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THE JOURNAL FOR CORPORATE PROFESSIONALS

FOCUS ON NCLT & NCLAT



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- 01 >> Meeting of President, ICSI with Secretary, Deptt. of Legal Affairs, Ministry of Law and justice - CS Mamta Binani seen presenting ICSI Journal and other publications to Suresh Chandra, Law Secretary, Deptt. of Legal Affairs, Ministry of Law and Justice.
- 03 >> Signing of MoU between ICSI and CCI –Smita Jhingran (Secretary, CCI) and CS Mamta Binani signed the MoU on behalf of CCI and ICSI.
- 04 >> IOD, ICSI One Day Seminar on Board Diversity – Theme: Driving a Sustainable Organisation through Board Diversity – Release of the seminar papers – Standing from Left: Dr. M B Athreya (Management Guru), CS Mamta Binani, Meenakshi Lekhi (Member of Parliament), Lt. Gen. J S Ahluwalia, Manasi Kirloskar (ED, Kirloskar Systems) and CS Ahalada Rao V.
- 06 >> Convocation 2016 held at Delhi – On the dais from Left: CS Manish Gupta, CS Rajiv Bajaj, CS (Dr.) Shyam Agrawal, Chief Guest CS (Dr.) Abhishek Jain, IAS (Labour Commissioner-cum-Director of Employment, Govt. of HP, CS Mamta Binani, CS Vineet Chaudhary, Rajesh Sharma and CS Ashok Kumar Dixit.

- 02 >> ICSI representation at the interactive meeting called by Hon'ble Finance Minister Arun Jaitley – Standing from Left: CS Vineet K Chaudhary, Jayant Sinha (then Hon'ble Minister of State for Finance), Piyush Goyal (Hon'ble Minister of State with Independent Charge for Power, Coal, New and Renewable Energy) and Shaktikanta Das (Revenue Secretary, Government of India).
- 05 >> ICSI meets republic of Kenya delegation on opportunities for India SME in African markets - Prof. Tom Peter Ogoda (Hon. Minister for Trade, Industry and Investments, Homa-Bay County Government) addressing. Others sitting from Left: CS Vineet K Chaudhary, CS Satwinder Singh, CS Mamta Binani and H.E. Hamilton O Orata (Deputy Governor, Homa-Bay County Government, Republic of Kenya).
- 07 >> Convocation 2016 held at Chennai – On the dais from Left: CS Sivakumar P, CS Ramasubramaniam C, CS (Dr.) Shyam Agrawal, CA T N Manoharan, CS Ahalada Rao V and CS Ramakrishna Gupta R.



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- 08 >> Opening of CS acceleration centre for members at Kolkata – CS Mamta Binanai cutting the ribbon to mark the opening of the acceleration centre. Seen in the picture among others from Left: CS Sandip Kejriwal, CS Ashok Purohit, Ankur Yadav, CS Siddhartha Murarka, Dr. Tapas Roy and CS S K Agrawala.
- 10 >> ICSI, ICAI and ICoAI Coordination Committee Meeting –Group photo of participants of the meeting.
- 12 >> EIRC – North Eastern Chapter – Round Table on CSR and Board’s Legal Environment and Board Processes & Procedures - Guest Speaker CS G P Madaan addressing.
- 14 >> Celebration of spirit of Unity and Harmony – team ICSI taking a pledge on the occasion.

- 09 >> Opening of CS acceleration centre for members at Chennai – CS Mamta Binanai addressing. among others sitting on the dais from Left: CS Dhanapal S, CS Sivakumar P, CS Ganapathi G M, CS Ramasubramaniam C and CS Ramakrishna Gupta R..
- 11 >> NIRC – 15 Days master class room study sessions on NCLT and NCLAT–Sitting on the dais from Left: CS Pradeep Debnath, CS Manish Gupta, Chief Guest CS S Balasubramanian (Former Chairman, CLB), CS Pavan Kumar Vijay, CS NPS Chawla, CS Saurabh Kalia and CS Nitesh Sinha.
- 13 >> EIRC – Ranchi Chapter Awareness Programme on Commodity Futures–Sitting on the dais from Left: Diptendu Moulik (Senior Executive, MCX), Vibhor Tandon (Assistant Vice-President, MCX); CS Sanjeev Kumar Dikshit, CS Subhash Bharti and CS Puja Kumari.
- 15 >> Celebration of spirit of Unity and Harmony - Group photo of team ICSI.

Capital Markets Week held from June 18- 25, 2016 on Transcending Horizons – Capital Market Way



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- 16 >>> Programme held at Mumbai – CS Makarand M. Lele addressing. Others sitting from Left: CS Mahavir Lunawat, Ashishkumar Chauhan (MD and CEO, BSE Ltd.), Rajeev Kumar Agarwal (WTM, SEBI) and CS Kamlesh Joshi.
- 18 >>> Programme held at Goa - CS Atul Mehta addressing. Others sitting from Right: CS Girija Nagvekar, Dinesh Sinha {(Regional Head, Syndicate Bank, Panaji Goa (Guest of Honour)}, Jaikish, {General Manager, RBI, Panaji Goa (Chief Guest)} and CS Shilpa Dhulapkar.
- 20 >>> Programme held at Jaipur - CS (Dr.) Shyam Agrawal addressing. Others sitting from Left: CS Mahendra Prakash Khandelwal, Mohan Lal Gupta (Member, Rajasthan Legislative Assembly and Chairman, Committee on Public Undertaking, Jaipur), S. K. Pradhan (General Manager – Corporate Banking, State Bank of Bikaner & Jaipur), Rajesh Sharma, CS Tara Chand Sharma.

- 17 >>> Programme held at Bhopal - CS S.Sudhakar [Vice President (Corporate Secretarial) Reliance Industries Limited , Navi Mumbai] addressing. Others sitting from Left: CS Avadhesh Parashar, CS P.K.Rai, CS G.P.Madaan, CS Amit K. Jain and CS Pradeep Mutreja.
- 19 >>> Programme held at Agra – CS Vineet Chaudhary addressing. Others sitting on the dais from Left: CS Arpit Suri, CS Akash Jain, CS Amit Gupta, Dr. Anand Saxena (Associate Professor, Deen Dayal Upadhyay College, DU) and CS Sumeet Agrawal (Consultant – Startups, MSME and New Venture).
- 21 >>> Programme held at Bengaluru – CS Gopalakrishna Hegde addressing. Others sitting on the dais from Left: CS Nagendra D Rao, CS Mahavir Lunawat, Chief Guest CS Rajesh Ramaiah (Director and CFO, Premji Invest) and CS Pradeep B Kulkarni.



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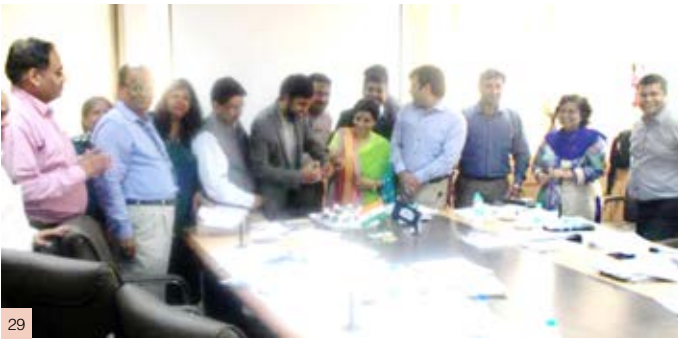
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- 22 >> Programme held at Kolkata - Chief Guest R C Meena (RD(ER), Ministry of Corporate Affairs) addressing. Others sitting from Left: CS Gautam Dugar, CS Siddhartha Murarka and CS Sandip Kumar Kejriwal.
- 23 >> Programme held at Bhubaneswar - Jogendra Behera (Hon'ble Minister, Micro, Small & Medium Enterprises, Public Grievances and Pension Administration, Govt. of Odisha) addressing. Others sitting on the dais from Left: CS Priyadarshi Nayak, CS Dr. Shyam Agrawal, Dr. K.C. Mishra (former VC, Sri Sri University, Odisha), CS Ashok Kumar Mishra and CS Surendra Nath Mallick.
- 24 >> Programme held at Hyderabad – Sitting from Left: CS Mahadev Tirunagari, Chief Guest B. Kalyan Chakravarthy (IAS, Director General, EPTRI, Hyderabad), CS Ahalada Rao V and CS Ramakrishna Gupta R.
- 25 >> Programme held at Kanpur - Sitting on the dais from Left: CS Vaibhav Gupta, CS Kaushal Saxena, CS Rajiv Bajaj, CS Vaibhav Shukla, Dr. Anand Saxena, and CS Sameer Shukla.
- 26 >> Programme held at Gurgaon Standing from Left: CS Vinay Shukla, CS Deepak Kukreja, CS Pavan Kumar Vijay, CS Ranjeet Pandey, CS Dhananjay Shukla, CS Pradeep Debnath and CS Amit Kaushal.
- 27 >> Programme held at Chennai - CS C Ramasubramaniam addressing. Others sitting from Left: CS Dhanapal S, Dr. R Natraj, IPS and CS Mohan Kumar A.
- 28 >> Programme held at Ahmedabad –Standing from Left: Manoj Sonawala from Beyond the Governance, CS Tushar Shah, CS Ashish Doshi, CS Savithri Parekh from Pidillite Industries, CS Chetan Patel, CS Maneesha Priyani and J. N. Gupta from Stakeholder Empowerment.

ICSI PCS Day Celebrations held on 15.6.2016. Some of the glimpses of the celebrations.



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- 29 >> Cake cutting ceremony to celebrate the PCS day at ICSI Headquarter.
- 30 >> NIRC - Ajmer Chapter – Aview of the dais.
- 31 >> NIRC - Alwar Chapter – Cake cutting ceremony to celebrate the PCS day.
- 32 >> SIRC - Amravati Chapter - Cake cutting ceremony to celebrate the PCS day.
- 33 >> SIRC - Bengaluru Chapter –dignitaries lighting the lamp to mark the opening of the PCS day celebration.
- 34 >> WIRC - Bhayander Chapter - Cake cutting ceremony to celebrate the PCS day.
- 35 >> EIRC - Bhubaneswar Chapter –discussion meeting on the PCS day.
- 36 >> ICSI – CCGRT –a view of the dais.
- 37 >> NIRC - Faridabad Chapter – A view of the dais.

ICSI PCS Day Celebrations held on 15.6.2016. Some of the glimpses of the celebrations.



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- 38 >> EIRC - North Eastern (Guwahati) Chapter – a view of the participants.
- 39 >> WIRC - Indore Chapter – Cake cutting ceremony to celebrate the PCS day.
- 40 >> NIRC - Kanpur Chapter – lighting of the lamp to mark the inauguration of PCS day celebration.
- 41 >> NIRC – a view of the speakers on the occasion.
- 42 >> NIRC - NOIDA Chapter –Group photo of the members on the occasion.
- 43 >> EIRC - Patna Chapter - Cake cutting ceremony to celebrate the PCS day
- 44 >> WIRC - Pune Chapter - A view of the dais.
- 45 >> EIRC - Ranchi Chapter – A view of the speakers on the occasion.
- 46 >> WIRC - Thane Chapter - A view of the gathering during seminar on PCS Day Celebration.
- 47 >> WIRC - Vadodara Chapter – dignitaries on the dais during the lecture meeting held on the PCS day.

NCLT – How I See It

» P-21

D.K.Prahlada Rao

Tribunalisation of justice is the order of the day and NCLT confirms the trendy events. NCLT is a long cherished dream to achieve lower time and cost over runs and that it is there to operationalise is a welcome measure, though a lot of time was lost in legal imbroglio. One of the start-up activity of the NCLT is to admit "Class Action Suits", a representative action on the part of members or depositors against a company in default and this is intended to protect the investors' interests.

Class Action Suits under Companies Act, 2013

» P-24

Pavan Kumar Vijay

Class Action Suits envisaged under Section 245 of the Companies Act, 2013 is a new tool in the hands of the investors to protect their interest and right in companies. The new provision will not only act as remedial measure but will also play an important role in deterring the securities related frauds and mismanagement by the promoters. Two significant advantages of Class Action Suits are reduction in cost and avoidance of multiplicity of litigation on the same subject matter. As per Section 245(1)(g), even professionals can be sued for giving any incorrect or misleading statement to the company. Therefore professionals need to be abundantly cautious while giving or issuing any statement to the company or to its management.

Appeals from the Orders of NCLT

» P-30

Pradeep K Mittal

NCLT and NCLAT, constitute single window institution for settling all corporate justice and thus there is consolidation of corporate jurisdiction. NCLT being a statutory body would enjoy all the powers being conferred under the Companies Act, 2013 and will handle all the matters presently being handled by Company Law Board with much wider jurisdiction in terms of scope of subjects. Section 420 of the Companies Act, 2013 provides that the Tribunal may pass appropriate orders after providing reasonable opportunity of being heard to the parties. Any person aggrieved by the orders of Tribunal may prefer an appeal to the Appellate Tribunal and the Tribunal may accordingly dispose of the appeals expeditiously. In case appeals are not disposed of by the Appellate Tribunal, the reasons for the same shall be recorded for not disposing of the application and the President/ Chairperson after taking into account the reasons extend the period exceeding ninety days as he may consider necessary.

Further, any person aggrieved by the orders of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of order of the Tribunal on the question of law. The Supreme Court may also extend the time for filing an appeal on sufficient cause.

NCLT Revolutionising Corporate Litigation – Opportunities & Challenges

» P-37

Dr. S.D. Israni & Satyan S. Israni

The Government has recently notified the creation of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) with effect from 1st June, 2016. With the said notification, the fourteen years long saga has finally come to an end. The controversy was finally laid to rest in May,

2015 when the Constitutional Bench upheld the creation of the NCLT/NCLAT and directed the Government of India to amend certain provisions of the Companies Act, 2013 (CA, 2013) in consonance with the guidelines prescribed in its 2010 judgment. We now have a tribunal which has been created to revolutionise corporate litigation and there are great expectations from it. Apart from being conferred with all the powers that were enjoyed by the erstwhile Company Law Board (CLB), the NCLT has been vested with several additional powers which will enable it to dispense effective justice to aggrieved persons. This article highlights the genesis of NCLT, also the scope of its powers. It also outlines the opportunities for PCS with the advent of NCLT.

NCLT – An Anecdote or Antidote to Consolidation of Corporate Jurisdiction

» P-42

Alok Kumar Kuchhal

The Ministry of Corporate Affairs has notified the formation of NCLT and NCLAT on 1st June, 2016 which also resulted in dissolution of CLB. It is a welcome step towards consolidation of corporate jurisdiction, which hitherto was scattered at various levels. With the promulgation of NCLT, the High Court's powers of resolving matters relating to reduction of capital, merger, amalgamation and winding up, similarly adjudicating powers of CLB with respect to rectification of Members register, refusal to transfer/transmission of Shares & Securities, Oppression and Mismanagement and similar other issues will now solely be exercised by NCLT. It is the only redressal body for all corporate matters now. The Constitution of NCLT will definitely go to reduce the burden of Courts, but it is a matter of great concern that how early and how smoothly NCLT will be able to achieve its objectives?

NCLT, a Single Window Tribunal for all Company Law Litigations opens Window of Opportunities for Practising CS

» P-45

Delep Goswami & Anirrud Goswami

The establishment and functioning of the NCLT and its appellate body, NCLAT opens a new era in the company law dispute resolution and will consolidate the various forums/tribunals under a single window Tribunal i.e. the NCLT and will reduce the workload of the Courts and will speed up disposal of company law cases. The Supreme Court had in its judgements of 2010 and 2015 upheld the constitutionality of NCLT and NCLAT. In compliance with the guidelines contained in the Supreme Court judgements, the Ministry of Corporate Affairs in its June 1st, 2016 notifications finally established the NCLT and NCLAT and notified its powers and functions. However, an important grey area that remains is the enforcement of the NCLT Rules which were drafted in February, 2016. In any case, the operationalisation of the NCLT will open up numerous avenues for the Practising Company Secretaries (PCS) who play a vital and significant role in matters of company law compliance and company law litigation.

National Company Law Tribunal – Certain Provisions and Principles relating to Oppression and Mismanagement

» P-50

Dr. K. S. Ravichandran

The establishment and bringing into operation of National Company Law Tribunal [NCLT] has brought amongst Company Secretaries a whiff of fresh air. One of the serious matter that is going to be adjudicated by the NCLT is the disputes relating to "Oppression and Mismanagement". In effect, these matters are going to be dealt with in the same manner as they have been dealt with by the erstwhile Company Law Board. Being a tribunal

proper, powers are certainly more. Importantly if any member or some of the members do not possess the requisite qualification so as to be eligible to invoke the jurisdiction of NCLT, the member or members who are aggrieved due to acts of oppression and / or mismanagement may apply to NCLT to waive those norms and admit the petition. This provision, all the more important, as jurisdiction of civil courts in relation to such matters has been expressly barred. As NCLT will have benches across the country, litigants will benefit. Moreover it is expected to result in speedy disposal of cases. It is in this backdrop, company secretaries must grasp the relevant jurisprudence and learn the techniques and procedural aspects quickly so as to be able to make a distinct mark. Those who have interest in this subject, may take advantage of the situation and gain expertise and experience. Once a person is thorough as regards facts, he must learn the fundamental principles, court craft and art of advocacy. A person who is very well equipped need not have even the slightest fear even if the other side is represented by a very reputed senior. Ultimately these cases decided on the basis of facts and circumstances only. In short, it is time to gear up, time and tide waits for none.

Role of the NCLT under the Insolvency and Bankruptcy Code, 2016 >>> P-55

Munish K Sharma

The Insolvency and Bankruptcy Code, 2016 (the Code) recognizes National Company Law Tribunal (NCLT) as the adjudicating authority for insolvency resolution process and liquidation of corporate entities. The underlying principle of the Code is that adjudicating authority should be given minimum burden with the process of the insolvency resolution and liquidation but simultaneously it should be given sufficient powers to ensure the fairness of the process and efficiency of insolvency resolution and liquidation. Under the Code, the NCLT is empowered to decide on admissibility of the insolvency applications, appoint insolvency resolutions professionals, recommend disciplinary action against insolvency resolution professional, ensuring that resolution plan submitted meets the requirement of Code, initiate liquidation process and pass dissolution order. NCLT has also been empowered to act against the wrongful and fraudulent actions of the corporate debtor as well as the malicious and frivolous applicants. This article attempts to outline such powers of the NCLT.

Class Actions >>> P-61

Prachi Manekar-Wazalwar

The remedy of shareholder class action has been provided under the Companies Act, 2013 vide Section 245. The said section has been notified and first class action has been filed. This article analyses the meaning, nature and scope of the remedy. It also deals with the guidelines/tests that will determine maintainability of class actions.

Compounding of certain offences: Need for Publication of all decided orders >>> P-64

Dr. S. Chandrasekaran

The concept of Compounding of Offences was introduced in the Companies Act in 1988 on the recommendation of Sachar Committee Report. It was felt that the proposed amendment will ensure compliance of law. Non-compliance of the provisions of the Act by Companies are mostly unintentional, technical in nature and divergent interpretations which attract penal provisions. Companies prefer filing of compounding applications for easy and quick disposal, whereas, all the orders of compounding

applications were not reported. It is very much important to make available all such orders on compounding of applications so that the officers in defaults, professionals would understand and take proper decisions for compliance of law in letter and spirit. All such orders passed by CLB and RD may be compiled and made available by MCA or ICSI and to publish future orders of NCLT on the same lines of the recent decision of RBI for public disclosure of compounding orders and guidelines on the amount imposed during compounding under FEMA.

Constitution of NCLT and NCLAT : Challenges and Opportunities For Practising Company Secretaries >>> P-68

Mukesh Kumar Karna

From 1st June, 2016 various new opportunities have emerged for corporate professionals like Practising Company Secretaries. Fourteen years ago the Companies (Second Amendment) Act, 2002 provided for the setting up of a National Company Law Tribunal and National Company Law Appellate Tribunal to replace the existing Company Law Board (CLB) and Board for Industrial and Financial Reconstruction (BIFR). NCLT & NCLAT are based on the recommendation of the Justice Eradi Committee and finally approved on 1st June, 2016 by Ministry of Corporate Affairs. The National Company Law Tribunal shall comprise of a President and such number of Judicial and Technical Members not exceeding 62. According to the notification, the Company Law Board stands dissolved with effect from 1st June, 2016. Notification of Section 466 makes last Chairman of Company Law Board as Provisional and first Chairman of NCLT.

NCLT – Paradigm Shift Towards Expeditious Dispute Resolution >>> P-72

Namita Tripathi & Jayanti Chaurasia

NCLT as quasi-judicial body, was to be set up on the recommendations of Justice Eradi Committee under the Companies (2nd Amendment) Act, 2002, but long drawn litigation had delayed its birth till 1 June 2016. The Tribunal shall function as the supplementary part of the judiciary system. The Tribunal is having wide powers under CA, 2013; about 174 sections deal with the functioning of the Tribunal, out of which 87 Sections have been notified which were dealt by the CLB. The Tribunal provides an opportunity to company secretaries to become part of judicial system as they are eligible for appointment as Technical Members or liquidator for winding up process and as Amicus Curiae on any legal issues. Company secretaries should make extra-efforts and 'invest' substantial time to update with the knowledge of relevant laws; and in developing art of advocacy and soft skills.

Now Miracles will Happen through NCLT >>> P-77

Suresh Sharma

With operationalisation of the NCLT and NCLAT from 1st June, 2016 the Company Secretaries role has gone for a new recognition as they will be able to appear before the Tribunal. The jurisdiction of NCLT and NCLAT is very wide and includes all matters which were earlier dealt by the Company Law Board, BIFR and High Court relating to winding up, reconstruction and Corporate Insolvency. Now all these matters will be dealt with by NCLT and NCLAT. Company Secretaries should get conversant with rules and regulations of NCLT, NCLAT, provisions of the Companies Act and related rules etc. NCLT and NCLAT will provide an opportunity to the Company Secretary to serve the Corporate Sector and this will make miracles in the life of the members of the ICSI.

RESEARCH CORNER

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Economic Governance for Inclusive Economic Development and the Role of Different Stakeholders



P-83

Dr. Abhishek Jain

Governance and Development are issues of great critical importance in modern times of liberalisation, privatisation and globalisation. Governance has a very significant role in economic development. Governance has multiple dimensions of which economic governance is one of the most important ones. Economic development should be as inclusive as possible. Economic Governance affects inclusive economic development in different ways and mechanisms. This paper is an attempt to study governance in general, and economic governance in particular; and its relationship with inclusive economic development. Since governance involves various stakeholders including state, private sector, voluntary sector, civil society, media and citizens; this paper describes the role of all these stakeholders in unleashing inclusive economic development. As we see the Indian economy driven more and more by private sector and the state redefining its strategies, the different stakeholders of governance would all have to play a synergized and coordinated role so as to achieve maximum welfare of the maximum number of people.

Comparison of Pre & Post Financial Performance after Mergers & Acquisitions



P-89

Meenu Gupta

'Merger' of two or more organisations, is a concept well accepted by many organisations and even banks to create one stronger organization and experience the benefits of synergy. The number is increasing in India and even globally creating India an investment hub at the time when the government has liberalized the FDI reforms for ease of doing business in India. Recently, the state-run-lender SBI has proposed its merger with its five associate banks and Bhartiya Mahila Bank to create a banking behemoth with an asset base of Rs. 37 trillion. The author has undertaken a research to compare pre and post financial performance of merged entities.

International Research Papers on International Corporate Governance Day



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Expression of Interest (EOI)



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LEGAL WORLD

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▶ LMJ: 09:07:2016 Managing director is an employee of the company and not an agent.[SC] ▶ LW: 42:07:2016 Delhi High Court approves the voluntary winding up of a company. ▶ LW: 43:07:2016 Delhi High Court restores the name of the struck of company. ▶ LW: 44:07:2016 As NCDs are 'debt securities' in terms of the ILDS Regulations, the Company

was also mandated to comply with the provisions of the ILDS Regulations in respect of its public issue of NCDs.[SEBI] ▶ LW: 45:07:2016 It becomes clear that the words 'without its advertisements' which follow immediately after the words 'unless it simultaneously shares the live broadcasting signal' has to be given a meaning that such broadcasting signals are to be without advertisements, whether it is of the content rights owner, content holder or that of television or radio broadcasting service provider.[SC] ▶ LW: 46:07:2016 However, there is also no bar on the RBI in simultaneously considering the application and also determining the total number of Credit Information Companies which may be granted a certificate under Section 5(3) when an application by a prospective Credit Information Company is moved under Section 4(1) of the said Act.[Del] ▶ LW: 47:07:2016 When there was no increased component and therefore no liability to pay VAT in respect of such increased component, benefit under the proviso ceased to be applicable.[SC] ▶ LW: 48:07:2016 Having considered the statements made by the competitors of OP, the Commission is of the view that there is no clear evidence on record to infer that the OP group leveraged its dominant position to ensure awarding of work to OP. [CCI] ▶ LW: 49:07:2016 It emerges that OP does not enjoy dominant position either in the market for manufacture and sale of Backhoe Loaders in India or in the market for manufacture and sale of Vibratory Soil Compactors in India.[CCI]

FROM THE GOVERNMENT

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▶ Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016 ▶ Companies (Removal of Difficulties) Third Order, 2016 ▶ Companies (Acceptance of Deposits) Amendment Rules, 2016

OTHER HIGHLIGHTS

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▶ 17th National Conference of PCS
▶ Ethics & Code of Conduct Corner
▶ Ethics & Sustainability Corner
▶ Brain Teasers



**Don't say you don't have enough time.
You have exactly the same number of hours per day that were
given to Helen Keller, Pasteur, Mother Teresa, Mahatma Gandhi,
J.C. Bose, Leonardo da Vinci, Thomas Jefferson, Thomas Alva
Edison and Albert Einstein.**



Esteemed Professional Colleagues

This time, when I am penning my views down, its 183rd day of this leap year 2016, and we all have already seen exactly half of its dawns and dusks; so, above quote has loomed in my mind to motivate me that as a suzerain of the Institute for this year, I still have to endeavour hard and put so many drops in the ocean called ICSI. Far away, some of my esteemed Professional colleagues are participating in 11th International Professional Development Fellowship Programme from 26 June-4 July 2016 in Greece, the country, which is considered the cradle of Western civilization, the birthplace of democracy, the Olympic Games and mathematical principles and I am appeased to fetch the feedback about the scale of intellectual deliberations held by the members of our fraternity out there.

Also, my thoughts could not stop ferreting out the global development springing up due to Brexit phenomenon. Finally, when the UK, the fifth largest economy of the world, voted to exit the European Union on historic 24 June 2016, it marked an exceptional turning point for many of its member States as well as nations across the Globe. Experts are already in a stew regarding the hand picking of regulations and approaches by the UK government from the existing EU rules and regulations in its kitty. While, actual regulatory change may take time till the year 2018 (the "separation" process is expected to take at least two years), compliance and governance professionals should start preparing to operate in a changed environment

tout de suite and should get under way exploring accompanying challenges. They should readily foresee additional compliance efforts and complexities emerging in their board rooms if some members in Continental Europe give rein to renegotiating elements of their relationships with the EU.

As far as India-Brexit equation is concerned, there are two sides of a coin. Of course, the withdrawal of the Great Britain from the European Union, will inevitably have an impact on the global economy and Indian economy as well. India's markets have shown a sign of shrugging off the impact of Britain's vote to exit the European Union. Though stock markets in India tumbled initially like other global stock markets, yet, it recovered swiftly and the net impact was meagre. India has rock solid fundamentals. Now, when direct trade of India with Britain is to surge post-Brexit, the trade rules need to be revisited .

The Brexit development calls for a more challenging and important role for Company Secretaries, the Governance professionals, as the parallels between political and corporate governance are plentiful. During this time, when a new set of problems are expected to usher up, the Boardrooms, will have a vital role to play. They have to ensure that their own organisations are properly run and they are alive to the issues to which they may become exposed. To my professional colleagues, my modest advice will be that, though, there will

be challenges on the way to the business activity of their respective companies; yet, Company Secretaries should step in to act proactively to safeguard the interest of the stakeholders in boards meetings addressing such challenges. Good governance will be the need of the hour to face the situation over the next few years.

The UK's Corporate Governance regime was developed within the UK but is certainly influenced by both European and even global initiatives. Therefore, the UK Financial Reporting Council, which sets standards for Corporate Governance, is expected to play a big league role in the times to come.

Having shared my views on this historic global development from Corporate Governance point of view, I will continue taking a stock of the little but firm steps taken by ICSI towards its journey of excellence in the month of June.

Income Disclosure Scheme, 2016

ICSI represented at the interactive meeting called by the Hon'ble Finance Minister Shri Arun Jaitley with the Professional bodies, Business and industry on 28th June, 2016 at New Delhi. Smt. Nirmala Sitaraman, Hon'ble Minister of Commerce and Industry (IC), Shri Jayant Sinha, Hon'ble Minister of Finance, Shri Piyush Goyal, Hon'ble Minister for Power (IC), Coal (IC) and New & Renewable Energy (IC), Revenue Secretary and other high profile dignitaries were also present at the meeting. The Institute is supporting the initiative of the Government by arranging for better dissemination of the Income Declaration Scheme. The scheme is open for making declarations upto September 30, 2016.

Meetings with Dignitaries

Taking forward our sincere and wholehearted initiatives for excavating and scooping out opportunities for our revered profession and also towards joint participation in flagship Government initiatives, the Institute had meetings with the following dignitaries in the month of June:

- Mrs. Meenakshi Lekhi, Hon'ble Member Parliament, New Delhi
- Shri Suresh Chandra, Secretary, Ministry of Law and Justice, Government of India
- Shri Upender Gupta, Commissioner GST, Central Board of Excise and Customs.

Representations

After making extensive deliberations with ICSI stakeholders, the Institute has made following representations to the various Ministries, Central and State Governments:

- Ministry of Corporate Affairs
- Ministry of Consumer Affairs, Food and Public Distribution
- Ministry of Labour
- Ministry of Finance

- Government of Delhi
- State Finance Ministers
- Ministry of Water Resources, River Development and Ganga Rejuvenation.

Special Meeting for Approval of Revised Secretarial Standards

The Institute submitted revised Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) to the Ministry of Corporate Affairs for its approval.

Student Month

The Institute has dedicated the month of July to its dear students by earmarking it as 'Student Month'. Several pragmatic activities have been planned in all RCs/Chapters of the Institute across the country to mark this theme month. The slogan chosen for the theme is 'Udaan-We Fuel Your Growth'. During the Student Month, special interactive sessions with colleges Pan-India, cultural programmes and get-togethers with the students, fresh batch of Full Time Integrated Course, Van Mahotsav Divas, various competitions for students, study notes, uniform start date for Class Room Teaching batches, E-Governance Programmes, Webcasts, meetings with the students and esteemed parents, mega student programmes, faculty induction programmes, training programmes on communication and soft skills, Samadhan Divas with focus on grievances redressal, cleanliness drives, campus placement programmes, career awareness programmes and national level Student Conference have been planned. I encourage my dear students to take part in these privileged initiatives with brimming enthusiasm and zeal.

SMASH Project

In order to provide seamless 24X7 services to our dear students and the esteemed members, the Institute has launched 'Student Member Application Software Hosting' (SMASH). ICSI-SMASH project is one of the supreme projects of our Institute to provide an integrated automated online environment to the students and the members. After one year of persistent and serene efforts, the first set of modules was launched on 16 June, 2016 in 'Go Live' mode. The new software shall be compatible with multiple electronic devices such as Smart phones, i-tabs and laptops. The project is an offshoot of the certitude and commitment of the venerated ICSI Council to strive for interminable enrichment in its services to our stakeholders. The new environment will automate and pull off the zenithal level of efficiency in services.

Capital Markets Week

As part of incessant initiatives towards investors' education and Good Governance in Capital Markets, the ICSI, observed Capital Markets Week from June 18-25, 2016 Pan-India. The theme of this week was 'Transcending Horizons - Capital

Market Way'. During this week, 13 mega programmes and a host of other programmes such as Academic Development Programmes, Panel Discussions, Lectures, Interactive Meetings with Capital Market Regulators/Stock Exchanges and Investor Awareness Programmes were organized by the Regional Councils and Chapters. The Institute also released a video lecture titled "Capital Raising by India: Emerging Scenario" addressed by Mr. Prithvi Haldea, the Founding Chairman, PRIME Database.

Celebration of PCS Day

I congratulate all my cherished colleagues on PCS Day. We all celebrated this treasured day with full zest and vehemence on 15 June to commemorate the historic day when the Company Secretaries in Practice were accorded recognition for Certifying the Annual Returns in 1988 under the erstwhile Companies Act and became the first premiere mile stone in the development of the practising side of the profession of Company Secretaries in India. Professionals like Practising Company Secretaries have a progressively distinct and well defined role to play in turning challenges faced by India Inc. into beneficial business opportunities which are taking the nation forward at a colossal speed. I appreciate your role towards the Profession of Company Secretaries and their contribution to promote and sustain Good Corporate Governance in the small and medium business sector across the country.

Interactive Meet with a High Level Delegation from Republic of Kenya

The interactive meet was arranged with a high level delegation from Homa Bay County, Republic of Kenya comprising of His Excellency Hon'ble Hamilton Onyango Orata - Deputy Governor, Homa Bay County and Hon'ble Prof. Tom Peter Migun Ogada - County Minister for Trade, Industrialization, Investment. The delegation had an open house session with the representatives from academia and industry and ICSI Senior officials. Addressing the august gathering, Kenyan Delegation apprised that Kenya offers quite attractive investment opportunities for Indian MSME sector desirous of entering African Markets and the Government is planning to develop specific themes with special focus on Cotton and Textile Industrial Park, Food Park, Leather Park etc. at present. He also invited the Indian Industry and entrepreneurs to pay a visit to Kenya and explore investment opportunities in the MSME segment. I personally feel that it will be worthwhile if opportunities deliberated by the Kenyan delegation are explored.

Seminar on Board Diversity

The Corporate Boards have been at the centre of many reforms, especially the game changing Companies Act 2013. The Boards need to realize that there are gaps between Governance ideals and governance realities, which need to be closed to ensure effective corporate functioning. One such gap, which has fetched recent attention, is the Board Diversity gap. Any well

functioning board requires a heterogeneous composition of skills, nationality, culture, gender and most importantly thoughts. Keeping this in view, ICSI and the Institute of Directors [IOD] organized a Seminar on 'Driving a Sustainable Organization through Board Diversity' on June 4. Insightful and information packed, the speakers emphasised on the vitality of the Gender Diverse Boards and their impact on corporate performance. Mrs. Meenakshi Lekhi, Hon'ble Member of Parliament was the Guest of Honour. Other eminent and distinguished speakers present at the occasion were Mr. Gopal Krishna Agarwal, Council Member, ICSI and Managing Director, Voguestock, Ms. Vasudha Mishra IAS, Managing Director, National Cooperative Development Corporation, Justice (Dr.) Arijit Pasayat, Co-Chairman, Institute of Directors & Former Judge, Supreme Court of India, Dr. M. B. Athreya, Independent Management Advisor and Former Prof. IIM, Kolkata and London Business School, Mr. Nesar Ahmad, Past President, ICSI, CS N.K Jain, Corporate Advisor & Former Secretary & CEO, ICSI & Ms. Manasi Kirloskar, Executive Director, Kirloskar Systems.

CS Acceleration Centre (CSAC)

I am happy to inform you that the Institute has launched first of its kind CS Acceleration Centre (CSAC) on 8 June to promote the CS profession by providing an opportunity to the young Company Secretaries a well-equipped platform with all State-of-the-Art infrastructural facilities for their professional Practice under the mission of 'Start-up India, Stand-up India' campaign of Government of India. Initially, the CSAC has been made operational at SIRO, Chennai, EIRO, Kolkata and Bengaluru Chapter of ICSI. CS Acceleration Centre (CSAC) is meant to facilitate the germane facilities and amenities to create a conducive work environment for the budding Company Secretary professionals who wish to establish their own practice as a CS professional.

