguable whether CCI would have the requisite jurisdiction to examine the terms of a court-sanctioned settlement agreement without imperiling a possible challenge.

There are more companies resorting to patent mediation in India now, although the trend is new to the country. Patent settlements are not illegal. Courts can ask the parties involved to reach a mutual settlement instead of getting stifled in a prolonged judicial process CS

[3]http://www.reuters.com/article/us-court-h-lundbeck-eu-antitrust-idUSKCN11E1V2

[4]http://www.fiercepharma.com/marketing/teva-s-cephalon-forks-over-125m-second-pay-for-delay-settlement

[5]F. Hoffmann-La Roche Ltd, Switzerland and OSI Pharmaceuticals, Inc. New York v. Cipla Ltd; CS (OS) No.89/2008 and C.C. 52/2008, decision dated 07.09.2012

Liability of individuals under the Competition Act, 2002

Deeksha Manchanda
Senior Associate, Luthra & Luthra Law Offices, New Delhi
dmanchanda@luthra.com

Whilst the Competition Commission of India (CCI) is aggressively enforcing the provisions of the Competition Act, 2002 (Act) against enterprises, it has also not shied from saddling with penalties, the individual who are found to be in-charge of and responsible for the illegal conduct of the enterprise. As the readers may be aware, under the Act, anti-competitive agreement as defined in Section 3 of the Act and abuse of dominant position as elucidated in Section 4 of the Act are both prohibited. Further, under Section 27 of the Act penalty can be imposed on the enterprises for contravention of Section 3 and Section 4 of the Act. However, the Act also gives the CCI the power to impose penalties on individuals in-charge of affairs of the enterprises who are found to have contravened the Act.

The CCI has started imposing penalties on individuals for contravention of provisions of the Act. All directors, managers and person in charge potentially face the vicarious imposition of liability for contravention of anti trust laws. Faced with the risk of penalty and disqualification, the management of any enterprise need to act with sufficient care and caution and introducing a robust compliance program for antitrust laws for all relevant personnel.

The rationale for imposing penalties on individual are fairly obvious – the deterrence arising out of the imposition of penalties on an individual would be much higher than imposition of penalty on just the company. Where an employee or a director is personally liable for anti competitive, he is less likely to draw the company into anti-competitive arrangements. A memorandum issued by the Deputy Attorney General Yates of the United States Federal States Commission entitled, “Individual Accountability for Corporate Wrongdoing,” aptly explains the value of individual accountability when as *“(O)ne of the most effective ways to combat corporate misconduct.”* [1]
The imposition of penalties on individuals is also an extension of the recognition of the officials as the alter ego of the company and the necessity to impose penalties on those who are actually guilty of contravention of the provisions of the Act. The benefit of individual liability is well accepted and imposition of sanctions on individuals is a part of anti trust statutes of various countries.[2]

This article aims at discussing the provisions dealing with imposition of penalties on individuals, the enforcement trends relating to the same with the aim of providing practitioners as well people in-charge of organizations a brief overview of the position of law in India so as to enable individuals to exercise sufficient due diligence to escape liability.

SCOPE OF THE PROVISIONS UNDER THE ACT

Under the Act, the power to impose fine on individuals is derived from Section 27 and Section 48 of the Act.

Section 27 which is the primary sanctioning provision in the Act, gives the CCI the power

[1] Department of Justice Memo, Individual Accountability for Corporate Wrongdoing, Sally Quinlan Yates, Deputy Attorney General (Sept. 9, 2015) available at http://www.justice.gov/dag/file/769036/download.
[2] United States, United Kingdom, Belgium and Poland are some countries in which sanctions are also imposed on individuals.

to impose "such penalty, as it may deem fit, upon each of such person or enterprises which are parties to such agreement or abuse."[3] The definition of person includes individual and as such it is arguable that an individual can be held liable for both anti-competitive agreements as well as abuse of dominant position under the Act and penalty can be imposed on such persons. While the CCI appears to agree with this,[4] tqhe Competition Appellate Tribunal (COMPAT) has held that CCI has no power to impose penalty on individuals under Section 27 of the Act.[5]

A direct provision enabling the CCI to impose sanctions on individuals is found in Section 48 of the Act which gives the CCI the power to impose vicarious liability for contravention of provisions of the Act by enterprises. Section 48(1) of the Act creates a provision for the CCI to impose penalties on "every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly;" Similarly, under Section 48(2) of the Act any director, manager, secretary or other officer of the company with whose consent or whose connivance or as a result of whose negligence the contravention occurs shall be deemed to be guilty for that contravention.

While both the sub-sections are deeming provisions, liability under Section 48(1) of the Act can be avoided if the individual can prove that that contravention was (a) committed without his knowledge; or (b) he exercised all due diligence to prevent the commission of the contravention. The liability under Section 48(2) of the Act is however not subject to any exception and once it is proved that the conduct was with consent, in connivance or as a result of negligence of a person, liability is presumed. Existence of consent, connivance or negligence should however be ascertained on facts and not presumed.[6]

What is however relevant to note that the penalty is not just for contravention of Section 3 and Section 4 of the Act but also extends to contravention of an order or direction of the CCI implying that penalty can be imposed on individuals for contravention of Sections 5 and 6 read with Section 43A of the Act[7] as well as for Section 42[8] and 43 of the Act[9] .

ENFORCEMENT TRENDS

A perusal of the past orders of the CCI reveals that in

While both the sub-sections are deeming provisions, liability under Section 48(1) of the Act can be avoided if the individual can prove that that contravention was (a) committed without his knowledge; or (b) he exercised all due diligence to prevent the commission of the contravention. The liability under Section 48(2) of the Act is however not subject to any exception and once it is proved that the conduct was with consent, in connivance or as a result of negligence of a person, liability is presumed.

approximately 40 cases in which penalty has been imposed by the CCI for contravention of the provisions of the Act, in around 9 cases[10] the CCI has either imposed penalty on individual and in approximately 7 cases[11] decided to pass orders imposing penalties on individuals after responses and income tax returns are received from the individuals indentified by the Director General **(DG)** during investigation.

In one of the first cases where the CCI looked into the applicability of Section 48 of the Act- *Varca Chemists and Druggists and Others v. Chemists and Druggists Association, Goa*[12] - one member of the CCI opined that that in so far as Section 48 was only applicable to companies, penalties could not be imposed on the office bearers of trade associations. This interpretation was however differed from the one in *M/s Arora Medical Hall Ferozpur v. Chemists and Druggists*[13] which was ironically the first case in which penalty was imposed under Section 48 and on office bearers of a trade association. This was not a one-off incident and the CCI continued to impose penalties on individuals in other cases as well and has till date imposed penalty or initiated proceedings under Section 48 of

3 Section 27(b) of the Act

4 The CCI agreed with this approach in M/s Arora Medical Hall Ferozpur v. Chemists and Druggists, Case No. 60/2012, order dated 05.02.2014 In re: Bengal Chemists and Druggists Association, Suo motu Case No 02 of 2012, order dated 11.03.2014

5 Bengal Chemists and Druggists Association and Ors. v. Competition Commission of India and Anr. Appeal No. 37/2014 order dated 10.05.2016

6 Ibid and Alkem Laboratories v. CCI and Ors, Appeal No. 09/2016, order dated 10.05.2016

7 Under Sections 5 and 6 of the Act any combination has to be notified to the CCI and failure to do so within the time limit stipulated in Section 6(2) of the Act shall lead to imposition of penalty under Section 43A of the Act

8 Under Section 42 of the Act penalty can be imposed for contravention of any order or direction passed by the CCI under sections 27, 28, 31, 32, 33, 42A and 43A of the Act

9 Under Section 43 of the Act, if any person fails to comply with any directions passed by the CCI or the DG under section 36(2) and (4) and Section 41(2) respectively i.e. any direction passed during the course of investigation.

10 See generally, In re: Bengal Chemists and Druggists Association, Suo motu Case No 02 of 2012, order dated 11.03.2014; In Re:M/s. Crown Theatre v. Kerala Film Exhibitors Federation (KFEF) , Case No. 16/2014 order dated 08.09.2015; M/s Shivam Enterprises v. Kiratpur Sahib Truck Operators Co-operative Transport Society Limited & Ors., Case No. 43/2013, order dated 04.02.2015

11 See generally, M/s Three D Integrated Solutions Ltd. v. M/s VeriFone India Sales Pvt. Ltd., Case No. 13/2013, order dated 10.04.2015; In Re: M/s Sheth and Co and others, Suo motu Case No. 04/2013, order dated 10.06.2015; Shri P.V. Basheer Ahamed v. M/s Film Distributors Association, Kerala, Case No. 32/2013, order dated 23.12.2014

12 In Re: MRTP Case C -127/2009/DGIR (4/28), order dated 11.06.2012

13 Case No. 60/2012, order dated 05.02.2014 in which penalty was imposed on 8 office bearers.

the Act in over 15 cases.

What is interesting however is that the CCI is not imposing penalties under Section 48 of the Act in all cases. The imposition of penalties seem to be more in cases relating to chemists and druggists associations, possibly on account of the widespread nature of the conduct. However one fails to see a rationale behind selection of cases in which penalties are not imposed on individuals.

WHEN CAN THE CCI INITIATE PROCEEDINGS

What has been a point of contention in these cases is the stage at which the proceedings against an individual be initiated under Section 48 of the Act. Two divergent stands have appeared in this case with the COMPAT holding that simultaneous proceedings cannot be initiated against the officers and the company and the guilt of the company needs to be established before proceeding against the individuals[14].

The CCI has however disagreed with this approach[15] and finds some support with the Delhi High Court and Madras High Court[16] - who have held that proceedings can be initiated simultaneously.

In view of the conflicting position being taken by the COMPAT and CCI, it is difficult to say with certainty which is the correct approach. However it is apparent that the CCI will direct the DG to conduct the proceedings simultaneously and notices will be issued to individuals as well once the report is submitted to file their replies.[17] The individuals will hence have an opportunity before the CCI to prove their innocence.

TAKE AWAY FOR THE PERSON IN-CHARGE

A review of the existing case law of the CCI, the COMPAT as well as the High Courts reveals that individuals need to note the following with respect to imposition of vicarious liability for contravention by an enterprise:

a. Liability can be imposed on the individual for not just contravention of Section 3 and 4 by the enterprise but for contravention of any order or direction issued by the CCI

b. The liability extends to individuals in-charge and responsible for the conduct of the enterprise as well as those with whose consent or connivance or as a result of whose neglect the contravention was made. It hence extends to not just the directors, but also the manager, secretary and officers in charge;

c. The CCI has extended the scope of Section 48 to include

‘enterprises’ as defined in Section 2(h) of the Act and hence individuals in-charge of trade associations, partnerships as well as sole proprietorships would also fall within the scope of Section 48;

d. The individuals can escape liability, if they can factually prove either of the following:
   (i). Even though they are in-charge and responsible for the conduct of the enterprise, the contravention was committed without their knowledge or all due diligence was exercised by them to prevent the contravention;
   (ii). They did not consent to the commission of the contravention and the contravention was not as a result of their neglect;

e. In view of the decisions of the CCI as well as the High Court of Delhi and Kerala, the investigation against the enterprise and the individuals in-charge can proceed simultaneously and concurrent orders can be passed;

f. Individuals who are identified by the DG in her report, should file responses to place on record any facts in support of arguments in d. above while contending that the enterprise is in the first place not liable.

CONCLUSION

As evident over the past two years the CCI has started imposing penalties on individuals for contravention of provisions of the Act. All directors, managers and person in charge potentially face the vicarious imposition of liability for contravention of anti trust laws. Faced with the risk of penalty and disqualification, the management of any enterprise need to act with sufficient care and caution and introducing a robust compliance program for antitrust laws for all relevant personnel would help mitigate the penalties imposed and reveal due diligence of the top management. CS

[14] See generally, A.N. Mohana Kurup and Ors. v. CCI and Ors, Appeal No. 05/2016, order dated 10.05.2016; M/s Alkem Laboratories v. CCI and Ors, Appeal No. 09/2016, order dated 10.05.2016

[15] Ministry of Agriculture and Farmers Welfare, Nuziveedu Seeds Limited, All India Kisan Sabha (AIKS), Department of Agriculture and Cooperation, State of Telangana, National Seeds Association of India (NSAI) v. M/s Mahyco Monsanto Biotech (India) Limited & Others., Ref. 02/2015, 107/2015, 03/2016, Ref. 01/2016 & 10/2016, Order dated 26.07.2015

[16] Unnikrishnan and Ors. v. CCI and Anr, W.P.C No. 22534/2016, order dated 23.09.2016 (High Court of Kerala) and Pran Mehra v. CCI and Anr., W.P.(C) 6258/2016, order dated 26.02.2015 (High Court of Delhi)

[17] In the absence of a notice being issued the penaly can be challenged and in view of the decision of the COMPAT in Kerala Film Exhibitors and Ors v. CCI and anr. Appeal No. 99/2015, order dated 19.04.2016 is likely to be set aside. In this case the COMPAT held that a penalty cannot be imposed without giving due notice to the concerned parties.

Competition Law – A paradigm shift in the competition landscape for sustainable economic resilience

G. Krishna Murty, ACS
Practising Company Secretary
Hooghly, W.B.
gkm.reddy@gmail.com

BACKDROP

In the present era of liberalization ushered in by technological advancements, where technology is touching many facets in the world of cosmic complex diversity with numerous quandaries and predicaments in the landscape of competition law, India did feel the pulse in the early 1990's to liberalise its policies to keep pace with the emerging global economies. With the advent of pervasive economic reforms in 1991, the law was found inadequate for fostering competition in markets. It is disheartening to note that India ranks 55th in the Global Competitiveness Index among 140 economies in the world and ironically no member of the South Asian Association for Regional Cooperation (SAARC) features in the top 50 while Switzerland, Singapore and the United States remain the top three world's most competitive economies (according to The Global Competitiveness Report 2015–16 published by The World Economic Forum). Moreover, a sharp and acrimonious criticism over the ineffectiveness of the erstwhile Monopolies and Restrictive Trade Practices Act, 1969 ("MRTP Act") and its failure in curbing the concentration of economic power or in regulating the diverse monopolistic, restrictive and unfair trade practices, in fact, added fuel to the fire. With a view to fine tune the provisions of the Monopolies and Restrictive Trade Practices Act, 1969 ("repealed MRTP Act") and to replace with a new competition regime of global standards to meet the present day needs in the field of competition, a high-level committee was set up in October 1999 under the Chairmanship of SVS Raghavan to make necessary recommendations on the competition policy and related Laws. The Committee submitted its report in May 2000, which formed the basis of a draft Competition Bill, 2002. Finally, the Bill got Presidential assent on 13th January, 2003, leading to repeal MRTP Act, 1969 and dissolve the MRTP Commission. As envisaged by the Competition Act, 2002 ('The Act"), keeping in view of the economic development of the country, its objectives inter alia, include, a) to establish Competition Commission of India ("CCI") to prevent practices having adverse effect on competition, b) to promote and sustain competition in markets, c) to protect the interests of consumers; and d) to ensure freedom of trade carried on by other participants in markets, in India.

> Competition Policy, being an indispensable part of Competition landscape, should be a priority for policymakers to let it take the driver's seat to propel the engine of liberalization in emerging economy steering to achieve efficient allocation of resources, resuscitate sluggish productivity, tap new sources of growth, innovation, job creation, and development, thus leading to 'inclusive growth'. Simply put, the boom in economic development of the country cannot be brought about unless the barriers of freedom of trade for market participants, are removed and full growth potential of the economy is unleashed by further economic liberalization.

SCOPE AND ROLE OF COMPANY SECRETARY UNDER COMPETITION LAW REGIME

In the regime of complex system with multiple regulators implementing parallel regulatory practices in various sectors like Securities and Exchange Board of India ("SEBI"), the Competition Commission of India ("CCI"), Telecom Regulatory Authority of India("TRAI"), the Insurance Regulatory and Development Authority("IRDA"), the Central Electricity Regulatory Commission

("CERC"), Reserve Bank of India ("RBI") for competition issues in Banking Sector etc. the overlapping jurisdictions of these regulators, for instance, between the CCI and SEBI, runs the risk of either transactions relating to mergers and acquisitions (M&A) being needlessly stalled due to the multiple or contradictory regulatory requirements. The present legal framework does not aid in co-ordination and harmonization among various laws. In this context, it is not exaggerating to say that the services of Company Secretary assume paramount importance for the expertise and acumen in various laws. Further, section 3 and 4 of the Act calls for drafting skills with flair and meticulous care so as not to fall under the lens of CCI and trigger inquiry into such agreements and consequently leading to harsh penalties if it is found such agreements are anti-competitive nature. Undoubtedly, a single metaphor is suffice here to substantiate - "Company Secretary is best equipped with the sort of ammunition in armoury". This apart, he/she can effectively guide the Board to appropriately deal with the laws. It is worth mentioning here that the provisions of section 35 and 53S of the Act further widened the scope of Company Secretary in Practice. He/She can make appearance before the Competition Commission of India ("CCI") and Competition Appellate Tribunal ("CAT"), respectively, to represent the clients in presenting cases. Further, for the expertise and adeptness in competition laws, Company Secretary can play a pivot role in Competition Impact Assessment and formulation of National Competition Policies. As regards advisory/consultancy services, client can be sensitized about the need for and usefulness of having competition compliance program, review all purchase and sale agreements, Prepare customised competition compliance manual, impart training on Competition Advocacy, have due diligence of transaction from the perspective of competition law etc.

1. WHY COMPETITION?

Empirical studies/evidence from several countries viz. USA, Australia etc. testifies the benefits as under:

- Reduces prices
- Improves quality

- Encourages innovation
- Boost up choice

- Promotes allocative and productive efficiency
- Facilitates better governance

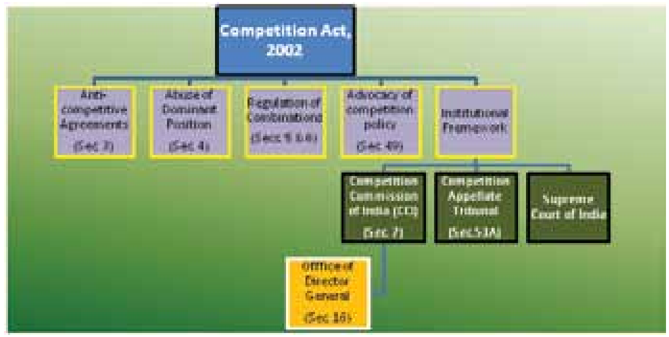
- Ensures availability of goods in abundance of acceptable quality at affordable price
- ensures consumer welfare, economic and political democracy

Global Competitiveness Index – Rankings

Rank	Economy	Score[1]	Remarks
1	Switzerland	5.76	
2	Singapore	5.68	
3	United States	5.61	
4	Germany	5.53	
6	Japan	5.47	
10	U.K	5.43	
75	Brazil	4.08	BRICS – NATIONS
45	Russian Federation	4.44	
28	China	4.89	
49	South Africa	4.39	
55	India	4.31	
68	Sri Lanka	4.21	S
100	Nepal	3.85	A
105	Bhutan	3.80	A
107	Bangladesh	3.76	R
126	Pakistan	3.45	C

Key dimensions of the Act – At a Glance

The Act focuses on the following five dimensions:

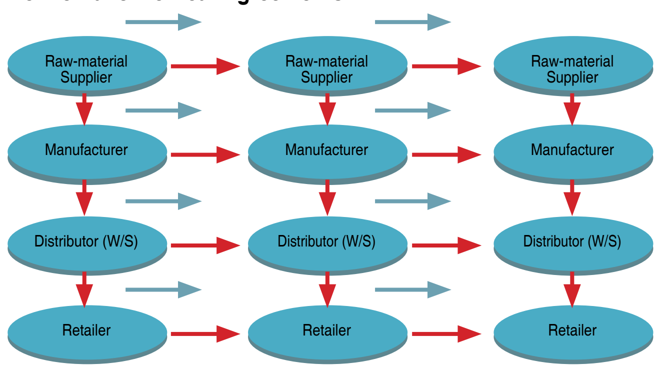


A CRITICAL ANALYSIS ON THE NITTY-GRITTY OF COMPETITION ACT

Anti-competitive Agreements

Sub-section (1) of Section 3[2] of the Act prohibits an enterprise or association of enterprises to enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Further, sub-section (2) of Section 3 provides that any agreement entered into in contravention of the above prohibition, shall be void.

Horizontal & Vertical Agreements



Horizontal Agreements (presumed to have an Appreciable Adverse Effect on competition)

- Agreements between enterprises or Association of enterprises or between persons or association of persons engaged in similar trade of goods or provision of services.
- Agreements including cartels that directly or indirectly (i.) Determine sale/purchase price (ii). Limit or control production, supply, markets, technical development or investment or provision of services iii. share the market or source of production or provision of services by way of allocating markets or customers;

[1]Scale ranges from 1 to 7.

[2]Brought into force on 20.05.2009

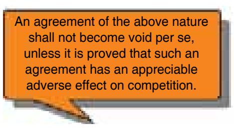
iv. Rig Bids or collusive bidding.

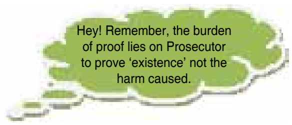
Proviso to sub-section (3) of section 3 states that the restrictions (supra) shall not apply to agreements entered into by Joint Ventures ("JVs.") if such agreements increase efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Vertical Agreements (presumed to have an Appreciable Adverse Effect on competition)

Agreements entered into pursuant to Sub-section (4) of Sec. 3[3] of the Act, at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, viz. –

a. "Tie-in arrangement" includes any agreement requiring a purchaser of goods or recipient of services, as a condition of such purchase or provision of such services, to purchase some other goods or availing of some other services;
b. "Exclusive supply agreement" includes any agreement restricting in any manner the purchaser of goods or recipient of services in the course of trade from acquiring or otherwise dealing in any goods or services other than those of the seller or service provider or any other person;
c. "Exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or provision of services or allocate any area or market for the disposal or sale of the goods or provision of services;
d. "Refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or services are provided or from whom goods are bought or services are availed of;
e. "Resale price maintenance",— (i) in case of goods includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged; (ii) in case of services includes any agreement to provide services on condition that the prices to be charged on retailing of services by the recipient of services shall be the prices stipulated by the service provider unless it is clearly stated that prices lower than those prices may be charged;





Competition Act, 2002

The "Rule of Reason" Hypothesis

The Rule of Reason Hypothesis determines whether the conduct of the enterprise or Group or person can be justified on the basis that its pro-competitive gains outweigh its anti-competitive effects. Hence, Agreements are not deemed anti-competitive unless they cause or are likely to cause Appreciable Adverse Effect on Competition in India.

However, sub-section (5) of Section 3 of the Act does not restrict right of Intellectual Property Rights ("IPR") holder to prevent infringement of IPR or impose Reasonable Conditions' on use of such IPR by way of restrictive trade agreements. Similarly, it does not restrict or limit the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

Factors Determining Agreements having an Appreciable Adverse Effect on Competition

In terms of sub-section (3) of Section 19, the Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:—

(a) Creation of barriers to new entrants in the market; (b) Foreclosure of competition by hindering entry into the market (c) Driving existing competitors out of the market; (d) Accrual of benefits to consumers; (e) Improvements in production or distribution of goods or provision of services; and (f) Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Abuse of 'Dominant Position'

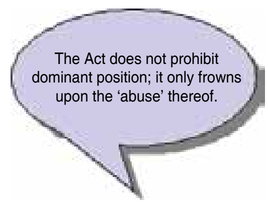
In terms of sub-section 1 of Section 4[4] of the Act[5], No enterprise or group shall abuse its dominant position.

"Dominant Position" refers to a position of strength enjoyed by an enterprise or group in the relevant market, in India, which enables it to-

i) Operate independently of competitive forces prevailing in the relevant market; or
ii) Affect its competitors or consumers or the relevant market in its favor.

Factors determining 'Dominant Position'

For the purpose of determining whether an enterprise or Group jointly or singly[6] enjoys dominant position, one or more of the following factors may be taken into account - a) Market share of the Enterprise or Group; b) Size and resources of the Enterprise or Group; c) Size and importance of the competitors; d) Economic power of the Enterprise or Group; e) Vertical integration of the enterprises; f) Dependence of consumers on the enterprise; g) Dominant position as a result of statute; h) Barrier to entry; i) Countervailing buyer power; j) Market structure and size of market; k) Social obligations and social costs; l) Contribution to the economic development; m) Any other factor (residuary factor)



Competition Act, 2002

Factors Determining 'Abuse Of Dominant Position'

a) Establishing the 'dominant' status of the enterprise or group; b) Identifying the 'relevant market';[7] and c) Evaluation of the conduct to determine whether it falls within the 'abuses' listed under the Act.

List Of Abuses W.R.T. "Abuse Of Dominant Position"

Exploitative Abuses

It refers to the conduct of enterprise or group which results in exploitation of others in the value chain, viz. a) Imposition of unfair or discriminatory conditions; b) imposition of unfair or discriminatory prices i.e. predatory pricing.

Exclusionary Abuses

It refers to the conduct of enterprise or group which intrudes with the competitive process, viz. a) Limiting production of goods, provision of services; scientific development; b) Denial of market access; c) Making conclusion of contracts subject to acceptance of supplementary

3 Explanation to sub-section (4) of Sec. 3, proposed to be substituted by Competition (Amendment) Bill, 2012.

4 Brought into force on 20.05.2009

5 Subs. by Competition (Amendment) Act, 2007 for "No enterprise shall abuse its dominant position"

6 Competition (Amendment) Bill, 2012 proposes to Insert the words "jointly or singly"

7 Sec. 2(r) - "relevant market" means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

obligations having no connection with the subject of such contracts; d) Using dominance in one relevant market to enter into or protect other relevant market.

Who can make an application or reference to the Commission to cause inquiry into certain agreements?

In terms of sub-section (1) of Sec. 19. of the Act, the Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or sub-section (1) of section 4 either on its own motion or on receipt of information in prescribed manner by a) Any Person[8], Consumer or their Association or Trade Association; or b) a reference made to it by Central Government or a State Government or a statutory authority.

[9]CCI to issue further inquiry or investigation orders only after hearing the concerned party

While initiating inquiry process under section 26 of the Act on receiving information or suo moto in relation to agreements having appreciable adverse effect on competition or abuse of dominant position If, CCI is of the opinion that further investigations is called for, it may direct further investigation or cause further inquiriy to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act and make appropriate orders thereon after hearing the concerned parties.

[10]Giving an Opportunity of being heard prior to imposition of penalty

Competition (Amendment) Bill, 2012 proposes to insert a proviso to Section 27(b) and (g) whereby prior to imposing penalty under Section 27(b) and passing orders or directions under Section 27(g), opportunity of hearing would be granted to the party(s) in relation to CCI's inquiry into agreements having appreciable adverse effect on competition or abuse of dominant position.

REGULATING COMBINATIONS

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended) ("Combination Regulations") relating to regulation of combinations have been in force since 1st June, 2011. 'Combinations' as emanating from the Bare Act, include - Acquisition of control, shares, voting rights, or assets of another enterprise; or Acquisition of control where the acquirer already has control over a similar/identical business' or Merger or amalgamation of enterprises, where such transactions cross the asset or turnover[11] thresholds as set out in the provisions of Section 5 of the Act. Explanation to Section 5 of the Act clarifies that for the purposes of determining asset value, the book value of such assets as shown in the audited books of the accounts of the enterprise in the financial year immediately preceding the financial year of the combination must be taken. However no such express clarification has been provided relating to the calculation of turnover.

In this context, it is worth mentioning that the Competition (Amendment) Bill, 2012 proposes to insert section 5A, by virtue of which, the Central Government has been empowered to specify different value of assets and turnover for any class or classes of enterprises under the proposed Section 5A read with Section 54 and 20(3) of the Act. While Section 54 empowers the Central Government to exempt any class of enterprises from the application of the Act if such exemption is necessary in the interest of security of the State or public interest; or an enterprise engaged in performance of sovereign functions or engaged in any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries, Section 20 (3) of the Act lays down that notwithstanding anything contained in section 5, the Central Government can, every two years, enhance or reduce the value of assets or the value of turnover on the basis of the wholesale price index or fluctuation in exchange rate of rupee or foreign currencies, only for the purposes of Section 5 of the Act.

Triggers for Notice to CCI

Section 5 of the Act stipulates that any person or enterprise who proposes to enter into a combination shall give a notice to CCI in the prescribed form-1 or Form-II, as the case may be, along with prescribed fee (Rs. 15 lac or Rs. 50 lac w.e.f. 28.03.2014, within 30 days of occurrence of any of the events or at the option of the party subject to crossing of the specified Asset/Turnover thresholds - (a) Approval of the proposal relating to merger or amalgamation, by the board of directors of the enterprises concerned; (b) The execution of an agreement or other document for an acquisition of one or more enterprises or acquiring control over an enterprise; (c) The execution of an agreement or other document for Acquisition of control over one or more enterprises where the acquirer already has control over a similar/ identical business. No combination can take effect unless the transaction is approved by the CCI.

Moreover, sub-section (1) of Sec. 6 of the Act stipulates that "No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void".

Penalty for failure to give notice on combinations

Section 43A[12] states that failure to file notice by the acquirer, an enterprise or a Group[13] of Enterprises to CCI within 30 days of approval of merger proposal by Board of Directors of the enterprise of a reportable transaction, attracts penalty.which may extend to one percent, of the total turnover or the assets, whichever is higher, of such a combination.

Penalty for making false statement or omission to furnish material information

In terms of the provisions of section 44[14] of the Act, if a party to a combination (a) makes a false statement of any material particular, knowing it to be false; or (b) omits to state any material particular knowing it to be material, such party shall be liable to a penalty between Rs. 50 lacs – Rs. 1 Crore, as may be determined by the Commission.

Treatment of Acquisition of Shares or voting rights

Under the Takeover Code, a mandatory open offer gets triggered on the acquisition of shares or voting rights entitling the acquirer (along with persons acting in concert with it) to exercise 25% or more of the voting rights in the target company. Similarly, under the Combination Regulations ("First Amendment"), which came into force on 23.02.2012, any acquisitions of shares or voting rights entitling the acquirer to less than 25% of shares or voting rights in the target enterprise, directly or indirectly, solely as an investment and not resulting in the acquisition of

[8]Clause I of Sec. 2 of the Act -"person" includes— (i) an individual; (ii) a HUF; (iii) a company; (iv) a firm; (v) an AOP or BOI (vi) Govt. Company; (vii) any body corporate incorporated by or under the laws of a country outside India; (viii) a co-operative society registered under any law relating to cooperative societies; (ix) a local authority; (x) every artificial juridical person, not falling within any of the preceding sub-clauses;

[9]As proposed to be amended by Competition (Amendment) Bill, 2012

[10]Competition (Amendment) Bill, 2012

[11] Sec. 2(y) - "turnover" includes value of sale of goods or services excluding taxes levied thereon as proposed in Competition (Amendment) Bill, 2012;

[12]Vide MCA Notification dated 30.05.2011, Sec. 43A came into force on 1st Day of June, 2011

[13]Explanation to Sec. 5 provides that for the purpose of this section "group" means two or more enterprises which, directly or indirectly, are in a position to —(i) exercise twenty-six per cent or more (fifty per cent or more, as proposed in Competition (Amendment) Bill, 2012) of the voting rights in the other enterprise; or (ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or (iii) control the management or affairs of the other enterprise;

[14]Vide MCA Notification dated 30.05.2011, Sec. 44 came into force on 1st Day of June, 2011

'control' is exempt from the requirement to file a merger notice with the CCI. Simply put, in relation to share acquisitions, only acquisitions of above 25% in any target company would trigger the merger control regime, subject to crossing of the Asset/Turnover thresholds prescribed under Section 5 of the Act.

Further, in creeping acquisitions i.e. acquisitions of shares of up to 5% in a financial year by an acquirer who already holds together with persons acting in concert ("PAC") 25% or more but less than maximum permissible non-public shareholding i.e. 50% of the shares in any company, was exempted from the requirement to make an open offer under the Takeover Regulations, (Only acquisitions of shares by an acquirer, as long as the target company was not controlled jointly by enterprises of the same group). With a view to bring them in line with the Takeover Code, Combination Regulations ("Second Amendment") vide notification dated 4th April 2013, substituted with "any gross acquisition of additional shares of less than 5% of the shares or voting rights of the target enterprise in a financial year by the acquirer or group which already holds together with PAC entitling to exercise 25% or more but less than 50% of the voting rights in the target company, is exempt from filing a merger notice with CCI under the Act. Further, acquisition of shares or voting rights where the acquirer already holds 50% shares in the target company, is also exempt. However, The method of computation of 'gross acquisition under Combination Regulations, unlike the Takeover Code, leaves open the scope of further disparity between the two regimes.

Treatment of Acquisition of 'Control'

The Takeover Code and Combination Regulations are also simultaneously triggered in cases where there is an acquisition of "control". The term "control" is defined in explanation to Sec. 5 of the Competition Act, to include 'controlling the affairs or management by one or more enterprises, either jointly or singly, over another enterprise or group. Similarly, clause 'e' of sub-section 1 of section 2 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SEBI Takeover Code")., provides that "Control" includes 'the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner'. Likewise, RBI's revised definition of "control" with respect to foreign direct investment ("FDI") rules provides that 'Control shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

From the perspective of Takeover Code in relation to listed companies, 'Control' has two distinct and separate features - The right to appoint majority of directors (factual part) and the ability to control the management or policy decisions (subjective part). The right to control can accrue by way of "Shareholding", "Management Rights", "Investment / Shareholders' Agreement", "Voting Agreements" or in any other manner.

Regulation 4 (Acquisition of Control) of Takeover Code provides that irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Given the wide scope of the precise term 'control', it is a subject of review by both regulators and is determined on a case-by-case basis. The interpretation of the concept of 'control' based on case law varies from the interpretation under other legislations. The concept of negative control under the Takeover Code was tested in re. SEBI Vs. Subhkam Ventures (I) Pvt. Ltd.

Ambiguity in the Definition of "Control": A Case Study

In SEBI v. Subhkam Ventures (I) Pvt. Ltd. , MSK Project (India) Limited ("MSKPIL") made a preferential allotment of equity shares to Subhkam Ventures (I) Private Limited ("SVIPL") which constituted 17.90% of the shareholding in MSKPIL. SVIPL made a public announcement for an open offer to acquire shares of MSKPIL from its shareholders. The SEBI required the draft letter of offer to be revised to reflect that the open offer was being made under Regulation 10 (acquisition of shares, now Regulation 3) as well as Regulation 12 (acquisition of control, now Regulation 4) of the then Takeover Code. Regulation 12 provides that irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire "control" over the target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the regulations. The point of law that was being disputed in this case was "whether the right to nominate a director on the board of the company, the right to be present to constitute quorum and the affirmative voting rights all of which is essentially "negative control rights" constituted "control" for the purposes of the Regulations". SEBI held that the acquisition should be treated as an acquisition of "control". Aggrieved by the SEBI Order, SVPIL appealed to the Securities Appellate Tribunal ("SAT") which conflicting with the SEBI's position, in order dated January 15, 2010 held that 'control is a proactive and not a reactive power'. The power by which an acquirer can only prevent a company from doing what the latter intends to do, i.e. negative control is by itself not "control". SEBI appealed the SAT's decision to the Supreme Court. However, given that SEBI and SVIPL resolved the matter by way of an out-of-court settlement in the matter, the Supreme Court passed an order disposing off the appeal. The Supreme Court's order dated November 16, 2011, accepting the out of court settlement between SEBI and the respondents, specifically states that the question of law "whether negative control is control" remains open and that the SAT decision being uncertain and lacking clarity in terms of the definition of "control' under Takeover Code, would not be treated as precedent. This Hon'ble SC's observation has far reaching ramifications.

Ironically, CCI, on the other hand, has clarified that under the Act, negative control amounts to control for the purposes of the Act. In MSM India/SPE Holdings/SPE Mauritius, the CCI has effectively concluded that the right to block special resolutions (by way of a more than 26% equity stake) amounts to 'negative control', which is 'control' for the purposes of the Act. Further, in Century Tokyo Leasing Corporation/ Tata Capital Financial Services Limited, the CCI held that affirmative rights relating to the items as enumerated hereunder would be considered "control" for the purposes of the Act; (i) annual budget; (ii) annual business plan; (iii) exit and entry into lines of business; (iv) appointment of management and determination of their remuneration; or (v) strategic business decisions (no materiality threshold specified).

Under these two legal regimes, with respect to merger & amalgamations ("M&A") in relation to listed companies, there are multiple disparities between the governing legislations, SEBI Act, 1992 read with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Code") on the one hand and the Competition Act, 2002 and CCI read with Combinations Regulations, on the other hand. There are parallel triggers for the requirement to make an open offer, as well as the requirement to file a merger notification with the CCI. While there is now consistency in terms of triggers, the incongruence in terms of timelines, differing definitions and concepts, etc. in the context of acquisitions of shares and acquisitions of control over a listed company still needs to be addressed.

Mismatch of Timelines

The major concern is the potential mismatch between the timelines for an open offer under Takeover Code and the review of a merger notice for a listed company by CCI. The CCI is required to provide its prima facie view within 30 days of receipt of a merger notice. If the CCI is of the view that the proposed transaction involves competition concerns, it can conduct an in-depth review of a further 180 (i.e. a total period of 210[15] days) or pass orders under section 31, whichever is earlier. The proposed combination cannot be given effect to until the CCI approves it. However, under the Takeover Code the open offer process takes typically 60-90 days. In accordance with the provisions of Takeover Code, the acquirer is required to pay the shareholders who have tendered shares within 15 days from closure of the open offer process or pay interest until such payment is made (even if such delay is on account of other pending regulatory approvals). Unlike the UK City Code on Takeovers and Mergers, there is no process for suspension of the Takeover Code while the CCI is reviewing the merger notice. Further, it should be noted that the Combination Regulations provide for a standard carve-out from the exemptions set out above, i.e. the acquisition of control, by way of additional rights in the target company by the acquirer. Thus, even where an acquirer is acquiring less than 25%, falls under the creeping acquisition limit or is acquiring additional shares above 50%, any acquisition of joint or sole control, or change from joint to sole control would require the filing of a merger notice, the rationale being that any change in control would result in a change in the business operations of the target enterprise and accordingly, a change in market structure.

Why should the Acquirer be made a scape-goat in paying interest due to regulatory cacophony?

Acquirer

The overlapping jurisdictions of the regulators often result in the risk of transactions being needlessly stalled due to the multiple (and in some cases, contradictory) regulatory requirements that need to be met to get a transaction approved. In light of the above, it is critical that the parallel regulatory approval processes are aligned to ensure that the merger and acquisition ("M&A") activity is not hindered due to lack of co-ordination between the various regulators or cumbersome procedural formalities. However, this position is partially sought to be addressed under the Competition (Amendment) Bill, 2012 ("Bill"), which includes a proposal that other regulators are required to mandatorily refer the matters to CCI where an issue arises that any decision of such authority is contrary to the Act. Likewise, The Bill also provides for the converse, i.e. an obligation on the CCI to mandatorily refer matters to the authority where an issue arises that any decision of the CCI may be contrary to any Act whose implementation is entrusted with such authority. This provision, if brought into force, clearly draws the line between the responsibilities and jurisdictions in India's multi-regulator regime. However, pending harmonization of some of the inconsistencies identified above, even a mandatory reference will not result in an effective and efficient resolution. The need of the hour is to identify inconsistencies between the Act and the Takeover Code and address appropriately.

[15]Competition (Amendment) Bill, 2012 proposes to reduce the period from 210 days to 180 days u/s 31(11) of the Act, within which CCI to approve/seek modifications of or pass orders in relation to combinations. Consequential amendment is proposed in section 31(12) to exclude extension of time granted at the request of parities. If the approval is not made within 180 days, it shall be deemed to have been approved by CCI.

> From the perspective of Takeover Code in relation to listed companies, 'Control' has two distinct and separate features - The right to appoint majority of directors (factual part) and the ability to control the management or policy decisions (subjective part). The right to control can accrue by way of "Shareholding", "Management Rights", "Investment / Shareholders' Agreement", "Voting Agreements" or in any other manner.

Leniency provisions

In terms of the provisions of Section 46 of the Act, the Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, who is alleged to have violated section 3 of the Act, impose lesser penalty provided such person makes FULL, TRUE and VITAL disclosure of a cartel to the CCI before receipt of report of investigation directed u/s 26 of the Act; The power of the CCI to impose lesser penalty is aimed at cartel member(s) to be induced to break rank and turn approver against other cartel members. A successful applicant can avail the benefit of a reduction in penalty even upto 100% keeping in view the first mover advantage. Samsung Electronics receiving full immunity (100%) from fines under the Commission's leniency programme in the LCD Cartel case and likewise, 50% reduction in penalty in case of LG stand testimony to the very intent of the law unlike the repealed MRTP Act.

Duties & powers of the Commission (CCI)

Powers of the Commission (CCI) as laid down under Chapter-IV of the Act, include:

a) Cease & Desist orders
b) Grant interim relief during enquiry;
c) Impose penalty upto ten percent of the average of the turnover for the last three preceding financial years, for other violations.
d) In case of cartels, penalty upto upto three times of its cartelized profit for each year of infringement or ten percent of its turnover for each year of infringement, whichever is higher;
e) Impose lesser penalty under section 46 (Leniency Provisions)
f) Order division of dominant enterprise or groups;
g) Approve/approve with modifications or block combinations;
h) Declare anti-competitive agreements void;
i) Render opinion to Central/State Government in formulating a policy on competition;
j) make regulations by way of amendments consistent with the Act or rules framed thereunder.

Is it a tussle for dominance or battle for regulatory supremacy?

It may not be true. But the sheer truth is "With Great Power comes Greater Responsibility". Section 53A(1)(a) of the Act provides that an appeal shall before the CAT to hear and dispose of only against any direction issued or decision made or order passed by the CCI under sections 26(2), 26(6), 27, 28, 31, 32, 33, 38, 39, 43, 43A, 44, 45 or 46 of the Act. Further, 'Party' aggrieved by the direction, decision or order of the CCI, may prefer an appeal before the CAT in terms of section

53B(1). In terms Section 53B(3) of the Act, the CAT, on receipt of an appeal under sub-section (1) of Section 53B, may after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

In a major verdict, the CAT quashed the order of CCI imposing penalty of Rs. 6,316.59 crore on 11 cement firms on cartelization charges and asked the CCI to hear the matter afresh. The CAT also allowed the cement manufacturers to withdraw the 10 per cent penalty amount already deposited with the CCI, which has been asked to pass a fresh order within three months. It is beyond doubt that CAT has set aside the order of CCI in accordance with the provisions of the Act and powers conferred upon it in terms of section 53B of the Act. It sounds normal though, but by perception it seems inconceivable. One can't arrive at a conclusion unless one get through the factual details to say prima facie whether there exists a tussle for dominance or a battle for Regulatory Supremacy – CCI vs. CAT. This can be corroborated by the facts of a case law, as below.

In a landmark judgement of Hon'ble Supreme Court in re. CCI v. SAIL (9th Sept. 2010), it has put to rest various controversies and ambiguities related to interpretation of the provisions of the Act and clearly demarcated the powers of CCI and CAT to iron out the creases about the extent of their powers under the Act. The brief facts of the case are as follows:

a) Jindal Steel & Power Ltd. ("JSPL") in October, 2009, invoked section 19 read with section 26(1) of the Act, by providing information to the CCI.
b) JSPL alleged that SAIL had entered into an exclusive supply agreement with Indian Railways in supply of rails and such conduct of SAIL had amounted to abuse of dominant position in the market, simultaneously deprived others of fair market competition.
c) Thus SAIL acted in contravention of the provisions of section 19 read with section 26(1) of the Act.
d) CCI before forming a prima facie view on the matter requested SAIL to furnish further information for which SAIL sought some time.
e) But CCI without considering any information on record opined that there exists a prima facie case and accordingly directed the Director General (DG) in terms of section 26(1) to cause an investigation into the matter u/s 19(1).
f) SAIL challenged the legality of the order before the CAT. The CCI applied for impleadment in the matter. CCI's argument was the maintainability of the appeal before the CAT since the order under appeal was a direction simpliciter to DG to cause investigation and it did not fall within the purview of section 53A of the Act.
g) Ironically, the CAT dismissing the application of CCI for impleadment, stated that the CCI is neither a necessary nor a proper party in the appellate proceedings before the CAT and held that right to reason is an indispensable part in a sound system of judicial review, accordingly the CCI was directed to give reasons while passing any order, giving directors or taking decision and held that such appeal is maintainable under section 53A.
h) Thus, CAT while setting aside the order of the CCI, granted further time to SAIL to file its reply.
i) CCI challenged the order of the CAT before the Hon'ble Supreme Court.

Interpreting the provisions of section 53A(1)(a), the Apex Court held that an appeal shall lie before the CAT only against the directions, decisions or orders passed by the CCI. The orders which have not been specifically made appealable cannot be treated as appealable by implication. For instance, taking a prima facie view or issuing a direction to DG for investigation would not be an order appealable under section 53A since it is of administrative nature not of adjudicatory. Further it held while deciding the rights of the aggrieved party to appeal against the directions, decisions or orders passed by the CCI, the court has rightly ruled that the right to appeal is a statutory right and not a natural or inherent right that may be assumed to exist. It is strictly controlled by the provisions of the Act and the procedure provided therein.

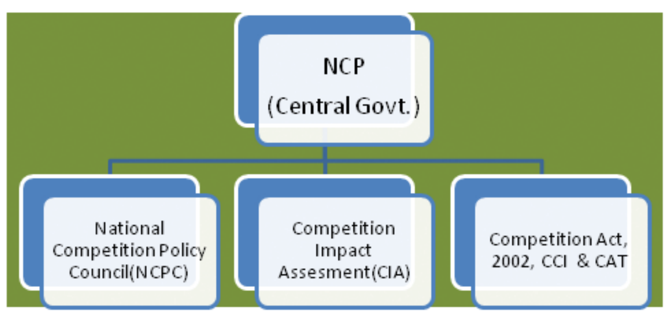
While interpreting the inference drawn from the statement of the CAT that "CCI is neither a necessary nor a proper party in the appellate proceedings", the Hon'ble SC interpreting the essence of provisions of the Act contrary to the view taken by the CAT observed that where the proceedings are initiated suo moto by the CCI, the principles of fairness demand that such party should be heard before passing any orders and this makes the CCI a necessary party in such proceedings before the CAT. In other cases where information is received by CCI under section 19 of the Act, interpreting the CAT's contention that necessary parties are the informant and respondents, the Hon'ble SC in disagreement with the CAT, is of the view that CCI being a regulatory body would be a proper party to the proceedings. Relying upon the judgement in Brahm Dutt v. Union of India, wherein the Court observed it might be appropriate if two bodies are created for performing two kinds of functions, one advisory and regulatory and other adjudicatory. Therefore, in order to make the CCI an effective watchdog, the presence of the CCI for proceedings before the CAT would be proper.

Hon'ble SC **Author**

Competition Advocacy

The Government's proactive role in ensuring free play of market forces rather than curbing monopolies and regulating the business growth, can be viewed from the angle of its changed philosophy on the competition laws. In terms of sub-section (1) of Sec. 49 of the Act, the Central Government and/or State Government may, in formulating a policy on competition, make a reference to the Commission for its opinion on possible effect of such policy on competition. The Commission is mandated to give its opinion to Central/State Government, within sixty days of receipt of such a reference, for taking further action as it deems fit. However, the opinion given by CCI shall not be binding upon the Central /State Government, in formulating such policy, as stipulated by the provisions of sub-section 2 of Sec. 49 of the Act. However, sub-section 3 of Sec. 49 of the Act, casts obligation on CCI to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

Wings of National Competition Policy (NCP) – A snapshot



Aberrations in the provisions of the Act

Section 60 of the Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The intent inferred by the use of non-obstante clause is that if there is any inconsistency between the provisions of the Act and the provisions of any other law, the provisions of the Act shall prevail by virtue of its overriding effect. However, section 62 of the Act states that the provision of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force meaning that the application of other laws notwithstanding any inconsistency with the provisions of the Act, are not barred. In other words, it nullifies the "overriding effect". Thus, the existence of both sections 60 and 62 leaves open the scope of further disparity, which needs to be addressed.

Aberrations in the CCI Regulations

Can the right 'to nominate a Director on the Board' by a Shareholder holding voting rights be turned off?

Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2016 were brought into force by the CCI vide notification dated 7th January, 2016 further to amend the CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Principal Regulations). The categories of combinations (M&A) that are exempted from filing notice to CCI have been enumerated under schedule-I to the principal regulations. Now by this amendment, explanation inserted under category 1 combinations in schedule-I stipulates that any acquisition of less than ten per cent of the total shares or voting rights of an enterprise shall be treated as solely as an investment provided (proviso A & B, as reproduced below) that:

"(A) the Acquirer has ability to exercise only such rights that are exercisable by the ordinary shareholders of the enterprise whose shares or voting rights are being acquired to the extent of their respective shareholding; and

(B) the Acquirer is not a member of the board of directors of the enterprise whose shares or voting rights are being acquired and does not have a right or intention to nominate a director on the board of directors of the enterprise whose shares or voting rights are being acquired and does not intend to participate in the affairs or management of the enterprise whose shares or voting rights are being acquired/"

By plain reading of the above proviso A and B, the intent of the CCI is that any acquisition of shares or voting rights in an enterprise, entitling the acquirer to exercise less than 10% of voting rights that does not result in change in control, shall be treated solely as an investment. But, ironically, the words used in above proviso-B, inadvertently, extinguishes the rights of members 'to nominate directors on the Board', as conferred under the companies Act, Further, right of a member carrying voting rights to nominate a director is a statutory right and the right to control can accrue by way of "Shareholding", This anomaly needs to be addressed.

CONCLUSION

The raison d'être of any competition law is to protect the interest of the consumer, simultaneously protecting the rights of market players to ensure economic justice. While enforcement of this legislation, sooner than later or never, truly deserves to be applauded, it seems the law was not enacted with bottom-up approach. The major concerns of the Act, inter alia include, inconsistencies in terms of parallel regulatory overlaps like SEBI Takeover Code vis-à-vis the provisions of the Act, lacking provisions to facilitate co-ordination and harmony between CCI and sectoral regulators like TRAI, IRDA, CERC, RBI, anomalies in clarifying key terms and aberrations in certain provisions of the Act and regulations, no substitute provision for Sec. 12A of the repealed MRTP Act that upholds the "public interest" in relation to M&A (empowering the Commission to prohibit such corporate actions if found to be detrimental to 'public interest'), CCI, being the watchdog of the competition market, entrusted with nominal advisory power in formulating policies and is made to function at the beck and call of Central Governemtn, snail-walk, sometimes apathetic in the conduct of implementing agencies, which in fact, put the cart before the horses in the race of horses for courses. The sooner the potential grey areas are addressed, the better for the Act to go a long way in competing with the global competition landscape. It is pertinent to highlight here - it was rightly said by ex-RBI Governor, Dr. Raghuram Rajan in the context of constituting a special Monetary Policy Committee for RBI, by Central Government - "It is dangerous to have a *de facto* powerful position with low *de jure* status".

Further, competition cannot thrive in a kind of vacuum. There is a pressing need to bring about a competitive environment which calls for competition advocacy to create a culture of competition among the stakeholders. This can be achieved only by active participation of industry, Chambers, trade associations, professional Bodies, Educational Institutions etc. in generating awareness among the public by way of adequately disseminating information on competition laws by means of seminars, training, workshops and capacity building measures. Competition Policy, being an indispensable part of Competition landscape, should be a priority for policymakers to let it take the drivers' seat to propel the engine of liberalization in emerging economy steering to achieve efficient allocation of resources, resuscitate sluggish productivity, tap new sources of growth, innovation, job creation, and development, thus leading to 'inclusive growth'. Simply put, the boom in economic development of the country cannot be brought about unless the barriers of freedom of trade for market participants, are removed and full growth potential of the economy is unleashed by further economic liberalization. In the light of the above it is imperative that the extant Competition Law is indeed a paradigm change in shifting focus towards promotion of fair play completion from curbing monopolies to achieve sustainable economic resilience. Professor Klaus Schwab, has rightly remarked - "Declining openness in the global economy is threatening growth and prosperity and is harming competitiveness and making it harder for leaders to drive sustainable, inclusive growth", To conclude, it would be appropriate in this context to recall the stirring words of wisdom of the Nobel Laureate, R. N. Tagore, that read as -.

Where the world is without fear and the head is held high;
Where the knowledge is free;
Where the world has not been broken up into fragments by narrow domestic walls;
Where the words come out from the depth of the truth;…
My father, let my country awake!

CS

REFERENCES:

1. Competition Act, 2002 (As amended)
2. www.weforum.org
3. http://www.gktoday.in/national-competition-policy-draft/
4. MANU/SC/1587/2011.
5. www.sebi.gov.in
6. www.mca.gov.in
7. http://timesofindia.indiatimes.com/toireporter/author-Shalini-Singh-7131.cms

Competition is the way of life for Business, but "All that is Traditionally Practised" to get competitive edge, may not be permissible in law

Dr. Mahesh Thakar, FCS
Advocate, Vadodra
dr_mkthakar@yahoo.com

THE CONSTITUTIONAL LEGAL PERSPECTIVE

Article 19(1)(g) of The Constitution of India provides that all citizens shall have right to practice any profession, or to carry on any occupation, trade or business. The law has been interpreted beneficially for the corporates and the Supreme Court held that fundamental rights of the citizens are not lost when they associate to form a company[1]. When fundamental rights of the citizens as shareholders are impaired by state action, their rights as shareholder have to be protected. Thus the much needed "locus standi" has been conferred on the individuals carrying on business under corporate banner.

No freedom can be absolute and unfettered. Hence, Article 19(6) protects the power of the state to enact law in the interests of general public and place reasonable restrictions on the exercise of this fundamental right. The Article indicates in its language the following limbs about such rule-making powers:

> The word "competition" in common parlance means the activity or condition of striving to gain or win something by defeating or establishing superiority over others. Any business activity usually contemplates multiplicity of players in the market. The production even with highest quality standards, may by itself, not be sufficient for any business entity unless the goods or services produced by him reach the ultimate consumer. The bond with such consumer is difficult to establish and more difficult to sustain because of multiple supply sources providing the same product.

Qualifications	Protection of citizens
Professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business can be regulated by statute	Laws can be enacted relating to carrying on by the State, of any trade, business, industry or service whether to the exclusion, complete or partial of citizens or otherwise

The genesis of competition law perhaps can be traced in the second limb of constitutional provision. It clearly indicates that the power to exclude citizens or others from engaging in any business or reversely the state or state-owned corporation having exclusivity to carry on such business stands protected. How far and for what purposes such exclusivity is desirable has to be tested by the criteria of "interests of general public".

Right since the advent of Constitution, there has been a constant battle as to whether the power of State to make such laws is unfettered or it is circumscribed? Few important principles that have been laid down in the Apex Court judgments may be referred:

(i) The Courts have to ascertain reasonableness of the restriction and not of law permitting such restriction. It may happen that law may be reasonable but restriction imposed by it on the exercise of power may not be so[2];

(ii) Even if the restriction results in total prohibition depriving a person of such

[1] Bennett Coleman & Co. vs. Union of India AIR 1973 SC 106

[2] Jolly George Verghese vs. Bank of Cochin (1980) 2 SCC 360

> The competition law seriously and rather fatally hits certain agreements and treats them *per se* as anti-competitive. Since they are void *per se* it cannot be enforced or be enforceable. The Indian Contract Act provides that all agreements are contract if they are made by free consent of parties competent to contract, for a lawful consideration, with a lawful object and are not hereby expressly declared to be void. An agreement not enforceable by law is said to be void.

fundamental right, under certain circumstances, it will be treated reasonable if the State establishes it in context of predominant public interest;

(iii) It is open to the State to impose such restrictions for carrying out directive principles of state policy. Two important provisions in Article 39 deserve reference:
  (a) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
  (b) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

(iv) Reasonableness can also be tested by the criteria of proper balancing and hence arbitrary and excessive restrictions maybe struck down.

(v) The criteria covers both procedural and substantive restrictions because procedure is hand made of justice and what cannot be done under express provision can also not be done by rules and delegated powers.

HOW COMPETITION IS IN PUBLIC INTEREST AND BENEFITS ALL?