ICSI Outreach

In continuation with the Outreach initiative, the ICSI entered/extended the following MOUs during the month of June:

- MoU with Competition Commission of India (CCI), New Delhi to support each other in the areas of mutual interest which includes competition advocacy, advancement of knowledge.
- MoU with National Institute of Financial Management (NIFM), Faridabad to offer Joint Certificate Course(s)
- MoU with National Institute of Securities Market (NISM), Mumbai to foster academics and research between the two Institutes.

Training and Placement Initiatives

The Institute is taking all strides to create further opportunities for its esteemed members. The Institute is also trying to give a push to its placement initiatives. The newly launched placement corner on the website of ICSI provides job as well as training

opportunities to the members and the students. This is fetching an encouraging response. The role of Company Secretary is being highlighted so that they are hired for expert roles in the companies moving ahead from compliance activities. The Institute is contacting key potential and prospective companies and reaching out to leading Start-up incubators and leading Start-up Villages at leading technical and business Schools, and to brief them about various licensing/permits/ permissions required, and tentative costing for the same if done through a Practicing Company Secretary.

Annual Convocation

I am delighted to share that during the month of June, 2016, three Convocations were organized at Kolkata, Delhi and Chennai. My heartiest blessings and congratulations to the new members of the Institute. Always remember verse 47 from Shreemad Bhagwad Gita, Chapter 2,

कर्मण्येवाधिकारस्तेमाफलेषु कदाचन ।
माकर्मफलहेतुर्भूमितिसंशयोऽस्तु कर्मणि ॥

**(Your right is to the duty only, not to the fruits thereof.
Do not act for the results of your deeds. Never be
attached to not doing the duty.)**

In United States, this occasion is called 'Commencement' because one is commencing his/her journey of translating his/her education to benefit this World. May every new member realize his/her potential to the full to make this country and the world a better place. ICSI has made best of its efforts to provide an excellent knowledge base and skill enhancement of all of you. You must aspire that our nation becomes the best-administered country in the world through good governance and a model of fairness, transparency and accountability. Let's be true 'Sutradhars' of our Boards.

Webinars - A Knowledge Building Initiative

As a part of knowledge building initiative, Professional iTellect the following webinars were conducted:

- Webinar on 'Genesis, Background of NCLT, Impact of Insolvency & Bankruptcy Code 2016' on 10 June, 2016
- Webinar on 'Ground for Refusal to Transfer Shares - Remedies Available' on 22 June 2016
- Webinar on 'Corporate Governance – Cutting Corners' on 24 June, 2016. The video of the webinar would be uploaded at the website of Institute.

ICSI Signature Award

The ICSI Signature Award Scheme was introduced by the Institute in furtherance of its objectives to nurture best talent available and facilitate meaningful collaborations between the institutions in the higher education sector for the benefit of student community. After entering into nine MOUs with eminent Universities, ICSI went another mile to enter MOUs with IIM,

Tiruchirapalli, Tamil Nadu and Panjab University, Chandigarh in the month of June. These MOUs will further the cause of youth empowerment and encourage young professionals to play important role in the decision making process at the highest level. Collaborations between such Institutions of excellence in the higher education sector are the need of the hour and will go a long way in empowering the student community.

Metamorphosing Chartered Secretary

To make it more appealing and interesting to the esteemed readers, team ICSI has tried to enrich the outlook and content of Chartered Secretary Journal. It is now being published in high quality matt paper for superior readability with laminated matt cover. Besides, a good number of new features such as Research corner, Ethics and Code of Conduct Corner, Sustainability Corner, CG Corner, PCS Corner, NCLT Corner; Brain Teasers, a separator for each section for better indexing etc. have been launched to enrich the knowledge of our venerated readers. 'Looking Beyond' features an interview with members of the Institute who have scaled new heights and occupied respectable positions in industry, trade, commerce or in Government organisations, has attracted a substantial response.

Celebration of International Day of Yoga

To me Yoga means 'Addition - Addition of Energy, Strength and Beauty to Body, Mind and Soul.' Yoga, a 5,000 years old tradition, provides a holistic approach to discover the sense of oneness with ourselves and also the Mother Nature. That is why, the idea of an International Day of Yoga was first proposed by Hon'ble Shri Narendra Modi during his speech at the United Nations General Assembly (UNGA), on September 27, 2014 and it received support of 177 member countries without a vote too. Keeping this in view, the Institute, together with Ministry of AYUSH, celebrated International Day of Yoga on 21 June 2016. As 'Governance Professionals', we pledged to further bring wellness to the lives of ourselves and our loved ones; adding to be a healthy nation on this day. My request to you all is to Make Yoga a part of our daily lives and to practice Yoga each day. ICSI 4 Regional Councils and 69 Chapters organised a one and a half hour Yoga sessions on this day for its Members and students of respective area/region across India which benefitted around 5 Lakh ICSI Stakeholders. The 'Common Yoga Protocol' of Ministry of Ayush was also shared with all ICSI stakeholders Pan India.

ICSI- Swachhta Pakhwada

The Hon'ble Prime Minister initiated the drive for "Swachh Bharat" as a mass movement to realize Gandhiji's dream of a Clean India by the 150th birth anniversary of Mahatma Gandhi in 2019. The Institute launched 'Sawchhta Pakhwada' from 16 to 30 June, 2016 under the aegis of Ministry of Corporate Affairs at ICSI all over India. As part of the drive, thematic activities on cleanliness/environment conservation was undertaken. All the

employees across the Country once again took the Swachhta pledge for the healthy and progressive India. ICSI team is now using both sides of paper to reduce its paper consumption.

ICSI Website Home Page Renovation

On the basis of the feedback and demand of the stakeholders, the Institute has renovated the home page of its website with attractive look and feel. The new home page was launched on 16 June, 2016. Along with this, the Institute has also planned to renovate the complete website in coming months.

Epilogue: The Worry Tree

The Carpenter I hired to help me restore an old farm house had just finished a rough first day of his job. The flat tire of his old bike refused to start, his helper didn't turn up, and now he missed his bus by five seconds that cost him to lose two hours of work. While I drove him back home at the end of the day, he sat in a stony silence whole way. On arriving his street, he invited me in to meet his family. As we walked toward the main door, he paused for a moment at a 'Banyan tree' planted in his courtyard, and then touched the tips of its branches with both his hands. Then, when opening the door, he underwent an amazing transformation. His tanned face wreathed in broad smiles and he hugged his two small kids and planted a sweet kiss on the cheek of his sweetheart. Afterwards, he came to see me off. As we passed the Banyan tree, my curiosity couldn't hide any more. I asked him what he was doing with that tree.



"Oh, that's my trouble tree", he replied. "I know I can't help having troubles on the job, but one thing for sure, my work troubles don't belong to my home to leave their shadow on my

wife and the children. So I just hang them on the Banyan tree every night when I come home. Then in the morning I pick them up again." "Amazing thing is....", he smiled, "when I come out in the morning to pick 'em up, there ain't nearly as many as I remember hanging up the night before."

Moral of the Story: "When walking, walk. When eating, eat" as preached by a Zen proverb. Start living, start living free of worries, Live in "**Day-tight Compartments**", live in today!!! Most of us think while eating, walking, sleeping, and a whole lot of other things worrying about something always. One book that has helped quell my worrying is Dale Carnegie's "How to Stop Worrying and Start Living" and I would like to share these ways to stop worrying:

Often times, our thoughts are dominated by regrets and mistakes of the past, or anxiety about upcoming events. We are unable to perform what must be done at the moment because we are trapped in the past or future. **As a ship has compartments that can be sealed to prevent water in one compartment from flooding another, so too do we need to seal off the past and the future. Touch a button and hear at every level the iron door shutting out the past. The dead yesterdays, touch another button and shut off with a metal curtain the future the unborn tomorrow's. You are safe safe for today!"-Dale Carnegie.** Don't stew about the futures. Just live each day until bedtime. By living in "Day-tight compartments" we can hone all of our energy, motivation and skills into promptly accomplishing tasks while utilizing our abilities optimally. If you are overwhelmed with worry and simply cannot concentrate because of anxiety, try this strategy from Dale Carnegie:

1. Ask yourself, "What is the worst that can possibly happen?"
2. Prepare to accept the worst
3. Try to improve on the worst
4. Remind yourself of the exorbitant price you can pay for worry in terms of your health

Let's stop worrying and start living, living our greatest lives, living in today! Many people today are so caught up by their worries that they forget to even smile. When was the last time you laughed by heart? A smile can change the way people around you treat you. Try smiling back and thanking the one who served your tea on your office desk today. Smile at your co-workers. Look yourself in the mirror and smile. You will notice that somehow at the end of the day, your whole day has been lighter and more pleasant than the days you forgot to smile.

Happy Reading!!
Best wishes

Yours sincerely

Mamta Binani

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July 05, 2016
New Delhi

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ARTICLES



■	NCLT – HOW I SEE IT
■	CLASS ACTION SUITS UNDER COMPANIES ACT, 2013
■	APPEALS FROM THE ORDERS OF NCLT
■	NCLT REVOLUTIONISING CORPORATE LITIGATION – OPPORTUNITIES & CHALLENGES
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■	NCLT – PARADIGM SHIFT TOWARDS EXPEDITIOUS DISPUTE RESOLUTION
■	NOW MIRACLES WILL HAPPEN THROUGH NCLT

Initiatives of ICSI FOR STUDENTS AND PROSPECTIVE STUDENTS



Student Month - July 2016

Study Centre Scheme



Under the Scheme, Study Centres are proposed to be opened in areas / locations, wherein the Institute's Regional/ Chapter Offices are not in existence. Apart from providing basic services, the Study Centres shall also be imparting coaching to the students of various stages.



ICSI Signature Award Scheme



The Institute is developing synergies with major Universities across India and the intent of the Institute is to introduce the profession among the academic circles and thereby attract best talent to the profession of company secretaries. In line with the above, ICSI Signature Award Scheme has been launched under which top rank holders of the reputed Universities/ IIMs/IITs will be awarded a Gold Medal and Certificate.

ICSI to Conduct CS Olympiad



The Institute of Company Secretaries of India (ICSI) will conduct CS Olympiad on 15th September, 2016 & 4th October, 2016 in association with Science Olympiad Foundation(SOF) for XI and XII class students for the first time in its history.

Attractive cash awards, certificates and mementoes will be distributed among the rank holders. Participation Certificates shall be issued to all participating students. Some bright students, up to a certain rank achieved in the CS Olympiad, will also get waiver of registration fees in respect of Foundation Programme stage of the Company Secretaryship course.

All the important information regarding Olympiad, like date, time, syllabus, sample question papers, pattern of questions, etc. are available on the website www.csolympiad.info



Van Mahotsav Divas – Sustainable Development By plantation



Yuva Naipunyam – In the line of skill development Programme



CS Touch – Student always get connect with updated information of all the activities of The ICSI.



SMASH – Smoother online registration process all the services are online



Competition - National/ State Level Competition



Student Conference- Provide Platform for Peer to Peer network

Training for Students



A student of ICSI go through a variety of training programs like **15 days Academic Programme**, **Long term internship with specified entities**, **Management Skill Orientation Programme (MSOP)**. The training programs are designed such that student will get on-the-job experience while undergoing the CS course. Through different training programs, they will get an opportunity to apply the learnings to real time business problems, deliver innovative solutions and invaluable work opportunities. Student can decide their own professional gradient, based on their training exposure, academic background and appetite to take up challenges.



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

www.icsi.edu

NCLT – How I See It



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THE LEGISLATIVE BACKGROUND

The genesis of NCLT can be traced to the recommendations of the Eradi Committee, a high level committee, which was appointed by the Central Government in the year 1999. It recognised the need for an insolvency law and urged that, before quick disposal of stressed assets in a winding up, the first task should be for the revival and rehabilitation of companies. It also recommended that the winding up of companies should be entrusted to a specialised body like NCLT, instead of High Courts as at present and proposed appointment of insolvency professionals.

and the Appellate Tribunal. Considering this aspect, the Standing Committee observed that legal hurdle having been solved, it is imperative for the Govt. to set up NCLT to play a pivotal role in administering the various provisions of company law in the matters of revival and rehabilitation and winding up companies. Now the setting up of NCLT & NCLAT finally finds its place in the re-codified Companies Act, 2013 taking into consideration the views of the Supreme Court in its judgement delivered on 11th May, 2010 on the composition, qualification and experience of the members of the Tribunal.

Tribunalisation of justice is the order of the day and NCLT confirms the trendy events. NCLT is a long cherished dream to achieve lower time and cost over runs and that it is there to operationalise is a welcome measure, though a lot of time was lost in legal imbroglio. One of the start-up activities of the NCLT is to admit "Class Action Suits", a representative action on the part of members or depositors against a company in default and this is intended to protect the investors' interests.

J.J. Irani Committee (2005) reiterated and affirmed the need for NCLT and observed that it requires specialised expertise for addressing issues referred to it. The law should prescribe the required qualification for appointment of members to the Tribunal as also provide for their training and continuing education. The setting up of NCLT and the Appellate Tribunal was first envisaged in the Companies (Amendment) Act, 2002, but due to several legal hurdles, the same could not materialise.

The Parliamentary Standing Committee on Finance in its 21st Report (2009-10) also stated that the constitutional validity of setting up of NCLT was examined by the Supreme Court and in its judgement delivered in May 2010 upheld the legislative competence of Parliament to create NCLT

THE CONCEPTUAL ASPECT OF NCLT

It is good news to the corporate sector and the professionals alike that the NCLT has taken off the ground after legal imbroglio of 13 years with the notification issued by the Central Government. It heralds a new dispensation of justice and a beneficial convergence of all corporate jurisdiction and puts an end to the cost and time over runs in securing speedy justice. This initiative is a further step in tribunalisation of justice and takes away certain work load from the judiciary. It is a win-win situation to all parties. However, having regard to the large area of responsibility entrusted to NCLT the quality of justice should not

*Past President, The Institute of Company Secretaries of India.

suffer. Future holds the key to justify the monolith organisation which the law seeks to create. This emphasizes the need for adequate training and continuing education to the Members of the Tribunal.

CONSTITUTION OF NCLT, NCLAT & POWERS

By a Notification issued on 1st June, 2016 and Gazetted on the same day National Company Law Tribunal (NCLT) & the Appellate Tribunal have been constituted by the Central Govt. under section 408 & 410 of the Companies Act, 2013 (the Act) to exercise and discharge the powers and functions conferred on NCLT. The Appellate Tribunal is required to hear appeals against the orders of the NCLT, effective from 1st June, 16.

By another Notification issued on the same date the Ministry of Corporate Affairs (MCA) has constituted Benches under section 419(1) of the Act at various places-New Delhi, both the Principal Bench and the Delhi Bench, Ahmedabad, Allahabad, Bangalore, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai to exercise jurisdiction over the areas given to them with eleven benches consisting of Single Member Bench, Two Member Bench and Three Member Bench with majority of Judicial Members for rehabilitation, restructuring and revival of companies.

By another Notification issued on the same date as above by the MCA, the Central Govt. has appointed 1st June, 16 on which date all matters or proceedings or cases pending before CLB shall stand transferred to NCLT in accordance with the procedure laid down in the Act.

In March 16, the Central Govt. has transferred certain powers and authorities to NCLT. These powers fall under (i) powers transferred from High Court to NCLT, (ii) powers transferred from CLB, (iii) new powers to NCLT. These powers relate to the Act in respect of Chapter IV - Share capital & Debentures, Chapter V - Acceptance of Deposits by Companies, Chapter VII - Management & Administration, Chapter X - Audit & Auditors, Chapter XIV - Inspection, Inquiry & Investigation, Chapter XV - Compromises, Arrangements & Amalgamation, Chapter XVIII - Special Courts, Chapter XXIX - Miscellaneous Provisions, However winding up provisions envisaged in Chapter XX are not notified, except constitution of Advisory Committee envisaged in section 287(1) of the Act.

In May 16 certain new powers have been conferred on NCLT by the Central Government, and these are expected to be implemented in two phases. It is reported that Phase One relates to, to start with, (i) Class Action Suits filed by the prescribed number of members or depositors envisaged in section 245 of the Act, (ii) change of auditors on being satisfied that the company's auditor(s) has acted fraudulently, either suo motu or on the application of the Central Govt. or by any other concerned person {section 140(5)}, (iii) freezing the accounts of a company in connection with an inquiry or investigation into its affairs, subject to the conditions and restrictions imposed by it {section 221(1)}.

The second phase relates to transfer of powers from High Courts relating to merger & amalgamations. The third phase will decide on cases relating to Insolvency & Bankruptcy Code which has been passed by Parliament but pending enforcement of the same and also revival & rehabilitation of sick companies.

NEW PROVISIONS OF THE ACT BROUGHT INTO FORCE

To enable NCLT to exercise powers aforesaid, the following provisions of the Act have been brought into force effective from 1st June, 16; (i) Incorporating a company by furnishing false or incorrect information {Section 7(7)}, (ii) alteration of articles under section 14(i)b(2), (iii) issue & redemption of preference shares and inability of the company to redeem such shares {section 55(3)}, (iv) approval of the Tribunal where there is change in voting percentage of shareholders under the scheme of alteration of share capital, {section 61(1)(b)}, (v) conversion of debentures into shares, {section 62(4) to (6)}, (vi) insufficiency of assets of a company, failure to redeem debentures and interest thereon penal provisions thereto, {section 71(9) to (11)}, (vii) damages for fraud, (section 75), (viii) the registers, their indices, copies of annual return constitute evidence (section 95), (ix) power of Tribunal to call for AGM in the event of default by a company, (section 97), (x) power of Tribunal to call for meetings of members, (section 98), (xi) punishment for default under section 99 in complying with sections 96 to 98, (xii) inspection of minutes books of general meetings, refusal or default, {section 119(4)}, (xiii) re-opening of accounts of a company on the orders of court or Tribunal, (section 130), (xiv) constitution of National Financial Reporting Authority, (section 131), (xv) removal, resignation of auditor and giving special notice & procedure therefor, (section 140), (xvi) removal of directors, (section 169), (xvii) investigation into the affairs of a company, other than by SFI office, (section 213), (xviii) investigation into the ownership of company, (section 216), (xix) protection of interest of employees during investigation, (section 218), (xx) freezing of assets of company on inquiry & investigation, (section 221), (xxi) imposition of restriction upon securities, (section 222), (xxii) action to be taken in pursuance of inspectors' report, {section 224(5)}, (xxiii) application to Tribunal for relief in cases of oppression, (section 241) (xxiv) powers of Tribunal, {section 242 except sub-section 1(b) & (c) & (g) of section 242} as they relate to winding up of companies, (xxv) inspection, production & evidence of documents kept by Registrar, powers of court or Tribunal, {section 399(2)}, (xxvi) matters relating to NCLT & NCLAT, (section 415 to 433), (xxvii) transfer of proceedings before CLB, {section 434(1)(a) & (b)}, (xxviii) compounding of certain offences, (section 441), (xxix) dissolution of CLB & consequential provisions, (section 466).

Sections 411 to 414 relating to qualification of Members etc have not been notified as certain changes have been proposed as per the Supreme court judgement and these changes form part of the Companies (Amendment) Bill, 2016 which is pending passage in Parliament. Provisions of the Act in relation to winding up have also not been given effect to, pending formulation of rules.

THE NCLT

It has started functioning with a President and eleven Benches. It is expected that a large number of members are going to be recruited after passage of the Amending Bill which permits, *inter alia*, constitution of a Selection Committee. The Tribunal is a trial court for all practical purposes and though it is not bound by the procedure laid down in the Civil Procedure Code but certain powers of the CPC are vested in it while trying a suit, as laid down in section 424(2) of the Act. These are vital powers of considerable importance from the point of view of delivery of justice. The speedy disposal of cases is the hall mark of a Tribunal. The proceedings before the Tribunal is a summary trial involving summoning and enforcing attendance of any person and

examining him on oath, discovery and production of documents, receiving evidence on affidavits, requisitioning any public record from any office, issuing commissions for examination of witnesses or documents and any other matter as may be required. Section 422 of the Act provides for certain time frame disposal of cases and the proceedings before it are judicial proceedings.

The new Members of the Tribunals will have to undergo an intensive training program for capacity building as new areas are going to be handled by the Tribunals. There is a need for continuous education program to keep the members updated on the changes taking place in company law and related legislations.

One of the start up activity of the Tribunal is the Class Action Suits by the prescribed number of members and the depositors against a company for default as provided in section 245 of the Act. It is a representative suit under which members or depositors may come together and seek action against an errant company. Needless to say this is an investor friendly measure and indicates the Govt.'s desire to protect the investors' interests.

THE APPELLATE TRIBUNAL - NCLAT

This has been constituted effective from 1st June, 16 and consists of a Chairperson and such number of Judicial and Technical Members not exceeding eleven for hearing appeals against the orders of the Tribunal. The appeal is both on facts and law and there is nothing to suggest in the Act to the contrary. A person aggrieved by the order of the Tribunal may appeal to the Appellate Tribunal within 45 days from the date of receipt of a copy of the order of the Tribunal, with liberty given to the Appellate Tribunal to entertain an appeal for a further period of 45 days, if it is satisfied that the appellant was prevented, by sufficient cause, from filing the appeal within the prescribed period. On appeal, the Appellate Tribunal is required to give a reasonable opportunity of being heard to the parties and pass such orders as it thinks fit, confirming, modifying or setting aside the orders of the Tribunal. Reasonable opportunity of being heard is based on the principles of natural justice. The same procedure as in the case of Tribunal also applies in equal measure to the proceedings before the Appellate Tribunal.

An appeal from the orders of the Appellate Tribunal lies to the Supreme Court on any question of law arising out of such order. Though High Court is out of reckoning for the purpose of appeal, the writ jurisdiction which High Courts enjoy under Article 226&227 of the Constitution of India remains intact and it cannot be taken away.

THE GUIDING PRINCIPLES

Section 424 of the Act mandates that the Tribunal and the Appellate Tribunal while disposing of any proceeding before them are guided by the principles of natural justice. This is a settled principle of administrative law and has a great humanising effect with a view to invest law with fairness and secure justice to the litigants. Needless to say that the principle is a safeguard against hasty and ill considered decisions which virtually affects the parties. Fair play means that the decision has been arrived at in a just and objective manner having regard to the relevance of materials and reasons.

Two basic principles of natural justice are (i) issue of notice to the persons, before adjudication, who are likely to be affected by the decision, (ii) Hearing the parties whose rights are going to be affected must have a reasonable opportunity of being heard in

their defence. These principles are followed scrupulously, in letter and spirit, as non-observance of the same is fatal to the validity of the decision, on appeal.

Judicial Proceedings

Section 424(4) of the Act provides that all proceedings before the Tribunal and the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193&228 of the Indian penal code and the Tribunals are deemed to be Civil Courts for the purpose of section 195 etc of the Act. These are deeming provisions and the law deems it as such and nothing more to be done to perfect the status. The effect lies in the fact that punishment is provided for false evidence and for insult and interruption to public servants in judicial proceedings, as envisaged in sections 193&228 of the Indian Penal Code.

Contempt


Section 425 of the Act confers power on the Tribunal & the Appellate Tribunal the power to punish contempt of these institutions. For this purpose, the Tribunals have the same power as the High Court and they may exercise powers under the Contempt of Courts Act, 1971. Orders of the Tribunals call for compliance by the parties to the proceedings and non compliance falls under the contempt. This is based on the principle of "attribution" and the liability for the same should be determined individually. The punishment arises out of wilful disobedience of the Tribunals' orders.

THE COMPANIES (AMENDMENT) BILL, 2016

In section 409(3)(a) of the Act the eligibility for being appointed a Technical Member has been upgraded from the rank of "Joint Secretary" to the persons holding the rank of "Secretary or Additional Secretary" to the Govt. of India having technical expertise. This has been done at the instance of Supreme Court directions with respect to constitution of NCLT. To give effect to this, an amendment to section 409(3)(a) has been proposed in the Companies (Amendment) Bill, 2016 which is pending passage in Parliament. Recruitment under the revised eligibility criteria is possible only after approval of the amendment and issue of notification of the same. This is presumably the reason which forced MCA to implement NCLT powers in three phases. The revision in the eligibility criteria has been done in the context of NCLT taking over the functions of High Courts by the Technical Members of NCLT and they should, as nearly as possible, have the same position and status as High Court judges.

Section 412(2) is also proposed to be amended to the effect that the Members of the Tribunal/Appellate Tribunal should be appointed on the recommendations of a Selection Committee consisting of four members, instead of five and the Chairman of the Selection Committee should have a casting vote, if there is equality of votes.

SUMMATION

As in the case of CLB, professionals including Company Secretaries are recognised to appear before the Tribunals on behalf of their clients. This is a big opportunity to our members. They have to, in the context of enlarged responsibility entrusted to the Tribunal, have to have and undergo in depth training and capacity building programs to measure up to the occasion and avail of the opportunity offered by the Tribunals. 

Class Action Suits under Companies Act, 2013



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WHAT IS CLASS ACTION SUIT?



In a class action suit, a large group of people, having same or similar injuries caused by the same person, collectively bring a claim to court, represented by one or more persons. This form of lawsuit is also called a representative action. One set of persons representing a larger group approach the court for redressal

as per the rule of necessary party¹ all the members of a class are required to be made plaintiff, which otherwise would have made the adjudication impossible.

This form of collective lawsuit is very popular in the United States of America (USA), United Kingdom (UK), Singapore and other European Countries. In USA, Class Action Suits are governed by Federal Rules of Civil Procedure Rule 23 and 28 U.S.C.A. § 1332 (d). In Singapore, Order 15, Rule 12 of Rules of Courts governs such suits. Likewise in UK, Rule 19.6 of the Civil Procedure Rule govern the Class Action Suits. In India, Class Action Suits will be governed under Section 245-246 of the Companies Act, 2013 (Act) and Rules made thereunder².

In India before the emergence of the

Class Action Suits will empower members, depositors or any class of them to approach the National Company Law Tribunal to redress their grievances, in case of any fraudulent action on the part of company, its directors and even its auditors and consultants. It will not only act as curative measure but also increase investor protection and awareness. In addition, Class Action Suits will put at rest a number of cases filed on the same subject matter. This article discusses the various aspects of the Class Action Suits under Companies Act, 2013 and the draft rules issued by MCA.

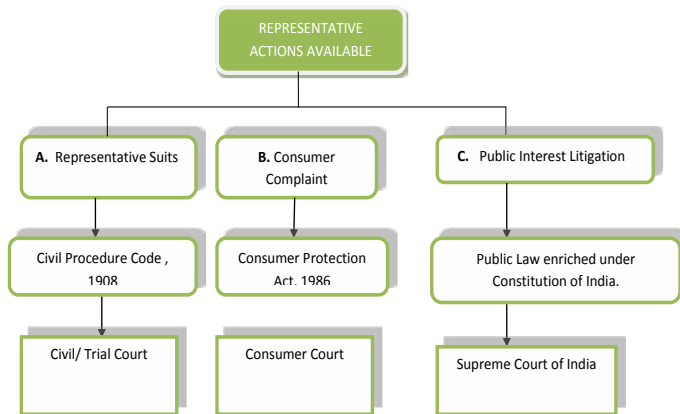
of their grievances. The rationale behind such suits are - firstly to protect the interest of members of a class who are geographically dispersed and secondly to reduce the duplication of the litigation as it combines the various proceedings initiated in different parts/jurisdiction bearing same cause of action(s). Further it also makes adjudication possible; otherwise

class action suits representative actions were taken *via* three modes - Civil Court³, Consumer Court, and Public Interest Litigation petitions (PIL). The above three modes are discussed in brief hereunder.

- 1 As envisaged under order 1 Rule 10 of Civil Procedure Code 1908
- 2 Draft rules on Companies (Prevention of Oppression and Mismanagement) Rules, 2016 and NCLT Rules 2016
- 3 Order 1 Rule 8 of the Civil Procedure Code, 1908

*Past President, The Institute of Company Secretaries of India.

EXISTING SYSTEM



EVOLUTION IN INDIA

The aforesaid three representative actions lack jurisdiction towards the fraud on the minority by wrongdoers who are in control of a company. To be specific, the long adjudication period involved in representative suits discourage claims. Further lack of a provision under the Companies Act, 1956 for representative suits by shareholders and other stakeholder leaves stakeholders high and dry in cases of fraud, misappropriations, siphoning of funds etc. This was specially felt at the time of Satyam fiasco, where the small investors were left to see their money go down the drain while the American depositors of the Satyam were able to receive \$ 125 mn in settlement as a result of a strong class action framework in US.

The Company Law Committee headed by Dr. J J Irani anticipated the requirement of such measure in 2005 and specifically advocated the need of such measure under Companies Act, in parallel to counterparts (i.e. USA, Singapore and UK). Subsequently in 2009, it gained its momentum with "India's Enron"- Satyam Fiasco case wherein financial accounts were manipulated to the extent of INR 7,855 Crores. Thereafter in Companies Bill, 2009⁴, Class Action Suits were included as a measure to be available to the members and depositors of the company to approach National Company Law Tribunal (NCLT or Tribunal), if the affairs of the company were conducted in a manner prejudicial to the interest of the company, or its members and depositors.

IMPACTS OF CLASS ACTION SUITS

Class action suits is an invention of equity to enable it to proceed to a decree in suits where the number of those interested in the subject of the litigation is so great that their joinder as parties in conformity to the usual rules of procedure is impracticable. Thus the said curative measures, viz. class action suit is evolved to overcome such drawbacks and allow a set of persons to represent all other members of said class who are scattered in different jurisdictions.

Class action suits would allow individuals to hold some of the world's most powerful companies and organizations accountable for their actions. These lawsuits will cover a wide range of issues including the mismanagement of monies invested with a company, securities law related fraud, malfunctioning of accounts, restraining

company to act *ultra vires* or in breach of the articles of association of the Company, etc. The new mechanism will not only protect the interest of investors but will also deter the promoters to enrich themselves at the cost of small shareholders. Class action suits will be taken as a lesson to wrong doers which will deter them as well as others to take such actions. Same has been witnessed in the counterparts, specifically in USA where behavior of doctors changed and they were encouraged to report suspected child abuses after a landmark case⁵. Otherwise they would have faced the threat of civil action for damages in tort proximately flowing from the failure to report the suspected injuries.

Class action suits will provide a window to the small shareholders to redress their grievances irrespective of their jurisdictional limitation. Class action suits will benefit the Indian landscape on various fronts, some of which are illustrated below:

CLUBBING OF SIMILAR APPLICATION AND BAR ON FUTURE LITIGATION



When the facts are similar in suits filed in different dominions by the members of the same class, standing against the same or similar defendants, it makes sense to combine them all and adjudicate it under one roof. Clubbing of similar claims/suits would also result in efficiency of judiciary, as the same would save precious time of judiciary from adjudicating the similar dispute numerous times. Therefore specific provisions are incorporated under the Act to enable NCLT to club all similar applications in any jurisdiction, into one. For better understanding of this facet it is profitable to analyse the provision of section 245(5) (b) of the Companies Act, 2013, which is reproduced below:

“(b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side”.

The legislature intends to consolidate “all similar applications” existing at a time in any jurisdiction into one. The usage of word

⁴ Clause 216 of the Companies Bill, 2009

⁵ Landeros v. Flood, 17 cal. 3d 399, Supreme Court of California.

‘ The group action does not mean that imbalanced compensation would be made. As per the draft rules equal compensation has to be made without any discrimination between the members of same class. Furthermore there is also provisions in the Act for reimbursement of the expenditure so incurred, in litigation, by the applicants from the company or other persons, who are responsible of such oppressive act(s), if proved true. ’

“similar” instead of “same” will invest vast powers in NCLT to adjudicate the matters and resist the multiplicity of proceedings. Hence Class Action Suits against similar defendants/respondents seeking similar relief may be consolidated into one.

Further the legislature also intends to bar the future class action on same subject matter. Same can be inferred from Section 245 (5)(c) of the Act, which is reproduced below:

"(c) two class action applications for the same cause of action shall not be allowed".

On a bare perusal of the above the intention of law makers is clear that no two class action applications shall be entertained on the same cause of action. It is pertinent to note that the bar is only upon class action and it does not cover other measures. Thus other civil actions can be invoked on same cause of action. On a literal interpretation of the clause it will not be wrong to state that, any class action, whether brought by members or depositors, both are based on same cause of action.

REDUCTION OF COST



The cost of bringing a claim to the settlement under the present mechanism at times is very expensive as well as time consuming particularly while filing of suits under Civil Procedure Code, 1908. Further the territorial jurisdiction of the civil court also leads to duplicity of litigation leading to multiplicity of cost for same cause of action. It therefore makes far greater sense for people to share the costs of litigation by teaming up with others in a similar position. If

as a group, only one set of counsels are instructed and the factual cases of each members are identical the legal cost will be far less than that would have been if instituted individually. The group action does not mean that imbalanced compensation would be made. As per the draft rules equal compensation has to be made without any discrimination between the members of same class. Furthermore there is also provisions in the Act for reimbursement of the expenditure so incurred, in litigation, by the applicants from the company or other persons, who are responsible of such oppressive act(s), if proved true⁶.

COMPENSATION IN CASE SECURITY FRAUD

As stated earlier, representative suits are not naïve in India, instead there are three sets of remedies available. In case of civil court, it is settled position of law that in case of securities related fraud, no court of law hold jurisdiction and Securities and Exchange Board of India (SEBI) holds exclusive jurisdiction in such matter.⁷ In PIL, one cannot claim compensation, damages or related remedy as it does not cover private nature dispute. Lastly consumer complaints jurisdiction is limited, which can be exercised in matters related to consumers only, but in security cases such complaints do not exist. Moreover if such suits are filed under the rule of tort and misfeasance before Civil Courts, then such matter will take years to see the sun shine. Keeping in view the same legislature has come up with clause (g) under sub Section (1) of the Section 245 whereby; one can also claim damages or compensation or demand any other suitable action from or against the Company or its Directors or its advisors or consultants for any fraudulent, unlawful or wrongful act on their part.

INVESTOR EDUCATION AS WELL AS AWARENESS



The Act also prescribes norms of public notice to all the members of the class, so that all the concerned members can be aware of such suit. This will not only benefit in clubbing of similar application(s) (if any) but also spread awareness and educate the investors about such measures. Further such publication/notice will boost the investor and persons concerned, who are aggrieved by the alleged oppressive acts of the management of the company to seek redress.

WHO ALL CAN FILE CLASS ACTION SUITS?

There are following set of classes recognized under the Act to file class action suits – (i) members (ii) depositors and (iii) any

⁶ Clause (d) of the Sub Section (5) of the Section 245 of the Companies Act, 2013.
⁷ Section 15Y and 20A of the Securities and Exchange Board of India Act, 1992.

The phrase other classes of them under Section 245 of the Act refers to different classes of members and depositors viz. equity shareholders, preference shareholders, equity shareholders having different voting right, amongst preference shareholders convertible, non convertible, cumulative non-cumulative, and bearing different rate of dividend; amongst depositor with different rate of return, different term of maturity etc.

class of them. The Companies Act, 2013 just like its predecessor recognizes the following persons as members of a company⁸:

- (i) The subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
- (ii) Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- (iii) Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

In simple words:

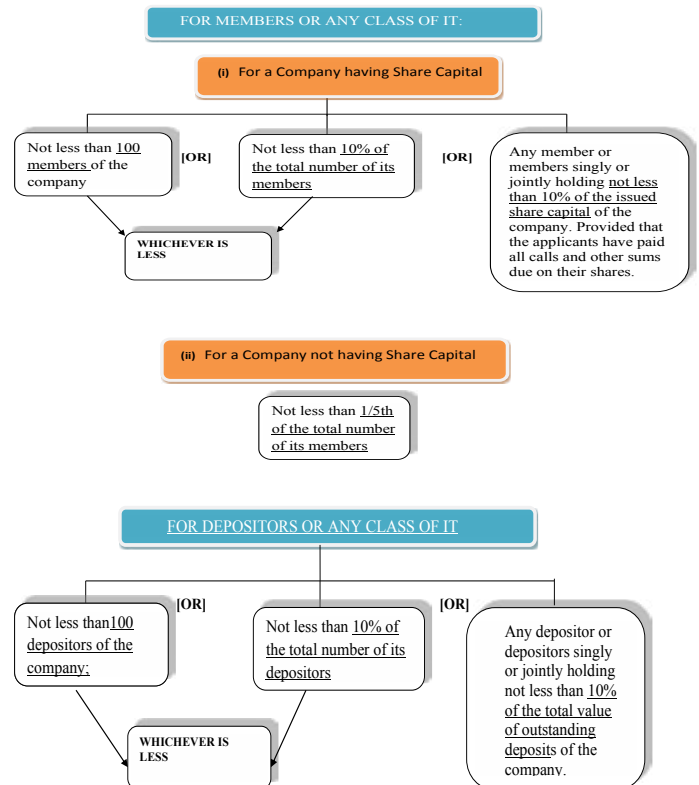
- i. subscriber to the memorandum of the company;
- ii. persons who give consent to become shareholder of the company, in form of allotment letter or request for transfer, as the case may be and his name appears in the register of members;
- iii. in listed entity a person whose name appears in the records of the depository as beneficial owner.

The other class which is allowed to file class action suit is depositors, which is defined under the Companies (Acceptance of Deposits) Rules, 2014⁹ (in short "Deposit Rules") as under:

- (i). any member of the company who has made a deposit with the company in accordance with the provisions of sub-section (2) of section 73 of the Act, or
- (ii). any person who has made a deposit with a public company in accordance with the provisions of section 76 of the Act.

Further the phrase other classes of them under Section 245 of the Act refers to different classes of members and depositors viz. equity shareholders, preference shareholders, equity shareholders having different voting right, amongst preference shareholders convertible, non convertible, cumulative non-cumulative, and bearing different rate of dividend; amongst depositor with different rate of return, different term of maturity, etc.

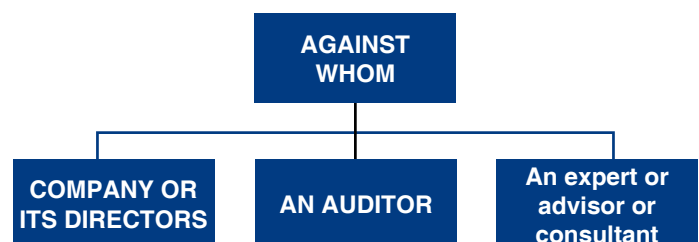
As per the provisions of the Act, there is qualification which needs to be fulfilled prior to filing the Class Action Suits by members or depositors or any class of them. Qualification similar to qualification required for filing oppression & mismanagement cases under the Act is elaborated herein below:



AGAINST WHOM CLASS ACTION SUIT CAN BE FILED

A class action suit is a new mechanism to claim the loss caused to the specified stakeholders (as discussed hereinbefore) of the company not only from the company but also from other entities. Various persons/ entities against whom such actions can be taken are:

- A company or its directors for any fraudulent, unlawful or wrongful act or omission;
- An auditor including audit firm of a company for any improper or misleading statement of particulars made in the audit report or for any unlawful or fraudulent conduct.
- An expert or advisor or consultant for an incorrect or misleading statement made to the company.



⁸ Clause 55 of the section 2 of the Companies Act, 2013.

⁹ Clause (d) of the Rule 2 of the Companies (Acceptance of Deposits) Rules, 2014.

The Companies Act, 2013 in the same spirit as followed in the counterparts, allows the specified stakeholder to implead even consultants/advisors/experts also for issuing/giving any misleading statement/certificate etc., or for any other fraudulent or wrongful or like nature conduct or act. It is pertinent to note that neither in Act nor in draft Rules definitions of advisors or consultants or experts are provided, thus the definitions of the same will be derived from judicial precedence and use of the same in common parlance.

WHERE AND HOW TO FILE CLASS ACTION SUIT?

The procedure is contemplated under Section 245 read with the Rules issued under Chapter XVI (Prevention of Oppression and Mismanagement) of the Act. The final rules have not yet been notified for class action. As per the Companies (Prevention of Oppression and Mismanagement) Rules, 2016 (O&M Rules), and draft NCLT Rules 2016 following will be the procedure for filing and adjudicating Class Action Suits:

1. **Cause of Action:** When the management or affairs of the company are being conducted in a manner prejudicial to the interest of the company or its members or depositors, [Section 245(1)]
 2. **Qualification:** In such cause of action, applications shall be filed in Form NCT 1 by requisite number of members or depositors before the Tribunal as has been set out in Section 245(3) read with Rule 6 of O&M Rules. Also such application may be filed by any person, group of persons, or any association of persons representing the person affected by any act or omission, [Section 245 (3) & (10)]
 3. **Service:** A copy of application shall be served on the Regional Director, Registrar of Companies, the company, other respondents and all such persons as the Tribunal may direct, [R. 6, 105 of O&M Rules]
 4. **Notice to Central Government:** The Tribunal shall give a notice of every application to the Central Government and shall take into consideration the representations, if any, made to it by that Government before passing a final order under those sections, [R. 105 of NCLT Rules]
 5. **Admission of Application:** The Tribunal shall either admit the application or deny the application.
 6. **Publication:** On the admission of an Application filed under section 245(1), a public notice shall be issued by the Tribunal as per Form No. ONM 2 to all the members of the class as under:
 - a. Publishing the same within seven days of admission of the application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;
 - b. Requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper under sub-clause (a)
- above:
- Provided that such notice shall also be placed on the websites of the Tribunal and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange(s) where the company has any of its securities listed, until the application is disposed of by the Tribunal.
7. **Contents of Publication:** The public notice shall, *inter alia*, contain the following-
 - a. name of the lead applicant;
 - b. brief particulars of the grounds of application;
 - c. relief sought by such application;
 - d. statement to the effect that application has been made by the requisite number of members /depositors;
 - e. statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under section 245(4) and these rules and it is satisfied that the application may be admitted:
 - f. date and time of the hearing of the said application;
 - g. time within which any representation may be filed with the Tribunal on the application;
 - h. the details of the admission of the application and the date by which the form of opt out has to be completed and sent as per Form No. ONM1: and
 - i. such other particulars as the Tribunal thinks fit.
 8. **Service to Public:** The date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class.
 9. **Cost/expenses of Publication:** The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.
 10. **Rule of opt in/out:** A member of a class action under section 245 of the Act is entitled to opt-out of the proceedings at any time after the institution of the class action, with the permission of the Tribunal, as per Form No. ONM. 1.
 - a. For the purposes of opting out a class member, who receives a notice under section 245(5)(a) of the Act, shall be deemed to be the member of a class, unless he expressly opts out of the proceedings, as per the requirements of the notice issued by the Tribunal in accordance with Rule 11; and
 - b. A class member so opting out will not be precluded from pursuing a claim against the company on an individual basis under any other law, where a remedy may be available, subject to any conditions imposed by the Tribunal.
 11. **Duplication of proceedings:** In accordance with section 245(5)(b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the

class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side:

12. **Lead Counsel:** The class members or depositors may choose a lead counsel and in the event the members or depositors of the class are unable to come to a consensus on this matter, the Tribunal shall have the power to appoint a lead counsel on their behalf.
13. **Compromise/Settlement:** In case of an agreement or compromise in an Application under section 245 of the Act, the Tribunal shall afford an opportunity to individual parties to exclude themselves from the class so as to not be bound by the agreement or compromise.
14. **Binding Nature of Settlement Order:** Unless an individual has opted out of the proposal of settlement and compromise, the order of the Tribunal recording the agreement compromise shall be binding on all members of the class and the relevant parties. Further said Order shall also be binding on the company and auditors, including audit firms or experts or consultants or advisors or any other person associated with the company
15. **Reduction and alteration of capital by order:** Where an order given by the Tribunal on a petition under this chapter involves a reduction of share capital or alteration of the memorandum of association, the provisions of the Act and rules relating to such matters shall apply as the Tribunal may direct.
16. **Frivolous Application:** Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding INR 1 lakh, as may be specified in the order [section 245(8)].

WHAT RELIEFS CAN BE SOUGHT FROM TRIBUNAL?

Any member or depositor who files the Class Action Suits can seek all or any of the following reliefs from NCLT:

- (a) To restrain the company from:
 - Doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
 - Taking action contrary to any resolution passed by the members;
 - Committing an act which is *ultra vires* the articles or memorandum of the company;
 - Committing breach of any provision of the company's memorandum or articles;
- (b) To declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by misstatement to the members or depositors;
 - To restrain the company and its directors from acting on such resolution;

- (c) To claim damages or compensation or demand any other suitable action from or against –
 - (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
 - (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
 - (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part.

PENALTY FOR NON-COMPLIANCE OF ORDER PASSED BY TRIBUNAL

Any company which fails to comply with an order passed by the Tribunal under Section 245 of the Act, shall be punishable with fine which shall not be less than Rs. 5 Lakh but which may extend to Rs. 25 Lakh and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years and with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 1,00,000/-.

Under Section 425 of the Companies Act, 2013 the Tribunal has also been conferred the same jurisdiction, powers and authority in respect of contempt of its orders as conferred on High Court under the Contempt of Courts Act, 1971.

It is strange to note that no penalty is provided, if auditor, auditor firm, expert, advisor, consultant or any other person failed to comply with the order passed by the NCLT.

CONCLUSION

Although class action suits have not yet been tested, surely it will change the litigation landscape for potential claimants and their lawyers, as well as for defendants. It will be easier for claimants to bring collective actions for breach of law, share and minimize legal fees, and mutually benefit from a successful result or settlement. Those who breach the law and drive mileage on it can expect an increased likelihood of a class action filed against them. Firms and consultants are also under the ambit of class action, therefore they need to act with due care and caution.

However, the new provision (i.e. Section 245 of the Act) and rules framed thereunder provide some important controls to curb the wrongful acts by promoters or directors. Much will depend on how broadly or narrowly the class will be defined, the merits of each claim, and the risk appetite of defendants either to settle or defend the case to its conclusion. The NCLT's first few decisions will be vital in shaping the development of Indian class action practices and determining whether claimants will seek to bring increasingly large and complex cases or not.

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Appeals from the Orders of NCLT



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Section 420 of the Companies Act, 2013 states that the National Company Law Tribunal (hereinafter called Tribunal) may pass any orders it thinks fit, as long as it gives the parties before it, an opportunity of being heard. The powers of the Tribunal are, therefore, extremely wide and there are no restrictions on the kind of relief that it can grant in a particular case. The Tribunal may also rectify any mistake that is apparent on the face of the record within two years from the date of the order. In view of the enormous powers of the Tribunal, an attempt is being made to highlight the provisions for making appeals from the orders of the Tribunal.

APPEAL FROM THE ORDERS OF TRIBUNAL

Section 421 reads thus:

(1) Any person aggrieved by an order of

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall,

after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

The provisions regarding appeal to the NCLAT are in harmony with the provisions relating to a first appeal under section 96 of the Code of Civil Procedure, 1908. Therefore, the NCLAT will hear appeals on both questions of fact and law. Appeals from NCLT will go to National Company Law Appellate Tribunal and from the decisions of the Appellate Tribunal to the Supreme Court of India.

the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees as may be prescribed:

Section 421 of Companies Act 2013 which corresponds to Section 10FQ of the Companies Act, 1956 seeks to provide appeal against the order of the Tribunal in the Appellate Tribunal. It provides that *appeal may be filed within 45 days* from the date of order and in case Appellate Tribunal is satisfied that delay is justified then further period of 45 days is allowed. The Appellate Tribunal after according an opportunity of hearing may confirm, modify or set aside order of the Tribunal and provide copy of

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‘ A person against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand would be an “aggrieved person”. Not every person who has suffered some disappointment or whose expectations have not been realised as a result of the decision or order can claim to be an “aggrieved person” .

order to the Tribunal and parties to appeal.

At this point an enlightened reader's mind may be interrupted with many questions as to: who is a person aggrieved? What is the interpretation of limitation period in this clause? What all will be construed as sufficient cause? etc. Let us discuss each question in depth.

"ANY PERSON AGGRIEVED"

In common judicial parlance the term ‘person aggrieved’ by a decision includes:

- (a) a person whose interests are adversely affected by the decision; or
- (b) in the case of a decision by way of the making of a report or recommendation—a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.

A party or a person is aggrieved by a decision only when it operates directly and injuriously upon his personal, pecuniary or proprietary right. A person who feels disappointed with the result of a case is not a person aggrieved. The order must cause him a legal grievance by wrongfully depriving him of something. [*Adi Pherozshah Gandhi v. H.M. Seervai*, AIR 1971 SC 385.]

The word ‘aggrieved’ refers to a substantial grievance, a denial of some personal, pecuniary or proprietary right, or the imposition upon a party of a burden or obligation.

A person against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand would be an “aggrieved person”. Not every person who has suffered some disappointment or whose expectations have not been realised as a result of the decision or order can claim to be an “aggrieved person”.

Powers of CLB under Section 402 of the 1956 Act are of wide amplitude and, therefore, many persons, other than the parties, may become affected by any of its orders. But it does not follow that any such person should be made a party to the proceedings and be heard. The High Court of Delhi held that this was the reason why the Legislature in its wisdom used in section 10F of the 1956 Act the words “any aggrieved persons” instead of the “party aggrieved”. The Company Law Board is free to pass such orders as it considers expedient, just and reasonable. Any person

aggrieved by an order is free to assail it before the Appellate authority. [*Industrial Development Bank of India Ltd. v. CLB* (2007) 81 CLA 356(DEL.)]

Who is a ‘person aggrieved’ also was debated and decided in catena of judicial pronouncements. In *Fertilizer Cooperation Kamgar Union v. Union Of India*, MANU/SC/0010/1980; AIR 1981 SC 344 and *Bangalore Medical Trust v. Muddappa*, MANU/SC/0426/1991; AIR 1991 SC 1902) the Court found that question of ‘person aggrieved’ is different from the question whether the petitioner is entitled to relief as prayed by him. The expression ‘person aggrieved’ denotes an elastic and to some extent an elusive concept. According to traditional theory, only a person whose right has been infringed can apply to the court but the later view as referred to above has liberalized the concept of aggrieved person and the right duty pattern commonly found in adversarial litigation has been given up. The only limitation is that such a person should not be a total stranger known as meddling interloper.

In the case of *Ayaub Khan Noor Khan Pathan v. State of Maharashtra* [MANU/SC/0939/2012 : (2013) 4 SCC 465], the Supreme Court has held that only a person who has suffered a legal injury can challenge an act/action/order etc. in a court of law by way of a writ under Article 226 of the Constitution of India. Writs under Article 226 of the Constitution of India are maintainable either for the purpose of enforcing a legal or fundamental right or when there is a sustainable complaint by the petitioner that there has been a breach of statutory duty on part of the authority *qua* him and to his prejudice thus making out a judicially enforceable right of his for enforcement. It has been held in the aforesaid case by the Supreme Court that it is implicit in the exercise of the extraordinary equitable jurisdiction of the High Courts that the relief prayed for must be for the enforcement of a legal right. A “legal right” has been held to mean entitlement arising out of legal rules. Concluding in para 17 of the aforesaid report on the question as to who is a “person aggrieved”, the Supreme Court has held that “in view of the above, law on the said point can be summarised to the effect that a person who raises a grievance must show how he has suffered a legal injury”. *Infosys Technologies Ltd. v. Jupiter Infosys Ltd. & Anr* MANU/SC/0932/2010 : (2011) 1 SCC 125 case was cited to show that the applicant must not only be a person aggrieved on the date of the application but must continue to remain a person aggrieved until such time as the rectification application is finally decided and if the applicant is not shown to have ever traded or intended to trade in any goods covered by the appellant's registrations and as such the first respondent is not a “person aggrieved”.

The Intellectual Property Appellant Board in *Needle Industries (India) Private Limited v. Vinod Kumar Agarwal trading as Pioneer Plastics* MANU/IC/0020/2008 held that persons who are in some way or the other substantially interested in having the mark removed from the Register are persons aggrieved. The fact that a person is engaged in the same trade will not make him an aggrieved person. The person aggrieved must establish that in some practical sense he may be damaged if the mark is allowed to continue on the Register.

The apex court in the case of *Maharaj Singh v. State of U.P.* MANU/SC/0361/1976: (1977) 1 SCC 155 held:

“20. The classical concept of a ‘person aggrieved’ is delineated in *Re Sidebotham exp. Sidebotham*. But the amplitude of

'legal grievance' has broadened with social compulsions. The State undertakes today activities whose beneficiaries may be the general community even though the legal right to the undertaking may not vest in the community. The State starts welfare projects whose effective implementation may call for collective action from the protected group or any member of them. New movements like consumerism, new people's organs like *harijan* or *mahila samajams* or labour unions, new protective institutions like legal aid societies operate on the socio-legal plane, not to beat 'their golden wings in the void' but to intervene on behalf of the weaker classes. Such burgeoning of collective social action has, in turn, generated gradual processual adaptations. Test suits, class actions and representative litigation are the beginning and the horizon is expanding, with persons and organizations not personally injured, but vicariously concerned being entitled to invoke the jurisdiction of the court for redressal of actual or imminent wrongs.

21. In this wider perspective, who is a 'person aggrieved'? Dabholkar gives the updated answer:

The test is whether the words 'person aggrieved' include a person who has a genuine grievance because an order has been made which prejudicially affects his interests'.

..The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busy body who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which 'prejudicially affects his interests.' (p.324-325)".

LIMITATION PERIOD FOR FILING APPEAL [SECTION 421(3)]

An appeal lies to the Appellate Tribunal within 45 days from the date of communication of the order of the Tribunal. The limitation period can be further extended by 45 days if the Appellate Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal.

The Supreme Court in the case of *N Balakrishnan v. M Krishnamurthy* AIR 1998 SC 3222 has held that unless there is a deliberate, malafide or gross negligence, reasonable delay should be condoned in as much as a person does not benefit by filing a petition with delay. Once no malafides or illegal motive can be imputed to a person to file a petition with delay, delay should ordinarily be condoned.

A question arises, as to whether provisions of Section 5 of Limitation Act, 1963, are applicable to an appeal filed under Section 421 of Companies Act 2013 (corresponding to Section 10F of Act, 1956). The words used in proviso to Section 421 of 2013 Act are "not exceeding 45 days" thereby clearly prescribing time limit of only 45 days, in addition to initial period of 45 days allowed under Section 421(3), to enable a party to file an appeal against the orders of Tribunal. The said proviso clearly shows that power vested in Appellate Tribunal to condone delay on sufficient cause being shown is directory and subject to discretion vested in the Appellate Tribunal. However, maximum period to the extent of which such delay is capable of being condoned is mandatorily

prescribed and not open to exercise of any discretion. Therefore, the words "not exceeding 45 days" would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, 1963 and would therefore bar application of Section 5 of Act, 1963 to Section 421 of Companies Act 2013. In view thereof, scheme of Act, 2013, surely supports curtailment of Appellate Tribunal's powers by exclusion of operation of Section 5 of Act, 1963.

The legislative intent as reflected from the Companies Act, 2013, resulting in the constitution of the NCLAT and the Section 421 providing for a limited appeal make it abundantly clear that the Legislature intended to restrict the power of the Appellate Tribunal to condone the delay beyond the period exceeding 45 days and thus prescribed in a mandatory language as under:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

The Supreme Court in *Union Of India v. Popular Construction Co.* [2001] 8 SCC 470, held that if there were any residual doubt on the interpretation of the language used in Section 10F, the legislative intent behind the constitution of the Company Law Board and the object of insertion of Section 10F would resolve the issue involved of curtailment of the court's power with the exclusion of the operation of Section 5 of the Limitation Act, 1963.

Delay shall be condoned when special statute itself expressly provides for it. [*Manohar Lal Sharma v. Union of India (UOI)* and Anr. 2009(6) ALD 315, (2009)152 Comp. Cas.412 (AP), (2010)1Comp LJ 19(AP), MANU/AP/0430/2009]

As to the applicability of Section 5 of the Limitation Act, the learned judge considered the question in the light of the law laid down by the apex court in *Union Of India v. Popular Construction Co.* MANU/SC/0613/2001; [2001] 8 SCC 470 : AIR 2001 SC 4010 and *Gopal Sardar v. Karuna Sardar* MANU/SC/0195/2004; [2004] 4 SCC 252, and laid down as follows:

"There is no dispute that the Companies Act, 1956, is a special law. Under the normal circumstances, the provisions of the Limitation Act will have application to all appeals and applications under the Companies Act, unless a different period of limitation is prescribed. As noticed herein above, the company law itself has prescribed a period of limitation for filing the appeal and also for condonation of delay. Hence, condonation of delay for filing the appeal beyond the prescribed period of limitation is by virtue of the proviso to Section 10F. This proviso can be considered to be akin to Section 5 of the Limitation Act. However, the proviso imposes limitation for extension of time in filing the appeal beyond the prescribed period of limitation, the expression used in Section 10F being 'further period not exceeding, sixty days'... The proviso to Section 10F has created an absolute bar for extension of period of limitation beyond sixty days apart from the period of limitation of sixty days prescribed under Section 10F. The expression 'not exceeding' does not permit any further extension and it seems that the true import, purport and construction of the proviso is to restrict the total period of limitation to 120 days, i.e., sixty days principal and sixty days by extension subject to existence of sufficient cause in a given case. Any other interpretation would amount to committing violence to the statute itself which is

The legislative intent as reflected from the Companies Act, 2013, resulting in the constitution of the NCLAT and Section 421 providing for a limited appeal make it abundantly clear that the Legislature intended to restrict the power of the Appellate Tribunal to condone the delay beyond the period exceeding 45 days.

impermissible under law.

13. Yet again, the court ruled

...it is abundantly clear that where particular statute does not apply to Section 5 of the Limitation Act expressly or even impliedly in a special or local law itself, it shall be presumed that the exclusion is express. Section 29(2) of the Act not only excludes the application of Section 5 of the Limitation Act but also other sections from Sections 4 - 24 (inclusive). Thus, Section 14 also stands excluded from its application for purposes of either condoning the delay or exclusion of the period on the ground envisaged therein notwithstanding existence of sufficient cause. Thus, even if the period spent before the Delhi High Court constitutes sufficient cause for extension of period under Section 5 read with Section 14 of the Limitation Act, these sections cannot be applied *de hors* the proviso to Section 10F to extend the limitation beyond sixty days in addition to the original period of sixty days (total 120 days) for filing an appeal as proviso to Section 10F does not permit such extension.”

Any appeal filed beyond the maximum period prescribed in the special statutes will be barred by limitation.] *Kabul Chawla v. CPI India Real Estate Ventures Limited and Ors.* MANU/PH/0818/2015]. Therefore no appeal will be entertained by the Appellate Tribunal after the expiry of 45+45=90 days.

In *'Union of India v. M/s. Popular Construction Co.'*, MANU/SC/0613/2001 : AIR 2001 SC 4010 the Supreme Court has held that the provisions of Section 5 cannot be invoked since in Section 34(3) of Arbitration Act, 1996, while fixing the time period for filing objections challenging the Award of the Arbitral Tribunal, the words used “but not thereafter” – meaning thereby the legislature intended that no further time can be granted to the petitioner for filing objections under Section 34(3) of Arbitration Act, 1996 by invoking the provisions of Section 5 of Limitation Act. Therefore, to sum up, if the words used in any particular legislation convey legislative intent that the petitioner shall not be entitled to further time by invoking the principle of Section 5 of Limitation Act, then the provisions of Limitation Act, 1963 shall not apply.

"SUFFICIENT CAUSE"

A litigant who failed to file an Appeal before the Appellate Tribunal within the permissible time period as fixed can file it after the expiry of the prescribed time period provided he has “sufficient cause” for

non-filing the Appeal within the time period. In *Dinabandhu Sahu v. Jadumoni, Mangaraj*, AIR 1954 SC 411, the Supreme Court approved the dicta in *Krishna v. Chathappan*, MANU/TN/0148/1889 that ‘sufficient cause’ should receive a liberal construction so as to advance substantial justice, when no negligence, nor inaction, nor want of bonafide is imputable to the appellant. If sufficient cause is shown, the court has to exercise its discretion in favour of the appellant. The true guide for the court in its exercise of such discretion is whether the appellant had acted with reasonable diligence in prosecuting his appeal. But the circumstances of each case must be examined to see whether they fall within or without the terms of this general rule. *Brij Inder Singh v. Kanshi Ram*, MANU/PR/0033/ 1917, ILR (1918) 45 CAL 94.

In *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* MANU/SC/0298/2012: (2012) 5 SCC 157, the Supreme Court has ruled thus:

“23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bonafide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bonafides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. “

It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. [*N. Balakrishnan v. M. Krishnamurthy* MANU/SC/0573/1998]

What is sufficient cause cannot be described with certainty for the reasons that facts on which questions may arise may not be identical. What may be sufficient cause in one case may be otherwise in another.

Where the appellant suffering from low blood pressure was medically advised not to move, and if he does not move, he acts in good faith. There is ‘sufficient cause’. *Hisaria Plastic Products v. Commissioner of Sales Tax*, MANU/UP/ 0200/1980. Counsel initially advised for filing revision and realising mistake, the revision was withdrawn and an appeal was preferred. Mistaken advice cannot be considered as sufficient cause. [*Babaram v. Devinder*, AIR 1981 Del 14.]

When a party allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, he must establish that because of

What is sufficient cause cannot be described with certainty for the reasons that facts on which questions may arise may not be identical. What may be sufficient cause in one case may be otherwise in another.

some event or circumstances arising before the limitation expires, it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. [*Ajit v. State* AIR 1981 SC 733.]

Each day's delay after expiry of limitation is to be explained. [*Balram v. Sarathi*, AIR 1988 ORI 10.]

In a landmark judgment in which all previous judgments of the courts have been discussed the Supreme Court in the case of *Esha Bhattacharjee v. Raghunatha Nafar Academy*, MANUSC/0932/2013 = 2013(12) SCC 649 summarized the principle that emerged from all previous decisions:

- (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
- (xi) It is to be borne in mind that no one gets away with fraud,

misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

- (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
- (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

The expression "sufficient cause" is to be construed liberally with a view to advance justice, the purpose for which Section 5 of the Limitation Act has been enacted. However the Court is required to scrutinize the cause shown and would be justified in considering the merits of the evidence led to establish the cause. [*Mineria Nacional Limitada v. Sociedade De Fomento Industrial Pvt. Ltd.* MANU/MH/0172/2007]

An applicant cannot be put to prejudice on account of the misguidance from their lawyer provided to applicant. Where an applicant approached the other Court on wrong advice and approached the present Court without much delay it was stated that while condoning delay what matters is not the length of the period but the acceptability of the explanation offered to condone the delay.

"APPEAL FROM AN ORDER OR DECISION"

A similar phrase has been used in several statutes. The expression "any decision or order", is of wide amplitude and would include all orders or decisions passed by the Board. [*Kantilal Shah v. CC* 1982 ELT 902(CAL).] The expression is wide enough to include interlocutory orders passed by the board. [*M.S.Naina v. CC*1975 TAX LR 1351(CAL)]. An appeal against an order which did not decide the rights of the parties is maintainable. [*Gharib Ram Sharma v. Daulat Ram Kashyab*, (1994) 80 Comp. Cas.]

Where in a case before the Bombay High Court, during the pendency of an appeal against dismissal of a winding up petition, an application was made to CLB [now Tribunal under the 2013 Act] for appointment of an administrator for prevention of mismanagement under section 398 of 1956 Act [corresponding to section 241 of the 2013 Act] and the same was admitted under an order that the matters of mismanagement would not be raised in the winding up petition and an appeal was made to the same High Court against this order also. The court refused to dismiss it summarily but ordered that if an administrator was appointed by the CLB, 14 days' time should be given to any aggrieved party to prefer an appeal against an order. *Thakur Savadikar & Co. (P) Ltd. v. S.S. Thakur*, (1996) 23, CORPT LA 170(BOM).

An order of the CLB in a matter for reference to arbitration under section 8 of the Arbitration and Conciliation Act, 1996 is not appealable in view of the fact that section 5 of that Act permits appeals to judicial authorities only in the matters specified in that section and the order of reference is not one of those matters. [*Hind Samachar Ltd. v. Union of India (UOI)* and Ors. MANU/PH/0502/2008.]

In *Vardhaman Dye-Stuff Industries P. Ltd. v. Mrs. M. R. Shah*, MANU/MH/0666/2007: [2009] 149 Comp. Cas. 345 (Bom) it has been held as follows (headnote):

In a petition filed under section 398 of the Companies Act, 1956,

the Company Law Board held that no case of oppression had been made out by the shareholder. The Board, however, directed the company to purchase the shares of the shareholder. On appeal, the company, challenged the operative part of the order of the Board as being contrary to law and impermissible:

Held, allowing the appeal that the shareholder had not made out any case for exercise of equitable jurisdiction to grant such relief as granted by the Board. There was no case of oppression and mismanagement or for winding up of the company on any just or equitable ground to bring the case under section 397 or 398 or even section 402 of the 1956 Act. The submission that the High Court may not disturb the order of the Company Law Board as section 10F referred to an appeal only on a question of law was not correct. The order, specially its operative portion, was perverse and not sustainable. The order was to be quashed and set aside.

It is admitted case of the parties that the appellants herein had filed two petitions under Sections 397-398 of the Companies Act alleging oppression and mismanagement before the CLB in the affairs of M/s Tinna Agro Industries Limited And Tinna Oil and Chemicals Limited. During the pendency of the said petitions, applications under Sections 8 and 45 of the Arbitration Act were filed and by the impugned orders dated 20th July, 2010 passed by the CLB, the applications have been allowed and the matters have been referred to arbitration to be conducted in accordance with the rules of the conciliation and arbitration of the International Chamber of Commerce in London. What has been decided by the CLB are the applications filed under Sections 8 and 45 of the Arbitration Act and not the petitions under Section 397-398 of the Companies Act. The disputes raised in the main petitions under Sections 397-398 of the Companies Act have not been adjudicated. Rights of the parties C.A. NOS. 1701-1702/2010 in CO.A. (SB) Nos. 31-32/2010 5 under the Companies Act have not been decided. The CLB while passing the impugned orders dated 20th July, 2010 has adjudicated these applications under Sections 8 and 45 of the Arbitration Act and whether in view of the conditions stipulated in the aforesaid Sections, the applications should be allowed. While doing so, CLB may have incidentally examined the provisions of the Companies Act but only for the purpose of deciding whether conditions stipulated in Sections 8 and 45 of the Arbitration Act are satisfied or not; and not for deciding the petitions under Sections 397-398 of the Companies Act.

"OPPORTUNITY OF BEING HEARD" [SECTION 421(4)]

Opportunity to be heard means the chance to appear before a court or Tribunal to present evidence and argument before being punished by governmental authority. An opportunity to be heard before penalty or punishment is imposed for contempt is an indispensable essential to the administration of due process of law as contemplated by the constitutional inhibition. Notice and an opportunity to be heard are the hallmarks of due process. However, due process does not always require an adversarial hearing. The violation of a state statute outlining procedure does not necessarily equate to a due process violation under the federal constitution. An opportunity to be heard ordinarily includes the following three rights:

- the right to receive fair notice of the hearing;
- the right to secure the assistance of counsel; and

- the right to cross examine adverse witnesses.

What is "opportunity of being heard"? The Karnataka High Court in *Karibasappa Kuravateppa Maradibankar v. Assistant Commissioner*, ILR 1997 KARNATAKA 2236; MANU/KA/0329/1994 held:

"It is well settled that the right of oral or personal hearing is not an essential element of natural justice. No doubt, a person sought to be proceeded against is entitled to a right of defence, but that does not necessarily imply a personal hearing. Even an opportunity to file a written representation complies with the principles based on the requirement of natural justice... It is well settled that whether oral hearing should be given or written representation will meet the ends of justice depends on the facts of each case. It is only in such cases which require determination of disputed question of fact, where personal hearing becomes incumbent. If not otherwise provided in the statute itself, 'hearing' does not mean grant of a personal hearing as mandatory. In the present case, the facts were not at all in dispute. The decision of the Assistant Commissioner is based on clear and unambiguous provisions of law. Therefore, non-grant of personal hearing cannot be said to be fatal".

The requirement of the rule of natural justice is that the parties whose civil rights are to be affected by a quasi-judicial authority must have a reasonable opportunity of being heard in their defence. "stating it broadly and without intending it to be exhaustive.....rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which it relies, that the evidence of opponent should be taken in his presence and he should be given the opportunity of cross examining the witness examined by the party, and that no materials should be relied on against him without his being given an opportunity of explaining them." [*Union of India v. T.R Verma*, AIR 1957 SC 882.]

The Orissa High Court in the case OF Radhika Charan Banerjee v. Sambhalpur Municipality and Others reported at 1979 AIR 69 (Orissa) relied upon in *Kingfisher Airlines Ltd. v. Assistant Commissioner Of Income Tax* (2014) has held as under:-

"A right of appeal wherever conferred includes a right of being afforded an opportunity of being heard, irrespective of the language used in conferring such a right. That is a part and parcel of the principle of natural justice. Where an authority is required to act in a quasi-judicial capacity, it is imperative to give the appellant an adequate opportunity of being heard before deciding the appeal. Opportunity of hearing does not always necessarily mean giving a personal hearing. A written representation, if complete and elaborate in all respects fully explaining the points of view of the appellant, when accepted, may, in some cases amount to affording effective opportunity of hearing. What particulars of natural justice should apply to a given case must also depend to a great extent on the facts and circumstances of that case."

Whether a reasonable opportunity has been given in a particular case will depend on its own circumstances, there being no uniform formula or rigid rules for the purpose.

Appearance of a lawyer cannot be claimed as a matter of right. But in a case where complicated questions of law and fact arise, where the evidence is elaborate and the party concerned may not be in a position to meet the situation himself effectively, denial of legal assistance may amount to a denial of natural justice. [*Mrs.*

APPEALS FROM THE ORDERS OF NCLT

Rita Prasad W/o Ranjan Kumar, Ms. Tanya Tanvi, Ms. Reetu Ranjan and Ms. Reecha Ranjan All D/o Late Ranjan Kumar v. The Board of Directors, Through Its Chairman, Nalanda Gramin Bank, the Chairman, Nalanda Gramin Bank and Senior Manager, Nalanda Gramin Bank, MANU/BH/1068/2010.]

WHAT'S NEW?

Under the erstwhile section 10F of the 1956 Act, an appeal from the order or decision of the CLB was provided to the High Court only on questions of law.

“The Legislature has consciously restricted the right of appeal under Section 10F of the Companies Act, 1956, only to the questions of law so as to ensure that there is as far as possible an early finality to the issues and consequent redressal of grievances. All decisions on the questions of fact as decided by the Company Law Board are final and conclusive. Therefore, any liberal construction of the discretion vested under the proviso to Section 10F would render the provision otiose and defeat the purpose for the establishment of the Special Tribunal (being Company Law Board) for the speedy adjudication of the disputes.”[*Smt. Hetal Alpesh Muchhala v. Adityesh Educational Institute and Ors.* MANU/MH/1349/2009].

The provisions regarding appeal to the NCLAT are in harmony with the provisions relating to a first appeal under section 96 of the Code of Civil Procedure, 1908. Therefore, the NCLAT will hear appeals on both questions of fact and law. Under Section 96 of the Code of Civil Procedure, 1908, it was held that an appeal is a continuation of the suit proceedings. The court has the power to examine questions of law or fact or mixed questions of law and fact. [*Manik Chandra Nandy v. Debdas Nandy*, AIR 1986 SC 446.]

Appeals from NCLT will go to National Company Law Appellate Tribunal and from the decisions of the Appellate Tribunal to the Supreme Court of India. Earlier, the decisions of the Company Law Board were challenged before the Hon'ble High Court and then in Supreme Court. This will help in getting uniform decision on a particular subject by the Appellate Tribunal instead of getting different decisions on the same matter by different High Courts.

EXPEDITIOUS DISPOSAL BY TRIBUNAL AND APPELLATE TRIBUNAL

Section 422 of the Companies Act 2013 provides for expeditious disposal of applications and petitions filed before the Tribunal and Appellate Tribunal. Where the Tribunal or the Appellate Tribunal does not dispose of the matter before it within three months of its presentation, the Tribunal or the Appellate Tribunal is required to record the reasons for such delay. And after considering the reasons so recorded the President or the Chairperson, as the case may be, has the discretion to extend the period for disposal of the matter, not exceeding ninety days.

APPEAL TO SUPREME COURT (SECTION 423)

Any person aggrieved by an order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the

date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order.