In any civilized society governed by rule of law, there prevails a well-integrated relationship between producers, government and the consumers. So far the relationship remains balanced, it benefits all concerned in the following ways:

How competition benefits

Entrepreneur	Government	Consumer
- Promotes innovation	- Intra & inter industry comparison helps to formulate policies	- Better services & choice
- Encourages excellence	- Can help to concentrate in key sovereign functions	- Affordable prices
- Identify weaknesses/ strengths	- Promote exports, earn foreign exchange	- Suitable buying decisions by comparing products
- Helps to identify focus areas	- Balanced growth of business activities	- Combat exploitation by taking balanced prudent decision in consumer disputes for comparison
- Keeps alert for services	- Tax and revenue collection	- Promotes consumer awareness collectively
- Helps to identify potential threats	- Laying down minimum compliance norms	
- Promotes research and development	- To detect & discourage unfair monopolies	
- To develop strength for global competition		

The Supreme Court[3] in its observation gave a global perspective and noted:

"In the era of globalisation, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go-by and certainly not compromised in its entirety."

CHRONOLOGY OF RELEVANT LEGISLATIONS IN INDIA: WHY MRTP ACT MISERABLY FAILED AND BECAME MATTER OF PAST

The powers of Parliament and State legislatures to enact laws originates from Constitution of India which became operative in 1950. It appears the initial thrust was on bringing the industries and their functions within strict government control. The growth of industry was relatively very restricted.

The Industries (Development and Regulation) Act, 1951 can be treated as the first remarkable legislative initiative. While the Act in its Preamble stated that it provides for development and regulation of certain industries, it was more in nature of regulatory legislation with development being the ignored aspect. The Act provided for registration of existing industrial undertakings, their licensing, revocation of licences, investigation and a drastic power for direct control by Central Government. That era was popularly or rather sarcastically known as "License Raj". The Act remains but its drastic provisions have been diluted to promote industrial growth by a positive approach giving least minimum importance to direct government interference. Modifications have been made in the law to make it suitable with present context.

India also needed foreign investment and technical knowhow. The laws regulating foreign exchange had been in force right since the Second World War and such laws were enacted by Britishers to suit their own convenience. Later in 1974, Foreign Exchange Regulation Act (FERA) was enacted. It is later replaced by FEMA.

The Government was concerned about undesirable effects of monopoly and hence in 1964, Monopolies Inquiry Commission was constituted and its terms of reference included inquiry into the extent and effect of concentration of economic power in private hands and the prevalence of monopolistic and restrictive practices in important sectors of economic activities other than agriculture and to identify factors responsible for the same and social and economic consequences. The Commission submitted its report and the Monopolies and Restrictive Trade Practices Act (MRTP) Act was enacted in 1969. The Act provided for detecting monopolies and controlling such monopolies and restrictive practices. MRTP Commission was constituted for control of restrictive trade practices, unfair trade practices,

[3]Per Justice R.C. Lahoti in AIIMS Students' Union vs. AIIMS (2002) 1 SCC 428 (Para 58)

monopolistic trade practices and prevention of concentration of economic powers detrimental to public interest.

The constitutional validity of this Act was challenged and while upholding the same, Supreme Court observed[4]:
"The basic feature and the paramount consideration which pervades throughout the State are the public interest, the common good and to keep a watch and control on the operation of economic system of the country. The Governments act in public interest. Public interest is writ large in every act and function of the Government."

Every legislation has to stand the test of time and needs to be critically appraised in context of its actual contribution in achieving the objects for its enactment. By that test, MRTP Act was found to be ineffective or rather having negative impact on the growth of industries and curbing monopolies.

Contemporary changes also made it virtually obsolete. In 1991, India decided to be a trendsetter in global reforms which required liberalisation of the policies. The MRTP Act was solely concentrating on the size of industrial undertaking. The deterrent provisions dealing with offences in some cases negated even principles of natural justice. There was strict and rigid registration procedure. Dominance by itself was treated as an indicator of monopoly and hence sought to be curbed. There was an unworkable concept called "group" under the MRTP law.

In view of the policy shift from curbing monopolies to promoting competition, there was a need to repeal the MRTP Act[5] and substitute it with a legislation which can address the urges and requirements of the changed economic and international scenario. The Competition Act hence was the need of the day and was enacted in 2002 after considerable deliberation.

THE ACT PREVENTS ADVERSE EFFECT ON COMPETITION BY A TRIPLE FORMULA

The Preamble of Competition Act indicates that keeping in view economic development of the country and to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interest of consumers and to ensure freedom of trade carried on by other participants in markets in India, the legislation is introduced. The law tries to strike a balance between "freedom of trade" and an over-domination which eliminates competition.
The law for this purpose operates in following three dimensions under its scheme

Competition Law

- Prohibits anti-competitive agreements
- Prohibits abuse of dominant position
- Regulates combination by acquisition, merger or amalgamation

It is quite obvious that the public interest including the consumer's interest suffers when the business enterprises engage in any of the aforesaid objectionable practices. Every such practice cannot be and is not intended to be curbed or controlled by the Act because it will be detrimental to freedom of trade which again benefits public interest.
Framers of the law have therefore laid down different criteria depending on the investment, market share, the overseas position including the position of the group. The situations which the law intends to regulate can be broadly classified as under:

Situation	Criteria		
	Assets	**Turnover**	**Overseas assets/ turnover**
Acquisition of enterprises including merger amalgamation	Acquirer and the enterprise have assets more than 1000 crore turnover.	Acquirer and the enterprise have turnover of more than 3000 crore.	Assets of value more than USD 500 million including atleast Rs. 500 crores in India. Turnover USD 1500 million with minimum 1500 crores in India
Acquisition by the group to which the enterprise belongs	Assets in India of value of more than 4000 crores.	Turnover in India of more than 12000 crores.	Assets of value more than USD 2 billion, Turnover USD 6 billion including atleast 1500 crores in India and assets of 500 crores in India.
Acquisition of control when such person has already direct or indirect control over another enterprise engaged in same or similar goods or services	If it results in assets value of more than 1000 crore jointly.	If It results in turnover of more than 3000 crore jointly.	Aggregate assets in and outside India of more than USD 500 million including atleast Rs. 500 crores in India or Turnover more than USD 1500 million and atleast 1500 crores in India

Law itself gives explanation to interpret the concept of group. Group is identified by:

(i) exercise 26% or more of the voting rights in the other enterprise; or
(ii) appoint more than 50% of the members of the board of directors in the other enterprise; or
(iii) control the management or affairs of the other enterprise.

A group or enterprise acquires dominant position when it is a position of strength enjoyed by an enterprise in the relevant market in India which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitor or consumers or the relevant market in its favour. Relevant market can be determined by Commission with reference to the relevant geographic market i.e. where the competition for supply of goods or provision of services are distinctly homogeneous compared to neighbouring areas. When products or services are interchangeable or substitutable by the consumer, by reason of characteristics of the product or services

[4]Raymond Woolen Mills Ltd. vs. MRTP Commission (1979) 49 Company Cases 686 (Bombay)
[5]Guide to Competition Law by S.M. Dugar (6th Edition), Edited by Justice Arijit Pasayat & Sudhanshu Kumar (Pg. 37)

or prices then that is treated as relevant product market.

VOID AGREEMENTS HIT BY ANTI-COMPETITIVE CRITERIA

The competition law seriously and rather fatally hits certain agreements and treats them as *per se* anti-competitive. Since they are void *per se* it cannot be enforced or be enforceable. The Indian Contract Act provides that all agreements are contract if they are made by free consent of parties competent to contract, for a lawful consideration, with a lawful object and are not hereby expressly declared to be void. An agreement not enforceable by law is said to be void[6].

The law in one sweep covers all agreements between enterprises or association of enterprises or persons or associations of persons or between any person and enterprise. The practices carried out by or decisions taken by any association of enterprises engaged in identical or similar trade of goods or provision of services have been covered.

The prominent amongst such practices are illustrated by the Act itself:

Practice prohibited under the agreement	Why law disapproves
Cartel i.e. limiting, controlling or attempting to control the production, distribution, sale or price of trade in goods	It benefits the producers, sellers, distributors, traders or service providers and puts the consumer to disadvantage.
Market sharing agreements by allocating geographical area of market, type of goods or services or number of customers in the market or any other similar way	The enterprises amongst themselves not only control the markets but even the production to create artificial scarcity and exploit consumers.
Rigging or collusive bidding i.e. adversely affecting or manipulating the bidding process	Enterprises engaged in identical or similar production of trading or goods by an agreement corner the bid among themselves.
Tie-in agreement i.e. imposing condition against the wish of purchaser	It requires a purchaser of goods as a condition of such purchase to also purchase some other goods which as such he does not want to buy.
Exclusive supply and distribution agreements i.e. restricting the purchaser to deal in any goods or withhold output of supply	It restricts the purchaser in course of his trade from acquiring or dealing in any other product or limits, restricts or withholds the output to any area or market.
Refusal to deal with persons other than those covered under agreement	It restricts by any methods the persons or classes of persons from whom goods will be purchased or to whom goods will be sold.
Resale price maintenance stipulating that the prices to be charged on resale by purchaser shall be the prices stipulated by the seller	The condition deprives the ultimate consumers to purchase the goods at a price lesser than stipulated by the producer even if the intervening seller wants to do so.

HORIZONTAL AND VERTICAL AGREEMENTS – THEIR ADVERSE EFFECT ON COMPETITION

The agreements wherein the business firms otherwise competing with each other in the same field of activity decide to cooperate with each other and the ultimate objective is to maximize profits of the parties to such agreement and has the ultimate effect of reducing competition or exploiting the consumers. The Supreme Court has observed that swift and accurate proof in such cases is not required and their anti-competitive potential justifies their facial invalidation even if pro-competitive justifications are offered for the same by the concerned parties.[7] Sec. 3(3) of Competition Act lays down a statutory presumption that such agreements have an "appreciable adverse effect" on competition. As against this, vertical agreements take place when enterprises are involved at different stages or levels of production change in different markets in respect of production, supply, distribution, storage, sale or trade in goods or provisions of services. In effect, vertical agreements are more of condition-fixing agreements connected with fixing of price. The main point of difference between horizontal and vertical agreements is that while the former takes place among the competitors and aim at maximizing profit at cost of the consumers, the latter creates a chain of enterprises starting from production upto distribution and ultimate retail sale and results in higher cost for the customer.

The key criteria for application of law is whether the restraints which the agreements create has the effect of foreclosing markets to manufacturers or retailers and does it also have the effect of reducing new entry by other participants on competitive terms. Such agreements may involve payment of non-cost related discounts to existing retailers for franchise fees and thereby the entry of other participants becomes difficult.[8]

COMPETITION COMMISSION – ITS DUTIES AND POWERS

Usually language of the statute formally does not cast any duty on the statutory body constituted under the law, atleast in express terms but the framers of law have provided that "it shall be the duty of Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interest of consumers and ensure freedom of trade carried on by other participants in markets in India."

The word "eliminate" sounds stronger than "adjudicate" and indicates that powers vested are of drastic nature.

The matters reach the Competition Commission through various channels as under:

Cases inquired by Competition Commission

Suo motu (on its own motion)	Information by any person, consumer or trade association	Reference by Central or State Govt./ statutory authority

Cases may happen when from the same facts, there may be multiple complaints by several different parties. It may be at the same time or during different time when it involves a continuing violation. In a classic case involving Google the policies with respect to online search advertising by Google were subject

[6]Section 2(g) read with Section 10 – Indian Contract Act

[7]Voltas Ltd. vs. Union of India (1995) 83 Company Cases 228

[8]Raghvan Committee Report on Vertical Agreements Reference Page 211 Vol. 1 Competition Law by S.M. Dugar

[9]Regarding Google India P. Ltd. (2014) Comp Law Reports 338 (CCI)

matter of the complaint.[9] The Competition Commission without hesitation held that opposite party had rendered themselves liable to be proceeded against and punished in terms of provisions of the Act.

ADVANCE RULING THROUGH COMPETITION ADVOCACY PROVISION

Policy relating to competition cannot be rigid and there has to be an inbuilt flexibility because the competitive world is ever-changing in nature. The policy which was good before few years or decades may not necessarily be serving the purpose of law in changed circumstances. The formulation of policies is function of executive. Hence when Central Govt. or State Govt. is indulging in exercise of formulating the policy or even reviewing such policy then they have the option of making reference to the Commission for its opinion on possible effect of such policy on competition. The Commission has to make available such opinion within 60 days of reference. The Commission also has been vested with further duty to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

The provision is consultative in nature. It aims at changing particular public policy and taking a position on specific issues by influencing or supporting a particular idea or policy. It helps in securing the willingness and acceptability of proposed policy and law.[10]

The Act stipulates that the opinion given by Commission shall not be binding upon the Central Govt. or State Govt. in formulating such policy.

In addition to the opinion, even spread of education and awareness through workshops and seminars also is included within the scope of advocacy initiatives. The Commission also publishes quarterly newsletter "Fair Play" having wide circulation. The statistical details of some of the advocacy initiatives taken during last 5 years by Competition Commission have been statistically summed up as under:

Sr. No.	Stakeholders	2010-11	2011-12	2012-13	2013-14	2014-15	Total
1	Government	2	12	4	15	8	41
	Central Govt./ Ministries			1	13	10	24
2	Business with Chambers of Commerce	12	16	22	18	11	79
3	Institutes/ Academies	6	31	29	24	24	114
4	Internship	26	42	70	75	80	293

The approach is multi-prone and sincere. It yet appears to be inadequate for a country where the business enterprises are spread over length and breadth of the country and the population, constituting ultimate consumers is more than 40 crores in terms of households. The huge population can be apprised only through appealing advertisements in television and social media.[11] Prestigious institutions like IIM Ahmedabad, National Law University also have been empanelled for evaluation of samples of competition assessment.

[10]Report of the Working Group on Competition Policy, Planning Commission, Government of India 2007

[11]http://www.cci.gov.in/events

POWERS OF COMPETITION COMMISSION

The Competition Commission has to perform the challenging task of promoting healthy competition which has a consumer friendly effect and also to curb undesirable practices through agreements or otherwise which operates against fair competition resulting in unfair advantage to the enterprises practicing it. The above objects are sought to be achieved through multiple powers vested in the Commission as given below:

Power	Details
Inquiry into the alleged contravention (Sec. 19)	Commission can *suo motu* or on receipt of information/ reference initiate inquiry about appreciable adverse effect on competition as contemplated u/s. 3 or the dominant position of an undertaking.
Inquiry into combination (Sec. 20)	Commission has power to inquire into merger, amalgamation or acquiring control with specific reference of the combination causing or likely to cause an appreciable adverse effect on competition in India. There are 14 different criteria laid down in Sec. 20(4) including extent of entry barriers, innovation, effective competition.
Commission's power to make reference to statutory authority (Sec. 21A)	If in any proceedings before Commission issue is raised by any party that any decision which the Commission has taken or proposes to take, would be contrary to any provision of Act whose implementation is entrusted to a statutory authority, Commission may make such reference.
Power to make orders including interim orders (Sec. 27, 31, 33)	Commission can direct the enterprises or their associations to discontinue agreements resulting in abuse of dominant position, impose penalty, direct for modification of such agreement.
Power to direct division of enterprise enjoying dominant position (Sec. 28)	Orders can direct division of an enterprise enjoying dominant position to ensure that there is no abuse of such position and it may include transfer or vesting of property, rights, liabilities or obligations or adjustment of contracts, allotment or surrender of shares, formation or winding-up of enterprises.
Extraterritorial powers of inquiry (Sec. 32)	Irrespective whether the agreement, party/ enterprise abusing dominant position or combination taking place outside India, the Commission can still inquire into the appreciable adverse effect on competition in relevant market in India and pass orders.

The person or enterprise or Director General can appear before the Commission himself or authorize one or more chartered accountants, company secretaries, cost accountants or legal practitioners.

Orders of the Commission imposing monetary penalty on an enterprise, upon reference so made by the Commission can be recovered under the provisions of Income Tax Act through the tax authority.

SOME RECENT LANDMARK DECISIONS OF THE COMMISSION

(i) Indian Railway is consumer of steel manufacturing units. Indian Railways was a state monopoly without any competitor and was bulk purchaser of steel. Its MOU with Steel Authority of India Ltd. happened to be challenged by Jindal Steel. The Commission held that it was well within its consumer rights to try to influence the market in its favour

[12]Jindal Steel and Power Ltd. vs. Steel Authority of India Ltd. [2012] 107 CLA 278(CCI)

and get the best deal in its own view.[12]

(ii) IRDA cannot be termed as enterprise. Insurance Regulatory and Development Authority (IRDA) discharges its regulatory and statutory duties mandated under the law. Such regulatory actions are not *per se* amenable to the jurisdiction of the Commission and hence it does not come within definition of Section 2(h) i.e. enterprise.[13]

(iii) Cartelization of cement industry heavily punished. The cement manufacturer where 12 major cement companies had 75% of total capacity in India increased cement prices. The Director General conducted economic analysis of price data resulting in price parallelism. There was deliberate act of shortage of production and supplies by the cement manufacturers. The Commission imposed a penalty of approximately Rs. 6000 crores (USD 1.1 billion) as they were guilty of cartelization. Additional penalty was imposed on Cement Manufacturers Association.[14]
The Competition Appellate Tribunal has intervened in the matter and directed the CCI to hear the matter again following just and fair procedure and pass fresh orders.

(iv) Exorbitant increase in price of explosives. Case was filed against explosive manufacturer and supplier Association. Different kinds of explosives were used by Coal India Ltd. and explosives were procured through tender process. The Commission found that opposite parties had rigged the bidding process. The suppliers boycotted the e-reverse auction in 2010. The Commission held that this action was violative of Sec. 3(3)(d) as it amounted to bid rigging and collusive bidding.[15] The Appellate Tribunal concurred with the decision.

(v) If no horizontal overlap between two enterprises, scheme of amalgamation cannot be challenged. Alstom Bharat Forge Power Ltd. (ABFPL) and another company proposed to go for amalgamation under which ABFPL will continue to be under joint control of promoters i.e. Alstom Power holding S.A. and Bharat Forge Ltd. The amalgamating company was in business of manufacturing heat exchangers and auxiliary equipments. The Commission held that products would be complimentary to each other for setting up of turbine islands and had no adverse effect on competition in India.

(vi) Whether there are any limitations on powers of DG to investigate?

In this case, Commission held that period of contravention under provisions of Competition Act, 2002 has to be reckoned only from date of its enforcement but it does not imply that the Commission or DG cannot examine the conduct of parties post notification when there was complaint pending before MRTP Commission.

SUPREME COURT ON COMPETITION LAW

Under section 53B, appeal from the orders of Competition Commission lies to Competition Appellate Tribunal. The Chairperson of Appellate Tribunal shall be a person who is, or has been a judge of the Supreme Court or the Chief Justice of a High Court. There will be two members who shall be a person of ability, integrity and standing having special knowledge and professional experience of not less than 25 years in competition matters including laws. Section 8 of the Act stipulates that the Chairperson and every other member of Competition Commission has to be a person of ability, integrity and standing.

The Supreme Court held that the chairperson of Competition Commission has to be person connected with judiciary and selected by head of judiciary and he should not be a bureaucrat or other person appointed by executive without reference to head of judiciary. The Government agreed to amendment for selection by a committee presided over by Chief Justice of India. Hence the vires of Section 3 and Section 8(2) of the Act was not decided at that stage.[16]

In another important judgment, Supreme Court held that Sections 26 and 53A of the Act clearly depict the legislative intent that framers never desired that all orders, directions and decisions should be appealable to the Tribunal. Appeal shall lie only from those orders which have been made specifically appealable.[17]

GOVERNMENT'S APPROACH TO COMPETITION POLICY

Free enterprise has to be facilitated for economic growth and National Competition Policy has to, through its regulatory network, achieve highest sustainable level of economic growth, entrepreneurship, employment, highest standards of living for citizens, protect economic rights for just, equitable, inclusive and sustainable development and promote economic democracy and support good governance by restricting objectionable practices.

The-then Union Minister of Corporate Affairs while expressing his views on competition law observed that "National Competition Policy" would be a "proactive and positive" effort to build a competition culture in the economy. We are in the process of releasing the National Competition Policy which seeks to unleash the fullest growth potential of our economy. I would prefer to call this the 'second generation of economic reforms."[18]

The Government that succeeded also has adopted an optimistic approach. The successor Finance Minister said that India was improving in the ease of doing business index. India should look to move faster on its current chosen path of an open economy where customers are benefited with more choices. There should be lesser government monopolies in the interest of promoting competition. The present policy may or may not be needed. The CCI is a fair play regulator to foster competition in the country. The existing regulatory setup is already taking efforts to encourage competition[19].

It seems the Government approach is positive, pragmatic and flexible. Duty therefore lies on the enterprises not to over-focus on the formulas to evade and circumvent the provisions but to ensure its compliance while carrying out their business activities with full vigor and force. Conflict situation with the provisions of law should be an exception and the adjudicatory mechanism also has to maintain clarity and consistency giving specific direction in which the business has to move. CS

[13] Dilip Modwil vs. Insurance Regulatory Development Authority of India (IRDA), Case no. 39 of 2014 decided on 12.9.14

[14] Builders Association of India vs. Cement Manufacturers Association (2012) Competition Law Report 629 (CCI), Shree Cement Ltd. vs. Builders Association of India (2016) Competition Law Report 23

[15] Coal India Ltd. vs. Gulf Oil Corp. Ltd. (2012) Comp Law Reporter 1 (CCI)

[16] Brahm Dutt vs. Union of India AIR 2005 SC 730

[17] Competition Commission of India vs. Steel Authority of India Ltd. (2010 AIR SCW 6238)

[18] M Veerappa Moily – Former Union Minister of Corporate Affairs , quoted in the Competition Act, 2002, Key Commentary published by WIRC of ICSI at Page 74

[19] Finance Minister Arun Jaitly - Business line, New Delhi, May 20, 2016.

Provisions relating to prohibition of anti - competitive agreements & abuse of dominant position under the Competition Act, 2002

Dr. Rajeev Babel, FCS
Company Seretary in Practice
Udaipur
babelrajeev@gmail.com

INTRODUCTION

Existence of competition has been recognised globally as the best means of ensuring that consumers have access to the wide range of products and services and that too at most competitive prices. In order to provide best quality products the manufacturers will bring the innovations in their product in terms of quality and reasonable price which can meet the demand of the public. Thus, it can said that the competition induces the quality improvements and product efficiency and this requires healthy market conditions and government's efforts to remove the market imperfections by coming out with appropriate law, in order to promote healthy competition. The Government of India brought a new Act titled the Competition Act, 2002 (Act) and Section 66 of the Act, repealed The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act).

Competition induces the quality improvements and product efficiency and this requires healthy market conditions and government's efforts to remove the market imperfections by coming out with appropriate law, in order to promote healthy competition. The Government of India brought a new Act titled the Competition Act, 2002. The Competition Law expands the scope of Constitutional Guarantee by incorporating provisions relating to Prohibition of anti-competitive agreements and prohibition of abuse of dominant position .

OBJECTIVES OF THE COMPETITION ACT, 2002

The preamble to the Competition Act, 2002 (Act) sets out the key objectives and states that it is an Act to provide, keeping in view the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

The Supreme Court[1] elaborated that the main objective of competition law is to promote efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. The advantages of perfect competition are threefold:

- Allocative efficiency, which ensures the effective allocation of resources,
- Productive efficiency, which ensures that costs of production are kept at a minimum and
- Dynamic efficiency, which promotes innovative practices.

The preamble talks about the freedom of trade, which means freedom of choice, lower switching costs and proper information system for the consumers to make the right choice. Freedom of trade amounts to the protections of consumers and participants in the market from anticompetitive agreements, protection from cartels, from anticompetitive trade practices, control of markets, collusive bidding, refusal to deal, tier in arrangements etc. and abuse of dominance. Abuse of dominant position involves the above factors, unfair and discriminatory practices and prices, denial of market access, supplementary

[1] Competition Commission of India v. Steel Authority of India Ltd & Others, Civil Appeal No. 7779 of 2010

obligation and protecting other markets. Freedom of trade, equality before law and liberty of thought are also incorporated in the Constitution of India. Therefore the Competition Law expands the scope of Constitutional guarantees. These all are incorporated in Section 3 and 4 of the Competition Act[2].

PROHIBITION OF ANTI-COMPETITIVE AGREEMENTS

Section 3 of the Act deals with the prohibition of anti-competitive agreements. It provides that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Any agreement in contravention of the above provisions shall be void. The agreements which are prohibitive in nature have been divided into two categories.

Horizontal Agreements

Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which:

a directly or indirectly determines purchase or sale prices;
b. limits or controls production, supply, markets, technical development, investment or provision of services;
c. shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
d. directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

Proviso to Section 3(3) provides that noting in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Further Explanation to this sub-section narrates the meaning of 'bid rigging', which means any agreement, between enterprises or persons referred to in Section 3(3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

Collusive bidding or bid rigging may occur in various ways. Some of the most commonly adopted ways are[3]:

- agreements to submit identical bids
- agreements as to who shall submit the lowest bid, agreements for the submission of cover bids (voluntarily inflated bids)
- agreements not to bid against each other,
- agreements on common norms to calculate prices or terms of bids
- agreements to squeeze out outside bidders

> Freedom of trade amounts to the protections of consumers and participants in the market from anti-competitive agreements, protection from cartels, from anti-competitive trade practices, control of markets, collusive bidding, refusal to deal, tier in arrangements etc. and abuse of dominance. Abuse of dominant position involves the above factors, unfair and discriminatory practices and prices, denial of market access, supplementary obligation and protecting other markets. Freedom of trade, equality before law and liberty of thought are also incorporated in the Constitution of India. Therefore the Competition Law expands the scope of Constitutional guarantees.

- agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis
- agreement as to the bids which any of the parties may offer at an auction for the sale of goods or any agreement through which any party agrees to abstain from bidding for any auction for the sale of goods, which eliminates or distorts competition

Vertical Agreements

Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including:

a. Tie-in arrangement: It includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
b. Exclusive supply agreement: It includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
c. Exclusive distribution agreement: includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;
d. Refusal to deal: includes any agreement which restricts, or

[2]Shri Pravahan Mohanty v.HDFC Bank Ltd, Chennai & Others, Case No. 17/ 2010
[3]http://www.cci.gov.in/advocacy-booklet/78

is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

e. Resale price maintenance: It includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;

shall be an agreement in contravention of Section 3(1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Section 3 does not restrict the right of any person to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under:

- The Copyright Act, 1957;
- The Patents Act, 1970;
- The Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999;
- The Geographical Indications of Goods (Registration and Protection) Act, 1999;
- The Designs Act, 2000;
- The Semi-conductor Integrated Circuits Layout-Design Act, 2000.

In the case of Builders Association of India v. Cement Manufacturers' Association[4], Competition Commission of India (CCI) opined that in case of agreements as listed in section 3(3), once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition within India; the onus to rebut this presumption would lie upon the Opposite Parties. The parties may rebut the said presumption in light of the factors enumerated in section 19(3). It may be pointed out that by virtue of the provisions contained in section 19(3), the Commission, while determining whether an agreement has an appreciable adverse effect on competition within India under section 3, shall have due regard to all or any of the following factors, namely:

a. creation of barriers to new entrants in the market;
b. driving existing competitors out of the market;
c. foreclosure of competition by hindering entry into the market;
d. accrual of benefits to consumers;
e. improvements in production or distribution of goods or provision of services;
f. promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Thus, while clauses (a)-(c) deal with factors which restrict the competitive process in the markets where the agreements operate (negative factors), clauses (d)-(f) deal with factors which enhance the efficiency of the distribution process and contribute to consumer welfare (positive factors). An agreement which creates barriers to entry may also induce improvements in promotion or distribution of goods or vice-versa. Hence, whether an agreement restricts the competitive process is always an analysis of a balance between the positive and negative factors listed in section 19(3).

The CCI held that where cement companies used platform provided by Cement Manufacturers' Association (CMA) and shared details relating to prices, capacity utilisation, production and dispatch and thereby restricted production and supplies in market and had also been acting in concert in fixing prices of cement in contravention of provisions of section 3, impugned act of Cement Companies and CMA unequivocally established that they were acting as a cartel and, hence, penalty was to be imposed upon them.

PROHIBITION OF ABUSE OF DOMINANT POSITION

Section 4 of the Act deals with the prohibition of abuse of dominant position and states that no enterprise or group shall abuse its dominant position.

Meaning of dominant position

The meaning of dominant position has been prescribed under the first explanation to section 4(2)(e). It means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.

In the case of Sameer Agarwal v. Bestech India (P.) Ltd[5], the Informant was an allottee of a flat in 'Park View Sanskruti', a group housing complex developed by Opposite party (OP). Informant filed information against OP for contravention of section 4 alleging that despite having paid huge amount for flat, OP had not only failed to deliver possession of same on time but also unilaterally cancelled allotment and forfeited amount paid by informant. It was also alleged that terms and conditions of Agreement were unfair, arbitrary and tilted in favour of OP. The CCI held that since there were many other major real estate developers like DLF, Ansal, Unitech, Adani, Emaar, Vatika, Supertech etc. operating and competing with OP in relevant market of 'provision of services for development and sale of residential apartments/flats in Gurgaon', OP was not dominant in relevant market and, therefore, no case of contravention of section 4 was made out against OP. CCI further opined that even though informant had alleged existence of an arrangement amongst real estate developers in relation to stipulation of similar terms and conditions in flat buyers' agreement/application form for booking flats, no cogent material evidences had been provided to substantiate allegations and, therefore, commonality of terms and conditions of agreement could not be said to be anti-competitive.

Activities treated as abuse of dominant position

There shall be an abuse of dominant position, if an enterprise or a group:

a. directly or indirectly, imposes unfair or discriminatory (i) condition in purchase or sale of goods or service; or (ii) price in purchase or sale (including predatory price) of goods or service.
b. limits or restricts (i) production of goods or provision of services or market there for or (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
c. indulges in practice or practices resulting in denial of market

[4] Case No. 29 of 2010, Judgment dated 31st August, 2016

[5] Case No. 59 of 2016, Judgment dated 6th September, 2016

access in any manner; or

d. makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
e. uses its dominant position in one relevant market to enter into, or protect, other relevant market.

In the case of Oberoi Cars (P.) Ltd. v. Imperial Housing Ventures (P.) Ltd.[6] the CCI held that where there were many other real estate developers operating and competing with the opposite party in relevant market for provision of services for development and sale of residential apartments/flats in Noida and Greater Noida, opposite party was not dominant in relevant market and, thus, no case of abuse of dominance was made out against opposite party.

In the case of All Odisha Steel Federation v. Orissa Mining Corpn. Ltd.[7] the Competition Appellate Tribunal (CAT) opined that dominant position by itself is not prohibited, however abuse of dominant position is a violation of section 4. In this case the Appellant was an association of steel manufacturers and related industries in Odisha - Respondent No. 1, i.e., OMC, was engaged in mining of minerals in Odisha. The Appellant filed information stating that OMC had monopoly over extraction of chrome ore in State of Odisha and had been abusing its dominant position by fixing arbitrary and highly unreasonable price of chrome ore. The CCI held that despite dominant position in relevant product market, OMC did not abuse its position and that it was entitled to protect its business interest by adopting any methodology of price setting depending on market conditions. It was evident that OMC was main supplier of chrome ore and due to circumstances created by response to market dynamics from private sector, OMC had found itself in a monopoly situation. Further due to operation of regulation under relevant law, State Government had created huge barriers to entry into chrome ore mining for non captive use. Moreover, in view of fact that a price regulator did not exist, onerous responsibility of balancing zeal for high profits with making available chrome ore to consumer industry at a reasonable cost, had fallen upon OMC which responsibility it had discharged with reasonable sensitivity. Thus it could be said that by virtue of existing legal framework, OMC was in a dominant position and it had pursued a policy of maximizing profits while keeping supply chain operation to downstream industry. However, the allegation of abuse of dominance by OMC had not been established and price charged by it was not unfair.

In the case of Union of India v. MRF Ltd , a reference was made by Central Government under section 10 of MRTP Act, 1969, alleging that respondents, manufacturers of automotive tyres and tubes, had indulged in restrictive trade practices by manipulating fixation of price of tyres and tubes. The CAT found that pursuant to earlier order of CCI, respondent gave an undertaking that they would not indulge in any concert for fixing prices at any time. Since respondents did not indulge in restrictive trade practices from 1988 onward, reference filed by Central Govt. in 1992 that respondents had indulged in restrictive trade practices or anti-competitive activities and thereby violated provisions of

1969 Act was to be rejected.[9]

In the case of Anuj Kumar Bhati v. Sony Entertainment T.V. (Set)[10], the Petitioner had filed a complaint before CCI averring that though petitioner had spent large sums of monies in his attempt to participate in television show 'Kaun Banega Crorepati-2 (KBC)' but had not been able to participate as organizers were duping participants and indulging in foul play. The CCI dismissed complaint holding that allegations of petitioner were to be tested in light of opposite party being in a dominant position and, thus, discriminating in selection of contestants for participation in programme/show and adopting unfair means therein; however, on basis of viewership ratings, it was found that share of viewers of said television show was not so much for which it could be said that show was in a dominating position. Accordingly, it was held that no case of violation of provisions of section 3 or section 4 was made out and, thus, need was not felt to refer matter to Director General for further investigation. On appeal, the CAT by impugned order dismissed appeal holding that conclusions reached by CCI that television show was not in a dominant position was a factual conclusion, correctness whereof had not been questioned, and thus, confirmed order of CCI. The High Court of Delhi also opined that as from viewership ratings/figures, findings of CCI of subject television show being not in dominant position could not be disputed, no case of maintainability of complaint was made out, therefore, the petition against impugned order was to be dismissed.

SUMMING UP

The Competition Law expands the scope of Constitutional Guarantee by incorporating the chapters of Prohibition of Anti-competitive agreements (Section 3) and prohibition of abuse of Dominant Position (Section 4). While Section 3 has elaborated the possible horizontal agreements between the enterprises and at vertical agreement different levels of the production chain in different markets, which are prohibitive. India being a developing country, the abuse of dominance, along with the cartels can seriously harm consumers and businesses, so keeping in view of it Section 4 was placed in the Act, which prohibit the abuse of dominant position. CS

[6]Case No. 60 of 2016, Judgment dated 31st August, 2016
[7]Case No. 2 of 2014, Judgment dated 30th August, 2016
[8]RTPE No. 147 of 1992, Judgment dated 29th July, 2016
[9]Section 4 of the Competition Act, 2002/Section 36B of the [10]Monopolies and Restrictive Trade Practices Act, 1969.
[10]WP(c) No. 6744 of 2011, Judgment dated 16th September, 2011

Role of Competition Commission of India (CCI) in prevention of abuse of dominant position - Some Important Rulings

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

Anirrud Goswami
Advocate
Goswami and Goswami Associates
New Delhi
anirrudgoswami@gmail.com

The Competition Commission of India (CCI) is empowered under the Competition Act to prevent companies/enterprises from engaging in anti-competitive agreements or abusing their dominant position in the market or engaging in combination which is detrimental to their competition. The CCI has already passed numerous orders and has imposed penalties amounting to several thousand crores on erring entities/enterprises and no business entity can therefore ignore the provisions of the Competition Act. This has also opened up a new area of practice for the professionals including the advisory practice of Company Secretaries in practice. This article highlights the inception of the CCI and some of its major decisions.

THE INCEPTION OF COMPETITION COMMISSION OF INDIA

In the corporate world, the term "competition" is generally understood to mean a process whereby the commercial enterprises compete with each other to win over/secure customers for their products and services and in the process outsmart each other and even eliminate the rivals. In fact, an effective competitive business environment, duly supported by competition law and policy, is one of the essential elements of a thriving market economy and it benefits the customers by allowing them to access wider range of better products at lower prices which unfortunately cannot be a possibility if monopoly were allowed to prevail. In this regard, the provisions of the Competition Act, 2002, as amended in 2007 and 2009 (in short "Act" or "CA,2002") regulate the activities of virtually all the commercial trade and services and these are regulated by the rulings and decisions rendered by the specialised expert body known as the Competition Commission of India ("CCI").

A brief background about the introduction of the Competition Bill, 2001 in the Parliament reveals that its "Statement of Objects and Reasons" mentioned that:

> *"In the pursuit of globalisation, India has responded by opening up its economy, removing controls and resorting to liberalisation. The natural corollary of this is that the Indian market should be geared to face competition from within the country and outside…"*

The Competition Bill, 2001 sought to ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in markets within India and, for this purpose, the quasi-judicial body known as "CCI" was to enforce the provisions of the CA, 2002 and was entrusted to undertake competition advocacy for creating awareness and imparting training on competition issues.

To understand the unique role being played by the CCI in ensuring competitive environment and to discipline erring companies by preventing abuse of dominant position, in this article reference has been made only to some important rulings in this regard and this will throw some light on the role of the CCI and the importance and significance of the orders passed by the CCI.

The Competition Bill, 2001 was passed by the Parliament in December, 2002 and on 13th January, 2003 received the assent of the President of India and was published in the Gazette of India on 14th October, 2003 and paved the way for setting up of the Competition Commission of India ("CCI") at New Delhi. Some sections of the Act were brought into force on 31.3.2003 and majority of the other sections were brought into force on 19.6.2003. However, operationalisation of the Act was challenged on 30th October, 2003 before the Supreme Court of India by way of a public interest litigation in Braham Dutt v. Union of India (2005-2-SCC-433) on the grounds, *inter-alia*, that since the CCI would be exercising judicial functions, the Chairman of the CCI should be a Judge chosen by the Chief Justice of India.

Thus, the Supreme Court stayed the functioning of the CCI in 2003 and gave its final judgement on 20th January, 2005 wherein it noted the argument of the Union of India that certain amendments were intended in the Act and that the CCI was more of a regulatory body. The Supreme Court thus disposed of the writ petition, leaving open all the relevant questions raised in the writ petition. Thereafter, in 2007, a number of changes were made to the Act of 2002 and the Chairman and Members of the Competition Appellate Tribunal were appointed and the machinery for administrating the Act was established. Accordingly, the Competition Act, as amended in 2007, became operational. The Act of 2002 was amended yet again in 2009. The provisions regulating "anti-competitive agreements and abuse of dominance" were notified with effect from 20th May, 2009 and the provisions of the Act regulating "mergers and acquisitions" were also notified and brought into force w.e.f. 1.6.2011.

The Act, as it stands today, seeks to cover three anti-trust issues, namely,

1) anti-competitive agreements by an enterprise or association of enterprises or person or association of persons;
2) abuse of dominant position and
3) combinations.

While anti-competitive agreements are dealt with by section 3, abuse of dominant position is dealt with by section 4 and combination by way of acquisition or merger or amalgamation is dealt with by sections 5 & 6 of the Act. In other words, the Act, as amended, regulates and prevents practices having adverse effect on competition, and thereby promotes and sustains competition in markets so as to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto.

It is worth mentioning that as per the judgement dated 9.9.2010 of the Supreme Court of India in Competition Commission of India v.SAIL (2010-10-SCC-744), the main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. The Supreme Court further summarized the three-fold advantages of perfect competition as under–

(i) Allocative efficiency - which ensures the effective allocation of resources;
(ii) Productive efficiency - which ensures that cost of production are kept at a minimum; and
(iii) Dynamic efficiency - which promotes innovative practices.

The Supreme Court observed that these factors, by and large, have been accepted all over the world as the guiding principles for effective implementation of Competition Law and in view of the preamble to the Competition Act, it requires not only protection of the free trade, but also protection of consumer interest.

PREVENTION OF ABUSE OF DOMINANT POSITION

Section 4 of the Act deals with the concept of 'abuse of dominant position' which reads as follows:

"4. (1) No enterprise or group shall abuse its dominant position.

(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group—

(a) directly or indirectly, imposes unfair or discriminatory—

(i) condition in purchase or sale of goods or service; or

(ii) price in purchase or sale (including predatory price) of goods or service.

Explanation— For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

(b) limits or restricts—

(i) production of goods or provision of services or market there for; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access in any manner; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.—For the purposes of this section, the expression—

(a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favour.

(b) "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

(c) "group" shall have the same meaning as assigned to it in clause (b) of the Explanation to section 5."

ANALYSIS OF SECTION 4 OF THE COMPETITION ACT

Section 4 of the Act is the substantive provision which provides for prevention of abuse of dominant position. Abuse of dominant position prevents, restricts or distorts competition. The Act does not consider dominance but its abuse as anti-competitive and unlawful. For an infringement order against abuse of dominance, therefore, both dominance and its abuse need to be proved. Abuse of dominant position occurs when an enterprise or group of enterprises uses its dominant position in the relevant market in an exclusionary and exploitative manner and also interferes with competition in the marketplace, apart from impeding fair competition amongst business enterprises. Abuse of dominant position includes:-

(i) Imposition of unfair conditions or price;
(ii) Predatory pricing;
(iii) Limiting production/market;
(iv) Creating barriers to entry and applying dissimilar conditions to similar transactions.

In order to determine whether an enterprise enjoys a dominant position or not, various factors have been enlisted under Section 19(4) of the Act which must be considered by the CCI. These include, *inter alia*, market share of the enterprise; size and resources of the enterprise; size and importance of competitors and entry barriers including regulatory barriers, financial risk, high capital cost of entry, etc.

Since the "Explanation" to Section 4 states that 'dominant position' to mean a position of strength enjoyed by an enterprise in the relevant market in India, the determination of the "relevant market" becomes a key factor to measure the abusive conduct carried out by the dominant undertaking and Section 19(5) of the Act provides that in determining

"CCI is empowered to pass substantive orders under Section 27 of the Act wherein, *inter alia*, it can impose a penalty of not more than 10% of the average turnover for the last three financial years of the enterprise, or in order to prevent the concerned enterprise from abusing its dominant position, the CCI may also direct division of the enterprise apart from directing the enterprise from discontinuing with the anti-competitive agreement."

whether a market constitutes a relevant market, the CCI shall have due regard to the 'relevant geographic market' and 'relevant product market'. In order to determine the "relevant geographical market" stipulated under Section 2(s) of the Act, the CCI must give due regard to any or all of the factors enlisted under Section 19(6) of the Act, which include, *inter alia*, regulatory trade barriers; local specification requirements; national procurement policies; adequate distribution facilities; transport costs, etc. Similarly, while the term "relevant product market" is defined under Section 2(t) of the Act, in determining so, the CCI must pay due regard to any/all of the factors enlisted under Section 19(7) which include, *inter alia*, factors such as physical characteristics or end-use of goods; price of goods or service; consumer preferences; exclusion of in-house production, etc.

POWERS OF THE CCI

While any person, consumer, consumer association or trade association can provide CCI with the information with regard to anti-competitive practices or abuse of dominant position by an enterprise, upon the satisfaction of the CCI that a prima-facie case is made out, the CCI is empowered to direct the Director General (DG) appointed under the Act to initiate investigation of the matter and submit its report to the CCI.

During the course of inquiry, if the CCI is satisfied that there is an anti-competitive agreement or that a dominant enterprise is abusing its position in the market, the CCI can pass interim orders under Section 33 of the Act and temporarily restrain such entity from carrying on such acts till conclusion of the inquiry or further orders.

Further, the CCI is empowered to pass substantive orders under Section 27 of the Act wherein, inter alia, it can impose a penalty of not more than 10% of the average turnover for the last three financial years of the enterprise, or in order to prevent the concerned enterprise from abusing its dominant position, the CCI may also direct division of the enterprise apart from directing the enterprise from discontinuing with the anti-competitive agreement.

SOME LEADING "CCI" DECISIONS PREVENTING ABUSE OF DOMINANT POSITION

Though there are numerous decisions of the CCI on prevention of abuse of dominant position and on other provisions of the Act, in this article only some decisions are highlighted. These are:-

(1) *Case Nos.03/11 & 59/2012: M/s Maharashtra State Power Generation Company Limited & Others* v. *Coal India Limited and Others.*

Brief facts: Maharashtra State Power Generation Company Limited (MSPGCL) and the Gujarat State Electricity Corporation Limited (GSECL) filed complaints in the CCI against the Coal India Limited (CIL) alleging that the coal miner had been supplying low-quality coal at higher prices and had non-transparent contract conditions regarding quality and other parameters.

The issue before the CCI was whether the CIL had abused its dominant position in the relevant market in contravention of the provisions of section 4(2)(a)(i) of the Competition Act.

Decision: The CCI held that since CIL, through its subsidiaries, operates independently of market forces and enjoys undisputed dominance in the relevant market of production and supply of non-coking coal in India, and that the CIL had indulged in contravention of the provisions of section 4(2)(a)(i) of the Competition Act and imposed unfair/discriminatory conditions in the Fuel Supply Agreements with the power producers for supply of non-coking coal. It directed CIL to undertake the following measures:

1) Cease and desist from indulging in the conduct contravening the provisions of th Act.
2) FSA clauses found to be in contravention to be suitably modified, ensuring that the stakeholders are consulted before such modification.
3) CIL should ensure that parity between old and new power producers as well as between private and PSU power producers is maintained.
4) Payment of penalty of 3% of the average turnover of the last three years of the CIL, which amounted to approx. Rs. 1773.05 crores.

(2) *Case No.01/2015: Department of Sports, Ministry of Youth Affairs & Sports, Government of India* v. *Athletics Federation of India. CCI's decision dated 16.3.2016.*

Brief Facts: The Complainant/Informant i.e. Department of Sports, Ministry of Youth Affairs & Sports alleged that the opposite party's (OP) primary objective is to promote the sport of athletics in India for which the Government of India has given recognition to it and also provides financial assistance from time to time for its functioning. Besides financial support from the Government of India, the OP also generates a large sum of money through sponsorship, royalty etc. while organising various national and international athletic events. The Informant stated that the OP had taken a decision to take action against the State Units/officials/ athletes and individuals who encourage the unauthorised marathons and became part of such marathons where the permission of the OP was not taken and it was made mandatory to seek permission of the OP before organising any road race/ marathon on national and international level.

Decision: The CCI held that activities of the OP can be termed as economic activities and hence the OP stood covered under the meaning of "enterprise" in terms of section 2(h) of the Act. The relevant product market in the instant case was held to be the market for "provision of services relating to organisation of athletics/ athletic activities" in reference to section 2(r) of the Act and the provision relating to organisation of athletic events is distinct and cannot be substituted with any other related products/services. The relevant geographical market in this case was taken as "India" because the OP organises various national and international athletic events throughout India. Accordingly, the CCI held that the "relevant market" in this case was the market for "provision of services relating to organisation of athletics/athletic activities in

India".

With regard to "dominance", the CCI observed that the OP has been recognised by the Government of India for promotion of athletics in the country. In this regard, the CCI referred to the website of the OP. The CCI held that the OP being the apex body for managing athletics in India and by virtue of its association with IAAF, AAA and Indian Olympic Association, the OP is controlling athletic activities in the entire country. The CCI held that in relation to organisation of athletic activities in India, the OP is the supreme authority having control over all such events and activities and therefore the CCI held that the OP is dominant in the relevant market of "provision of services relating to organisation of athletics/athletic activities in India."

With regard to allegation of abuse of dominance under section 4 of the Act, the CCI held that by virtue of its dominance in the relevant market, the OP was trying to impose discriminatory conditions like mandatory permission for conducting national and international marathon meets and thereby restricting the entry of new entrants into the relevant market and the said conduct of the OP *prima-facie* appeared to be abuse of dominant position by the OP in terms of the provisions of section 4 of the Act. With regard to contravention of section 3 of the Act in the matter, the CCI observed that the information does not disclose any kind of agreement which can be termed as "anti-competitive" in terms of any of the provisions of section 3 of the Act.

However, the CCI held that *prima-facie* there existed a case for contravention of the provisions of section 4 of the Act by the OP and accordingly, under section 26(1) of the Act, the CCI directed the DG to cause an investigation into the matter and to complete the investigation within a period of 60 days from the receipt of the order. The CCI also directed that in case the DG finds that the OP has acted in contravention of the provisions of the Act, the DG shall investigate the role of the officials/persons who, at the time of such contravention were in-charge of and responsible for the conduct of the business of the OP. Thus, even with regard to conduct of national and international athletic bodies, the CCI passed appropriate orders to prevent abuse of dominant position of the OP.

(3) *Dharam Vir & Aditya Umang vir* v. *Jaiprakash Associates Limited [Case No.8/2015 decided by CCI on 14.9.2016].*

Brief facts: The Informants had on 25.9.2006, jointly applied for allotment of one apartment at "Crescent Court" at Jaypee Greens, Greater Noida, a project of the Opposite Party (OP). They even paid the consideration in full, yet the OP did not complete the construction and deliver possession of the flat. The Informant alleged that the terms and conditions of application form contained many unfair and abusive conditions which violated the terms of section 4 of the Act and highlighted those conditions. They also alleged that the said agreement did not contain a proportionate liability clause to fasten commensurate penalty/charge on the OP for breach in discharge of its obligations. The informants therefore sought several reliefs on the ground of abuse of dominant position by the OP.

Decision: The CCI examined several documents and also heard the parties. It noted that the real estate development project of the OP and the entire land of the OP is located at a single location spread over 452 acres, which is known as Jaypee Greens, Greater Noida. The OP has various residential options at various price bands within Jaypee Greens, Greater Noida. The CCI noted that the distinguishing and intrinsic characteristics of "integrated township" make the residential units located in such townships a distinct "relevant product", which is not substitutable with residential units in other standalone residential projects/towers. Accordingly, the CCI was of the *prima-facie* view that the relevant product market is "provision of services for development and sale of residential/dwelling units in integrated townships" and the relevant geographic market, therefore, seemed to be "Noida and Greater Noida".

The CCI, while deciding this case, referred to its earlier decision concerning the OP, but differed from the said decision. In the instant case, on the basis of number of dwelling units, financial resources and land resources, as well as vertical integration, the CCI found the OP to enjoy dominant position in the relevant market. The CCI was of the prima-facie view that the clauses of the agreement with the informants were unfair, onerous, one-sided and titled favourably towards the OP and thus called for a detailed investigation holding that the OP had contravened the provisions of Section 4 of the Act and directed the Director General to cause an investigation to be made in the matter and to complete the investigation within a period of 60 days from the receipt of the order.

(4) *Best IT World (India) Pvt.Limited (iBall), Mumbai* v. *Telefonaktiebolaget L M Ericsson (Pub) Case No. 4/2015 decided by the CCI on 12.05.2015.*

Brief Facts: The Informant complained before the CCI that the Informant is in the business of import and distribution of computer peripherals, mobile etc and alleged that the OP had abused its dominant position by charging excessive royalty as percentage of value of handsets, as opposed to the actual cost/price, besides insisting other unreasonable conditions. The CCI noted that the OP is largest holder of "standard essential parts" (SEP) used in mobile communications used for smart phones, tablets etc and that there was no alternative technology that was available in India and in this way the OP was in a dominant position which it abused. On the basis of information received from the informant and other material on public domain, the CCI *prima-facie* found that the OP was abusing its dominant position in the relevant market by imposing excessive and unfair royalty rates, based on price charged by the purchaser from customers for its products, instead of cost of technology and also insisted on other unreasonable conditions. The CCI passed appropriate orders directing the DG to investigate.

ACT DOES NOT PROVIDE FOR 'COLLECTIVE' OR 'JOINT' DOMINANCE

In a recent ruling dated 31.8.2016 in Case No. 29/2010 re: The Builders Association of India v. Cement Manufacturers' Association of India & Ors, even though the allegations against the opposite parties (including some of the top cement manufacturing companies) *prima-facie* related to abuse of collective dominance and engagement in anti-competitive agreement by the opposite parties, however, since there is no provision in the Act for 'Collective Dominance' or 'Joint Dominance', the CCI held that the abusive conduct of the opposite parties unequivocally established that they were acting as a cartel. Thus, the CCI held that the opposite parties had contravened Sections 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act and imposed specific penalties calculated as per Section 27 of the Act on turnover basis (amounting to several thousand crores) and directed the OPs to deposit the penalty amount within 60 days.

CONCLUSION

As can be seen from the above, no business enterprise in India can afford to ignore the provisions of the Competition Act because the CCI has passed stringent orders with exceptionally heavy penalties against companies engaging in anti-competitive agreements or found to be abusing their dominant position in the market. The time has come for the professionals to advise the management of the companies to adapt their marketing policies and strategies so that they are not found foul with by the CCI. CS

"Combinations" under Competition Commission of India

Deepika Vijay Sawhney, ACS

Partner – Securities Law & Transaction Advisory
Corporate Professionals Advisors & Advocates, New Delhi
deepika@indiacp.com

The Competition Act, 2002 (as amended) ("the Act"), was enacted with intent to promote competition and to curb any anti-competitive activities in the Indian Market. It deals in detail vis-à-vis Acquisitions and Mergers or Amalgamations so taking place in India. The Acquisitions and Mergers or Amalgamations are collectively referred as "Combinations" under the Act and is broadly covered under Section 5 and 6 of the Act. Alongside the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 have been framed to provide for detailed provisions regarding "Combinations" and procedures and process for clearance of CCO for any proposed Combination. The broader aspects relating to Combinations are covered hereunder, in this Article.

Acquisitions and Mergers or Amalgamations are collectively referred as "Combinations" under the Competition Act and is broadly covered under Sections 5 and 6 of the Act. The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 have been framed to provide for detailed provisions regarding "Combinations" and procedures and process for clearance of CCO for any proposed Combination.

COMBINATION UNDER SECTION 5 OF THE ACT

As per the provisions of the Act, no combination which shall or may cause an "adverse effect on competition" in the "relevant market" will be void.

The provisions of the Act with respect to Combinations have been made effective since 01.06.2011 and further amended from time to time, latest being as on 4th of March, 2016.

As per the provisions of the Act, any proposed transactions in the nature of Acquisitions and Mergers or Amalgamations shall be required to take prior approval of the Competition Commission of India (CCI).

The very basic question that arises is; does every transaction would fall under the ambit of Competition Commission?

The answer is 'No', not every transaction would require the approval of CCI but only those "Combinations" as provided under the Act.

In order to estimate whether a particular transaction is "Combination" and falls under the provisions of Competition Act 2002, first it is important to understand the following:

1. The nature of Transaction
2. The values involved in Transaction (Threshold Limits)

Nature of Transaction

'Combinations', as under the Act, includes the following three types of transactions

1. Acquisition
2. Acquiring of Control by a person over an Enterprise
3. Merger or Amalgamation

Acquisition

"Acquisition" has been defined by the Act as including 'acquiring or agreeing to acquire', directly or indirectly, of:

i. shares, voting rights, or assets of an enterprise; or
ii. control over management; or
iii. control over the assets of an enterprise.

Thus the definition do includes all forms of acquisitions whether direct or indirect (though which will be above the prescribed threshold limits).

Acquiring of Control by a person over an Enterprise

The Act further covers any acquisition of "Control" by a "Person" over an "Enterprise" where:

i. such person has direct or indirect control on any other enterprise and,
ii. the any other enterprise is also in production, distribution or trading of:
   a. similar goods or services; or
   b. identical goods or services; or
   c. substitutable goods or services.

as that of the Enterprise whose control is being acquired.

Here a person includes an individual or body corporate as defined under the Act.

Merger or Amalgamation

The term merger or Amalgamation has not been defined specifically under the Act, though the meanings of the same may be drawn from Section 2(1B) of the Income tax Act, 1961 to mean the merger of one or more companies with another company or the merger of two or more companies to form one company in such a manner that:

- All properties of the amalgamating companies immediately before the amalgamation become the properties of the amalgamated company;
- All liabilities of the amalgamating companies immediately before the amalgamation become the liabilities of the amalgamated company;
- Shareholders holding not less than three-fourths in value of the shares in the amalgamating companies (other than share already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company.

Thus the transactions, as in the nature of Acquisition, Acquiring of Control or Merger or Amalgamation shall fall under the purview of Competition Act 2002.

Further as discussed above, to judge the applicability of the Act, not only the aforesaid criteria as to "Nature of Transaction" are sufficient but the values are also to be taken into consideration.