The Supreme Court may allow it to be filed within a further period not exceeding sixty days, if it is satisfied, that the appellant was prevented by sufficient cause from filing the appeal within this period.

POWER UNDER ARTICLES 226 AND 227 NOT TAKEN AWAY

It was held in *L.Chandra Kumar v. Union of India* (MANU/SC/0261/1997) and *Satyanarayan v. Atmaram* (MANU/MP/0855/2015) that the High Court's power under Articles 226 & 227, being a part of the basic structure of the Constitution, can never be taken away. Practically, however, since a direct appeal has been provided to the Supreme Court under section 423 of the Companies Act, 2013, the High Court will not interfere in a writ petition from the order of the Tribunal or the Appellate Tribunal unless there is a violation of the principles of natural justice or a lack of jurisdiction. CS

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NCLT Revolutionising Corporate Litigation – Opportunities & Challenges



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GENESIS

The Government has recently notified the creation of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) with effect from 1st June, 2016. With the said notification, the fourteen yearlong saga has finally come to an end. We now have a tribunal which has been created to revolutionise corporate litigation and there are great expectations from it.

The genesis for the creation of the NCLT can be traced all the way back to the year 2000, when Justice Balakrishna Eradi Committee published a Report on the Law Relating to Insolvency and Winding up of Companies. Amongst other things, the

Amendment) Act, 2002 acting upon the above recommendations, provided for the creation of a new national tribunal called the National Company Law Tribunal and its appellate body called the National Company Law Appellate Tribunal.

The NCLT / NCLAT was proposed to be a body having jurisdiction of the Company Law Board, the BIFR / AAIFR and the Company Court of the High Courts. Also more importantly, for the Company Secretaries, it was to be a haven as it was proposed to open the door to all the practicing professionals to act, appear and plead before the NCLT and the NCLAT.

However, there appeared to be a serious issue with certain aspects of the law, as a result of which its constitutional validity was

The NCLT and the NCLAT present a golden opportunity for Company Secretaries to show their core competence of Company Law. Since the matters to be dealt with by the NCLT / NCLAT are a combination of the jurisdiction of the High Court, the BIFR/AAIFR and the Company Law Board, there is a huge opportunity for Company Secretaries to practice before these tribunals and make a good career out of the same.

Committee recommended the setting up of a National Tribunal which would have the following powers:

- i. the jurisdiction and power presently exercised by Company Law Board under the Companies Act, 1956;
- ii. the power to consider rehabilitation and revival of companies – a mandate presently entrusted to BIFR/ AAIFR under SICA;
- iii. the jurisdiction and power relating to winding up of companies presently vested in the High Courts.

Thereafter, the Companies (Second

challenged. The Madras High Court held in 2003 that the NCLT was not constitutionally valid. While deciding the appeal, the Supreme Court in 2007, not only upheld the said order but also referred the matter to the Constitutional Bench to decide whether the Parliament *had the legislative competence to vest intrinsic judicial functions that had been traditionally performed by the High Courts, in any tribunal outside the judiciary.*

The Constitutional Bench in 2010, decided that the creation of the NCLT/NCLAT was constitutionally valid and it laid down guidelines, amongst other things, for the appointment and selection criteria for the Technical Members. .

While NCLT has been endowed with all such powers as were being enjoyed by the erstwhile CLB, several additional powers have also been conferred on the NCLT. Apart from that the NCLT will exercise powers similar to that of a court of law, some new powers have been provided by the CA, 2013.

Thereafter, there was change in the law and the new Companies Act, 2013 (the new Act / CA, 2013) came into force replacing the 1956 Act (the old Act). However, the provisions once again did not comply with the guidelines as prescribed by the Apex Court. As a result, there was a fresh challenge to the creation of the NCLT/NCLAT before the Apex Court.

The controversy was finally laid to rest in May, 2015 when the Constitutional Bench upheld the creation of the NCLT/NCLAT and directed the Government of India to amend certain provisions of the Companies Act, 2013 in consonance with the guidelines prescribed in its 2010 judgment.

However, more telling was the following observation of the Apex Court, which showed the seriousness with which the issue was being dealt with:

“Since, the functioning of NCLT and NCLAT has not started so far and its high time that these Tribunals start functioning now, we hope that the respondents shall take remedial measures as per the directions contained in this judgment at the earliest, so that the NCLT & NCLAT are adequately manned and start functioning in near future.”

Since then we have seen swift action from the Government of India, which has completed the process for appointment and selection of Judicial and Technical Members, appointment of registry officials, lower staff and selecting appropriate premises.

Although, theoretically, the NCLT and the NCLAT have both become operational since 1st June, 2016, the Government is busy getting the necessary infrastructure in place and realistically the NCLT and the NCLAT should be operational by July, 2016.

Initially, only the Company Law Board has been dissolved and all its powers have been vested with the NCLT. The BIFR/AAIFR as well as the High Courts continue to retain and exercise their respective powers.

NEW POWERS

While NCLT has been endowed with all such powers as were being enjoyed by the erstwhile CLB, several additional powers have also been conferred on the NCLT. Apart from that the NCLT will exercise powers similar to that of a court of law, some new powers have been provided by the CA, 2013.

DAMAGES IN CASE OF FRAUD

For too long small investors putting their hard earned money in deposit

schemes offered by various companies have been taken for a ride by many such companies. It is not uncommon to find companies defaulting in returning deposits as per the terms of deposit. In such a situation depositors had no speedy and effective recourse to recover their deposits and interest and bring such companies to book, as the only process available was a long drawn out civil court action or doubtful consumer court action.

Now NCLT has been given power to award damages in case of a fraud committed by a company in respect of deposits taken by it. The new section 75 is comprehensive in nature and covers different scenarios. In fact, such a provision has not come a day too soon, as it has been long overdue as small depositors have suffered at the hands of thousands of companies including some of the most well known names in the Indian corporate sector.

The new section specifies the circumstances in which a company will be deemed to have committed a fraud upon the depositors, which are as under:

- i. a) A company has failed to repay the deposit or part thereof or any interest thereon within the specified time limits; or
- b) A company has failed to repay the deposit or part thereof or any interest thereon within such further time as permitted by the Tribunal; and
- ii. It is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose.

Once the aforesaid two conditions are fulfilled, every officer of the company who was responsible for the acceptance of such deposit will be personally held responsible. Moreover, the section provides that there will be no limitation of liability, so far as the losses / damages that may have been incurred by the depositors.

Besides, the new law also permits a group of persons / association of persons who have incurred any loss as a result of the failure of the company to repay the deposits / part thereof or any interest thereon, to file a suit / proceedings against the company.

RE-OPENING OF ACCOUNTS / RECAST OF FINANCIAL STATEMENTS

Under the old Act there was no provision for re-opening of books of account of a company nor there was power to recast any company's financial statements. However, now section 130 of the new Act has removed that lacuna.

As per CA, 2013, a company can re-open its books of accounts and recast its financial statements, but this can be done only on the directions of a court of competent jurisdiction or by the Tribunal. However, for this to happen an application in this regard has to be made either by the Central Government, or the Income-tax authorities, SEBI, any other statutory regulatory body or authority or any person concerned.

The court of competent jurisdiction or the Tribunal will have to pass an order to the effect that—

- (i) the relevant accounts were prepared in a fraudulent manner; or
- (ii) the affairs of the company were mismanaged during the relevant

period; thereby casting a doubt on the reliability of financial statements.

It is the duty of the concerned court / Tribunal, as the case may be, to give notice to the Central Government, the Income-tax authorities, the SEBI or any other statutory regulatory body or authority concerned and take into consideration their views before passing any such order.

Once the accounts are so revised or re-cast in accordance with the order passed by the court / Tribunal then the same shall be final. In other words, the earlier accounts and financial statement shall cease to have any validity and instead it will be the accounts as revised / re-cast by the court / Tribunal which will be deemed to be the true accounts / financial statement of the company.

VOLUNTARY REVISION OF FINANCIAL STATEMENTS

A new provision in the nature of section 131 has been provided in the new Act that provides power to the directors of a company to prepare revised financial statements or a revised report in respect of any of the three preceding financial years. The requisite condition for carrying out this exercise is that the directors of a company should be of the opinion that the financial statements of the company or the report of the Board, do not comply with the provisions of section 129 or section 134 of the new Act.

After forming such an opinion, the company has to obtain prior approval of the Tribunal by making an application in the prescribed form and manner. A copy of the order passed by the Tribunal has to be filed with the Registrar. However, before granting such approval, the Tribunal has to give notice to the Central Government and the Income-tax authorities and take into consideration the representations, if any, received from them.

The section provides that such revised financial statements or report shall not be prepared or filed more than once in a financial year. In fact, the Board is obliged to disclose in its report the detailed reasons for revision of such financial statements or report.

CLASS ACTION

A new provision that has been brought on the statute book and that has the potential of revolutionizing the accountability of the corporate sector is that of class action. This concept of class action is well established in several jurisdictions around the developed countries, but in India it is just making its entry. Section 245 of the new Act provides that various persons dealing with a company can be liable for any wrong done by them and this includes an audit firm or expert or consultant or advisor or any other person associated with the company. The persons who can initiate a class action must be either the requisite number of members or depositors or any class of them. The net has been cast far and wide and today professionals are also accountable and can be slapped with heavy fines by the Tribunal for any misdemeanor committed by them. We will have to wait and watch as to how this concept of 'class action' develops and one only hopes it does not become a tool for harassing certain managements. No doubt the Tribunal has enough powers to impose cost on those attempting to misuse the provision by making frivolous or vexatious applications.

MEDIATION AND CONCILIATION

With increasing stress on resolving commercial disputes through alternative disputes redressal mechanism, it is not surprising to find that the new Act has provided section 442 which lays down the ground rules. According to this section the Central Government will maintain a panel of experts to be called as the Mediation and Conciliation Panel.

The panel will consist of such number of experts having such qualifications as may be prescribed.

The section provides that any of the parties to the proceedings may, inter-alia, apply to the Tribunal or the Appellate Tribunal, in the prescribed form for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. In that case, the Tribunal or the Appellate Tribunal, as the case may be, will appoint one or more experts from the panel.

At the same time, the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo motu, refer any matter to Mediation and Conciliation. Similar powers have been conferred upon the Central Government for the proceedings before it.

BENCHES OF THE TRIBUNAL

The NCLT has 11 benches spread throughout India including 2 Benches in Delhi with the President of the NCLT presiding over the Principal Bench at Delhi. The region wise jurisdiction of the NCLT Benches is as under:

1. Delhi – Haryana, Rajasthan and Delhi.
2. Ahmedabad – Gujarat, Madhya Pradesh, Dadra & Nagar Haveli, Daman & Diu.
3. Allahabad – Uttar Pradesh, Uttarakhand.
4. Bengaluru – Karnataka.
5. Chandigarh – Himachal Pradesh, Jammu & Kashmir, Punjab and Chandigarh.
6. Chennai – Kerala, Tamil Nadu, Lakshadweep and Puducherry.
7. Guwahati – Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya, Nagaland, Sikkim and Tripura.
8. Hyderabad – Andhra Pradesh and Telangana.
9. Kolkata – Bihar, Jharkhand, Odisha, West Bengal and Andaman & Nicobar Islands.
10. Mumbai – Chhattisgarh, Goa and Maharashtra.

The NCLAT has only one single bench in the country and it is situated in Delhi. Perhaps in the time to come it would be necessary to have some additional benches of the appellate tribunal located in different parts of the country.

SOME IMPORTANT PROVISIONS RELATING TO THE TRIBUNAL

Appeal from Orders

If any person is aggrieved by an order of the NCLT then he / she has the right to prefer an appeal before the NCLAT within 45 days from the date the NCLT makes such order available to the aggrieved person. The NCLAT has the discretion to allow a delay of upto 45 days in preferring the appeal if there is sufficient cause for justifying such a delay.

However, it is pertinent to note that unlike the provision in section 10F of the old Companies Act, section 421 of the new Act is silent on

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the issue as to whether such an appeal should be only on a question of law or facts as well. By implication it would mean that there could be a possibility of appeals being preferred even on questions of fact and it will be interesting to see how the law develops on this front.

So far as the orders passed by NCLAT are concerned, if any person is aggrieved by an order of the NCLAT then he / she has the right to prefer an appeal before the Supreme Court within 60 days from the date of receipt of the order; such an appeal would be restricted only to a question of law. The Supreme Court may allow a further period of 60 days for filing the appeal if it is satisfied that the Appellant was prevented by sufficient cause in filing the appeal within the initial period of 60 days.

POWER TO ENFORCE ORDERS [SECTION 424(3)]

An important change as compared to the CLB is that the NCLT has the power to enforce its orders in the same manner as if it were a decree made by a court of law. In other words, the Tribunal can execute its own orders.

POWER TO PUNISH FOR CONTEMPT (SECTION 425)

The Tribunal has been given the jurisdiction, power and authority of the High Court to punish an offender for contempt under the provisions of the Contempt of Courts Act. Both the Tribunal and the Appellate Tribunal have similar powers in this regard. Consequently, now there will be no need for an aggrieved party to knock the doors of the High Court for contempt proceedings and the same can be directly initiated before the Tribunal / Appellate Tribunal itself.

EXPEDITIOUS DISPOSAL

One of the more ambitious provisions that have been notified is the one which seeks expeditious disposal of matters. Section 422 of the Act directs the NCLT and the NCLAT to endeavour to dispose off matters within 3 months from the date of presentation / filing of appeal, as the case may be. If the Tribunal / Appellate Tribunal is unable to dispose off the matter within 3 months, then it shall record the reasons

in writing and will be allowed a further 90 days within which to dispose off such a matter.

These timelines though highly desirable seem impractical to enforce and comply with in majority of the cases. For example, it is difficult to make contested matters time bound as can be seen from the plethora of cases plaguing our courts and tribunals. Timelines can be adhered to in uncontested matters where only statutory compliances are involved. This will be one of the biggest challenges the new tribunals will face. Much will also depend upon the number of members available *vis-à-vis* the number of cases before the Tribunal.

RIGHT TO LEGAL REPRESENTATION

One of the reasons for such optimism with the creation of this new tribunal is that it widely enhances the scope and opportunity for practicing professionals like Company Secretaries and Chartered Accountants. It now allows such practicing professionals to step into the hitherto exclusive domain of lawyers.

The following persons can appear before the NCLT / NCLAT:

- Party in person
- Authorised Representative
- Chartered Accountant
- Company Secretary
- Cost Accountant
- Legal Practitioner

GOLDEN OPPORTUNITY FOR COMPANY SECRETARIES

The NCLT and the NCLAT present a golden opportunity for Company Secretaries to show their core competence of Company Law. Since the matters to be dealt with by the NCLT / NCLAT are a combination of the jurisdiction of the High Court, the BIFR/AAIFR and the Company Law Board, there is huge opportunity for Company Secretaries to practice before these tribunals and make a good career out of the same. As a consequence, Company Secretaries can handle scheme matters, winding up, reconstruction along with oppression mismanagement matters right from the start to their logical conclusion.

The opportunity lies not just in appearing before the Tribunal or Appellate Tribunal, but doors have also been opened for Company Secretaries to be appointed as Technical Members of the Tribunal or Appellate Tribunal. There is also scope of being appointed as Valuers, Liquidators, Arbitrators, Mediators, Conciliators and Amicus Curiae.

CHALLENGES FOR COMPANY SECRETARIES

However, great opportunities also bring with them greater challenges. Things will not be offered on a platter to anybody and each professional will have to carve out a niche for himself and herself.

CHANGE IN ATTITUDE AND MINDSET

First and foremost there has to be a drastic change in the mindset of the Company Secretaries. They must not think of themselves as professionals dealing only with meetings, minutes and audit; nor should they be happy just rubbing shoulders with the best lawyers. At the same time, company secretaries will have to shed their diffidence

and must not be stuck in the inferiority complex when facing lawyers. They must learn to believe in themselves and their ability; more so when in any case they have a far superior understanding and knowledge of not just the company law, but other important corporate laws.

SHARPENING DRAFTING AND ADVOCACY SKILLS

Company Secretaries need to remember that they will be competing with Legal Practitioners, so it will be necessary for the Company Secretaries to hone their drafting and advocacy skills. Many non legal practitioners err in litigation due to badly drafted petitions / applications. Since such practitioners do not deal with litigious matters day in and day out, there is a tendency to be casual in approach and use loose language in drafting.

The following guidelines can be used as a yardstick, while drafting of a petition / application:

- a. Ensure that all the facts have been noted.
- b. All the supporting documents are available to support the facts.
- c. Remember that making allegations without any supporting documents do not amount to facts.
- d. Allegations should be specific in nature and backed by supporting documents.
- e. The format of the petition / application has to be as per the prescribed format of the appropriate forum.
- f. The Formats used before the ROC cannot be used before the NCLT.
- g. The reliefs should be very carefully drafted. Many practitioners make the cardinal mistake of mixing up their Interim and Final Reliefs and end up getting no relief at the Mentioning Stage.
- h. One should seek the interim reliefs as only those reliefs which are due to the exigencies of the circumstances of the case and are urgently required to avoid likely loss / damage. The final reliefs should be the ones sought for at the disposal of the petition / application.

ADVOCACY SKILLS

Company Secretaries will also need to strengthen their skills of advocacy. Due to paucity of space, this article cannot get into specifics, but suffice to say that it would be prudent for Company Secretaries to visit the courts and Tribunals and observe proceedings to understand the language of the court, the conduct of the court proceedings and the art of advocacy.

A few pointers in the art of advocacy to help Company Secretaries are as under:

- a. Adhere to the prescribed dress code
- b. Be humble and respectful at all times to the Judge and the Opposing Counsel
- c. Sir / Madam / British Titles may be used when addressing the court
- d. The language used should be English and it should be spoken in a formal manner. Remember we are not addressing a friend but a court of law.

- e. While making submissions, one should be clear, cogent, concise and confident.
- f. Be prepared with your case and be ready to argue when your matter is called out.
- g. Always be on time before your matter is called.
- h. Try to keep calm and sober demeanor when arguing your case.

NCLT IS A WORK IN PROGRESS

It is good news that the NCLT and NCLAT have been constituted and will start functioning. However, there is still a long way to go before NCLT assumes all the powers and becomes fully operational as envisaged under the new Act. Apart from the infrastructure and the manpower that will be tested, there are certain important powers that still remain with courts and other judicial authorities.

Three major chapters of the new Act involving NCLT are yet to be notified and these relate to mergers and amalgamations, winding up of companies and issues relating to revival and rehabilitation of sick companies. Presently, the powers relating to the first two are with the respective High Courts, while so far as sick industries are concerned, BIFR continues to exercise those powers.

Even the powers relating to approval of reduction in share capital of a company continue to be with the High Courts.

CONCLUSION

There can be no two views that the notification of the constitution of the NCLT is a landmark event in the corporate law history of the country and it is a very important step towards providing ease of business. However, a word of caution should be in place that the creation of NCLT is merely the first step in the long journey of changing the paradigm of legal delivery system in the country, particularly in the context of the corporate sector. The Central Government cannot rest on its own laurel now that the NCLT has come into existence and its job is done. What has been done till now by the Central Government is only the first stage.

In fact, the real job of the Central Government will start now as the new body is bound to have many hiccups on the way; it will be for the Government to keep a hawk's eye to ensure that no shortage of physical infrastructure, of number of members or the manpower is allowed to adversely affect the new system.

It should be remembered that the functioning of NCLT will be really tested only when all the functions and powers those are supposed to be transferred from the courts and BIFR are indeed transferred to NCLT and it actually becomes fully operational.

All the stakeholders including the practicing professionals be they Advocates, Practising Company Secretaries, Chartered Accountants or Cost Accountants, all of them will have their work cut out and must play a constructive role in making a success of the new justice delivery system. CS

NCLT – An Anecdote or Antidote to Consolidation of Corporate Jurisdiction



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Modern business is characterized by three major things namely (i) a consistently changing business environment (ii) an increasing inclination towards specialization and (iii) a mushrooming diaspora of activities, making businesses more complicated and interconnected. This has led to a discerning trend across the globe towards rationalization of business processes and simplification of legislations governing them. Along with other factors that have redefined business, is the use of electronic communication and information technology that has speeded up business transactions as well as made them international. This therefore demands that steps be taken to ensure that dispensation of justice and disposal of business matters by the Court

body), the Ministry of Corporate Affairs, (MCA) has, vide notifications dated June 1, 2016 notified the constitution of NCLT (National Company Law Tribunal) and NCLAT (National Company Law Appellate Tribunal) by Central Government under the provisions of the Companies Act, 2013. MCA has also notified certain provisions of the Companies Act 2013, thereby making NCLT and NCLAT operative from June 1, 2016.

FOLLOW-UP TOWARDS THE FORMATION OF NCLT

Justice Eradi Committee on Law Relating to Insolvency and Winding up of Companies, in its Report noted that there

A paradigm shift expected from the constitution of NCLT and NCLAT is a step towards consolidation of all corporate jurisdictions, which at present is scattered at various levels viz. High Courts of different States, Company Law Board, Company Courts of appropriate Jurisdiction, BIFR / AAIFR . Henceforth these jurisdictions shall be exercised by the NCLT and NCLAT. All insolvency matters of bodies corporate shall also fall under the jurisdiction of NCLT .

and Authorities should be in tune with the speed with which business is being transacted. Further, our Courts may not be competent enough to comprehend the intricacies of commerce thoroughly as certain business matters require specialized domain knowledge for dealing with the matters justifiably.

All this, had for long led to increasing voices in favor of setting up of specialized courts for discharging the responsibility of adjudicating the matters involving intricate issues relating to business.

Heeding to all this (and after a long run towards resolving issues occluding the formation of such judicial / quasi-judicial

are at present three different agencies namely, the High Courts, which have powers to order winding up of Companies under the provisions of the Companies Act, 1956; secondly, the Company Law Board set up under Section 10E of the Companies Act, 1956 to exercise powers conferred on it by the Act or the powers of the Central Government delegated to it and finally, Board for Industrial and Financial Reconstruction (BIFR) which deals with the references relating to rehabilitation and revival of companies.

It was realized that the High Courts were not able to devote exclusive attention to winding up cases which was essential to conclude the winding up of companies

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Establishment of a single forum, dedicated to corporate matters, is a welcome move, and once fully functional it will definitely be going to remove the problem of multifold governance and regulations. However, a big challenge as on date is how it transpires into reality in days to come. Although, MCA by its notification has paved the way for functioning of NCLT, yet there are Rules pending to be notified.

quickly. Also the experiment with BIFR for speedy revival of companies had also not been encouraging. The committee after a detailed analysis of the working of High Courts with respect to winding up of companies and the working of BIFR, with respect to revival of sick companies, recommended for the formation of a composite legal forum to address all aspects of Companies Act 1956 rather than have separate Acts (SICA 1985 etc.) and multiple forums (BIFR, High Court) for various sections of the Companies Act 1956.

The Companies (Second Amendment) Act, 2002 for the first time provided for the setting up of a National Company Law Tribunal and Appellate Tribunal to replace the Company Law Board and Board for Industrial and Financial Reconstruction. However a writ petition was filed by the Madras Bar Association (the Petitioner) in the Madras High Court challenging the constitutional validity of the NCLT and NCLAT. The Madras High Court in its judgment in the year 2004 upheld that the creation of NCLT and vesting the powers hitherto exercised by the High Court and the Company Law Board in the said Tribunal was not unconstitutional. Even after this, the road to the formation of NCLT was occluded by various petitions until the matter was presented against the Supreme Court (twice, in 2010 & 2015). In the year 2010 the Supreme Court has, even under the provisions of Companies Act, 1956, upheld the validity for constitution of NCLT & NCLAT in *re. Union of India v. R. Gandhi*. Thereafter, the Companies Act, 2013 came into picture, which provides for specific provisions with respect to formation of NCLT and NCLAT, but the same was again challenged by Madras Bar Association. However, the Constitutional Bench of Apex Court has reiterated the validity of constitution of NCLT and NCLAT with a few changes with respect to appointment of Members to the Tribunals relying upon its earlier ruling.

And, finally on the eve of June 1, 2016 a pleasant surprise was received from the Ministry of Corporate Affairs, Government of India vide a Notification for Formation of NCLT and NCLAT along with some part of Companies Act, 2013 and that June 1, 2016 becomes a historic day on which the long awaited NCLT and NCLAT saw the light of the day.

WHERE DOES NCLT STANDS TODAY?

The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) have been constituted

by Central Government through MCA Notification dated June 1, 2016. With the constitution of NCLT and NCLAT, the Company Law Board (CLB) stands dissolved with immediate effect. As per the Notification all the matters / proceedings / cases pending before the CLB stand transferred to NCLT and the same shall now be disposed of by Tribunal.

The NCLT will start functioning with eleven Benches – two at New Delhi and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. The Principal Bench of the NCLT will be at New Delhi. Justice SJ Mukhopadhaya, Judge (Retd.), Supreme Court of India has been appointed as the Chairperson of the NCLAT while Justice MM Kumar, Judge (Retd.) has been appointed as the President of the NCLT.

POWERS OF NCLT

Practically the NCLT and NCLAT have been subsumed with all the powers in respect of corporate matters which are hitherto being exercised by the Company law Board, High Courts of respective States, BIFR & AAIFR. The same can be summarized as under:

1. Powers of the erstwhile Company Law Board under the Companies Act, 1956.
2. Powers of High Court in the matters of mergers, demergers, amalgamations, winding up, etc.;
3. Power to order repayment of deposits accepted by Non-Banking Financial Companies as provided in Section 45QA of the Reserve Bank of India Act, 1934;
4. Powers of BIFR for revival and rehabilitation of sick industrial companies;
5. Power to wind up companies; within the provisions of Insolvency & Bankruptcy Code 2016;
6. Power to Review its own orders;
7. Power to Punish for Contempt;
8. Power to seek assistance of Chief Metropolitan Magistrate; and
9. The Bar on the exercise of Jurisdiction of Civil Courts on any matter on which Tribunal or Appellate Tribunal has the powers.

CONSOLIDATION OF CORPORATE JURISDICTION

A paradigm shift expected from the constitution of NCLT and NCLAT is a step towards consolidation of all Corporate Jurisdiction, which hitherto has been scattered at various levels viz. High Courts of different States, Company Law Board, Company Courts of appropriate Jurisdiction, BIFR / AAIFR shall henceforth be exercised by the NCLT & NCLAT. In the case of disputes relating to company matters, it was divided between the High Court and the Company Law Board. The disputes relating to reduction of capital, merger, amalgamation and winding up of companies were with the High Courts and the power of rectification of Members register, refusal to transfer/transmission of Shares & Securities, Oppression and Mismanagement and similar other issues were adjudicated by CLB. However, with the introduction of NCLT, the Tribunal has become the only redressal mechanism body available to corporates for all their disputes.

With the enactment of Insolvency and Bankruptcy Code, 2016,

NCLT has been entrusted with one more important jurisdiction, which is with respect to corporate liquidation and Bankruptcy, and henceforth, all insolvency matters of Bodies Corporate will fall under the jurisdiction of NCLT.

Establishment of a single forum, dedicated to corporate matters, is a welcome move, and once fully functional it will definitely be going to remove the problem of multifold governance and regulations. However, a big challenge as on date is how it transpires into reality in days to come. Although, MCA by its notification has paved the way for functioning of NCLT, yet there are Rules pending to be notified. Similarly, provisions of Companies Act, 2013 with respect to amalgamation or scheme of arrangements, capital reduction and so on are yet to be notified and till then these remain to be governed by the jurisdictional High Courts and as per the erstwhile provisions of Companies Act, 1956. Still there is strong ambiguity on the time, which may have been taken up by the NCLT to actually become operational in the fashion it is designed for, the MCA may gradually notify provisions relating to powers of High Court under the Companies Act 2013/ 1956 in respect of reduction of share capital, winding-up and compromise or arrangement (merger/demerger) and these matters may get transferred to NCLT later on.

Provisions relating to investigation of Company's accounts, class action suits, conversion of public company to private company and other matters, will in future be governed by NCLT whereas matters relating to reduction of share capital, winding-up and compromise or arrangement (merger/demerger), etc. will remain under the jurisdiction of respective High Courts till the time these provisions are made effective. On the other hand there are various other unanswered questions which need to be addressed by the MCA on a priority basis e.g. how much time the erstwhile CLB will take to actually transfer the case files to respective Benches of NCLT, what will be the fate of matters already registered under the BIFR

and Appellate Authority for Industrial and Financial Reconstruction (AAIFR) which are pending for revival/rehabilitation, specially those which are at final stages, whether they are required to file a fresh petition / scheme as there is no provision till date for shifting of BIFR / AAIFR matters to NCLT. However, today it appears that the same will stand vacated as it is and the corporate will be required to file afresh under the provisions of Companies Act, 2013.

CONCLUSION

Undoubtedly, there was an immediate need for this kind of fast track judicial body as due to increased number of proceedings pending at various places the real motive of justice could not be achieved and it's an established principle of law that "justice delayed is justice denied". But the Government has to put in lots of efforts to actually achieve the objectives of formation of NCLT and NCLAT. A strong determination of bureaucratic machinery is required especially in the matters pertaining to shifting of existing Jurisdiction of High courts e.g. the erstwhile jurisdiction under Section 391 to 396 of 1956 Act, as it's a cumbersome process of approval in consultation with the Chief Justices of all the High Courts and the Chief Justice of India to actually shift the Jurisdiction, and then the other administrative and practical difficulties e.g. physical shifting of case files to the respective Benches and so on. Here, there is the chance for Government to prove its intention and make a strong impression on the faces of competing parties. Making rules is just as important as its enforcement and regulations, and the same are expected to be notified very soon. There is a big question before everyone that now only a few proceedings are delegated to NCLT, a large pool of pending proceedings is waiting, will this scheme help the law to cover up all such cases or will it create a menace? CS

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NCLT, a Single Window Tribunal for all Company Law Litigations opens Window of Opportunities for Practising CS



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A new era in the resolution of company law related litigations in India has opened with the Central Government, Ministry of Corporate Affairs (MCA) issuing two separate notifications on 1st June, 2016, constituting the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) with effect from 1st June, 2016. Also, through another notification issued under clause (a) of sub-section (1) of section 434 of the Companies Act, 2013 (hereafter referred to as the "Act, 2013"), the Central Government appointed the 1st day of June, 2016 on which all matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board) shall stand transferred to the NCLT and that the NCLT shall dispose of such matters or proceedings or cases in accordance with the provisions of the Act, 2013 or the Companies Act, 1956.

1. NCLT, Principal Bench and NCLT, Delhi Bench – both to be located at New Delhi. Will exercise territorial jurisdiction in respect of cases emanating from the State of Haryana; State of Rajasthan and the Union Territory of Delhi;
2. NCLT Ahmedabad Bench, located at Ahmedabad with territorial jurisdiction over the State of Gujarat, State of Madhya Pradesh; Union territory of Dadra and Nagar Haveli and Union Territory of Daman and Diu;
3. NCLT, Allahabad Bench, located at Allahabad, exercising territorial jurisdiction over the State of Uttar Pradesh and the State of Uttarakhand;
4. NCLT, Bengaluru Bench located at Bengaluru with territorial jurisdiction over the State of Karnataka;

The establishment and operationalization of the NCLT and NCLAT opens a new era in the company law dispute resolution and will consolidate the various forums/tribunals under a single window and reduce the workload of the Courts and speed up disposal of company law cases. An important grey area that remains is the enforcement of the NCLT Rules which were drafted in February, 2016. In any case, the operationalization of the NCLT will open up numerous avenues for the Practising Company Secretaries (PCS) who play a vital and significant role in matters of company law compliance and company law litigation.

Further, in exercise of powers conferred by sub-section (1) of section 419 of the Act, 2013, the Central Government constituted the following 11 Benches of the NCLT for exercising jurisdiction over the areas mentioned against each of them. These are as follows:-

5. NCLT, Chandigarh Bench, located at Chandigarh with territorial jurisdiction over the State of Himachal Pradesh; State of Jammu and Kashmir; State of Punjab and the Union Territory of Chandigarh;

NCLT, A SINGLE WINDOW TRIBUNAL FOR ALL COMPANY LAW LITIGATIONS OPENS WINDOW OF OPPORTUNITIES FOR PRACTISING CS

6. NCLT, Chennai Bench, located at Chennai with territorial jurisdiction over the State of Kerala; State of Tamil Nadu and the Union Territory of Lakshadweep and the Union Territory of Puducherry;
7. NCLT, Guwahati Bench, located at Guwahati, with territorial jurisdiction over the State of Arunachal Pradesh, State of Assam; State of Manipur; State of Mizoram; State of Meghalaya; State of Nagaland; State of Sikkim and the State of Tripura;
8. NCLT, Hyderabad Bench, located at Hyderabad, with territorial jurisdiction over the State of Andhra Pradesh and the State of Telangana;
9. NCLT, Kolkata Bench, located at Kolkata, with territorial jurisdiction over the State of Bihar; State of Jharkhand; State of Odisha; State of West Bengal and the Union Territory of Andaman and Nicobar Islands;
10. NCLT, Mumbai Bench, located at Mumbai, with territorial jurisdiction over the State of Chhattisgarh; State of Goa and the State of Maharashtra.

When fully functional, NCLT will have 63 members and 21 Benches. So, besides the present 11 Benches, additional Benches will be set up in other locations. According to the Act, 2013, NCLT will eventually handle various cases being currently handled by the High Courts, notably with regard to amalgamation/merger of companies and winding up of companies. However, provisions of Chapter XV of the Act, 2013 relating to compromises, arrangements and amalgamations and Chapter XX with regard to 'Winding Up' of companies have not yet been notified; so these cases will continue to be handled by the High Courts. Further, NCLT will eventually take over the functions of the Board for Industrial and Financial Reconstruction ("BIFR") with regard to detection, revival and rehabilitation of sick industrial companies under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"). Also, when fully functional and upon enforcement of the remaining provisions of the Act, 2013, the NCLAT will hear appeals from the orders of the NCLT with regard to the transferred jurisdictions of the High Courts and the BIFR. All these changes are expected to speed up the company law litigations and will improve India's image of "ease of doing business", which will positively impact decisions of international investors to invest in India.

DISSOLUTION OF CLB AND CONSEQUENTIAL MATTERS - ENFORCEMENT OF 29 PROVISIONS OF THE ACT, 2013 TO BE DEALT WITH BY THE NCLT

Simultaneous to the setting up of the NCLT and NCLAT, on 1st June, 2016, the Ministry of Corporate Affairs, also notified certain provisions of the Act, 2013 which confer powers on the NCLT. A brief summary of the 29 sections of the Act, 2013 dealing with NCLT, that have been notified by the MCA on June 1st, 2016 are as follows:-

1. Sub-section (7) of section 7 [except clauses (c) and (d)] relating to NCLT's power to pass orders, where a company has got

incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declarations filed or made for incorporating such a company or by any fraudulent action. Clauses (c) and (d) of sub-section 7 of section 7 relate to NCLT's power to direct removal of name of the company from the Register of Companies; and to pass an order for the winding up of the company.

2. Sub-section (2) of Section 14 which relates to alteration of Articles of Association and such alterations having the effect of conversion of a public company into a private company with approval of the NCLT.
3. Sub-section (3) of Section 55. This section basically relates to "issue and redemption of preference shares". Sub-section (3) relates to power of the NCLT with regard to issue of fresh redeemable preference shares, where a company is not in a position to redeem preference shares and to pay dividend.
4. Proviso to clause (b) of sub-section (1) of Section 61 relating to consolidation and division of shares capital which changes voting percentage of shareholders.
5. Sub-sections (4) to (6) of Section 62 relating to "further issue of share capital" and these sub-sections relate to conversion of debentures issued or loans obtained from the Government by a company and appeal can be made to the NCLT.
6. Sub-sections (9) to (11) of Section 71. These relate to petitions to be filed before the NCLT upon failure by the company to redeem the debentures or pay interest thereon.
7. Section 75 relating to "damages for fraud" and the powers of the NCLT when fraud has been committed with regard to acceptance and repayment of deposit actuated with the motive of fraud/fraudulent purpose.
8. Sections 97 to 99 relating to power of the NCLT to call annual general meeting in specified cases and punishment for default in complying with provisions of sections 96 to 98.
9. Sub-section (4) of Section 119. Basically section 119 deals with provisions relating to inspection of Minutes-book of general meeting and sub-section (4) deals with powers of the NCLT to direct inspection of minutes book where company refuses or defaults in allowing inspection of minutes-book of general meeting.
10. Sections 130 and 131. Section 130 deals with re-opening of accounts on orders of the Court or of the NCLT and section 131 relates to NCLT's powers with regard to approving voluntary revision of financial statements or Board's report.
11. Second proviso to sub-section (4) and sub-section (5) of Section 140. This relates to powers of the NCLT with regard to removal of Auditors and Tribunal's suo-moto powers or on an application made to it by the Central Government where the Auditor of a company has, whether directly or indirectly acted in a fraudulent manner or abetted or colluded in any fraud etc.
12. Sub-section (4) of Section 169 relating to powers of the NCLT with regard to removal of directors.

in contrast to the erstwhile 5 Benches of the Company Law Board (CLB), setting up of 11 Benches at present at different places to begin with, is definitely going to speed up disposal of company law related disputes/cases and will eventually lessen the burden of the civil courts hitherto before dealing with such disputes.