The values involved in Transaction (Threshold Limits)

India is a growing economy and hot destination for the developed countries attracting huge investments. The number of acquisition and mergers taking place in India (whether involving only Indian Entities or both Indian and Outside Indian entities) are enormous and it is not feasible for the CCI to regulate all transaction. Hence presuming that small size transactions would not effect competition in the market, certain high threshold limits have been prescribed, which require mandatory notification to the CCI. The limits so prescribed are produced herein below:

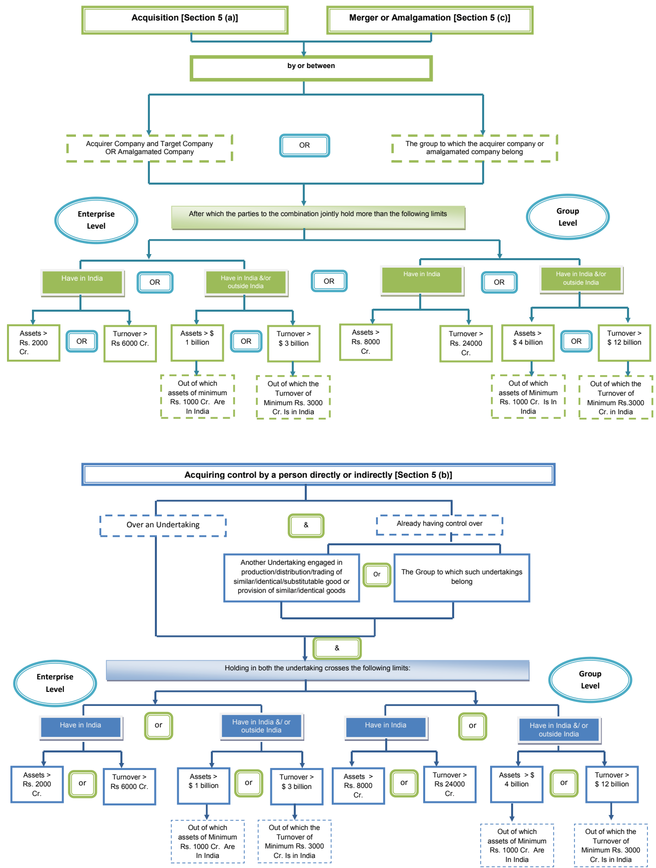
Nature of transaction	Criteria	Threshold Limits			
		In India (in rupees)		Outside India (in Dollars)	
		Asset Value	Turnover	Asset Value	Turnover
Acquisition	Individual	Rs. 2000 Cr OR	s. 6000 Cr.	$1 Billion OR	3 Billion
Acquiring of control	OR				
Merger	Group	Rs.8000 Cr.	Rs.24000 Cr.	$4 billions	$12 billion
	&				
	In both cases of Individual or Group			(of which Rs. 1000 cr. are in India)	(of which Rs.3000 cr. are in India)

In case of Acquisition: Group Asset and Turnover of the Acquiring Company

In case of Acquiring of Control: Group Asset and Turnover of the Acquiring Person

In case of Merger: Group Asset and Turnover of the entity which would prevail after merger or amalgamation.

A Diagrammatical Representation for understanding Applicability of Act on Combinations is as follows:



A. Filing of Application to Commission under Section 6

Section 6 of the Act provides that any person or enterprise who proposes to enter into a combination shall give notice to the Commission, in the form as prescribed and along with the Fees as also prescribed. The notice is required to be filed within 30 days of:

a. approval of the proposal relating to merger or amalgamation, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;
b. execution of any agreement or other document for acquisition or acquiring of control as the case may be.

Pursuant to the provisions under the Section, the process and forms and fees etc. have been provided under the Regulations as discussed below:

B. The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("Combination Regulations")

1. Pursuant to the powers accorded by sub-section (1) and clauses (b), (c) and (f) of sub-section (2) of section 64 read with sub-sections (2) and (5) of section 6 of the Competition Act, 2002, the CCI came out with Combination Regulations which became effective from 01.06.2011.
2. As per the provisions of the Act and detailed provisions in the Regulations, enterprises which proposes to enter into

The Government vide an earlier notification dated 04.03.2011, had extended an exemption window for certain Combinations wherein the enterprise being acquired comprises of assets and turnover below the threshold values as prescribed. The same was done considering the prevalent market conditions at that time. The exemption window was provided for a period of 5 years.

a combination shall give notice of such combination to the Commission within 30 days, ordinarily in Form I (provided in the Schedule to the Regulations). The Form I is basically a brief form. A Fees of Rupees Fifteen Lakhs (Rs. 15,00,000) is to be filed alongwith the Form I.

3. It is further provided that the parties to the Combination, at their option, give notice in Form II (also provided in the Schedule to the Regulations), along with a Fees of Rupees Fifty Lakhs (Rs. 50,00,000), preferably in case covering the following:
   a. The parties to the combination are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than fifteen percent (15%) in the relevant market;
   b. The parties to the combination are engaged at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or trade in goods or provision of services, and their individual or combined market share is more than twenty five percent (25%) in the relevant market.
4. The Commission has power to call for further information and documents as may be needed. Also if a form is filed as Form I and commission needs information of Form II, it has powers to call for such information in modified Form.
5. A separate category of form, i.e. Form III is prescribed for categories like Public Financial Institution, FIIs, Banks, venture funds etc. This entities are required to file notice in prescribed form with a period of 7 days.
6. Apart from the process and timelines for the approval of combinations from the Commission, the Regulations also provide for the Categories of transactions not likely to have appreciable adverse effect on competition in India. Such Combinations are exempted from filing of any Notice to the commission. The list of such combinations is provided as Schedule I. to the regulations and broadly covers transactions as followings:
   a. Acquisition or investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquirer directly or indirectly, does not entitle the acquirer to hold 25% or more of the total shares or voting rights of the target company subject to certain conditions. Similar exemption for cases where Acquirer with group already holds 25% but not more than 50%, subject to the condition that acquisition does not result in sole or joint control. Exemption is also given in cases where Acquirer already has 50% or more shares or voting rights subject to the condition that the transaction should not result into sole control form joint control.
   b. Acquisition of stock-in-trade, raw materials, stores and spares, trade receivables and other similar current assets.
   c. Acquisition of shares or voting rights Securities Underwriter or a registered stock broker on behalf of their clients in ordinary course of business.
   d. Acquisition of shares or voting rights or assets, by one person or enterprise, of another person or enterprise within the same group, except in cases where the acquired enterprise is jointly controlled by enterprises that are not part of the same group.
   e. merger or amalgamation of two enterprises where one of the enterprises has more than 50% shares or voting rights of the other enterprise, and/or merger or amalgamation of enterprises in which more than 50% shares or voting rights in each of such enterprises are held by enterprises within the same group, subject to the condition that it does not result to sole control from joint control.

C. Exemptions from Requirement of Filing of form of notice to CCI under Section 6 vide notifications:

1. In additions to exemptions provided under the Combination Agreement, the Government vide an earlier notification dated 04.03.2011, had extended an exemption window for certain Combinations wherein the enterprise being acquired comprises of assets and turnover below the threshold values as prescribed. The same was done considering the prevalent market conditions at that time. The exemption window was provided for a period of 5 years.
2. Subsequently the Central Government again vide notification dated 04.03.2016 further extended the holiday period of Five Years for transactions wherein the value of Assets and Turnovers of Target Company are below a certain threshold limits assuming that acquisition of such small Companies would not have the adverse effect the competition, the thresholds are as mentioned below:

The enterprise being acquired has:	Assets in India	OR	Turnover in India
	Rs. 350 Cr.		Rs. 1000 Cr.

Here, the exemption is available in case if either of the Asset Value or the Turnover Value of the Target Company is below limits as prescribed above.

3. Also, as per pursuant to similar notification dated 04.03.2016, the "group" exercising less than fifty percent of voting rights in the other enterprise, is also exempted from the provisions of Section 5 for a period of 5 years from the date of notification.

D. Understanding certain Jargons under Competition Act

1. Turnover

While calculating limits under section 5, "Value of Turnover" of both the parties to the transaction needs to be considered.

Thus it becomes essential to understand the meaning of the "Turnover" and what constitutes "Turnover".

The Competition Act, defines "Turnover" to include the followings:

- Sales of goods, and
- Sales of services.
-

The term "Turnover" is not explicitly described under the Act and hence requires drawing inferences from definitions and explanations as available under other statutes like Companies Act, 2013 and Income Tax Act, 1961 and practices as being followed by Competition Commissions of other nations like US, UK and EU.

Broadly keeping in view the Indian Statutes, following may be considered while calculating the "Value of Turnover" for Section 5 of the Act:

Turnover and treatment of Indirect Taxes

The Guidance Note to Tax Audit under Sec 44AB of the Income Tax Act, 1961 which is also based on the concept of Turnover states that the term "gross turnover" is a commercial term and it should be construed in accordance with the method of accounting regularly employed by the assessee. Further, the Guidance Note defines "sales turnover" as the aggregate amount for which sales are affected or services rendered by an enterprise.

Further the Form II for filing notice with CCI under Section 6(2) of the Act, provided in the Regulations the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, in its notes explicitly provides that "The turnover shall be computed in accordance with section 2(y) of the Act, excluding indirect taxes, if any".

Extraordinary Incomes

The Act defines the Turnover to include sales of "good" and "services" thus any sale which are extraordinary in nature and does not constitute "good" and "services" should not be included in Turnover. Few examples are like:

Sale of Fixed Asset

Sale of Investments (property or securities) (though securities or properties held as stock in trade to be included)

The Guidance Note to Tax Audit under Sec 44AB of the Income Tax Act, 1961 also states that 'turnover' though not defined under the Income Tax Act, 1961, in the ordinary sense, refer to the volume of the business to which it relates and which is/are carried on by the assessee. Integral relation of receipts by a person from business, does indicate that it refers to revenue receipts only and do not include Capita receipts and certainly not the receipts which are not relatable to business.

Treatment of Discounts, good return, bills cancellations etc.

Here, reference may be drawn from the definition of "Turnover" and "Sales" as defined under Central Sales Tax Act as following:

The CST Act defines turnover under section 2(j) to means the aggregate of the sale prices received and receivable". Further Sales Price is defined by CST Act under section 2(h) to means:

"Sale price means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged."

Further, also the Guide to Companies Audit, ICAI states that "the term `turnover' would mean the total sales after deducting there from goods returned, price adjustments, trade discount and cancellation of bills for the period of audit, if any. Adjustments which do not relate to turnover should not be made e.g. writing off bad debts, royalty etc. Where excise duty is included in turnover, the corresponding amount should be distinctly shown as a debit item in the profit and loss account."

Period and other adjustments for determining Value of Turnover

The Act has no where provided as to the "Value of Turnover" is to be taken for which period. In case of defining "Assets" as explanation to Section 5, it is provided that the value of assets to be taken as per last Financial Year Audited Statement. Hence a presumption can be drawn here that the "Value of Turnover" also to be taken as per the last Financial Year Audited Statement.

Though, it becomes pertinent to consider here that during the intermediate period, i.e. from the closure of last Financial Year to the date of Transaction, if there is any substantial change w.r.t. say diversification, divestment of an undertaking or addition of new products etc. the treatment thereof is not clarified and remains subjective. Similarly should there be any adjustments for any surplus Installed Capacity is not clear.

2. Assets

Further, while calculating limits under section 5, "Assets" of both the parties to the transaction needs to be considered. Therefore it is also important to understand the meaning of the "Value of Assets" and what constitutes "Assets".

The Competition Act, defines "Value of Assets" to be the "Book Value of Assets" less Depreciation and provides for include:

- Brand value,
- Value of goodwill,
- Value of all types of IPRs,
- Homonymous geographical indication,
- Design or layout design,
- Similar other commercial rights.

The Act further provides to take the Value of above as per the audited books of accounts, for the Financial Year, immediately preceding the year in which proposed transaction is falling.

The Act prescribes for the "book value of Assets" and hence it should include all assets i.e. Fixed Assets (less depreciation), Current Assets, Capital Work in Progress and all Intangible Assets (as specifically provided in the books of account).

Further likewise in case of Turnover, the "Value of Asset" as to be taken as per the audited books of accounts, for the last Financial Year, the ambiguity remains for the treatment is there is any divestment of any undertaking or inclusion of any asset, since the date of last financial year.

3. Relevant Markets

The Competition Act in India prohibits mergers or acquisitions which cause or are likely to cause an appreciable adverse effect on competition in the "Relevant Market" in India. Thus "Relevant Market" definition is a tool to be used to define and outline the competition between enterprises and presents a framework for the Commission to decide the effect of the Transaction over the Market.

The Relevant Market can be well defined as the area of effective competition, within which the parties to the transactions operates. To explain it further, the Act very well defines the "Relevant Market" to include:

A. Relevant Product Market; and
B. Relevant Geographic Market

The Act also provides the definitions of the both the Relevant Product Market and Relevant Geographic Markets.

Relevant Product Market

The Act provides the definition of Relevant Product Market to mean a market wherein:

- Products and Services interchangeable by consumers; or
- Products and Services substitutable by consumers

By reasons of:

- Intended use; and
- Prices

Further the Commission, while determining the "Product Market" shall consider the following:

a. Physical characteristics or end-use of goods;
b. Price of goods or service;
c. Consumer preferences;
d. Exclusion of in-house production;
e. Existence of specialized producers;
f. Classification of industrial products.

The aforesaid determining criteria can be broadly segregated as:

i. Demand-side substitution.
ii. Supply-side substitution.
iii. Potential competition.

i) Demand-side substitution.

Demand Substitutability cab be determined on basis of factors which prevent or promote a customer to switch between one product to another or from one producer to another including.

- prices of substitutable products,
- transportation costs,
- legal or regulatory barriers, etc.

ii) Supply-side substitution

Supply substitutability cab be determined on basis of factors which prevent or promote a producer from shifting production facilities or resources to the groups of products that would increase their profit margins.

iii) Potential competition

The potential competition of the market may be determined on the basis of likely competitiveness of the market in case of a new entrant in the market.

Relevant Geographic Market

The geographic market is an area in which the conditions of competition applying to the product concerned are the same for all traders. The same factors used in delineating relevant product markets should be used to define the relevant geographic market.

The elements to be taken into consideration when defining the relevant geographic market include the nature and characteristics of the concerned products, the existence of entry barriers, consumer preferences, differences among the market shares of undertakings in the neighbouring geographic areas, as well as significant differences between suppliers' prices and transport costs level.

Further the Commission, while determining the "Product Market" shall consider the following:

a. regulatory trade barriers;
b. local specification requirements;
c. national procurement policies;
d. adequate distribution facilities;
e. transport costs;
f. language;
g. consumer preferences;
h. need for secure or regular supplies or rapid after-sales services.

The Commission has carefully attempted to define the Relevant Market and has provided for the considerations to be kept in mind to identify a Market, although the same is subjective and vary from case to case.

DISCLAIMER: This Article has been prepared on the basis of the analysis of the legal provisions and author's understanding and interpretation of applicable laws as on date. The author expressly disclaims any financial or other responsibility arising due to any action taken by any person on the basis of this article.

Assessment of Transactions

All the transactions of Combinations, above the threshold limits, require the approval of the Competition Commission of India. The Commission would base its approval on analysing the effect of the proposed transaction on the competition in the relevant market. The Act list the factors which the commission would be required to take into account to form its opinion.

Apart from the list provided under the act, a substantive test as may be usually involved to determine whether the proposed transaction has any adverse effect on the Relevant Market may broadly cover the followings:

1. Nature of Transaction
2. Market shares and market

CRITERION TO DETERMINE THE EFFECT OF PROPOSED COMBINATIONS ON RELEVANT MARKETS

Section 20(4) of the Act provides the following:
For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:—

a. actual and potential level of competition through imports in the market;
b. extent of barriers to entry into the market;
c. level of combination in the market;
d. degree of countervailing power in the market;
e. likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
f. extent of effective competition likely to sustain in a market;
g. extent to which substitutes are available or are likely to be available in the market;
h. market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
i. likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
j. nature and extent of vertical integration in the market;
k. possibility of a failing business;
l. nature and extent of innovation;
m. relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition; and
n. whether the benefits of the combination outweigh the adverse impact of the combination, if any."

concentration
3. Barriers to entry
4. Actual and potential competition
5. Welfare objectives and benefits to consumers

The above factors are discussed in brief below:

1. Nature of Transaction: Whether Horizontal, Vertical or Conglomerate

1.1 Horizontal Mergers:
The most common types of mergers are Horizontal Mergers. These mergers have effect on market concentration and use of market powers as these mergers result to:

a. Reduction in numbers of Market Players
b. Increase the market share of merged entity
c.

Example of Horizontal Merger:

Entity X Limited	Both Manufacturing Product A →	Merge to Form
Entity Z Limited		**X Limited**

Any adverse effect on Market by Horizontal Merger may be majorly in case of non-coordinated or unilateral actions by players to mergers. This means that when as result of merger, the number of players get reduced and their powers increase, and they are in position to increase profit margins or able to reduce outputs, quality or variety. Factors as relevant to determine whether coordinated or unilateral effect occur due to any merger may be as following:

a. High market concentration
b. Restricted consumer choice
c. Weak competitive constraints from other market players
d. Buyer power
e. Elimination of potential competitive new entrants etc.

1.2 Vertical Mergers:
Vertical mergers occurs when two entities which operate at different but complementary levels of production chain. Vertical Mergers can further be segregated as:

a. Backward Integration
a. Forward Integration

Examples of Vertical Merger:

a. Merger between raw material supplier and manufacturer of Final Product is an example of Backward integration
b. Merger between manufacturer and retailer is an example of Forward Integration

Any adverse effect of vertical merger can happen in case where there is a potential for "Foreclosure of the Market Players". There can be two types of foreclosures:

a. Input Foreclosure
b. Customer Foreclosure

Input foreclosure may occur when the Merged entity have potential to likely restrict the product or services in the downstream market for other market players and thereby increasing cost of production, leading to higher cost for consumers.

Customer foreclosure may occur where the supplier is likely to integrate with the customer base in the market thereby depriving the other players in the market to access the customers.

1.3 Conglomerate merger:
The third type of merger is conglomerate merger, which generally refers to mergers between entities, which are not linked. The types of transaction may further be classified as:

a. Pure Conglomerate: These are mergers where the merging entities have no functional link.
a. Product Extension Merger: These are mergers wherein the product of the acquiring entity is complementary to that of the acquired entity.
a. Market Extension Merger: These are mergers were the merging entities seek to enter into a new market.

Conglomerate mergers though have minimal adverse effect on Relevant Markets, though they may pose certain threats to competition like:

a. Market extension mergers are similar to horizontal mergers and thereby may have similar impacts.
a. Conglomerate mergers may lead to overall industrial concentration, i.e. domination over various portfolios of products in the market.
a. Conglomerate mergers may also enhance coordinated or mutual forbearance behaviour which may harms consumers.

2. Market shares and market concentration
Market shares of the merging entities are also an important factor to be taken into account to assess the adverse effect on competition as they can indicate the market power of the firm. Market shares, prior and subsequent to the merger, are used to determine the level of concentration in the market which in turn indicates the level of competition in the market.

3. Barriers to entry
Barriers to entry refers to a situation that makes the costs of a new entrant to the market higher than the cost of firms already in the market which creates a range within which firms in the market can raise their prices above the competitive level without attracting new entry. Thus Barriers to Entry is one of the important factors to be taken into account in determining whether a proposed combination has or is likely to have an appreciable adverse effect on competition.

4. Actual and potential competition
The determination of the effects of proposed mergers on competition involves the examination not only of the actual levels of competition in the relevant market and the likely consequences of the transaction but also the impacts of the transaction on potential competition. Thus to determine the effect of the merger the consideration of 'actual or potential competition' is essential.

5. Welfare objectives and benefits to consumers
While competition law is essentially concerned with economic objectives, social welfare objectives and consumer benefit also constitute an important part thereof. The regulation of mergers may also involve the consideration of such objectives and thus what benefit of the proposed merger would devolve in general is also an important consideration. CS

Fair Competition: The Engine of Economic Development

Dr. Devendra Jarwal, FCS
Assistant Professor
Department of Commerce
Motilal Nehru College
University of Delhi
Delhi
devendra.jarwal@mln.du.ac.in

INTRODUCTION

Fair competition is vital component for economic development. When there is an element of unfairness, there is certainly oppression of depressed and victimization of poor/weaker section by rich and powerful section of the society. Economic development requires equal distribution of wealth among the masses. We live in the age of socialist pattern and for economic development this requires the State to ensure for its people adequate means of livelihood, fair distribution of wealth, equal social and economic opportunity, and equal pay for equal work and protection of marginalized and weak section of the society. Economic development is increase improvements in the standard of living of a nation's population with sustained growth from a simple, low-income economy to a modern, high-income economy. Economic development typically involves improvements in a variety of indicators such as literacy rate, life expectancy, and poverty rate. With all these indicators of the Economic Development, it is clear that we need best market, best goods and services, best living conditions including education

> Fair Competition, stimulates increased efficiency in innovation, production and resource use, which in turn, leads to enterprise development and increased aggregate welfare. Further, competitive markets provide macroeconomic benefits. Fair competition provides enterprises with incentives to adjust to internal and external shocks and these individual adjustments help reduce the cost of such shocks to the macro economy.

and health, environmental quality, freedom, or social justice; alternative measures of economic wellbeing etc. All these indicators of economic development can be achieved through competition. Competition achieves efficiency in the marketplace as well as in the economy; competition cultivates an environment of innovation and progress and it makes life better. Competition, though, has one essential ingredient: fairness. A blind reliance on competition alone can be dangerous, especially in developing new markets. Unfettered, it can open the door for fraud, misrepresentation, and unethical business practices. By fair competition we mean, Competition based on the factors of price, quality and service, not on the abuse of nearly monopoly powers, competitor bashing, predatory pricing etc.

HISTORICAL PERSPECTIVE

The fairness and unfairness of the competition affects the development of the economy. It is evident from the Indian History that the unfair competition made the Indian nation a poor country from a very rich country known to be "Golden Sparrow" mainly during the British rule in India which caused a transformation of India's economy into a colonial economy, i.e., the structure and operation of Indian economy were determined by the interests of the British Economy. Cheap and machine-made imports flooded the Indian market after the Charter Act of 1813 allowing one way free trade for the British Citizens; on the other hand, Indian products found it more and more difficult to penetrate the European Markets. In this way the British products were made more competitive and by virtue of unfair competition the Indian products were out – thrown. The pattern of foreign trade was unfavorable to India and it relegated India to a position of importer of finished goods and exporter of raw materials and foodstuffs. The development of railways was not coordinated with India's industrial needs and it ushered in a commercial rather than an industrial revolution. The net effect of the railways was to enable foreign goods to outsell indigenous products. The nationalists claimed that one-way free trade was ruining Indian handicrafts industry, exposing it to premature, unequal and unfair competition, while tariff policy was guided by British capitalist interests. On finance front, taxes were levied to overburden the poor, sparing British capitalists and the bureaucrats. They demanded reduction of land revenue, abolition of salt tax, imposition of income tax and excise duties on consumer goods consumed by the rich middle classes. The government

In order to better achieve economic development the State should ensure environment of fair competition, as unfair means of competition will draw impediments in the growth and development of the economy. It is also pertinent to note that there is difference between anti – competitive measures and unfair means of competition, however, many times the two overlap each other. Yet, both are dangerous for the growth and development of the economy.

expenditure was meant to serve colonial needs only, while development and welfare were ignored. Thus unfair competition totally impaired the economic development of India.

FAIR COMPETITION: A TOOL FOR ECONOMIC DEVELOPMENT

Fair competition acts as an engine for the economic development. Competition brings variety of options to the consumers in the market at fairly competitive prices. This supports that competition is unambiguously an important tool for the economic development. This stems from a belief that competitive market affords consumers wider choice and lower prices and give sellers stronger incentive to minimize their costs and eliminate waste. In addition, in competitive markets, competitors need to innovate and adapt quickly to changing circumstances, thus creating dynamic efficiency. Competition also induces competitors to pass on cost reductions to consumers and better satisfy their specific preferences. In general it is found that market power, in terms of high market shares, leads to reduced levels of productivity, and that more competition, as measured by increased numbers of competitors or lower profit margin, is associated with higher rates of total factor productivity growth. Fair competition also augments economic activities among each and every section of the society which in turn provide better employment opportunities and handsome wages to the labour and leads to increment in per capita income which certainly enhances the Gross Domestic Product of the Country. Standard economic development theory assumes that competitive forces work best and deliver the expected outcomes when there exists a market that is not overridden by distortions. Free and fair competition is a fundamental assumption in any market economy and has even been seen as one of the foundations for democratic societies. The traditional economists emphasized the benefits of free entry to and exit from industries. This insight has been rediscovered in the theory of "contestable" markets and is distinct from the static notion of perfect competition. If there be dynamic benefits of competition, it must be relatively easy for new and more efficient firms to enter a market and for older and less efficient ones to be forced to upgrade or leave. The modern economists consider the competition as a trial and error process, not always perfect, as firms enter and leave. The gains from competition are thus not simply that prices will be kept as low as possible for consumers, rather it also includes the creation of new opportunities for new firms as well as small businesses, to enter markets and to grow resulting in enhancement of standard of living of the people and creation of new employment opportunities, and to put pressure on existing firms to innovate, by which we have to think of introducing new products and services, new ways to manage the business better, rather than incurring simply expensive Research and Development activities.

Free and Fair competition emphasizes on institutionalization of microeconomic reforms, involving greater reliance on markets and less implication of State interventions. It also urges to adopt freeness and fairness against both domestic players as well as foreign players, thereby ushering in better results for economic development in terms of price competitiveness and technical innovations. Among the important conditions, it requires lowering of tariff barriers, the removal of many quantitative import restrictions, the reduction of subsidies to domestic producers, the privatization of government business enterprises and utilities to obtain greater efficiency, the easing of foreign exchange controls and the encouragement of foreign direct investment. These reforms can make a greater contribution to economic and social development and an inward – looking centralized economic system. It is again essential to mention that the potential benefits of a shift towards a more market oriented economy will not be realized unless business firms are prevented from imposing restriction on fair competition.

Free competition coupled with liberalization of International trade, including the reduction of trade barriers and elimination of most quantitative restrictions on imports and exports, allows producers to expand their horizons to world market, rather than relying exclusively on small domestic markets and eventually boosts economic development activities. By taking up the new export opportunities, they are able to increase output and lower costs through economies of scale. Moreover, because strong competition is usually encountered in export markets, these firms are generally under pressure to devise more efficient methods, better marketing techniques and quality improvements in their products. This often results in lower prices and better – quality goods, not only for foreign customers, but also for domestic consumers. The lowering of trade barriers also increases competition from imports for those local producers of tradable goods and services mainly dependent on the domestic market. The additional competitive pressure obliges these firms also to improve their productivity and keep down prices to consumers. The fair competition also provides opportunities to better attract foreign direct investment for capital requirement of economy.

INCIDENCES OF UNFAIR COMPETITION AND ANTI – COMPETITIVE MEASURES

Competition should not be considered as cut throat competition and to outplay the competitors by any sort of means or by hook or by crook. In order to better achieve economic development the State should ensure environment of fair competition, as unfair means of competition will draw impediments in the growth and development of the economy. It is also pertinent to note that there is difference between anti – competitive measures and unfair means of competition, however, many times the two overlap each other. Yet, both are dangerous for the growth and development of the economy. The anti competitive measures may come in the form of price fixing where two or more business agrees to control or fix prices resort to tied selling where a supplier will not provide a customer a certain article unless he or she buys a second product at the same time, abuse of dominant position to lessen competition, resale price maintenance when suppliers attempt to influence their distributors and retailers to charge a fixed price, bid rigging where firm agrees that one or more of them will not submit bids in response to a call for tenders or when bids submitted have been previously arranged between parties, double ticketing where a supplier puts two different price tags on an article and tries to force the consumer to purchase it at the higher price. The unfair means of competition may be applied in the form of abuse of intellectual property rights such as piracy or infringements of copy rights which may upset innovation and research & development activities, abuse of dominant position following with predatory pricing where a dominant organisation tries to manipulate prices in order to drive other traders out of business, dumping activities where goods or services are exported to foreign markets at throw away prices in order to secure markets and outplay others permanently, misrepresentation in advertising where a business broadcasts or publishes misleading advertisement about a product or services and which also bring disrepute to other players about their goods or services, etc.

IS FAIR COMPETITON ALWAYS NEEDED FOR ECONOMIC DEVELOPMENT

It is generally conceivable to accept the notion that the nature of competition prevailing in the market will have an impact on innovation, and adoption of competitive measures will affect the incidence of innovations. The fact that innovation has an influence on economic development is not a subject of debate. Hence, linking competition to innovation implies that competition will affect economic development. But it is not always right as when capital markets are imperfect; the rents from market powers provide firms with the internal financial resources for innovative activities. Market powers help reduce the uncertainty associated with excessive rivalry, which tends to undermine the incentive to invest. Monopolies tend to charge higher prices and restrict output, in order to maximize their profits. These same profits may be used to pay higher wages to employees or may be used for innovation, which may result in a reduction of marginal costs and increase in output over the time.

Developing countries due to traditional patterns of investment and industrialization need to protect their local companies against foreign domination in critical sectors of the economy, in line with national interest objectives; this tends to have a huge bearing on competition and investment promotion. Such protection also needs to be extended towards defense sector of strategic importance. Some sort of anti – competitive measure is also required on the part of government in the form of policies and regulations in order to fulfill domestic requirements and socialist pattern compulsions alongwith check on inflationary tendencies. There are also regulations and reactive laws being put in place, as a way of safeguarding "public interest" especially the price control mechanism for agricultural products and essential commodities. Another contrast to fair competition is protectionism of domestic players and infant industries carried out by the respective governments. Protectionism is the economic policy of restraining trade between States through methods such as tariffs on imported goods, restrictive quotas, and a variety of other government regulations designed to discourage imports and prevent foreign take-over of domestic markets and companies. Protectionists believe that there is a legitimate need for government restrictions on free trade in order to protect their country's economy and its people's standard of living. Protectionists believe that infant industries must be protected in order to allow them to grow to a point where they can fairly compete with the larger mature industries established in foreign countries. They believe that without this protection, infant industries will die before they reach a size and age where economies of scale, industrial infrastructure, and skill in manufacturing have progressed sufficiently allowing the industry to compete in the global market.

COMPETITION LAWS AND PRACTICE IN INDIA TO ENSURE FAIR COMPETITION

Competition Law in India has a root under Article 38 and 39 of the Constitution of India. These Articles constitutes part of the Directive Principles of State Policy. Articles 38 and 39 of the Constitution of India provides, inter alia, that the State shall strive to promote the welfare of the people by securing and protecting as effectively, as it may, a social order in which justice – social, economic and political – shall inform all the institutions of the national life, and the State shall, in particular, direct its policy towards securing that

1. That, the ownership and control of material resources of the community are so distributed as best to subserve the common good; and
2. That, the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Taking guidance under Directive Principles of State Policy, the first Indian Competition Law was enacted in 1969 and was named Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). The MRTP Act drew heavily upon the laws embodied in the Sherman Act and the Clayton Act of the United States of America, the Monopolies and Restrictive Trade Practices (Inquiry and Control) Act, 1948, the Resale Prices Act, 1964 and the Restrictive Trade Practices Act, 1964 of the United Kingdom and also those enacted in Japan, Canada and Germany. The U.S. Federal Trade Commission Act, 1914 as amended in 1938 and the Combines Investigation Act, 1910 of Canada also influenced the drafting of the MRTP Act.

The principal objectives sought to be achieved through mechanism of MRTP Act were:

I. Prevention of concentration of economic power to the common detriment;
II. Control of monopolies;
III. Prohibition of Monopolistic Trade Practices;
IV. Prohibition of Restrictive Trade Practices;
V. Prohibition of Unfair Trade Practices.

The MRTP Act, 1969 was amended in 1991 as a part of the new economic reforms introduced by then Government. Out of five objectives mentioned above, the first two had been deemphasized. With the restructuring of the MRTP Act through the 1991 amendments, the thrust thereof is on curbing Monopolistic, Restrictive and Unfair Trade Practices with a view to preserving competition in the economy and safeguarding the interest of consumers by providing them protection against false or misleading advertisements and/or deceptive trade practices. Size as a factor of concern, to discourage concentration of economic power had been given up.

EVOLUTION OF NEW COMPETITION POLICY AND LAW

In October 1999, the Government of India appointed a High Level Committee on Competition Policy and Competition Law to advise a modern competition law for the country in line with international developments and to suggest a legislative framework which may entail a new law or appropriate amendments to the MRTP Act. On the recommendation of the said Committee and further deliberations in the Parliament, the Competition Act 2002 was enacted with a objective to provide keeping in view of the economic developments of the country, for the establishment of a Competition Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interest of consumers and to ensure freedom of trade carried on by other participants in market, in India and for matters connected therewith or incidental thereto.

The Competition Act 2002 has four thrust areas;

1. Prohibition of Anti – Competition Agreements
2. Prohibition of abuse of dominant position
3. Regulation of Combinations
4. Competition Advocacy

Section 3 of the Competition Act 2002 states that "No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India" and such agreements if entered shall be void. List of such agreements include tie-in arrangements, exclusive supply agreement, refusal to deal and resale price maintenance. Hence care must be taken while drafting or entering into any agreement that whether it is attracting provision of the Section 3 of the Competition Act 2002. However exceptions to Section 3 are there in the form of copyright, patent, trade and merchandise marks and Designs Act etc.

Section 4 of the Competition Act 2002 states that "No enterprise shall abuse its dominant position" means dominant position by itself is not prohibited rather abuse of such position is prohibited. The Section 4 further states that there shall be an abuse of dominant position if an enterprise directly or indirectly imposes unfair or discriminatory condition in purchase or sale of goods or services or price in purchase or sale of goods and services. It will be abuse of dominant position if it limits or restricts production of goods or provision of services or indulges in practice resulting in denial of market access. It also prohibits predatory pricing which means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors. Dominant Position has been defined as position of strength, enjoyed by an enterprise, in the relevant market, in India which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour.

The Competition Act 2002 seeks to regulate the combinations. Section 5 of the Competition Act 2002 defines the combination in terms of the meaning given to them in the Act includes mergers, amalgamations, acquisitions and acquisitions of control. Section 6 of the Competition Act 2002 provides for the parties to notify their proposed agreement or combinations to the Competition Commission that any person or enterprise, who proposes to enter into a combination, may, at his or option, give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination within seven days approval of the proposal or execution of any agreement. The Commission shall, after receipt of notice shall deal with such notice in accordance with the provisions contained in section 29, 30 and 31 of the Act. According to Section 49 of the Competition Act 2002, in formulating a policy on competition, the Central Government may make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of incoming such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit. This provision is in line with the High Level Committee's recommendation that, the Act extends the mandate of the Competition Commission of India beyond merely enforcing the law to competition advocacy which creates a culture of competition.

THE COMPETITION COMMISSION OF INDIA

Administration and enforcement of the competition law requires an administrative set up. It is in this context that the Competition Commission of India in the Act has been entrusted with two basic functions of administration and enforcement of competition law and competition policy to foster economic efficiency and consumer welfare and involving proactively in Governmental policy formulation to ensure that markets remain fair, open, flexible and adaptable.

Section 29 of the Competition Act outlines the procedure for investigation of combination by the Competition Commission. Section 30 of the Competition Act provides for inquiry to be conducted by the Commission into disclosure under sub-section (2) of section 6 and Section 31 empowers the Commission to pass appropriate orders on certain combinations. Beside these the Commission is also empowered to grant interim relief and award compensation in certain cases. However, appeal against the decisions and orders of the Competition Commission of India lie to the Supreme Court within the limitation period of 60 days on the grounds specified under Section 100 of the Code of Civil Procedure.

CONCLUSION

It is widely accepted that fair competition contributes to economic development. The promotion of productive and dynamic efficiency due to fair competition will make enterprises achieve economies of scale, enhance international competitiveness and promote Research & Development capacities. Fair Competition, therefore, stimulates increased efficiency in innovation, production and resource use, which in turn, leads to enterprise development and increased aggregate welfare. Further, competitive markets provide macroeconomic benefits. Fair competition provides enterprises with incentives to adjust to internal and external shocks and these individual adjustments help reduce the cost of such shocks to the macro economy.

Notwithstanding, arguments like anti-dumping measures, protectionism and needs of socialist pattern, fair competition could hardly be thought to exceed the negative aspects arising from the absence of competition. In fact, there is growing empirical evidence that, in general, more competition leads to more innovation and accelerates growth and that there is a strong correlation between the effectiveness of competition policy and growth. The fact that fair competition contribute towards economic development is more or less an agreed concept, and it is also true that fair competition is dependent on the successful implementation of competition policy. It is largely the barriers to competition that exist that are sources of apprehension. There is need, therefore, for competition culture to prevail in the whole economy, to remove the distortions. Political will turns out to be one of the key factors that determine the success of implementation of competition policy and laws to ensure free competition. Political will might also result in an assurance to investors about security and predictability of returns of their investments. The fair competition policy adoption should be followed or accompanied by removal of restrictions on competition from investment policy, the industrial policy, the consumer policy, the trade policy and other sector specific policies that have impact on competition. CS

REFERENCES:

Chakravarthy S. "MRTP Act metamorphoses into Competition Act"

CUTS (2008), "Competition Policy and Economic Growth – Is there a Casual Factor?" Jaipur, India.

Ewing Ky. (2003), "Competition Rules for the 21st Century: Principles from America's experience", Kluwer Law International

Godfrey Nick (2008), "Why is competition important for growth and poverty reduction?" Global Forum on International Investment, OECD

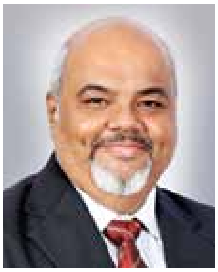
Lucian Cernat and Peter Holmes (2004), "Competition, Competitiveness and Development: Lesson from Developing Countries" UNCTAD Report, Geneva.

www.en.wikipedia.org accessed on 13.10.2016 at 12.36 HRS

Report of 'The High Level Committee on Competition Policy and Law' – Department of Company Affairs, Government of India, New Delhi (2000)

The Competition Act 2002

Dissemination of Price Sensitive Information - Continuous Disclosure Requirements for Listed Entities under Listing Regulations



Khushro Bulsara, ACS
Senior General Manager
Listing Compliance, BSE Limited
Mumbai
khushrobulsara@bseindia.com

Some men have thousands of reasons why they cannot do what they want to, when all they need is one reason why they can.

-Willis R. Whitney, American chemist

OBLIGATIONS UNDER THE LISTING REGULATIONS

In order to enable the investors of the securities market to make well-informed investment decisions and for the orderly development of the securities market, timely, adequate and accurate disclosure of information on an ongoing basis is essential. Also, there is a need of uniformity in disclosures made by listed entities to ensure compliance in letter and spirit.

> In several cases there is some confusion amongst the listed entities as to whether they should disclose certain events or not and if they do disclose, the extent of disclosures that should be made. While the market regulator and the exchanges may issue several guidelines, circulars, etc., what really matters is the intention of the listed entity to comply with the Regulations. Compliance cannot (especially in the case of Regulation 30 cases) be enforced unless it is a very glaring case of non-disclosure. A simple mantra that can come to the aid of managements if they find themselves in doubt as to whether they should disclose a particular event or not is WIDD which means When In Doubt, Disclose.

Towards this end, Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations") deals with disclosure of material events by the listed entity whose equity and convertible securities are listed. Such entity is required to make disclosure of events specified under Part A of Schedule III of the Listing Regulations.

A listed entity must comply with its disclosure obligations under Regulation 30, even if it does not appear to be in short term interests of the company to do so (e.g. even where the information might have a negative impact on the price of its securities).

REQUIREMENTS UNDER LISTING REGULATIONS

Types of information to be disclosed

The Listing Regulations divides the events that need to be disclosed broadly in two categories.

a) The events that have to be necessarily disclosed without applying any test of materiality are indicated in Para A of Part A of Schedule III of the Listing Regulation. It is a must disclose list without applying any reasoning by the listed entity.

b) Para B of Part A of Schedule III indicates the events that should be disclosed by the listed entity, if considered material as per the materiality policy of the company.

It may be mentioned here that Regulation 30(4)(ii) makes it incumbent on all listed companies to frame a policy for determination of materiality based on specified criteria as approved by its Board and disclose the same on its website. Further, in order to ensure speed of disclosure when a disclosable event occurs, it is mentioned that the Board of Directors of the company shall authorise one or more KMPs for the purpose of determining materiality and making the disclosure to the exchanges.

Test of Materiality

The test for determining whether information is material is when a reasonable person expects that the information may have an effect on the price or value of an entity's securities and influence the buy or sell decisions of persons usually investing in securities. Thus while there is no 'one size fits all' concept (that would be very difficult or virtually impossible to achieve) a broad guideline is provided viz. if in one's opinion there could be an impact on the price of the entity's securities. Notably, the Listing Regulations has suggested the following criteria that a listed entity shall consider for determination of materiality of events / information:

a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;

c) where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

SEBI vide its Circular dated September 09, 2015 has clearly prescribed the extent of details required to be disclosed and when a disclosable event is deemed to have occurred.

Announcements must be given to the Exchanges first

A listed entity must not release information that is required to be given to Exchange under Regulation 30 to anyone else, unless and until it has been given to the Exchanges where the company is listed (Regulation 30(5)). This includes releasing the information to the media or to analysts. In fact the schedule of analysts meet or institutional investors meet and presentations on financial results made by the Company to analysts or institutional investors must be disclosed to the Stock Exchanges first. It is however noticed that in many cases, important statements are made by the senior management regarding price sensitive events such as say, signing of important agreements that may entail good inflow of future revenue, litigation by / against the company etc., that are made at public forums or media interviews and are subsequently disclosed to the Exchanges when asked to comment on the same. This is not in the spirit of the Regulations. Here it is important that the Company Secretaries of entities sensitize the senior management about the issues particularly related to disclosure of unpublished price sensitive information.

It may be mentioned here that BSE has developed a state-of-the-art web portal by the name Listing Centre that allows listed companies at BSE to easily and efficiently submit their disclosures to the Exchange. Each company has a User Id and Password using which the disclosures can be seamlessly uploaded to the Exchange, 365 days of the year. We even have a team that comes even on Sundays, to disseminate the price sensitive information after conducting a few basic validations.

Disclosure on website of listed entity

The listed entity is also required to disclose all such events or information which has been disclosed to stock exchange(s) on its website and such disclosures are required to be hosted on the website of the listed entity for a minimum period of five years.

HOW DO THE EXCHANGES MONITOR COMPLIANCE WITH REGULATION 30

BSE has developed a state-of-the-art web portal by the name Listing Centre that allows listed companies at BSE to easily and efficiently submit their disclosures to the Exchange. Each company has a User Id and Password using which the disclosures can be seamlessly uploaded to the Exchange, 365 days of the year. We even have a team that comes even on Sundays, to disseminate the price sensitive information after conducting a few basic validations.

1. Exchange officials track media reports in over 23 news publications every day, to ascertain details of material events/ price sensitive information pertaining to the listed companies. Further, news reports appearing in the print and electronic media are also tracked. Articles pertaining to commonly listed companies and which require further clarification are discussed with other exchanges where they are listed.
2. The Exchange has recently started monitoring even the social media for rumours or news about the companies and verifying the same.
3. Clarifications are sought from companies - this fact is posted on the Exchanges websites.
4. Replies submitted by the companies in response to these queries are disseminated on the Exchanges websites.
5. A consolidated weekly report of such correspondence is forwarded to SEBI in the form of a report. Additionally, the report is disseminated on the exchange website.

The Exchange also monitors and verifies the adequacy and accuracy or otherwise, of the *suo-motu* disclosures submitted by the companies under Regulation 30 of Listing Regulations, 2015. In view of the process explained above, it is clear that the regulator and the Exchanges are monitoring the disclosures made / required to be made by companies in a serious and disciplined manner.

REGULATION 30 TO BE COMPLIED WITH IN LETTER AND SPIRIT

With the notification of "Listing Regulations" the air related to disclosure of material events by the listed entity is made quite clear. SEBI has made the regulation itself as clear as possible and at the same time also provided Schedule III which lists down the 'must disclose' events along with suitable examples of the events wherein test of materiality is involved.

Thereafter, on September 09, 2015 the SEBI has issued its very first circular related to continuous disclosure requirements under the Listing Regulations. These efforts from SEBI clearly show the intention of SEBI that the compliance under Regulation 30 is to be viewed very seriously. The listed entities are expected to comply with the requirements of Regulation 30 both in letter and spirit.

However, it has been observed in the past that some of the listed entities have not lived up to the expectations of compliance with continuous disclosure requirements - this may be willful or it may be on account of not realizing what exactly is required to be reported. The Exchanges were therefore obliged to seek clarification from the listed entities whereupon the required disclosures were submitted.

Based on the experience gathered while monitoring compliances under Regulation 30 we have given below a few cases where a disclosure was warranted under Regulation 30 but the same was forthcoming only upon seeking a clarification in this regard by the Exchanges.

Cases where important information not given initially

Some cases where important information was not given initially but only when sought for by the exchanges, are given below:

A) One listed entity did not disclose a rather large (compared to its bottom line) Income Tax Demand of a few hundred crores that was raised by the Assessing Officer. The listed entity also did not disclose that it had made a small payment upfront and appealed the same.

Based on a complaint made by an investor, the Exchange sought clarifications from the listed entity that gave a reply which unfortunately did not answer the specific query. Thereafter upon the Exchange urging the company to send a specific point wise reply to the queries, the information was provided by the company for dissemination to the public at large from the websites of the Exchanges. It was *inter alia* submitted by the listed entity that it was of the view that no disclosure was required in the matter as the matter was frivolous and that they were confident of winning their appeal. The appeal by the company is presently *sub-judice*.

Learning: In such cases where the litigation or adverse event is material (as was so in the present case) it is incumbent on the company to disclose that event to the fullest extent possible even though it may temporarily adversely affect the company's share price in the market. The loss of public reputation which ensues from the non-disclosure may sometimes be much more than if the event had been disclosed transparently upfront with the company's views on the same. This is further borne out by the fact that in the present case, the market regulator subsequently imposed a penalty on the listed entity for non-disclosure of information to Stock Exchanges under the continuous disclosure requirements.

B) There is a recent case of the arrest of a KMP of a real-estate company. The company informed about the arrest of the executive KMP only after the Exchange sought clarification from the company. The company and the KMP who is also one of the promoters of the company have been in the news as the company had promised delivery of certain flats that were booked by investors and taken advances for the same. However, the company failed to deliver the said flats. A few days later, the same KMP was arrested by another regulatory authority based on the same charges as the first time of arrest. It may be mentioned here that arrest of Key managerial personnel falls under the 'must disclose' category under para A of Part A of Schedule III of Listing Regulations. While the company acknowledged the 'news' as correct, it did not mention why they did not disclose the same in the first place as required under the Regulations.

C) A unit of a company in the hospitality business had caught fire where there was a tragic casualty (two employees had lost their lives). The company did not intimate *suo-motu* about the incident. Upon learning of this event from the news, the Exchange sought clarifications from the company. The company initially downplayed the damage and only mentioned that is was a small fire and there was no great damage. Upon being pressed further, the company admitted about the said casualties. The fact that a clarification was sought and the replies from the company were disseminated on the Exchange website.

CONCLUSION

It is observed that in several cases there is some confusion amongst the listed entities as to whether they should disclose certain events or not and if they do disclose, the extent of disclosures that should be made. While the market regulator and the exchanges may issue several guidelines circulars, etc., what really matters is the intention of the listed entity to comply with the Regulations. Compliance cannot (especially in the case of Regulation 30 cases) be enforced unless it is a very glaring case of non-disclosure. Compliance is a culture that has to be cultivated in the organisation and comes from the innate nature and character of the persons/promoters at the helm of the organisation. While it is very easy to vilify the KMP or the Company Secretary for not disclosing certain material facts, it may be appreciated that at the end of the day, they are only employees. Gradual sustained sensitization of the top management and their commitment or buy-in to a transparent upfront disclosure regime is extremely crucial to make any Regulation effective.

A simple *mantra* or *brahmastra* that can come to the aid of managements if they find themselves in a dilemma or imbroglio as to whether they should disclose a particular event or not is **WIDD** which means **W**hen **I**n **D**oubt, **D**isclose. This does not mean that one should throw all caution to the winds - instead the disclosure should be carefully worded to disclose the material facts and more importantly communicate the company's perspective of the event. It is this philosophy that will stand the company in good stead in the long run, especially in the eyes of global and domestic institutional players who will gauge a company's mettle and character by the fact that they have disclosed an unfavourable event and are willing to own it.

A wise person once said "Life is like playing a game of chess with God. After every move of ours, He makes the next move. Our moves are called Choices and His moves are called Consequences." Let's make wise choices ! CS

ARTICLE

Valuation of Goods & Services : Section 15 GST Model Act & GST (Determination of the Value of Supply of Goods and Services) Rules, 2016.

Pradeep K Mittal*, FCS
PKMG Law Chambers
Delhi
pkmital171@gmail.com.

GENERAL PRINCIPLE OF VALUATION

Sale at depot or place of consignment agent

If goods are sold from depot or place of consignment agent, that will be 'place of removal' as per section 4(3)(c)(iii). This is pertinent in view of the provisions of Section 12(2)(a)(i) of Act – here also the word used is "removed". In such case, transport, handling and insurance charges up to depot or place of consignment agent will be includible in assessable value as depot/place of consignment agent is 'place of removal'.

In Escorts JCB Ltd. v. CCE (2003) 1 SCC 281 : 146 ELT 31 (SC), the contract was for sale ex-factory. Goods were handed over to the carrier/transporter. However, insurance was arranged by the assessee, though charged separately. It was contended by the Department that since insurance is arranged by the seller, the property in the goods passes to buyer only when goods reach the destination. Hence, buyer's place will be the 'place of removal'. This view was rejected by SC. It was held that as per section 39 of Sale of Goods Act, delivery of goods to carrier is *prima facie* delivery of goods to buyer. This judgment was followed in CCE v. Indian Carbon Ltd. (2011) 269 ELT 6 (SC).

> An attempt has been made here to explain "transaction value" as appearing in Section 15 of GST Act and more particularly in relation to "Goods". Since "transaction value", appearing in Section 15 of the Goods and Services Tax Act, 2016 is, more or less, a replica of Section 4 of the Central Excise Act, 1944, the interpretation rendered by the Courts and CESTAT in relation to Section 4 and other related rules under Central Excise Act, 1944 are relevant for GST too.

FUNDAMENTAL PRINCIPLE OF VALUATION

Once the sale price is genuine, it is not open to Revenue to investigate whether the assessee is making profit or loss in the manufacture and sale of goods. CCE v. Mohan Crystal 2000(118) ELT 691 Tri. The Department cannot determine the extent to which a business entity should earn its profit. [CCE v. Limca Flavours 2006 (198) ELT 106.] The goods are to be assessed in the form in which they are cleared from factory. [ICI India v. CCE 2003(151) ELT 629 Tri.; Sirpur Paper Mills v. CCE 2012(280) ELT 235 Tri.]

EACH TRANSACTON IS A SEPARATE TRANSACTION

Each transaction is a separate transaction and has to be valued separately.[Prakash Industries Limited v. CCE 2010(250) ELT 65 (Tri).] Thus, separate prices for same product to different buyers is permissible. In case of parts, price could be different to OEM suppliers and different to Dealer when Dealers sell as spare parts. [GNK Drive Shafts v. CCE 2003(154) ELT 177 (Tri). Goa Industrial Products v. CCE 2005(181) ELT 222.] Export sales can be treated as sale to different class of buyers and FOB Value can be adopted for valuation. [Vera Laboratories v. CCE 2004(173) ELT 43 (Tri).]

Under Rule 2(d) of GST Valuation Rules "Transaction Value" means the value of goods and/or services within the meaning of Section 15 (1) of the CGST Act.

SECTION 15 (1) – VALUE OF TAXABLE SUPPLY

Value of taxable supply: The value of a supply of goods and/or services shall be the "Transaction Value" i.e. the price actually paid or payable for the said supply of goods and/or services where the supplier and recipient of the supply are not related and the price is the sole consideration for the supply.

MEANING OF ACTUALLY PAID OR PAYABLE

The Supreme Court in the case of Puralator India Limited v. CCE MANU/SC/0988/2015, while defining

*Past Central Council Member, the Institute of Company Secretaries of India, New Delhi.

the words "actually paid or payable" has observed that the expression 'actually paid or payable for the goods, when sold' only means that whatever is agreed to as the price for the goods forms the basis of value, whether such price has been paid, has been paid in part, or has not been paid at all. The basis of 'transaction value' is, therefore, the agreed contractual price. Further, the expression 'when sold' is not meant to indicate the time at which such goods are sold, but is meant to indicate that goods are the subject matter of an agreement of sale.

The Supreme Court in the case of Steel Authority of India Limited v. CCE MANU/SC/1401/2015 has observed as under:-

"It is undeniable that under Section 4 of the Act, the excise duty is to be paid on the 'transaction value' and such a transaction value has to be seen at the time of clearance of the goods".

EXCLUSION FROM TRANSACTION VALUE

The Supreme Court in the case of Gujarat Borosil Limited v. CCE MANU/SC/1554/2015 has held that the amount towards "transit insurance" is liable to be excluded from the "Transaction Value".

The Supreme Court in the case of Castrol India Limited v. CCE MANU/SC/1504/2015 has observed that " interest on receivable" would be deductible from "Transaction Value".

TRANSACTION VALUE

Section 15 (2): The transaction value shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services.

The Supreme Court in the case of CCE v. Ford India (P) Ltd MANU/SC/0179/2016 has ruled that the expenditure so incurred on any advertisement campaign was liable to be included as part of the Transaction Value under the Act for purposes of levy of excise duty. However, in CCE v. Surat Textile Mills 2004 AIR SCW 2868;2004(5)SCC 201;167 ELT 379 (3 member bench of SC), it was held that advertisement expenditure incurred by customer can be added to sale price for determining assessable value only if manufacturer has an enforceable legal right against customer to insist on incurring of such advertisement expenses by customer – followed in Alembic Glass Industries v. CCE 2006 (201) ELT 161 (SC).

Section 15(2)(b) :The value, apportioned as appropriate, of such of goods and/or services as supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable.

Section 15(2)(c) : Royalties and license fees related to the supply of goods and/or services being valued that the recipient of supply must pay, either directly or indirectly, as a condition of the said supply, to the extent that such royalties and fees are not included in the price actually paid or payable.

In franchise agreement, royalty is charged for permission to use the brand name e.g. Pepsi and Coca Cola manufacture concentrate and supply the same to bottlers. The bottlers make soft drink and sell it directly in the market. The bottlers have to pay royalty to Pepsi and Coca Cola for use of the brand name. Since they are under obligation to buy concentrate only from Pepsi and Coca Cola, the royalty payable is includible in the price of concentrate sold by Pepsi and Coca Cola to the bottlers. When the royalty is charged separately, price is not the sole consideration. [Pepsi Food Ltd v. CCE 2003(158) ELT 552 SC.]

Technical know-how charges relating to manufacture are includible in assessable value on amortization basis [.Ucal Fuel Systems v. CCE 2007(216) ELT 370 Tri.] Drawing, design charges, Art & Development Charges are includible on proportionate basis. [New Tech Packaging v. CCE 2003(156) ELT 74 Tri.]

Section 15(2)(d): Any taxes, duties, fees and charges levied under any Statute other than SGST Act or the CGST Act or the 1GST Act would be includible in "Transaction Value".

The Tribunal in the case of CCE v. Uttam Galva Steel Limited 2016 (311) ELT 261 Tri, has held that even if the actual amount of tax paid has been less, the whole tax is deemed to have been paid and the assessee shall be entitled to the abatement of full amount and not the amount actually paid.

In Kisan Sahkari Chini Mills Ltd v. CCE 1999(111) ELT 762 Tri, it was held that tax, levy and impost. The above view was finally approved by Supreme Court in the case of Chhata Sugar Co Ltd v. CCE 2004 AIR 1528 SC.

Section 15(2)(e):Incidental expenses such as commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, provision of the services.

CONTAINER SUPPLIED FREE OF COST BY BUYER-WHETHER COST OF CONTAINER LIABLE TO BE INCLUDED

The Supreme Court in the case of CCE v. Superior Products MANU/SC/8007/2008 has observed as under:-

"Insofar as packing charges are concerned, tribunal has held that this point stands concluded against the revenue by a judgment of this Court in the case of Hindustan Polymers v. CCE MANU/SC/0298/1990 : 1989(43) ELT165(SC) . After going through the judgment in the case of Hindustan Polymers (supra), we are satisfied that this point is squarely concluded against the revenue and in favour of the assessee. The judgment of this Court in Hindustan Polymers (supra) has been confirmed by a subsequent judgment of this Court in the case of Jauss Polymers Ltd. v. CCE, Meerut reported in MANU/SC/0927/2003 : 2003ECR5(SC) . We endorse the finding of the Tribunal on this point."

PACKING CHARGES: CONTAINER/CYLINDER/CARTONS

Packing which is necessary for putting excisable article in condition in which it is generally sold is includible in assessable value [Royal Enfield v. CCE (2011) 270 ELT 637 (SC).]