13. Section 213 relating to NCLT's powers to order investigation into company's affairs in specified cases.
14. Sub-section (2) of section 216 relating to powers of the NCLT where the Central Government appoints one or more inspections to investigate into the affairs of the company in certain specified cases.
15. Section 218 relates to protection of employees during investigation and the NCLT's powers with regard thereto.
16. Section 221 deals with "freezing of assets of company on inquiry and investigation" and Section 222 deals with "imposition of restrictions upon securities". Powers of the NCLT relating to these two sections have also been brought into force now.
17. Sub-section (5) of section 224 relating to "actions to be taken in pursuance of inspector's report" and NCLT's powers where the report states that "fraud" has taken place as specified in the said sub-section.
18. Sections 241, 242 (except clause "b" of sub-section 1; clauses "c" and "g" of sub-section 2); 243, 244 and 245. Section 241 relates to application to the NCLT for relief in cases of oppression etc. Section 242 relates to powers of NCLT with regard to section 241. Section 243 relates to consequences of termination or modification of certain agreements and Tribunal's powers thereto; Section 244 relates to "right to apply under section 241" and the Tribunal's powers to waive-off all or any of the requirements, in certain specified cases, as the Tribunal may decide. Section 245 relates to filing of "Class-action" before the NCLT for appropriate orders.
19. Reference to word "Tribunal" in sub-section (2) of section 399. Section 399 relates to "inspection, production and evidence of documents kept by the Registrar of Companies. This sub-section deals with NCLT's powers with regard to production of any document kept by the ROC.
20. Sections 415 to 433(both inclusive). These broadly relates to operation, functioning of the NCLT and NCLAT and powers to be exercised by the President and Chairperson of NCLT or NCLAT and its Members.
21. Sub-section (1)(a) and (b) of Section 434; sub-section (2) of section 434 relating to transfer of certain pending proceedings from the Board of Company Law Administration (Company Law Board) to NCLT.

22. Section 441 - relating to powers of NCLT of "compounding of certain offences".
23. Section 466 – this relates to "dissolution of Company Law Board and consequential provisions".

In any case, in contrast to the erstwhile 5 Benches of the Company Law Board (CLB), setting up of 11 Benches at present at different places to begin with, is definitely going to speed up disposal of company law related disputes/cases and will eventually lessen the burden of the civil courts hitherto before dealing with such disputes. The Central Government has not, as of date (i.e., up to 27th June, 2016) notified the NCLT Rules, although draft thereof has been uploaded in the websites, which will introduce, inter-alia, a dedicated online portal and will allow electronic filing. It is felt that flexibility in the NCLT Rules for dealing with company law related disputes will go a long way in speedy disposal of cases.

NCLT – ONE-ROOF TRIBUNAL TO DEAL WITH COMPANY LAW PROVISIONS/ DISPUTE RESOLUTION

It would not be out of context to mention here that there was a huge backlog of cases in different Courts with regard to adjudication of company law disputes, which resulted in inordinate delays and hampered speedy disposal of cases. Investors, both in India and from abroad, got scared due to this complex administration of justice in respect of corporate law related disputes and it also created a dent on India's image as a destination for doing business. With a view to examine the existing law relating to insolvency proceedings and winding up of companies, the Central Government constituted the Justice Eradi Committee and the said Eradi Committee suggested many practical and pragmatic changes, including the setting up of a single-window judicial Tribunal to speedily dispose of all corporate litigations, including taking over the functions of the BIFR and its appellate authority AAIFR and also transferring certain jurisdictional functions from the High Courts to the said Judicial Tribunal. Thus, the Companies (Second Amendment) Act, 2002 provided for setting up of a National Company Law Tribunal (NCLT) and its Appellate Tribunal (NCLAT) to replace the existing Company Law Board, BIFR, AAIFR and transfer of jurisdiction exercised by the High Courts to the NCLT and its appellate authority NCLAT.

TRIBUNALISATION OF COMPANY LAW JURISDICTION FROM COURTS TO NCLT

The reforms introduced by the Companies (Second Amendment) Act, 2002 were, however, mired in litigations which led to the filing of a Petition before the Madras High Court by Mr. R. Gandhi, President of the Madras High Court Bar Association. Challenge was laid to the establishment of the NCLT, as well as the NCLAT, on the ground that the Parliament had resorted to "tribunalisation" by taking away the powers from the normal Courts which was essentially a judicial function and this move of the Legislature impinged upon the impartiality, fairness and reasonableness of the decision making, which was the hallmark of judiciary and essentially a judicial function. Argument went to the extent that it amounted to negating the Rule of Law and trampling upon the 'Doctrine of Separation of Powers', which is the basic feature of the Constitution of India. The

Court specifically went into the gamut of all those arguments raised and emphatically rejected the contention that transferring judicial function, traditionally performed by the Courts, to the Tribunals offended the basic structure of the Constitution and held that:

- a) The Legislature can enact a law transferring the jurisdiction exercised by Courts in regard to any specified subject (other than those which are vested in Courts by express provisions of the Constitution) to any Tribunal;
- b) Any Tribunal to which any existing jurisdiction of Courts is transferred should also be a Judicial Tribunal and such Tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the Court, which was till then dealing with such matters and the members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals;
- c) Whenever there is need for Tribunals, there is no presumption that there should be technical members in the Tribunals. When any jurisdiction is shifted from Courts to Tribunals on the ground of pendency and delay in Courts and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only Judicial Members. Only when the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of technical members will be useful and necessary, the Tribunals should have technical members. However, indiscriminate appointment of Technical Members in all Tribunals will dilute and adversely affect the independence of the Judiciary;
- d) The Legislature can re-organise the jurisdictions of Judicial Tribunals. However, prescribing the qualifications/eligibility criteria of such Technical Members will be subject to judicial review and where it adversely affects the independence of judiciary or standards of judiciary, the Court may interfere as a part of the checks and balances measures to maintain the separate of powers and to prevent any encroachment, intentional or unintentional, by either the Legislature or by the Executive.

The Supreme Court thereafter specifically affirmed the decision of the High Court which held that creation of NCLT and NCLAT was not unconstitutional. In *Union of India vs. R. Gandhi* (2010), the Supreme Court looked at the working of tribunals closely. It said that when the existing jurisdiction of a court is transferred to a tribunal, its members should be persons of a rank, capacity and status as nearly as possible equal to the rank, capacity and status of the court which was till then dealing with such matters. It wanted only persons with a judicial background, that is, those who have been or are Judges of the High Court, and lawyers with the prescribed experience, who are eligible for appointment as High Court Judges, to be considered for appointment as judicial members. The judgment underscored the importance of having a good, able and impartial adjudicator, and said that even an officer with a lifetime of experience in administration may not have the above qualities. A member who is drawn from the department may not satisfy the perception of impartiality.

The judgement said that the independence of tribunals must be guarded. The judgment in *R. Gandhi* contains directions to preserve

the independence, and one of them is that “The administrative support for all Tribunals should be from the Ministry of Law & Justice. Neither the Tribunals nor its members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or concerned Department.” The Apex Court held that the said direction remained unheeded. However, with regard to composition of the selection committee and the qualification/experience/ status, etc., of the members of the NCLT which necessitated several amendments to the Companies Act, consequently, the establishment of the two bodies, i.e., the NCLT and NCLAT got delayed.

However, with the passing of the new companies act, i.e., Companies Act, 2013 by the Parliament in 2013, legislations were made keeping in view the amendments required to incorporate provisions with respect to NCLT and NCLAT in the Act of 2013. However, the provisions of the Act, 2013 with respect to NCLT and NCLAT also got challenged in the Supreme Court and a five-judge Constitution Bench of the Supreme Court struck down several provisions of the Act, 2013 with regard to establishment of NCLT and NCLAT in its judgement dated 14th May, 2015. The most compelling factor in the mind of the Court was the gradual erosion of independence of judiciary, which was perceived as a matter of concern, as it pointed out gradual dilution of the standards which were earlier decided by the High Court. *The Court referred to para 112 of its 2010 judgement and held that section 409(3)(a) and (c) of 2013 Act are invalid as these provisions suffer from same vice pointed out in its 2010 judgement. Likewise, section 411(3) as worded, provided for qualifications of technical members is also held to be invalid.*

However, the Supreme Court upheld the law providing for setting up of NCLT and NCLAT and directed the Central Government to set up the same without further delay and directed the Central Government to amend the Act, 2013 to amend the offending provisions, stating, inter-alia, that tinkering with them would evidently have the potential of compromising with the standards which the Court wanted to zealously secure. Provisions of Section 409 of the Act, 2013 with regard to selection of Technical Member of the NCLT was found invalid and the Court said that only the Secretary or the Additional Secretary could be considered for such appointment. Also, with regard to eligibility of Cost Accountant with 15 years' experience was also held to be invalid, as these went against the categorical decision of the 2010 judgement. The Court also held that the mandate of the 2010 judgement with regard to constitution of the Selection Committee was not followed, which needed amendment to the Act, 2015.

SCOPE OF SERVICES FOR THE PRACTISING COMPANY SECRETARIES (PCS)

In so far as the scope of work for the practising CS is concerned, they had been appearing before the erstwhile CLB in respect of shifting of registered office of companies from one State to another; in respect of cases of “oppression and mismanagement”; compounding of offences and condonation of delay in filing of charge documents. Besides, the practising CS had been conducting “secretarial audit” of companies and also helping the company management in various other secretarial functions in compliance with statutory requirements. However, after the coming into force of the Act, 2013, some of the above functions, were transferred from

the setting-up of the NCLT would open up and tremendously increase the scope of opportunities/practice by the Practising Company Secretaries (“PCS”) as the enforcement of the 29 sections of the Act, 2013 which relate to the NCLT would enable the PCS to render services in the applications and appearance before the NCLT in respect of those 29 sections.

CLB to the Regional Directors (“RD”), even though the practising CS had been appearing before the RD for the transferred jurisdictions.

In any case, the setting-up of the NCLT would open up and tremendously increase the scope of opportunities/practice by the Practising Company Secretaries (“PCS”) as the enforcement of the 29 sections of the Act, 2013 which relate to the NCLT would enable the PCS to render services in the applications and appearance before the NCLT in respect of those 29 sections. Besides, as and when the NCLT becomes fully functional and the jurisdictions get shifted from the High Courts and the BIFR to the NCLT, the PCS would be eligible to appear before the NCLT in respect of:

- a) Merger, amalgamation and restructuring of companies; as well as, in respect of winding up of companies, which powers under the Companies Act are now being exercised by various High Courts, which will eventually get transferred to NCLT. Not only appearance before the NCLT, the PCS will also get the opportunity of advising and assisting the corporate sector in respect of preparation of Scheme of Amalgamation/Merger and matters connected therewith. The PCS will also be able to get involved in preparation of winding up petitions and matters incidental thereto, which are now being done by Advocates appearing before the High Courts.
- b) Once fully functional and operational, the NCLT will also deal with matters connected with the timely detection of sick companies; formulation and sanction of schemes for revival and rehabilitation of sick companies – all of which are now being dealt with by the BIFR. The PCS will also be able to render requisite services to the corporate sector in this regard, as the PCS will be eligible appear and argue cases before the NCLT.
- c) Reduction of share capital of companies, which are now being approved by the various High Courts, will get transferred to the NCLT and this area will also open up newer opportunities for the PCS.
- d) The PCS will eventually be able to appear before the NCLAT which will also open up newer avenues to not only present the appeals, but also to argue them in the NCLAT.
- e) Besides, a PCS with requisite number of years of experience in practice will also be entitled to apply and get selected as Specialised Technical Member of NCLT.
- f) These are in addition to appearing before the NCLT in respect

of oppression and mismanagement of companies and refusal of share transfer requests, etc.

- g) The enforcement of Section 245 of the Act, 2015 with regard to “Class Action” litigation or class-action suits in the NCLT by requisite number of deposit holders against the company, its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct of its or their past; against the auditors; or against any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part. In these cases too, the PCS will have enough scope to render expert professional services.

CONCLUSION

The changes brought about for speedier resolution of company law litigations, including winding up of companies by empowering the NCLT will definitely upgrade the ranking of India in “ease in doing business” index and will also open window of opportunities for the practising CS. How the changes unfold in course of time will determine the success of the new regime in the matters of company law litigations. Not only the PCS, but also the other professionals associated with the company law litigations will have to gear themselves up to be ready to accept the changes and render effective professional services to the corporate sector. This newer opportunity cannot be lost sight of.

CS

Appointment

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National Company Law Tribunal – Certain Provisions and Principles relating to Oppression and Mismanagement



Dr. K. S. Ravichandran, FCS

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Coimbatore and Chennai

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By Notification No.SO 1934(E) dated 01st June 2016, the Central Government had brought into force certain provisions of the Companies Act, 2013 [the Act] exercising its powers under sub-section (3) of Section 1 of the Act. Under sub-section (3) of Section 1, the Central Government has the powers to notify different dates for the coming into force of different provisions of the Act. Chapter XVI of the Act comprising of Sections 241 to 245 have been brought into force with effect from 01st June 2016.

In the establishment of National Company Law Tribunal [Tribunal], there has been a sort of completion to the objective legislature sought to achieve in the manner in which issues arising under the Act have been dealt with or adjudicated or disposed of. Enormous powers have been conferred upon NCLT. The Tribunal has powers to enquire into all acts of Oppression and Mismanagement and grant by order any relief to regulate the affairs of a company.

- c) members thereof or by the company;
- c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
- d) restrictions on the transfer or allotment of the shares of the company;
- e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;
- f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):
Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

An important function of the National Company Law Tribunal will be to resolve disputes relating to oppression and mismanagement and going by the past such cases will continue to be substantial. This article accordingly examines the role expected of the new Tribunal .

POWERS OF TRIBUNAL

While exercising powers in relation to applications under Section 241 of the Act, sub-section (1) of Section 242 confers upon the Tribunal sweeping powers to put an end to the matters complained of and make such order as it may think fit. Further sub-section (2) of Section 242 of the Act states that, the Tribunal may, without prejudice to the generality of the powers under sub-section (1), make an order under that sub-section to provide for

- a) the regulation of conduct of affairs of the company in future;
- b) the purchase of shares or interests of any members of the company by other

- g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed to be a fraudulent preference;
- h) removal of the managing director, manager or any of the directors of the company;
- i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund

- or repayment to identifiable victims;
- j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);
- k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;
- l) imposition of costs as may be deemed fit by the Tribunal;
- m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

NOTIFICATION BLUES

Notification No.SO 1934(E) dated 01st June 2016 strangely states that Section 242 of the Act comes into force except clause (b) of sub-section (1) of Section 241. However in view of the fact that clause (b) contains a fundamental principle that but for the alternate remedy provided under Section 241, the affairs of the company must be such that it is just and equitable to wind up the company. While issuing the notification under sub-section (3) of Section 1, the Central Government seems to have been concerned that winding up provisions should not be brought into force in view of the Insolvency and Bankruptcy Code, 2016. Inadvertently clause (b) of sub-section (1) of Section 241 has not been brought into force, may be because the words “wind up” appears in that clause. This is a classic illustration of putting on hold all the provisions where there is a mention of the “winding up”. Actually it is necessary to ensure that whenever petition is filed against acts of oppression and mismanagement, it is necessary to show as stated in clause (b) of sub-section (1) of Section 241 that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up.

Clause (c) of sub-section (2) of Section 242 contains an important provision. It has not been brought into force merely because it contains the words “reduction of capital” which in the ordinary course is a power presently being exercised by the High Court. Section 66 has not been brought into force. Clause (g) of sub-section (2) of Section 242 contains an important provision. It has not been brought into force merely because it contains the words “fraudulent preference”. Fraudulent preference is dealt with by Section 339 and it has not come into force. These things speak volumes about the lack of understanding of the subject at the highest level even while introducing such important provisions.

Similarly Section 246 of the Act which declares applicability of provisions of Sections 337 to 341 of the Act in relation to proceedings before Tribunal against oppression and mismanagement has not been brought into force. Someone must have thought that as provisions of Section 337 to 341 of the Act have not been brought into force, how to bring Section 246 into force. It should be understood that Section 246 is a powerful provision though it appears to be smallest section of Chapter XVI. Without introducing the same, for instance, surcharge proceedings cannot be initiated requiring wrongdoers to make good the loss occasioned by them to the company.

ELIGIBILITY NORMS AND POWERS TO WAIVE

The only limitation in the jurisdiction of the Tribunal seems to come from the stipulation contained in Section 244 of the Act. Section 244 states that only if members making the petition against acts of

oppression meet the stipulation regarding eligibility, it is possible to invoke the jurisdiction of the Tribunal. The position was same under the Companies Act, 1956 also. Section 399 of the Companies Act, 1956 had prescribed the same stipulation. In *Econo Valves Private Limited v. V L Sridharan*, [2010] 156 Comp. Cas. 355 (CLB), (argued by the author of this article for the respondents) the Company Law Board dismissed a petition under Sections 397 and 398 of the Companies Act, 1956 on the ground that the petitioner Mr.Sridharan did not meet the eligibility condition stipulated under Section 399 of the said Act. It would be fatal to move the Company Law Board without being eligible to invoke its jurisdiction. In that case, all the shares held by the Petitioner were found to have been transferred and the share transfer was approved by a board meeting which was chaired by none other than the petitioner. The Petitioner preferred an appeal against the above decision. In *V.L. Sridharan and Anr. v Econo Valves P. Ltd. and Ors.* [2010] 158 Comp. Cas. 505 (Mad), the Madras High Court held that the findings of the Company Law Board in the impugned order cannot be either treated as perverse or against the law or that the Company Law Board considered irrelevant materials so as to enable this Court to interfere with the same under Section 10F of the Companies Act on the basis of any question of law and the High Court further held that the appeals fail and the same are dismissed accordingly. However it may not be a cakewalk in all cases as was the case in *Econo Valves* case. It was a case where the Petitioner did not originally seek an order for rectification of register of members. Realizing that that Section 399 is against the Petitioner, there was an attempt to amend the company petition to incorporate a prayer for rectifying the register of members. However he could not succeed. Much would depend upon the facts and circumstances obtained in each case. In certain other cases, it could be so that there are serious irregularities in the management of the affairs of a company. However the number of members who have joined together is not sufficient to meet the qualification stipulated in the Act. Under Section 399 of the Companies Act, 1956, there was a power to Central Government to authorise any member or members who may not be meeting the eligibility conditions prescribed under Section 399 to apply to Company Law Board if the Central Government finds, in its opinion that circumstances exist which make it just and equitable so to do. While authorising so, by virtue of sub-section (5) of Section 399 of the Companies Act, 1956, the Central Government has powers to require such member or members to give security for such amount as the Central Government may deem reasonable, for the payment of any costs which the Company Law Board dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.

In this requirement relating to getting authorized by Central Government, a substantial change has been brought about by the Act. Sub-section (1) of Section 244 of the Act sets the eligibility norms in order to be entitled to apply to Tribunal under Section 241 of the Act against acts of oppression. It says that (a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares; and (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members. The most important provision is contained in the proviso under sub-section (1). The proviso says that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under Section 241. Unlike the Companies Act, 1956, there is no need to get authorization

Unlike the Companies Act, 1956, there is no need to get authorization from Central Government in case any member or members who do not meet the eligibility norms as stipulated under Section 244 would like to invoke the jurisdiction of the Tribunal to complain against acts of oppression and mismanagement in the affairs of their company. Thus when there are oppressive acts and mismanagement of the affairs of a company, members need not remain silent merely because they do not meet the eligibility norms stipulated under Section 244 of the Act.

from Central Government in case any member or members who do not meet the eligibility norms as stipulated under Section 244 would like to invoke the jurisdiction of the Tribunal to complain against acts of oppression and mismanagement in the affairs of their company. Thus when there are oppressive acts and mismanagement of the affairs of a company, members need not remain silent merely because they do not meet the eligibility norms stipulated under Section 244 of the Act.

JURISDICTION OF CIVIL COURT OUSTED

This provision must be read in conjunction with Section 430 of the Act. Section 430 of the Act says that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

Such a provision was not there under the Companies Act, 1956. In *Spectrum Technologies USA Inc. v Spectrum Power Generation Company Ltd.* [2002] CLC 539; [2002] 49 CLA 424, one of the contentions of the defendants against the maintainability of the suit was that wherever there are allegations of mismanagement and operational fraud, remedy lies with the Company Law Board as aforesaid provisions exclude the jurisdiction of the Civil Court. The defendants contended that the plaintiff holds less than 2% of the issued and paid up equity share capital of the company and is, therefore, debarred to take any action under these provisions.

The Defendants contended that the leave of the Court under Order 1 Rule 8 CPC has to be obtained by the individual on behalf of the other shareholders of the Company and the allegations have to fulfill the condition that he is bringing the action bonafide and for the benefit of the Company and if the action is brought for an ulterior purpose or if another adequate remedy is available, the court will not allow the derivative action to proceed. However the High Court rejected this contention.

In *ITI Ltd. v. Siemens Public Communications Network Ltd.* [2002] 5 SCC 510 : AIR 2002 SC 2308 : [2002] 2 CTC 620, a two judge Bench of the Supreme Court has clearly held that the jurisdiction of the civil court to which a right to decide a *lis* between the parties has been conferred can only be taken away by a statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the civil court has the jurisdiction to decide all questions of civil nature therefore, if at all there has been an inference the same should be in favour of the jurisdiction of the court rather than the exclusion of such jurisdiction and there being no such exclusion of the Code in specific terms except to the extent stated in Section 37(2) of the Act an inference that merely because the Act has not provided the Civil Procedure Code to be applicable, the Code is inapplicable cannot be drawn.

However in view of the emphatic declaration contained in Section 430 of the Act, read in conjunction with the enabling proviso under sub-section (1) of Section 244 of the Act, it is clear that the jurisdiction of the civil court has been specifically ousted under Section 430 in relation to matters such as those relating to acts of oppression and mismanagement and other such wrongs that fall within Section 241 of the Act, and therefore action must necessarily be initiated only in the Tribunal.

DERIVATIVE ACTION

In fact, where the wrongdoers themselves control the company, members who may constitute a minority and who may not even meet the eligible norms if aggrieved due to such grounds can bring an action on behalf of the Company in their capacity as the representatives of the company so as to obtain relief against acts of oppression and mismanagement. Most of these cases are arising due to the fact that it is not that an outsider does something which is against the interests of the company. Mostly it is the managing director or promoter or directors who are insiders who indulge in grossly unfair acts or acts of oppression or mismanagement.

ALLEGATIONS MUST BE SUBSTANTIAL

It must be understood that at the drop of hat members cannot approach the Tribunal to seek remedy. Merely because some members find certain acts are unfair acts, such acts cannot be termed as oppressive acts.

In *S. Arunachalam and Others v. Sugavaneswara Spinning Mills P. Ltd. and Others* [2011] 166 Comp. Cas. 138 (CLB); MANU/CL/0057/2011, (argued by the author of this article for the respondents) Company Law Board held that this is a case where the majority has been harassed by the petitioners. The petitioners have approached this Bench with unclean hands. The respondents were justified in removing the first petitioner from directorship of the company. None of the reliefs sought for in the company petition are allowable and the company petition is nothing but an abuse of the process of the court.

However if there is any oppressive or grossly unfair or unconscionable act, a shareholder even with just 100 shares could also fight and get relief. When a member is entitled to present a petition under Section 241 and seek any of the reliefs under Section 242 (Tribunal is not powerless to mould a relief in view of the general powers under sub-section (1) of Section 242 read with clause (m) of sub-section (2) of Section 242), duly satisfying the norms prescribed (or waived) under Section 244, the fact that he might be holding only one share or very small quantity of shares

as compared to the remaining shares in the company is inconsequential to the right to invoking the powerful jurisdiction of the Tribunal. Where there is mischief, there is a right and there is a remedy.

It would be interesting to note that in *N.R. Harikumar v W.W. Apparels (India) P. Ltd.* and Ors. [2016] 196 Comp. Cas. 29 (CLB), (argued by the author of this article for the petitioners) it was a case where the petitioner was a member holding just 100 shares and all the remaining shares in the Indian company was held by a UK company. The UK company went into receivership. It was their case that the administrative receivers had sold for just 1 GBP all the shares held by the UK Company in the Indian company. This was wholly unconscionable as the price of 1 GBP is nothing but the value of the Indian operations. Further the administrative receivers had disregarded the right enshrined in the articles of the Indian company that said there is a pre-emptive right when a member desires to transfer his shares. Though the Company Law Board had agreed with the contention of the petitioner that in view of *situs* of shares being in India, the Company Law Board has jurisdiction, it dismissed the petition.

In this case, the Company Law Board had, *inter alia*, held that “*this is not a case where oppression or mismanagement had been prima facie established. It is also not prima facie shown that just and equitable grounds for winding up of the company exist*”.

However in an appeal preferred by the Petitioner, the Madras High Court, [2016] 196 Comp. Cas. 11 (Mad) found strong reason and justification in the arguments that Petitioner had made before the Company Law Board and held that “*it is true, that in order to maintain a petition under Sections 397 and 398 of the Companies Act, the acts of oppression complained of, should be a series of acts continuing upto the date of filing of the petition. But it does not mean that when the entire holding of a company incorporated in England, in the shares of a company incorporated in India is sold outside India for a consideration of one GBP, shocking the conscious of any court, the same can be rejected as an isolated instance not warranting an action under Sections 397 and 398 of the Companies Act*”.

RELEVANT PRINCIPLES AND PROPOSITIONS

In *Srikanta Datta Narasimharaja Wadiyar v. Sri Venkateswara Real Estate Enterprises (Pvt.) Ltd. and others*, [1991] 72 Comp. Cas. 211(Kar), it was held as follows:

“It is well-settled that the relief under sections 397 and 398 of the Act is an equitable relief which is entirely left to the discretion of the company court. In the 5th edition of Pennington's Company Law, dealing with relief from acts of oppression, it is stated (at page 750):

“A petition for relief from oppression under the original statutory provision would be dismissed if it was not presented in good faith solely in order to obtain such relief, and because of the equitable and therefore discretionary character of the court's jurisdiction under both the original and the present provision, the requirement of good faith on the part of the petitioner undoubtedly continues. Thus, even if the directors or majority shareholders have been guilty of improper or irregular conduct, so that there is a prima facie case for relief, it will be refused if the real purpose of the petitioner is to obtain payment of a debt owed by the company, or to force the directors to accept his views as to the way in which the company's business should be managed; or if the petitioner has submitted to the conduct complained of without protest and has acquiesced in the improper management of the company affairs. Likewise, delay by the petitioner in initiating proceedings after he must

have realised that he was the victim of a scheme of oppression or unfair treatment will induce the court to refuse relief, because this indicates that the petitioner has acquiesced in the respondents' conduct and that his complaint is, therefore, not made in good faith.”

It was further observed by the Karnataka High Court that “*in English law, there is no provision which is similar or comparable to section 398 of the Act. But section 397 of the Act is present in the English Act in a slightly different form. In the 1985 Act, the word "oppression" is substituted by the words "unfairly prejudicial". The principles applicable for granting relief against oppression under the English Act are equally applicable to Indian conditions since it is well settled that the company court constituted under the Act is also conferred with equity jurisdiction and, therefore, the principles applicable for granting reliefs against oppression under section 397 would be applicable to the grant of relief under section 398. But, it should also be noted that the court's power to exercise jurisdiction under section 397 or, for that matter, under section 398 cannot be defeated by mere technicalities, as observed by the Supreme Court in Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. [1981] 51 Comp. Cas. 743 (SC); AIR 1981 SC 1298; MANU/SC/0050/1981 : [1981]3SCR698*”.

Much before the decision in the above case, setting the tone for various other decisions, the Supreme Court in *Shanti Prasad Jain v. Kalinga Tubes Limited*, [1965] 35 Comp. Cas. 351 (SC), held that “it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of Section 397, It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to Section 397”.

In *Killick Nixon Limited v. Bank of India* [1985] 57 Comp. Cas. 831, a Division Bench of the Bombay High Court observed that under Sections 397 and 398 of the Act any personal grievance of a member himself is not contemplated. The cause of action under Section 397 is the conduct of the affairs of a company in a manner prejudicial to public interest or in a manner oppressive to any member or members of the company.

The Kerala High Court, in *Palghat Exports Private Limited and another v. TV Chandran and another* [1994] 79 Comp. Cas. 213 (Ker), following the proposition laid down in *Bellador Silk Ltd.*, In re [1965] 1 All ER 667 stated that “*a petition which is launched not with the genuine object of obtaining the relief claimed, but with the object of exerting pressure in order to achieve a collateral purpose is, in my judgment, an abuse of the process of the court*” dismissed the company petition.

In *H. R. Harmer Ltd.*'s case [1958] 3 All ER 689; [1959] 29 Comp. Cas. 305 (CA) it was held as follows:

“The result of applications under section 210 in different cases must depend on the particular facts of each case, the circumstances in which

oppression may arise being so infinitely various that it is impossible to define them with precision. The circumstances must be such as to warrant the inference that 'there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy'. The phrase 'oppressive to some part of the members' suggests that the conduct complained of 'should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely But, apart from this, the question of absence of mutual confidence *per se* between partners, or between two sets of shareholders, however relevant to a winding up, seems to me to have no direct relevance to the remedy granted by section 210. It is oppression of some part of the shareholders by the manner in which the affairs of the company are being conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not ... come within section 210. It is not lack of confidence between shareholders *per se* that brings section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of lack of company's affairs and oppression involves at least an element of lack of probity or fair dealing to a member in the matter of his proprietary right as a shareholder."

In *V S Krishnan and others v. Westfort Hi-tech Hospital Limited and Others*, [2008] 142 Comp. Cas. 235 (SC), the Supreme Court held that a most basic principle of Section 397, is, that mere unfairness does not constitute oppression. In this case, the Supreme Court had held that it is clear that oppression would be made out in the following situations:

- (a) Where the conduct is harsh, burdensome and wrong.
- (b) Where the conduct is *mala fide* and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders *vis-à-vis* the others.
- (c) The action is against probity and good conduct.
- (d) The oppressive act complained of may be *fully permissible under law but may yet be oppressive* and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is *mala fide* or for a collateral purpose, it would amount to oppression under Sections 397 and 398.
- (e) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide.
- (f) As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact.

JURISDICTION UNDER CHAPTER XVI IS ALTERNATIVE TO WINDING UP

The reliefs the Tribunal may grant under this jurisdiction are in the nature of an alternate remedy to winding up of the company. Winding up of the company is an extreme step. In applications under Section 241, it is fundamental to show that the facts and circumstances and the manner in which affairs of the company are being managed are

such that it is just and equitable to wind up the company. However a winding up of the company would unfairly prejudice the interests of the very complaining members. Clause (b) of sub-section (1) of Section 242 of the Act precisely states the same.


In order to meet this provision, it is usual to add a paragraph in the petition itself as part of the pleadings stating that though facts of the case as narrated above would justify that it is just and equitable to wind up the Company, Petitioners submit that to wind up the Company would unfairly prejudice the members.

However it must be remembered that it is not expected of the members complaining acts of oppression and mismanagement demanding the winding up of the company as one of the reliefs. In fact, a careful reading of the provision would clearly show that the jurisdiction and powers of the Tribunal in granting relief under Section 242 when Section 241 has been properly invoked is declared by the statute to be the alternative remedy to winding up as winding up would unfairly prejudice the interests of the petitioning member or members.

In *Eastern Linkers Pvt. Ltd. v. Dina Nath Sodhi*, [1982] 55 Comp. Cas. 462 (Del); MANU/DE/0006/1982, one of the contentions of the respondents was that the petitioning members have failed to seek winding up as a relief in their earlier petition under Section 397 of the Companies Act, 1956 and therefore in their present petition they are debarred from praying for the winding up of the company. This situation may very well arise under the Act too in as much as the Tribunal has jurisdiction and powers to order the winding up of companies. However there is nothing under the Act in Chapter XVI to suggest that while exercising powers to provide relief against acts of oppression and mismanagement, the Tribunal would order the winding up of a company. In fact, Section 271 clearly suggests that the Tribunal may order the winding up of a company if it is satisfied that the circumstances specified in that section exist. In fact, if a person applies mind a little deeper, it will be possible to understand that to ask for winding up of the company would by itself show that no other relief is necessary as winding up would put an end not only to the acts of oppression and mismanagement but also to the very existence of the company. In the case of *Eastern Linkers*, the Delhi High Court held that the "the relief that could be granted under section 397 and that which could be granted under section 433 are different. The proceedings are distinct and separate, and one does not depend upon the other even though the ground urged for winding up may be that it is just and equitable, which is no doubt a ground which should be established to sustain the petition under section 397 also.

The Delhi High Court further said that "*it is not necessary that every time a petitioner moves an application under section 397/398, he must also ask for the relief of winding up. It is possible and indeed in many cases it is not only desirable but is also not in the interest of the petitioner and other members that the relief of winding up may be asked because it may be out of proportion to the relief that may satisfy the petitioner and give him full justice*".

CONCLUSION

This is a vast subject and it is not the only subject in relation to which Tribunal has been empowered. In short, it can be said that this subject itself is an ocean and there are other subjects too. When dealing with these subjects, it is of no use to be jack of all trades; and master of none. One must learn to do scuba diving to understand/explore the depths. 

Role of the NCLT under the Insolvency and Bankruptcy Code, 2016



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INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (the Code) has been passed by both Houses of Parliament and has also received the Assent of President of India. The objectives sought to be achieved by this legislation are to (i) ensure the reorganization and insolvency resolution in time bound manner for maximization of value of assets of persons under insolvency; (ii) promote entrepreneurship; (iii) improve credit availability; and (iv) balance interest of all stakeholders. The Code is also expected to promote ease of doing business. The Code provides uniform framework for reorganization and insolvency resolution of corporate persons, partnership firms and individuals.

Recovery Tribunal (the DRT) constituted under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 as adjudicating authority for the purpose of insolvency resolution and bankruptcy of partnership firms and individuals.

The Underlying principle of the Code is to minimize the role of the adjudicating authority to avoid undue burden on the judiciary while simultaneously ensuring the fairness and efficiency of insolvency resolution and liquidation. Code outlines a scheme of “Professionally and Commercially Driven Resolution and Insolvency Process” as against the “Court Driven Resolution and Insolvency Process”. Broadly, the role and power of

Applications for initiating insolvency resolution process or liquidation of corporate debtor shall be filed before the NCLT having jurisdiction over the place where registered office of the corporate entity is situated. Similarly, voluntary liquidation application shall be filed before the NCLT having jurisdiction over the place where the registered office of the corporate entity is situated.

The Code provides for detailed institutional framework consisting of insolvency professionals, insolvency professional agencies, information utilities, board and adjudicating authority.

NCLT AS ADJUDICATING AUTHORITY

Section 5(1) of the Code recognizes National Company Law Tribunal (the NCLT) constituted under section 408 of the Companies Act, 2013 as the adjudicating authority for the purpose of insolvency resolution and liquidation for corporate persons; and Clause (1) of section 79 of the Code recognizes Debt

the NCLT under the Insolvency Code are:

- (i) to exercise supervisory powers over the process of resolution and insolvency.
- (ii) to ensure adherence to process and compliance with applicable laws.
- (iii) to adjudicate on fraud; and
- (iv) penalize fraudulent or malicious applicants.