SECONDARY/SPECIAL PACKING DONE AT THE INSTANCE OF BUYER NOT INCLUDIBLE

The secondary packing done which is not in case of normal delivery of goods to customers is not required to be added [National Leather Cloth Mfg v. UOI (2010) 256 ELT 321 (SC).] Rental charges to buyer for durable containers is not includible in assessable value . In CCE v. Bisleri International Pvt. Ltd. (2005) 6 SCC 58;186 ELT 257 (SC), it was held that rental charges for container (ROC) and interest charged for delayed return of container are not includible in assessable value of cold drink. This was followed in Krishna Mohan Beverages v. CCE (2013) 289 ELT 197 (CESTAT).

Section 15(2)(f) : Subsidies provided in any form or manner, linked to the supply; Needless to say that the amount of subsidy or grant of any nature whatsoever, given to the assessee by the Government is liable to be included. However, CBEC vide Circular No.983/7/2014 CX- dated 10.07.2014 has confirmed that the fertilizer subsidy received from the Government is not additional consideration to individual manufacturer of Fertilizers. In CCE v. Super Synotex India Ltd 2014) 301) ELT 273 SC, the position was that as per Sales Tax Incentive Scheme of the State, the assessee was allowed to charge full sales tax in his invoice, however, he was allowed to retain 75% of sales tax amount to himself and balance 25% was required to be paid by him to the Government. Hence, it was held that the assessee shall be allowed the benefit of 25% and the balance 75% shall be included in the "Transaction Value".

ADVERTISEMENT, GIFT AND SALES PROMOTION EXPENSES :SECTION 15(2)(A), (G)

In CCE v. Surat Textile Mills 2004 AIR SCW 2868;2004 (5)SCC 201;167ELT

379 (3 member bench of SC), it was held that advertisement expenditure incurred by customer can be added to sale price for determining assessable value only if manufacturer has an enforceable legal right against customer to insist on incurring of such advertisement expenses by customer . This was followed in Alembic Glass Industries v. CCE 2006 (201)ELT 161 (S.C) and Honda Seils Power Products v. CCE (2015) 317 ELT 510 (CESTAT). Advertisement expenses incurred by marketing company to advertise soft drinks (aerated waters) are not includible in assessable value of concentrate .[CCE v. Parle International Ltd. 2006 (198) ELT 486 (SC).]

Section 15(2)(h)-: "Any discount or incentive that may be allowed after the supply has been effected:"

Provided that such post-supply discount which is established as per the agreement and is known at or before the time of supply and specifically linked to relevant invoices shall not be included in the transaction value.

VARIOUS TYPES OF DISCOUNTS

Discount – meaning, nature and scope

The Supreme Court, in a landmark judgment, in the case of Union of India v. Bombay Tyre International Limited MANU/SC/0538/1983: 1984 (17) ELT 329 (SC) has observed as under:

Trade Discounts

Discounts allowed in the trade (by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of the discount being known at or prior to the removal of the goods. Such Trade Discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price.

Cash discount

In IFB Industries Ltd. v. State of Kerala (2012) 4 SCC 618 ;49 VST 1 (SC), it was held that trade discounts are allowable as deduction even if not shown in invoice but given separately by credit note (sales tax matter but principle applies here also).

Section 15(2)(h) Proviso

Trade Discount not shown in the invoices but allowed under the trade practice or under agreement (both oral or written) by way of separate Credit Note, is allowable as a deduction even if not shown in the Invoice but given by way of separate credit note. [IFB Industries Ltd v. State of Kerala 2012(4) SCC 618. (Sales Tax matter).] Quantity Discount given later at Depot is permissible even if quantified on half year basis. [Glenmark Pharmaceuticals v. CCE 2011(272) ELT 385.]

Section 15 (3):The transaction value under sub-section (1) shall not include any discount allowed before or at the time of supply provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice issued in respect of the supply.

Section 15(4)-:The value of the supply of goods and/or services in the following situations which cannot be valued under sub-section (1), shall be determined in such manner as may be prescribed in the rules.

(i) the consideration, whether paid or payable, is not money, wholly or partly;
(ii) the supplier and the recipient of the supply are related;
(iii) there is reason to doubt the truth or accuracy of the transaction value declared by the supplier;
(iv) business transactions undertaken by a pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery;
(v) such other supplies as may be notified by the Central or a State Government in this behalf on the recommendation of the Council.

JUDGMENT ON 'RELATED PERSON' [SECTION 15 (4)(II) AND RULE 3(4)]

In Alembic Glass Industries v. CCE 2002 (143)ELT 244 (S.C), the Supreme Court observed thus:

"The shareholder of a public limited company do not by reason only of their shareholding have an interest in the business of the company. Similarly two public limited companies having common Directors do not have an interest in the business of each other."

Section 15(4)(iii) –Rule 7

Mis-declaration- Under what circumstances the charges of under-valuation could be proved and under what circumstances such charge could not be proved?

- Cases where charge of undervaluation could be proved

The Supreme Court in the case of LanEseda Industries v. CC (2010) 258 ELT 3 (SC) has observed that "Transaction value cannot be accepted when similar goods were imported at a higher value by applicant himself, import was from dealer and invoice of original manufacturer was not produced."

- Cases where charge of undervaluation could not be proved

In Konia Trading Co. v. CC, 2006 (199) ELT 644 (CESTAT), the Tribunal has observed : "Where one value is indicated in invoice and the other in export declaration, customs authorities are justified in holding that invoice value is not the transaction value." In Big Apple Manufacturing v. CCE, (2008) 226 ELT 270(CEGAT), it was observed that "Computer items are subject to wide fluctuations due to rapid growth. Rejection of value only on that ground is not justified when there is no evidence that invoice is fake or amount is not remitted through banking channels."

GST VALUATION (DETERMINATION OF THE VALUE OF SUPPLY OF GOODS AND SERVICES) RULES, 2016

Rule 2. DEFINITIONS.(1) In these rules, unless the context otherwise requires:

(b) "goods of like kind and quality" means goods which are identical or similar in physical characteristics, quality and reputation. The Supreme Court in the case of Union of India and Ors. v. Bombay Tyre International 1983 (14) E.L.T. 1896, observed :-

"28. In every case the fundamental criterion for computing the value of an excisable article is the price at which the excisable article or an article of the like kind and quality is sold or is capable of being sold by the manufacturer, and it is not the bare manufacturing cost and manufacturing profit which constitutes the basis for determining such value."

METHOD OF DETERMINATION OF VALUE

(1) Subject to rule 7, the value of goods and/or services shall be the transaction value.
(2) The "transaction value" shall be the value determined in monetary terms.
(3) Where the supply consists of both taxable and non-taxable supply, the taxable supply shall be deemed to be for such part of the monetary consideration as is attributable thereto.
(4) The transaction value shall be accepted even where the supplier and recipient of supply are related, provided that the relationship has not influenced the price.
(5) Where goods are transferred from:-
    (a) one place of business to another place of the same business,
    (b) the principal to an agent or from an agent to the principal,
    [Whether or not situated in the same State, the value of such supply shall be the transactions value.]
(6) The value of supplies specified in sub-section (4) of section 15 be determined by proceeding sequentially through rules 4 to 6.

DETERMINATION OF VALUE OF SUPPLY BY COMPARISON

(1) Where the supply cannot be determined under rule 3, the value shall be determined on the transaction value of goods and/or services of like kind and quality supplied at or about the same time to other customers, adjusted in accordance with the provisions of sub-rule (2).

(2) In determining the value of goods and/or services under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable taking into consideration the relevant factors, including__

The Division Bench of the Tribunal in the case of SRK Enterprises v. Commissioner of Customs MANU/CM/0389/2011 has observed: " We further find that, in case the transaction value has to be rejected, the adjudicating authority has to first arrive at the reasoning for the rejection of the transaction value and, thereafter, they have to resort to the procedure prescribed in the Customs Valuation Rules. As per Rule 5 of the Customs (Valuation) Rules, 2008, the absence of data about the sale price of the imported goods is no excuse for the department to rely on incomparable goods as this would lead to absurd result. In this case, we have seen that the goods were assessed after loading the value and, thereafter, re-enhancement has been done. Section 14(1) of the Customs Act provides for determination of value of such goods or like goods ordinarily available for sale, at the time and place of importation". In this case, it is seen that the method of valuation and market survey is not proper and no opportunity to the appellant were given to cross-examine the persons who have given the data for the valuation.

Computed value method

If the value cannot be determined under rule 4, it shall be based on a computed value which shall include the following:-

(a) the cost of production, manufacture or processing of the goods or, the cost of provision of the services;

(b) charges, if any, for the design or brand;

(c) an amount towards profit and general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.

Residual method

Where the value of the goods and/or services cannot be determined under the provisions of rule 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules. In case the valuation cannot be made as per the above provisions, any reasonable basis that is consistent with the principles of comparison or computed method may be used. The flexibility is given since there might be cases where goods or services are unique or not comparable data is available in the public domain.

RULE 6 OF GST VALUATIN RULE [RULE 8 OF CUSTOM VALUATION RULES]

The Supreme Court in the case of Eicher Tractors Limited v. CCE MANU/SC/0699/2000 has observed that "When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these rules and sub section (1) of section 14 of the Customs Act, 1962 and on the basis of data available in India."

Rejection of declared value

(1) (a) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any goods and/or services, he may ask the supplier to furnish further information, including documents or other evidence and if, after receiving such further information, or in the absence of any response from such supplier, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such goods and/or services cannot be determined under the provisions of sub-rule (1) of rule 3.

b) The reasons to doubt the truth or accuracy of the value of the supply declared by the supplier shall include, but not be limited to the following:

(i) the significantly higher value at which goods and/or services of like kind or quality supplied at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(ii) the significantly lower or higher value of the supply of goods and/or services compared to the market value of goods and/or services of like kind and quantity at the time of supply; or

(iii) any mis-declaration of goods and/or services in parameters such as description, quality, quantity, year of manufacture or production

(2) The proper officer shall intimate the supplier in writing the grounds for doubting the truth or accuracy of the value declared in relation to the supply of goods and/or services by such supplier and provide a reasonable opportunity of being heard, before making a final decision under sub-rule (1).

(3) If after hearing the supplier as aforesaid, the proper officer is, for reasons to be recorded in writing, not satisfied with the value declared, he shall proceed to determine the value in accordance with the provisions of rule 4 or rule 5 or rule 6, proceeding sequentially.

Explanation:- For removal of doubts, it is hereby declared that this rule by itself does not provide a method for determination of value. It provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value.

The Supreme Court in a landmark judgment, on Income Tax Act, in the case of State of Kerala v. C Velukutty MANU/SC/0307/1965 has observed as under:-

"Under section 12(2)(b) of the Act, power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a "best judgment assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. Though sub-section (2) of section 12 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material. "

The Allahabad High Court in the case of Kartikey Ispat (P) Ltd v. Commissioner of Trade Tax MANU/UP/1394/2016 has noted the principle of best judgment assessment laid down in the case of State of Orissa v. Maharaja Shri B.P. Singh Deo MANU/SC/0237/1969 : (1971) 3 SCC 52 where in the Supreme Court has observed as follows:-

"Apart from coming to the conclusion that the materials placed before him by the assessee were not reliable, the Assistant Collector has given no reason for enhancing the assessment. His order does not disclose the basis on which he has enhanced the assessment. The mere fact that the material placed by the assessee before the assessing authorities is unreliable does not empower those authorities to make an arbitrary order. The power to levy assessment on the basis of best judgment is not an arbitrary power; it is an assessment on the basis of best judgment. In other words that assessment must be based on some relevant material. It is not a power that can be exercised under the sweet-will and pleasure of the concerned authorities. The scope of that power has been explained over and over again by this Court."

As regards proposed GST is concerned, the law has yet to evolve but, under the Central Excise Act, the concept of "Transaction Value" has been fully evolved and conceptualized. CS

ARTICLE

Regulating Research Analysts - An in-depth study of Securities and Exchange Board of India (Research Analysts) Regulations, 2014

Rahul P Sahasrabuddhe, FCS

Founding Partner
SPRS and Co.
Company Secretaries, Mumbai

rahul@sprscs.com

PROLOGUE

Albert Einstein once said, if we knew what it was we were doing, it would not be called research. Research is a systematic and scientific process which leads to a detailed study of a subject, especially in order to discover (new) information or reach a (new) understanding. Human being could evolve from apes to current form only because of his appetite for constant improvement in all his deeds and ability to analyze and think.

The purpose of this article is to make an analysis of Securities And Exchange Board of India (Research Analysts) Regulations, 2014. The Regulations empower SEBI to govern Research Analysts and Research Entity. Company Secretaries has been recognized to conduct Annual Audit of Research Analysts and Research Entity.

WHY RESEARCH ANALYSIS?

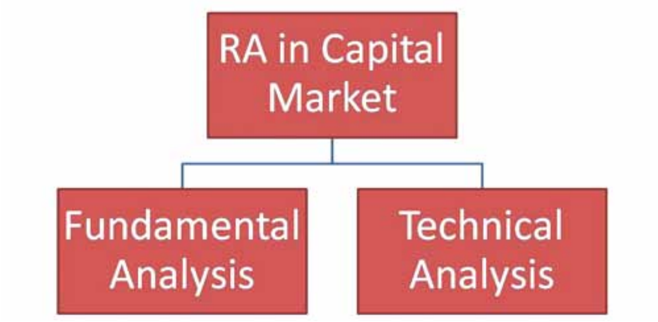
Based on number of factors, research can be categorized as quantitative research and qualitative research. In spite of the fact that quantitative and qualitative analysis overlap each other in number of ways they both are fundamentally poles apart. Quantification of data is at the core of quantitative analysis whereas qualitative research is required for in depth understanding of reasons and motivations to get further insights. Many areas of life, may it be at macro level, say, exploring new market, need for infrastructure facilities, introduction of new taxes, (at micro level) buying a new car or a mobile phone, is preceded by one or the other kind of research. A person may risk taking a new product, car or mobile phone without a proper research but a corporate venturing without a proper and systematic research may result into a negative hit to its balance sheet. Hence, there is need to engage a research mechanism to take an informed decision.

RESEARCH ANALYSIS AND CAPITAL MARKET

Institutional Investors and seasoned investors does a sincere analysis pre and (on a regular basis) post investments. Research Analysis (RA) (hence forth to be used as terminology of Capital Market) can be categorized into Fundamental Analysis and Technical Analysis.

Fundamental Analysis includes analysis of a particular stock based on analysis of economy, industry to which it belongs and company analysis. Chronologic analysis of word and country specific economy, Industry and Company; may divide fundamental analysis into "top down" or "bottom up" approach.

Technical Analysis on the other hand, presumes price of a particular stock has already effected or affected by the economy, industry or Company's outlook and it is more of analysis of psyche of market players. Based on investment decisions to be taken by the market player, Fundamental and Technical Analysis can also be categorized as "Buy Side" and "Sell Side" analysis.



Research Analysis is a very important aspect of capital market industry and no intermediaries especially, Stock Brokers, Underwriters, Merchant Bankers, Portfolio Managers, Mutual Funds, Debenture Trustees, bankers to an issue and others would like to take investment decisions without having a very strong in-house research department.

In spite of being an inalienable part of Capital Market in particular and Indian economy in general, till November 29, 2014, there was no direct Regulations as such, regulating the conduct of RA, however, SEBI vide gazette notification dated September 1, 2014 issued Securities And Exchange Board Of India (Research Analysts) Regulations, 2014(hereinafter referred to as "RA Regulations") and brought research analysts under its direct regulatory control.

SEBI in its Annual Report for the year 2015-16 reasoned introduction of instant regulations as "a move to safeguard Indian markets from any manipulative research reports or misleading advice coming from any unregulated entity, SEBI has notified norms for 'research analysts' to ward off any conflicts of interest in their activities." These regulations came into existence with effect from November 30, 2014.

Particulars	2014-15	2015-16
Registered Research Analysts	26	261*

* Includes 3 proxy advisers.

** Source: SEBI Annual Report 2015-2016 (http://www.sebi.gov.in/cms/sebi_data/attachdocs/1471609638850.pdf)

KEY DEFINITIONS UNDER THE RA REGULATIONS

According to Regulation 2 (1) (u) 'research analyst' means a person who prepares, publishes and provides research report, makes buy/sell/hold recommendations, gives price target, offers concerning public offer. Such advice should be related with securities which are either listed to be listed on the stock exchange(s).

Regulation 2 (1)(h) defines "independent research analyst" as a person whose only business activity is research analysis or preparation and/or publication of research report. It may be noted that there are very few market players who acts as independent research analyst and Research Analysis is one of the activities of a financial conglomerate. Whereas Regulation 2 (1)(v) defines "research entity" as an intermediary registered with SEBI and providing merchant banking, investment banking, brokerage, and/or underwriting services and also issues research report or research analysis in its own name through the individuals employed by it.

As per Regulation 2 (1)(w) "research report" means any written or electronic communication involving any research analysis, opinion o recommendation pertaining to any listed or to be listed securities or public offer. Such opinion or analysis should result into providing a basis for investment decision however, research report does not cover comments on general trends, economic, political conditions, periodic report to mutual fund unit holders or portfolio management service provider to its clients, Comments on general trends in the securities market; non client centric internal communication, offer document, statistical summary, technical analysis relating to demand and supply in a sector or the index. It is quite surprising that macro level technical analysis of sector or an index is excluded while micro level technical analysis is still in the ambit of this regulation. This exclusion is intriguing.

"Subject Company" is defined in regulation 2 (1)(z) as the company whose securities are the subject of a research report or a public appearance. This is quite interesting as the word "company" is defined in Section 2 (20) of Companies Act, 2013 as company incorporated under this Act or under any previous law, where as many entities are listed on Stock Exchanges, which are body corporate and not a company.

REGISTRATION OF RESEARCH ANALYSTS

The SEBI vide PR No. 148/2016 dated October 20, 2016 has introduced online system for Investment Advisers and Research Analysts to promote ease of operations in terms of e-registration, compliance reporting, etc.

No person is allowed to act as RA or Research Entity (RE) unless he has obtained a Certificate from SEBI. However, SEBI registered Investment Advisor, Credit Rating Agencies, Asset Management Company or fund manager are exempt from such certification provided it abides with Chapter III of this regulation dealing with "Management of Conflicts of Interest and Disclosure Requirement".

Regulation 4 makes it mandatory for any research analyst located outside India and issuing research reports on Indian Capital Market to enter into a formal agreement with Research Analyst or Research Entity.

SEBI before granting certificate under this regulation shall take into consideration following points:

1. Any individual, partnership firm, limited liability partnership or body corporate may be registered as RA.
2. Every individual Research Analyst or employee of Research Entity working as Research Analyst must be certified as Research Analyst. SEBI vide Notification under regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007 dated March 24, 2015 has made it mandatory that any person acting or desirous of acting as research analyst shall obtain certification from the National Institute of Securities Markets (NISM) by passing the "NISM-Series-XV: Research Analyst Certification Examination. It is been clarified by SEBI in "Frequently Asked Questions wart to SEBI (Research Analyst) Regulations, 2014" that certification requirement is limited to those employees who are working with research entity as research analyst and employees working in other departments like clerical, marketing, back office department, support services etc, are not covered.
3. Individual and partnership registering as research analyst need to have net worth of Rs. 1 lac and in case of LLP and body corporate thenet worth requirement is Rs. 25 Lacs.

Certificate once granted shall be valid for 5 years and the same may be renewed subject to the condition that the applicant submits formal application within 3 months of expiry of its registration. On obtainment of registration, the registered entity may use the term "Research Analyst" in all correspondence with its clients.

REGULATOR FOR RESEARCH ANALYSTS

SEBI is empowered to delegate, administration, supervision and regulation of Research Analysts. The Board may also make it mandatory for every research analyst to become member of such

> Research Analysis is a very important aspect of capital market industry and no intermediaries especially, Stock Brokers, Underwriters, Merchant Bankers, Portfolio Managers, Mutual Funds, Debenture Trustees, bankers to an issue and others would like to take investment decisions without having a very strong in-house research department.

body. SEBI is yet to notify any such body to act as regulator for RAs.

Note: The only association of Capital Market Intermediaries recognized by SEBI is Association of Mutual Funds of India (AMFI). AMFI is a non-profit organization, an association of all the registered Asset Management Companies in India.

MANAGEMENT AND CONFLICT OF INTEREST AND DISCLOSURE REQUIREMENT

Chapter III of the Regulations deals with internal control, policies, limitations on trading by research analysts, compensation to be paid to research analysts and contents, limitations and disclosures to be made in research report, general responsibilities of research analysts and maintenance of records.

Establishing Internal Policies and Procedures

Regulation 15 mandates that every research analyst and research entity shall have written internal control policies governing dealing and trading by research analysts in their personal accounts with specific reference to-

1. Address conflict of Interest
2. Promote unbiased research reports
3. Prevent use of research report to manipulate securities market.

Conflict of Interest

The (Cambridge) dictionary meaning of Conflict of Interest is "a situation in which someone's private interests are opposed to that person's responsibilities to other people." Conflicts of interest arise when a financial service provider, or an agent within such a service provider, has multiple interests that create incentives to act in such a way as to misuse or conceal information needed for the effective functioning off financial markets. Generally Financial Intermediaries offer catena of services to its target customers and that may spread across financial planning, insurance advisory, personal financial advisory, life and general insurance advisory, portfolio management, stock broking, depository, proxy advisory, research. Similarly, financial intermediary houses also cater to institutional client set up where in they offer merchant banking, underwriting, and financial advisory in addition to earlier discussed services. All these services are interlinked and hence many situations give rise to conflict of interests.

Case study

A Financial Conglomerate has few entities registered as Stock Broker, Portfolio Manager, Research Analyst, and Depository Participant. A research analyst publishes a report with a long view with respect to (say) ABC Limited, a pharmaceutical company. However, on releasing this research report he dumps his own long position in the open market to book profit. Herein, the research analyst had taken an exact opposition position which was contrary to recommendations.

Similarly, a research analysts changing his view on a particular stock through his report so as to profit his employers stock broking arm, a sister concern to earn more brokerage.

There is nothing wrong in have conflict of interests per se however, overbearing of self interest over client's interest is undesirable.

Unbiased Research Report

Research Analyst should be unbiased in drawing a research conclusion in its research reporting. An intermediary which had given merchant banking services in an IPO should not create any pressure on research analyst to publish a favorable report for the same company. Control measures like physical and procedure Chinese walls are tools to avoid such conflict situations.

Use of research report to manipulate market

A report not depicting correct information about a particular stock may have been drawn by a research house for manipulative market practices. This no doubt will have impact on goodwill of the research house however; control mechanisms must be in place to avoid such malpractices.

Limitations on trading by research analysts

Regulation 16 prescribes following limitations on trading by research analysts:

1. Personal trading activities of employees of research entity shall be monitored and recorded and a formal approval process of every trade needs to be followed by Compliance Department.
2. Independent Research Analyst or person employed in research entity shall not deal or trade in securities within 30 days before and 5 days after publication of research report covering Subject Company.
3. Independent Research Analyst or person employed in research entity shall not enter into any trade contrary to his recommendations.
4. Independent Research Analyst or person employed in research entity shall not subscribe or receive securities of any issuer, of the same industry, which research analyst tracks.
5. Any exceptions or exemptions to the policy may specifically be provided.

Every Capital Market Intermediary is required to have a policy under SEBI (Prohibition of Insider Trading) Regulations, 2015. A compliance of this policy would ensure compliance with regulation16.

Compensation of Research Analysts

While dealing with compensation to be paid to employees of research entity, Regulation 17 states that payment of compensation including bonus, increment shall not be linked to any merchant banking, investment banking or brokerage transaction of the research entity or any of its sister concern. The compensation paid to research employees of entity shall be documented, approved and reviewed annually by the Board of Directors or committee of Directors of the Research Entity. It may also be noted that head of the merchant banking, investment banking or broking division of the research entity shall not be part of such decision making process.

Limitations on publication of research report, public appearance and conduct of business, etc.

Brokerage and merchant banking houses also acting as research entity shall not publish or distribute research report or make any public appearance like arranging a road show, conference call, host an investors' meet for an issuer company, in which it has acted as manager or co manger for any of its public issue for a period of 45 days from the date of offering in case of initial public offer and 10 days in case of further issue offering. The above time limit in respect of a Research entity, who has also acted as an underwriter for a particular issue shall be 25 days from the date of offerings made. Research Analyst is also barred from participating in any communication concerning business engagement with any of the current or prospective investment banking, merchant banking or brokerage client. However, these restrictions does not bar research analyst from engaging in any investor education activities where in a brief about the proposed deal is discussed.

A research analyst is required to make following disclosures in every research report:

1. All the material information about business activities of Research Analyst
2. Disciplinary actions history
3. Terms and conditions on which research report or services are being offered
4. Details of associates and such other information necessary for readers to make an informed investment decision based on research report
5. Financial interest of the research analyst or research entity in the subject company
6. Holdings in excess of 1% or more securities of the subject company in the subject company by research analyst or research entity and such other material conflict of interest
7. Details of any compensation received by research entity or research analysts from Subject Company
8. In case of any public appearance by the research analyst or employee of research entity compensation details are also needs to be disclosed.

Research Analyst or Research Entity may not publish any disclosures above which may reveal material non public information regarding any potential investment banking, merchant banking or block deal.

Contents and distribution of research report

Research Entity making the research report must ensure that every research report published by it is based on reliable information and facts.In case of usage of rating system the same shall be clearly defined in the research report. Research Report may also contain graphic representation of price or price targets, subject to the fact that every report must contain daily closing price of the subject company in the given graph and performance of the stock for the period for which such target is given or 3 years, whichever is shorter.

Research Report once published cannot be released to select individuals or clients. Also research entity sourcing research report from a third party needs to vet the same before making any release.

Proxy Advisor

Though, proxy advisory services are a nascent concept in India but they have already made a huge impact in corporate decision making process. Proxy advisor is a subject expert providing professional advice to institutional investor or shareholder of a company in relation to exercising of their rights in the company which also includes recommendation of public offer or voting recommendation on any agenda item. Provisions of Chapter II to VI of Research Analysts regulations are applicable mutatis mutandis to proxy advisory services firms except to the fact that employees of the proxy advisory firms should have a minimum educational qualification as graduate and SEBI has been empowered to introduce a certification requirement.

GENERAL RESPONSIBILITY OF RESEARCH ANALYSTS

Regulation 24 describes general responsibilities of Research Analysts:

1. Research analyst or research entity shall maintain an arm's length relationship between its research activity and other activities.
2. Research analyst or research entity shall abide by code of conduct as specified in Third Schedule of the regulation.
3. Research analyst or research entity must obtain prior approval from SEBI in case of any change in management control.
4. Research analyst or research entity shall provide all the necessary information, details as sought by SEBI.
5. Research analyst or research entity must adhere to certification requirement of all its employees at all the time.

Maintenance of Records

Regulation 25 prescribes records mandatorily required to be maintained by Research analyst or research entity. They are as follows:

1. Research Report duly signed and dated
2. Research recommendations
3. Rationale for arriving at research recommendation
4. Record of public appearance.

Records, if any kept in electronic form, may be digitally signed.

All the above records are required to be maintained for a period of 5 years.

SEBI's Right to Inspect

SEBI may suo motu or upon receipt of complaint from any person may carry out inspection of research analyst or research entity. The board may appoint an inspecting authority to carry out such inspection and may exercise this power with or without giving any notice to the research analyst or research entity. On receiving any such notice research analyst or research entity must cooperate with the officials of the Board. Inspecting authority is required to submit a report to the board on completion of inspection. Based on the inspection report, the board may issue necessary directions to research analyst or research entity to refund any money collected as fees, charges or commission, with interest and prohibiting research analyst or research entity to act as such with immediate effect. SEBI has also been empowered to prohibit research analyst or research entity from accessing capital markets.

Compliance Officer

Regulation 26 mandates, that a research analyst which is body corporate or LLP is required to appoint Compliance Officer who shall be responsible for monitoring the Compliances under this regulation.

Annual Compliance

Regulation 25 (3) prescribes that Research analyst or research entity shall conduct annual audit in respect of compliance with Research Analyst regulations. RA regulations fall short of prescribing any report format or time limitation for conducting of Audit. The Audit Report is expected to contain all the required compliances of RA Regulations (suggestive format of Audit Report is enclosed).

Opportunity For Company Secretaries

Members of ICSI or ICAI are identified professionals to do this audit. It would have been appropriate to include the word "practicing member of" before ICSI or ICAI, as current regulations indicate that even employee members of these professional bodies can act as auditor. However, looking at the spirit of the regulation and to bring in third party audit and their views in compliant running of the research house, audit under regulation by independent professionals is the need of the hour.

SUGGESTIVE FORMAT OF ANNUAL COMPLIANCE AUDIT REPORT

(Pursuant to Regulation 25(3) of Securities and Exchange Board of India (Research Analysts) Regulations, 2014)

To,
XXXXXXXXX

We have conducted the "Annual Compliance Audit as prescribed under Regulation 25(3) of Securities and Exchange Board of India (Research Analysts) Regulations, 2014" (hereinafter referred to as "Annual Compliance Audit") of XXXXXXXXXXXXXX (hereinafter referred to as "the Company") which is a Research Entity as per Securities and Exchange Board of India (Research Analysts) Regulations, 2014 (hereinafter referred to as "RA Regulations").
Research Analyst Audit was conducted in a manner that provided us a reasonable basis for evaluating the corporate conducts and statutory compliances.
Based on our verification of the necessary Registration Certificate, other required certificates, documents, records, forms, internal policies, procedures and other records maintained by the Company and also the information provided by the Company, its officers, agents and authorized representatives during the conduct of Research Analyst Audit, we hereby report that in our opinion, the company has, during the audit period covering the financial year ended on 31st March, 2016 (hereinafter referred to as "the audit period") complied with the statutory provisions listed hereunder and also that the Company has proper compliance mechanism in place to the extent, in the manner and subject to the reporting made hereinafter:

1. The Company has obtained Certificate of registration from the Securities and Exchange Board of India (hereinafter referred to as "SEBI") as per RA Regulations.
2. The Company has employed XX (XX) Research Analysts as mentioned in "Exhibit A".
3. As per information/records provided by the Company, the Net Worth of the Company as on March 31, 2016 is Rs. XXX /- (Rupees XXX Only) and the company has complied with capital adequacy requirements as per Regulation 8 of RA Regulations.
4. Mr. XXX has resigned from the office of Director of the Company with effect from XXXX . The Company vide its letter dated XXX has informed about this change in the Directorship in compliance with Regulation 13 of RA Regulations.
5. The Company has used the term "Research Analyst" in its correspondence relating with Research Reports, Research Notes, Research update, etc. with its clients.
6. The Company has required internal control policies and procedures governing the dealing and trading by any research analyst as detailed in "Exhibit B". The Compliance Officer is in charge of implementation and review mechanism of these policies.
7. The Company is having in place appropriate mechanisms to ensure independence of its research activities from its other business activities.
8. The Remuneration and Compensation paid to Research Analysts has been approved by the Board of Directors/ Committee appointed by the Board of Directors, vide Board Resolution passed in the meeting for Board of Directors held on XXXX .
9. The Company has well defined Organization Structure as mentioned in "Exhibit C" and that no employee has been supervised or controlled by any employee of the merchant banking or investment banking or brokerage service divisions of Company.
10. The Company has not acted as Underwriter of any IPO or manager/co-manager of public offering during the year under review.
11. The employee has not participated in business activities designed to solicit investment banking or merchant banking or brokerage services business, such as sales pitches and deal road shows.
12. The employee has not engaged in any communication with a current or prospective client in the presence of personnel from investment banking or merchant banking or brokerage services divisions or company management about an investment banking services transaction.
13. The Company has provided unbiased review in its research report to a company or industry or sector or group of companies or business group. The research analysts have prepared his research report based on documents, papers, records and information available in Public Domain.
14. The Company has disclosed all the required and material information about itself, disciplinary history, the terms and conditions on which it offers research report; details of associates and such other information as is necessary to take an investment decision.
15. The company has drafted rating system to rate a particular security and same rating policy is being adhered to while rating a particular security which is being published in the research reports or public appearances for the period under review.
16. The employee or directors of the company has given disclosure about the registration status and details of financial interest in the subject company while public appearance.
17. The research report has not been made available selectively to internal trading personnel or a particular client or a class of client in advance of other clients who are entitled to receive the research report.
18. The Company has maintained arms length relationship between its research activity and other activities.
19. The Company is in compliance with the Code of Conduct as prescribed under Regulation 24(2) and third schedule of RA Regulations.
20. The Company has maintained all the necessary records required as per regulation in physical/electronic form.
21. The Company has appointed a Compliance Officer for monitoring the compliance of the provisions of RA regulations and circulars issued thereon by the SEBI.
22. The Company has not contravened any regulation or circulars issued by the SEBI.

Signature:

Date: XXXX
Place: XXXX

CS

2

RESEARCH CORNER

- LITERATURE REVIEW COMPETITION ON SIGNIFICANT ASPECTS OF INDIAN COMPANIES ACT, 2013 (CHAPTERS XI – XXIX)
- ALL INDIA RESEARCH PAPER COMPETITION ON THE FINANCIAL RESOLUTION AND DEPOSIT INSURANCE BILL, 2016
- TWO DAYS NON-RESIDENTIAL RESEARCH COLLOQUIUM ON INDIAN COMPANIES ACT – DECODING UNSOLVED MYSTRIES

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

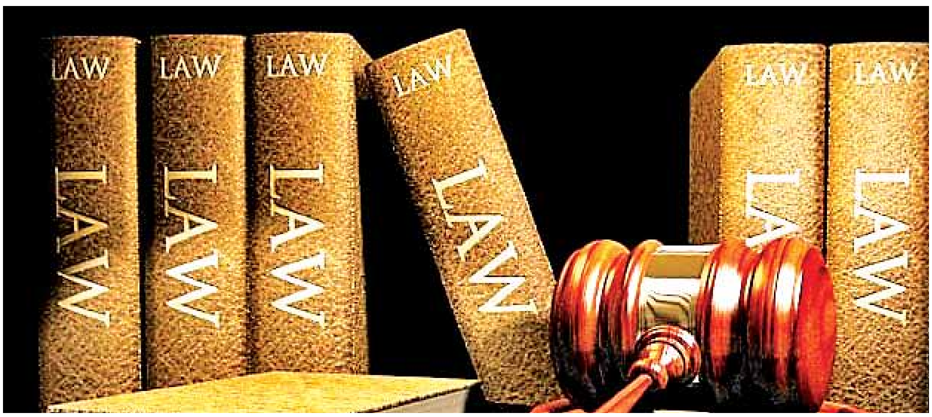
CENTRE FOR CORPORATE GOVERNANCE, RESEARCH & TRAINING (CCGRT)

ICSI-CCGRT

ANNOUNCES

Unique

Literature Review Competition onSignificant Aspects of Indian Companies Act, 2013 (Chapters XI – XXIX)



ICSI-CCGRT is pleased to announce ***unique Literature Review Competition on Significant Aspects of Companies Act, 2013 (Chapters XI – XXIX)*** with an objective of creating proclivity towards research among its Members, both in employment and practice, students pursuing Company Secretary and other professional courses, academicians, corporate professionals and other interested folk.

The purpose of competition is to identify significant concepts and try to find out a comprehensive and definitive solutions. Since research in all disciplines and subjects, must begin with a clearly defined goal, this study is also designed keeping those objectives in mind.

Prologue

Companies Act, 2013 have ushered in several key changes with the aim of strengthening corporate governance. The significant changes introduced by the new Companies Act are-Board Composition, Independent Directors, Woman Director, One Person Company, Secretarial Standards, Key Managerial Personnel, Secretarial Audit, Prevention of Oppression and Mismanagement, Registered Valuers etc. Companies Act comprises of twenty nine chapters. Thus, it can be said without an iota of doubt that in years to come we will witness a renaissance in the eon of corporate governance. For instance, Section 245- Class Action Suit, will go a long way in safeguarding the rights of stakeholders.

It generates paramount academic and research interest to delve deep into the critical facets of the sections covered under Chapters XI to XXIX, as their notifications are going to be a game changer in the corporate law space.

Objectives:

a) To analyze each section of the Chapter.
b) To find critical issues of the chapter.
c) To understand the probable hurdles that will be witnessed by corporate houses in embracing the sections covered under Chapters XI to XXIX, once they are notified.
d) To draw a comparison with relevant international corporate laws while studying the critical aspects covered under the Chapters XI to XXIX.
e) To undertake literature review of each section and compile the same along with analysis.
f) To understand and identify the relevant jurisprudence

Coverage-

* CHAPTER XI- APPOINTMENT AND QUALIFICATIONS OF DIRECTORS
* CHPATER XII- MEETINGS OF BOARD AND ITS POWERS
* CHAPTER XIII- APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

* CHAPTER XIV-INSPECTION, INQUIRY AND INVESTIGATION
* CHAPTER XV- COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS
* CHAPTER XVI- PREVENTION OF OPPRESSION AND MISMANAGEMENT
* CHAPTER XVII- REGISTERED VALUERS
* CHAPTER XVIII-REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES
* CHAPTER XIX- REVIVAL AND REHABILITATION OF SICK COMPANIES
* CHAPTER XX- WINDING UP
* CHAPTER XXI- PART I - COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT
* CHAPTER XXII- COMPANIES INCORPORATED OUTSIDE INDIA
* CHAPTER XXIII- REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES.
* CHAPTER XXIV- REGISTRATION OFFICES AND FEES
* CHAPTER XXV- COMPANIES TO FURNISH INFORMATION OR STATISTICS
* CHAPTER XXVI- NIDHIS
* CHAPTER XXVII- NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL
* CHAPTER XXVIII- SPECIAL COURTS
* CHAPTER XXIX- MISCELLANEOUS

How to present the Significant Aspects

Significant aspects covered under Chapters XI to XXIX needs to be presented in the format appended below-

- Chapter
- Section and rules / forms
- Issues (heads)
- Details of issue with justification
- Suggested Changes
- Is there any other section / rule / form relevant to the issue?
- Case Laws / jurisprudence (reproduction relevant portion of case law along with citation)

Additional information can provided in the form of foot notes / additional information at the end of the above mentioned table for each Chapter.

Above information shall be presented in the form of analysis along with source of information as per the following structure-

Analogous Law,
Overview,
Relevant Rules and Forms,
Circulars and Clarifications,
Judicial Pronouncements,
Secretarial Standards,
Departure from the 1956 Act,
Offence and Penalty etc.

Research Paper / Manuscript Guidelines

- Original papers 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.
- 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, with a maximum of 10000 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.
- The following should also accompany the manuscripts on separate sheets: (i) An abstract of approximately 1500 words with a maximum of five key words, and (ii) A brief biographical sketch (200 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI, if any, and other membership on editorial boards and companies, etc.
- The research papers should reach the Competition Committee on or before 15th December, 2016 by 12 noon (IST).
- Participants should email their research papers on the following email id: ccgrt@icsi.edu
- The paper may be presented either in single section of any chapter or multiple sections after chapters.
- There is no restriction on number of entries. One participant can submit more than one entries.

Further Information for Authors / Participants

- The decision of the Reviewing 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. Further, the authors whose significant aspects will be accepted will receive 4 PCH.
- 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.
- The papers will be scrutinized by an Expert Committee.
- For any query / assistance, kindly contact at: ccgrt@icsi.edu
- For the member of ICSI suitable credit hour will be awarded based on each entry and contents and in accordance with the credit hour guidelines of ICSI
- Apart from prizes in kind to other participants certificates will be given or the selected paper on request for the purpose of submission to university or any other purpose.

CS Ahalada Rao V
Chairman
ICSI-Research Committee

CS Ashish Doshi
Chairman
ICSI-CCGRT Management Committee

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

CENTRE FOR CORPORATE GOVERNANCE, RESEARCH & TRAINING (CCGRT)

ICSI-CCGRT

ANNOUNCES

Unique

All India Research Paper Competition on The Financial Resolution and Deposit Insurance Bill, 2016

ICSI-CCGRT is pleased to announce ***unique "All India Research Paper Competition on The Financial Resolution and Deposit Insurance Bill, 2016*** with an objective of creating proclivity towards research among its Members, both in employment and practice.

The purpose of research is to identify specific questions and try to find out a comprehensive and definitive answer. Since research in all disciplines and subjects, must begin with a clearly defined goal, this study is also designed keeping those objectives in mind.

Prologue

The committee set up to draft a Code on Resolution of Financial Firms ("Committee"), by the Ministry of Finance, Government of India, on September 28, 2016, released a draft bill – The Financial Resolution and Deposit Insurance Bill, 2016 (the "Draft Bill"), seeking comments from the public. The Draft Bill proposes to establish a similar special resolution regime to deal with insolvency issues of banks, insurance firms, and other financial sector entities.

The draft bill is an endeavor to consolidate and amend numerous existing legislations dealing with insolvency/ winding up of covered service providers in distress and aims to provide a comprehensive resolution framework applicable to various financial service providers, while safeguarding the interests of depositors of insured service providers by giving priority to such depositors (covered under deposit insurance) over other category of dues including, the cost of the Resolution Corporation, claim of other secured creditors, workmen's dues, etc.

An important feature of the Draft Bill is that it may be enforced in a foreign country, if the Indian government has entered into an agreement with such foreign country and its regulators.

The Draft Bill proposes major financial reforms, however, effective implementation will depend not only on strong legal and political backing and professional capabilities of the Resolution Corporation, but also on the leadership of the Resolution Corporation.

Objectives:

a) To comprehend the role of Resolution Corporation
b) To understand how the concept of 'Deposit Insurance' will prove to be blessing to consumers for certain categories of financial services.
c) To comprehend the utilization of funds of Resolution Corporation.
d) To understand the functioning of 'Covered Service Providers', i.e. low, moderate, material, imminent and critical.
e) To comprehend the initial hiccups (sector-wise) in implementation of the Financial Resolution and Deposit Insurance Bill.
f) To find out the lacunae, inconsistencies, scope of multiple interpretations or any other legal contradiction in clauses of bills.

Themes on which Research Papers are invited

- Caution to be exercised in utilization of Corporation Insurance Fund.
- Systematically Important Financial Institutions and its resultant impact on consumers due to their collapse.
- Resolution Corporation-Constitution of Board, Restrictions on future employment of members, Removal of members, Powers of Chairperson, Meetings of the Board, Members not to participate in meetings in certain cases, Vacancies etc. not to invalidate proceedings, Power to appoint officers and employees and Powers of officers.
- Corporation's Liability toward its depositors.
- Prevalence of similar forms of organization, i.e. Resolution Corporation in developed and emerging economies and key takeaways from them.
- Covered Service Providers
- The concept of Risk to Viability
- Financial viability of Deposit Insurance
- Impact on the consolidation of laws pertaining to certain categories of financial institutions including banks, insurance companies, financial market infrastructures, payment systems and other financial service providers (excluding individuals and partnership firms).
- The Role of NCLT once Financial Resolution and Deposit Insurance Bill sees the light of the day.
- The Role of Practicing Company Secretaries once Financial Resolution and Deposit Insurance Bill comes into existence.

Research Paper / Manuscript Guidelines

- Original papers are invited from Company Secretaries in employment & practice, Academicians, Research Scholars and other Professionals.
- 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.
- 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, with a maximum of 5000 words.
- The text should be typed double-spaced only on one side of A4 size paper in MS Word, Times New Roman, 12 font size with one-inch margins all around.
- 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.
- The following should also accompany the manuscripts on separate sheets: (i) An abstract of approximately 150 words with a maximum of five key words, and (ii) A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI and other membership on editorial boards and companies, etc.
- The research papers should reach the Competition Committee on or before 15th of December, 2016.
- Participants should email their research papers on the following email id: : ak.sil@icsi.edu

Further Information for Authors / Participants

- The decision of the Reviewing 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 as per ICSI Guidelines with other organizations and also in regular course of activities of ICSI. Further, the authors whose papers will be selected will receive Program Credit Hours (PCH).
- 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 except honorarium paid by ICSI. The participants / authors shall submit the Declaration Form to the institute at the time of submission of paper.
- The papers will be scrutinized by an Expert Committee.
- For any query / assistance, kindly contact at: ak.sil@icsi.edu
- Suitable Credit Hours will be given to the members of ICSI, as per the Credit Hour Guidelines of the institute. Participation certificates and prizes in kind will be given to other participants whose research papers will be selected.

CS Ahalada Rao V	CS Ashish Doshi	CS Ashish Garg	CS Vineet K Chaudhary
Chairman	Chairman	Chairman	Chairman
ICSI-Research Committee	ICSI-CCGRT Mgmt Committee	PCS Committee	Corporate Laws and Governance Committee

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

CENTRE FOR CORPORATE GOVERNANCE, RESEARCH & TRAINING (CCGRT)

ICSI – CCGRT organizes

PCH- 8

Two Days Non-Residential Research Colloquium on Indian Companies Act – Decoding unsolved Mystries

(Two Days of Aficionados Congregation)

Coverage Chap 11-13

NO BACKGROUND MATERIAL, ONLY INPUTS IN BRAIN & GUIDANCE OF CONNOISSEURS

The Trajectory

In its endeavor to provide impetus to research activities and taking it to the zenith, CCGRT is organizing the aforesaid program to explore into various Sections and Critical Aspects of the Chapters – 11 (Appointment and Qualifications of Directors); Chapters -12 (Meetings of Board and its Powers) and Chapter – 13 (Appointment and Remuneration of Managerial Personnel) of Companies Act, 2013.

The First Move-Group Study

The pre-lunch session of the first day of the workshop will focus upon the idea behind formation of the Research Circle and its role as a catalytic agent in conducting research on Companies Act, 2013 on the aforesaid three chapters.

Panel Speakers and Organisers will explain expansively the importance of the colloquium, the proposed outcome, its relevance for the Company Secretaries in practice and employment & Ignited Minds, i.e. our students pursuing Company Secretary course and the fruits it bear for CS fraternity.

The session will also throw light on the procedure or process to be embraced by the participants during the voyage of this workshop. Now all these can only be accomplished, if the activities are executed in a group, as the adage goes, “United We Stand and Divided We Fall”, so in journey of attaining excellence in research, it is imperative to march together. Keeping this crucial point in view, the first stage focuses upon group formation and significance of group study.

The Second Move: Brain Storming

Once the participants will be conversant with the theory behind formation of the Research Group, its goals and process to be adhered as a participant, the next move goes by the axiom, "Two Heads are Better than One". Yes, we are talking about brainstorming, as in today's dynamic Legal, Business & Economic environment, decision taken by one expert may prove detrimental to the interest of the organization and stakeholders. So, in view of the immense value brainstorming holds, this session will unite various groups (after formation of groups during the colloquium), who will engage into a detailed discussion on the assigned Chapters/Sections of the Companies Act, 2013. As various people have different perceptions and it consumes paramount time to reach the point of reconciliation. Keeping this in view, substantial time will be allocated for the mentioned session, so that all participants with the combination of 3Ds, 'Dedication, Determination & Discipline' give their optimum output. This session aims to throw light on significant issues covered in the three chapters, i.e. Chapters – 11, 12 & 13 of Companies Act, 2013.

The Third Move: Discussions with Debate

After participants discussed their viewpoints among their group members, the next stage involves holding in-depth discussion with other group members. This will assist in forming better views or in formulating refined and unsullied conclusions on the mentioned three Chapters of the Companies Act, 2013.

Since this session is a metamorphosis from a 'River to an Ocean', as all group members share their thoughts/opinions, it demands ample time and so not few hours rather full is allocated for the mentioned session.

This will be in the presence of Panelist.

Chapters of Indian Companies Act, 2013 for Symposium

Chapters	Title of the Chapters
11	Appointment and Qualifications of Directors
12	Meetings of Board and its Powers
13	Appointment and Remuneration of Managerial Personnel

All Participants should carry their own Laptop, Books, Bare Acts, and other relevant reading material.

Date, Time and Venue

Day & Date: Time: Friday, 16th of December, 2016, 10:00 a.m. to Saturday, 17th of December, 5:00 p.m.
Venue: ICSI-CCGRT, Plot No.101, Sector-15, Institutional Area, CBD-Belapur, Navi Mumbai-400614

Rs. 5500/- Per participant including Service Tax @15% for participants registering on or before 30th of November, 2016 (Early Bird Discount)

Rs. 6000/- Per participant including Service Tax @ 15% for participants registering on or before 11th December 2016 after that Rs 6500 per participate including service tax @15%

Above cost covers Conference kit, Lunch (2), Morning & Evening snacks (4), tea /coffee at ICSI-CCGRT.

Out station delegate- Hotel assistance will be provided separate at the requested nearest to ICSI- CCGRT on chargeable basis.

For Registration

Fees may be paid through Pay U link(link available on CCGRT website-Pay U Money Link
https://www.payumoney.com/customer/users/paymentOptions/#/5CC5C752DEA07B6F2813FB0136AE4CBF/ICSI-CCGRT/103967) / local / Par cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to: Dr. Rajesh Agarwal, Director, ICSI-Centre for Corporate Governance, Research & Training (ICSI-CCGRT), Plot No. 101, Sector-15, Institutional Area, CBD Belapur, Navi Mumbai- 400 614

Phone : 022-41021515/04, Fax: 022-27574384 ,email: programs.ccgrt@gmail.com;

Limited participants 50 only

(CS Ahalada Rao)
Chairman
ICSI Research Committee

(CS Makarand Lele)
Program Director
Council Member

(CS Ashish Doshi)
Chairman
ICSI-CCGRT Management Committee

3

LEGAL WORLD

Corporate Laws

CS: LMJ: 13:11:2016

SARASWATI INDUSTRIAL SYNDICATE LTD v. C.I.T. [SC]

Civil Appeal No. 91 of 1976.

K.N.Singh, T.K.Thommen & Kuldip Singh, JJ. [Decided on 04/09/1990]

Equivalent citations: 1991 AIR 70; 1990 SCR Supl. (1) 332; 1990 SCC Supl. 675; JT 1990 (4)353; (1991) 70 Comp Cas 184.

Income tax Act, 1961 read with Companies Act, 1956 – amalgamation of two companies - nature of amalgamation - whether after amalgamation the transferor company ceases to exist and loses its identity - Held, Yes.

Brief facts:

Though this case relate to income tax, the crucial and interesting question which arose, to decide the correctness or otherwise of the taxation, was "Whether after the amalgamation, the transferor company ceases to exist and loses its identity or not". We are concerned with this aspect of law laid down by the Supreme Court of India.

Indian Sugar and General Engineering Corporation (hereinafter referred to as 'the Indian Sugar Company') amalgamated with the appellant Saraswati Industrial Syndicate Ltd. Prior to the amalgamation, the Indian Sugar Company had been allowed expenditure to the extent of Rs.58,735 on accrual basis in its earlier assessment. The company had shown the aforesaid amount as a trading liability and the said trading liability was taken over by the appellant company. After amalgamation, the appellant company claimed exemption on the amount of Rs.58,735 from income tax for the assessment year 1965-66 on the ground that the amalgamated company was not liable to pay tax under Section 41(1) of the Income Tax Act 1961 as the expenditure had been allowed to the erstwhile Indian Sugar Company which was a different entity from the amalgamated company. The Income Tax Officer disallowed the appellant's claim for exemption. The assessee filed appeal before the Appellate Assistant Commissioner who confirmed the order of the Income Tax Officer. The assessee, thereafter, preferred appeal before the Income Tax Appellate Tribunal, which allowed the appeal holding that after the amalgamation of the Indian Sugar Company with the assessee company the identity of the amalgamating company was lost and it was no longer in existence, therefore, the assessee company was a different entity not liable to tax on the aforesaid amount of Rs.58,735/. The High Court reversed this order. Hence this appeal.

Decision: Appeal allowed.

Reason:

The question is whether on the amalgamation of the Indian Sugar Company with the appellant company, the Indian Sugar Company continued to have its entity and was alive for the purposes of Section 41(1) of the Act. The amalgamation of the two companies was effected under the order of the High Court in proceedings under Section 391 read with Section 394 of the Companies Act. The Saraswati Industrial Syndicate, the transferee company was a subsidiary of the Indian Sugar Company, namely, the transferor company. Under the scheme of amalgamation the Indian Sugar Company stood dissolved on 29th October, 1962 and it ceased to be in existence thereafter. Though the scheme provided that the transferee company the Saraswati Industrial Syndicate Ltd. undertook to meet any liability of the Indian Sugar Company which that company incurred or it could incur, any liability, before the dissolution or not thereafter. Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation or scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England, 4th Edition Vol. 7 Para 1539. Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity.

In M/s. General Radio and Appliances Co. Ltd. & Ors. v. M.A. Khader (dead) by Lrs., [1986] 2 S.C.C. 656, the effect of amalgamation of two companies was considered. This Court in appeal held that under the order of amalgamation made on the basis of the High Court's order, the transferor company ceased to be in existence in the eye of law and it effaced itself for all practical purposes. This decision lays down that after the amalgamation of the two companies the transferor company ceased to have any entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets. In the instant case the Tribunal rightly held that the appellant company was a separate entity and a different assessee, therefore, the allowance made to Indian Sugar Company, which was a different assessee, could not be held to be the income of the amalgamated company for purposes of Section 41(1) of the Act.

The High Court was in error in holding that even after amalgamation of two companies, the transferor company did not become non-existent instead it continued its entity in a blended form with the appellant company. The High Court's view that on amalgamation there is no complete destruction of corporate personality of the transferor company instead there is a blending of the corporate personality of one with another corporate body and it continues as such with the other is not sustainable in law. The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. However, their respective rights or liabilities are determined under scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective.

In view of the above discussion, we agree with the Tribunal's view that the amalgamating company ceased to exist in the eye of law, therefore the appellant was not liable to pay tax on the amount of Rs.58,735. The appeal is accordingly allowed and we set aside the order of the High Court and answer the question in favour of the assessee against the Revenue. There will be no order as to costs.

LW: 67:11:2016

TIN PLATE DEALERS ASSN. P. LTD. & ORS v. SATISH CHANDRA SANWALKA & ORS [SC]

Civil Appeal No. 589 of 2010 with Civil Appeal No.599 of 2010

Ranjan Gogoi & Prafulla C. Pant, JJ. [Decided on 07/10/2016]

Companies Act, 1956- various acts of oppression & suppression- Supreme Court upholds the CLB order.

Brief facts:

The appellant company consisted of two groups viz "Gupta Group" appellants in CA 589/2010 and "Sanwalka Group" who are the appellants in CA 599/2010. These two appeals are cross appeals. The dispute relate to the management control of the company. Both the appeals being against the common judgment and order of the High Court of Calcutta dated 14th September, 2005 were heard together and are being dealt with by this common order.

Sanwalka group filed a petition before the CLB alleging that Gupta group had come into the power of the company by actions of commission and omission such as forfeiture of preference shares issued to Sanwalka group, increasing the authorised capital, issuing bonus shares without notice to Sanwalka group, removing two members of the Sanwalka group from the board of directors.

The eventual reliefs prayed for in the Company Petition in the light of the averments made in the said petition and the supplementary applications were for: (i)restoration of the names of the members of the Sanwalka Group in the register of members of the company;(ii)cancellation of the allotment of bonus shares;(iii) cancellation of the issue and allotment of 25000 partly paid up ordinary equity shares to the Gupta Group;(iv)cancellation of 3065 equity shares to the holders of the 3065 preference shares;(v) cancellation of the lease agreement in respect of the industrial plot and restoration of the names of the concerned members of the Sanwalka Group as Directors of the Company.

The CLB by its order dated 01.03.2001 disposed of the petition by granting majority of the reliefs to Sanwalka group.

Aggrieved by the aforesaid order of the CLB with regard to the maintainability of the company petition, issue of bonus shares and 25,000 ordinary equity shares and also the re-induction of the members of the Sanwalka Group in the Board of Directors, the Gupta Group appealed to the High Court. Challenging the decision of the Board insofar as the issue of 3065 preference shares and the lease in respect of the industrial plot is concerned, the Sanwalka Group also had filed a separate appeal. The High Court, by its impugned order dated 14.9.2005, dismissed both sets of appeal leading to the institution of the present appeals before the Supreme Court.

Decision:Civil Appeal No.589 of 2010 filed by the Gupta Group is dismissed whereas Civil Appeal No.599 of 2010 filed by the Sanwalka Group is disposed of with directions.

Reason:

Notwithstanding the very elaborate and persuasive arguments made by both sides a resolution of the above question is possible by a close look of the share certificates issued to the members of the Sanwalka Group after allotment of the shares in question following the forfeiture of the same in the hands of M/s. Gupta Brothers. Some of the share certificates in question are on record. A reading thereof discloses that the same constitute a fresh and independent allotment of the shares by reference to their distinctive numbers specified therein. The certificates do not contain any stipulation or condition that the same are being held either on account of a third person or as beneficiaries on behalf of any third person. The shares in question were allotted on payment of Rs.35 being the application money (Rs.25) and allotment money (Rs.10). A further amount of Rs.10/- per share was paid against the first call made on 7.8.1986. Therefore, the share certificates, *ex facie*, do not support any of the contentions advanced on behalf of Gupta Group, details of which have been noticed herein above. If the shares were held by the members of the Sanwalka Group in their own right without any connection to the erstwhile/forfeited shares held by M/s. Gupta Brothers, the second question arising i.e. failure to respond to the call notice dated 5.1.1991 really does not arise. Be that as it may, the said notice required the members of the Sanwalka Group to pay the unpaid value of the forfeited shares (which coincidentally was also Rs.55/- per share i.e. same as the unpaid amount of the shares at the time of forfeiture when held by M/s. Gupta Brothers) along with interest. In this regard it was found by the CLB as well as the High Court that even issue of notice of the call in terms of Section 53 of the Act had not been proved by the Gupta Group.

Not only the call notice dated 5.1.1991 had not been proved to have been issued in the matter required under Section 53 of the Act, the notice also does not mention the consequences of non-payment i.e. forfeiture. Also the fastening of the liability on the Sanwalka Group to pay the unpaid amount of the forfeited shares along with interest is plainly contrary to the provisions of Article 18 of the Articles of Association. Besides, the date of the forfeiture also is not clear though it appears that in a Board Meeting held on 2.8.1995 a decision was taken to restore the said shares to M/s. Gupta Brothers. The reason for the said decision appears to be to comply with an order of attachment of the shares passed earlier by the Civil Court. All these would demonstrate the apparent falsity of the claim now made that the forfeiture was due to failure of the Sanwalka Group to comply with the terms of the call notice dated 5.1.1991.

If the primary question i.e. maintainability of the company petition has to be answered in favour of the Sanwalka Group, as we are inclined to, the other issues highlighted in the earlier part of this order would now have to be considered.

There is no denial of the fact that notice of the E.O.G.M. dated 5.7.1994 was not given to the members of the Sanwalka Group though they, admittedly, continued to be members of the company on the date of the meeting. It is pursuant to the decision taken in the said E.O.G.M. dated 5.7.1994 to raise the share capital of the company from Rs.10 lakh to Rs.5 crores that the other decisions with regard to bonus shares; the issue of 25,000 ordinary equity shares and the conversion of preference shares to equity shares were made subsequently. Such notice is mandatory under Section 172(2) read with Section 41 of the Act. This is, *ex facie*, apparent from the reading of the said provisions of the Act. Reference to the elaborate case laid before us on this score would, therefore, not be required.

Specifically, so far as the issue of bonus shares is concerned, the arguments laid down before us would require a consideration whether Section 205(3) of the Act, particularly, the proviso thereto permits issue of bonus shares out of revaluation reserves of a company. The further question that would arise is the correct interplay between the provisions of the Act and those contained in the Articles of Association of a Company. So far as the issue with regard to utilization of reserves arising from revaluation of assets for the purpose of issuing fully paid bonus shares is concerned, the same has been held to be permissible in Bhagwati Developers v. Peerless General Finance & Investment Co. & Ors. (2005) 6 SCC 718.

However, it has to be noticed that in Bhagwati Developers (supra) the Articles of Association (Article 182) specifically permitted/ contemplated such a course of action. In the present case, the Articles of Association of the Company do not empower the Directors to so act. No such situation i.e. issue of bonus shares out of revaluation reserve is contemplated. When the Articles of the Company do not confer any such power in the Board exercise thereof on the basis that the Act so provides would be impermissible. Enabling provisions under the Act would require incorporation in the Articles of a company.

That apart, the resolution of the Board dated 5.7.1994 pursuant to which bonus shares were issued indicates that the real purpose for issue of the bonus shares is to raise funds which were badly needed by the company at that point of time. On the very face of it, the purpose indicated in the resolution is a sham and a pretence inasmuch as revaluation of the existing assets of the company and issuance of bonus shares against such revaluation could not and did not generate any additional funds as the additional capital available is purely fictional or notional. A self-serving interest of the Gupta Group (who received all the bonus shares issued) in issuing the bonus shares, therefore, is evident.

So far as the issue of 25,000 equity shares is concerned, there can be no manner of doubt that the decision of the Board to issue the said shares has to be tested in the light of the wide powers of the Board to act in such matters as has been laid down by this Court in Needle Industries (India) Ltd. & Ors. v. Needle Industries Newey (India) Holding Ltd. & Ors. (1981) 3 SCC 333. The power of the Board of Directors of the Company to issue fresh shares must always be viewed as an adjunct of its extensive powers under the Act and the bona fides of such an exercise cannot be called into question by construing the power to issue fresh shares to be limited by any particular purpose or purposes. This was the view of the Company Law Board also. However, the same would not detract from the fundamental principle of fair play that is to be expected from the Board of Directors in making a fair and proportionate distribution/allotment of such fresh shares. The direction of the Company Law Board upheld by the High Court, namely, that allotment from the aforesaid 25,000 newly issued ordinary equity shares should be proportionate to the shareholding of the two groups taking the members of the Sanwalka Group as having continued to be members of the company, will, therefore, not require any interference.

Insofar the issue of 3065 ordinary equity shares in lieu of 3065 preference shares is concerned, the CLB and the High Court had thought it proper to leave the matter for a just determination by the Delhi High Court in view of the suit filed by the Sanwalka Group contending that the said shares had ceased to exist in the year 1967 and therefore no equity shares could have been issued in lieu of the said preference shares as has been done. The suit in question which is of the year 1996 may take some further time for resolution. In such circumstances, the apprehension of the Sanwalka group is that if the equity shares issued against the said preference shares are allowed to remain alive and valid the balance would still tilt in favour of the Gupta Group.

It is not known whether the High Court had been requested by the parties to make an interim arrangement and if so the result thereof. However, before us, the Gupta Group has sought to contend that the above apprehension of the Sanwalka Group is unfounded. It is claimed that it is not correct that by virtue of the conversion of the 3065 preference shares into equity shares the Gupta Group has emerged in the majority for the first time. Even prior to such conversion, the Gupta Group was in a majority inasmuch as the preference shares always carried a right to vote. Therefore, even on the basis of the original shareholding, the Gupta Group was in majority.

The aforesaid Articles must necessarily have to be understood in the light of the provisions of Section 87 particularly those contained in sub- Section (2). The meaning sought to be given to Articles 20, 21 and 22, extracted above, namely, that every share holder including the holder of a preference share has a right to vote cannot be readily accepted. The resolution of the Board dated 5.7.1994 relating to the conversion of preference shares into equity shares proceeds on the basis that dividends in respect of the 3065 shares have not been paid and in lieu thereof the shareholders had agreed to receive an equivalent number of equity shares. The above statement of fact is difficult to accept. Neither is the period during which dividends had not been paid is specified, nor is the amount due indicated. No material has been laid to show that the 3065 equity shares represent a fair value of the dividends claimed to be unpaid. What cannot also be lost sight of is that the preference shares in question were held by the Gupta Group who was in control of the company at that point of time. A number of self-serving decisions by the Gupta Group and its conduct of the business of the company in a manner detrimental to the interest of the company, as discussed hereinabove, would make it extremely perilous to rely on the version available in the resolution of the Board for allotment of 3065 equity shares in place of the preference shares in question. In the above circumstances it would be just and proper to strike down the conversion of the 3065 preference shares into equity shares and revert the preference shares to its earlier status to be dealt with in the future in accordance with law. This is, of course, subject to the orders of the Delhi High Court in the appeal pending before it.

If the forums below have left the above matter for a just determination in an Extra Ordinary General Meeting of the Company, in view of the directions hereinabove, we do not consider it necessary to deal with the said aspect of the case any further.

Before parting, certain subsidiary issues raised on behalf of the parties may be briefly noticed if only to make the discussion complete. The failure of the High Court to frame a substantial question of law to hear the appeal before it can hardly invalidate the order passed. The order of the High Court is an order of affirmation; further there is no provision in Section 10F of the Act which is akin to the provisions contained in Section 100 (4) of the Code of Civil Procedure, 1908.

The argument that having regard to the conduct of the Gupta Group in managing the affairs of the Company and all decisions taken being in the best interest of the Company, no case for winding up is made out so as to justify the exercise of powers under Section 397/398 of the Act by the CLB, would hardly require a detailed consideration in view of the specific findings of the High Court in this regard, which are wholly adverse to the Gupta Group. The said view and the conclusions reached have our approval, as already indicated. Besides, the High Court in the order under challenge has taken into account that apart from the industrial plot in question the Company has no subsisting business and that the terms of the lease entered into by the Gupta Group in respect of the said property are wholly adverse to the Company's interest.

The question whether a single act of oppression would enable the CLB to intervene or oppression must be the cumulative result of continuous acts should not require any debate in the facts of the present case which demonstrate a series of unacceptable decisions and actions on the part of the Gupta Group. In the last resort, satisfaction that oppression has been committed has to be reached in the facts of each case.

Competition Laws

LW: 68:11:2016

PICASSO ANIMATION PRIVATE LTD v. PICASSO DIGITAL MEDIA PVT LTD [CCI]

Case No. 75 of 2016

D.K.Sikri, S. L. Bunker, Sudhir Mital, Augustine Peter, U. C. Nahta, &

G. P. Mittal [Decided on 25/10/2016]

Competition Act,2002- abuse of dominance-allegations as to violation of copyright in brand name "Picasso"- whether constitutes abuse of dominance- Held, No.

Brief facts:

The Informant was mainly aggrieved by the use of its brand name "Picasso" by OP as well as OP's claim to be associated with Maharishi Group. The Informant had alleged that this illegal conduct of OP has caused loss of goodwill and business to the Informant. The Informant had also alleged that the said conduct of the OP amounts to abuse of dominant position by contravening the provisions of Section 4 of the Act.

Decision:Complaint rejected.

Reason:

After a careful perusal of the information and material available on record, the Commission notes that both the Informant and OP are engaged in the business of offering various animation related services which includes offering certification and diploma courses in animation. As per the OXFORD dictionary, 'animation' is a technique of photographing successive drawings or positions of puppets or models to create an illusion of movement when the film is shown in sequence. As per the CAMBRIDGE dictionary, 'animation' means moving images created from drawings, models, etc. that are photographed or created by the computer. There is no certain definition of the term but it can be safely inferred that "animation" generally means and includes drawings and moving images created through photography or with the help of computer. Animation courses are not generally substitutable with other vocational courses offered by institutions in view of their peculiarity. The selection of any course is a personal choice of the candidates which is based on various factors such as individual taste, inclination and interest. Further courses also differ on the fee charged. In view of the above mentioned characteristics, vocational course such as animation is not generally substitutable with other vocational courses viz., web designing, internet marketing, electrical and electronics, hardware and software repair and maintenance, mobile repair, etc. and other streams or courses such as, law, arts, hotel management, finance, banking, insurance, engineering or other courses. Thus, the relevant product market is "Market for providing animation related education services".

The Commission observes that there are many colleges and institutions which are providing degrees, certifications and diploma courses in the field of animation at pan India level. Some of the institutions are even providing online courses. Further, the conditions of competition in animation related education services are homogenous throughout India in the absence of any evidence to the contrary. Hence, the relevant geographic market is the territory of India.

In view of the above discussion, the Commission holds that the relevant market in the present matter is "Market of providing animation related education services in India".

It is further noted that apart from the OP, there are many other institutions providing online and offline trainings in animation courses. Prominent amongst them are Arena Animation, Maya Academy of Advanced Cinematic (MAAC), Zee Institute of Creative Arts (ZICA), Global School of Animation, Whistling Woods International Institute, Tekno Point Multimedia, Apeejay Institute of Design, Toonz Webel Academy (TWA) and Massco Media. The relevant market seems to be quite competitive with a number of institutions offering animation courses to the students. Though the market shares of these institutions are not available in the public domain, however, it can safely be inferred that the OP does not have dominance in the relevant market in view of the competitive scenario and owing to the presence of many reputed institutions.

In the absence of dominance of the OP in the relevant market, there is no need to look into the allegations regarding abuse of dominance in contravention of the provisions of Section 4 of the Act. Further, we do not find any breach under Section 3 of the Act albeit not being alleged by the Informant.

The Commission therefore, observes that the dispute primarily relates to the usage of the brand name "Picasso" and the Informant is aggrieved by the violation of copyright of its registered title by the OP. As per the information, there are a series of litigations between the parties to claim the ownership of the title 'Picasso' at various forums and courts. This fact is corroborated upon perusal of the annexures attached with the information. The Informant has also admitted that in the capacity of the holder of registered brand name/logo namely 'Picasso', it has filed necessary applications before respective authorities for taking action against the OP under criminal and civil proceedings. The allegations noted above also do not indicate any competition law breach in any manner.

Tax Laws

LW: 69:11:2016

DUGAR TEA INDUSTRIES PVT.LTD v. STATE OF ASSAM & ORS [SC]

Civil Appeal No. 2806 of 2009 with Civil Appeal No.3246 of 2009, Civil Appeal Nos.3247-3253 of 2009, Civil Appeal Nos.3254-3262 of 2009 & Civil Appeal Nos.3264-3266 of 2009

Anil R. Dave & Shiva Kirti Singh, JJ. [Decided on 06/10/2016]

Assam Industries (Sales Tax Concession) Act, 1987 – tax exemption – blending of tea- whether 'manufacture' enabling to exemption- Held, No.

Brief facts:

As the legal issues involved in all of the aforesaid appeals are same, for the purpose of convenience, we have taken facts from Civil Appeal No. 2806 of 2009. After some modernisation, it commenced its production in April, 1988. The case of the appellant-Company was with regard to availing sales tax concession declared by the respondent-State. Before going through the relevant provisions, we may record the fact that the respondent-State had notified its Industrial Policy in 1982, which had thereafter been revised in 1986. The said Policy had been framed so as to increase economic and industrial growth in the State.

In pursuance of the aforestated Policy, the respondent-State enacted Assam Industries (Sales Tax Concession) Act, 1987 (hereinafter referred to as "the Act"). By virtue of the provisions of the Act, certain new industries, subject to certain conditions, were to be given exemption from payment of sales tax but the exemption was not to be given in respect of certain commodities. The case of the appellant-Company was that the Company was made eligible for certain concessions in pursuance of the Industrial Policy framed by the Government, which had been declared in 1982, but ultimately the benefits had been denied to the company under the Act.

The reason for not giving the benefits under the Act, as stated by the respondent- Authorities, was that 'tea' was a raw material, in respect of which no exemption was to be given and the appellant-Company was merely blending and packing tea and was not having any manufacturing activity.

Decision: Appeals dismissed.

Reason:

Upon perusal of the record and the law laid down by this Court in the light of the facts of the case, we are of the opinion that the view expressed by the Courts below cannot be said to be incorrect.

In view of Rule 2 (f) of Assam Industries (Sales Tax Concession) Rules, 1988, it is crystal clear that tea is not to be included in "raw material" and therefore, no exemption could have been claimed by the Appellant Company in respect of 'tea' as a raw material for purchase as well as sale of tea. It is also pertinent to note that the appellant had earlier preferred Civil Rule No.4162 of 1991 before the High Court challenging validity of the afore stated Rule. The learned Single Judge, while rejecting the petition, vide order dated 17th August, 1988 held that Rule 2(f) of the 1988 Rules was legal and valid and the plea of promissory estoppel raised by the appellant was also not accepted. Against the said judgment, no appeal was filed by the appellant and therefore, the said issue had attained finality.

Another important thing is with regard to certificate of authorisation. As stated hereinabove, it is an admitted fact that no certificate of authorisation, as provided under the Act, had ever been granted to the appellant-Company and therefore, in our opinion, the courts below were absolutely right to the effect that the appellant was not entitled to any sales tax exemption.

So far as the averments with regard to estoppel are concerned, it is a settled legal position that there cannot be any estoppel against law. When there is a legal provision to the effect that when tea is used as raw material, no tax exemption would be available under the provisions of the Act, none can claim tax exemption in respect of sales tax payable on purchase or sale of tea. It is true that an eligibility certificate had been issued to the appellant-Company in pursuance of the 1986 Incentive Scheme of Government of Assam but when the said Scheme was given a statutory form under the Act, 'tea' had been excluded from the definition of raw material and therefore, on the basis of the eligibility certificate issued under the 1986 Incentive Scheme of Government of Assam, the appellant cannot claim any benefit. It is also pertinent to note that the respondent-Authorities have rightly held that the appellant was not in the business of 'manufacturing' tea but was merely blending and packing tea, which does not amount to 'manufacturing' of tea. We find substance in the said stand taken by the respondent-Authorities as the said view has been fortified by a decision of this Court in Commissioner of Income Tax, Kerala v. Tara Agencies 2007 (6) SCC 429.

For the afore stated reasons assigned by the State in the impugned order passed as well as in the judgments delivered by the High Court, we cannot find fault with the impugned judgment and therefore, these appeals deserve dismissal.

Industrial & Labour Laws

LW: 70:11:2016

GEN SECRETARY, COAL WASHERIES WORKERS UNION, DHANBAD v. EMPLOYERS IN RELATION TO MANAGEMENT OF DUGDA WASHERY OF M/s.BCCL [SC]

Civil Appeal No. 9278 of 2014

T.S. Thakur, A.M. Khanwilkar & D.Y. Chandrachud, JJ. [Decided on 23/09/2016]

Industrial Disputes Act, 1947- Industrial tribunal awards reinstatement and back wages-High court allows lump sum compensation and rejects reinstatement-whether correct- Held, Yes.

Brief facts:

The appellant raised an industrial dispute which was referred to the Central Government Industrial Tribunal at Dhanbad, for adjudication. The Industrial Tribunal vide award dated 17th June 1997, answered the reference in favour of the appellant and directed the Management to reinstate and regularize the concerned 35 workmen w.e.f. 1st July 1990, with payment of 30% full back wages. The High Court on appeal by the respondent- Management affirmed the view taken by the Tribunal. The respondent carried the matter in appeal by way of Letters Patent Appeal before the Division Bench.

The Division Bench modified the award by refusing the reinstatement and allowing Rs.50,000/- compensation, in addition to whatever has been paid to the workmen. Hence this appeal by workmen.

Decision: Appeal disposed of.

Reason:

It is not in dispute that the Management has paid wages to the workmen in terms of the order passed on an application under Section 17(B) of the Industrial Disputes Act, 1947 during the pendency of proceedings before the High Court. The question is: whether an amount of Rs.50,000/- determined by the Division Bench of the High Court to be paid to the workmen in addition to whatever amount has been paid to them under Section 17(B) of the Industrial Disputes Act, 1947 is adequate.

Considering the arguments of both sides, in our opinion, the Division Bench was right in observing that, in the facts of the present case, an order of reinstatement must be eschewed, being inequitable. The workmen, however, must be compensated in lieu of reinstatement. Applying the principle underlying the decisions of this Court in Ruby General Insurance Co. Ltd. v. P.P. Chopra (1969) 3 SCC 653 and the recent case of Delhi International Airport (P) Ltd. v. Union of India (2011) 12 SCC 449, in our considered opinion, interest of justice would be met by enhancing the amount of compensation in lieu of reinstatement/absorption and regularisation quantified at Rs.1,50,000/-(Rupees One Lakh Fifty Thousand) to each workman. For, the workmen have already received wages from October 2004 to January 2012 in terms of the order under Section 17(B) of the Industrial Disputes Act, 1947 without any work assigned to them. The respondent paid minimum wages to the concerned workmen during the relevant period as the workmen were not able to produce any document in support of their last drawn wages.

This lump sum compensation amount of Rs.1,50,000/- to each workmen would be in full and final settlement of all the claims of the concerned workmen and substitute the order passed by the Tribunal to that extent, without any further enquiry as to whether the concerned workmen was gainfully employed during the relevant period or not.

The respondent shall deposit the amount payable in terms of this order to the workmen before the Central Government Industrial Tribunal, Dhanbad, within three months from today, failing which, shall be liable to pay interest thereon at the rate of 10% p.a. from today till the amount is deposited or paid to the concerned workmen, whichever is earlier. The Central Government Industrial Tribunal, Dhanbad, shall cause to disburse the amount to the concerned workmen subject to verification.

LW: 71:11:2016

DELHI TRANSPORT CORPORATION v. RAJENDER KUMAR [DEL]

LPA 250/2016

Indira Banerjee & V. Kameswar Rao, JJ. [Decided on 30/ 09/2016]

Dismissal of workman on the ground of unauthorised absenteeism- whether dismissal tenable – Held, Yes.

Brief facts:

The respondent-Workman was appointed as a sweeper/cleaner with the appellant- Corporation. A charge sheet was issued to the respondent for availing leave without pay for 118 days between the period November 1987 to October 1988. The charge sheet stated that the aforesaid act of the respondent amounted to misconduct within the meaning of para 4(ii) and 19(h) of the Standing Orders governing the conduct of DTC employees. The charge sheet also stated that the respondent's past record would also be taken into account at the time of passing of the order. The past record of the respondent showed that he was punished with stoppage of one increment with cumulative effect on three occasions for availing excessive leave. After holding disciplinary proceedings, the workman was dismissed from services on the ground of absenting without authorised leave. The respondent raised an industrial dispute. The Labour Court passed an Award in favour of the respondent. The appellant challenged the said Award before the High court and the single judge dismissed the appeal. Hence this second appeal under the Letters Patent.

Decision:Appeal allowed.

Reason:

Having heard the learned counsel for the parties, the only question arises for consideration is whether against 118 days leave 41 days was against medical certificates; the submission of the leave application for some period and no leave application for 37 days, and the charge in the charge sheet that the respondent had taken 143 days excessive leave in the year 1986 and 103 days leave in the year 1987 and out of four adverse entries, three adverse entries are about availing of leave without pay, the Labour Court could have interfered with and set aside the penalty of removal imposed on the respondent as upheld by the learned Single Judge.

The position of law is well settled in the case of DTC v. Sardar Singh (2004) 7 SCC 574, the Supreme Court has held that when an employee absents himself from duty, even without sanctioned leave for a very long period, it *prima facie* shows lack of interest in work. Para 19(h) of the Standing Orders relates to habitual negligence of duties and lack of interest in the Authority's work. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and has exhibited lack of interest in the employer's work. Conclusion regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when the same is unauthorized. It also held that an order passed treating absence as leave without pay after passing an order of termination is only for the purpose of maintaining correct record of service. It relied upon its judgment in the case of State of M.P v. Harihar Gopal (1969) 3 SLR 274 (SC).

The charge in the case in hand, is absence without obtaining leave in advance. The plea of the respondent was, the leave he had taken was for his as well as his children's illness. Against 118 days, medical certificates for 41 days was submitted, still 77 days of leave was unaccounted for. It is not the case of the respondent that the leave for those days was taken in advance. This sufficiently reveals that the conduct of the employee is nothing but irresponsible and can hardly be justified and in view of the Standing Orders, unauthorized leave can be treated as misconduct.

On a perusal of para 4 of the Standing Orders, it is clear, that it shows the seriousness attached to habitual absence. Clause (i) shows, there is a requirement for prior permission. Non-observance of clause (i) renders the absence unauthorized.

From the order of the labour court, above, it is noted that the Labour Court has only noted that the medical certificates for the period June 11, 1988 to June 20, 1988; August 10, 1988 to September 12, 1988 and October 1988 were produced. The total period is of 41 days, as has come on record. The Labour Court also notes that, against 37 days, the workman had not submitted any leave application. That apart, the Labour Court notes that for the rest of the period, leave applications were given by the respondent. Mere submitting the leave application would not meet the requirement of para 4 of the Standing Orders. It is the case of the respondent that he had taken leave for his children's illness as well. Assuming that the medical certificates submitted was for his illness, surely for the illness of his children, he could have sought prior permission from the Authorities. In any case, for against 37 days, there was no leave application. Hence, to that extent charge stands proved. In other words, the conclusion of the Labour Court that the charges as framed by the Management are not proved completely before the Court, may not be tenable. Hence, the case of the respondent gets covered under para 4 of the Standing Orders. The past conduct of the respondent, also reveals absence for a very long duration of 143 days (1986), 103 days (1987) and three adverse entries are about availing leave without pay. The circumstances does suggest that the respondent was guilty of the misconduct under para 4 and 19 of the Standing Orders and the case in hand is squarely covered by the law laid down by the Supreme Court in the case of Sardar Singh (supra).

Further, the position of law with regard to Section 11A of the Industrial Disputes Act, 1947 is very clear, inasmuch as the Labour Court may interfere with the quantum of punishment awarded by the employer but ordinarily discretion exercised by employer should not be interfered with. It is not a case where the penalty of removal is unjustified. The Labour Court could not have set aside the order of removal.

Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials.

The Tribunal proceeded in all these cases on the basis as if the leave was sanctioned because of the noted leave without pay. Treating as leave without pay is not same as sanctioned or approved leave. It is a case where the Labour Court has failed to follow the law laid down by the Supreme Court the Award is an erroneous exercise of jurisdiction vested in it. Consequently, the learned Single Judge has erred in upholding the order of the Labour Court.

LW: 72:11:2016

M/S SILVER TOUCH ENTERPRISES v. RADHA SHARMA & ANR [DEL]

FAO 212/2016

Sunil Gaur, J. [Decided on 28/09/2016]

Employee's Compensation Act, 1923- retired workman dies in the employers premises- commissioner awards compensation- whether tenable-Held, No.

Brief facts:

The appellant is the employer, who has been directed to pay compensation of Rs.6,67,984/- with interest in proceedings under the Employee's Compensation Act, 1923 while holding that deceased had died during the course of employment. The challenge to the impugned order of 4th March, 2016 in this appeal is on the ground that three months prior to her death, Smt. Laxmi Lachho had resigned and on the day of incident, she had come to appellant's premises to visit her friend and she had died natural death whereas the case of the respondents-claimants is that due to the work pressure, the deceased was under tremendous pressure and because of the excessive stress and strain of her employment, she had died at her work place.

Decision: Remanded for fresh adjudication.

Reason:

Upon hearing and on perusal of the impugned order, I find that even the issues have not been correctly reproduced in the impugned order, what to talk of the findings on the issues. The plea of resignation has not been dealt at all in the impugned order. In the considered opinion of this Court, the impugned order discloses utter non-application of mind and so, it deserves to be set aside with direction to the Commissioner, under The Employee's Compensation Act to permit the parties to lead evidence on the issue of resignation and thereafter return the finding about existence of relationship of employer-employee on the date of incident. Since, it is the case of appellant that deceased had come to the premises of the appellant to meet her friend, therefore, the necessary ingredient of 'accident taking place during the course of employment' has to be considered by the trial court in right perspective, after the evidence is led by the parties.

In view of the aforesaid, the impugned order is hereby set aside and the matter is remanded back to the Commissioner, under the Employee's Compensation Act to proceed further in terms of the directions issued in this judgment.

In view of mandate of Section 25A of the Employee's Compensation Act, 1923, the Commissioner under aforesaid enactment shall make all endeavours to decide the claim petition within the time stipulated in the aforesaid provision. The amount deposited by the appellant be refunded forthwith.

General Laws

LW: 73:11:2016

JET AIRWAYS (INDIA) LTD v. DHANUKA LABORATORIES LTD [DEL]

RSA No.295/2016

Valmiki J Mehta, J. [Decided on 30/09/ 2016

Carriage By air Act, 1972 - liability thereunder- carrier fails to deliver the consignment- goods appeared to have been stolen- carrier fails to lead evidence- whether carrier is liable for the loss- Held, Yes.

Brief facts:

The appellant/defendant is a carrier of goods. Respondent/plaintiff received an order from a buyer in Bangladesh, which was executed by the respondent/plaintiff by shipping the goods by air through the appellant/defendant. The goods on being handed over to the appellant/defendant for transportation were thereafter further transferred by the appellant/defendant to its agent for carriage/transportation viz M/s Biman Bangladesh Airlines. The goods did not reach the consignee of the Airway bill and M/s Biman Bangladesh Airlines issued a short landing letter.

The respondent/plaintiff thereafter filed the subject suit. The respondent/plaintiff led evidence in support of its case by proving the value of the goods transported as also the wilful misconduct/misappropriation of goods by the appellant/defendant through its agent carrier, but the appellant/defendant has led no evidence whatsoever in the trial court. Therefore the suit had to be and was decided only as per the evidence which was led by the respondent/plaintiff. The trial court decreed the suit and in the first appeal the judgement of the trial court was confirmed.

The singular issue to be decided in this second appeal is as to whether the liability of the appellant/defendant is limited as per Rule 22 of the Rules under the Carriage by Air Act, 1972 or whether the appellant/defendant cannot get benefit of this Rule 22 of limited liability because the appellant/defendant is guilty of wilful misconduct as provided in Rule 25 of the said Rules and which provision overrides the provision of Rule 22.

Decision: Appeal dismissed.

Reason:

It is settled law that benefit of the provision of the limited liability of a carrier such as the appellant/defendant under Rule 22 is subject to Rule 25 and which states that the benefit of limited liability cannot be given to a carrier in case the carrier is found guilty of wilful misconduct or conduct equivalent to wilful misconduct. A statement by respondent/plaintiff that goods have been misappropriated is not only a case of wilful misconduct but such act is even more than the case of wilful misconduct, and it is this case of the respondent/plaintiff which was proved that on account of the goods not having been traced and thus in fact the goods have been misappropriated. Obviously, misappropriation cannot be by a legal entity such as the appellant/defendant or its agent airline company, but by its employees or agents who have been dealing with the goods. There are judgments of various courts which hold that once goods are not traced and there is an averment of the same being misappropriated, the case then falls under Rule 25 that there is wilful misconduct or conduct equivalent to wilful misconduct. One such judgment of this Court is in the case of Vij Sales Corporation v. Lufthansa, German Airlines AIR 2000 Del 220. Of course, whether or not there is wilful misconduct would depend on facts of each case with, of course the onus being really on the carrier such as the appellant/defendant who is in control and possession of the goods to show that there is no wilful misconduct because a consignor such as the respondent/plaintiff can only step into the witness box and state so in the examination-in-chief. It is also required to be noted that similar principle with respect to strict liability of a carrier exists under the Carriers Act, 1865 and therefore onus is really upon the appellant/defendant/carrier to show that there is no wilful misconduct. The judgment under the Carriers Act holding strict liability of the carrier is the judgment of the Supreme Court in the case of Nath Bros. Exim International Ltd. v. BEST Roadways Ltd. (2000) 4 SCC 553 and which specifies the strict liability of a carrier and how a carrier cannot take benefit of a clause of limited liability.

In my opinion, once the appellant/defendant has admittedly led no evidence whatsoever, and the respondent/plaintiff has led evidence proving the value of the goods and the case as set up in the plaint, the appellant/defendant cannot be said to have discharged the onus upon it that there was no wilful misconduct or misappropriation as was the case of the respondent/plaintiff. Without leading evidence and merely by cross-examination of the witnesses of the respondent/plaintiff/shipper/consignor, a carrier cannot say that it has discharged its onus of proof because onus of proof is discharged by leading positive evidence, with the aspect that positive evidence also ordinarily does not absolve a carrier because liability of a carrier is a strict liability equal to that of an insurer.

Therefore, once the present case is laid out by the respondent/plaintiff as per the plaint as a case falling as a case of wilful misconduct or equivalent to wilful misconduct i.e. misappropriation of goods, the case will have to be decided as per Rule 25 and not Rule 22 as argued on behalf of the appellant/defendant.

4

FROM THE GOVERNMENT

- RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING AOC-4, AOC-4 (XBRL), AOC-4 (CFS) AND MGT-7 E-FORMS UNDER THE COMPANIES ACT, 2013-REGARDING.
- CONSTITUTION OF STEERING COMMITTEE FOR CONDUCTING 'NATIONAL CORPORATE SOCIAL RESPONSIBILITY AWARD' OF MINISTRY OF CORPORATE AFFAIRS.
- NATIONAL ADVISORY COMMITTEE ON ACCOUNTING STANDARDS
- COMPANIES (INCORPORATION) FOURTH AMENDMENT RULES, 2016.
- DISCLOSURES IN CASE OF LISTED INSURANCE COMPANIES
- DISCLOSURE OF FINANCIAL INFORMATION IN OFFER DOCUMENT/PLACEMENT MEMORANDUM FOR INVITS
- FACILITATING TRANSACTION IN MUTUAL FUND SCHEMES THROUGH THE STOCK EXCHANGE INFRASTRUCTURE
- BULLION AS COLLATERAL
- EXCLUSIVELY LISTED COMPANIES OF DE-RECOGNIZED/NON-OPERATIONAL/EXITED STOCK EXCHANGES PLACED IN THE DISSEMINATION BOARD (DB).
- INVESTMENTS BY FPIS IN GOVERNMENT SECURITIES
- FOREIGN DIRECT INVESTMENT (FDI) POLICY ON OTHER FINANCIAL SERVICES

Corporate Laws

01 Relaxation of additional Fees and extension of last date of filing AOC-4, AOC-4 (XBRL), AOC-4 (CFS) and MGT-7 e-forms under the Companies Act, 2013-regarding.

[Issued by the Ministry of Corporate Affairs vide General Circular 12 File No. MCA 21 /153/2012 dated 27.10.2016.]

1. In continuation of this Ministry's General Circular No.08/2016 dated 29.07.2016, keeping in view the requests received from various stakeholders, it has been decided to further extend last date for filing of financial statements and annual returns using e forms AOC-4, AOC-4 (XBRL), AOC4 (CPS), or MGT-7, as the case may be, without payment of additional fee, wherever applicable, till 29th November, 2016.

2 This issues with the approval of the competent authoriry.

K. M. S. NARAYANAN
Assistant Director

02 Constitution of Steering Committee for conducting 'National Corporate Social Responsibility Award' of Ministry of Corporate Affairs.

[Issued by the Ministry of Corporate Affairs vide General Circular 11 File No. 02/04/2016-CSR dated 15.09.2016.]

1. In pursuance to the approval of Hon'ble Corporate Affairs Minister, National CSR Award is being set-up by the Ministry of Corporate Affairs. A Steering Committee with the following composition is hereby constituted to oversee the whole process of the execution of 'National Corporate Social Responsibility Award':

Sl. No.	Name	Role
1.	Secretary, MCA	Chairman
2.	Additional Secretary, MCA	Member
3.	joint Secretary (Policy), MCA	Member
4.	Economic Adviser, MCA	Member
5.	Department of Public Enterprises represented by Officer not below Joint Secretary Level	Member
6.	Director General, IICA	Member
7.	Representatives of • FICCI • ASSOCHAM • CCI • PHD Chambers of Commerce	Member
8.	Representatives of • ICSI • ICAI • ICWAI	Member
9.	Nodal officer of IICA	Member Convener

Terms of Reference:

(i) To approve the 'Implementation Strategy' and draft agreement/ Memorandum of Understanding with MCA.

(ii) To constitute and approve terms of reference of the Selection Committee.

(iii) To approve a Panel of external agencies for field visits/verification of the CSR Policy implemented by corporales.

(iv) To recommend a Panel of Grand Jury drawn from various fields of expertise alongwith terms of reference for the Jury.

(v) To receive the list of Final Awardees from Grand jury.

(vi) Any other matter indicated to above.

2. This issues with the approval of the Competent Authority.

SEEMA RATH
Deputy Director

03 National Advisory Committee on Accounting Standards

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/5/2001 CL-V, (Part-vi) dated 03.10.2016. To be published in Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii)]

1. In exercise of the powers conferred by sub-section (1) of section 210A of the Companies Act, 1956, (1 of 1956), the Central Government hereby constitutes an Advisory Committee to be called the National Advisory Committee on Accounting Standards, consisting of the following persons, to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under the said Act or the Companies Act, 2013 (18 of 2013) as the case may be namely:-

(1)	Shrt Amarjtt Chopra, Chartered Accountant	Chairperson, [nomtnated under clause (a) of sub-section (2) of section 210A]
(2)	Shri Manas Kumar Thakur, President, Nominee of the Institute of Cost Accountants of India	Member [nominated under clause (b) of sub-section (2) of section 210A]
(3)	Ms. Mamta Binani President, Nominee of the Institute of Company Secretaries of India	Member, (nominated under clause (b) of sub-section (2) of section 210A]
(4)	Shri M. Devaraja Reddy, President. Nominee of the Institute of Chartered Accountants of India	Member, nominated under clause (b) of sub-section (2) of section 210A]
(5)	Joint Secretary, Ministry of Corporate Affairs	Member, (nominated under clause (c) of sub-section (2) of section 210A]
(6)	Shri Sudarshan Sen, Chief	Member,

	General Manager-in-Charge, Nominee of the Reserve Bank of India	nominated under clause (d) of sub-section (2) of section 210A]
(7)	Director General(Commercial), Nominee of Comptroller and Auditor-General of Indla	Member, nominated under clause (e) of sub-section (2) of section 210A]
(8)	Dr. Sanjeev Singhal, Former Associate Professor, FORE School of Management	Member, nominated under clause (f) of sub-section (2) of section 210A]
(9)	Joint Secretary, TPL-II, Nominee of the Central Board of Direct Taxes	Member, nominated under clause (g) of sub-section (2) of section 210A]
(10)	Shri Dipankar Chatterji, Nominee of the Confederation of Indian Industry	Member, nominated under clause (h) of sub-section (2) of section 210A]
(11)	Shrl Sushll Agarwal, Nominee of the Federation of Indian Chambers of Commerce and Industry	Member, [nominated under clause (h) of sub-section (2) of section 210A]
(12)	Dr. Ashok Haldia, Nominee of the Associated Chambers of Commerce and Industry of India	Member, [nominated under clause (h) of sub-section (2) of section 210A]
(13)	Executive Director, Nominee of Securities Exchange Board of India	Member, [nominated under clause (i) of sub-section (2) of section 210A]

2. The Chairperson and members shall hold office for a period of one year from the date of Publication of this notification in the Official Gazette or till the constitution of National Financial Reporting Authority under section 132 of the Companies Act, 2013 (18 of 2013), whichever is earlier.

3. This notification shall come Into force on its publication in the Gazette.

AMARDEEP SINGH BHATIA
Joint Secretary

04 Companies (Incorporation) fourth Amendment Rules, 2016.

[Issued by the Ministry of Corporate Affairs vide Notification No. G.S.R. 936(E). Plublished in Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i) dated 01.10.2016]

In Exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 201 3), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Incorporation) fourth Amendment Rules, 2016.
(2) Save as otherwise provided, these rules shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Incorporalion) Rules, 2014 (hereinafter referred to as the principal rules), in rule 33, for sub-rule (2), the following shall be substituted, namely:-
"(2) subject to the provision of sub-rule (1), for effecting the conversion of a public company into a private company, a copy of order of the Tribunal approving the alteration, shall be filed with the Registrar in Form No.INC-27 with fee together with the printed copy of altered articles within fifteen days from the date of receipt of the order from the Tribunal".

3. In the principal rules, after rule 37, the following rule shall be inserted, with effect from 2nd October 2016, namely:-
"38.Simplified Proforma for Incorporating Company Electronically (SPICE)
(1) The simplified integrated process for incorporation of a company in Form No. INC-32 alongwith e-Memorandum of Association in Form No. INC-33.and e-Articlea of Association in Form No. INC-34.

(2) The provisions of sub-rule (2) to sub-rule (13) of rule 36 shall apply *mutatis mutandis* for incorporation under this rule.

Provided that for the purposes of references to form numbers INC-29, INC-30 and INC-31 in rule-36 with Form no. INC-32, Form no. INC-33 and Form no. INC-34 shall be substituted respectively.

4. In the principal rules, after rule 38 as so inserted these rules, the following rule shall be inserted with effect from 1st November, 2016, namely:-
"39. Conversion of a company limited by guarantee into a company limited by shares (1) A company other than a company registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013 may convert itself into a company limited by shares.
(2) The company seeking conversion shall have a share capital equivalent to the guarantee amount.
(3) A special resolution is passed by its members authorising such a conversion omitting the guarantee clause in its Memorandum of Association and altering the Articles of Association to provide for the articles as are applicable for a company limited by shares.
(4) A copy of the special resolution shall be filed with the Registrar of Companies in Form no. MGT-14 within thirty days from the date of passing of the same along with fee as prescribed in the Companies (Registration Offices and fees) Rules, 2014.
(5) An application in Form No. INC-27 shall be filed with the Registrar of Companies within thirty days from date of the passing of the special resolution enclosing the altered Memorandum of Association and altered Articles of Association and a list of members with the number of shares held aggregating to a minimum paid up capital which is equivalent to the amount of guarantee hither to provided by its members.
(6) The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects and upon approval of Form No. INC-27, the company shall be issued with a certificate of incorporation in Form INC-11B.".

5. In the principle rules, after the Form No. INC-11A, the following form shall be inserted, namely:-

"Form No. INC-11B

Certificate of Incorporation pursuant to conversion of a company limited by guarantee into a company limited by shares

[Pursuant section 18 of the Companies Act, 2013 read with rule 39 of the Companies (Incorporation) Rules, 2014]

I hereby certify that...............(name of the company prior to conversion) limited by guarantee has been converted into..........(name of the company after conversion) a company limited by shares with effect from the date of this certificate.

The CIN of the company is................................

Given under my hand at.............. . this.. . ... day of.............. two thousand ....

SEAL: ....

Registrar of Companies

(State).".

6. In the principle rules for Form no. INC-27, the following form shall be substituted, namely:

......................*

AMARDEEP SINGH BHATIA

Joint Secretary

**Not reproduced here for want of space. Readers may log on to www. mca.gov.in for the entire text of the Notification.*

05 Disclosures in case of listed insurance companies

[Issued by the Securities and Exchange Board of India Vide Circular No: [CIR/CFD/DIL/115/2016, dated 24.10.2016.]

1. SEBI circular No. CIR/CFD/CMD/15/2015 dated Nov 30, 2015 provides for formats for publishing financial results by listed companies.
2. Subsequently, vide circular No. CIR/CFD/FAC/62/2016 dated July 05, 2016, the following was specified:
   "For the period ending on or after March 31, 2017, the formats for Unaudited/Audited quarterly financial results to be submitted by the Listed Entities, with the stock exchanges, shall be as prescribed in Schedule III to the Companies Act, 2013. However, Banking Companies and Insurance Companies shall follow the formats as prescribed under the respective Acts/Regulations as specified by their Regulators."
3. In view of the recent listing by insurance companies, in consultation with Insurance Regulatory and Development Authority of India (IRDAI), it is now clarified:
   a) The insurance companies (life and non-life) shall submit the following disclosures for quarters ending 30th September, 2016 and 31st December, 2016 in the format as specified by IRDAI:
      i. Format for quarterly financial results
      ii. Format for Reporting of Segment wise Revenue, Results and Capital Employed along with the quarterly results
   b) With respect to the format for Newspaper Publishing Purpose (Standalone/Consolidated), the insurance companies shall continue to follow the format as specified under the aforesaid circulars issued by SEBI. Additional disclosures may also be made as prescribed by IRDAI.
   c) The other requirements specified under the aforesaid circulars shall continue to apply to insurance companies.
4. This Circular is being issued in exercise of powers conferred under Section 11 and Section 11A of the Securities and Exchange Board of India Act, 1992 read with Regulation 33, Regulation 47 and Regulation 101(2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
5. This circular is available on SEBI website at http://www.sebi.gov.in under the category

PRADEEP RAMAKRISHNAN

Deputy General Manager

06 Disclosure of financial information in offer document/placement memorandum for InvITs

[Issued by the Securities and Exchange Board of India Vide Circular No: [CIR/IMD/DF/114/2016, dated 20.10.2016.]

1. Regulation 15(3), read with Schedule III, and Regulation 15(4) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 prescribe disclosures to be made in an offer document and placement memorandum respectively. The said disclosures, *inter-alia*, include disclosures for financial information of the InvIT as well as the Investment Manager and the Sponsor.

2. With reference to aforesaid Regulations, the detailed requirements for disclosure of financial information in offer document/placement memorandum for InvITs are placed at '**Annexure - A**'.
3. This Circular is issued in exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992 read with Regulation 33 of InvIT Regulations.

4. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and under the drop down "Circulars".

RICHA G. AGARWAL

Deputy General Manager

Annexure - 'A'

Financial information to be disclosed in offer document/placement memorandum

<u>(A) Financial Information of InvIT:</u>

The financial information, to be disclosed in the offer document/placement memorandum, shall comply with the following:

1. Period of financial information to be disclosed:

1.1. The offer document / placement memorandum shall contain financial information for a period of last three completed financial years immediately preceding the date of offer document / placement memorandum.

1.2. If the closing date of the last completed financial year falls more than six months before the date of offer document / placement memorandum, then the InvIT shall also disclose interim financial information, in addition to the three year financial information referred in para 1.1.above.

The said interim financial information shall be not more than six months old from the date of offer document / placement memorandum.

2. Nature of financial information

2.1. InvIT shall disclose the financial information for the previous three financial years and the interim period, if any, in either of the following manner depending upon the history of the InvIT:

(a) If the InvIT has been in existence for the last three completed financial years immediately preceding the date of offer document / placement memorandum, then the historical financial statements of the InvIT (on both standalone as well as consolidated basis) for last three years, and the interim period, if any, shall be disclosed.

(b) If the InvIT has been in existence for a period lesser than the last three completed financial years and the historical financial statements of InvIT are not available for some portion or the entire portion of the reporting period of three years and interim period, then the combined financial statements need to be disclosed for the periods when such historical financial statements are not available.
The principles for preparation of combined financial statements are discussed in Section '(G)' below.

3. Content and basis of preparation of financial information:

3.1. The financial information shall be prepared in accordance with Indian Accounting Standards (Ind AS) and/or any addendum thereto as defined in Rule 2 (1) (a) of the Companies (Indian Accounting Standards) Rules, 2015.

3.2. The financial information presented by the InvIT can be in the form of condensed financial statements. Such financial information shall comply with the minimum requirements for condensed financial statements as described in Ind AS 34 on 'Interim Financial Reporting', to the extent applicable.

3.3. The financial information shall, *inter-alia*, disclose the following financial statements:

(a) Balance Sheet;
(b) Statement of Profit and Loss/Income and Expenditure;
(c) Statement of Changes in Unit holders' Equity;
(d) Statement of Cash Flows;
(e) Statement of Net Assets at Fair Value
(f) Statement of Total Returns at Fair Value
(g) Explanatory notes annexed to, or forming part of, any statements referred above

For the financial statements listed above, the minimum information to be disclosed is given in Section '(H)' below.

3.4. The financial information shall be disclosed after making the following adjustments, wherever applicable and wherever quantification is possible:

(a) Adjustments/rectifications for all incorrect accounting practices or failures to make provisions or other matters which resulted in modified opinion(s) or modification(s) to the opinion in the auditor's report.
Modified opinion(s), where quantification is not possible and which have not been adjusted, shall be highlighted along with the management comments. If the impact of above adjustments/ rectifications is not considered ascertainable, then a statement to that effect shall be given by the auditors.

(b) Material amounts relating to adjustments for prior period errors/items (as discussed in Ind AS 8 'Accounting Policies, Changes in Accounting Estimates and Errors') shall be identified and adjusted in arriving at the profits of the years to which they relate.

(c) Where there has been a change in accounting policy, the profits or losses/incomes or expenditures of the earlier years (required to be disclosed in the offer document/ placement memorandum) and of the year in which the change in the accounting policy has taken place shall be recomputed to reflect what the profits or losses/incomes or expenditures of those years would have been if a uniform accounting policy was followed in each of these years.

(d) If any accounting policy followed in past was not in compliance with applicable laws and/or accounting standards, the financial statements shall be adjusted and recomputed in accordance with correct accounting policies.

(e) The Balance Sheet shall be prepared after deducting the balance outstanding on Revaluation reserve account from both Fixed assets and Reserves and the Net worth should be arrived at after such deductions.

3.5. Financial statements shall disclose all 'material' items, i.e., the items if they can, individually or collectively, influence the economic decisions made on the basis of the financial statements. Materiality shall be judged and determined by the Investment Manager depending upon pertinent facts and circumstances, including the size or nature of the item or a combination of both.
In addition to the consideration of 'materiality' as specified above, any item of income or expenditure, which exceeds one per cent of the revenue from operations or Rs.10 lacs, whichever is higher, shall be disclosed separately either on the face of financial statements or in the schedules/notes.

4. Additional financial disclosures

In addition to the financial statements referred in Paragraph 3 above, the following statements/disclosures shall also be included as a part of the audited financial information and shall also be subjected to audit:

4.1. Project wise operating cash flows:
The InvIT shall disclose operating cash flow from the projects (project-wise) for all the InvIT assets that are included in such financial information for the last three years and interim period, if any.

4.2. Earnings per Unit:
The InvIT shall disclose Earnings per Unit (EPU) for the last three years and the interim period, if any. The principles for computation of EPU shall be same as the principles laid down in Ind AS 33 Earnings per Share, to the extent applicable. Relevant disclosures shall be provided as part of the notes for the EPU computation.

Contingent liabilities:

(a) A statement of InvIT's Contingent liabilities, if any, as on the date of latest financial information disclosed in the offer document/placement memorandum, shall be disclosed.

(b) If there are any material changes in the contingent liabilities from the aforementioned date of latest financial information to the date of the offer document / placement memorandum, the details of such changes shall be disclosed in the offer document / placement memorandum.

4.3. Commitments:

(a) A statement of InvIT's Commitments, if any, as on the date of latest financial information disclosed in the offer document/placement memorandum, shall be disclosed.

(b) If there are any material changes in the commitments from the aforementioned date of latest financial information to the date of the offer document / placement memorandum, the details of such changes shall be disclosed in the offer document / placement memorandum.

4.4. Related party pransactions:

(a) For the related parties as defined in the InvIT regulations, the InvIT shall provide relevant disclosures of all related party transactions in compliance with the requirements of "Ind AS 24 - Related Party Disclosures".

(b) In addition to the disclosures required as per Ind AS 24, the following additional disclosures related to Related parties and Related party transactions shall also be included:
   i. Details of related party and its relationship with InvIT;
   ii. Nature of the transaction;
   iii. Value of the transaction;
   iv. In case of any related party transaction involving acquisition or disposal of an InvIT asset, the following additional information shall be provided
      - Summary of valuation report;
      - Material conditions or obligations in relation to the transaction;
      - Rate of interest, if external financing has been obtained for the transaction/acquisition; and
      - Any fees or commissions received or to be received by any associate of the related party in relation to the transaction.

4.5. Capitalisation statement

An InvIT shall disclose a Capitalisation Statement showing total debt, net worth, and the debt/equity ratios before and after the completions of issue. An illustrative format of the Capitalisation Statement is specified hereunder:

Particulars	Pre-issue as at............	As Adjusted for issue
(Amount)		
Total Debt	xx	xx
Unitholders' Funds		
Unit Capital	xx	xx
xx	xx	xx
xx	xx	xx
Reserves	xx	xx

Provided that in case of any change in the Unit Capital (since the date from which the financial information has been disclosed in the Offer document/placement memorandum), a note explaining the nature of the change shall be given.

4.6. Debt payment history

A statement including history of interest and principal payments of InvIT shall be disclosed for past three years and interim period, if any, covering all InvIT assets forming part of the historical financial information. Additionally, the following shall also be disclosed:
- The carrying amount of debt at the beginning of each year
- Additional borrowings during the year
- Repayments during the year
- Other adjustments / settlements during the year
- The carrying amount of debt at the end of each year

5. Audit of Financial Information:

5.1. The financial information shall be audited and the following shall be complied with respect to same: :

(a) The audit shall be carried out by the auditor appointed for the InvIT as per the InvIT regulations. The auditor, so appointed, shall be the one who has subjected itself to the peer review process of the Institute of Chartered Accountants of India (ICAI) and who holds a valid certificate issued by the Peer Review Board of ICAI.

(b) In providing his report, the auditor shall be guided by the requirements of the 'Guidance Note on Reports in Company Prospectuses', issued by ICAI, to the extent applicable.

(c) In particular, the reports of the auditors on the financial statements of the various InvIT assets (whether prepared in accordance with the framework applicable to such InvIT assets or the framework applicable to the InvIT) for the respective periods covered in the period of three years and the interim period, if any, will have to be taken into consideration and the same shall be relied upon by the auditor giving the final report. For the audit procedures to be followed in such case, the auditor shall be guided by the procedures stated in the Standard on Auditing (SA) 600, "Using the Work of another Auditor", to the extent applicable. Further, the fact that the financial statements audited by other auditors have been relied upon shall be disclosed in the audit report.

(d) As a part of the audit report, the auditor shall state whether:
   i. he has obtained all information and explanations which, to the best of his knowledge and belief, were necessary for the purpose of his audit;
   ii. the Balance Sheet and the Statement of Profit and loss/ Income and Expenditure are in agreement with the books of account of the InvIT; and
   iii. the financial statements comply with the applicable accounting standards in his opinion.

(e) As a part of the audit report, the auditor shall give his opinion as to whether:
   i. the balance sheet gives a true and fair view of the state of affairs of the InvIT as at the balance sheet dates;
   ii. the statement of profit and loss/income and expenditure gives a true and fair view of the InvIT's profits or losses/ incomes or expenditures for the years/periods ended at the balance sheet dates;
   iii. the cash flow statement gives a true and fair view of the cash movements of the InvIT for the years/periods ended at the balance sheet dates;
   iv. the statement of changes in unit holders' equity gives a true and fair view of the movement of the unit holders funds for the years/periods ended at the balance sheet dates;
   v. the statement of net assets at fair value gives a true and fair view of the net assets as at the balance sheet date; and
   vi. the statement of total returns at fair value gives a true and fair view of the total returns for the years/periods ended at the balance sheet dates.

(B) Projections of InvIT's Revenues and Operating Cash flows

1. The offer document/placement memorandum shall contain disclosures of the projections of revenues and operating cash flows of the InvIT, project-wise, over the next three years including related assumptions.

2. The projections shall be disclosed for InvIT assets/projects that are owned by the InvIT or are proposed to be owned by InvIT prior to the allotment of units in the public offer/private placement.

3. The following minimum items shall be disclosed as a part of the projections for the next three years:
   - Project-wise revenue
   - Project-wise operating cash flows
   - Assumptions for projections
   - Any other item deemed important for better readability and understanding

4. The aforesaid projections, including assumptions, shall be certified by the auditor. For the purpose of said certification, the auditor shall be guided by the requirements of SAE 3400 for 'The Examination of Prospective Financial Information' and any other relevant standards/

directions issued by ICAI in this context.

5. Further, the aforesaid projections (including the underlying assumptions and calculations) shall also be certified by the Investment Manager.

(C) Management Discussion and Analysis of InvIT's operations

1. InvIT shall prepare and disclose Management Discussion and Analysis (MDA) (by the Investment Manager), based on the financial statements. A comparison shall be provided for the most recent financial information with financial information of previous two years.
2. MDA shall, *inter-alia* contain the following :
   - Overview of the business of the InvIT
   - A summary of the financial information containing significant items of income and expenditure.
   - Factors that may affect results of the operations, key risks and mitigating factors
   - Quality of earnings and revenue streams
   - Significant developments subsequent to the last financial year:
     - A statement by the Investment Manager whether in their opinion there have arisen any circumstances since the date of the last financial statements as disclosed in the offer document and which materially and adversely affect or is likely to affect the business or profitability of the InvIT, or the value of its assets, or its ability to pay its liabilities within the next twelve months.
   - Procedure for dealing with and approval of related party transactions
   - Related party transaction(s) involving acquisition or disposal of an InvIT asset
     - The analysis shall discuss impact of such acquisition/ disposal on the yield of the units of InvIT
   - An analysis of reasons for the changes in significant items of income and expenditure shall also be given, *inter alia*, containing the following:
     - unusual or infrequent events or transaction;
     - significant economic changes that materially affected or are likely to affect income from continuing operations;
     - known trends or uncertainties that have had or are expected to have a material adverse impact on revenues from continuing operations;
     - future changes in relationship between costs and revenues, in case of events such as future increase in operating costs that will cause a material change are known;
     - total turnover from each major segments of the InvIT
     - status of any publicly announced new business segment;
     - the extent to which business is seasonal;
     - any significant dependence on a single or few suppliers or customers;
     - Competitive conditions.

(D) Other Disclosures for InvIT

1. Working Capital

A statement from Investment Manager regarding sufficiency of the working capital to fulfill the present requirements of InvIT (i.e., at least twelve months from date of listing) shall be disclosed. In case, sufficient working capital is not available in the opinion of Investment Manager, then a statement should be provided describing how it proposes to provide additional working capital requirement.

2. Past Market Performance

In case of a capital offering subsequent to the initial offer, the market value of the units traded on all the designated stock exchanges where InvIT is listed shall be disclosed:

- on the last date of reporting period
- highest value during reporting period based on intra-day and on closing price with specified date
- lowest value during reporting period intra-day and on closing price with specified date

(E) Historical Financial information of Investment Manager and Sponsor(s)

1. An offer document/placement memorandum of InvIT shall include summary of the audited consolidated financial statements (including the Balance Sheet and Statement of Profit and Loss (without schedules)) of Investment Manager and Sponsor(s) for past three completed years, prepared in accordance with accounting standards, as applicable, as per the Companies Act, 2013 and rules thereunder.