JURISDICTION OF THE NCLT

As per sub-section (1) of section 60 the *situs* of the registered office of the corporate entity is the deciding criteria of jurisdiction for insolvency resolution and liquidation of corporate persons, corporate debtors and personal guarantors thereof.

Application for initiating insolvency resolution process or liquidation of corporate debtor shall be filed before the NCLT having jurisdiction over the place where registered office of the corporate entity is situated. Similarly, voluntary liquidation application of corporate person shall be filed before the NCLT having jurisdiction over the place where registered office of the corporate entity is situated.

Though, as per Clause (1) of section 79 the DRT is recognized as adjudicating authority for partnership firms and individuals, as per sub-section (2) of section 60 where an individual is personal guarantor of a corporate debtor and a corporate insolvency resolution process or liquidation proceedings of such corporate debtor is pending before the NCLT, an application relating to the insolvency resolution or bankruptcy of personal guarantor of such corporate debtor shall also be filed before such NCLT. Sub-section (3) of section 60 further provides that bankruptcy or insolvency cases of personal guarantor of corporate debtor pending before any court or tribunal shall stand transferred to the NCLT dealing with insolvency resolution process or liquidation of the corporate debtor. As per sub-section (4) of section 60, in dealing with the application relating to the insolvency resolution or bankruptcy of personal guarantor of corporate debtor the NCLT shall be vested with the powers of DRT dealing with the insolvency resolution or bankruptcy of individual under Part III of the Code.

ADMISSION OF IRP APPLICATION

The Code envisages two stages for insolvency resolution and liquidation of corporate persons. The first stage is insolvency resolution process (the IRP), during which an attempt is made to assess the viability of business operation of corporate debtor and plans (the resolution plan) are drawn and approved for its revival. Failure of IRP leads to initiation of second stage i.e. liquidation. As per section 6 an IRP can be initiated either by financial creditor (a person to whom financial debt is owned) or operational creditor (a person to whom operational debt is owned) or corporate debtor itself.

APPLICATION BY FINANCIAL CREDITOR

The Financial creditor either by itself or jointly with other financial creditors may file an application under section 7 of the Code before the adjudicating authority for initiating IRP. As per sub-section (3) of section 7 the application complete in all respect must be accompanied by:

- (i) record of default recorded with information utility;
- (ii) name of insolvency professional proposed to act as interim resolution professional; and
- (iii) any other information as may be specified by the Board.

As per sub-section (4) of section 7 the adjudicating authority shall, within fourteen days of filing of application, ascertain existence of default from record of information utility or other evidence. And as per sub-section 5 of said section 7, where the adjudicating authority is satisfied that:

- (i) default has occurred;
 - (ii) application is complete in all respect; and
 - (iii) no disciplinary proceedings are pending against the proposed interim resolution professional
- it may, by order admit such application.

But, where the adjudicating authority is satisfied that:

- (i) no default has occurred; or
- (ii) application is incomplete; or
- (iii) any disciplinary proceedings are pending against the proposed interim resolution professional

it may, by order, reject the application.

The adjudicating authority shall, before rejecting an application, give notice to the applicant to rectify the default in his application within seven days of receipt of such notice from the adjudicating authority. As per sub-section (7) of section 7 the adjudicating authority shall, within seven days of the acceptance or rejection of the application as the case may be, communicate –

- (a) the order accepting application to the financial creditor and the corporate debtor;
- (b) the order rejecting the application to the financial creditor.

APPLICATION BY OPERATIONAL CREDITOR

As per section 8, on occurrence of default in payment to operational creditor, the operational creditor is required to give demand notice to the corporate. The corporate shall within ten days of receipt of demand notice either make payment or raise issue of existence of dispute in regard to payment under demand. As per section 9, if after expiry of ten days of demand notice the operational creditor neither receives payment nor notice of dispute, the operational creditor may file an application for IRP before the adjudicating authority. As per sub-section (2) of section 9 the application must *inter alia* be accompanied by:

- (i) Copy of the invoice demanding payment or demand notice delivered by operational creditor to corporate debtor;
 - (ii) An affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid debt;
 - (iii) a copy of the certificate from financial institution maintaining accounts of operational creditor that there is no payment of unpaid operational debt by the corporate debtor; and
 - (iv) such other information as may be specified.
- Sub-section (4) of section 9 provides that the operational creditor may also propose name of insolvency professional to act as interim resolution professional.

As per sub-section (5) of section 9, where the adjudicating authority is satisfied that:

- (i) application is complete;
- (ii) there is no repayment of unpaid operational debt;
- (iii) Invoice or notice for payment to corporate debtor has been delivered by the operational creditor;
- (iv) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
- (v) there is no disciplinary proceeding pending against the proposed interim resolution professional,

it shall, within fourteen days of receipt of application, by order admit such application and communicate the decision to operational creditor and corporate debtor. But, where one or more of the conditions mentioned above are not satisfied, the adjudicating authority, shall, within fourteen days of receipt of application, by order reject the application and communicate the decision

to operational creditor and corporate debtor. Provided that the adjudicating authority shall before rejecting application give notice to the applicant to rectify the default in his application within seven days of receipt of such notice from the adjudicating authority.

APPLICATION BY CORPORATE DEBTOR

Section 10 of the Code provides for application by corporate debtor who has committed default in repayment. Section 10 mandates that corporate applicant along with application shall furnish the information relating to:

- (i) its books of accounts and such other documents related to such period as may be prescribed; and
- (ii) the resolution professional proposed to be appointed as an interim resolution professional.

Sub-section (4) of section 10 provides that the adjudicating authority shall, within a period of fourteen days of receipt of application, by an order – (i) admit the application, if it is complete; or (ii) reject the application, if it is incomplete. Provided that the adjudicating authority shall, before rejecting application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of notice from the adjudicating authority.

MORATORIUM AND PUBLIC ANNOUNCEMENT

One of the elements of design used in the Code is creation of “calm period” for creditors and debtors to negotiate the viability of the entity. Thus, where an application for initiating IRP has been accepted by the adjudicating authority under section 7 or section 9 or section 10, as the case may be, a duty is cast on the adjudicating authority under section 13 to:

- (i) declare moratorium;
- (ii) cause public announcement of the initiation of corporate insolvency resolution process; and
- (iii) appoint an interim resolution professional.

MORATORIUM

As per sub-section (1) of section 14 an order declaring moratorium passed by the adjudicating authority *inter alia* prohibits:

- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor;
- (ii) transferring or alienating assets by the corporate debtor;
- (iii) foreclosure and recovery action etc. under SARFAESI Act, 2002, and
- (iv) recovery of any property by owner and lessor where such property is occupied by the corporate debtor.

Further, as per sub-section (2) of section 14 supplies of essential goods and services to the corporate debtor cannot be terminated or suspended during moratorium period. Thus, order of moratorium ensures that no additional stress is created on the assets of the corporate under IRP.

PUBLIC ANNOUNCEMENT

With a view to afford opportunity to the creditors to submit their claims to be considered during IRP a public announcement is made.

As per sub-section (1) of section 15 the public announcement should contain the information about:

- (i) the name and address of the corporate debtor under IRP;
- (ii) the name of authority with which corporate debtor is incorporated or registered;
- (iii) last date of submission of claims;
- (iv) details of interim resolution professional;
- (v) penalties for false and misleading claims; and
- (vi) the date of closure of IRP.

POWER TO APPOINT RESOLUTION PROFESSIONAL

Interim Resolution Professional

As per section 16 an insolvency professional is required to be appointed as interim resolution professional within fourteen days of commencement of IRP. For financial creditor or corporate debtor initiating the IRP it is mandatory to propose name of insolvency professional as interim resolution professional along with application under section 7 or section 10, as the case may be. The adjudicating authority shall appoint proposed insolvency professional as interim resolution professional. In case of application for IRP is initiated by operational creditor under section 9, it is optional for operational creditor to propose name of insolvency professional as interim resolution professional; where name of insolvency professional has been proposed by operational creditor he will be appointed as interim resolution professional by the adjudicating authority and where no such name has been proposed by the operational creditor the adjudicating authority will make reference to the Board for recommendation of insolvency professional who can act as interim resolution professional.

Every appointment of proposed insolvency professional as interim resolution professional is subject to the condition that no disciplinary proceedings are pending against proposed insolvency professional. The Board is required to confirm to the adjudicating authority that no disciplinary proceedings are pending against the proposed insolvency professional proposed to be appointed as interim resolution professional. Appointment of interim resolution professional is made for a term not exceeding thirty days.

RESOLUTION PROFESSIONAL

Section 22 provides that the committee of creditors in its first meeting is required to resolve either to appoint the interim resolution professional as resolution professional or replace interim resolution professional by another resolution professional. Continuation of interim resolution professional as resolution professional need to be communicated to the adjudicating authority and an application under sub-section (3) of section 22 need to be filed before the adjudicating authority for replacing the interim resolution professional.

In case of replacement of interim resolution professional the adjudicating authority will refer name of proposed resolution professional to the Board for confirmation. Board is required to confirm the name within ten days, in case Board does not confirm the name within ten days, the adjudicating authority shall, by order, direct that interim resolution professional shall function as resolution professional till confirmation of proposed name by the Board.

Every appointment of proposed insolvency professional as interim resolution professional is subject to the condition that no disciplinary proceedings are pending against proposed insolvency professional. The Board is required to confirm to the adjudicating authority that no disciplinary proceedings are pending against the proposed insolvency professional proposed to be appointed as interim resolution professional. Appointment of interim resolution professional is made for a term not exceeding thirty days.

REPLACEMENT OF RESOLUTION PROFESSIONAL

Sub-section (1) of section 27 empowers the committee of creditors to replace the resolution professional any time during the pendency of IRP. Sub-section (2) of section 27 provides that the committee of creditors may, at a meeting, resolve to replace resolution professional and forward name of another insolvency professional to the adjudicating authority. The adjudicating authority shall forward name of proposed resolution professional to the Board for confirmation and, on confirmation being received from the Board, appoint him as resolution professional.

POWER TO ISSUE DIRECTIONS TO CORPORATE

Under sub-section (1) of section 19 a duty is cast upon personnel of the corporate debtors, its promoters and other persons associated with it to extend all assistance and cooperation to interim resolution professional. If they do not assist or cooperate with interim resolution professional, he may, under sub-section (2) of section 19, make an application to the adjudicating authority for necessary directions. The adjudicating authority, on receiving an application shall, by order, direct personnel of the corporate debtors, its promoters and other persons associated with it to comply with the instruction of the interim resolution professional and cooperate with him.

POWER TO EXTEND TIME LIMIT

One of the objectives sought to be achieved by the Code is to resolve insolvency in time bound manner. To achieve this section 12 has set default maximum time of one hundred eighty days for completing insolvency resolution process in normal case; and section 56 has set default maximum time of ninety days in fast tracked insolvency resolution process. The resolution professional,

if instructed by committee of creditors, is required to file application before the adjudicating authority for extension of time beyond one hundred eighty days, or ninety days, as the case may be. The adjudicating authority may, on being satisfied that subject matter of the case is such that it cannot be completed within default maximum time, by order, grant one time extension beyond prescribed default maximum time. One time extension in case of normal process cannot exceed ninety days and in case of fast tracked process cannot exceed forty five days. The adjudicating authority, in both cases, is empowered to grant extension of time only once.

APPROVAL OF RESOLUTION PLAN

Sub-section (1) section 31 provides that if the adjudicating authority is satisfied that resolution plan approved by committee of creditors under sub-section (4) of section 30 meets requirement of sub-section (2) of section 30, it shall, by order, approve the resolution plan. An approved resolution plan is binding on debtors and its employees, members, creditors, guarantors and other stakeholders in the resolution plan. Where the adjudicating authority is satisfied that resolution plan approved by committee of creditors under sub-section (4) of section 30 does not meet the requirement of sub-section (2) of section 30, it may, by order, reject the resolution plan.

POWER TO INITIATE LIQUIDATION PROCESS

Section 33 of the Code contemplates following situations for start of liquidation process:

- (i) When the adjudicating authority does not receive resolution plan before expiry of insolvency resolution process period or maximum time permitted for corporate insolvency resolution process under section 12 or section 56, as the case may be;
- (ii) When the adjudicating authority rejects resolution plan for non-compliance of specified requirements;
- (iii) When committee of creditors during the corporate insolvency process but before confirmation of resolution plan, resolves to liquidate the corporate debtor and through resolution professional intimates the adjudicating authority about such decision; and
- (iv) When the adjudicating authority, on an application being received, determines that corporate debtor has contravened the approved resolution plan.

If the situation for initiating liquidation arises, the adjudicating authority shall-

- (i) Pass an order requiring the corporate debtor to be liquidated;
- (i) Issue public announcement stating that corporate debtor is in liquidation; and
- (iii) Require such order to be sent to the authority with which corporate debtor is registered.

POWER TO APPOINT LIQUIDATOR

Usually an insolvency professional appointed to act as insolvency resolution professional acts as liquidator; sub-section (4) of section 34 provides for following circumstances when the Adjudicating Authority, by order, shall replace the resolution professional:

- (i) when resolution plan submitted by the resolution professional

under section 30 was rejected for failure to meet requirement of sub-section (2) of section 30; or

- (ii) when the Board recommends the replacement of resolution professional to the adjudicating authority for reason to be recorded in writing.

For the purpose of (i) above the adjudicating authority may direct the Board to propose name of insolvency professional to be appointed as liquidator and the Board shall propose name within days of receipt of direction. The adjudicating authority shall, on receipt of proposal from the Board, by an order appoint such insolvency professional as liquidator.

DISSOLUTION ORDER

Sub-section (1) of section 54 mandates that when the business operations of the corporate person have been completely wound up and its assets have been completely liquidated, the liquidator shall make an application to the adjudicating authority for dissolution of corporate person. On such application being filed, the adjudicating authority shall order that corporate person shall be dissolved from the date of the order. As per sub-section (2) of section 54 the order of the adjudicating authority has effect of dissolving the corporate person from the date of order. Order of dissolution is required to be forwarded within seven days (fourteen days in case of voluntary liquidation) from the date of order to the authority with which the corporate debtor (corporate in case of voluntary liquidation) is registered.

AVOIDANCE OF PREFERENTIAL TRANSACTIONS

Section 43 requires that when liquidator or resolution professional, as the case be, is of the opinion that a corporate debtor during the period specified under the Code has transferred any property or an interest thereof of the debtor to specified persons on account of antecedent debt or liability in a manner putting specified person in a beneficial position than it would have been in the event of a distribution of assets in liquidation (preferential transaction), he shall apply to the adjudicating authority for avoidance of such transactions.

Section 44 mandates that when an application for avoidance of preferential transaction is made, the adjudicating authority may, *inter alia* by an order.

- (i) Require that property transferred be vested in the corporate debtor.
- (ii) Release or discharge security interest created by the corporate debtor.
- (iii) Require payment by any person of sum in respect of benefit received by him from such transaction.
- (iv) Restore the position of guarantor whose debts were released or discharged.
- (v) Direct providing security or charge on any property for discharge of any debt under order.

As per sub-section (4) of section 43 the period specified in respect of preferential transactions with related parties is two years preceding the insolvency commencement date and one year preceding the insolvency commencement date in other

transactions.

AVOIDANCE OF UNDERVALUED TRANSACTIONS

Section 45 read with section 47 provides that when a corporate debtor, except in the course of ordinary business, makes a gift or transfers one or more assets for insignificant consideration (the undervalued transaction), the resolution professional or liquidator, as the case may be, shall, or failing them a creditor, member or partner of corporate debtor, as the case may be, may make an application to the adjudicating authority to declare such transaction void and to reverse their effect.

Section 47 provides that the adjudicating authority, on being satisfied about undervalued transaction and failure of the resolution professional or liquidator to file application, shall pass order (i) for restoring the position as it existed before transaction and reversing the effect thereof; and (ii) requiring the Board to initiate disciplinary proceedings against the resolution professional or the liquidator, as the case may be.

Section 48 deals with the kind of order that may be passed for reversing effect of undervalued transactions, accordingly, order of the adjudicating authority may provide for the following:

- (i) Require any property transferred as part of the transactions, to be vested in the corporate debtor.
- (ii) Release or discharge any security interest granted by the corporate debtor.
- (iii) Require the payment of such consideration for the transaction as may be determined by the independent expert.
- (iv) Require beneficiary to pay such sum, to the liquidator or the resolution professional as the case may be, as the adjudicating authority may direct.

AVOIDANCE OF EXTORTIONATE CREDIT TRANSACTIONS

The term 'extortionate transaction' means a transaction wherein one party was made to pay unfairly high rate of interest or subjected to unfair credit term. Section 50 contains provisions for avoidance of extortionate transactions related to financial or operational debt during the period within two years preceding insolvency commencement date. The application for avoidance of extortionate credit transaction may be made by the resolution professional or the liquidator, as the case may be, to the adjudicating authority.

The adjudicating authority on examining the application and being satisfied that terms of the credit transactions required exorbitant payment to be made by debtor, it shall, by order (i) restore the position as it existed before the transaction; (ii) set aside whole or part of debt created; (iii) modify terms of the transaction; (iv) require any person, who was party to transaction, to repay any amount received by such person; or (v) require to relinquish the security interest that was created as part of extortionate transaction.

POWER IN CASE OF MALICIOUS AND FRAUDULENT PROCEEDINGS

Section 50 contains provisions for avoidance of extortionate transactions related to financial or operational debt during the period within two years preceding insolvency commencement date. The application for avoidance of extortionate credit transaction may be made by the resolution professional or the liquidator, as the case may be, to the adjudicating authority.

The adjudicating authority has been empowered under section 65 to deal with cases of fraudulent and malicious initiation of proceedings to ensure proceedings are brought only for the purpose of resolution of insolvency, or liquidation, as the case may be and not for malicious or fraudulent purpose. Where any person initiates fraudulent or malicious liquidation proceeding or insolvency resolution process the adjudicating authority may impose upon such person a penalty which may not be less than rupees one lakh, but which may extend to rupees one crore. Also where any person initiates voluntary liquidation proceeding with intent to defraud any person, the adjudicating authority may impose upon such person a penalty which may not be less than rupees one lakh, but which may extend to rupees one crore.

POWER IN CASE OF FRAUDULENT OR WRONGFUL TRADING

Section 66 deals with cases of fraudulent and wrongful trading by the corporate debtor. According to section 66 when it is detected during the corporate insolvency resolution process or a liquidation process that the business of corporate debtor has been carried on with the intent to defraud creditors of corporate debtors or for any fraudulent purpose, the adjudicating authority on an application may (i) pass an order that any persons who were party to such business transactions shall be liable to make such contribution to the assets of the corporate debtors as it may deem fit; (ii) by an order, under specified conditions, direct that a director or partner of corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit.

CONCLUSION

Thus, the provisions of the Code are drafted in the manner that the NCLT as adjudicating authority for the corporate persons controls the process of resolutions, ensure efficiency and due compliance with provisions of the law, but, is not burdened with driving the process of insolvency resolution and liquidation. Insolvency and liquidation process is driven by professionals ensuring quick insolvency resolution while preserving economic value of corporate debtor under insolvency process.

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Class Actions



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On 1st June 2016, the provisions on class actions under Section 245 of the Companies Act, 2013 were notified. The first class action has been filed in Mumbai. Class action is a very potent remedy for shareholders. This article analyses the nature and scope of this new remedy.

The concept of shareholder class action has been introduced for the first time under the Companies Act. Protection of the interest of various stakeholders, especially non-promoter shareholders and depositors, has always been the concern of company law. There were several frauds and improprieties that were noticed where the key losers were the shareholders and depositors. The shareholders who invested in listed companies saw their investments and savings drying up when the companies that they invested in

introduced by the 2013 Act.

CLASS ACTION: MEANING, NATURE AND SCOPE

A class action is a procedural device that permits one or more plaintiffs to file and prosecute a lawsuit on behalf of a larger group, or 'class'. Put simply, the device allows courts to manage lawsuits that would otherwise be unmanageable if each class member (individuals who have suffered the same wrong at the hands of the defendant) were required to be joined in the lawsuit as a named plaintiff. It is in the nature of a representative suit where the interest of a class is represented by a few of them.

Securities class action (where investors file a

A class action is a procedural device that permits one or more plaintiffs to file and prosecute a lawsuit on behalf of a larger group, or 'class'. The device allows courts to manage lawsuits that would otherwise be unmanageable if each class member (individuals who have suffered the same wrong at the hands of the defendant) were required to be joined in the lawsuit as a named plaintiff. The focus of this article is on class actions under the new company law.

cheated the investors. For instance, the share price of Satyam collapsed from the heights of INR 528 per share to INR 6.30 per share post disclosure by Mr. Ramalingam Raju (which was finally sold to Mahindra at INR 58 per share). This loss was not on account of the market condition but on account of the fraud committed by the promoters and management on the shareholders. While the law was successful in punishing the offender, it was unsuccessful in bringing monetary relief to the shareholders who lost heavily on account of the fraudulent practices. Class action is the answer that is

case against the company) are very common in the United States. However, many other countries like Canada, Austria have recognized class actions. It is one of the key mechanisms used for enforcement of the corporate law wherein shareholder takes action against the company or its management for breach of their duties and obligations which are owed to the shareholders or to the company. Private shareholder actions were sparsely used in India. But with the introduction Class action under Section 245, it is possible that there will be a spurt in class actions.

*The author is a Mumbai based corporate lawyer.

Securities class action (where investors file a case against the company) are very common in the United States. However, many other countries like Canada, Austria have recognized class actions. It is one of the key mechanisms used for enforcement of the corporate law wherein shareholder takes action against the company or its management for breach of their duties and obligations which are owed to the shareholders or to the company.

CLASS ACTION UNDER THE NEW ACT

Section 245 has been introduced in the new company law to provide relief to the investors against a large set of wrongful actions committed by the company management or other consultants and advisors who are associated with the company. Some of the important highlights of the provisions of class actions are as follows.

Against which type of companies?

Class action can be filed against any type of companies, whether in the public sector or in the private; whether it is incorporated under 2013 Act or previous Companies Act. However, banking companies are exempted from these provisions. Further, the Act has empowered the Central Government to exempt any company or a class of companies from the provisions of the Act.

Who can file a class action suit?

Under the new Act, following persons are empowered to file a class action suit:

- members
- depositors
- a person or association representing such members or depositors

who fulfil the criteria specified in section 245(3) read with the rules that will be notified.

Rule 99 of the Draft National Company Law Tribunal Rules (NCLT Rules) provides criteria for members. The Companies (Prevention of Oppression and Mismanagement) Draft Rules also provide it. However, the criteria in the two draft rules are inadvertently different.

What are the Eligibility criteria for members?

If members choose to file a class action, they should meet the following criteria.

Company having a share capital

- 100 members¹ or 10% of the total number of its members, whichever is less; or

¹ It is 200 members in NCLT Draft rule whereas it is 100 members in draft O & M Rules. We have to wait for the final notified rules to see which one of this criterion is notified.

- any member or members holding singly or jointly not less than 10% of the issued share capital of the company.

The members should have paid all calls and other sums due on the shares held by them.

- Company not having a share capital*

- Not less than one-fifth of the total number of its members.

What are the eligibility criteria for depositors?

- one hundred depositors or not less than 10% of the total number of depositors, whichever is less; or
- any depositor or depositors to whom the company owes 10% of the total value of outstanding deposits of the company.

In the O&M Rules it is provided that 'depositor' shall have the same meaning assigned to it under Rule 2(c)(xiv)(c) of the Companies (Acceptance of Deposit) Rules, 2014.

Representative person or association

Section 245 permits a representative/an NGO/any investor association/a public spirited citizen to file a suit for representing the aggrieved persons provided they are able to establish that they are representing the members/depositors who meet the eligibility criteria.

Guidelines for considering applications under section 245

Section 245(4) gives a set of guidelines that the Tribunal will use while considering applications filed under section 245. We need to closely analyse the guidelines and their rationale to understand the concept of class action as is adopted in India.

- Good faith:** The Tribunal has to ascertain whether the class action is brought in good faith by a set of genuine members/depositors. This is essential as an order under the class action is binding on all shareholders/depositors.
- Evidence:** The Tribunal will assess whether there is any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in class action before making them a party and before continuing class action against them. This is essential as in a class action, even outsiders such as auditors, experts, consultants, and other companies who are involved in the wrongful or unlawful action with the company or its directors can be impleaded. This will ensure that they are not casually impleaded.
- Cause of action:** Class action is not permitted for matters which the member or depositor could pursue in his own right rather than through section 245. Thus, a member who is not being given a notice for a general meeting or whose shares are forfeited may not be able to avail of this remedy. However, if a group of members find that the company is stripping off the assets of the company in a wrongful way or for a wrongful purpose, then a class action will be maintainable as such misdeeds harm the entire gamut of members.
- Views of other member:** The Tribunal must consider any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section. Under the Act, a class of members or

depositors may file a case representing the class. The Act requires the Tribunal to consider the holistic situation and consider the rights and interests of other members who are not being represented.

- (v) **Acts/omissions:** Under a class action, the Tribunal can take cognizance of past, present and future wrongful actions and future violative actions that are proposed by the company. However, certain safeguards are provided before orders are passed with respect to future Acts/omissions. The Tribunal will be slow in interfering in a future action that can be authorised by the company before it occurs or which can be ratified by the company after it occurs.
- (vi) **Public Notice:** The Companies Act, 2013 requires that a public notice is given to the members and depositors of the class actions. This will give them opportunity to seek intervention in the matter to place their grievances. Such public notice is essential as a new class action is not allowed on the same cause of action. Thus, any member who is aggrieved by the action/omission complained of in the class action should come before the Tribunal expeditiously or file a separate class action which will be merged with the existing class action if the cause of action is similar.

Bar on Future Class Action

Two class action applications for the same cause of action are not be allowed.

Consolidation of Class Actions

The Act also provides that all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side. There is some degree of mandate provided by the Act for consolidation of class actions against companies. However, it is not a strict mandate and discretion is given to Tribunal to determine whether the cause of action is similar to justify clubbing the class actions.

Nature of Reliefs in a Class Action

Unlike section 241 which states the circumstances in which an action for oppression and mismanagement may be filed, the Companies Act, 2013 does not specify the ground on which a class action may be filed. It only provides guidelines on how to deal with a class action. Again the Act has provided the following relief that can be sought in a class action in section 245(1).

- Ultra vires act:** A company committing an act which is ultra vires the articles or memorandum can be restrained.
- Breach:** A company committing breach of any provision of the company's memorandum or articles can be restrained. For instance, if a company calls for a meeting at short notice without following the norms.
- Invalidating resolutions:** The applicant can seek a declaration that a resolution altering the memorandum or articles of the company is void, if the resolution was passed by suppression of material facts or was obtained by making misstatement to the members or depositors. One can also seek an order restraining the company and its directors from acting on such resolution.
- Prevent contraventions:** The company can be restrained from doing an act which is contrary to the provisions of this Act or any other law for the time being in force. For instance, if the company is using

the employee contribution of provident fund for meeting its working capital needs, it can be restrained.

- Acting in contravention to resolution:** The purpose is to restrain the company from taking any action contrary to any resolution passed by the members. For instance, the company granting inter-corporate loans which exceed the limit prescribed by members.
- Compensation from wrongdoers:** A fraud or any wrongful act in the company generally occurs with the assistance/connivance of many persons -- insiders as well as outsiders. Thus, the Companies Act, 2013 allows the aggrieved investors to claim damages or compensation against various people. They can also demand any other suitable action. The said action can be initiated against the following :
 - Company and its directors - For any fraudulent, unlawful, or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part.
 - Individual auditor & audit firm/LLP as well as individual partners - For any improper or misleading statement of particulars made in their audit report or for any fraudulent, unlawful, or wrongful act or conduct.
 - Any expert or advisor or consultant or any other person - The Act seeks to hold them liable for any incorrect or misleading statement made to the company or for any fraudulent, unlawful, or wrongful act or conduct or any likely act or conduct on their part. A wide variety of persons can be made liable under this Section, including merchant bankers, law firms, chartered accountants, company secretaries, and other such practicing professionals or subsidiary companies
- For seeking any other remedy.*

Effect of Order passed under Section 245

Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company. An order under the provision of class action is in the nature of an order *in rem*. It is binding on the "company and all its members, depositors..." Thus, the order will be binding even on those members or depositors who are not party to the suit. The persons against whom the order is binding are specified in section 245(6). This is basically the person against whom a case of class action may be brought against.

Non-compliance with orders [Section 245(7) read with section 425]

If any company fails to comply with an order passed by the Tribunal under this section, then it shall be punishable with a fine which shall not be less than INR 5 lakhs but which may extend to INR 25 lakhs. Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with a fine which shall not be less than INR 25,000 but which may extend to INR 1 lakh.

Vexatious application

The Act provides for a fine of up to INR 1 lakh against the persons who are found to misuse this mechanism of class action.

Reimbursement of expenses in class action

The Tribunal can allow the members/depositors who have spent money on a class action to be reimbursed if they find that the said class action ultimately leads to providing reliefs that help the community of members or depositors.

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Compounding of certain offences: Need for Publication of all decided orders



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INTRODUCTION

Before legislating the Companies (Amendment) Act, 1988, in respect of all offences under the Companies Act, 1956 (the Act), complaints were filed before the Trial Courts by the Registrars of Companies against the company and its officers in default. The offences under the Act seldom were very serious and mostly such offences were technical in nature due to varying interpretation and

the Monopolies and Restrictive Trade Practices Act under the Chairmanship of Justice Rajindar Sachar was constituted by the Government in 1977. The Sachar Committee Report at Chapter XVI in paragraphs 16.13 to 16.17 (page 149 to 152) dealt with extensively and covered:

- 16.13 Penalties and Prosecutions;
- 16.14 Persons entitled to complain under the Act;
- 16.15 Deficiencies in the present

If all compounding orders under the Companies Act are made public, the same would not only be of guidance to companies but would go to improve the level of compliance.

ignorance of the requirement, besides non filing of certain forms and returns on time. All such complaints before the Trial Courts were proceeded under the Criminal Procedure Code (Cr.PC). The officers in default against whom the complaints were lodged had to comply with the requirements stipulated in Cr.PC, had to seek bail for each and every complaint and to appear on each and every date of hearing. Most of the complaints were disposed-off with small amounts of fines after a lengthy trial but the trauma faced by the officers in default was harsh. The Registrars and authorised representative of Central Government were not required to personally appear before the court but the officers in default of companies were required to appear before the court personally. This not only put the officers in default in tight spot but also increased the work load of the trial courts which resulted in heavy back-log of complaints in lacs and lacs.

SACHAR COMMITTEE RECOMMENDATIONS

A High powered Expert Committee for review of the Companies Act and

- 16.16 Proposed changes in enforcement of penal provisions of the Act;
- 16.17 Provisions for appeal against the original orders of the Registrar of Companies or Company Law Board and Recommendations with regard to penalties under the Act.

In a nutshell, the Committee recommended, *inter alia*, for substitution of the then existing provisions for realisation of fines through Court proceedings by a system of penalty as provided in the Income Tax Act, and also that the Registrars, and the Company Law Board, including the Regional Benches, should be clothed with powers of a Court so as to empower them to take cognizance of and to impose penalties for any infraction of certain specified provisions of the Act.

COMPOSITION OF CERTAIN OFFENCES

The Government having considered the recommendations of Sachar Committee Report inserted Section 621A in the Act, by the Companies (Amendment) Act,

1988 for composition of certain offences. The 'Notes on Clauses' of relative Clause 58 stated, thus:

"This clause empowers the Company Law Board and the Regional Director to compound offences punishable by fine by imposing penalties in lieu of prosecution. The proposed amendment will also ensure compliance of law. The power to compound shall not be exercisable by the Company Law Board and the Regional Director in relation to offences which are punishable with imprisonment only or with imprisonment and fine".

The offences which are punishable by fine or imprisonment or both shall be compoundable only with the permission of the court and the court will follow the procedure set out in Cr.PC, for granting such permission. It is to be noted that the order of composition is equal to an order of acquittal by the court.

COMPOUNDING OF CERTAIN OFFENCES

The Companies Act, 2013 modified the title as 'compounding of certain offences' with a clear message that (a) only offences punishable with fines are compoundable; (b) any offence punishable with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of special court; and (c) that no offence shall be compounded if an investigation against such company has been initiated or is pending.

NATIONAL COMPANY LAW TRIBUNAL

The Government vide notification dated 1st June, 2016 dissolved the Company Law Board (CLB) which was constituted under the Companies Act, 1956 and in its place constituted the National Company Law Tribunal (NCLT). Benches of the NCLT have been set up at ten other places besides the Principal Bench at New Delhi. All the eleven benches of NCLT will entertain the compounding of certain offences as against the dissolved CLB which was functional at only four places. The constitution of more Benches would certainly benefit the corporates and professionals besides the Registrars of Companies for easy and quick disposal of their applications and petitions.

ORDERS OF COMPOUNDING OF OFFENCES

CLB since the introduction of the provision for compounding of offences had disposed - off thousands of compounding applications under various provisions of the Act. Some of the orders on compounding of offences are available in certain journals but not all of them. The orders on compounding of offences are compulsorily to be filed by the companies with the Registrar of Companies by attaching it in the e-forms, which are available for public inspection. Some of the available orders are discussed hereunder:

(a) Offences of technical nature

As discussed above, the non-compliance of the provisions of the Act are mostly of a technical nature. *Mens rea* was absent and the contravention alleged is due to difference in the interpretation of the requirement by the corporates and the administrator.

In the matter of *Usha India Ltd* (1996) 85 Comp. Cas. 581

(CLB, Northern Region), the company has issued partly convertible and non-convertible debentures and shown the amount of the debentures in the annual return as deposits and in the subsequent year securities were created and a proper return was also filed. But the default was violation of Companies (Acceptance of Deposits) Rules, 1975 and was held as technical in nature. It was compounded on payment of a nominal fee of Rs. 100 by the company and Rs. 10 by the Secretary and each director of the company respectively.

(b) Offence repeated twice

In the matter of *Vikrant Tyres Ltd* (1995) 83 Comp. Cas. 210 (CLB-SB), the company defaulted in issuing debenture scrips in time and an extension of time was allowed because of the fact that a long time was lost in getting charges registered. The company sought further extension on the same ground and this being not allowed, an offence under section 113 of the Companies Act, 1956 was established.

(c) No offence made out

In an interesting matter in *A.Sivasailam v ROC* the CLB, Madras Bench, (1995) 83 Comp. Cas. 151, on the complaint made by ROC of violation of provisions of section 299 resulted in vacation of office under section 283, decided that the applicant has not violated the said provisions and disposed of the complaint without any order relating to compounding the offence and the Registrar was directed to withdraw the prosecution already launched.

One of the pleadings in a proceeding for compounding of an offence is that the directors and the officers in default have to admit the violation and seek the compounding, whereas, in this matter, it was held that there was no violation.

(d) Inadvertent offence

In the matter of *First Leasing Co., of India Ltd*, CLB Chennai (2003) 42 SCL 65, the Registrar inspected the books of the company and various defaults of the company were detected. The company rectified the defaults which were inadvertent and pleaded for a lenient view so that no prosecution was launched. The Bench compounded the offence.

(e) Lenient view

In the matter of *Shaw Wallace & Co Ltd* (2009) 96 SCL 213, the CLB took a lenient view for accepting excess deposits which were just 1.38% of the total deposit and compounded the contravention with a fine of Rs. Five lacs.

MCA CIRCULAR FOR COMPANIES UNDER LIQUIDATION

MCA vide its general circular No 6/2002 dated 6.3.2002 on a query raised in one of the inspection follow up files as to whether the offence committed by directors of a company can be compounded, when the company in which they were directors is under liquidation without obtaining leave of the company court under section 446 of the Companies Act, 1956. The issue was examined by the Department in consultation with the Ministry of Law and expressed its view that there is no legal bar for composition of offences under

Some of the orders on compounding, are reported in law journals but not all the decisions on compounding applications. It is not a confidential or secret matter and the orders are being filed compulsorily with the respective Registrars of Companies, and open for public inspection. No doubt certain orders were published which are discussed above, but majority of the decisions are not published and are not available for the professionals, officers of the Registrars of Companies.

section 621A, provided the conditions specified in the section and guidelines, if any, are fulfilled. However the section does not bar criminal proceedings against the directors of the company for any offence under the Act and the offences are compoundable. Where the penal provisions also provide for proceedings against the companies and if the offences are compoundable, compounding will not be permissible against the company in view of the provisions of the said Act.