   For example, if the concerned entity is required to follow Companies (Accounting Standards) Rules, 2006 during the entire period of last three years, then the three year financial information of such entity shall be prepared in accordance with Companies (Accounting Standards) Rules, 2006. Similarly, if the concerned entity is required to follow Companies (Indian Accounting Standards) Rules, 2015 during the entire period of last three years, then the three year financial information shall be prepared in accordance with Companies (Indian Accounting Standards) Rules, 2015.
2. In case the Investment Manager and/or Sponsor(s) has/have done a transition from Companies (Accounting Standards) Rules, 2006 to Companies (Indian Accounting Standards) Rules, 2015 at any time during the period of last three years, then the financial information for the last three years shall be disclosed on the following basis:
   a. If the concerned entity is following or is required to follow Companies (Indian Accounting Standards) Rules, 2015 for the latest two years (for the latest three years including comparatives of the first year of adoption) out of last three completed years, then the financial information for all the three years shall be prepared as per Companies (Indian Accounting Standards) Rules, 2015.
   b. If the concerned entity is following or is required to follow Companies (Indian Accounting Standards) Rules, 2015 only for the latest year (for the latest two years including comparatives) out of the historical period of three years, then the financial information for the recent two years shall be disclosed as per the Companies (Indian Accounting Standards) Rules, 2015 and the financial information for the earliest year (i.e. the third last year) shall be disclosed as per the Companies (Accounting Standards) Rules, 2006.

      For example, if financial information of Investment Manager/Sponsor is presented for the financial years 2014-15, 2015-16, and 2016-17 and such Investment Manager/Sponsor is required by Companies Act, 2013 to report under Ind AS from financial year 2016-17 (with financial year 2015-16 as comparatives), then it shall disclose financial information for financial years 2016-17 and 2015-16 as per Companies (Indian Accounting Standards) Rules, 2015 and financial year 2014-15 as per Companies (Accounting Standards) Rules, 2006.

      Further, for example, if financial information of Investment Manager/Sponsor is presented for the financial years

2014-15, 2015-16, and 2016-17 and such Investment Manager/Sponsor is required by Companies Act, 2013 to report under Ind AS from financial year 2015-16 (with financial year 2014-15 as comparatives), then it shall disclose financial information for all the three financial years, i.e. 2014-15, 2015-16 and 2016-17, as per Companies (Indian Accounting Standards) Rules.

3. Further, if any of the Investment Manager/Sponsor is a foreign entity and is not legally required to comply with the Companies Act, 2013, then the financial statements of such entity may be prepared in accordance with International Financial Reporting Standards (IFRS).

(F) <u>Framework for calculation of Net Distributable Cash Flows (NDCFs):</u>

1. Every InvIT/Investment Manager shall define net distributable cash flows (NDCFs) for itself and the definition as decided by InvIT/Investment manager shall be:
   a. subject to compliance with Companies Act, 2013 or Limited Liability Partnership Act, 2008, or any Central Government Act, as applicable; and
   b. disclosed in offer document and shall be followed consistently pursuant to listing.

   2. The indicated framework shall be followed in so far as whatever is applicable to the SPV/InvIT, for e.g. the sale of infrastructure assets under SPV may not be possible under certain kind of concession agreements and therefore such head under distribution may be kept blank, etc.

   3. InvIT may take guidance from the following framework for defining and calculating NDCFs at the SPV level and at the InvIT level :

(I.) <u>Calculation of Net Distributable Cash Flows at the SPV level:</u>

Description	Amount
Profit after tax as per Statement of profit and loss/income and expenditure (standalone) (A)	Xx
Add: Depreciation and amortisation as per Statement of profit and loss/income and expenditure	Xx
Add/less: Loss/gain on sale of Infrastructure Assets	xx
Add: Proceeds from sale of Infrastructure Assets adjusted for the following: • related debts settled or due to be settled from sale proceeds • directly attributable transaction costs • proceeds reinvested or planned to be reinvested as per para 18 (7) (a) of the InvIT Regulations	xx
Add: Proceeds from sale of Infrastructure Assets not distributed pursuant to an earlier plan to re-invest, if such proceeds are not intended to be invested subsequently	xx
Add/less: Any other item of non-cash expense / non cash income (net of actual cash flows for these items), if deemed necessary by the Investment Manager. For example, any decrease/increase in carrying amount of an asset or of a liability recognised in Statement of profit and loss/income and expenditure on measurement of the asset or the liability at fair value, interest cost as per effective interest rate method, deferred tax, lease rents recognised on a straight line basis, etc.	Xx
Less: Repayment of external debt (principal) / redeemable preference shares / debentures, etc., if deemed necessary by the Investment Manager	xx
Total Adjustments (B)	xx
Net Distributable Cash Flows (C)=(A+B)	xx

(II.) <u>Calculation of Net Distributable Cash Flows at the Consolidated InvIT level:</u>

Description	Amount
Profit after tax as per Statement of profit and loss/income and expenditure (consolidated) (A)	xx
Add: Depreciation and amortisation as per Statement of profit and loss/income and expenditure (consolidated)	xx
Add/less: Loss/gain recognised on sale of Infrastructure Assets or equity shares or interest in SPV	xx
Add: Proceeds from sale of Infrastructure Assets or equity shares or interest in SPV adjusted for the following: • related debts settled or due to be settled from sale proceeds • directly attributable transaction costs • proceeds reinvested or planned to be reinvested as per para 18 (7) (a) of the InvIT Regulations	xx
Add: Proceeds from sale of Infrastructure Assets or equity shares or interest in SPV not distributed pursuant to an earlier plan to re-invest, if such proceeds are not intended to be invested subsequently	xx
Add/less: Any other item of non-cash expense / non cash income (net of actual cash flows for these items), if deemed necessary by the Investment Manager. For example, any decrease/increase in carrying amount of an asset or of a liability recognised in Statement of profit and loss/income and expenditure on measurement of the asset or the liability at fair value, interest cost as per effective interest rate method, deferred tax, lease rents recognised on a straight line basis, etc.	xx
Less: Repayment of external debt (principal) / redeemable preference shares / debentures, etc., if deemed necessary by the Investment Manager	xx
Total Adjustments (B)	xx
Net Distributable Cash Flows (C)=(A+B)	**xx**

(G) <u>Principles for preparation of combined financial statements:</u>

1. For preparation of Combined Financial Statements, as has been indicated in Paragraph 2.1 (b) under Section '(A)' above, InvIT shall follow the following principles :

   1.1. <u>Period for which combined financial statements shall be disclosed</u>

   When the InvIT has not been in existence for some portion or the entire portion of the reporting period of three years and interim period, if any, then the financial information must be provided through combined financial statements, showing the combined financial performance of all the proposed InvIT assets, for such period when InvIT was not in existence.

   1.2. <u>Assets/entities forming part of Combined Financial Statements:</u>

   All the assets or entities, which are proposed to be owned by the InvIT, as per the disclosures in the offer document / placement memorandum, shall collectively form part of combined financial statements.

   1.3. <u>Underlying assumption for preparation of Combined</u>

Financial Statements

Such combined financial statements shall be prepared based on an assumption that all the assets and/or entities, proposed to be owned by InvIT, were part of a single group for such period when InvIT was not in existence.

1.4. Preparation of Combined Financial Statements:

i. These statements shall be prepared on a combined basis and presented as if InvIT assets were a part of a single group since the first day of the reporting period for which information is being presented.

ii. The principles for preparation of combined financial statements shall be same as the principles laid down in "Ind AS 110 Consolidated Financial Statements", to the extent applicable. However, unlike consolidated financial statements, the combined financial statements shall not have the parent.

iii. While preparing Combined Financial Statements, transactions between the entities proposed to be owned by InvIT (i.e. transactions between the entities which are forming part of the combined financial statements) shall be eliminated.

Further, all pertinent matters, such as non-controlling interests, foreign operations, different fiscal periods, or income taxes, etc. shall be treated in the same manner as in consolidated financial statements, to the extent applicable.

iv. In cases where one or more of the underlying InvIT assets have been held by the sponsor or its associates or its group entities for a period lesser than the last three completed financial years, then such assets may be reflected in the Combined Financial Statements only from the date of holding by such entity.

However, if the discrete financial information for such assets is also available for the pre-holding period (i.e. the period before the acquisition by the sponsor or its associates or its group entities), then such assets shall be reflected in the Combined Financial Statements for such pre-holding period as well.

v. If there are any assets for which the financial information is considered for a period lesser than three years and the additional interim period, if any, then such fact shall be clearly disclosed in the offer document/placement memorandum, along with all pertinent details.

vi. Assumptions made in preparation of the Combined Financial Statements shall be disclosed in 'Basis of Preparation' of such statements.

vii. The basis of preparation shall also explain the principles of combination and elimination of transactions amongst entities that are included in the Combined Financial Statements.

2. In addition to the principles listed at paragraph '1' above, the InvIT/Investment Manager, while preparing the Combined Financial Statements of the InvIT, shall also be guided by the requirements laid down in the 'Guidance Note on Combined and Carve-Out Financial Statements' and any other pertinent guidance/directions issued by ICAI in this context.

(H) Minimum Disclosures for key financial statements:

1. For the financial statements listed at Paragraph 3.3 of Section '(A)' above, the line items shall, at minimum, include the following:

1.1. Line items for Balance Sheet:

I. Assets

a) Property, plant and equipment;
b) Capital work-in-progress
c) Investment property;
d) Intangible assets
e) Inventories;
f) Other receivables;
g) Other financial assets (excluding Inventories & Other Receivables)
h) Cash and cash equivalents;
i) Deferred tax assets;
j) Assets for current tax.

II. Equity and Liabilities

a) Unit capital;
b) Other payables;
c) Provisions;
d) Financial liabilities (excluding amounts shown under (b) and (c)), separately disclosing liabilities owed to sponsors;
e) Liabilities for current tax;
f) Deferred tax liabilities;
g) Other liabilities

1.2. Line items for Statement of Profit and loss/Income and Expenditure

I. Incomes and gains:

a) Revenue from operations;
b) Dividend;
c) Interest;
d) Profit on sale of assets/investments
e) Other income (Clearly indicate nature of such income).

II. Expenses and losses:

a) Valuation expenses;
b) Audit fees;
c) Insurance & security expenses;
d) Employee Benefits Expenses
e) Project management fees (including fees paid to project manager)
f) Investment management fees (including fees paid to investment manager)
g) Trustee Fee
h) Depreciation on property, plant and equipment;
i) Amortization of intangible assets;
j) Finance Cost (Interest);
k) Custodian fees;
l) Registration fees;
m) Repairs and maintenance in case of infrastructure asset;
n) Loss on sale of assets/investments
o) Other expenses (Clearly indicate nature of such expense)

III. Profit or loss for the period before income tax
IV. Tax expense (current tax and deferred tax)
V. Profit or loss for the period after income tax
VI. Items of other comprehensive income
VII. Additional line items (if applicable)

a) Items that will not be reclassified to profit or loss
b) Income tax relating to items that will not be reclassified to profit or loss

c) Items that will be reclassified to profit or loss
d) Income tax relating to items that will be reclassified to profit or loss

VIII. Total comprehensive income for the period (V+VI) (Comprising profit (loss) and Other comprehensive income for the period)

1.3. Line items for the "Statement of changes in Unit holders' equity"

I. Total comprehensive income for the period;

II. For each component of unit holders' equity, a reconciliation between the carrying amount at the beginning and the end of the period, separately (as a minimum) disclosing changes resulting from:
a) Profit or loss;
b) Other comprehensive income;
c) Aggregate amount of investments by unit holders in InvIT, and dividends / other distributions by InvIT to unit holders

1.4. Line items for the "Cash Flow Statement"
Cash Flow Statement, shall be prepared in accordance with the requirements of Ind AS 7-"Statement of Cash Flows".

1.5. Line items for 'Statement of Net Assets at Fair Value'
The line items for the Statement of Net Assets at Fair Value, shall, at minimum, include the following:

S.No.	Particulars	Book Value	Fair Value
A.	Assets	xxxx	xxxx
B.	Liabilities	xxxx (as reflected in the balance sheet)	
C.	Net Assets (A-B)	xxxx	xxxx
D.	No. of Units	xxxx	xxxx
E.	NAV (C/D)	xxxx	xxxx

Notes:
(i) 'Statement of Net Assets at Fair Value' shall be provided only as on the last date of the financial information disclosed in the offer document/ placement memorandum.
(ii) Further, the breakup of the fair values of the assets shall be given project-wise in the notes to the Statement of Net Assets at Fair Value.

1.6. Line items for 'Statement of Total Return at Fair Value':
The line items for the Statement of Total Return at Fair Value, shall, at minimum, include the following:

Particulars	Amount
Total Comprehensive Income (As per the Statement of Profit and loss/Income and Expenditure)	xxxx
Add/Less: Other Changes in Fair Value (e.g., in investment property, property, plant & equipment (if cost model is followed)) not recognized in Total Comprehensive Income	xxxx
Total Return	xxxx

Note: 'Statement of Total Returns at Fair Value' shall be provided only for the last completed year and interim period, if any.

2. Headings, line items, sub-line items and sub-totals may be presented as an addition or substitution on the face of the financial statements when such presentation is relevant to an understanding of an InvIT's financial position or performance or to cater to industry/sector-specific disclosure requirements or when required for compliance with the InvIT regulations or Indian Accounting Standards or any other law.

07 Facilitating transaction in Mutual Fund schemes through the Stock Exchange Infrastructure

[Issued by the Securities and Exchange Board of India Vide Circular No: [SEBI/HO/MRD/DSA/CIR/P/2016/113, dated 19.10.2016.]

1. SEBI vide circular no. CIR/MRD/DSA/32/2013 dated October 04, 2013 had permitted mutual fund distributors to use recognised stock exchanges' infrastructure to purchase and redeem mutual fund units directly from Mutual Fund/Asset Management Companies.

2. n order to broad base the reach of this platform, it has been decided to allow SEBI Registered Investment Advisors (RIAs) to use infrastructure of the recognised stock exchanges to purchase and redeem mutual fund units directly from Mutual Fund/Assets Management Companies on behalf of their clients, including direct plans.

3. The other provisions of the above mentioned circulars remain unchanged.

4. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

5. This circular is also available on SEBI website at www.sebi.gov.in

BITHIN MAHANTA
Deputy General Manager

08 Bullion as collateral

[Issued by the Securities and Exchange Board of India Vide Circular No: [SEBI/HO/CDMRD/DRMP/CIR/P/2016/112, dated 14.10.2016.]

1. Vide circular no. CIR/CDMRD/DRMP/01/2015 dated October 01, 2015 SEBI had specified comprehensive risk management framework for national commodity derivatives exchanges including norms on collateral that can be accepted by Exchanges from their members.

2. After analysing the representations received regarding bullion as collateral, it has been decided to modify the condition - "Total commodities collateral for any clearing member shall not exceed 15% of the total liquid assets of the clearing member",prescribed in paragraph 2 (Liquid Assets) of Annexure I of the above mentioned circular,as follows – "Total commodities collateral for any clearing member shall not exceed 30% of the total liquid assets of the clearing member, out of which non-bullion collateral shall not exceed 15% of the total liquid assets of the clearing member".

3. It is reiterated that exchanges shall make necessary arrangements to enable timely liquidation of collaterals accepted by them and may

stipulate concentration limits for collateral at member level/across all members as may be necessary based on their risk perception, capability to hold and arrangements for timely liquidation.

4. The exchanges are advised to bring the provisions of this circular to the notice of their members and also to disseminate the same on their website.

5. 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.

6. This circular is available on SEBI website at www.sebi.gov.in.

SHASHI KUMAR
General Manager

09 Exclusively listed companies of De-recognized/Non-operational/exited Stock Exchanges placed in the Dissemination Board (DB).

[Issued by the Securities and Exchange Board of India Vide Circular No: [SEBI/HO/MRD/DSA/CIR/P/2016/110, dated 10.10.2016.]

1. SEBI vide circular dated May 30, 2012 issued guidelines facilitating the exit of De-recognized/Non-operational stock exchanges and exit to the shareholders of exclusively listed companies (ELCs) by allowing them to get listed on nationwide stock exchanges after complying with the diluted listing norms of nationwide stock exchanges, failing which they would be moved to the Dissemination Board (DB).

2. Further, SEBI vide circular dated May 22, 2014, *inter-alia*, provided that ELCs, on de-recognized/non-operational stock exchanges, can also opt for voluntary delisting by following the existing delisting norms of SEBI. It was also specified that if the ELCs fail to comply with the same, they shall be moved to DB.

3. Subsequently, SEBI vide circular dated April 17, 2015 allowed a period of eighteen months' time to ELCs on DB to obtain listing upon compliance with the listing requirements of the nation-wide stock exchanges.

4. SEBI has been receiving representations seeking clarifications on raising of further capital and the process of exit of ELCs from the DB. Therefore, SEBI, in the interest of the investors of such ELCs, clarifies as follows:
   a. The respective nationwide stock exchanges hosting the ELC on its DB would hereinafter be referred as 'designated stock exchange'.
   b. The ELCs on the DB would be required to exercise one of the two options as mentioned in Para 4.c or 4.d of the circular.
   c. <u>Raising capital for listing on Nationwide Stock Exchanges.</u>
      In order to facilitate listing on nationwide stock exchanges the ELCs on the DB shall be allowed to raise capital for meeting the listing requirements through preferential allotment route in terms of the provisions under the Issue of Capital and Disclosure Requirements Regulations, 2009 (ICDR).
      i. For the above purpose the procedures as specified under ICDR shall be followed to the extent possible. Towards this purpose, the designated stock exchange shall be according in principle approval and monitoring compliance with the same.
      ii. In the process of raising capital through preferential allotment, if the allotment is made to promoters/public such that it is in excess of the threshold limits (5% or 25%) of the SEBI (Substantial Acquisition of Shares and Takeovers Regulations), 2011 (SAST), the provisions of SAST Regulation shall not be applicable for the proposed acquisition subject to the overall holding of the promoter group not exceeding 75% of the paid up capital of the company.
      iii. The ELCs which fail to list on the nationwide stock exchanges under the aforesaid mechanism shall provide exit to its investors as per para 4.d of the circular.
   d. <u>Procedure to provide exit to investors:</u>
      In order to protect the interest of all shareholders of such ELCs, an exit mechanism to investors of such ELCs shall be as prescribed in **Annexure-A** to this circular. Accordingly, all ELCs shall be required to ensure compliance with the procedure for exit. The oversight and monitoring of such exit mechanism shall be carried out by the designated stock exchange.
      i. Designated stock exchanges shall further ensure that the promoters have made adequate efforts in terms of the above provisions for providing exit to their shareholders before removing ELCs from the DB.
      ii. The designated stock exchange shall display the list of companies willing to provide exit to their investors on their website on a monthly basis.

5. In order to facilitate the raising of capital or provide exit to investors as mentioned under para 4.c and 4.d, it is prescribed that:
   a. The ELCs on the DB which are yet to indicate their intention to comply with listing or to provide exit shall submit their plan of action to designated stock exchanges latest within three months from the date of this circular to the satisfaction of the designated stock exchanges, failing which the designated exchange shall recommend action as specified under Para 6 of this circular.
   b. The designated stock exchanges shall review the plan of action and ensure completion of the process within 6 months.

6. <u>Action against companies remaining on the DB</u>
   a. Any promoter or director whose company is on the DB and has failed to demonstrate adequacy of efforts for providing exit to their shareholders in conformity with the exit mechanism as provided in this circular shall be liable for the following actions :
      - The company, its directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly associate with the securities market or seek listing for any equity shares for a period of ten years from the exit from the DB.
      - Freezing of shares of the promoters/directors.
      - List of the directors, promoters etc. of all non-compliant companies as available from the details of the company with nationwide stock exchanges shall be disseminated on SEBI website and shall also be shared with other respective agencies.
      - Attachment of bank accounts/other assets of promoters/directors of the companies so as to compensate the investors.

7. The provisions of this Circular are applicable to the exclusively listed companies of all de-recognized/non-operational stock exchanges which are exited/in the process of exit in terms of exit circular dated May 30, 2012.
8. The respective designated stock exchanges shall ensure that all exclusively listed companies on the DB be accordingly advised to facilitate compliance of the above provisions in a time bound manner.
9. This circular is issued in exercise of powers conferred under Section 11 (1) and 11(2) (j) 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. This circular is available on SEBI website at www.sebi.gov.in.

BITHIN MAHANTA
Deputy General Manager

Annexure-A.

i. The promoter in consultation with the designated stock exchange shall appoint an 'independent valuer' from the panel of expert valuers of the designated stock exchange.
ii. In case the fair value determined is positive the promoter of the company shall acquire shares of such companies from the public shareholders by paying them such value determined by the valuer.
iii. The promoter shall undertake to complete the entire process within seventy five working days.
iv. The promoter of the company to make a public announcement in at least one national daily with wide circulation, one regional language newspaper of the region where the exited stock exchange was located and the website of the designated stock exchanges.
v. The public announcement shall contain all material information of the fact of such exit opportunity to its shareholders, disclosing therein the name and address of company, including exit price offered by the promoter with the justification therefore, and shall not contain any false or misleading statement.
vi. The announcement shall contain a declaration about the liability of the promoter to acquire the shares of the shareholders, who have not offered their shares under exit offer up to a period of one year from the completion of offer at the same price determined by the valuer.
vii. The exit offer shall remain open for a period of minimum five working days during which the public shareholders shall tender their shares. The promoter shall open an escrow account in favour of independent valuer/designated stock exchange and deposit therein the total estimated amount of consideration on the basis of exit price and number of outstanding public shareholders. The escrow account shall consist of either cash deposited with a scheduled commercial bank or a bank guarantee, or a combination of both. The amount in the escrow account shall not be released to the promoter unless all the payments made in respect of shares tendered for the aforesaid period of one year.
viii. The promoter shall make payment of consideration within fifteen working days from the date completion of offer.
ix. The promoter shall certify to the satisfaction of designated stock exchange that appropriate procedure has been followed for providing exit to shareholders of such companies. Subsequently, the designated stock exchanges upon satisfaction shall remove the company from the dissemination board.
x. The exclusively listed companies which have 100% promoter holding shall be removed from the dissemination board on obtaining a compliance certification from any independent professional with regard to the holding of shares of these companies and submit to the designated stock exchanges.
xi. The names of the companies providing exit opportunity to its shareholders and their promoters shall be displayed in a separate section on the website of the designated stock exchange.

10 Investments by FPIs in Government securities

[Issued by the Securities and Exchange Board of India Vide Circular No: [IMD/FPIC/CIR/P/2016/107, dated 03.10.2016.]

1. RBI in its Fourth Bi-monthly Policy Statement for the year 2015-16, dated September 29, 2015 had announced a Medium Term Framework (MTF) for FPI limits in Government securities in consultation with the Government of India. Accordingly, SEBI had issued circulars CIR/IMD/FPIC/8/2015 dated October 06, 2015 and IMD/FPIC/CIR/P/2016/45 dated March 29, 2016 regarding the allocation and monitoring of FPI debt investment limits in Government securities.

2. As announced in the MTF and in partial modification to Para 2 of the SEBI circular IMD/FPIC/CIR/P/2016/45 dated March 29, 2016, it has been decided to enhance the limit for investment by FPIs in Government Securities, for the next half year, as follows:
   a. Limit for FPIs in Central Government securities shall be revised to INR 148,000 cr on October 03, 2016 and INR 152,000 cr on January 02, 2017 respectively.
   b. Limit for Long Term FPIs (Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks) in Central Government securities shall be enhanced to INR 62,000 cr and INR 68,000 cr on October 03, 2016 and January 02, 2017 respectively.
   c. The limit for investment by all FPIs in State Development Loans (SDL) shall be enhanced to INR 17,500 cr on October 03, 2016 and INR 21,000 cr on January 02, 2017 respectively.
3. Accordingly, the revised FPI debt limits would be as follows:

Type of Instrument	Revised Upper Cap with effect from October 03, 2016 (INR cr)	Revised Upper Cap with effect from January 02, 2017 (INR cr)
Government Debt	148,000	152,000
Government Debt – Long Term	62,000	68,000
State Development Loans	17,500	21,000
Total	**227,500**	**241,000**

4. The incremental limits for Long Term FPIs shall be available for investment on tap with effect from October 03, 2016 and January 02, 2017 respectively.
5. The incremental limits of INR 3,500 cr each for investment by FPIs in SDLs shall be available for investment on tap with effect from October 03, 2016 and January 02, 2017 respectively.
6. In partial modification to Para 7 of the SEBI circular IMD/FPIC/CIR/P/2016/45 dated March 29, 2016, a separate communication will be issued with regard to transfer of unutilized limits from Government Debt – Long Term category to Government debt category.
7. All other existing terms and conditions, including the security-wise limits, investment of coupons being permitted outside the limits and investments being restricted to securities with a minimum residual maturity of three years, shall continue to apply.

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.

A copy of this circular is available at the web page "Circulars" on our website www.sebi.gov.in. Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

ACHAL SINGH
Deputy General Manager

Economic Laws

11 Foreign Direct Investment (FDI) Policy on Other Financial Services

[Issued by DIPP vide Press Note No.6 (2016 Series) dated 25.10.2016.]

The Government has liberalized its FDI policy on Other Financial Services and Non-Banking Finance Companies (NBFCs). Accordingly, amended policy provisions are mentioned below.

2.0 Para 5.2.26, of Consolidated FDI Policy Circular of 2016, on 'Non-Banking Finance Companies' is replaced with the following paragraph:

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Other Financial Service		
Financial Services activities regulated by financial sector regulators, viz., RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India.	100%	Automatic
Other Conditions		
i. Foreign investment m 'Other Financial Services' activities shall be subject to conditionalities, including minimum capitalization norms, as specified by the concerned Regulator/Government Agency.		
ii 'Other Financial Services' activities need to be regulated by one of the Financial Sector Regulators. In all such financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight, foreign investment up to 100% will be allowed under Government approval route subject to conditions including minimum capitalization requirement, as may be decided by the Government.		
iii. Any activity which is specifically regulated by an Act, the foreign investment limits will be restricted to those levels/limit that may be specified in that Act, if so mentioned.		
iv. ownstream investments by any of these entities engaged in "Other Financial Services" will be subject to the extant sectoral regulations and provisions of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, as amended from time to time		

3.0 The above decision will take immediate effect.

ATUL CHATURVEDI
Joint Secretary

5

NEWS FROM THE INSTITUTE & REGIONS

- MEMBERS ADMITTED/RESTORED
- CERTIFICATE OF PRACTICE ISSUED/CANCELLED
- LICENTIATE ICSI ADMITTED
- COMPANY SECRETARIES BENEVOLENT FUND
- LIST OF PRACTISING MEMBERS/COMPANIES REGISTERED FOR IMPARTING TRAINING
- REGIONAL NEWS
- BRAIN TEASERS


TAKING A SHORTCUT NEVER PAYS OFF.
STAYING INVESTED FOR LONGER MAY HELP YOU REAP BETTER RETURNS.
BSE
INVESTORS' PROTECTION FUND
Make sure you invest for long-term to gain from the benefits of compounding and avoid the pitfalls of market fluctuations.
Call 022 22728097
to report any market irregularity.
Issued in Public interest by BSE Investor Protection Fund.

Institute News

Members Admitted

*FELLOWS**

Sl. No.	NAME	MEMB NO.	REGN.
1	MR. RAKESH KUMAR	FCS - 8891	NIRC
2	DR. M S SANKAR	FCS - 8892	SIRC
3	MS. SHADAB ANJUM	FCS - 8893	WIRC
4	MS. NIKITA AGARWAL	FCS - 8894	NIRC
5	MS. CHANDA BHAVANDAS RAWLANI	FCS - 8895	WIRC
6	MR. SUNNY DADA PAGARE	FCS - 8896	WIRC
7	SH. NAVIN MURLI MAHESHWARI	FCS - 8897	WIRC
8	SH. VIKRAM BHARAT KUMAR JOSHI	FCS - 8898	WIRC
9	MS. CHARU SHARMA	FCS - 8899	NIRC
10	SH CHANDAN NARANG	FCS - 8900	NIRC
11	MS. KAMAKSHI SINGH	FCS - 8901	NIRC
12	MRS. SUREKHA BALKRISHNA GARG	FCS - 8902	WIRC
13	MR. NIKHIL KRISHNAPRASAD BHANDARY	FCS - 8903	WIRC
14	MS. PREETI JAIN	FCS - 8904	NIRC
15	SH. SOHAN LAL JALAN	FCS - 8905	EIRC
16	SH. VINOD HARAKCHAND KANKARIA	FCS - 8906	WIRC
17	MS. SHRADDHA JAYAVANT DALVI	FCS - 8907	WIRC
18	SH. AMBLE BALASUBRAMANYA	FCS - 8908	SIRC
19	MS. SHUCHI SINGHAL	FCS - 8909	NIRC
20	MRS. ARPITA ADITYA JOSHI	FCS - 8910	WIRC
21	SH. SATHIRAJU GIRAJALA	FCS - 8911	SIRC
22	SH. ABHAY SINGH	FCS - 8912	NIRC
23	SH. SURENDER KUMAR SHARMA	FCS - 8913	WIRC
24	DR. AMIT KANSAL	FCS - 8914	NIRC
25	SH. KRISH NARAYANAN	FCS - 8915	SIRC
26	SH. RAJ KUMAR S ADUKIA	FCS - 8916	WIRC
27	MS. ANUPRIYA SAXENA	FCS - 8917	WIRC
28	SH. JIGAR SHAH	FCS - 8918	WIRC
29	MS. ARTI RAWAT	FCS - 8919	NIRC
30	SH. ROHIT GUPTA	FCS - 8920	NIRC
31	MS. REHANUMA KHAN	FCS - 8921	NIRC
32	MS. TEENA KISHOR DEDHIA	FCS - 8922	WIRC
33	MS. PREETI LAKHMANI	FCS - 8923	EIRC
34	MR. CHAITANYA SHRINIWAS JOGDEO	FCS - 8924	WIRC
35	SH. DEEPAK TIBREWAL	FCS - 8925	SIRC
36	MS. RUCHA MILIND PATWARDHAN	FCS - 8926	WIRC
37	MR. ALOK	FCS - 8927	SIRC
38	MRS. ARU AGGARWAL	FCS - 8928	NIRC
39	SH. GURURAJ SRIRAM	FCS - 8929	SIRC
40	MS. PALLAVI DATTARAJ PRABHU CHODNEKAR	FCS - 8930	WIRC
41	SH. PANKAJ MEHTA	FCS - 8931	NIRC
42	MS. DIMPLE JUNEJA	FCS - 8932	NIRC
43	SH. K S SURESH	FCS - 8933	SIRC
44	MS. PRIYANKA VIRMANI	FCS - 8934	NIRC
45	MS. ANSHU JAIN	FCS - 8935	NIRC
46	SH. S THARMARAJAN	FCS - 8936	SIRC
47	SH. JITENDRA SINGH BHATI	FCS - 8937	WIRC
48	SH. V SUBRAMANYAM REDDY	FCS - 8938	SIRC
49	MR. ANIL AGARWAL	FCS - 8939	WIRC
50	SH. CHIRANJEEVI BOMMAKANTI	FCS - 8940	SIRC
51	SH. SHREENIBASHA MISHRA	FCS - 8941	EIRC
52	SH. ATHILAKSHMI CHANDRASEKAR SARAVAN	FCS - 8942	SIRC
53	MRS. PREETAL ARNAV KOTHARI	FCS - 8943	WIRC
54	MRS. RASHI SEHGAL	FCS - 8944	NIRC
55	MS. VIDYA BHAVANI SURESH	FCS - 8945	SIRC
56	SH. JAYESH RAMNIKLAL UDESHI	FCS - 8946	WIRC

*ASSOCIATES**

Sl. NO.	NAME	MEMB NO.	REGN
1	MS. SHIVANGI LATH	ACS - 47164	EIRC
2	MS. SAKSHI BANSAL	ACS - 47165	NIRC
3	MS. NEELAM MADHAVDAS DEVANI	ACS - 47166	WIRC
4	MR. SUNIL KUMAR GOYAL	ACS - 47167	WIRC
5	MS. KRISHNA JAYAKUMAR	ACS - 47168	WIRC
6	MS. SWEETY DAS	ACS - 47169	EIRC
7	MR. PRIYABRATA NAYAK	ACS - 47170	EIRC
8	MS. RIDDHI BHATTER	ACS - 47171	EIRC
9	MS. NAVITA SANCHETI	ACS - 47172	EIRC
10	MR. SUMIT BISWAS	ACS - 47173	EIRC
11	MR. AMRITESH KUMAR RANJAN	ACS - 47174	EIRC
12	MR. SAURAV JAIN	ACS - 47175	EIRC
13	MS. GEETIKA CHATURVEDI	ACS - 47176	EIRC
14	MS. PRERANA TIBREWAL	ACS - 47177	EIRC
15	MS. SWEETY BANSAL	ACS - 47178	EIRC
16	MR. ABHINAV KHITHA	ACS - 47179	NIRC
17	MR. RAMESH CHANDRA PATHAK	ACS - 47180	NIRC
18	MR. DEEPAK BHANWARLAL SONI	ACS - 47181	NIRC
19	MS. MEENAL KUMAWAT	ACS - 47182	NIRC
20	MS. DISHA HASANI	ACS - 47183	NIRC
21	MS. NIKITA GUPTA	ACS - 47184	NIRC
22	MR. GANESH TANDON	ACS - 47185	NIRC
23	MS. SHREEN BHUTANI	ACS - 47186	NIRC
24	MR. RAHUL SAINI	ACS - 47187	NIRC
25	MR. RAJAT CHADHA	ACS - 47188	NIRC
26	MS. AISHWARYA PANDE	ACS - 47189	NIRC
27	MS. NEHA MAYUR RUPAREL	ACS - 47190	WIRC
28	MS. POOJA GOPALDAS CHANDAK	ACS - 47191	WIRC
29	MR. MANOJ SHARMA	ACS - 47192	WIRC
30	MS. SEJALBEN GIRISHBHAI SONI	ACS - 47193	WIRC
31	MR. VICKY JAIN	ACS - 47194	WIRC
32	MS. KESHA SURESH VORA	ACS - 47195	WIRC
33	MR. RUTESH KISHORBHAI CHOKSI	ACS - 47196	WIRC
34	MS. YOGITA VASANT HEDA	ACS - 47197	WIRC
35	MR. BHAVESH VRUJLALBHAI GONDALIYA	ACS - 47198	WIRC

*ADMITTED DURING THE PERIOD FROM 20.9.2016 TO 19.10.2016

*ADMITTED DURING THE PERIOD FROM 20.9.2016 TO 19.10.2016

36	MR. DIPESH KAMLESH JAIN	ACS - 47199	WIRC	90	MR. DURGA PRASAD SHUKLA	ACS - 47253	EIRC
37	MS. RUCHIKA KAMLESHKUMAR KOTHARI	ACS - 47200	WIRC	91	MS. KHUSHBOO GUPTA	ACS - 47254	EIRC
38	MS. SHIKHA NAVIN THAKKAR	ACS - 47201	NIRC	92	MS. AMARPREET BHOGAL	ACS - 47255	EIRC
39	MR. M GAURAV NAYAK	ACS - 47202	SIRC	93	MR. RAHUL VIJAY	ACS - 47256	EIRC
40	MS. DEVANGI RAJENDRA SHAH	ACS - 47203	WIRC	94	MR. RAVI KUMAR	ACS - 47257	NIRC
41	MR. RITESH KHATOD	ACS - 47204	NIRC	95	MR. PRATEEK JAIN	ACS - 47258	NIRC
42	MR. ASHISH KUMAR KUSTA	ACS - 47205	EIRC	96	MR. MOHIT SINGH	ACS - 47259	NIRC
43	MS. PUJA AGARWAL	ACS - 47206	EIRC	97	MS. NANCY JAIN	ACS - 47260	NIRC
44	MS. KRITIKA JAIN	ACS - 47207	NIRC	98	MR. MANISH KUMAR	ACS - 47261	NIRC
45	MS. ANITA KUMARI	ACS - 47208	EIRC	99	MR. PANKAJ YADAV	ACS - 47262	NIRC
46	MS. PREETY JAIN	ACS - 47209	EIRC	100	MR. ASHISH KUMAR	ACS - 47263	NIRC
47	MS. PRIYA MALANI	ACS - 47210	EIRC	101	MR. HIMANSHU RANA	ACS - 47264	NIRC
48	MS. PRIYA NARNOLIA	ACS - 47211	EIRC	102	MR. VIVEK KUMAR CHHIPA	ACS - 47265	NIRC
49	MS. SHRUTI GARG	ACS - 47212	NIRC	103	MS. SHRUTI MISRA	ACS - 47266	NIRC
50	MR. MOHAN YADAV	ACS - 47213	NIRC	104	MR. VIVEK TIWARI	ACS - 47267	NIRC
51	MS. SWATI	ACS - 47214	NIRC	105	MR. AMIT KUMAR SINGH	ACS - 47268	NIRC
52	MS. CHANDNI ARORA	ACS - 47215	NIRC	106	MS. RITIKA UNIYAL	ACS - 47269	NIRC
53	MS. SHUCHI KHANNA	ACS - 47216	NIRC	107	MR. ANKIT TIWARI	ACS - 47270	NIRC
54	MR. RAM GUPTA	ACS - 47217	NIRC	108	MS. SAKSHIE MENDIRATTA	ACS - 47271	NIRC
55	MS. POONAM SHARMA	ACS - 47218	NIRC	109	MS. MEENAKSHI MATHUR	ACS - 47272	NIRC
56	MS. BHARTI CHUGH	ACS - 47219	NIRC	110	MS. NEHA GARG	ACS - 47273	NIRC
57	MS. ANJALI GOYAL	ACS - 47220	NIRC	111	MS. RITU MAHAJAN OMHARE	ACS - 47274	NIRC
58	MS. DIVYANSHI SETH	ACS - 47221	NIRC	112	MS. JYOTI RANI	ACS - 47275	NIRC
59	MS. SHWETA N KADEL	ACS - 47222	NIRC	113	MS. PRIYA WADHWANI	ACS - 47276	NIRC
60	MS. SHWETA TOMAR	ACS - 47223	NIRC	114	MR. RAHUL KHURANA	ACS - 47277	NIRC
61	MR. MATHEW JOSEPH	ACS - 47224	SIRC	115	MR. NIKHIL ARORA	ACS - 47278	NIRC
62	MS. SUSMITHA KOTAPATI	ACS - 47225	SIRC	116	MS. JAGRITI AHUJA	ACS - 47279	NIRC
63	MS. SALONI VIPUL SHAH	ACS - 47226	WIRC	117	MR. RAJVEER SINGH GEHLOT	ACS - 47280	NIRC
64	MS. PRAMESH RAJKUMAR PANWAR	ACS - 47227	NIRC	118	MS. SONAL VERMA	ACS - 47281	NIRC
65	MR. ASHISH ARVIND PUROHIT	ACS - 47228	WIRC	119	MR. SHOBAN BABU B	ACS - 47282	SIRC
66	MS. SHWETA SHRIKANT ACHARYA	ACS - 47229	WIRC	120	MR. PRINCE THOMAS	ACS - 47283	SIRC
67	MR. AKASH UTTAM POTE	ACS - 47230	WIRC	121	MR. THIRUVALLUVAN THULASIRAMAN	ACS - 47284	SIRC
68	MS. SANJANA VERMA	ACS - 47231	WIRC	122	MR. SANTHANAGOPALAN JAYARAMAN	ACS - 47285	SIRC
69	MS. KARUNYA	ACS - 47232	WIRC	123	MS. NIKI CHIRAG MEHTA	ACS - 47286	WIRC
70	MR. IKSHIT SATISHBHAI SHAH	ACS - 47233	WIRC	124	MS. BHAVNA BASANT SHAH	ACS - 47287	WIRC
71	MR. RAJESH KUMAR MITTAL	ACS - 47234	NIRC	125	MS. KOMAL BHANDARI	ACS - 47288	WIRC
72	MS. DESAI SWATI BHARATBHAI	ACS - 47235	WIRC	126	MR. ROHIT MUKUND DESHPANDE	ACS - 47289	WIRC
73	MS. POOJA SINGH	ACS - 47236	EIRC	127	MR. ASIT SHARMA	ACS - 47290	WIRC
74	MS. PRIYANKA JAIN	ACS - 47237	NIRC	128	MS. MONABEN KISHORBHAI RATHOD	ACS - 47291	WIRC
75	MS. NIDHI ARORA	ACS - 47238	NIRC	129	MS. NEELAM DAHIYA	ACS - 47292	WIRC
76	MS. TRIVEDI NIYATI HITENDRA	ACS - 47239	WIRC	130	MS. ARCHANA MADHUKAR PATIL	ACS - 47293	WIRC
77	MR. AJAY MITTAL	ACS - 47240	NIRC	131	MS. SUCHETA SUDHIR KAMATH	ACS - 47294	WIRC
78	MS. HARPREET KAUR	ACS - 47241	NIRC	132	MS. SHIKHA RAHUL JANI	ACS - 47295	WIRC
79	MS. KRINA DHARMENDRA MEHTA	ACS - 47242	WIRC	133	MS. BEENA HIRA LAL THUTHGAR	ACS - 47296	WIRC
80	MS. KALAIVANI D	ACS - 47243	SIRC	134	MR. PRATHAMESH RAVINDRA SONSURKAR	ACS - 47297	WIRC
81	MS. SRINIDHI SRIDHARAN	ACS - 47244	SIRC	135	MR. KAPISH RAKESH KHANNA	ACS - 47298	WIRC
82	MS. APURVA SINGH	ACS - 47245	WIRC	136	MS. PANKITA RAJESHKUMAR SHAH	ACS - 47299	WIRC
83	MS. PALLAVI KETAN THAKUR	ACS - 47246	WIRC	137	MS. VANDANA KARAMSHI PATEL	ACS - 47300	WIRC
84	MR. SANDEEP KUMAR CHANDAK	ACS - 47247	NIRC	138	MS. SHIBANI SHIRISH NADKARNI	ACS - 47301	WIRC
85	MS. RUPA AGARWAL	ACS - 47248	EIRC	139	MS. AGARWAL SUCHITA SURESHKUMAR	ACS - 47302	WIRC
86	MR. B KUMAR	ACS - 47249	SIRC	140	MS. PAYAL DIVYANGBHAI DHAMECHA	ACS - 47303	WIRC
87	MS. SHILA KUMARI BHANSALI	ACS - 47250	EIRC	141	MS. MAITRY ANISHBHAI DOSHI	ACS - 47304	WIRC
88	MR. SAGNIK SANYAL	ACS - 47251	EIRC	142	MS. KAIVALYA PUNDARIKAKSHUDU TETALI	ACS - 47305	WIRC
89	MR. PANKAJ KUMAR BANTHIA	ACS - 47252	SIRC	143	MR. BUVALENDRAN K	ACS - 47306	SIRC

144	MR. DAYASHANKAR	ACS - 47307	EIRC
145	MS. KANIKA SHARMA	ACS - 47308	NIRC
146	MR. H NARAYANA RAO	ACS - 47309	SIRC
147	MS. MANISHA AGARWAL	ACS - 47310	EIRC
148	MS. POORVA TRIPATHI	ACS - 47311	NIRC
149	MR. BHARGAV PRAKASHBHAI PATTANI	ACS - 47312	WIRC
150	MR. PAWAN KUMAR TIWARI	ACS - 47313	EIRC
151	MR. GAUTAM KALAWATIA	ACS - 47314	EIRC
152	MS. KAJAL JAIN	ACS - 47315	EIRC
153	MR. ABHISHEK AGARWAL	ACS - 47316	EIRC
154	MS. SEEMA MAHESHWARI	ACS - 47317	EIRC
155	MS. NIKITA SHARMA	ACS - 47318	EIRC
156	MS. ANKITA BAGLA	ACS - 47319	EIRC
157	MS. PREETI KHANDELWAL	ACS - 47320	EIRC
158	MR. SANDEEP DUBEY	ACS - 47321	EIRC
159	MS. ALKA KHETAWAT	ACS - 47322	EIRC
160	MS. PARVATI SONI	ACS - 47323	EIRC
161	MR. PANKAJ VASHISTHA	ACS - 47324	NIRC
162	MR. PAWAN JAIN	ACS - 47325	SIRC
163	MR. ANKIT SINGH	ACS - 47326	NIRC
164	MR. HEMANT AGRAWAL	ACS - 47327	NIRC
165	MR. SAHIL MALHOTRA	ACS - 47328	NIRC
166	MR. MOHIT AGARWAL	ACS - 47329	NIRC
167	MS. KOMAL JAIN	ACS - 47330	NIRC
168	MS. KANIKA AGGARWAL	ACS - 47331	NIRC
169	MR. NITIN JINDAL	ACS - 47332	NIRC
170	MS. AKANSHA SINGHAL	ACS - 47333	NIRC
171	MS. MANISHA TRIPATHI	ACS - 47334	NIRC
172	MR. GAURAV SINGH SHEKHAWAT	ACS - 47335	NIRC
173	MS. MEENAKSHI RAMANDASANI	ACS - 47336	NIRC
174	MS. RICHA SHARMA	ACS - 47337	NIRC
175	MS. C SAKUNTHALA	ACS - 47338	SIRC
176	MR. SANTHOSH G	ACS - 47339	SIRC
177	MR. NAUFAL NAZAR	ACS - 47340	SIRC
178	MS. SATHYASUNDARI P	ACS - 47341	SIRC
179	MR. YOGESH KUMAR JAJU	ACS - 47342	SIRC
180	MS. KAVITA KUMARI BAID	ACS - 47343	SIRC
181	MS. KRISHNA KUMARI PATEL	ACS - 47344	SIRC
182	MR. K L K PRASAD	ACS - 47345	SIRC
183	MR. SHRIKANT PRAKASH JOSHI	ACS - 47346	WIRC
184	MS. HITI TARANJIT SINGH JHEETA	ACS - 47347	SIRC
185	MR. VIVEK PARMESHWAR SHARMA	ACS - 47348	WIRC
186	MR. PRANJAL PRASAD DONGARE	ACS - 47349	WIRC
187	MS. PRATIBHA BHUSHAN TARE	ACS - 47350	WIRC
188	MS. NIKITA DATTATRAY JOSHI	ACS - 47351	WIRC
189	MR. PRAVIN RAMDAS PATHADE	ACS - 47352	WIRC
190	MS. SONAL SURI	ACS - 47353	WIRC
191	MS. ADITI NITIN ANJARIA	ACS - 47354	WIRC
192	MS. KINJALBEN HAIRISHBHAI SHAH	ACS - 47355	WIRC
193	MS. KRISHNA BHARATBHAI DESAI	ACS - 47356	WIRC
194	MS. VARSHA RAJENDRA BARLOTA	ACS - 47357	WIRC
195	MS. THEJESHWINI N	ACS - 47358	SIRC
196	MS. SWETA SULTANIA	ACS - 47359	EIRC
197	MS. DIVYA GAUR	ACS - 47360	NIRC
198	MS. TANIYA KOUR	ACS - 47361	NIRC
199	MS. MADHURI DHANRAJ SAWANT	ACS - 47362	WIRC
200	MS. NILAM MULJIBHAI BHALKAR	ACS - 47363	WIRC
201	MS. BABITA SINGHAL	ACS - 47364	EIRC
202	MR. ARVIND KUMAR MODI	ACS - 47365	EIRC
203	MS. KRITI GUPTA	ACS - 47366	EIRC
204	MR. MUKESH KUMAR YADAV	ACS - 47367	NIRC
205	MS. KULJIT KAUR	ACS - 47368	NIRC
206	MS. VASUDHA MEHRA	ACS - 47369	NIRC
207	MS. KHUSHBU CHOPRA	ACS - 47370	WIRC
208	MS. GARIMA AGRAWAL	ACS - 47371	NIRC
209	MS. NIDHI KHANDELWAL	ACS - 47372	NIRC
210	MS. PURVIKA JAIN	ACS - 47373	NIRC
211	MR. HARISH GUPTA	ACS - 47374	NIRC
212	MR. RAJAT KUMAR GUPTA	ACS - 47375	NIRC
213	MR. HARSH KUMAR GARG	ACS - 47376	NIRC
214	MR. VISHAL GALAV	ACS - 47377	NIRC
215	MR. BATCHU KALYAN	ACS - 47378	SIRC
216	MS. NITHYA R	ACS - 47379	SIRC
217	MR. NAVARATAN KAKANI	ACS - 47380	SIRC
218	MS. NEHA DWIVEDI	ACS - 47381	WIRC
219	MS. NEHA JEEVAN JAIN	ACS - 47382	WIRC
220	MR. DHRUVKUMAR BHARATKUMAR PATEL	ACS - 47383	WIRC
221	MS. AMISHA MOHANLAL MISTRI	ACS - 47384	WIRC
222	MS. MANJIREE SURYAKANT TAKLE	ACS - 47385	WIRC
223	MS. ARPI GIRISH CHHEDA	ACS - 47386	WIRC
224	MS. RUTUJA DATTARAM MANDAVKAR	ACS - 47387	WIRC
225	MS. DHWANI DILIP GANGAR	ACS - 47388	WIRC
226	MR. AKSHAYKUMAR RASIKBHAI SATASIYA	ACS - 47389	WIRC
227	MR. CHIRAG BATUKBHAI RAKHOLIA	ACS - 47390	WIRC
228	MR. ROHIT SHARMA	ACS - 47391	NIRC
229	MR. SUNNI GUPTA	ACS - 47392	NIRC
230	MR. GIRIRAJ RATHI	ACS - 47393	NIRC
231	MR. DEEPAK KUMAR TRIPATHI	ACS - 47394	WIRC
232	MR. KAMLESH YADAV	ACS - 47395	WIRC
233	MS. SHWETA MISHRA	ACS - 47396	EIRC
234	MS. KIRAN BALA	ACS - 47397	NIRC
235	MS. RICHA KHANDELWAL	ACS - 47398	NIRC
236	MS. VINITA	ACS - 47399	NIRC
237	MR. MOHAMMAD FIROJ	ACS - 47400	SIRC
238	MR. D SURESH KUMAR	ACS - 47401	SIRC
239	MR. PADAM GAUTAM SEMLANI	ACS - 47402	WIRC
240	MR. LALIT ASHOK KARNE	ACS - 47403	WIRC
241	MR. PANKAJ CHANDRA	ACS - 47404	EIRC
242	MS. SHWETA PRABHA	ACS - 47405	WIRC
243	MS. PUJA MANTRI	ACS - 47406	EIRC
244	MS. KANAK LATA SWAIN	ACS - 47407	EIRC
245	MS. BHARTI JHANWAR	ACS - 47408	EIRC
246	MS. PRIYANKA AGARWAL	ACS - 47409	SIRC
247	MS. DEEPANJALI DAS	ACS - 47410	EIRC
248	MR. AKASH GOYAL	ACS - 47411	NIRC
249	MR. ANAND GUPTA	ACS - 47412	EIRC
250	MR. NITIN DABRIWAL	ACS - 47413	EIRC
251	MR. SUBODHAKANTA SAHOO	ACS - 47414	EIRC

252	MR. KESHAV SHARDA	ACS - 47415	EIRC
253	MS. NEHA PANDEY	ACS - 47416	EIRC
254	MS. SHRADHA JALAN	ACS - 47417	EIRC
255	MS. RICHA AGARWAL	ACS - 47418	EIRC
256	MR. SUNNY DAVIA	ACS - 47419	EIRC
257	MS. SHIKHA SARAWGI	ACS - 47420	EIRC
258	MR. YASH KUMAR	ACS - 47421	NIRC
259	MR. JUSTIN PAUL	ACS - 47422	SIRC
260	MR. NIKUNJ AGGARWAL	ACS - 47423	NIRC
261	MR. SHAILESH KUMAR JAIN	ACS - 47424	WIRC
262	MS. KEERTI MOHATA	ACS - 47425	WIRC
263	MS. GORIKA ARORA	ACS - 47426	NIRC
264	MS. KANIKA JAIN	ACS - 47427	NIRC
265	MR. ABHISHEK BHARGAVA	ACS - 47428	NIRC
266	MS. ANJU RANOLIA	ACS - 47429	NIRC
267	MR. SUBHASH KUMAR	ACS - 47430	NIRC
268	MR. NITIN PANCHAL	ACS - 47431	NIRC
269	MS. RITU LALWANI	ACS - 47432	NIRC
270	MR. SHANTANU SHUKLA	ACS - 47433	NIRC
271	MS. DEEPIKA SONI	ACS - 47434	NIRC
272	MR. DEVENDRA MEHTA	ACS - 47435	WIRC
273	MR. VIPAN SHARMA	ACS - 47436	NIRC
274	MS. KOMAL TANWANI	ACS - 47437	NIRC
275	MS. SHIVANI	ACS - 47438	NIRC
276	MR. RISHI VASHISTH	ACS - 47439	NIRC
277	MR. ROHIT KUMAR JAIN	ACS - 47440	NIRC
278	MS. RUCHI PANT	ACS - 47441	NIRC
279	MS. RADHIKA KANSAL	ACS - 47442	NIRC
280	MS. AMRITA SACHIDANANDAN	ACS - 47443	NIRC
281	MS. SWATI MISHRA	ACS - 47444	NIRC
282	MS. BHAVIKA SHARMA	ACS - 47445	NIRC
283	MS. AAKANSHA KHANDELWAL	ACS - 47446	NIRC
284	MS. MANSI MAKHIJA	ACS - 47447	NIRC
285	MR. BHARAT KATARIA	ACS - 47448	NIRC
286	MR. VARUN SIKRI	ACS - 47449	NIRC
287	MR. PRADEEP KUMAR SONI	ACS - 47450	NIRC
288	MS. INDER PREET KAUR	ACS - 47451	NIRC
289	MR. ASLAM	ACS - 47452	NIRC
290	MR. AYUSH GUPTA	ACS - 47453	NIRC
291	MS. MITASHI BISARIA	ACS - 47454	NIRC
292	MS. SWATI AGRAWAL	ACS - 47455	NIRC
293	MS. ANAGHA G	ACS - 47456	SIRC
294	MR. T KRISHNA KUMAR	ACS - 47457	SIRC
295	MR. AZHAGURAJA N	ACS - 47458	SIRC
296	MR. K. SENTHIL KUMAR	ACS - 47459	SIRC
297	MS. ANEESHA TOM	ACS - 47460	SIRC
298	MR. PAMULA BHARAT RAJ	ACS - 47461	SIRC
299	MS. CHANDINI M PATEL	ACS - 47462	SIRC
300	MS. MOHANA PRIYA M	ACS - 47463	SIRC
301	MS. KUSHBU VIJAYVARGI	ACS - 47464	SIRC
302	MR. KINHIKAR VYANKATESH MADHUKAR	ACS - 47465	WIRC
303	MR. ANUBHAV PRAKASH JAIN	ACS - 47466	WIRC
304	MS. AMBREEN MOEENUDDIN ALI	ACS - 47467	WIRC
305	MR. SAGAR MANSUKHBHAI THANKI	ACS - 47468	WIRC
306	MS. VARSHA LEELADHAR SHAH	ACS - 47469	WIRC
307	MR. ANAS ABDULHAI PATEL	ACS - 47470	WIRC
308	MR. MOHAMMED TARIQ HAROON RASHID BUDGUJAR	ACS - 47471	WIRC
309	MR. MANISH JOSHI	ACS - 47472	WIRC
310	MS. RUPALI SHARMA	ACS - 47473	WIRC
311	MS. BEENA PRAMOD MANDALIA	ACS - 47474	WIRC
312	MS. PURVA RAJIVBHAI CONTRACTOR	ACS - 47475	WIRC
313	MS. PREETI SANTOSH PAINGANKAR	ACS - 47476	WIRC
314	MS. HIMANI KAMALKUMAR TRIPATHI	ACS - 47477	WIRC
315	MS. NIMISHA MUKESHJI BHIMJIYANI	ACS - 47478	WIRC
316	MR. VIHANG PHALGOON DESAI	ACS - 47479	WIRC
317	MR. PARTH SHARMA	ACS - 47480	WIRC
318	MS. SHRUTI SUDARSHAN SHAH	ACS - 47481	WIRC
319	MS. AASTHA UPENDRABHAI UPADHYAY	ACS - 47482	WIRC
320	MR. GAURAV KASHINATH NAIK	ACS - 47483	WIRC
321	MS. MADHUVANTI MAHESH JOSHI	ACS - 47484	WIRC
322	MR. SANKET TANAJI PAWAR	ACS - 47485	WIRC
323	MS. MALVIKA SHARMA	ACS - 47486	NIRC
324	MS. DIVYA JITENDRA AGRAWAL	ACS - 47487	WIRC
325	MR. DILIP JAGDISH BOHRA	ACS - 47488	WIRC
326	MS. PALLAVI RAMANLAL PARIKH	ACS - 47489	WIRC
327	MS. POOJA CHHAGAN PATEL	ACS - 47490	WIRC
328	MS. HINA SIDDIQUI	ACS - 47491	WIRC
329	MS. SILKYBEN BHIKHALAL SHAH	ACS - 47492	WIRC
330	MS. ANISHA DEEPAK RAHEJA	ACS - 47493	WIRC
331	MS. ANISHA DEEPAK RAHEJA	ACS - 47493	WIRC
332	MS. RUCHIRA SINGHANIA	ACS - 47494	WIRC
333	MR. DURGA PRASAD KOTTALANKA	ACS - 47495	SIRC
334	MR. RAMESH M	ACS - 47496	SIRC
335	MR. PARAMESHWARAN P	ACS - 47497	SIRC
336	MS. NARMATHA G K	ACS - 47498	SIRC
337	MR. RAKESH SHARMA	ACS - 47499	NIRC
338	MR. SUDISH KUMAR GUPTA	ACS - 47500	NIRC
339	MR. MANJUNATH G	ACS - 47501	SIRC
340	MR. MAN MOHAN SHARMA	ACS - 47502	WIRC

RESTORED*

S. NO.	A/F	MEM. NO.	MEM. NAME	PLACE
1	A	4425	B RAMJEE	SIRC
2	F	1041	RAJINDER KUMAR BHARTI	NIRC
3	A	28810	NISHANT SINGLA	NIRC
4	A	24865	JEEWAN BABOO	NIRC
5	A	23929	KRUPESH VINODKUMAR PATEL	WIRC
6	A	21762	NILAKSHI CHOUDHURY	NIRC
7	A	15440	DEEPTI RUSTAGI	NIRC
8	A	19461	ARUN SHARMA	F/NIRC
9	A	31560	SHIVANGI AGARWAL	NIRC
10	A	22590	INDU KARDAM	NIRC
11	A	17625	KASHIF SHAMIM	F/NIRC
12	A	27330	PRIYA VINOD SHARMA	WIRC
13	A	14688	RAJ MANI MISHRA	NIRC
14	A	25808	POONAM WADHWA	NIRC
15	A	36335	KRATI TEWARI	NIRC
16	A	35310	APURVA HEMANT VINOD	WIRC

*RESTORED FROM 01.9.2016 TO 30.9.2016

17	A	19149	RAMANATH SAHOO	NIRC
18	A	36752	ADIL MUNEER ANDRABI	NIRC
19	A	22021	ASHISH MURARKA	EIRC
20	A	17845	NITISH KUMAR	EIRC
21	A	24553	PRIYA RANJEET JOSHI	WIRC
22	A	23266	SNEHA AMIT PATWARDHAN	WIRC
23	A	26493	MILIND TALEGAONKAR	WIRC
24	A	16837	GEETANJALI GUPTA	NIRC
25	A	21985	NIPUN GUNVANTRAI DOSHI	WIRC
26	A	37286	ANKIT BRIJPURIYA	NIRC
27	A	28522	A NOORAL NIZAR	SIRC
28	A	5947	K BALAKRISHNAN	WIRC
29	A	25678	RUCHI DELIWALA	F/WIRC
30	A	9947	AJIT VISWAMBHARAN	WIRC
31	A	7955	TUSHAR KAPADIA	WIRC
32	A	8596	ASHOK KUMAR JAIN	WIRC
33	A	18604	RAJEEV KUMAR	NIRC
34	A	32428	RAJNEESH THAKUR	NIRC
35	A	16366	PANKAJ KUMAR WAHI	WIRC
36	A	12420	R CHANDRASEKARAN	WIRC
37	A	19120	SHRUTI SOOD	NIRC
38	A	1413	FIROZ PESTONJI DARUWALA	WIRC
39	A	35320	DEBAHUTI SHARMA	NIRC

CERTIFICATE OF PRACTICE*

SI. NO.	NAME	MEMB NO.	REGN.	COP NO.
1	SH. KAMAL NARAIN GUPTA	FCS - 8624	NIRC	17138
2	SH. GOUSE SHAIK	ACS - 17459	SIRC	17139
3	MS. RENU	ACS - 29426	NIRC	17141
4	MRS. KESHA RAVI SHAH	ACS - 37491	WIRC	17142
5	MR. JEEVANJYOTI NAYAK	ACS - 39658	WIRC	17143
6	MS. PALLAVI MALIK	ACS - 40948	NIRC	17144
7	MS. SAKSHI ARORA	ACS - 42033	NIRC	17145
8	MS. GEETANJALI CHUGH	ACS - 42788	NIRC	17147
9	MS. PUJA MISHRA	ACS - 42927	NIRC	17148
10	MS. ANKITA CHAUHAN	ACS - 43767	NIRC	17149
11	MS. HEENA GARG	ACS - 44362	NIRC	17150
12	MS. ROJA PAUL AMBOOKEN	ACS - 45214	SIRC	17151
13	MR. NARESH KUMAR	ACS - 46231	NIRC	17152
14	MR. LOKESH SHARMA	ACS - 46247	NIRC	17153
15	MS. DOLLY SHARMA	ACS - 46275	NIRC	17154
16	MS. REETIKA AGARWAL	ACS - 46413	NIRC	17155
17	MR. SATYAVEER	ACS - 46737	NIRC	17156
18	MR. PRAVEEN KUMAR	ACS - 46741	NIRC	17157
19	MS. BHARTI KASHYAP	ACS - 46774	NIRC	17158
20	MR. SAURABH SHASHWAT	ACS - 46882	NIRC	17159
21	MR. MOHIT MEHTA	ACS - 46893	NIRC	17160
22	MR. ANOOP KUMAR PANDEY	ACS - 46931	NIRC	17161
23	MR. BHADRESH ASHWINKUMAR BHATT	ACS - 46935	WIRC	17162
24	SH. TAPAN KUMAR BANERJEE	ACS - 1242	EIRC	17163
25	MS. SEEMA CHOUDHARY	ACS - 16201	EIRC	17164
26	SH. R SUBRAMANIAN	ACS - 5695	SIRC	17165
27	SH. DURAISAMI VIGNESH	ACS - 26626	SIRC	17166
28	MR. SURENDRA KUMAR MOURYA	ACS - 42971	NIRC	17167
29	MS. HARSHA KUMAWAT	ACS - 43834	NIRC	17168
30	MS. NEHA SURESH KHANDELWAL	ACS - 43848	WIRC	17169
31	MS. SURBHI SHARMA	ACS - 44570	NIRC	17170
32	MR. TARUN KUMAR ARORA	ACS - 46763	NIRC	17171
33	SH. VIMAL PRAKASH DUBEY	FCS - 5062	WIRC	17172
34	MS. SUPREETA SWAMINATHAN	ACS - 37440	SIRC	17173
35	MS. MADHURI SAIN	ACS - 44231	NIRC	17174
36	MR. ASHOK	ACS - 45403	NIRC	17175
37	MS. SRIDEVI SRINIVASAN	ACS - 46537	SIRC	17176
38	MR. SMIT ANADAJI TANK	ACS - 46685	WIRC	17177
39	SH. VENKATA SUBRAMANYA RAVI KUMAR GANNAVARAPU	FCS - 8529	SIRC	17178
40	SH. LAXMAN TIKAMDAS VASANDANI	ACS - 24051	WIRC	17179
41	MS. REENA SHARMA	ACS - 29171	NIRC	17180
42	MS. PREETI CHADHA	ACS - 29183	NIRC	17181
43	MR. S KRISHNAN	ACS - 31339	SIRC	17182
44	MS. RAINA NALIN SHAH	ACS - 33510	WIRC	17183
45	MR. VIJAY KUMAR GUPTA	ACS - 34197	EIRC	17184
46	MS. DEVANSHI PALAK KEDIA	ACS - 35221	WIRC	17185
47	MS. RAJNI KOHLI	ACS - 35298	NIRC	17186
48	MR. KETUL JAGDISHBHAI SHAH	ACS - 37822	WIRC	17187
49	MS. RENUKA MAHESH MUZUMDAR	ACS - 38437	WIRC	17188
50	MR. SAHANI KARAN SUDHIR	ACS - 40638	WIRC	17189
51	MR. RAMESH SINGH	ACS - 42990	NIRC	17190
52	MS. RICHA RAWAT	ACS - 43831	NIRC	17191
53	MS. VINUTA HEGDE	ACS - 44670	SIRC	17192
54	MS. SHRUTIKA AGARWAL	ACS - 44939	NIRC	17193
55	MS. SHWETA SUNDARIA	ACS - 45301	WIRC	17194
56	MS. KHUSBU AGRAWAL	ACS - 45876	EIRC	17195
57	MR. ARUN KUMAR	ACS - 46117	NIRC	17196
58	MS. ANJALI SINGH	ACS - 46361	WIRC	17197
59	MS. NIHARIKA GUPTA	ACS - 46414	NIRC	17198
60	MS. APARNA KOTHARI	ACS - 46618	EIRC	17199
61	MS. KHUSHBU GUPTA	ACS - 46626	NIRC	17200
62	MR. SUSHANT BHALLA	ACS - 46640	NIRC	17201
63	MS. KOTHARI MITTALBEN VAIKUNTHBHAI	ACS - 46731	WIRC	17202
64	MR. VINOD	ACS - 46838	NIRC	17203
65	MR. SANDIIP HARICHAND ADWANI	ACS - 46911	WIRC	17204
66	MS. POOJA AJAY NAVAL	ACS - 46948	WIRC	17205
67	SH. DEEPAK AMRITLAL SHAH	ACS - 7846	WIRC	17206
68	MR. BASANT KUMAR	ACS - 40179	NIRC	17207
69	MS. KOMAL BHATIJA	ACS - 41003	NIRC	17208
70	MS. ITIKA SINGHAL	ACS - 43951	NIRC	17209
71	MR. ALJAS V A	ACS - 44518	SIRC	17210
72	MS. ISHA PAWAN AGRAWAL	ACS - 45522	WIRC	17211
73	MR. PEEYUSH GUPTA	ACS - 45986	NIRC	17212
74	MR. ANIL SINGH NEGI	ACS - 46547	NIRC	17213
75	MR. BINNY CHOPRA	ACS - 46724	NIRC	17214
76	MS. TARA RAWAT	ACS - 46756	NIRC	17215
77	MS. VANEETA	ACS - 46971	NIRC	17216
78	MS. DIVYA MOHTA	ACS - 47040	EIRC	17217
79	SH. VIVEK MISHRA	FCS - 8540	EIRC	17218
80	MS. NAFISA SULTANALI CHARANIA	ACS - 33767	WIRC	17219

*ISSUED DURING THE MONTH OF SEPTEMBER, 2016

81	SH. R KANNAN	FCS - 7446	SIRC	17220
82	MR. KRISHNAKUMAR G	ACS - 28566	SIRC	17221
83	MS. KINJAL PRAKASH MEHTA	ACS - 31196	SIRC	17222
84	MS. SUSMITA SEN	ACS - 34368	EIRC	17223
85	MS. SHIVANI KHURANA	ACS - 40860	NIRC	17224
86	MR. HARSHIT GUPTA	ACS - 41111	EIRC	17225
87	MS. AYESHA SIDDIQUE	ACS - 46315	EIRC	17227
88	MR. MAHESH BAWGE	ACS - 46714	SIRC	17228
89	MR. SAHIL GAUR	ACS - 47016	NIRC	17229
90	MR. BIPIN NARENDRAPRATAP SINGH	ACS - 47036	WIRC	17230
91	MS. CHANDANI MOHTA	ACS - 24214	EIRC	17231
92	MS. KHUSHBOO GOYAL	ACS - 38151	NIRC	17232
93	MR. HARI HARAN PV	ACS - 38668	SIRC	17233
94	MR. SAURABH ARORA	ACS - 47131	NIRC	17235
95	MR. PANKAJ SURENDRA GHORPADE	ACS - 32235	WIRC	17236
96	MR. SANJEEV PANDEY	ACS - 33468	NIRC	17237
97	MR. SANTOSH KUMAR	ACS - 33474	NIRC	17238
98	MR. BIRENDER SINGH	ACS - 36279	NIRC	17239
99	MR. VIRENDER SINGH	ACS - 38820	NIRC	17240
100	MR. SHIV PUSP KUMAR	ACS - 44839	NIRC	17241
101	MS. MINAL DUDEJA	ACS - 44912	NIRC	17242
102	MS. TANVI BHATIA	ACS - 46014	NIRC	17243
103	MR. VRUSHANG PARESHBHAI SHAH	ACS - 46810	WIRC	17244
104	MR. ASHISH	ACS - 46443	NIRC	17245
105	MR. NITESH KARWA	ACS - 46976	WIRC	17246
106	MR. PIYUSH CHANGAL	ACS - 47004	EIRC	17247
107	MR. AKHIL B VIJAY	ACS - 47027	SIRC	17248
108	MR. PAWAN HARINARAYAN KASAT	ACS - 47152	WIRC	17249
109	SH. SANDEEP GUPTA	ACS - 15740	NIRC	17250
110	MS. PARMAR DIMPAL KANAIYALAL	ACS - 37325	WIRC	17251
111	MR. NINGANNA MAHESH	ACS - 38360	SIRC	17252
112	MS. GARIMA VASUDEVA	ACS - 44131	WIRC	17253
113	MS. ANCHAL BERIWALA	ACS - 44364	NIRC	17254
114	MS. SWATHI BHOJAK	ACS - 45830	SIRC	17255
115	MS NEHA JAIN	ACS - 20386	NIRC	17256
116	MS. POOJA JANAK MODY	ACS - 27272	SIRC	17257
117	MS. PRIYA VINOD SHARMA	ACS - 27330	WIRC	17258
118	MS. SHIWALI JHANWAR	ACS - 40572	WIRC	17259
119	MS. LOHITA JAGDISHCHANDRA KHAIRNAR	ACS - 46236	WIRC	17260
120	MS. DEEPIKA KHUBSINGH RAIKWAR	ACS - 46550	WIRC	17261
121	MS. NIDHI SURESH PAREKH	ACS - 33839	WIRC	17262
122	MS. TRIPURA KAPIL KULKARNI	ACS - 44060	WIRC	17263
123	MS. PRERANA GUPTA	FCS - 8612	WIRC	17264
124	SH NEERAJ SINGHAL	ACS - 21385	NIRC	17265
125	MS. ASHIMA BANODHA	ACS - 30105	NIRC	17266
126	MS. ARCHIE GANGRADE	ACS - 40090	WIRC	17267
127	MS. MINU ROHILA	ACS - 41362	EIRC	17268
128	MR. MAYANK BHARDWAJ	ACS - 42209	NIRC	17269
129	MR. LALIT GAJANAN PHATAK	ACS - 43185	WIRC	17270
130	MS. BHARTI CHUGH	ACS - 46781	NIRC	17271
131	MR. SONTIMALLI ESWAR REDDY	ACS - 46815	SIRC	17272
132	MS. MADHURA SHRIKANT MULEY	ACS - 46947	WIRC	17273
133	MS. KAVITA BHARGAVA	ACS - 38450	NIRC	17274
134	MS. LAVINA KESWANI	ACS - 41763	NIRC	17275
135	MS. HIMANI JAIN	ACS - 45928	NIRC	17276
136	MS. BHAWNA GUPTA	ACS - 46502	EIRC	17277
137	MR. PARTH MURLIDHARAN NAIR	ACS - 46802	WIRC	17278
138	MR. RAHUL SAINI	ACS - 47187	NIRC	17279
139	MS. VARSHA DANGAYACH	ACS - 37692	NIRC	17280
140	MS. AMANPREET KAUR HORA	ACS - 41146	WIRC	17281
141	MR. NITIN KUMAR KAUSHIK	ACS - 41447	NIRC	17282
142	MS. NAMRATA GIRISH VYAS	ACS - 46184	WIRC	17283
143	MR. KUNAL ASHOK BORKAR	ACS - 47029	WIRC	17284
144	SH. BOPPANA SATYANARAYANA	FCS - 2177	SIRC	17285
145	SH. S V SRINIVASAN	ACS - 10258	SIRC	17286
146	SH. KIRTI TEJKARAN KOTHARI	ACS - 27255	WIRC	17287
147	MS. SWETA GOYAL	ACS - 35513	SIRC	17288
148	MR. AKASH SHARMA	ACS - 40399	NIRC	17289
149	MS. POONAM VERMA	ACS - 40463	NIRC	17290
150	MS. SHAWETA ARORA	ACS - 42045	NIRC	17291
151	MS. ASHITA DILIP GOLWALA	ACS - 42900	WIRC	17292
152	MS. SINU SUROLIA	ACS - 45333	EIRC	17293
153	MS. PUJA LOHIA	ACS - 45327	EIRC	17294
154	MS. IPSHITA PANDE	ACS - 45599	EIRC	17295
155	MR. DEEPAK KUMAR DHIR	ACS - 45930	NIRC	17296
156	MR. GYANESH KUMAR MISHRA	ACS - 46816	NIRC	17297
157	MR. RAJIV RATHI	ACS - 47073	EIRC	17298
158	MS. RUCHIKA KAMLESHKUMAR KOTHARI	ACS - 47200	WIRC	17299
159	MR. MATHEW JOSEPH	ACS - 47224	SIRC	17300
160	MS. MEGHANA EKANATH KASHTE	ACS - 31495	WIRC	17301
161	MS. REHANA KAMILAHMED KHAN	ACS - 34833	WIRC	17302
162	MS. DEBAHUTI SHARMA	ACS - 35320	NIRC	17303
163	MS. AMRITA KUMARI	ACS - 43658	NIRC	17304
164	MS. KHUSHBOO GOYAL	ACS - 47000	EIRC	17305
165	SH. C KRISHNAMANI	ACS - 9411	WIRC	17306
166	MS. ASHA NAIR	ACS - 32258	EIRC	17307

CANCELLED*

SI. NO.	NAME	MEMB NO.	COP NO.	REGN
1	MS. KRUTI SUNIL PATEL	ACS 40320	16177	WIRC
2	MS. KINJAL SANGANI	ACS 39255	15960	WIRC
3	MS. MISHA DHAWAN	ACS 40406	15837	NIRC
4	MR. HIREN HASMUKH SHAH	ACS 42463	15746	WIRC
5	MR. DHANEESH MADACHIMPARARAMA KRISHNAN	ACS 41794	16014	SIRC
6	MR. SHIV RAM SINGH	FCS 8457	13880	NIRC
7	MS. RIMIKA TALESARA	ACS 43461	16033	NIRC
8	MS. SPANA GUPTA	ACS 40515	15689	NIRC
9	MR. SHREYAS RASHMIN MEHTA	ACS 38639	15243	WIRC
10	MR. VASISTA RAGHAVA PADMANNA GARI	ACS 42155	15825	SIRC
11	MS. SHILPA RAHUL SHIRGAONKAR	ACS 17089	5525	WIRC
12	MS. KANAK KABRA	ACS 17561	8421	SIRC
13	MS. MANJEET KAUR	ACS 10211	5524	NIRC
14	MR. PARITOSH CHAUHAN	ACS 42603	16356	NIRC
15	MR. KUNAL PRABHAKAR MANDWALE	FCS 7944	8779	WIRC
16	MS. SUJATA KUMARI	ACS 33907	12795	NIRC
17	MR. SURESH DEVJI PARMAR	ACS 40270	15976	WIRC

*DURING THE MONTH OFSEPTEMBER, 2016

18	MS. ANUMITA SHARMA	ACS 38109	14522	NIRC
19	MRS. POONAM MAKKAR	FCS 7919	13432	NIRC
20	MR. MAYANK DIXIT	ACS 27761	9995	NIRC
21	MS. RITIKA KHARBANDA	ACS 37524	14100	NIRC
22	MR. JATIN SAHNI	ACS 34587	16944	NIRC
23	MR. BINDU BHUSAN DASH	ACS 19872	17140	NIRC
24	MR. DHAN RAJ RANAWAT	FCS 1986	8282	WIRC
25	MR. DHEERAJ SHARMA	ACS 21999	15937	WIRC
26	MR. RAVINDER REDDY SURUKANTI	ACS 45501	16729	SIRC
27	MR. NITIN VEDI	ACS 41376	15777	NIRC
28	MR. JASPREET SINGH MAKKER	ACS 46770	17135	NIRC
29	MS. MANVI JAIN	ACS 24907	16585	NIRC
30	MS. FALGUNI ROHIT SANGHVI	ACS 18726	16981	WIRC
31	MS. ANU SINGH	ACS 24760	14759	EIRC
32	MS. FAGUNI KAPOOR	ACS 44915	17015	NIRC
33	MR. VIKAS BANSAL	ACS 40309	14988	NIRC
34	MR. YAKKALI VISHWA SAI	ACS 43615	16053	SIRC
35	MR. H HARIPRASAD	ACS 12167	10612	SIRC
36	MS. ARPITA LADDHA	ACS 33909	12650	NIRC
37	MS. VARINDA RANI	ACS 34239	12950	NIRC
38	MRS. SHEFALI MITTAL	ACS 28641	12586	NIRC
39	MR. SHAILESH VISHWAS GADGIL	ACS 32745	15877	WIRC
40	MS. VANDANA SHARMA	ACS 36925	14010	NIRC
41	MR. ANIL KUMAR	ACS 36197	14424	NIRC
42	MS. JYOTI TANDON	ACS 19009	13409	SIRC
43	MS. HUMA M TAMATGAR	ACS 44303	16616	SIRC
44	MS. ADITI PETHKAR	ACS 29649	10998	WIRC
45	MS. K J LAKSHMI	ACS 21246	7786	SIRC
46	MRS. NEHA MUNDRA	ACS 22385	15354	EIRC
47	MS. NIKETA SINHA	FCS 8589	13336	EIRC
48	MS. DHRUTI ATUL DHRUV	ACS 45096	17226	WIRC
49	MS. SONAL POPLI	ACS 44167	16258	NIRC
50	MR. AMUDALA SREERAMULU NAGESWAR RAO	ACS 34081	14002	SIRC
51	MR. RAMPRASAD NAGARAJ MADHUGIRI	ACS 45302	16518	SIRC
52	MS. BHAVIKA BEHRUNANI	ACS 39110	14614	NIRC
53	MR. VINIT KUMAR JAIN	ACS 22995	9527	WIRC
54	MR. RAVI KUSHWAH	ACS 44990	16486	WIRC
55	MS. SHRAYA JAISWAL	ACS 40296	15019	NIRC
56	MR. YOGESH KUMAR	ACS 40555	15137	NIRC
57	MS. GARVI SANJAY BHAI SHAH	ACS 42663	16751	WIRC

LICENTIATE ICSI

S. No.	Licentiate No.	Name	Region
1	6877	MR. VIVEK PARAKH	WIRC
2	6878	MR. GAURAV MAHAJAN	NIRC
3	6879	MR. HEMANTH KUMAR	SIRC
4	6880	MS VARSHA V SHENOY	SIRC
5	6881	Mr. ANCHIT SUREKA	EIRC
6	6882	MR RAHUL JAIN	EIRC
7	6883	MR. PRETHAM PRABAKARAN	SIRC
8	6884	MR SAURABH SANJAY GOLIWAR	WIRC

*ADMITTED DURING THE MONTH OFSEPTEMBER, 2016

Guidelines for Change in Name of Proprietorship Concern/Firm of Company Secretary(ies)

In case an existing proprietary concern/ firm of Company Secretary (ies) desires to change its name, the following conditions shall be fulfilled:

(a) An application for change in name of the firm (preferably mentioning its Unique Code Number) shall be submitted along with the Form for giving particulars of Offices and Firms duly filled- in.

(b) All the existing partners of the firm must sign the application and the Form duly filled- in.

(c) In the case of a proprietary firm, an application along with the Form for giving particulars of Offices and Firms (mentioning its Unique Code Number) is to be submitted duly filled-in and signed by the proprietor.

(d) The application for approval of the firm name along with the Form should be sent to the Directorate of Membership, ICSI.

(e) The new proposed name will be approved under the provisions contained in Regulations 169 and 170 of the CS Regulations, 1982.

(f) The letter granting approval of a trade / firm name will be sent at the address mentioned in the Form for giving particulars of Offices and Firms.

(g) The Proprietorship concern/firm of Company Secretary (ies) which has requested for change in name, upon approval shall mention "formerly known as (old name)" for a period of one year from the date of approval of the changed name.

ATTENTION MEMBERS

The Institute has brought out a CD containing List of Members of the Institute as on 1st April, 2016. The CD is available at HQ, ICSI on payment of Rs. 250/- for members; and Rs. 500/- for others. A request along with the payment may be sent to the Directorate of Membership at email id rajeshwar.singh@icsi.edu.

For queries if any, please contact at 011-45341063.

ANNUAL MEMBERSHIP FEE

Revision in the Annual Membership fee, Entrance Fee and Certificate of Practice fee for Associate and Fellow Members w.e.f. 1st April, 2017

The Council of the Institute has decided revision in Annual Membership fee, Entrance fee and Certificate of Practice fee for Associate and Fellow Members w.e.f. 1st April, 2017, as under:

Particulars	Associate		Fellow	
	Existing fee	Revised fee	Existing fee	Revised fee
Annual Membership fee	Rs. 1125	Rs. 2500	Rs. 1500	Rs. 3000
Entrance fee	Rs. 1500	Rs. 2000	Rs. 1000	Rs. 2000
Certificate of Practice fee	Rs. 1000	Rs. 2000	Rs. 1000	Rs. 2000

The existing facility for payment of fee in advance/concessional fee shall remain in vogue for the revised fee structure.

ATTENTION MEMBERS

Revolving Fund Schemes for becoming life members of CSBF

The Managing Committee of Company Secretaries Benevolent Fund (CSBF) has launched the following schemes for enrolling the members of the Institute as life members of the CSBF. The members may take benefit out of these schemes.

Employer's Revolving Fund Scheme for their employees:

1. The companies, PCS and other organizations where the members of the Institute are working may be encouraged to create a Revolving Fund, to provide financial assistance out of this revolving fund to their employees by paying their one time subscription amount to CSBF, to enable them becoming a member of the Company Secretaries Benevolent Fund.
2. The amount, so disbursed as financial assistance, may be deducted from the monthly salary of the member employee in instalments or as per the mutually agreed terms between the employer and the employees.
3. The financial assistance so provided will act as an incentive and may attract young members to join these organizations as well as good number of members to join the CSBF.
4. Such employer companies, PCS and other organizations be given proper recognition by the Company Secretaries Benevolent Fund and their names will be posted at the webpage of the CSBF as well as in the Chartered Secretary.

General Revolving Fund Scheme for the Members of the Institute:

1. Such scheme will be administered by the Individual Members (hereinafter may be called "Contributory Member") of the Institute for enabling the eligible members (hereinafter may be called "Beneficiary Member") of the Institute to become members of CSBF;
2. The financial assistance will be provided at the discretion of the contributory member but in no case will be more than 80% of the one-time subscription amount to be paid by the beneficiary member for becoming a Life-member of CSBF.
3. Members having less than five years standing as an Associate Company Secretary shall only be eligible for this scheme.
4. The financial assistance so provided will be refunded in instalments as per the terms and conditions mutually agreed.
5. Such contributory members will be given proper recognition by the CSBF and their names will be hosted at the webpage of the CSBF as well as in the Chartered Secretary.

Revolving Fund Scheme administered by CSBF:

1. Any company, Individual (member or non-member) or Entity may contribute any amount towards the Revolving Fund Scheme to be administered by the CSBF. The Fund shall administer this revolving fund scheme for the new members of the Institute to enable them to become member of the CSBF.
2. Members having less than five years standing as an Associate Company Secretary shall only be eligible for this scheme.
3. This scheme shall be administered out of the contributions received by the Fund specifically for this scheme only and earmarked fund for the proposed scheme: "CSBF Membership Assistance Fund".
4. Beneficiary Members shall have to contribute at least 20% of the one-time subscription amount to be paid by them for becoming a Life-member of CSBF.
5. Beneficiary Members shall refund the amount to the Fund in not more than four quarterly instalments by way of PDCs within a period of one year.
6. Amount refunded by the beneficiaries would be credited to the fund.
7. Beneficiary Members may be required to submit an undertaking to refund the amount.

Note: In all the above three schemes, no interest or other amount shall be charged from the members seeking financial assistance.

Revised Guidelines for name of a Proprietorship concern / Firm / Trade

The Guidelines of the Council for name of a Proprietorship concern / Firm / Trade under Regulation 169 of the Company Secretaries Regulations, 1982.

1. A trade or firm or concern name shall be restricted to the name(s) of the proprietor/ partners or a name which is already in use.
2. A trade/firm name may include the name(s) of the member(s) as it/they appear in the Register of Members in the following manner:
   (i) For Sole proprietorship concern:
   (a) Name comprising first name and/or middle name and/or surname of the member, in any order, with or without commonly used suffix or prefix
   (b) Initials of the first name and/or middle name and/or surname, in whichever order
   (c) Combination of (a) and (b) above, in any order
   (d) Parts of or prevalent abbreviations of or acronyms of commonly used names alongwith any combination referred to in (c) above
   (ii) For Partnership firm:
   (a) Full surnames of two or more partners
   (b) Full first names of two or more partners
   (c) Combination of first names and / or middle names and/or surnames of two or more partners with or without commonly used suffix or prefix
   (d) Combination of initials of first names and/or middle names and/ or surnames of the two or more partners
   (e) Combination of (c) and (d) above, in any order
3. General
   (i) A trade or firm name shall not be approved if the same or similar or nearly similar name is already used by a Company Secretary in practice or which resembles the name of Company Secretary in practice or firm of such Company Secretaries and has been entered in the Register of office of firms.
   (ii) A trade/firm name shall not contravene the provisions of The Names and Emblems (Prevention of Improper Use) Act, 1950 or any modification/re-enactment thereof.
   (iii) The trade or firm name may be suffixed by the suffixes "& Co.", "& Company" or "& Associates". However, any suffixes that may be considered undesirable by the Council shall not be allowed.
   (iv) The word "and"/ "&"could be used in between the first name/middle name/ surname including initials thereof, of the partners of the firm.
   (v) A firm name may also be allowed without the use of the suffixes "& Co.", "& Company" or "& Associates" provided full first names and/or full middle names and/or full surnames of the partners are used. Also, in such cases, the word "&"/"and" is compulsorily to be used either in between the full first names and/or full middle names and/or full surnames of the partners or before the last full first name/full middle name/full surname of the partners.
   (vi) The name of a sole proprietorship concern shall not be allowed without the use of suffixes "& Co." / "and Company" / "& Associates".
   (vii) A trade/firm name, which has no relationship with the name of member(s) as above, shall not be allowed.
   (viii) Descriptive trade/firm names viz. Fire, Smash, Leader, Champion, Mastermind, Super, Supreme etc.shall not be allowed.
   (ix) Trade/firm names denoting publicity shall not be allowed. Any trade/firm name, regardless of reason or logic, using the initials, acronyms or full forms of any profession whether used individually and/or collectively and/ or in any order, shall not be allowed. The use, therefore, of CA, CS, CMA, MBA, CACMA, CACS, CSCA, CSCMA, CMACS, CMACA, Secretary,Accountant, Management, Chartered Accountant, Cost Accountant, Chartered Secretary etc., shall not be allowed.However, trade/ firm names matching with the group name/theme shall be allowed, if the same is not in contradiction with any other criteria.
   (x) The name, middle name and surname of the member shall conform to the name, middle name and surname as they appear in the register of members.
   (xi) In case any change in the status of the firm from individual firm to partnership firm or vice-versa, the firm name already been in use by any of the partner or individual could be approved provided there is no objection by any of the partners or individual.
   (xii) A trade/firm name which was in use by a proprietor or partners shall not be allowed to any other member or members for a period of three years of the closure of firm. The name may be re-allotted to the same member or members' upto a period of three years of the closer of the firm. In the event of removal of name of a practising member, after the expiry of the period of three years, the said trade/firm may be allowed to any member or members who are eligible for allotment of such name under the guidelines.
   (xiii) After various permutations and combinations under guidelines 2(i) and (ii) have been exhausted and the member is not able to get approval of firm/trade name in accordance with the same, he may be permitted to adopt or coin a firm/trade name out of the names of his/her family members provided that such name was not already registered by some other members. The terms "family" for this purpose means husband, wife, father, mother, son and daughter. An affidavit or other evidence to the satisfaction of the Secretary is to be produced in such cases.
   (xiv) Any reconstitution of the firm with the same firm name shallnot have effect except with the prior approval of the Council pursuant to Regulation 170.
   (xv) Approval accorded by the ICSI for any trade/firm name shallnot tantamount to any protection by the ICSI in case of any dispute arises affecting to Intellectual Property Rights between any trade/firm with any other brand, entity, business etc., outside the profession and in relation to the name in dispute. The responsibility and liability in such cases shall solely be of the concerned trade/firm and at its own risk and costs and not of the ICSI. The ICSI shall not be any party to any kind of dispute that may arise in this regard.

****

236th meeting of the Council held on 29-30th March, 2016

List of Practising Members Registered For The Purpose of Imparting Training During The Month of September, 2016

ABHIJIT NAGESH GAONKAR
302, LOUIS-OLIVE APARTMENTS, NEAR CIVIL & CRIMINAL COURTS, MAPUSA, BARDEZ-403507

ABHILASHA AGARWAL
506-507, CROP ARCADE, K-12, MALVIYA MARG, C-SCHEME, JAIPUR-302001

ABHISHEK AGARWAL
PARMESHWARI BLDG 4TH FLOOR R.N.4 CHATRIBARI ROAD, GUWAHATI -781001

ABHISHEK SANJAY SINGH
F-104, FIRST FLOOR, RAGHULEELA MEGA MALL, BEHIND POISAR DEPOT, S.V. ROAD, KANDIVALI (WEST) MUMBAI-400067

ABHISHEK SONI
401, MOHIT HIGHLAND, OFF SALUNKE VIHAR ROAD, WANOWRIE, PUNE-411048

AKSHARA PAREEK
G-36 DWARIKA TOWER CENTRAL, CENTRAL SPINE, VIDHYADHAR NAGAR, JAIPUR-302023

AKSHAY SHARMA
58 PRATAP NAGAR, MURLIPURA, JAIPUR-302023

AMANPREET KAUR
106, GIRISH GHOSH ROAD, BAJRANGBALI, LAL KOTHI, 4TH FLOOR, HOWRAH-711202

AMIT KUMAR
G-83, ROOM NO. 204, LAXMI NAGAR, DELHI-110092

ANANT NARASINHA BHAT
38/A, II FLOOR, I MAIN, MOUNT JOY EXTN., HANUMANTHA NAGAR, BANGALORE-560019

ANJALI SINGH
H. NO. 33, EXTENSION NO. 3, NANGLOI, NEW DELHI-110041

ANJU BIYANI
B -80, B- BLOCK, GALI NO. 5, DASHRATH PURI, NEW DELHI-110045

ANKUR SACHDEVA
A-137, SHASTRI NAGAR, NEW DELHI-110052

ARATHY P NAIR
"ROHINI", TC7/958, MARUTHANKUZHI, KANJIRAMPARA, THIRUVANANTHAPURAM-695030

ARPITA SHASHIKANT SHAH
7, SNEH KIRAN BLDG, JAI JAWAN LANE, DAFTARY ROAD, MALAD (EAST) MUMBAI-400097

BHAIRAVI SANJIV JOSHI
2306, SHIV SADAN, KRISHNA MANDIR, BHADRA LAL DARWAJA, AHMEDABAD-380001

BHARAT HASSANI
120-A, RAHUL VIHAR, DAYALBAGH (NEAR RAHUL VIHAR WATER TANK), AGRA-282005

CHIRAG GOVINDBHAI PANCHANI
7, 11-GALA, MIRANAGAR SOCIETY, MINI BAZAR, NEAR SARDAR SMUTI BHAVAN, VARACHHA ROAD, SURAT-395006

DIMPLE JUNEJA
58, TANEJA BLOCK, ADARSH NAGAR, JAIPUR-302004

DIVYA KHARE
W/O ASHUTOSH SAXENA, C-3/3 VIGYAN VIHAR, RAIPUR ROAD, DRDO RESIDENTIAL AREA, DEHRADUN-248008

G MANOHARAN
101A, AMBIENCE AVENUE, NEAR BIG BYTE BAKERY, 8-3-981/982, SRINAGAR COLONY MAIN ROAD, HYDERABAD-500073

GAUTAM KUMAR
59, VIJAY BLOCK, EMCO COMPLEX 2ND FLOOR, OFFICE NO. 209, LAXMI NAGAR, DELHI-110092

GITIKA KOHLI
D-69, KIRTI NAGAR, NEW DELHI-110015

HARESH RAMNIKLAL KAPURIYA
316, PHOENIX COMPLEX, NEW SURAJ PLAZA, SAYAJIGUNJ, VADODARA-110015

HARINATH PUNNA
H.NO 6-3-348/6, DWARKA PURI COLONY, PUNJAGUTTA, HYDERABAD-500082

HOLALKERE MANJUNATHA SETTY RAKESH
NO. 12 GROUND FLOOR, HOUSE OF LORD'S, # 15 & 16 SAINT MARKS ROAD BANGALRE-560001

ISHRAT SIDDIQUI
C/O HUKUM SINGH S/O METH SINGH, RAVIENDER CENTRAL STORE, ISLAMPUR, SEC-38, SOHNA ROAD, GURGAON-122018

JATIN BAJAJ
RZ-32A, SAI BABA ENCLAVE, PART -1, TEHSIL ROAD, NAJAFGARH, NEW DELHI-110043

JATINBHAI HARISHBHAI KAPADIA
D/22, SATELLITE APP, JODHPUR X RD, SATELLITE, AHMEDABAD-380015

JEETHI RADHAMOHAN PILLAI
A-4/402, NEEM CHS, LOK UDYAN, SANGLEWADI, KALYAN (W) , THANE-421301

KEERTI SEETARAM HEGDE
FLAT NO.203, SREEMATHA SADGRUMAM, 2ND MAIN ROAD, SREENIVASA NAGAR, BANASHANKARI, 3RD STAGE, BANGALORE-560050

KRISHNA MOHAN TP KURPAD
NO. 3043, 15TH CROSS, 6TH MAIN BSK 2ND STAGE, BANGALORE-560070

MADHAVI MITHIPATI
FLAT NO. 735, BLOCK -8, MANASAROVAR, HEIGHTS-III, MANOVIKAS NAGAR SAI SAGAR ENCLAVE, RIRUMALAGIRI, SECUNDERABAD-500009

MAHESH KUMAR AMRITLAL PATEL
316, SUN COMPLEX - 2 MOTIPURA, HIMATNAGAR, DIST - SABARKANTHA HIMATNAGAR-383001

MANISHA NIGAM
D-4, IDPL TOWNSHIP, DUNDAHERA, GURGAON-122016

MANISHA RAWAT
B-603, GAYATRI APPARTMENTS, PLOT NO. 27, SECTOR 10, DWARKA, NEW DELHI-110075

MANOJ KUMAR SHIVPRASAD JI KALANI
OFFICE NO: 204, PRAGATI TOWERS, IN FRANT OF BUS STAND, SHIVAJI NAGAR PUNE-411005

MAYURI JAIN
ABOVE ASHOK BANGLE STORE, B M GALI, BANJARI CHOWK, GOL BAZAR, RAIPUR-492099

MEGHNA PIPLANI
93, INDRA VIHAR, NEAR BBM BUS DEPOT, DELHI-110009

MEHTA YASH HINESHKUMAR
19, CHINUBHAI TOWER, NR. H.K. COLLEGE, ASHRAM ROAD, AHMEDABAD-380009

MOHINI SHARMA
D-5/91, SANGAM VIHAR , NEW DELHI-110062

MOHIT SINGHAL
I-29, ARYA SAMAJ ROAD, UTTAM NAGAR, NEW DELHI-110059

MUKUL TYAGI
101, SITA RAM MANSION, 718/21, JOSHI ROAD KAROL BAGH, NEW DELHI-110005

NEHA SHARMA
B 1/47, FLAT NO. 14, SEWAK NAGAR, UTTAM NAGAR, NEW DELHI-110059

NIDA SIDDIQUI
OFFICE NO. 208, BLUE INDUSTRIAL ESTATE, NEAR MAGATHANE PETROL PUMP BORIVALI (E), MUMBAI-400066

NISHA SARAFF
KREENG PLAZA, COOKS COMPOUND, NEAR-ZILLA SCHOOL MORE, PURULIA-723101
NITIN PRAFULLA CHOUDHARI
FLAT 10, RUDRAPARAYAG SOCIETY, BHAGVANT NAGAR, OPPOSITE WASAN EYE CARE MUMBAI NAKA, NASHIK-422 011
PANKAJ SURENDRA GHORPADE
PLOT NO. 26, CHAVREKAR VASAHAT, RADHANAGARI ROA, KOLHAPUR-416012
PAYAL KARTIK JAIN
GROUND FLOOR, SHUBHAM SOCIETY, OPP. INDIAN BANK, NR. PARSI AGYARI 599/600, RASTA PETH, PUNE-411011
PIYUSHKUMAR JIVARAJBHAI GEVARIYA
A-17, PULIN PARK SOCIETY, NR. NIDHIPARK SOCIETY, THAKKAR NAGAR ROAD AHMEDABAD-382350
POOJA CHANDANI
10/76, CHOPASNI HOUSING BOARD, IIND PULIYA, BEHIND LAXMI CIRCLE JODHPUR
POOJA JAIN
AJMERA HOUSE, MACKEY ROAD MAHAVEER CHOWK, UPPER BAZAR RANCHI-834001
POOJA PRASANNA SAWARKAR
A/401, SAVGAN HEIGHTS, RTO LANE, FOUR BUNGALOWS ANHDERI WEST MUMBAI-400053
PRAKASH KUMAR SHAW
P-38, PRINCEP STREET, 1ST FLOOR, ROOM NO. 12, KOLKATA-700072
PRATIK JAIN VINODKUMAR
B/18, MUTHIAN VIHAR, JYOTI NAGAR, NEAR DASHMESHWAR SHIV MANDIR AURANGABAD-431002
PRERNA TIWARI
B-88-A, MOTIKUNJ EXTENSION, MATHURA-2810001
RAGINI GUPTA
C/O VIMAL KUMAR GUPTA, H.NO.C122/177, MANOJ CHUDI MAHAL, OPP. DR. JANKI PRASAD, NAKHASH CHOWK, GORAKHPUR-273001
RAHUL MALHOTRA
R- 60, 2ND FLOOR, WEST PATEL NAGAR, NEW DELHI-110008
RAJAT GUPTA
8/36-37, SADAR BAZAR, SAGAR, MP
RAMESH SINGH
16A/20, WEA KAROL BAGH, NEW DELHI-110005
RANI RAI
GALI NO. 3, T-181, P/77 NEAR NCC CANTEEN ANAND NAGAR, MAKRONIYA SAGAR-470001
RASHMI SAGAR MITKARY
`RASHMI`, PLOT NO. 11 PANCHDEEP NAGAR, SOMALWADA, NAGPUR-440025
RISHABH JAIN
H.NO. 2511, ST. NO..12, BIHARI COLONY, DELHI-110032
ROHIT KUMAR
729, SHEESH MAHAL AZAD MARKET, DELHI-110006
ROHIT KUMAR KESHRI
PLOT -3, NEW PARK 2K SOUTH ROYNAGAR, BANSDRONI, KOLKATA-700070
SANTOSH RADHESHYAM BHUTADA
C/O SUJAL MEDICAL, PLOT NO.5, NEAR KOTHARI HOSPITAL, VEDANT NAGAR ITI COLLEGE ROAD, AURANGABAD-431005
SAURABH TANEJA
FLAT NO. 201, B-50, RAMPRASTHA COLONY, GHAZIABAD-201301
SEJAL HARIT PALAN
308, SADHANA DOWNTOWN, JUBILEE CHOWK, JAWAHAR ROAD, RAJKOT-360001
SHEETAL
B-27, BASEMENT, GUPTA PALACE, RAJOURI GARDEN, NEW DELHI-110027
SHEKHAR PAREEK
F-17, SHREE NATH TOWER, VIDHYADHAR NAGAR, JAIPUR-302039
SHIRITI KUMARI
OFFICE NO.05, FIRST FLOOR, 37, KRISHNA PLAZA, PRATAP NAGAR, MAYUR VIHAR, PHASE 1, DELHI-110091
SHRUTI SIDDHARTH SINGH
A-40, RADHEY SHYAM PARK, (EXT.), STREET NO.2, DELHI-110051
SHWETA GOYAL
D-32-33, GOYAL SADAN, KHETRI HOUSE, VIVEKANAND COLONY, CHANDPOLE BAZAR OUTSIDE, JAIPUR-302001
SHWETA SUNDARIA
FLAT NO.22 & 23 VRINDAVAN BLUEBELL CHS, EVERSHINE CITY GATGE VASAI (E), PALGHAR, MUMBAI-401208
SIDHARTH C A
2ND FLOOR, PLOT NO. 2, SURYA ENCLAVE ROAD, TRIMULGHERRY, SECUNDERABAD, HYDERABAD-500015
SONAM AGARWAL
ROOM NO. 20, 2ND FLOOR, 40 WESTON STREET, KOLKATA-700027
SRINIVAS THATIKONDA
NO. 79, 1ST FLOOR, KPA BLOCK, CHANDRA LAYOUT, LANKMARK BEHIND BALAJI TEXTILES, BANGALORE-560040
SUKHMEET SURI
31/323 A-2 PROFESSOR COLONY KAMLA NAGAR, AGRA-282005
SUMANTRA SARATHI MAHATA
97, PARK STREET, TRIMURTI APARTMENT, GROUND FLOOR KOLKATA-700016
SUMIT
SHOP NO. 25, HUDA MARKET, SECTOR 46, GURGAON-122001
SURAJ VILAS KARVEKAR
A/P-AMBAP TAL -HATKARANGALE PINCODE:416112, KOLHAPUR DISTT MAHARASHTRA
SURBHI BANSAL
39, III FLOOR MOHAMMADPUR, NEAR BHIKAJI CAMA PLACE PINCODE:110066, NEW DELHI
SURENDER SINGH CHAUHAN
21, 3RD FLOOR, SETHI MANSION, KUMTHA STREET, BALLARD ESTATE, MUMBAI-400001
SWEETY KUMARI KEJRIWAL
C/O MUKESH KEJRIWAL, H/J/11, S L SARANI JORAMANDIR (BAGUIATI) GAUTAM APPARTMENT, FLAT NO. 5, KOLKATA-700059
TANNIRU SRIRAM
FLAT NO. 204, PLOT NO.797, 801, VINEYARDS GOLDEN OAK APARTMENTS DEFENCE COLONY, SAINIK PURI, SECUNDERABAD-500094
THAKKAR UMANG NAVINBHAI
11, 4TH FLOOR, KALAPURNAM, NEAR MUNICIPAL MARKET, C.G.ROAD, AHMEDABAD-380009
UNNATTI SAMPAT JAIN
2/C/701, KUKREJA COMPLEX, LBS MARG, BHANDUP (WEST), MUMBAI-400078
USHA TOSHNIWAL
BLOCK -GA -2, GANGES GARDEN, 106, KIRAN CHANDRA SINGHA ROAD, SIBPUR HOWRAH-711102
VAIBHAV PRADEEPKUMAR ALAMWAR
OFFICE NO. 403, 4TH FLOOR, PINNACLE PRIDE, CTS NO. 1545, OPP COSMOS BANK, TILAK ROAD, PUNE-411030COM
VARUN KAPOOR
RU-498, PITAMPURA, NEW DELHI-110088
VIJAY KUMAR GUPTA
1103, NEW JAI BHARAT, PLOT NO.5, SECTOR 4, DWARKA,NEW DELHI-110075
VINITA JAIN
207, CS NAYADU ARCADE, NEAR GREAER KAILASH HOSPITAL, OLD PALASIA INDORE-452001
VIRAL HARESHBHAI THAKRAR
JEE MEET PARK, C-14, 2ND FLOOR, NEAR MADHAPAR CROSS ROAD, 150 FEET RING ROAD, RAJKOT-360006
VYOMA KAUSHIK DESAI
B/207, ABHIREKHA, OPP ANL TOWER, MATHURA DAS ROAD EXTENSION, KANDIVALI (WEST) MUMBAI-00067

List of Companies Registered for Imparting Training during the month of September, 2016

1MG TECHNOLOGIES PRIVATE LIMITED
LEVEL 3, VASANT SQUARE MALL, POCKET V, SECTOR B, VASANT KUNJ, GURGAON ROAD, DELHI
ACCORD SOFTWARE AND SYSTEMS PVT LTD
NO 37, K R COLONY, DOMLUR LAYOUT, BANGALORE
ADITYAPUR AUTO CLUSTER
PLOT NO-41 & 45 (P), PHASE-VII, TATA KANDRA MAIN ROAD, (NEAR TOLL BRIDGE JUNCTION), ADITYAPUR INDUSTRIAL AREA, ADITYAPUR, JAMSHEDPUR
AINO MANAGEMENT CONSULTANCY PRIVATE LIMITED
NO. 18/1, FIRST FLOOR, JAIN BHAWAN ANDREE ROAD, SHANTINAGAR BANGALORE
ATOTECH DEVELOPMENT CENTER PRIVATE LIMITEDJMD MEGAPOLIS,546,5TH FLOOR, SECTOR 48, SOHNA ROAD, GURGAON-122018, GURGAON
C-DAC THIRUVANANTHAPURAM
C-DAC VELLAYAMBALAM, THIRUVANANTHAPURAM, THIRUVANANTHAPURAM
CENTRAL ELECTRONICS LIMITED
781, DESHBANDHU GUPTA ROAD, KAROL BAGH, NEW DELHI
CHAMUNDESHWARI ELECTRICITY SUPPLY CORPORATION LTD
#29, VIJAYNAGARA 2ND STAGE, HINAKAL, MYSORE
ERIS LIFE SCIENCES PVT. LTD.
7TH FLOOR, COMMERCE HOUSE IV, BESIDES SHELL PETROL PUMP, 100 FEET ROAD, PRAHLADNAGAR, AHMEDABAD
CRYSTAL CROP PROTECTION PRIVATE LIMITED
B-95, WAZIRPUR INDUSTRIAL AREA, NEW DELHI-110052
DSG INVESTMENTS PRIVATE LIMITED
C-192, SARVODAYA ENCLAVE, NEW DELHI - 110017
EASTERN MILLS PRIVATE LIMITED
HAMID MANZIL, PEERKHANPUR, BHADOHI, SANT RAVIDAS NAGAR BHADOHI
ECOLIBRIUM ENERGY PVT. LTD.
504, VENUS ATLANTIS, NEAR ANAND NAGAR BUS STOP, PRAHLADNAGAR, AHMEDABAD
EROS RESORTS AND HOTELS PRIVATE LIMITED
S-1, AMERICAN PLAZA, INTERNATIONAL TRADE TOWER, NEHRU PLACE, NEW DELHI-110019
ESSEL FINANCE BUSINESS LOANS LIMITED
MARATHON FUTUREX, A WING, 18TH FLOOR, NM JOSHI MARG, LOWER PAREL, MUMBAI
G R MEDI-PRODUCTS LTD
15 NOORMAL LOHIA LANE, KOLKATA
G4S SECURITY SYSTEMS (INDIA) PRIVATE LIMITED
5TH FLOOR, TOWER A, UNITECH CYBER PARK, SECTOR-39, GURGAON
GITANJALI FINANCE LIMITED
6,COMMERCIAL BUILDING,23 N.S.ROAD, KOLKATA
GLOBE INTERNATIONAL CARRIERS LIMITED
301-306 PRAKASH DEEP COMPLEX, NEAR MAYANK TRADE CENTER, STATION ROAD, JAIPUR
GROWTH CORPORATE AND LEGAL SERVICES LLP
A2/, MAYUR APPARTMENTS, ROHINI SECTOR 9, DELHI
HERO FUTURE ENERGIES LIMITED
202 , THIRD FLOOR, OKHLA INDUSTRIAL ESTATE, PHASE-III, NEW DELHI-110020
KLAPP VYAPAAR PVT LTD
10A,CHITPUR SPUR, KOLKATA
M/S RAMDEV INDUSTRIES
G1, GIRISAI TOWERS, RUKMINI RICE MILL ROAD, LABBIPET, VIJAYAWADA - 520010
MANRAJ MOTORS PVT LTD
S 557, AJANTA ROAD, MIDC AREA, JALGAON
MOMENTIVE PERFORMANCE MATERIALS INDIA PVT LTD
SY. NO.09, ELECTRONIC CITY (WEST), HOSUR ROAD, BANGALORE
OPPO MOBILES MU PRIVATE LIMITED
B405, EVEREST CHAMBERS, MAROL NAKA, ANDHERI EAST, MUMBAI-400059
OSRAM LIGHTING PRIVATE LIMITED
1ST FLOOR, IFFCO SURINDER JHAKHAR BHAVAN, PLOT NO. 3, SECTOR32, GURGAON
PEERLESS HOTELS LIMITED
12, J. L. NEHRU ROAD, KOLKATA - 700013
PREMDEEP DEVELOPERS & BUILDERS PRIVATE LIMITED
PMPK HOUSE, S.N.GANGULY ROAD, RANCHI
QUALITY CARE INDIA LIMITED
8-2-595/2/B, CARE CONVERGENCE CENTER, ROAD NO.10, BANJARA HILLS HYDERABAD
SAHYADRI FARMERS PRODUCER COMPANY LTD
SR NO 1102/08 BEHIND POLICE HEAD QUARTER, ADGAON, NASHIK
SHRIYA OVERSEAS PRIVATE LIMITED
A 9/3, WAZIRPUR INDUSTRIAL AREA NEAR RICHI RICH, WAZIRPUR DELHI
SOCIETE GENERALE
19TH FLOOR, TOWER A, PENINSULA BUSINESS PARK, GANPATRAO KADAM MARG, LOWER PAREL, MUMBAI - 400 013
SPIRAX-SARCO INDIA PRIVATE LIMITED
PLOT NO.6, CENTRAL AVENUE, MAHINDRA WORLD CITY CHENGALPATTU TALUK, KANCHEEPURAM
SRG TRADING PVT LTD
36A, BENTICK STREET, 2ND FLOOR, KOLKATA
TOKYO CONSULTING FIRM PRIVATE LIMITED
317, 3RD FLOOR, RECTANGLE ONE, SAKET DISTRICT CENTRE, DELHI
TVS INFRASTRUCTURE PRIVATE LIMITED
B - 106, 10TH FLOOR, 'B' WING, MITTAL TOWER, FREE PRESS JOURNAL MARG, NARIMAN POINT, MUMBAI - 400021
UAL INDUSTRIES LIMITED
MANI UDAY, 16 MAY FAIR ROAD, KOLKATA-700019
VIKRAM INDIA LIMITED
TOBACCO HOUSE, 4TH FLOOR, 1 OLD COURT HOUSE CORNER KOLKATA-700001
WELLSIDE INFRASTRUCTURE PRIVATE LIMITED
7, HO CHI MINH SARANI, OPP - CAMAC STREET PANTALOONS, KOLKATA
WOW SOLUTIONS & SYSTEMS PRIVATE LIMITED
13, UDYOG BHAVAN SONAWALA LANE, GOREGAON (EAST), MUMBAI
BEST EASTERN HOTELS LTD.
401, CHARTERED HOUSE, 293/299, DR. C.H.STREET, NEAR MARINE LINES CHURCH, MUMBAI
CHROMATIC INDIA LIMITED
207, VARDHAMAN SERVICE INDUSTRIAL ESTATE, FITWELL COMPOUND, 10, L.B.S. MARG, VIKHROLI (W), MUMBAI - 400083
EVEREST ORGANICS LIMITED
AROOR VILLAGE, SADASIVAPET MANDAL, MEDAK DISTRICT, HYDERABAD
KILBURN CHEMICALS LTD
SHANTINIKETAN BUILDING 16TH FLOOR, 8,CAMAC STREET, KOLKATA
MT EDUCARE LIMITED
220, 2ND FLOOR, "FLYING COLORS", PANDIT DIN DAYAL UPADHYAY MARG, L.B.S.CROSS ROAD, MULUND (W), MUMBAI
MUNJAL AUTO INDUSTRIES LIMITED
MUNJAL AUTO INDUSTRIES LIMITED, 187 GIDC INDUSTRIAL ESTATE, WAGHODIA, VADODARA
SPML INFRA LIMITED
SPML HOUSE| PLOT NO. 65 | INSTITUTIONAL AREA | SECTOR-32| GURGAON - 122001
STARLIT POWER SYSTEMS LIMITED
A-1/51, LGF, SAFDARJUNG ENCLAVE, DELHI
WELSPUN CORP LIMITED, WELSPUN HOUSE, KAMLA MILLS COMPOUND, SENAPATI BAPAT MARG, LOWER PAREL, MUMBAI

ATTENTION MEMBERS

From 1st January, 2017, Financial Assistance from CSBF increases from Rs. 5 lakh to Rs.7.5 lakh; subscription increases from Rs.7500 to Rs. 10000. Enrol Quickly, on or before 31st December, 2016 !!