ARE ALL COMPOUNDING APPLICATIONS REALLY FOR NON-COMPLIANCES?

Any complaint for alleged non-compliance has to be filed by the Registrar of Companies before his jurisdictional magistrate. As discussed above, earlier all such complaints would be dealt with under the Cr.PC and it would be nightmare for the officers in default to stand before the Magistrate for such petty complaints with other hard core criminals. Secondly, a fine paid in excess of Rs. 1000 at such courts would disqualify a director for his continuance to act as a director as per the qualifications of directors under the Act. In order to avoid such hardships and to escape the disqualification aspect, the officers in default preferred to file compounding applications instead of facing the trial. This resulted in filing voluntarily compounding applications and one of the conditions as noticed earlier attached to the compounding applications was that the officers in default have to accept the alleged non-compliance and to make good such non-compliance. Moreover, for filing the compounding application it is not necessary that allegation has been proved on the company and its officers, as per the section the compounding can be filed either in the case the allegation of default is there. In the matter of *General Produce Company Ltd* (1994) 81 Comp. Cas. 570 CLB, the application was rejected for not making the default good.

WHO HAS TO FILE COMPOUNDING APPLICATIONS?

The application for compounding of an offence is to be made by a director of the company duly authorised by the Board for and on

behalf of the company and by each of the officers in default who are liable for prosecution under the respective provisions for non-compliances. In the matter of *Amadhi Investments Ltd* (2009) 149 Comp. Cas. 617 (CLB), the application made by persons other than the officers in default was rejected. It is also to be noted that even the officers in default who were involved in a non-compliance and not in employment at the time of filing the compounding application still has to be a party and file the compounding applications failing which he will be liable for prosecution.

In a compounding application if one or more officers in default are not available for filing such compounding applications, the rest of the officers in default can file the applications but the persons who have not filed the compounding of applications are liable for prosecution separately but the company and the persons who have filed the compounding applications, would be freed from the rigours of prosecutions.

CITATIONS FOR ALLEGED NON-COMPLIANCES

As discussed above, the officers in default prefer to file compounding applications instead of preferring to plead the alleged non-compliances before the trial courts. Besides, the trial courts which also deal with the alleged non-compliances of the Act are not well equipped to thoroughly understand the law and its practice.

Some of the orders on compounding, are reported in law journals but not all the decisions on compounding applications. It is not a confidential or secret matter and the orders are being filed compulsorily with the respective Registrars of Companies, and open for public inspection. No doubt certain orders were published which are discussed above, but majority of the decisions are not published and are not available for the professionals, officers of the Registrars of Companies. Had all the decisions been made public, the professionals would have cited such decisions wherever necessary which would have paved the way for establishing due compliances and drastically reduced the number of compounding applications.

NEED FOR COMPILING ALL COMPOUNDING APPLICATION DECISIONS

The Companies Act, 2013 has as one of its objectives self-governance and left it to the corporate and professionals to understand the law in its true spirit and to comply with all applicable provisions. Any non-compliance, be it a technical default or interpretational issue or without any mala fide intention, would visit with the penal provisions which are stringent. Besides, the class action suits are one of the threatening tigers for corporates for compliance and at times there may be necessity to comply under conservative methods instead of bold and dynamic steps.

ONE TIME OR CONTINUANCE OFFENCE

Certain offences are one time in nature and not a continuous offence. Professionals and Regulators do have divergent views. The office of the Registrar of Companies while forwarding the compounding applications with their report to CLB consider the one time offence as continuing offence and the professionals face

tough time to convince at the time of hearing. For an example, if a company fails to provide the particulars of loans, guarantees or investments in its Board's Report and in the subsequent year compiled with by providing the said particulars, the offence is one time offence and not a continuing one. Clarity is needed if the said particulars are not provided in two continuous years Board's Report and compiled with the third year's report would the offence is one time for each year or continuing offence.

REPEATED OFFENCE


An offence committed by a company or its officers within a period of three years from the date on which a similar offence committed by it or him cannot be compounded. However, lot of confusions do arise and if an offence is committed in the board's report say non providing of particulars of loans, guarantees and investments the application for compounding is prepared under the relevant section. Once the said offence is compounded and another offence is committed within three years say non providing of particulars on energy, technical absorption though it falls under the same section of earlier offence compounded, it is to be dealt as a fresh or new non-compliance.

Similarly, if an offence is committed by the company for non-providing of particulars of loans, guarantees and investments and the offence was compounded by the company and its managing director and subsequently, if the managing director is not employed in the company and the same offence was committed within a period of three years by the company and by another managing director, whether such an offence is compoundable is a matter where clarity is needed. Further, if the same managing Director is also a Managing Director in another company and that another company also violated the same provisions within three years period in which earlier company made the same violation, whether

the same managing Director will be allowed for compounding for the violation made by another company.

It is desirable that the Institute comes forward and collect all the decisions on compounding applications from all the four erstwhile CLB Benches and make it public for the benefit of our members. The constitution of much awaited NCLT and that too having benches at ten different places would improve the facilities for the companies as well as its officers in dealing with NCLT. The recent decision to celebrate PCS Day on every 15th June would encourage more and more younger members to join the practice arena and with the constitution of NCLT.

CONCLUSION

Decisions on Compounding of offences are available in respective company's particulars and it is not a confidential matter. The compounding of offence has been in force since 1991 and for the last 25 years several offences including alleged offences were compounded by Regional Directors and CLB. Barring a few decisions made available, most of them are not available in public domain. There being no citation, it is not possible for the companies, professionals to rely on any decisions to defend their matters before the Registrar of Companies. Now, with the constitution of NCLT at different places with both judicial and technical members, past decisions are very much necessary. The Ministry of Corporate Affairs or the Institute of Company Secretaries of India may come out with a compendium on decisions of compounding offences in the overall interest of corporates and professionals. *Now, Reserve Bank of India proposes public disclosure of compounding orders and guidelines on amount imposed during compounding under FEMA.* If all future compounding orders under the Companies Act are similarly made public, the same would not only be of guidance to companies but would go to improve the level of compliance. 

EXTENSION IN THE LAST DATE FOR PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2016-17

The annual membership and certificate of practice fee for the year 2016-17 became due for payment w.e.f. 1st April, 2016. The last date for payment of fee was 30th June, 2016 which has been extended upto 31st August, 2016.

The membership and certificate of practice fee payable is as follows:

1. Annual Associate Membership fee Rs.1125/- (*)
2. Annual Fellow Membership fee Rs.1500/- (*)
3. Annual Certificate of Practice fee Rs.1000/- (**) *

A member who is of the age of sixty years or above can claim 50% concession and a member who is of the age of seventy years or above can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration in writing duly signed that the member is not in any gainful employment or in practice.

**The certificate of practice fee must be accompanied by a declaration in Form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute www.icsi.edu and also printed elsewhere in the journal.

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of:

- (i) Online mode through payment gateway of the Institute's website (www.icsi.edu)
- (ii) Cheque at par/Demand draft or Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' or in cash at the Institute's Headquarter or Regional/Chapter offices. For queries, if any, the members may please write to Mr. Jitendra Kumar, Executive Assistant at email id jitendra.kumar@icsi.edu or contact at telephone No. 011-45341087.

Constitution of NCLT and NCLAT : Challenges and Opportunities For Practising Company Secretaries



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WHAT IS NCLT& NCLAT?

National Company Law Tribunal (NCLT) is a quasi-judicial body for resolving all disputes relating to the companies in India. It is established under the Companies Act, 2013 and is a successor to the Company Law Board. The principal bench of NCLT is at New Delhi. The Tribunal shall have all the powers as assigned to the erstwhile Company Law Board (which are mostly related to dealing with oppression and mismanagement), Board for Industrial and Financial Reconstruction (BIFR), revival of sick companies and powers related to winding up of companies (which was available only with the High Courts). National Company Law Tribunal has been constituted on 01 June 2016.

REMEDIES FOR PERSON AGGRIEVED BY ORDER

Appeals from NCLT will lie to the National Company Law Appellate Tribunal (NCLAT) and from the decisions of the Appellate Tribunal to the Supreme Court of India. Earlier, the decisions of the Company Law Board were challenged before the High Court and then in Supreme Court. This will help in getting uniform decision on a particular subject by the Appellate Tribunal instead of getting different decisions on the same matter by different High Courts.

JUSTICE ERADI COMMITTEE

The Government had constituted on 22nd

In view of various opportunities emerging with the establishment of National Company Law Tribunal, professionals like Practising Company Secretaries should standardize their competencies with global benchmarks to provide value added services in assisting the Tribunal and corporates in dispensation of justice and speedier disposal of matters like merger, amalgamation, restructuring, revival, and rehabilitation of sick companies, and winding up of companies.

The National Company Law Appellate Tribunal (NCLAT) is an appellate tribunal in India established under the Companies Act, 2013 for hearing appeals arising from the orders passed by the NCLT. Any person aggrieved by an order or decision of the NCLT may, within a period of 45 days from the date on which a copy of the order or decision of the Tribunal was served on him, prefer an appeal to Appellate Tribunal (NCLAT).

October 1999 a Committee consisting of experts to examine the law relating to winding up proceedings of companies in order to re-model it in line with the latest developments and innovations in the corporate law and governance.

The Committee in its report noted that there were three different agencies namely, the High Courts, the Company Law Board set up under section 10E of the Companies Act, 1956 and Board for Industrial and Financial Reconstruction (BIFR).

The scope for Company Secretaries has increased manifold with their empowerment to appear before NCLT; at the same time the challenges before practising company secretaries have also increased with this recognition. They have a major role to play in the credibility of NCLT and corporate sector by ensuring continuous evolution of standards and improving the skills.

With the intention of establishing a separate tribunal to deal with all issues or disputes under the Companies Act, 1956 and also to expedite speedy disposal of company related cases, a special tribunal and an Appellate tribunal called National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) were sought to be established through the Companies (Amendment) Act 2002.

CONSTITUTION OF NCLT & NCLAT

The Ministry of Corporate Affairs has issued notification for constitution of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) with effect from 1st June, 2016.

The following Sections and provisions of the Companies Act, 2013 relating to Tribunal have been notified w.e.f. 1/6/2016

Sl. No.	Section	Purpose
1	Sub-section (7) of section 7 [except clause (c) and (d)]	Legal action for false or incorrect information at the time of Incorporation
2	Second proviso to sub-section (1) of section 14	Conversion of Public to Private Limited
3	Sub-section (2) of section 14	Conversion of Public to Private Limited
4	Sub-section (3) of section 55	Rollover of existing redeemable preference shares
5	Proviso to Clause (b) of sub-section (1) of section 61	Changes in voting rights by consolidation or sub-division of share capital
6	Sub-sections (4) to (6) of section 62	Changes in terms of issue of debentures to facilitate conversion into equity shares
7	Sub-sections (9) to (11) of section 71	Action by debenture trustee once the secured Assets becomes insufficient
8	Section 75	Action against Company by defrauding depositors by non-payment
9	Section 97	Power to call for AGM in case of failure by the company
10	Section 98	Power to call for meetings other than AGM

11	Section 99	Punishment for failure to comply with Tribunal's direction regarding meetings
12	Sub-section (4) of section 119	Order for inspection in case of failure by the company
13	Section 130	Re-opening of accounts by Authorities
14	Section 131	Voluntary revision of financial statements
15	Second proviso to sub-section (4) and sub-section (5) of section 140	Removal or change of Auditor before due Date and <i>Suo Moto</i> action by Tribunal for removal
16	Sub-section (4) of section 169	Removal of Directors – representation and relaxation of provisions in certain cases
17	Section 213	Investigation into the affairs of the company
18	Sub-section (2) of Section 216	Appointment of Inspectors
19	Section 218	Protection of employees during investigation
20	Section 221	Freezing of assets of Company on inquiry and investigation
21	Section 222	Imposition of restrictions upon securities
22	Sub-sections (5) of section 224	Action against company or Directors on inspector's report
23	Sections 241, 242 [except clause (b) of sub-section (1), clause (c) & (g) of sub-section (2)], 243, 244, and 245	Action against prevention and oppression and mismanagement
24	Reference of word 'Tribunal' in sub-section (2) of section 399	Order for production of documents by Registrar
25	Sections 415 to 433 (both inclusive)	Tribunal and its Chairman, Members etc and provisions relating thereto.
26	Sub-section (1)(a) and (b) of section 434	Transfer of pending proceedings
27	Sub-section (2) of section 434	Appeal against Company Law Board's Order
28	Section 441	Compounding of offences
29	Section 466	Dissolution of CLB and consequential provisions

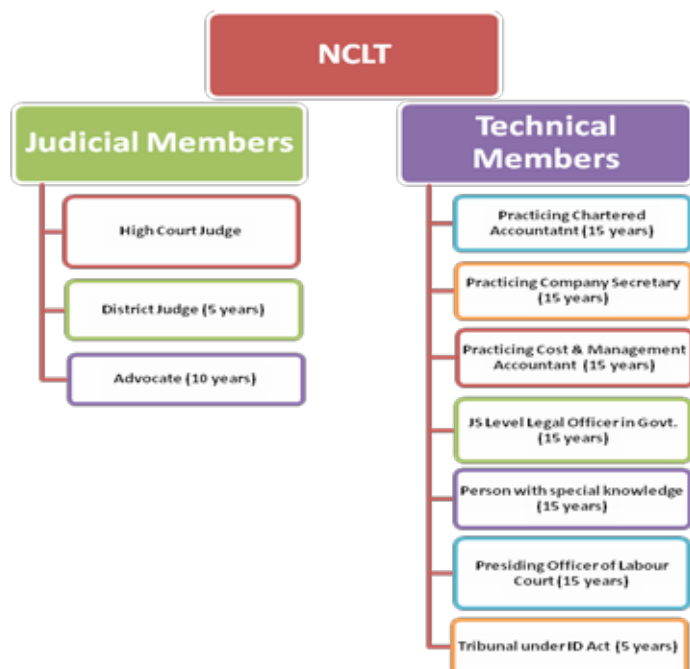
Once the Tribunal starts functioning the burden on High Courts is bound to get reduced. As per government data, 48,418 civil cases were pending before the Supreme Court as at the mid of February 2016. The number of civil cases pending before the various high court as on 31 December 2014 were 3.116 million and those before the district and subordinate courts were 8.234 million.

While provisions relating to the investigation of a company's accounts, freezing of assets, class action suits, conversion of a public company to a private company will now be governed by NCLT, those relating to compromise, amalgamation and capital reduction will continue to be under the purview of the High Court as these provisions have not yet been notified. It appears that the NCLT will begin exercising jurisdictions over these matters only after it becomes fully operational.

The Tribunal shall comprise of a President and such number of Judicial and Technical Members not exceeding 62. According to the above notification, the Company Law Board stands dissolved w.e.f. 1st June, 2016. Notification of Section 466 makes last Chairman of Company Law Board as Provisional and first Chairman of NCLT.

MEMBERS OF NCLT

The members of NCLT comprise of Judicial and Technical Members. The constitution of NCLT could be depicted as under:



BENCHES OF THE TRIBUNAL

In exercise of the powers conferred by sub-section (1) of section 419 of the Companies Act, 2013 (18 of 2013), the Central Government has constituted 11 Benches of the National Company Law Tribunal, two in New Delhi (one will be the principal bench) and one each in Mumbai, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad and Kolkata to exercise the jurisdiction over the area as given in the following table-

New Delhi Bench – Jurisdiction – State of Haryana, Rajasthan and Union Territory of Delhi;

Ahmadabad Bench – Jurisdiction- State of Gujarat, Madhya Pradesh, Union territory of Dadra and Nagar Haveli;

Allahabad Bench – Jurisdiction – State of Uttar Pradesh and Uttarakhand;

Bengaluru Bench – Jurisdiction – State of Karnataka;

Chandigarh Bench – Jurisdiction – State of Himachal Pradesh, Jammu and Kashmir, Punjab and Union Territory of Chandigarh;

Chennai Bench – Jurisdiction -State of Kerala, Tamil Nadu, Union territory of Lakshadweep and Union territory of Puduchery;

Guwahati Bench – Jurisdiction – State of Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya, Nagaland, Sikkim, and Tripura;

Hyderabad Bench – Jurisdiction – State of Andhra Pradesh and Telengana;

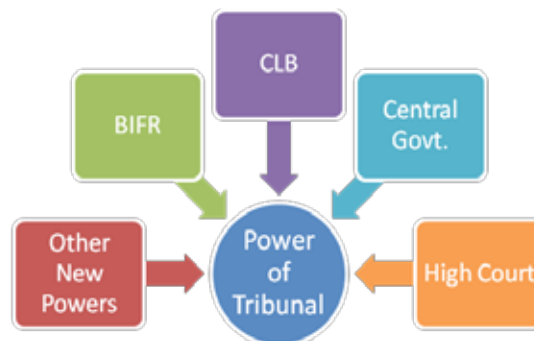
Kolkata Bench – Jurisdiction – State of Bihar, Jharhand, Odisha, West Bengal, and Union Territory of Andaman and Nicobar Islands;

Mumbai Bench – Jurisdiction – State of Chhatisgarh, Goa and Maharashtra.

POWERS OF THE TRIBUNAL

The Tribunal has two experts i.e. Judicial and Technical members, who will handle all the matters which were handled by CLB, Company, Court and BIFR with much wider jurisdiction in terms of scope of the subjects. The powers of Tribunal will be as follows:

- Almost all the powers of Company Law Board (CLB).
- All the powers of BIFR for revival and rehabilitation of sick industrial companies.
- Jurisdiction and power relating to winding up, restructuring and other such provisions, vested in the High Court.
- Power to order repayment of deposits accepted by Non-Banking Financial Companies as provided in section 45QA of the Reserve Bank of India Act, 1934.
- Power to wind up companies.
- Certain powers of the Central Government, like conversion of Company, etc.
- Power to review its own orders.



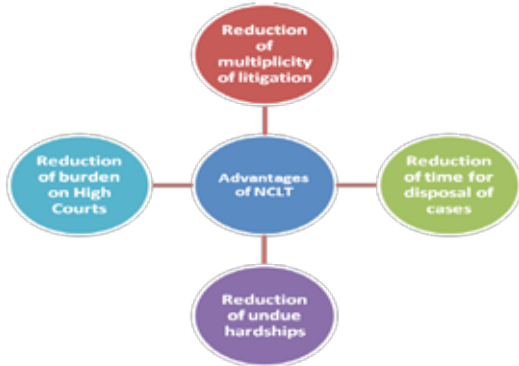
ADVANTAGES OF NCLT

- 1. Reduction of multiplicity of litigation**
After constitution of NCLT, it is expected that multiplicity of litigation will be avoided or at least reduced because NCLT is authorised to handle the cases which were previously handled by the High Court, Company Law Board (CLB) & BIFR etc., and appeal can be made against the orders of the Tribunal to the Appellate Tribunal and then the Supreme Court only.
- 2. Reduction of time for disposal of cases**
It is a known fact that cases with CLB or BIFR and High Court go on and on for long periods due to absence of time frame but with NCLT, there is time frame for disposal of cases. Thus there will be reduction of time taken in adjudication procedure, at large for disposal of the cases.
- 3. Reduction of undue hardships**

Speedy disposal will save time, energy and money of the parties concerned. Thus, undue hardships will be reduced if not completely eradicated.

4. Reduction of burden on High Courts

The number of civil cases pending before the High Court as of 31 December 2014 was 3.116 million. NCLT will reduce the burden of the various High Courts relating to cases having nature of corporate justice. Also, appeal from NCLAT will lie to the Supreme Court being the apex authority.



CHALLENGES AND PROFESSIONAL OPPORTUNITIES FOR PRACTISING COMPANY SECRETARIES

J.J. Irani Committee had recommended in its report dated May 31, 2005 that the professionals can be involved in the areas of Insolvency. An extract from the Report reads:

“Currently, the law does not support effective participation of professionals and experts in the Insolvency process. There is no shortage of quality professionals in India. Disciplines of Chartered Accountancy, Company Secretaryship, Cost and Works Accountancy, Law etc. can act as feeder streams, providing high quality professionals for this new activity. In fact, private professionals can play a meaningful role in all aspects of process. Insolvency practice can also open up a new field of activity for service professionals while improving the quality of intervention at all levels during rehabilitation/winding up/liquidation proceedings. Law should encourage and recognize the concept of Insolvency Practitioners (Administrators, Liquidators, Turnaround Specialists, Valuers etc.). Greater responsibility and authority should be given to Insolvency Practitioners under the supervision of the Tribunal to maximize resource use and application of skills.”

OPPORTUNITIES

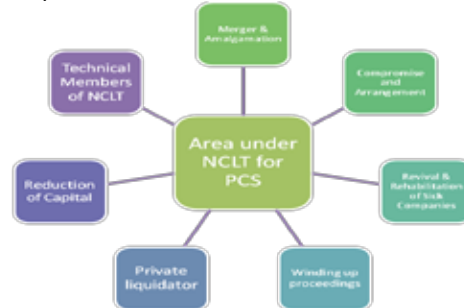
The establishment of NCLT and NCLAT shall offer various opportunities to Practising professionals including Company Secretaries as they have been authorised to appear before the NCLT / NCLAT.

The areas under NCLT for Practising Company Secretaries consist of the following:

- Appearance:** Mergers, amalgamations and winding up proceedings which were previously dealt by the High Court and now by the NCLT. Practising Company Secretaries are

eligible to appear before the NCLT.

- Appointment as technical members:** A Practising Company Secretary who has 15 years working experience as Secretary in whole time practice can be appointed as a technical member of NCLT.
- Representing winding up case:** A Practising Company Secretary may represent the winding up case before NCLT as NCLT has also been empowered to pass an order for winding up of a Company.
- Other areas of practice under NCLT:** The Practising Company Secretaries could play a pivot role in the areas of Sick Companies as all the powers of BIFR have been entrusted to NCLT.



CHALLENGES

The scope for Company Secretaries has increased manifold with their empowerment to appear before NCLT; at the same time the challenges before practising company secretaries have also increased with this recognition. They have a major role to play in the credibility of NCLT and corporate sector by ensuring continuous evolution of standards and improving the skills. The role of Practising Company Secretaries is not just to present facts before the NCLT, but also to provide a complete package considering the interests of all stakeholders. Company Secretaries will have to emphasise on the need for articulation of technical skills and improvement of standards. Practising Company Secretaries would for the first time be eligible to appear for matters which were hitherto dealt by the High Court. The areas have also opened up for the Company Secretaries, which were previously handled by Advocates like merger, amalgamation and winding up proceedings and opinion writing, etc.

CONCLUSION

In view of various opportunities emerging with the establishment of National Company Law Tribunal, Practising Company Secretaries should standardize their competencies with global benchmarks to provide value added services in assisting the Tribunal and Corporates in dispensation of justice and speedier disposal of matters like merger, amalgamation, restructuring, revival, and rehabilitation of sick companies, and winding up of companies.

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NCLT – Paradigm Shift Towards Expeditious Dispute Resolution



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BACKGROUND

On the recommendations of the Justice Eradi Committee on Law Relating to Insolvency and Winding up of Companies, a specialized institution for corporate justice i.e. Tribunal was to be set up. The Committee examined not only the Companies Act, 1956 but also the other relevant laws having a bearing on the subject such as Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the recommendations of the United Nations and International Monetary Fund Report - "Orderly and Effective Insolvency Procedures- Key Issues".

In *L. Chandrakumar v. Union of India* (A.I.R. 1997 SC 1125), a question was raised as to whether the setting up of the Tribunals and excluding the jurisdiction

The Tribunals may continue to act like courts of first instance in respect of the areas of law for which they have been constituted. The following paragraph from R. Gandhi's judgement clarified the above point:

"Parliament is thus competent to enact law with regard to the incorporation, regulation and winding up of Companies. The power of regulation would include the power to set up an adjudicatory machinery for resolving the matters litigated upon, and which concern the working of the companies in all their facets. The Law Commission, as noted by the Supreme Court in the case of L. Chandrakumar, had also recommended the creation of specialist Tribunals in places of generalist Courts. Creation of Tribunals and Appellate Tribunals and vesting in those Tribunals the powers exercised by the High Court with regard to company matters cannot be said to be unconstitutional."

Another significant area of Practice has opened up for Practising company secretaries for which they will be required to make extra-efforts and 'invest' substantial time to update themselves with the knowledge of relevant case-laws; developing art of advocacy and soft skills thorough study and in-depth analysis of the provisions of CA, 2013 as well as 1956, so that they can justify the entrustment of additional responsibilities.

of the High Court was constitutional? A ruling was made by the seven-judge bench of the Supreme Court that the power of 'judicial analysis' of the High Court under Article 226 of the Constitution cannot be eliminated by the Parliament. The Supreme Court under Article 32 and High Court under Article 226 form the basic structure of the Constitution of India. The jurisdiction of the High Court cannot be exiled, and on the other hand, the Tribunals may function as the supplemental part of the judiciary system.

It was further recommended in *L. Chandrakumar's* case that the Tribunals were playing vital part of our Judiciary system, and it is necessary to ensure that a Tribunal is a setup to deal with those cases under special laws as may be applicable therein, thus providing specialized adjudications. Further, the Tribunals cannot decide those disputes which are basically criminal in nature. Likewise, where the case involves substantial question of law, it cannot be decided by tribunals as this comes under

‘ The Central Government has issued the draft rules, but, the same could not be finalized and notified. Therefore, in absence of the Rules or Regulations, relating to the procedure part which needs to be followed by the Tribunal, there is complete dead lock for the time being as no proceedings can be filed before the CLB as well as the Tribunal. ’

the purview of the higher judiciary.

By the enactment of the Companies (Second Amendment) Act, 2002 to further amend the Companies Act, 1956, the controversial phase for the validity of the ‘National Company Law Tribunal’ (herein after referred as ‘Tribunal’) and ‘National Company Law Appellate Tribunal’ (herein after referred as ‘Appellate Tribunal’) was set in motion before the Court of Law and it seemed to be a never-ending fight. But such controversy was set to rest with the decision of Supreme Court in the case - *Union of India v. R. Gandhi, President, Madras Bar Association* – wherein the constitutional validity of the Tribunal and Appellate Tribunal was upheld as per the Supreme Court ruling on 14th May, 2015 and it has provided a path to the Central Government to notify the Tribunal and Appellate Tribunal in India under the provisions of the Companies, 2013 (hereinafter referred as ‘CA, 2013’).

CONSTITUTION OF TRIBUNAL AND APPELLATE TRIBUNAL

After a long journey of fourteen years the controversial phase has come to an end with the constitution of the Tribunal and the Appellate Tribunal as notified by the Central Government w.e.f. 1st June, 2016. The new judicial forum , apart from exefcising the powes of the erstwhile CLB, will also carry out the work, as currently being carried out by High Courts with regard to company matters for over the six decades and the same has to be done

with great care so that the Tribunal will be efficient and effective alternate institutional forum to the High Courts and the Company Law Board (herein after referred as ‘CLB’), Board of Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA Act, 1985) and for the other Authorities as well.

Tribunal

Tribunal is a quasi-judicial body and the primary objective of constituting the Tribunals is to provide a simpler, speedier and more accessible dispute resolution mechanism in Company Law matter specifically apart from other laws for which it is empowered. The Tribunal was established under Section 408 of the Companies Act, 2013 vide Notification No. S.O.1935(E) dated 1st June, 2016 and become effective with the same date.

Initially, Tribunal has eleven benches, two at New Delhi (one as Principal Bench) and one each at Ahmedabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.

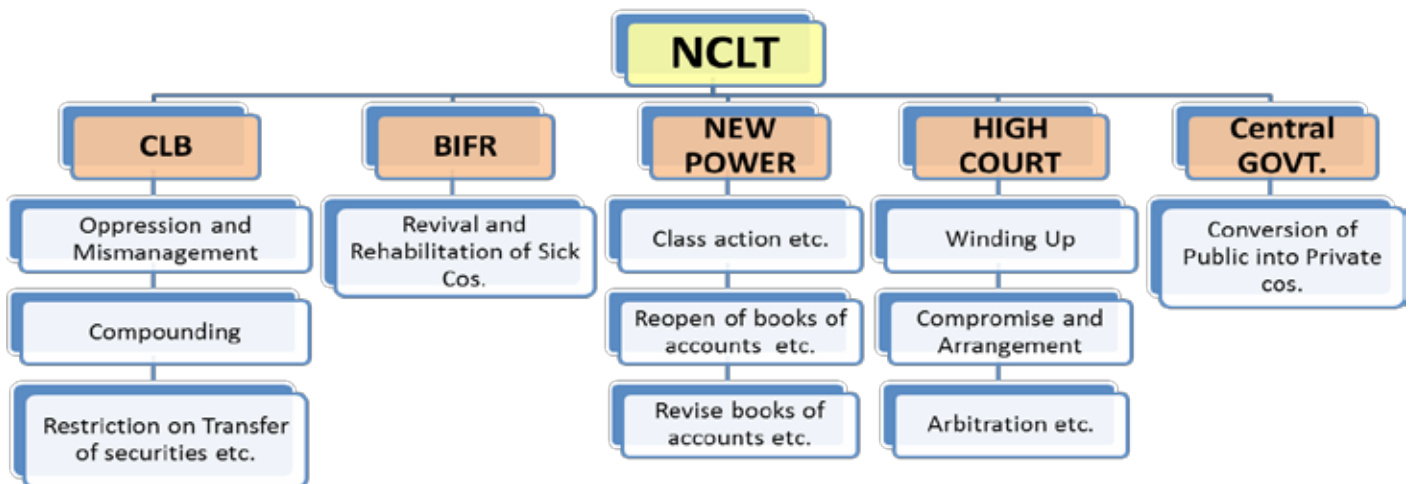
Section 434(1)(a) and (b) deals with transfer of powers from CLB to the Tribunal. Therefore, with the constitution of Tribunal by the Central Government as aforesaid, the CLB which was constituted under the Companies Act, 1956 stands dissolved vide Notification No. S.O. 1936(E) dated 1st June, 2016 w.e.f. 1st June, 2016 itself.

Powers of the Tribunal

The Tribunal is having wide powers under the Companies Act, 2013, which were exercised by the Court, CLB, BIFR, etc. as under

However, the powers being exercised by the High Court and BIFR, are yet to be notified. It is expected that further notifications will soon be issued to notify the rest of sections relating to the powers of the High Court for Winding up, Merger, amalgamation, BIFR, etc. to the Tribunal to exercise complete gamut of powers prescribed under the CA, 2013.

The Central Government has issued the draft rules, but, the same could not be finalized and notified. Therefore, in absence of the Rules or Regulations, relating to the procedure part which needs to be followed by the Tribunal, there is complete dead lock for the time being as no proceedings can be filed before the CLB as well as the Tribunal.



Appellate Tribunal

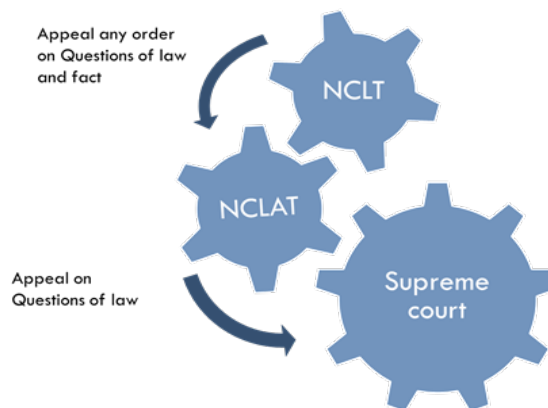
Under Section 410 of the CA, 2013, all appeals against any order of the Tribunal, may be filed by the aggrieved parties before the Appellate Tribunal, within a period of 45 days from the date on which a copy of the said order or decision is received by the appellant. The Appellate Tribunal shall have powers to set aside the order appealed against and the Appellate Tribunal will endeavor to dispose of the appeal finally within three months from the date of receipt of the same as per Section 422 of the CA, 2013.

Proceedings before the Tribunal and the Appellate Tribunal shall be quasi- judicial

All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be quasi-judicial and the Tribunal may regulate its own procedure and by following the principle of natural justice, equity and fair play, for the purpose of discharging its powers provided under the CA, 2013.

Appeal before the Supreme Court

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal before the Supreme Court within 60 days from the date of communication of the decision or order of the Appellate Tribunal only on any question of law arising out of such decision or order. It means any appeal filed before the Supreme Court should be on a "question of law, and not on a question of facts".



Therefore, the aggrieved person needs to approach the Apex Judicial authority, viz, Supreme Court, without knocking the door of the High Court in respect of powers given to the Tribunals. The clear intention behind the structure is to reduce the multiple litigation and burden of the High Courts.

Sections Notified

There are about 174 sections in the CA, 2013, which deal with the functioning of the Tribunal and Appellate Tribunal out of which 87 Sections, sub-sections and provisos have been notified and rest of the sections are yet to be enforced.

S. No.	Section Notified	Brief	Powers Conferred to NCLT
1.	Sec. 7(7), except clause (c) and (d)	Incorporation of the Company	Power of Tribunal to pass orders, etc. where a company has been incorporated by furnishing any false information/ suppressing any material fact or information or by any fraudulent action.
2.	Sec. 14(1)	Alteration of Articles	Provision relating to conversion of public company into a private company.
3.	Sec. 14(2)		
4.	Sec. 55(3)	Issue and Redemption of Preference Shares	Issue of fresh redeemable preference shares where a company is not in a position to redeem preference shares and to pay dividend.
5.	Sec. 61(1)(b)	Power of Limited Company to alter its Share Capital	Consolidation or division of share capital results in changes in voting percentage of shareholders.
6.	Sec. 62(4) to (6)	Further Issue of Share Capital	Conversion of debentures issued or loan obtained from Government by a Company into shares – If terms of conversion not acceptable to the Company, appeal can be made with the Tribunal.
7.	Sec. 71(9) to (11)	Debentures	Petition to be filed with the Tribunal on failure by the company to redeem the debentures or pay interest on them. Action by Debenture Trustee once the secured assets become insufficient. Penalties for not complying with the order of the Tribunal.
8.	Sec. 75	Damages for Fraud	Failure of the company to repay the deposit along with interest within the time limit.
9.	Sec. 97	Power of Tribunal to call Annual General Meeting	Power of the Tribunal to call Annual General Meeting, in specified cases.
10.	Sec. 98	Power of Tribunal to call meeting of Members, etc.	Power of the Tribunal to call Meetings of Members other than Annual General Meeting, in specified cases.

11.	Sec. 99	Punishment for default in complying with Sec. 96 to 98	Punishment for failure to comply with Tribunal Direction regarding Meetings (Section 96-98)
12.	Sec. 119(4)	Inspection of Minute books of General Meeting	Power of Tribunal to grant inspection of Minutes' Book of a General Meeting as requested by a member in a situation of refusal or default.
13.	Section 130	Re-opening of Accounts on Court's or Tribunal's orders	Power of the Tribunal to approve the re-opening of accounts on the order of Authorities.
14.	Section 131	Voluntary revision of Financial Statements or Board's Report	Power of the Tribunal to approve Voluntary revision of Financial Statements or Board's Report.
15.	Sec. 140(4)(ii) & (5)	Removal, Resignation of Auditors and giving of Special Notice	Powers granted to Tribunal to remove the auditor <i>suo moto</i> or on an application made by the Company or Aggrieved Person. However, where NCLT is satisfied that the Auditor has acted in a fraudulent manner it may order that the auditor may be changed.
16.	Sec. 169(4)	Removal of Director	Powers of Tribunal in relation to removal of director-representation and relaxation of provision in certain cases.
17.	Sec. 213	Investigation into Company's affairs in other cases	Powers of Tribunal to investigate into company's affairs in specified cases.
18.	Sec. 216(2)	Investigation of ownership of Company	Power of the Tribunal to investigate ownership of the Company.
19.	Sec. 218	Protection of Employees during investigation	Approval of Tribunal required for any action proposed against the employee and protection of employees during Investigation.
20.	Sec. 221	Freezing of Assets of Company on inquiry and investigation	Power of the Tribunal to Freeze the assets of company on inquiry and investigation.
21.	Sec. 222	Imposition of restrictions upon securities	Imposition of restrictions upon securities.
22.	Sec. 224(5)	Action to be taken in pursuance of Inspector's report	Power of the Tribunal to initiate action against Company or Directors on the basis of inspector's report.
23.	Sec. 241	Application to Tribunal for relief in cases of Oppression, etc.	Action against Prevention and Oppression and Mismanagement.
24.	Sec, 242, except (1) (b), (2)(c) & (g)	Powers of Tribunal notified except for certain High Court Matters.	
25.	Sec. 243	Consequence of the termination or modifications of certain Agreements	
26.	Sec. 244	Right to apply under Section 241 i.e., application to tribunal in case of Oppression etc.	
27.	Sec. 245	Class Action	
28.	Reference of word 'Tribunal' in Sec. 399(2)	Inspection, production and evidence of documents kept by Registrar	Leave of the word 'Tribunal' required for issuance of certain documents.
29.	Sec. 415 to 433 (both inclusive)	Constitution, Resignation & Removal of Members, Benches, Orders, Appeals, Procedure and Limitations, etc. about Tribunal	Detailed provisions in relation to operation, functioning of NCLT/NCLAT
30.	Sec. 434(1)(a) & (b) and (2)	Transfer of certain pending proceedings	Power of the Tribunal to transfer pending proceedings and Appeal against CLB Order.
31.	Sec. 441	Compounding of certain Offences	Power of NCLT to compound offences
32.	Sec. 466	Dissolution of CLB and Consequential provisions	Dissolution of CLB and consequential provisions.