Effective from 1st January, 2017, the quantum of financial assistance to the dependent(s) of the life members of CSBF has been increased from Rs. 5 lakh to Rs. 7.5 lakh in the unfortunate death of a life member (upto the age of 60 years).

In case of unfortunate death of a life member of CSBF (above the age of 60 years), the quantum of financial assistance has also been increased from Rs. 2 lakh to Rs. 3 lakh, payable to the dependent spouse only (in deserving cases).

Effective from 1st January, 2017, one-time subscription to the CSBF will be Rs. 10000.

Members of the Institute who are yet to become a life member of CSBF may avail opportunity to subscribe to CSBF by making one-time online/offline payment of Rs. 7,500 by 31st December, 2016.

The subscription / contribution to CSBF qualify for deduction under Section 80G of the Income Tax Act, 1961.

For further information, members can write at email id: saurabh.bansal@icsi.edu or contact on Telephone: 011-45341088.

ELEVATION

Dr. Jagan Nath Dhankar, FCS, on his being appointed as a Group Regional Director for India by IFC (Canada-USA) for three of its Institutions.

OBITUARIES

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

***CS M V Gokhale,** (19.09.1932 – 16.01.2011), a Fellow Member of the Institute from Pune. He was Chairman of Pune Chapter of ICSI for the year 1975-76.*

***CS L Ramaswamy,** (11.09.1929 – 04.10.2016), a Fellow Member of the Institute from Chennai.*

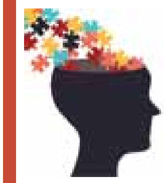
***CS S P Nadkarni,** (05.09.1928 – 09.10.2012), a Fellow Member of the Institute from Pune.*

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.

BRAIN – TEASERS!

(Win Prizes)



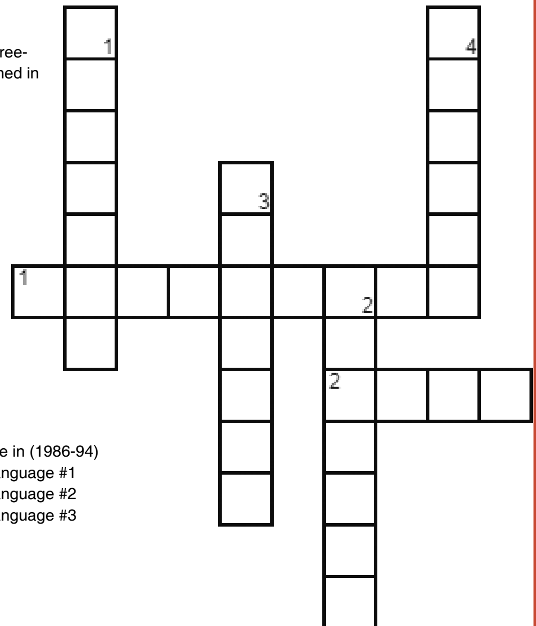
To win prizes, a person has to send replies to both (i.e. Legal Jargons & Case Study). Three prizes – a first, a second and a third carrying Rs. 2000, Rs. 1500 and Rs. 1000 respectively will be awarded to the best entries in order of merit. The decision of the Institute will be final and binding and no query/ clarification whatsoever will be entertained. The names of the winners will be published in one of the future issues of the Journal. Please send your replies to ak.sil@icsi.edu latest by 25th of November 2016 highlighting Replies to November 2016 Brain Teasers Column.

Brain Teasers November 2016

Simple Legal Terms

Across

1. Major Agreement signed in (1994)
2. Acronym



Down

1. took place in (1986-94)
2. Official language #1
3. Official language #2
4. Official language #3

CASE STUDY

Businesses big and small are overreaching their authorised work space. One can find them usurping community land, and other resources like water, air, electricity (energy), etc. Not just depriving the local community of precious resources, but polluting the environment as well.

A small department store springs up in a residential locality, not providing an iota of service to the locals, but dumps electronic waste along with un-evironmentally friendly substances.

Leaving out the common law remedy of tort / nuisances, what legal remedy would you suggest for a horizontal action against the polluter or defaulter. Explain with example the term polluter pays.

Company Secretaries Benevolent Fund

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

SL. NO.	LM NO.	NAME	MEMB. NO.	CITY
EIRC				
1	11494	MR. ATISH AGARWAL	ACS - 44327	KOLKATA
2	11498	MR. RAJA GHOSH	ACS - 41982	KOLKATA
NIRC				
3	11479	MR. RAJESH KUMAR MITTAL	ACS - 47234	GHAZIABAD
4	11480	MS. BHARTI CHUGH	ACS - 46781	GHAZIABAD
5	11482	MR. RAVI KUMAR	ACS - 47257	NEW DELHI
6	11483	MR. AMIT KUMAR GUPTA	ACS - 34032	ALLAHABAD
7	11484	MR. ANIL YADAV	ACS - 35240	ALLAHABAD
8	11488	MS. POOJA MEHRA	ACS - 40249	VARANASI
9	11490	MR. HARI OM PANDEY	ACS - 29321	GURGAON
10	11493	MR. RAKESH KUMAR CHHOKER	ACS - 44402	PANIPAT
11	11497	MS. SANDHYA GHARANA	ACS - 38143	NEW DELHI
SIRC				
12	11469	MS. CHITRA VENKATARAMAN	ACS - 44835	MUMBAI
13	11471	MR. SRINIVASA RAMANUJAN G	ACS - 34715	CHENNAI
14	11475	MR. KARTHIK A	ACS - 44462	HYDERABAD
15	11478	MR. B KUMAR	ACS - 47249	CHENNAI
16	11481	MR. K L K PRASAD	ACS - 47345	HYDERABAD
17	11495	MS. LAKSHMI	ACS - 38072	CHENNAI
18	11499	MR. SAI RAM GANDIKOTA	ACS - 41606	KURNOOL DISTT
19	11500	MR. SUBHASH NALAJALA	ACS - 35467	WARANGAL
20	11501	MR. AL LAXMAN	ACS - 41395	CHENNAI
WIRC				
21	11470	MR. MANOJ JAYAWANT PANASARE	ACS - 47153	MUMBAI
22	11472	MR. MEHTA YASH HINESHKUMAR	ACS - 45267	AHMEDABAD,
23	11473	MS. EMRIEL JOSEPH PEREIRA	ACS - 42477	MUMBAI
24	11474	MS. THAKKAR SHRADDHA ANIL KUMAR	ACS - 42753	AHMEDABAD
25	11476	MR. SANTOSH KUMAR SIDIRI	ACS - 44988	MUMBAI
26	11477	MR. RAJESH SHANTARAM SHINDE	ACS - 33149	KOLHAPUR
27	11485	MR. SIDDHANTH DEEPAK NIMBALKAR	ACS - 40636	BADLAPUR EAST
28	11486	SH ANANT S GOGATE	ACS - 4906	MUMBAI
29	11487	MS. JINAL RAJESH JAIN	ACS - 44435	MUMBAI
30	11489	MRS. VANDANA AGRAWAL	ACS - 27446	MUMBAI
31	11491	MR. VIPUL GOYAL	ACS - 35124	INDORE
32	11492	MR. DEEPAK BILLAIYA	ACS - 39809	INDORE
33	11496	MR. VIVEK SETHIA	ACS - 22462	MUMBAI

* ENROLLED DURING THE PERIOD 20.09.2016 TO 19.10.2016

NEWS FROM THE REGIONS

EASTERN INDIA REGIONAL COUNCIL

Programme	QR Code/Weblink
Peer Reviewers Training Programme on 1st October, 2016 at ICSI-EIRC House.	https://www.icsi.edu/eiro/Archive.aspx
Investor Awareness Programme held on 02.10.2016 at ICSI-EIRC, House.	
Swachh Bharat Abhiyan on 02.10.2016 at ICSI-EIRC, House, Kolkata.	
48th CS Day celebration on 4th October, 2016 at Gorky Sadan, Kolkata.	

BHUBANESWAR CHAPTER

Programme	QR Code/Weblink
Talk on Corporate Compliance Management on 01/10/2016	https://www.icsi.edu/bhubaneswar/NewsEvents.aspx
Swachh Bharat Abhijan Pledge on 3/10/2016 to mark the celebration of Mahatma Gandhi Jayanti	
Celebration of Rashtriya Ekta Diwas Pledge on 31/10/2016	

RANCHI CHAPTER

Programme	QR Code/Weblink
Seminar on GST organised at Ranchi on 01.10.16.	www.icsi.edu/portals/21/Seminar on GST-Ranchi.pdf
48th CS Day Celebration held on 4.10.2016	www.icsi.edu/portals/21/48th CS Day celebration-Ranchi.pdf

NORTHERN INDIA REGIONAL COUNCIL

Programme	QR Code/Weblink
Plantation of Sapling and Blood Donation Camp on the occasion of Celebration of CS Day held on 4.10.2016	http://www.icsi.edu/Portals/70/OCTOBER%202016.pdf
Celebration of CS Day – Panel Discussion among the Past Presidents-ICSI and Motivational Talk held on 4.10.2016	
PCS Help Line on SEBI (LODR) Regulations, 2015 on 5.10.2016	
Campus Placement for Trainees held on 8.10.2016	
Workshop held on 15.10.2016 on Annual Filing – Concepts & Techniques	
PCS Help Line on 19.10.2016 on "Annual Filing"	
Seminar on Cross Border Trade & Investment – Exchange Regulations held on 22.10.2016	
Diwali Pujan	

BHILWARA CHAPTER

Programme	QR Code/Weblink
National Symposium on Goods and Service Tax held at Bhilwara on 09.10.2016	NA

GURGAON CHAPTER

Programme	QR Code/Weblink
Full Day Seminar on CS – Ushering Emerging Opportunities held on 15.10.16.	NA

LUCKNOW CHAPTER

Programme	QR Code/Weblink
Full day seminar on "pertinent roles and responsibilities of CS" held on 3.10.2016 at Lucknow.	http://www.icsi.edu/lucknow/Home.aspx

LUDHIANA CHAPTER

Programme	QR Code/Weblink
Punjab State Conference held on 01.10.2016 on the topic CS - A Corporate Strategist	http://www.icsi.edu/Portals/12/State%20Conference_Report_01Oct.16.pdf

NOIDA CHAPTER

Programme	QR Code/Weblink
Full Day Seminar on 'GST' on 03.09.2016 at Noida Chapter	NA

SOUTHERN INDIA REGIONAL COUNCIL

BENGALURU CHAPTER

Programme	QR Code/Weblink
Study Circle Meeting on Recent Significant Changes in FEMA and its impact on Business	http://bit.ly/2e38aVV

HYDERABAD CHAPTER

Programme	QR Code/Weblink
National Training Program on "Emancipate Women Prodigy to Rule the Roost" Date: 7-8 October 2016	http://www.icsi.edu/portals/2/October-AR2016.pdf
Study Circle Meeting on Insolvency and Bankruptcy Code 2016 & draft financial resolution and deposit insurance Bill 2016 Date: 21 October 2016	

PALAKKAD CHAPTER

Programme	QR Code/Weblink
Study Circle Meeting on Investor Education& Protection Fund Rules held on 16.10.2016	http://www.icsi.edu/palakkad/NewsEvents.aspx

SALEM CHAPTER

Change of Address – Salem Chapter of the ICSI
Salem Chapter has been shifted to a new location the address of which is as under: (Telephone & Mobile numbers remain the same). **SALEM CHAPTER OF THE ICSI,** 173, PEARL VILLA, 1ST FLOOR, 3RD CROSS, NEAR CO-OPERATIVE MARRIAGE HALL, NEW FAIRLANDS, SALEM, TAMIL NADU – 636 016. TELEPHONE No. : 0427 – 2443600 / MOBILE : 87543 40840

WESTERN INDIA REGIONAL COUNCIL

AURANGABAD CHAPTER

Programme	QR Code/Weblink
15th Foundation Day Celebration of Aurangabad Chapter held on 9.10.2016 at Aurangabad	http://www.icsi.edu/aurangabad/NewsEvent.aspx

PUNE CHAPTER

Programme	QR Code/Weblink
Inaugurartion of ICSI-Ahmednagar Study Centre at Ahmednagar.	http://www.icsi.edu/portals/32/Chartered_Secretary_01_10_to_10_10.pdf

RAJKOT CHAPTER

Programme	QR Code/Weblink
Seminar on 48th CS DAY on "Overview of Security Market and Investor Protection Mechanism" supported by BSE Ltd. at Rajkot on 4.10.2016	NA

THANE CHAPTER

Programme	QR Code/Weblink
Seminar on Start up India & SME IPO & Foundation Day Lecture on 02.10.2016	http://www.icsi.edu/thane/News-Events.aspx
Seminar on "Annual Filings and Compliance under Companies Act, 2013 with specific reference to Private Limited and Unlisted Public Limited Companies" held on 22.10.2016	

SPECIAL ISSUE OF CHARTERED SECRETARY

It is proposed to bring out the December, 2016 issue of Chartered Secretary devoted to...

Social Audit and CSR

Members and others having expertise on the aforesaid subject are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issue.

The articles may kindly be forwarded to:
The Director (Publications), the ICSI, 22, Institutional Area, Lodhi Road, New Delhi – 110003.
e-mail: ak.sil@icsi.edu

6

MISCELLANEOUS CORNER

- ETHICS & CODE OF CONDUCT CORNER
- ETHICS & SUSTAINABILITY CORNER
- GST CORNER
- PCS CORNER
- ICGD 1ST GLOBAL CONGRUENCE TO PROMULGATE INTERNATIONAL CORPORATE GOVERNANCE DAY
- 44TH NATIONAL CONVENTION OF COMPANY SECRETARIES
- CG CORNER
- RELEASE OF SURVEY REPORT

FREQUENTLY ASKED QUESTIONS ON PROFESSIONAL AND OTHER MISCONDUCT IN RELATION TO MEMBER OF THE INSTITUTE IN GENERAL BASED ON PART II AND PART III OF THE SECOND SCHEDULE TO THE COMPANY SECRETARIES ACT, 1980

Q1. What happens if, a member of the Institute, whether in practice or not, contravenes any of the provisions of the Company Secretaries Act, 1980 or the Regulations made thereunder or any Guidelines issued by the Council?

Ans. A member of the Institute, whether he is in practice or not, has to abide by all the provisions of the Company Secretaries Act, 1980; the Company Secretaries Regulations, 1982 and Guidelines issued by the Council from time to time.

If a member of the Institute whether in practice or not, contravenes any of the provisions of the Company Secretaries Act, 1980 or the Regulations made thereunder or any Guidelines issued by the Council, he shall be deemed to be guilty of professional misconduct under item (1) of the Part II of the Second Schedule to the Company Secretaries Act, 1980.

It is necessary for all the members to go through the provisions of the Company Secretaries Act, 1980 and the Regulations made thereunder and make themselves fully acquainted with the guidelines issued by the Council from time to time and to follow them in true letter and spirit.

Q2. Can a member of the Institute disclose confidential information acquired by him in the course of his employment?

Ans. A member of the Institute in employment with any company, firm or person, is expected to maintain the relationship of trust and confidence with his employer. Such a member has to keep secret all the confidential information, which he has acquired in the course of his employment and not to disclose the same to others, under any circumstances, directly or indirectly.

If any member of the Institute, whether in practice or not, discloses such information, he shall be deemed to be guilty of professional misconduct under item (2) of the Part II of the Second Schedule to the Company Secretaries Act, 1980.

Such confidential information may be a technical secret, important policy decision, business strategy or any other matter having bearing on the interest of the employer and if disclosed, it might be harmful or may have potential to cause harm to the employer.

Q3. What happens if, a member of the Institute whether in practice or not, includes any particulars knowing them to be false in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees or authorities?

Ans. A member of the Institute whether in practice or not, has to furnish correct particulars in any information, statement, return or form, which they submit to the Institute, Council or any of its Committees, Director (Discipline), Disciplinary Committee, Quality Review Board or the Appellate Authority.

If a member of the Institute, whether in practice or not, submitted any information, statement, return or form to the Institute, Council or any of its Committees, Director (Discipline), Disciplinary Committee, Quality Review Board or the Appellate Authority, includes therein any particulars which the member knows them to be false, in such case, he shall be deemed to be guilty of professional misconduct under item (3) of the Part II of the Second Schedule to the Company Secretaries Act, 1980.

Q4. What happens if, a member of the Institute whether in practice or not, defalcates or embezzles moneys received in his professional capacity?

Ans. A member of the Institute whether in practice or not, is not expected to defalcate or embezzle moneys received by them in their professional capacity.

If a member of the Institute, whether in practice or not, defalcates or embezzles moneys received by him in his professional capacity, he shall be deemed to be guilty of professional misconduct under item (4) of the Part II of the Second Schedule to the Company Secretaries Act, 1980.

Q5. What happens if, a member of the Institute is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months?

Ans. If a member of the Institute, whether in practice or not, is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months, he shall be deemed to be guilty of other misconduct under Part III of the Second Schedule to the Company Secretaries Act, 1980.

CHARTERED SECRETARY
Advertisement Tariff

(With Effect from 1st April 2012)

BACK COVER (COLOURED)	Non - Appointment	COVER II/III (COLOURED)	Non - Appointment
Per Insertion	₹ 75,000	Per Insertion	₹ 50,000
4 Insertions	₹ 2,70,000	4 Insertions	₹ 1,80,000
6 Insertions	₹ 3,96,000	6 Insertions	₹ 2,64,000
12 Insertions	₹ 7,65,000	12 Insertions	₹ 5,10,000

FULL PAGE (COLOURED)	Non-Appointment	Appointment	HALF PAGE (COLOURED)	Non-Appointment	Appointment
Per Insertion	₹ 40,000	₹ 10,000	Per Insertion	₹ 20,000	₹ 5,000
4 Insertions	₹ 1,44,000	₹ 36,000	4 Insertions	₹ 72,000	₹ 18,000
6 Insertions	₹ 2,11,200	₹ 52,800	6 Insertions	₹ 1,05,600	₹ 26,400
12 Insertions	₹ 4,08,000	₹ 1,02,000	12 Insertions	₹ 2,04,000	₹ 51,000

PANEL (QTR PAGE) (COLOURED)			EXTRA BOX NO. CHARGES	
Per Insertion	₹ 10,000	₹ 3,000	For 'Situation Wanted' ads.	₹ 50
(Subject to availability of space)			For Others	₹ 100

MECHANICAL DATA

- Full Page - 18 x 24 cm
- Half Page - 9 x 24 cm or 18 x 12 cm
- Quarter page - 9 x 12 cm

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

For further information write to:
The Editor,
"CHARTERED SECRETARY",

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

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003
Tel: **011-45341024, 41504444.** Fax: + **91-11-24626727, 24645045**
Email : ak.sil@icsi.edu **website** : www.icsi.edu

Spl. Attraction

30%

rebate on the total billing for 36 insertions in 3 years in any category.

ROLE OF ETHICS FOR SUSTAINING EXCELLENCE IN ADMINISTRATION

(Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram)

Across the nation administration is being called for excellence. Like everything else, excellence cannot be taught in classrooms. Excellence in administration is achieved when the administration fulfils its objectives and it is sustained when each one is working for it at a personal and professional level.

However, what about a system where excellence is perceived differently by different people? And related to their definition of excellence, the means to achieve it and sustain it differ? To contribute to the sustainability of excellence in an administration system, each one in the system needs to be aligned in their efforts to continuously work for excellence at their level by following practices that mobilize the energy of the system. For such a mobilization of the energy, individuals need to inculcate excellence in the way they think, perceive, communicate, deal with people, perform etc. When we understand and appreciate this pre-requisite to excellence, it transforms our notion of excellence from being merely an outcome achieved by chance, to an attitude. Any simple act done with a blend of virtues or ethics raises the value of the act itself above the ordinary and then that act becomes our expertise which cannot be competed, leading to sustainable excellence. A simple act of serving others when done with the virtue of unconditional love and selflessness makes Agnes Gonxha Bojaxhiu into Mother Teresa and further into Saint Teresa; another simple act of standing by the truth when done with honesty, integrity, virtue and pure feeling of not causing hurt to anyone (non-violence) makes Mohandas Karamchand Gandhi into Mahatma Gandhi; the virtue of rock strong determination, perseverance and hope gives rise to an Abraham Lincoln; the virtue of courage along with a heart open to forgive made Nelson Mandela the father of democratic South Africa, widely admired for his ability to bring together a nation. This calls for the need of developing an attitude of excellence by knowing what is required of me to deliver this excellence and how can I experience it myself, at the first place? For this, proper understanding of ourselves, others and the system we administer is of utmost importance. One of the many hindrances to sustaining excellence is accounted to mere lack of self awareness and inability to transform ourselves to excel in every situation. When we are unaware of our true self, how can we be fully conscious of our potential and 'special' virtue (one that is weaved into my identity and can be easily converted into my greatest strength) and use it all the time? As a result, we start looking outside to accumulate enough triggers that can simulate a sense of excellence every time, although for a short while. Such an achievement is like a mirage. Since the situations outside are fluctuating, the attainments derived out of them are also short lived and this temporary & weak foundation to achieve excellence becomes the root cause for lack of its sustainability.

Here, we need to understand that everything external is managed and controlled by whatever is internal, as it is said-'As the Microcosm, So the Macrocosm'. Our world is created twice- firstly in our minds and then manifested in our words and actions, transforming our belief systems, perception of events, the atmosphere around us, our administration and through our influence on others this transformation propagates to others in the system gradually, thus creating the same world in reality. Also, what is looked for in Macrocosm indicates the void in the Microcosm. One fine evening, a child was searching for something below a dim street light. A man walking through the street noticed the child engrossed in hunting for something. He went to him and inquired of what was he searching. "I am looking for my lost keys" said the child. "How were the keys? Let me help you to find it, it is getting dark!" said the gentleman who immediately joined the child in his quest for keys. In another few minutes, other pedestrians also joined. An elderly woman also happened to pass by that way. When she noticed, she also tried to inquire what was happening. She asked the child, "What are you all looking for?" "I have lost my keys" said the child with regret. "Ok, where did you use it last? They must have been lost there." advised the woman. The child revealed "The keys were lost in the empty garage by the roadside, where I was playing with my friends". On hearing this, the people who were helping the child find his keys under the street light stood awe-struck. When they asked the child that why was he searching for the keys under the street light instead of searching it in the garage, the child confessed "When I was playing, it was early evening time and now it has grown dark. I fear darkness and even if I gain enough strength to go inside and look for the keys, I will not be able to find it in the absence of light. Because there is some light under the street lamp, I thought to look for the keys here." We might claim the child to act foolish in this case, but are we smart enough to search for the key of excellence under the diminishing light of virtues and strengths outside because of the darkness of ignorance in the room within? In other words, we seek from outside what actually lays inside of us, but due to lack of self awareness, remains unexplored or untapped. Just as when the quantity of water in the body decreases, we feel thirsty and need water to restore its balance; during winters we use heaters to restore warmth and use woollen clothing to prevent the loss of body heat. Since the physical entity of our identity (body) is made up these elements, we need them in the same proportion to sustain life. And when this proportion is disturbed, we create means to bring them back in the same proportion. Similarly, the spiritual entity of our identity (the SELF- 'Spiritual Energy in Light Form' or the SOUL- 'Source of Unique Light') is made up of virtues like knowledge, peace, purity, love, happiness, power and bliss. To sustain excellence, we need to explore our deeper selves to find the latent virtues and use them in order to strengthen them. This automatically rebalances these virtues and stops us from wasting our energy in trying to trigger them from outside by emphasising that others must practise them first as they are responsible for my state of being. Then we can start making use of these virtues in a worth-while way to gain excellence that can be sustained as now the foundation has shifted to the immortal, original state of being.

An administrator is like a tightrope walker who is walking from one end to other balancing himself all the way. His focus is on the destination but he doesn't lose the attention to remain balanced. A heavier step on any side at any point of time, can lead to misbalance resulting to complete failure of the administration. So if on one hand the administrator is lawful, he does not necessarily need to be a fundamentalist or arrogant or adamant. It is the duty of the administrator to do what is right and fair in order to protect the well being of all. However, even though we need laws, we must never lose sensitivity to the needs of individuals. Such a balance makes life peaceful and happy.

Those in administrative positions need to possess a higher than average degree of inner resources and abilities such as patience, tolerance, accurate discernment, sound judgement, compassion, courage, integrity, efficiency, self motivation, detached involvement, love, stability, understanding, indiscrimination, cheerfulness, contentment, assertiveness, open-mindedness, acceptance and many more, which contribute to the quality of administration. On the other hand, not knowing the real meaning of these virtues, the essence of ethical administration for sustaining excellence is lost. For instance, 'Power'- It is the mark of the administrators. It is by exercise the power of their role, that administration is conducted. And excellence in administration depends upon how this power is used, and whether it results in everyone in the system feeling empowered or not. An authentic administrator knows that real power does not derive from position, prestige or pay. How do the administrator excise this real power further depends on how powerful are the administrators internally? The demands of their role can often result in tremendous mental and physical strain that impacts the administration and creates a hindrance in achieving excellence. To be powerful is to be the controller of the self and to be able to inspire others, to be free from tension or influences of others and situations, to be able to take better decisions and also remain balanced in using the ethics to bring into play a moral authority- while executing their roles. It is through spiritual empowerment that one can awaken these inner powers and enhance administrative qualities of the mind and character that enrich their lives and allow them to empower others, thus achieving excellence.

Also, an administrator should refrain from leaning, prejudices, biased judgements, blame, accumulation of pressure leading to stress, attachment to an idea or a role, non-acceptance, dominance, dictation etc, which further indicates a disoriented and handicapped administration due to loss of ethics. These weaknesses in administration gradually become black holes of the system. But because a true administrator understands himself and others, he is aware of the weaknesses in him and the people and also the loop holes in the system that lead to threats. He also understands well- the strength of the self, people and the system, to convert those threats into an opportunity.

Excellence in administration also means to earn trust, respect and cooperation from those whom you administer as only then will the administration go a long way towards sustainability. In other terms, it is to ensure that the people in the administration remain intrinsically motivated to work for the cause for which all the administration exists. Instead of looking at the external motivators, a good administrator would seek to motivate his team by fulfilling their inner aspirations. An administrator who is well connected to the inner self gets an insight into other's minds and is easily able to see under the layers of one's consciousness to understand and address those intangible needs that are truly important to them. Instead of criticizing people and complaining about the problems and mistakes, he works with a positive mindset and uses the strengths of the administration and the people associated to it, to bring out their best making a permanent place in the mind and heart of the people. This allows them to act as a catalyst to keep others intrinsically motivated. Earning trust- respect- cooperation in return by the people under such an ethical administration makes the path ahead simpler by winning the loyalty and acceptance of the people forever. While getting things done by force with no due consideration to the benefit of the individuals, cannot win their hearts and such means of administration have to perish, making the system unsustainable.

Excellence in administration also relies on proper understanding of the situation which looks for the good in every situation, wise and timely decisions and sustenance of the decision taken. While it is important for an administrator to listen to others and be open to accept their ideas and suggestions, it is equally crucial for them to be intuitive in listening to the inner voice and catching the signals from situations and people. This can be referred to as the catching ability of the intellect which allows an individual to 'catch' the signals being generated from within and coming from others and the environment around us. This is possible when the intellect is in perfect coordination with the mind & body and is strengthened and capable of analyzing situations fairly by catching the signals but without getting influenced by others and without being affected by the past and fear of future. This can be achieved through Spirituality which helps us achieve this inner harmony. When my mind, intellect and body are in perfect coordination, my thoughts- words- actions are in harmony with each other. It is then that I can clearly- think, analyze what I need to do and what I need not, and express myself, leaving no scope for misunderstandings and miscommunications. It also avoids mistakes and lapses in my work and ensures excellence. Such a practice of Spirituality done through Rajyoga Meditation technique allows us to experience the inner self through silence. Meditation enables us to come back to a state of self worth and recognition of our own value. It nourishes and strengthens the intellect, filling us with peace and power.

Therefore we are standing on the verge of the experiencing sustainable excellence; all that is required is to peep within, explore the endless inner world and extend it to others through the medium of our ethics and virtues...

GST CORNER

GST Updates

- The three day meeting of GST Council scheduled from 18th to 20th October, 2016 ended in two days only, with a resolve to meet again on 3-4 November and then on 9-10 November, 2016 to discuss the rate structure and draft GST law respectively.

  Following developments took place in the meeting :
  - There was no major breakthrough in the two days meeting except that all the States and Centre agreed for the compensation to be received/made, for which formula will be approved in next meeting.
  - Government (MOF) is likely to prefer a new cess to compensate States for revenue loss but this is to subject to GST Council's approval. That cess is proposed to be the difference between present rate and GST rate.
  - The Centre has reportedly proposed four rates-ranging from 6%-26% for the goods and services tax (GST) with a likely cess on the highest tariff for ultra-luxury and demerit goods.
  - Two standard rates of 12 per cent and 18 per cent, presumably worked out after excluding real estate, electricity, alcohol and petroleum products, will cover a majority of taxable goods.
  - A lower slab of 6 per cent for essential goods that do not attract excise duty is welcome and a 4 per cent GST on gold is in sync with the recommendations of the Arvind Subramanian panel which will help wean consumers away from gold and reduce inflationary pressures. The panel had recommended a composite 40 per cent excise duty on non-merit goods.
  - Wherever band was proposed in the RNR report, Government may prefer higher end of the band.

- Laying to rest doubts on the Government's powers to levy indirect taxes after the notification of the Constitution Amendment Act for the goods and services tax regime, Finance Minister clarified that the new legislation empowers the Government to continue levying excise duty, service tax and value added tax (VAT) till September 16, 2017.

- GST Council is moving swiftly to decide on issues of draft IGST, CGST and SGST laws and rules, GST rate structure and exemption lists by November 22 to meet its intended deadline of roll out of April 1, 2017.

- Union Cabinet has decided to advance winter session of the Parliament, starting from 16 November, 2016, till 16 December 2016 wherein focus will be on the GST Bills. Advancing it by about a fortnight, this has been done to expedite the rollout of proposed goods and service tax (GST) by April 1, 2017.

- The Government has set a deadline of implementing the new taxation regime by April 1, 2017 and GSTN is hopeful of readying its technology systems before the deadline.
- The Government is likely to bring a separate law detailing the method of compensating states for any revenue loss from the GST to give a firm assurance to states that their revenues will be protected even if the GST rate is low.

- The Government is likely to overhaul the Central Board of Excise and Customs' (CBEC) organisational structure to administer the Central GST (CGST) and Integrated-GST (IGST) from April 1,2017.

- GST Network, the company which is entrusted to create the logistical and IT backbone for the new tax regime, allowed taxpayers the option of third-party interfaces to ease the taxpayers towards payment of the new indirect tax and invites banks, IT companies and financial technology companies to become GST Suvidha Providers (GSPs) to help the taxpayers right from registration of entity to uploading of invoice details to filing of returns.

- GSTN signs Memorandum of Understanding (MoU) with DGFT (Director General of Foreign Trade) to share data on foreign exchange realisation and import export code with GSTN for cross verification under GST law.

- States have started looking for Consultants who will be required to :
  - suggest organisation structure of the GST Department in the GST regime
  - strategy for transition period and ways to mitigate risks
  - checklist of tasks that need to be completed before introduction of GST
  - frame a communication strategy for administration vis-a-vis stakeholders such as industry and traders
  - imparting training on provisions of the GST Act/Rules and processes to officers of the department
  - the entity will calculate the impact of GST implementation on state revenues keeping in view the present rate of tax in the state and the proposed rate of tax under GST

- Clearing the ambiguity over the funding of operating costs of the GST Network (GSTN), the Government has decided that an 'assessee-based user fee' would make up for the bill.

- Assam has started the process for providing registration to taxpayers in the new indirect tax regime and has started collecting mobile numbers and e-mail IDs of registered dealers or taxpayers under Value Added Tax (VAT), Central Sales Tax(CST), entry tax, luxury tax and entertainment tax to provide goods and services identification number (GSTIN) on a provisional basis.

- To deal with complex tax issues, the GST Council will set up a technical Committee of Officers on taxation to give inputs to the GST Council on taxation whose decision will be final. States will be allowed to join the committee on a voluntary basis.

- As many as 80 lakh assessees of excise as well as service tax and VAT may start migrating their registration to the

Goods and Service Tax Network portal by November 8,2016

GST in News

- Centre, States can levy taxes for one year after GST Notification
- Service Tax Assessment under GST: Technical Committee to iron out differences, hold meetings
- Auto Industry demands two rates under GST
- Indian School Of Business seeks education services tag , relief under GST
- Doctors seek 40% Sin Tax on Tobacco under GST
- GST Council eyes 16% levy on Gold Jewellery and 4% on Bullion
- GST Council agrees on five subordinate legislations (Rules) dealing with issues ranging from registration to invoicing under the GST regime
- Commerce Ministry wants exemptions for exporters to continue under GST
- The Goods and Services Tax Network (GSTN) is inviting private companies to build third-party interfaces. Open for technology, accounting and financial services firms, it will allow businesses to file taxes from various platforms such as mobile apps or portals instead of applying only through the GSTN portal.
- Ministry of Finance is also focusing on GST training to various stakeholders

Returns under Model GST Law at a glance

Return	*To be filed for*	*To be filed by*
GSTR 1	Outward supplies made by taxpayer (other than compounding taxpayer and ISD)	10th of the next month
GSTR 2	Inward supplies received by a taxpayer (other than a compounding taxpayer and ISD)	15th of the next month
GSTR 3	Monthly return (other than compounding taxpayer and ISD)	20th of the next month
GSTR 4	Quarterly return for Compounding Taxpayer	18th of the month next to quarter
GSTR 5	Periodic return by Non-Resident Foreign Taxpayer	Last day of registration
GSTR 6	Return for Input Service Distributor (ISD)	15th of the next month
GSTR 7	Return for Tax Deducted at Source	10th of the next month
GSTR 8	Annual Return	By 31st December of next FY

Agenda for GST Council November meetings

3rd-4th November, 2016 -
Approval of GST rates, tax slabs and compensation methodology.
9th-10th November, 2016 -
Discussion on draft legislation

KIND ATTENTION COMPANY SECRETARIES

Company Secretaries are to note that if the word 'CS' or 'Company Secretary' or 'Company Secretaries' is used by a LLP as suffix, then a prior No Objection Certificate (NOC) is mandatorily required to be obtained from the ICSI by such proposed LLP.

It is also observed that many Company Secretaries directly approach the Registrar of Companies (ROCs) and obtain approval for their LLP names from the ROCs without taking prior approval from ICSI claiming that their LLP name does not contain the word "Company Secretary/Company Secretaries" and hence prior approval is not required from ICSI. Later they inform the ICSI about the same. In such cases too, if the proposed LLP is to provide secretarial/attestation services, NOC from the ICSI needs to be taken from the ICSI first for their LLP name and then approach the ROCs for the name registration.

All the LLPs which are covered as per the above will also need to update information, if not updated earlier, to the ICSI within 30 days of issue of this advisory such as name of the LLP, date of incorporation, approval of name details, professional address and contact details (email id, telephone number, fax number, mobile number etc.) of the LLP, details of the partners with membership number, LLP incorporation certificate received from RoC (Registrar of Companies), copy of Form 2 filed with ROC, copy of LLP deed executed & filed with ROC with Form 25.

Further, in all such cases as mentioned above, the Company Secretaries are also required to intimate ICSI about any subsequent changes in the partnership pattern of the LLP within thirty days of any such change.

However, notwithstanding anything contained hereinabove, if a Company Secretary intends to form a LLP for a purpose, not at all related directly or indirectly, to the profession of Company Secretary, he/she is exempted from obtaining NOC from the Institute.

Is Corporate Governance – Alien to common man ?

Is Corporate Governance – Restricted only to listed companies ?

Is Corporate Governance–Effective tool for functionality improvement ?

Is Corporate Governance – Connecting prime pillar of the global economic harmony ?

Is Corporate Governance – Harbinger of happiness to humanity ?

Is Corporate Governance – Part of agrarian economy ?

International Corporate Governance Code

Corporate Governance is a major component of wealth creator for owners. It is must for giving the citizens and all other stake holders a sustainable growing standard of life.

Moreover there is a general tendency to follow written codes or laws only and not going beyond that. The growth of the corporate has gone to a mammoth level and if there is no self-regulation this can create havoc in the near future. So, there is a necessity for the entire world to have a holistic code which describes each and every scenario and also which is applicable to every form of business entity like Firms, Societies, Trusts, NGOs etc., irrespective of their size and nature.

The challenge is to create a system of governance that promotes, supports and sustains economic development extending to all types of business forms, unlisted companies, firms, societies etc. Therefore there is a necessity to bring wholesome changes into corporate governance by way of International Corporate Governance Code (ICGC) which can give a proper convergence model to the world.

International Corporate Governance Code shall cater to the needs of present era seamless corporate world which is transcending boundaries beyond the country of its business establishment.

The Proposal: An overview

Every business entity and entrepreneur in the run for amassing wealth will cross the line to achieve its profits. So scams and scandals knock on their doors from time to time, that can lead to the downfall of a business tycoon or an empire.

In today's scenario the impact of such financial fiasco affects not only the business house, but the entire economic balance of trade and stock markets.

Till now corporate governance has been limited to a particular nation. In a world where the corporate is transcending boundaries beyond the country of its business establishment, makes it all the more relevant and imperative to have a unified code to monitor and control trade and commerce practices to safeguard the interest of global economy. We therefore foresee a strong need for having International corporate governance.

International Corporate Governance Day
Inclusion by UN Essential

Corporate Governance is important to achieve harmony in the challenges faced by the corporate sector in the working environment both internally and externally.

The conscience of the Corporate Governance should be there internally right from the Board level personnel till the last rung of employees and it should also exist externally right from the Regulator to Investor vis a vis to a Common Man.

With a view to provide more significance to the universally acceptable International Corporate Governance Code there is a need to have an international day for corporate governance. It will give more significance to the code and work for the better evaluation of the code from year on to year.

"International Corporate Governance Day" is a symbolic representation of systematic procedures, processes and their compliances.

An International day will create awareness for global promotion of Corporate Governance and its recognition beyond the horizons of the respective countries and also would bring significance to the concept in terms of common understanding

In all a great beginning has been made and built upon over the decades.

Greater thrust and progress is expected to be gained going forward. A focused approach by observing a 'INTERNATIONAL CORPORATE GOVERNANCE DAY 'is bound to make a difference here. This entails

- Annual revisiting of progress on Governance
- Reiterating and strengthening Governance bonds between countries of world by developing standard Governance practices.
- Examining and course corrections based on the experiences of member countries on Governance
- Developing Sustaining models on governance for future development.

1st Global Congruence

As an important initiative to profess and create international consensus for "International Corporate Governance Day" there is a necessity to bring all the nations together under one platform. Hence, the Institute is hosting its first ever Global Congruence to promulgate International Corporate Governance Day. The Congruence will be held on 8 and 9 December 2016 at Hyderabad International Convention Centre (HICC) in the pearl city of Hyderabad, India.

This congruence will have the participation from prominent representatives to discuss the challenges from various categories of global investors, stakeholders and regulatory bodies across the world as under:

The cohesive discretion lies with the United Nations to declare a day as International Corporate Governance day, wherein the involvement and representation of all nations are required to carry forward this noble thought.

This congruence will have the participation from prominent representatives to discuss the challenges from various categories of global investors, stakeholders and regulatory bodies across the world as under:

Participants

- Organizations working in corporate governance
- Governments of various countries
- Corporate houses across the globe
- Various statutory Regulators
- Professionals
- Academicians from various Universities and
- Educational institutions
- Researchers

OBJECTIVES OF THE CONGRUENCE

1. Honour the Pioneer leaders who made their contribution to the growth of Corporate Governance globally

2. Provide a framework for international cooperation and create synergies for the design and implementation of joint or individual assistance projects

3. Raise global awareness for the need to promote better corporate governance, increase visibility for reforms efforts and provide a vantage point for progress assessment

4. Promote comparative empirical and analytical work to advance our understanding of Corporate Governance and it's impact on economic performance

5. Declare a day as "International Corporate Governance Day"

Day & Date
Thursday & Friday
8 and 9 December 2016
Commencing on
8 December 2016 at 11:30 AM and
Concludes on
9 December 2016 at 6:00 PM

Venue
HYDERABAD INTERNATIONAL CONVENTION CENTRE
Near Hitec City,
Cyberabad,
Hyderabad

Venue of the convention root instructions

The Hyderabad International Convention Centre is in the heart of the IT corridor. It is 2 Kilometers from the Hitech city junction is accessible from Gachibowli junction too. The Rajiv Gandhi International Airport is well connected through the outer ring road to HICC.

INDICATIVE- SESSIONS

Technical Session I : Evolving of modern governance models from ancient practices

The speakers will deliberate on the ancient practices followed in various countries with following sub themes:

- Significance of the measures / activities followed in olden days relating to governance - Importance of Corporate Governance – a new paradigm shift from the past
- Gaps to be filled in to strengthen Corporate Governance in various countries. Business ethics in ensuring Corporate Governance.
- Various dimensions of Corporate Governance.

Technical Session II : Corporate Governance: Robust fortification tool

The Speakers will deliberate on how the governance can be used as a tool with following sub themes:

- Innovative Governance Solutions
- Isn't Corporate Governance – the Panacea of corporate evils
- Corporate governance to work as self-regulation or to be regulated by a regulator
- Scope to extend the corporate governance to various forms of business entities like unlisted companies, firms, societies, trusts etc
- Corporate Governance – Positivity energy for the investments

Technical Session III: Corporate Governance: Fostering Posterity & Prosperity

The Speakers will deliberate of the importance of Corporate Governance in fostering the economies of various countries with following sub themes

- Corporate Governance – Technological advancements
- Corporate Governance – Improves functionality improvement,
- Corporate Governance –Instrument of competitive strategies
- Corporate Governance – Tool for Economic stability of the nation
- International Corporate Laws and Corporate Governance.
- Sustainability – An essential pillar of governance

Technical Session IV : Universally accepted International Corporate Governance Code: A prerequisite of good governance

The speakers will deliberate on the necessity of having a universally accepted International corporate governance code with following sub themes:

- Lessons to be learnt from Global Economic Crisis from the perspective of Corporate Governance.
- Corporate Governance through the eyes of Secretarial Standards issued by ICSI
- Concept of proposing a day as an "International corporate governance day" - various benefits by observing a day internationally allocated towards Corporate Governance
- Revolutionizing International Corporate Governance Day

ICSI also invites International Research Papers for its Global Congruence on International Corporate Governance Day on or before 30 November 2016. For details visit www.icsi.edu

FEE STRUCTURE

Categories	On or Before 30 November 2016	On or Before 08 December 2016
Professionals (CS/CA/CMA/Advocates)	INR 3500	INR 4000
PCS Members	INR 3000	INR 3500
Students *	INR 1750 or USD 100	INR 2000 or USD 125
Research Scholar*	INR 4500 or USD 200	INR 5000 or USD 225
Other Delegates (Industry/Others)	INR 5500 or USD 250	INR 6000 or USD 300

*Separate kit will be provided for the Students/Research Scholars
**Apart from the above, a separate discount is available for Congruence Partners and also on group bookings containing 3 or more participants in all the above categories.
*** All Foreign delegates should pay the fee in US Dollars

PROGRAMME CREDIT HOURS

Members of the Institute attending the Global Congruence on both days will be entitled to grant of 8 PCH
Students attending the Global Cogruence on both days would be deemed to have completed with the requirement of attending 20 hours of Professional Development Programmes

Mode of Online Payment

Link of Delegate form for Global Congruence scheduled at Hyderabad on December 8, 9 2016
https://www.icsi.in/student/DelegateRegistration/tabid/137/ctl/DelegateRegistration/mid/454/EventId/45/Default.aspx

Name of the Bank & Branch	Account No.	IFSC Code	MICR Code
ICICI Bank, Khairatabad	00080123504	ICICI0000008	500229002

Upon making online payment you are requested to send e-mail to hyderabad@icsi.edu immidiatly specifying the name of the participant, membership No. Bank and Transaction reference number.

Please find the information for visa to foreign delegates:

India grants visa on arrival for citizens of some countries and for citizens of some countries, no visa is required. evisa facilities are also available. Please visit the following sites to get information about obtaining a visa to visit India.
https://indianvisaonline.gov.in; https://indianvisaonline.gov.in/visa/tvoa.html; https://indianvisaonline.gov.in/Visa_VOA/tvoa.html

Please visit: www.icsi.edu/hyderabad for Hotel Accommodation details

COME
BEA PART OF
THIS
GREAT
INTIATIVE

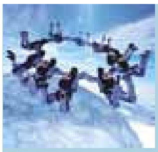
International Corporate Governance Day
Power of Best Practices

HOP ON
TO THE ROAD
LEADING TO
THE CONGRUENCE
BEING HELD IN INDIA

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

Headquarters
ICSI House, 22 Institutional Area, Lodi Road,
New Delhi - 110003
Tel 011-45341000, 41504444 fax +91-11-24626727
email: info@icsi.edu website: www.icsi.edu

Team Global Congruence on ICGD
Tel +91 40 23325458, +91 40 23399541, (M)+91 7658983099
email: globalcongruence@icsi.edu;
globalcongruence@gmail.com;
hyderabad@icsi.edu



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

44th National Convention of Company Secretaries

Mahatma Mandir Convention Centre
Gandhinagar, Gujarat
17-19 November, 2016
Thursday-Friday-Saturday

POWERING GOVERNANCE - EMPOWERING STAKEHOLDERS
CS - THE GOVERNANCE PROFESSIONAL

Day 1
(Thursday, November 17, 2016)

Registration of Delegates & Lunch
(11.00 am onwards)

Opening Plenary

(02.00 pm to 03.30 pm)

Powering Governance-Empowering Stakeholders : CS - The Governance Professional

Chief Guest

Vijaybhai R. Rupani
Hon'ble Chief Minister
Government of Gujarat

Guests of Honour

Suresh Prabhakar Prabhu
Hon'ble Minister for Railways
Government of India

Nitin Patel*
Deputy Chief Minister
Government of Gujarat

Dr. M. S. Sahoo
Chairman, Insolvency and
Bankruptcy Board of India

Mrugank M. Paranjape
MD & CEO
Multi Commodity Exchange of India Limited

Bimal Chaudhary
Managing Director
Anmol Biscuits Ltd.

Technical Session - I

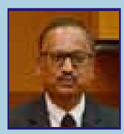
(04.00 pm to 06.00 pm)

Looking Glass to 2022 - India at 75 - Role of Professionals

Speakers

Devesh Bansal
Director, Skipper Limited

John E. Matheson
Managing Partner
I P Policy Services LLP



Saurabh Soparkar*
Sr. Advocate
Gujarat High Court

Rajeev Anand*
Vice Chairman & Managing Director
Goodyear India Ltd.

B2B Session
(06.00 pm to 07.00 pm)

Cultural Programme and Dinner
(07.30 pm onwards)
Dinner Sponsored by
Adani Group of Companies
and
DLF Limited

Day 2
(Friday, November 18, 2016)

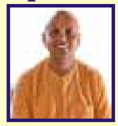
Yoga Session
in association with Ministry of Ayush
Government of India

(07.00 am to 08.00 am)
At Sabarmati River Front

*Shilpa Shetty**
Actress & Yoga Expert

Special Session
(10.00 am to 11.30 am)
Towards Meaningful Life

Speaker



HH Gaur Gopal Das
ISKON, Mumbai

Technical Session - II
(12.00 noon to 01.30 pm)
CEO's Speak - Emulate Governance from Corporate Leaders

Panel Moderator

Ashok Barat
Chief Operating Officer
Cyril Amarchand Mangaldas

Panelists

Uday Khanna
Chairman
Bata India Limited

Sunil Mathur
Managing Director & CEO
Siemens India Limited

Dr. Hasit Joshipura
Member - Executive Management Committee
Larsen and Toubro & Past President
Bombay Chamber of Commerce & Industry

Technical Session - III
(03.00 pm to 04.30 pm)
Digital Drive-Empowering Knowledge Economy

Speakers

Pavan Kumar Vijay
Managing Director
Corporate Professionals Pvt. Ltd.

Paroon Chadha
Co-founder and CEO
Passageways

G. V. Nageswara Rao
Managing Director & CEO
National Securities Depository Limited

S. Chandrasekhar
Group Director Government Affairs
Microsoft India

Technical Session - IV
(05.00 pm to 06.00 pm)
Learning from the Experience of Royal Majesties

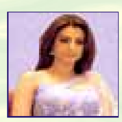
Speakers

Raja Bharatendra Singh
Member of Parliament
Bijnour

Rao Rajendra Singh
Deputy Speaker
Rajasthan Legislative Assembly

Yuvraj Saheb Mandhatasinh Jadeja
Rajkot

CULTURAL PROGRAMME AND DINNER
(08.00 pm onwards)
Dinner Sponsored by Adani Group of Companies and DLF Limited



*Ameesha Patel**

** Requested*

Day 3
(Saturday, November 19, 2016)

Run for a Cause in association with Ministry of Ayush, Government of India

(06.30 am to 08.00 am)

Guests of Honour

Meenakshi Lekhi*
Hon'ble Member of Parliament
Lok Sabha and Supreme Court Lawyer

Gautambhai Navalchand Shah
Mayor, Ahmedabad Municipal Corporation

Mukesh Kumar, IAS*
Municipal Commissioner, Ahmedabad

Interactive Session

(For Members of ICSI only)

(09.30 am to 11.00 am)

Technical Session - V

(11.00 am to 12.30 pm)

Enhancing Skills - Finding the Way beyond Compliance

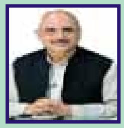
Special Address

K V R Murty
Joint Secretary
Ministry of Corporate Affairs

Speakers

CS U K Chaudhary
Senior Advocate
Supreme Court of India

Alok Dhir
Lawyer in Practice
Dhir & Dhir Associates



Nalin Kohli
Advocate
Supreme Court of India

Kevin Moore
Director
Global Business Development
Chartered Institute for Securities & Investment

Dr. P. D. Vaghela
Commissioner
Commissionerate of Commercial Tax

Closing Plenary

(12.30 pm to 02.30 pm)

Chief Guest

Smriti ZubinIrani
Hon'ble Union Minister of Textiles
Government of India

Guest of Honour

Amitabh Kant*
Chief Executive Officer
NITI Ayog

Special Guest

Vinai Kumar Saxena
Chairman, Khadi & Village Industries Commission
Ministry of Micro, Small and Medium Enterprises

Special Attractions

- *Local Sightseeing*
- *Yoga Session*
- *Cultural Evening (on 17th and 18th November)*
- *Attractive Convention Kits*
- *Special Gifts for Spouses*
- *Surprise Gifts in Rooms*
- *Special Surprise for all Delegates*
- *Drawing of Lots on all three days*
- *Gifts & Gift Hampers of different Companies*
- *Exhibition- A first time initiative : Stall of Ministry of Railways and Ministry of Textiles and many more*

Unfolding of more surprises in days to come.......

Co-Sponsors

Tourism Corporation of Gujarat Ltd.
Anmol Biscuits
MCX IPF Trust

Sponsors

Sadbhav Engineers Ltd.
Diligent
DLF
BSE- IPF
Tata Sons
ONGC
NSDL
Central Depository Services (India) Limited
LIC
Maruti Suzuki
Indian Oil
CLA
Passageways

T V Partner — CNN NEWS18

Magazine Partner — GOVERNANCE TODAY

Print Media Partner — Business Standard

* Requested

SEBI Chairman inaugurates new office premises for SEBI at Mumbai

Shri U.K. Sinha, Chairman, Securities and Exchange Board of India (SEBI) inaugurated a new office premises at Bandra Kurla Complex, Mumbai, on 28.10.2016. Shri Rajeev Kumar Agarwal and Shri S.Raman, Whole Time Members; Executive Directors and other senior SEBI officials were present on the occasion.

The new office at 4th& 5th floors , NCL Bandra Premises, C-6, E Block, Bandra Kurla Complex (BKC), Mumbai will house the Enquiries and Adjudication Department and the Investor Grievances Redressal Division (Office of Investor Assistance and Education) of SEBI Head Office. Earlier, these departments were functioning at SEBI Bhavan, BKC, Mumbai.

SEBI Toll Free Helpline numbers are: 1800-22-7575 / 1800-266-7575.

Mumbai
October 28, 2016

[Source: SEBI Press Release PR No. 149/2016]

CORPORATE GOVERNANCE CORNER

Developments –October 2016

Financial Reporting Council of Nigeria (FRC) issues National Codes of Corporate Governance

In accordance with Section 50 of the Financial Reporting Council of Nigeria Act, 2011, the Financial Reporting Council of Nigeria (FRC) has issued National Codes of Corporate Governance (the Code) for the private sector, public sector and not-for-profit organisations in Nigeria. The Code is effective from 17th October 2016. Details are as hereunder:

i) The Code of Corporate Governance for the Private Sector – Compliance with this Code is mandatory for:
- all public companies (whether listed or not)
- all private companies that are holding companies or subsidiaries of public companies
- private companies that file returns to any regulatory authority other than the Federal Inland Revenue Service and the Corporate Affairs Commission

Compliance is however not mandatory for companies with eight (8) or less employees, regardless of status of such companies.

ii) The Code of Governance for Not-for-Profit Sector – Not-for-profits organizations are encouraged to comply with the provisions of the Code. Where they do not comply, they are required to justify the reason for non-compliance.

iii) The Code of Governance for the Public Sector – This Code, though not mandatory at the moment, will be applicable to all public sector entities (government agencies, ministries, departments, and state owned entities).

The Codes are aimed at enhancing management credibility, preserving long-term investments, improving access to new capital and lowering cost of capital. The Codes will also help to drive increased transparency and accountability in financial reporting through enhanced disclosures in financial statements thereby supporting investment decisions and shareholders' value.

For copies of the three separate codes, please visit: http://www.financialreportingcouncil.gov.ng/corporate-governance/national-code-of-corporate-governance-2016/
Source: https://www2.deloitte.com/ng/en/pages/tax/articles/FRC-issues-national-code-of-corporate-governance.html

Remember!!

10 November	-	World Science Day for Peace and Development
17 November	-	World Philosophy Day
20 November	-	Universal Children's Day

Feedback & Suggestions

Readers may give their feedback and suggestions on this page to Ms. Banu Dandona, Joint Director, ICSI (banu.dandona@icsi.edu)

Disclaimer:

The contents under **'Corporate Governance Corner'** have been collated from different sources. Readers are advised to cross check from original sources.

Release of Survey Report

The Institute of Company Secretaries of India (ICSI) released a report based on the findings of the survey carried out on 'Implementation of Sexual Harassment Law at Workplace', at the ICSI 'National Training Programme exclusively for Women Empowerment –Emancipate Women Prodigy to Rule the Roost" organised at Ramoji Film City, Hyderabad on October7, 2016.

The survey report was released at the gracious hands of Hon'ble Smt. Daggubati Purandhreswari, former Minister of State for Human Resources, Government of India, Smt. Sailaja Kiran, Managing Director, Mangaldas Chit Funds Pvt Ltd and Smt. Meenakshi Datta Ghosh, IAS (Retd), Former Secretary to the Government of India, in the august presence of CS Mamta Binani, President, ICSI.

The survey was carried out by the Institute in association with Complykaro Services Pvt. Ltd through the questionnaire based method on various facets of the law on Prevention of Sexual Harassment of Women at Work Place and was aimed at spreading more awareness about the law which helps in furtherance of its implementation.
The survey report is available at ICSI website and may be downloaded at the link:

https://www.icsi.edu/webmodules/Final_Report_05102016.pdf

Regn. No. 21778/71
Posting Date : 10/11-11-2016
Date of Publication : 05-11-2016

Delhi Postal Regn. No. DL(S)-17/3197/2015-2017
Licenced to post without prepayment at Lodi Road P.O.
Licence No. U-(C)-80/2015-2017