Companies Act, 1956 is still applicable in the matter relating to the powers of the High Court

As the provisions relating to merger, de-merger, compromise, arrangement, winding up, etc. will be continuing with the applicable provisions of the Companies Act, 1956 and Companies (Court) Rules, 1959 companies have to approach the jurisdictional High Court

for these matters.

Amicus Curiae (an impartial adviser to a court of law in a particular case)

As per Rule 61 of the draft NCLT Rules, 2015, the Tribunal may, at its discretion, permit any person or persons, including the professionals and professional bodies to render or to communicate views to the Tribunal as Amicus Curiae on any point or points or legal issues as the case may be as assigned to such Amicus Curiae. The Tribunal may permit an Amicus Curiae to have access to the pleadings of the parties and shall also enable the parties to submit timely observations on an amicus brief. The Tribunal shall be at liberty to direct either of the parties or both the parties to the proceedings involving a point on which the opinion of the Amicus Curiae has been sought, to bear such expenses or fee as may be ordered by the Tribunal. The judgment and any appended opinions shall be transmitted to the parties and to Amicus Curiae.

Dedicated Portal Online

It is considered that the proceedings for application before the Tribunal, Appellate Tribunal and all the correspondences including issuing of the orders will be proceeded electronically as the intention of the Central Government is reflected under Rule 45 of the draft NCLT Rules, 2015, and proposed to have the 'Dedicated Portal Online' through which all the parties or Central or State Government agencies and local government's electronically send and receive documents to or from the Tribunal and make required payments, as may be prescribed by the Tribunal from time to time.

The 'Dedicated Portal Online', will specify the permissible formats for documents that will be electronically filed and served. Filers who electronically file documents will pay the filing fees to the Registry indirectly through the 'Dedicated Portal Online' by a method set forth by 'Dedicated Portal Online'.

TRIBUNAL: A BOON TO THE CORPORATES

1. The Tribunal shall circumvent the multiplicity of litigation before various authorities like High Courts, CLB, BIFR, etc. Thus, there will be a consolidation of Corporate Jurisdiction into a single Forum.
2. The Benches of the Tribunal comprise of technical members having expertise in the Corporate Laws who will assist to the judicial members in providing concrete and precise decisions. As there is combination of judicial and technical members in the Benches, the cases will be proceeded speedily to save cost, time and administrative efforts.
3. Tribunal will prove to be a great help to the creditors, stakeholders and sick companies as the time period for revival and winding up will be reduced.

SCOPE FOR THE PROFESSIONALS

The Government under the Companies Act, 2013 has recognised the knowledge and expertise of the Corporate Laws possessed by the practicing professionals like Company Secretaries, Chartered Accountants, Cost Accountants, apart from the Advocates as under;

- (a) Opportunity to become part of the judicial system through the Tribunal and Appellate Tribunal and have been authorized to appear before the Tribunal/Appellate Tribunal (Section 432 of CA, 2013). Therefore, Practicing Professionals for the first time have been made eligible to file application and/or petition and to appear and represent their case before the Tribunal in all the matters.
- (b) Can serve as Technical Members in the Tribunal.
- (c) Can be appointed as liquidator for the winding up process.
- (d) Can communicate views to the Tribunal as Amicus Curiae on any point or points or legal issues as the case may be as assigned by the Tribunal.

EXPECTATION FROM THE PROFESSIONALS

As referred above, another important area of practice has been opened up for Practicing Professionals like CS, CA and CMA for which they will be required to give extra-efforts and 'invest' substantial time to update themselves with the knowledge of relevant case- laws; developing art of advocacy and soft skills; thorough study and in-depth analysis of the provisions of CA, 2013 as well as 1956, so that they can justify the responsibilities shouldered upon them.

SUMMING UP

Professional Bodies, and other organization like FICCI and Government Departments need to work together to bring growth in the various dimensions of corporate environment which ignited the necessity for change in the age old legislation controlling the governing of such corporates and also for ease of doing business and take effective steps to spread awareness among various stakeholders. The procedure for granting relief and decree/orders will be definitely more viable and less time-consuming, so that the confidence of various sections of the people will nurture in the Tribunal. Therefore, going by the dynamism of the global world, merits of the Tribunal and the Appellate Tribunal cannot be denied. However, during the initial stage there would be some difficulties for which the professionals like Company Secretaries may provide necessary guidance to the corporate and that teething problem relating to implementation and execution of work before the Tribunal will be eliminated over period of time.

As India is a large country having 29 states, for expeditious resolution of cases, there should be more benches to cover all the major States at least in places where the Registrars of Companies are having their offices for speedy disposal and justice with lesser cost and time consumption for travelling and otherwise.

REFERENCES

1. CA, 2013 and Notifications thereunder
2. Draft NCLT Rules, 2015
3. www.icsi.edu
4. www.mca.gov.in
5. www.economicstimes.com
6. Union of India v. Madras Bar Association
7. L. Chandra Kumar v. Union of India

CS

Now Miracles will Happen through NCLT



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The Ministry of Corporate Affairs (MCA), has issued three notifications on 1st June, 2016 exercising the powers conferred upon it by Sections 434(1), 1(3), 419(1) and 410 of the Companies Act 2013 (the Act), regarding:

1. Constitution of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT)
2. Notifying various sections of the Act (which were not effective due to non-constitution of NCLT)
3. Location of NCLT benches
4. Dissolution of the Company Law

Board as per Section 466 of the Act.

Through the above notifications the NCLT and NCLAT have come into existence on 1st June, 2016.

PROVISIONS OF THE ACT MADE EFFECTIVE WITH THE CONSTITUTION OF THE TRIBUNALS

The Ministry vide its notification no. S.O.1934(E) dated June 01, 2016 has notified the following provisions of the Companies Act, 2013:

Company Secretaries have been authorized to appear before the NCLT and NCLAT and now this is the first time that the Company Secretaries will be eligible to appear for matters which till now were dealt by the High Courts and only by advocates. The Government has given a new responsibility to the Company Secretaries. Miracles will happen for the profession when its members realize their magic power of hidden qualities through the continuous process of development.



Section	Matter	Particulars
Section 7(7) [except clause (c) and (d)]	Incorporation of Companies	In cases where the Company has been incorporated by furnishing false or incorrect information the tribunal has powers to pass orders as it may deem fit. However, the power to remove the name and winding up of the company continues with the registrar of companies (ROC) and High Courts respectively.
Section 14 (1)and (2)	Alteration of Articles	Approval of the Tribunal shall be sought for conversion of public company to private company.
Section 55(3)	Issue and Redemption of Preference Shares	In cases where the Company is not in a position to redeem or pay dividend on preference shares, the company may issue fresh redeemable preference shares, with the approval of the Tribunal.
Section 61(1)(b)	Power of limited company to alter its share capital	Consolidation or division of share capital which results in the changes in voting percentage of shareholders shall be done only with approval of the Tribunal.
Section 62(4),(5) and (6)	Further issue of share capital	If need arises for conversion of debentures issued or loan obtained from Government by a Company into shares and terms of such conversion are not acceptable to the Company, appeal can be made with the Tribunal.
Section 71 (9) to (11)	Debentures	In cases where the company fails to redeem the debentures or pay interest on maturity, a petition may be filed with the Tribunal.
Section 75	Damages for Fraud	The Tribunal may grant extension of time to companies which fail to repay deposits and interest thereon in terms of Section 74(2).
Sections 97, 98 and 99	Power of the Tribunal to call annual general meetings and meetings of Members	The Tribunal may on an application made by a member or director call for annual general meetings or members meetings.
Section 119(4)	Inspection of minute books of general meetings	If any member is denied inspection or copies of minutes book of general meetings, the Tribunal has powers to direct immediate inspection or direct the copies be provided to the member.
Section 130	Reopening of Accounts	Financial Accounts of the company shall be reopened only by an order made by the Tribunal.
Section 131	Voluntary revision of financial statements or Boards' report	Approval of Tribunal shall be sought for voluntary revision of financial statements and Boards' report.
Section 140 Second proviso to sub-section (4) and sub-section (5)	Removal, resignation of auditor and giving of special notice	Tribunal shall act on an application made for removal of auditor or <i>suo motu</i> pass orders for removal of auditor.
Section 169(4)	Removal of Directors	Tribunal shall act on an application made for removal of director.
Section 213	Investigation into company's affairs in other cases	Tribunal may order investigations into the affairs of the company based on applications received from the concerned parties.
Section 216(2)	Investigation of ownership of company	Tribunal may direct investigation into membership/ownership of the company.
Section 218	Protection of employees during investigation	Change in terms of employment, discharge, suspension, removal of employees during the course of investigations requires prior approval of Tribunal
Section 221	Freezing of assets of company on inquiry and investigation	The tribunal may restrict transfer, removal or disposal of assets for a period not exceeding three years.
Section 222	Imposition of restriction upon securities	The tribunal may impose restriction on transfer of securities for a period not exceeding three years.
Section 224(5)	Action to be taken in pursuance of inspector's report	In case of fraud, the Tribunal shall pass appropriate orders with regard to disgorgement of assets and also against the person found guilty.
Sections 241, 242 [except clause (b) of sub-section (1), clause (c) & (g) of sub-section (2)], 243, 244, and 245	Prevention of Oppression and Mismanagement	The tribunal shall pass necessary orders in cases of mismanagement, oppression and class action suits.
Reference of word 'Tribunal' in sub-section (2) of section 399	Inspection, production and evidence of documents kept by Registrar	–
Sections 415 to 433 (both inclusive)	NCLT and NCLAT	Provisions related to constitution, functioning of benches orders and appeals on NCLT and NCLAT orders have been dealt with in these sections.
Section 434(1)(a), (b) and (2)	Transfer of certain pending proceedings	All matters, proceedings or cases pending before the Company Law Board initiated under the Companies Act, 1956 shall stand transferred to the Tribunal. Appeals against the orders of the Company Law Board passed before the constitution of the NCLT would continue to be made before relevant High Court.
Section 441	Compounding of certain offences	The Tribunal shall compound offences where penalty imposed exceeds Rs.5 lakh or more and cases where maximum amount of penalty imposed does not exceed Rs.5 lakhs shall be dealt with by the Regional Director or such other officer authorised by the Central Government.

Section 466	Dissolution of Company Law Board and consequential provisions	Provisions regarding dissolution of Company Law Board.
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While matters like class action suits, alteration of articles and many more will now be governed by NCLT, other matters relating to winding-up, compromise, amalgamation and capital reduction will continue to be under the purview of the High Courts. Once the Tribunals commence their functions, matters handled by the Board of Industrial and Financial Reconstruction (BIFR), the Appellate Authority for Industrial and Financial Reconstruction and High Courts would eventually be transferred to NCLT. With this, NCLT and NCLAT are intended to act as a quasi-judicial body to adjudicate all disputes pertaining to Corporate Sector.

MEGA TRIBUNAL

The NCLT and NCLAT may be termed as Mega Tribunal as they will do the work like a single window of all types of Corporate Justice. The scope of NCLT and NCLAT will be as follows:-

1. On dissolution of the Company Law Board: All the matters will be taken up by NCLT and NCLAT
2. All matters which were decided by the Board for Industrial and Financial Reconstruction will be taken up by NCLT and NCLAT
3. Jurisdiction and powers relating to winding up, reconstruction and other such provisions, which were dealt by the high courts will be taken by NCLT and NCLAT
4. According to the Insolvency And Bankruptcy Code, 2016: all the matters relating to reorganization and insolvency resolution of Corporate persons will be taken by NCLT and NCLAT.

WHY MIRACLE WILL HAPPEN

This shows that another important area of practice, has been opened for Company Secretaries besides others. Company Secretaries have been authorized to appear before the NCLT and NCLAT and now it is the first time that the Company Secretaries have been made eligible to appear for matters which till now were dealt by the High Courts and by advocates. In case of mergers, amalgamations under Section 391 to 394 of the Companies Act, Company Secretaries were not eligible to appear before High Courts even having good command on Corporate Laws.

Company Secretaries have been considered as complete Corporate Professional and the opportunity of appearing before NCLT and NCLAT have been provided under the Companies Act. Now they are 'all in one' Corporate Law Adviser, Corporate Compliance Person and helpful person in getting justice.

Provisions relating to merger, amalgamations by companies and winding up of companies are yet to notified because it will take time to transfer the files which are presently with High Courts to NCLT. Ultimately these powers will be dealt by the NCLT and NCLAT.

PRESENT STATUS

The Ministry of Corporate Affairs has issued notification for constitution of the NCLT and NCLAT with effect from 1st June, 2016. The Ministry has constituted the following eleven benches:

National Company Law Tribunal, Principal Bench, New Delhi, National Company Law Tribunal, New Delhi Bench, National Company Law Tribunal, Ahmedabad, National Company Law

Tribunal, Allahabad, National Company Law Tribunal, Bengaluru, National Company Law Tribunal, Chennai, National Company Law Tribunal, Guwahati, National Company Law Tribunal, Hyderabad, National Company Law Tribunal, Kolkata, National Company Law Tribunal, Mumbai.

The Central Government has fixed 1st June, 2016 as the date of transfer of all matters with NCLT which were pending before the Company Law Board.

The Ministry has yet to issue necessary rules for NCLT mechanism, draft of the same were already placed and comments have been obtained and at any time the rules may be notified by the Central Government.

ADVANTAGES OF NCLT AND NCLAT

The following will be the main advantages for Corporate Sector on NCLT and NCLAT becoming operational:

1. Reduction of period: Presently in most of the winding up cases and insolvency matters the time period generally taken vary from 5 to 10 years, whereas in this new NCLT era it will be only about two years.
2. Eleven Benches of NCLT: This will give convenience to Corporate sector as the number of Benches is good and this will also reduce the period of disposal of matters. In future these benches may be increased by the Ministry to have benches in all the major states.
3. Presently in some matters there are multiplicity of litigation before various forums, viz., CLB, High Courts, BIFR etc. NCLT and NCLAT will provide various types of justice at one centre.
4. Precious national money, time and manpower will be saved due to NCLT and NCLAT.

COMPANY SECRETARIES : HOW TO UTILIZE THE OPPORTUNITY

For getting success in NCLT and NCLAT practice, a Company Secretary needs to have complete grip on the applicable laws on the particular matter, and the provisions of the NCLT and NCLAT rules, regulations, provisions of the Companies Act, 2013 and the rules, regulations of the Companies Act, 2013; the Civil procedure Code, Indian Evidence Act, Indian Contract Act, etc, Besides this the following are some basic rules, which one should follow in proper and right manner:-

1. **Tips for Appearing before NCLT and NCLAT**
PCS needs to keep in mind the following points strictly for giving an impression of being a good professional:
 - be on time
 - throw away gum, any chewable item before entering the courtroom.
 - stand when the judge/member enters and leaves the courtroom
 - stand when you are speaking to the judge/member in right posture
 - Always address the judge as 'Your Honor' or 'Respected

Sir/Madam'

- never interrupt the judge, if you are unsure of what you heard, wait until the judge or other person speaking has finished talking before asking a question.
- enter and leave the courtroom quietly, so you do not disturb others.
- only approach the bench when instructed to do so.
- and very much important keep your mobile in silent mode or switch it off .

2. Dressing for Tribunal

While appearing in the Tribunal, we should dress nicely and in a manner that show respect to the court. We should follow the dress code prescribed by ICSI and or under the NCLT Rules.

3. Here are some things that we should NOT wear

- Hats inside the courtroom (use only if it is necessary due to religious reason)
- Sunglasses (until it is necessary due to advise of your doctor)
- Ripped or torn jeans
- mini- skirts and shorts
- trousers that fall below the waist

If any person who is not dressed properly, he/she may be asked to leave the court and to attend the court at a later date. This will delay your hearing and will lower your reputation and will increase the cost of client.

4. Behavior

Attend the court on time, and return from court breaks on time. Behave politely at all times, including to the opposing parties and their counsel.

Don not interrupt when other parties are speaking, unless (on legal grounds only) you object to a question being asked or the way a question is asked to a witness.

Do not interrupt the Judge/member when he/ she is speaking.

5. Reputation

Our reputation is very much important in our career both in professional life and in our personal life, hence we have to be vigilant about what we say and how we behave. This principle is true, whether we are making representations to the Tribunal, interacting with Tribunal personnel, working with opposing counsel, managing our client, or in any other situation in which a Company Secretary might find himself/ herself.

In an article titled , 'Tips for Court Appearances' it has been quoted that if you lie, the judge might forgive you, but he will never forget. "The judge needs to trust you, and if you violate his/ her trust even once, your reputation is tarnished." Tip for Company Secretary, make an impression, and this should be a good one.

6. Be respectful in court

Approach the Tribunal and chambers staff with respect and a healthy dose of humility, because we should accept in our interest, the staff knows more than us. They are experienced, knowledgeable and have the judge's respect and trust. Show courtroom staff the same respect that you show the judge.

7. Know your Case

It is our job to be well prepared. An early lesson is that, 'I did

not have to be the smartest person there, may not be the most experienced, or the most eloquent person in the room, but, I believe that I know my case better than my opposing party. We should put ourselves in the judge's position and consider the number of cases, a judge has on his/her table. It would be unfair to expect the judge (even with the help of staff) to research every legal issue or master the facts of every case before him. Therefore, judges depend on the counselor to provide accurate information on the facts and the law, and to be honest and straightforward in the presentations. A good approach should be, "If I were the judge, what would I want to know?"

We should never try to fool the judge by answering questions which we really do not know the answer to. Judges respect when the counselor admits that he does not know the answer, but offer to supplement or research and come back with an answer. In the end, the judge will appreciate the honesty.

8. Know the rules and follow them

Being Company Secretary, we should know the jurisdiction's rules of evidence, Court and NCLT procedure and the practice of NCLT and NCLAT. We should Carry the hard copies of the ruling quoted, law/ rule books for frequent and easy reference.

9. Always Learn from our seniors

We should observe how well-respected attorneys and judges act and speak. Ask them questions and seek their advice for getting better knowledge. *Learning should be a never ending process. We should try to develop our skills through reading good books, taking advice from our mentors who are successful in their field.*

10. Be Confident

We should maintain our confidence by complete preparation, knowledge of the case and by our good behavior. It is possible to appear confident, even when we are not.

Find ways to build confidence in your own way. We may make outlines and notes that will help guide us through an argument or presentation before the court. We may practice even the simplest of arguments by talking it through to ourselves, with our colleagues, and sometimes with our clients also.

CONCLUSION

The Ministry has given a new responsibility to the Company Secretaries in the form of NCLT and NCLAT, and being Corporate Law experts, we can utilize the opportunity by developing our qualities through above mentioned points. Through this process we may become an integral part of the Corporate world. Miracles will happen for the profession of the Company Secretary, when we will realize our magic power of our hidden qualities through the continuous process of development. We should start to feel that we are having best qualities among others and we have to change the fate of the profession of Company Secretary. Now we should not use the terms, 'I can't do this', or 'I can't afford it'.

When our Corporate society will get benefit from our good and timely services, we will automatically enlighten the fate of our profession and of ours also. Because our fate is not separate from the fate of our profession. Hence the time has come for saying, 'Miracles will happen.' No one can stop its happening. CS

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RESEARCH CORNER

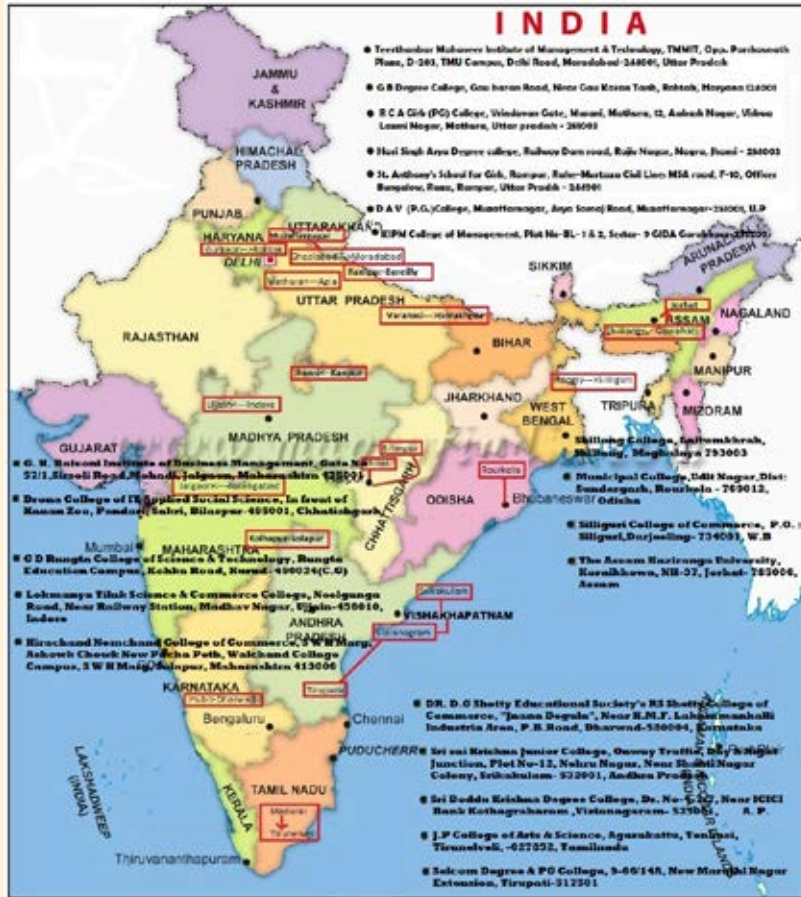


- ECONOMIC GOVERNANCE FOR INCLUSIVE ECONOMIC DEVELOPMENT AND THE ROLE OF DIFFERENT STAKEHOLDERS
- COMPARISON OF PRE & POST FINANCIAL PERFORMANCE AFTER MERGERS & ACQUISITIONS
- ICSI INVITES INTERNATIONAL RESEARCH PAPERS FOR ITS GLOBAL CONGRUENCE ON INTERNATIONAL CORPORATE GOVERNANCE DAY TO BE HELD ON 09 & 10 DECEMBER 2016 @ HYDERABAD, TELANGANA, INDIA
- IIRESEARCH SYMPOSIUM ON INDIAN COMPANIES ACT – DECODING UNSOLVED MYSTERIES AND IMPACT OF AMENDMENT BILL 2016
- EXPRESSION OF INTEREST (EOI)

ICSI STUDY CENTRES

The Institute had launched 'ICSI Study Centre Scheme' on the birth anniversary of Mahatma Gandhi i.e. 2nd October, 2016 primarily to enhance of reach of the Institute in areas which are not getting the desired level of services due to distantly located Regional/ Chapter Offices of the Institute. Under the scheme, the Institute is striving to establish Study Centres in most of the Smart Cities as proposed by the Government of India which shall not only remove the distance barrier but also improve the level of services being provided to the students in such areas.

So far, 21 Study Centres have been opened at the following locations: -



ICSI SIGNATURE AWARD

The ICSI Signature Award Scheme was introduced by the Institute in furtherance of its objectives to nurture best talent available and facilitate meaningful collaborations between the institutions in the higher education sector for the benefit of student community. The initiative is expected to encourage competitive spirit among the students studying in various colleges affiliated to the Universities. Under this Scheme, Top Rank Holder in the B.Com. Examinations of respective Universities and topper of PGDM of IIMs / IITs shall be awarded a Gold Medal and Merit Certificate. Top three rank holders in the aforesaid examinations shall also be eligible for waiver of Registration Fee while registering for the CS Course in Executive Programme.

So far, the Institute has signed agreements/ MOUs with the following Universities / Indian Institutes Management :

1. BhagatPhool Singh MahilaVishwavidyalaya, KhanpurKalan, Haryana
2. AlagappaUnivesity, Karaikudy, Tamilnadu
3. Guru Nanak Dev University, Amritsar, Punjab
4. Kumaun University, Nainital, Uttarakhand
5. Himachal Pradesh University, Shimla, Himachal Pradesh
6. AdikaviNannaya University, Rajamundry, Andhra Pradesh)
7. Andhra University, Visakhapatnam, Andhra Pradesh)
8. IIM, Indore (Madhya Pradesh)
9. SNDT Women's University, Mumbai (Maharashtra)
10. IIM, Tiruchirapalli
11. Panjab University, Chandigarh

Economic Governance for Inclusive Economic Development and the Role of Different Stakeholders



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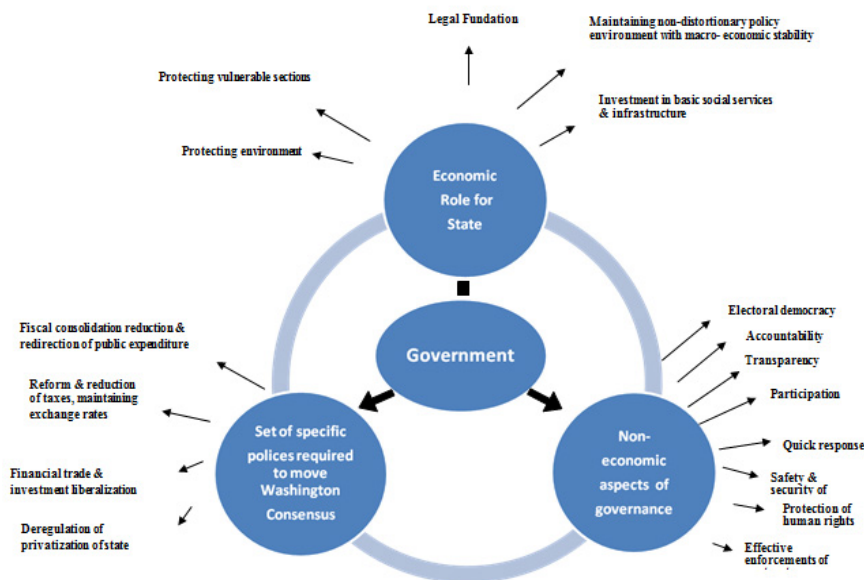
GOVERNANCE

Despite the recent popularity of governance at both the practical and theoretical levels, 'governance' continues to mean different things to different people. Governance relates to the management of all such processes that, in any society, define the environment which permits and enables individuals to raise their capability levels, on one hand, and provide opportunities to realize their potential and enlarge the set of available choices, on the other.¹ Governance is the totality of interactions in which government,

manage their common affairs.³ There is a difference between those who view governance as concerned with the rules of conducting public affairs, on the one hand, and those, on the other, who see it as steering or controlling public affairs.⁴

Figure 1 explains the different horizons of governance which is mainly based upon the World Bank concept of governance. It shows that the government has role in economic and non-economic aspects of the economy, which also includes set of specific policies for the different aspects.

Figure 1: Different horizons of governance



other public bodies, private sector and the civil society participate, aiming at solving societal problems or creating social opportunities.² Governance is the sum of the many ways individuals and institutions, public and private,

Source: Indian Institute of Public Administration (2013): India Governance Report 2012, New Delhi, p.3.

Governance includes various categories

*The ideas expressed in this paper are the personal opinion of the author. The paper is based on the doctoral research work of the author on the topic 'Economic Governance and Inclusive Economic Development – A Study of Himachal Pradesh'.

1 Planning Commission (2002b): Tenth Five Year Plan Document, New Delhi: Government of India.
2 Mueleman, L (2008): Public Management and the Metagovernance of Hierarchies, Networks and Markets, Heidelberg: Physica-Verlag, p.11.

3 Report of the Commission on Global Governance: Our Global Neighborhood, Research Department Working Paper No. 4149, <http://www.gdrc.org/u-gov/global-neighborhood/chap2.htm>.

4 Hyden, Goran and Julius Court (2002), "Governance and Development," World Governance Survey Discussion Paper 1, August, United Nations University, p.7.

of relationships which are mentioned below –

- i) Relationship between government and market,
- ii) Relationship between government and citizens,
- iii) Relationship between government and civil society including voluntary sector,
- iv) Relationship between elected officials (politicians) and appointed officials (civil servants),
- v) Relationship between spheres of government (central, provincial, local etc.)
- vi) Relationship between legislative, executive and judiciary along with media.⁵

Governance is the key variable between the Outlays and Outcomes as shown in Figure 2. The efficiency of Governance thus, critically affects the outcomes i.e. the same inputs can lead to better outcomes with better governance, and *vice-versa*.

Figure 2: Governance as a channel between Inputs and Outcomes



DIMENSIONS OF GOVERNANCE

Goran Hyden and Julius Court in a World Governance Survey Discussion Paper⁶ state that governance is an all-encompassing concept and has three legs: economic, political, and administrative. There are various dimensions of governance – Political, Economic, Administrative, Social, Legal and Judicial – each giving thrust to different sets of objectives.

ECONOMIC GOVERNANCE

Economic Governance means governance relating to the economic aspects of a state or nation. It refers to the ability of the state to ensure macro-economic stability and create conducive climate for economic activity to take place in the economy. It is also reflected in the state's ability to provide support to the various sectors of the economy. Economic governance includes decision-making processes that affect a country's economic activities and its relationship with other economies.⁷

Economic governance is about setting rules that induce economic actors to cooperate more effectively with each other, and that support the implementation of economic policy.⁸ Economic governance denotes the management of complex policy-making structures.⁹ Economic governance has emerged as the most dominant factor in changing the model

for government.¹⁰ Economic governance is a concept which is subsumed in the concept of good governance.¹¹

There have been three main models of economic governance during the last three centuries: the economic liberal, the Keynesian and the neo-liberal. After the economic liberal model and the Keynesian model, the collapse of the Soviet Union and its planned economy further revealed that state failure could be even more detrimental to economic growth than market failure. The neo-liberal doctrine was based on minimizing the role of the state. Neither state nor the market solutions proved optimal. For economic liberals, the solution for state failure is more markets, while proponents for state intervention look at the solution for market failure to be more state as a result of which we witness the prevalence of a zero-sum game.

Economic governance aiming at inclusive economic development encompasses the following components –

- a) Support to primary, secondary and tertiary sectors: Economic governance has implications for the primary, secondary and tertiary sectors and how the state provides various services to support these sectors.
- b) Business Environment: It pertains to the way businesses operate within the state and includes general investment climate, legal aspects, procedural issues, infrastructure and manpower, regulatory systems etc.
- c) Welfare of the poor and vulnerable: The changing emphasis of governance towards the welfare of the poor and the marginalized is well recognized. The test of governance lies in the state of the poor and the vulnerable segments such as the women, children, minorities, physically challenged persons etc.
- d) Fiscal Governance: It relates to how the state manages its finances over a period of time. This is examined both in terms of revenue mobilization indicators and indicators pertaining to expenditure management.
- e) Efficient public service delivery: The delivery of essential public services to millions of citizens is very crucial for promoting inclusive development with a human face especially in sectors like health care, education, drinking water, sanitation, basic infrastructure etc.

The Millennium Development Goals include good governance as one of the essential components for reducing poverty and improving lives. It aims to develop an open, rule-based, predictable, non-discriminatory trading and financial system. It includes a commitment to good governance, development, and poverty reduction – both nationally and internationally.¹²

RELATIONSHIP BETWEEN ECONOMIC

5 Gill, Dr. R.S. (2012): "Role of Industry in Himachal Pradesh Economy: Problems and Prospects", Administrative Development, July-December 2012, Volume 1, No.2, Shimla: Himachal Pradesh Institute of Public Administration, p.343.

6 Hyden, Goran and Julius Court (2002), op.cit.

7 Ibid., pp.11-12.

8 Karmakar, Asim K. and Debabrata Mitra (2009): "In Looking into Good Governance: The State and Economic Development," Economics of Good Governance, Anil Kumar Thakur and Parmanand Singh (eds), New Delhi: Deep and Deep Publications Private Limited, p.5.

9 Gamble, Andrew (2000): "Economic Governance," Debating Governance, Authority, Steering and Democracy, Jon Pierre (ed), London: Oxford University Press.

10 Prasad, Kamala (2006): Indian Administration: Politics, Policies and Prospects, New Delhi: Pearson Longman, p.389.

11 Joydeb, Sasmal (2009): "Size of Government, Distributive Politics and Governance: A Simple Political Choice Model," Economics of Good Governance, Anil Kumar Thakur and Parmanand Singh (eds), New Delhi: Deep and Deep Publications Private Limited, p.56.

12 Ministry of Statistics and Programme Implementation (2005): Millennium Development Goals, India Country Report 2005, New Delhi.

GOVERNANCE AND INCLUSIVE ECONOMIC DEVELOPMENT

Economic development is a complex process. It is influenced by various factors like natural resources, economic factors (capital formation, marketable surplus of agriculture, conditions in foreign trade, economic system) and non-economic factors (human resources, technical know-how and general education, political freedom, social organization, corruption etc.)

Both in normal parlance and in the economic literature, it is considered that growth and development depends on various factors of which governance is a very significant and critical one.

Mathematically, the relationship between governance and development in the three sectors of economy is shown below -

$$Y = \beta_1 x_1 + \beta_2 x_2 + \beta_3 x_3 + \dots + \beta_n x_n + e_i$$

In this regression model,

Y = Rate of development

X = Independent variables including Governance

e_i is error term following standard normal distribution with mean 0 and variance 1.

$\beta_{1,2,3,\dots,n}$ = regression coefficient.

Growth rate in Primary sector is a function of governance and other factors in that sector.

$$Y^p = f(x^p) + e_i$$

Y^p = Development in Primary sector

$$x^p = x^p_1, x^p_2, x^p_3 \dots x^p_n$$

x^p_1 = Governance in Primary sector

$x^p_2, x^p_3 \dots x^p_n$ = Other factors affecting Development in Primary sector

e_i = error term

$$Y^p = \beta_1 x^p_1 + \beta_2 x^p_2 + \beta_3 x^p_3 + \dots + \beta_n x^p_n$$

$\beta_1, \beta_2, \dots, \beta_n$ are regression coefficients

Growth rate in Secondary sector is a function of governance and other factors in that sector.

$$Y^s = f(x^s) + e_i$$

Y^s = Development in Secondary sector

$$x^s = x^s_1, x^s_2, x^s_3 \dots x^s_n$$

x^s_1 = Governance in Secondary sector

$x^s_2, x^s_3 \dots x^s_n$ = Other factors affecting Development in Secondary sector

e_i = error term

$$Y^s = \beta_1 x^s_1 + \beta_2 x^s_2 + \beta_3 x^s_3 + \dots + \beta_n x^s_n$$

$\beta_1, \beta_2, \dots, \beta_n$ are regression coefficients

Growth rate in Tertiary sector is a function of Governance and other factors in that sector.

$$Y^t = f(x^t) + e_i$$

Y^t = Development in Tertiary sector

$$x^t = x^t_1, x^t_2, x^t_3 \dots x^t_n$$

x^t_1 = Governance in Tertiary sector

$x^t_2, x^t_3 \dots x^t_n$ = Other factors affecting Development in Tertiary sector

e_i = error term

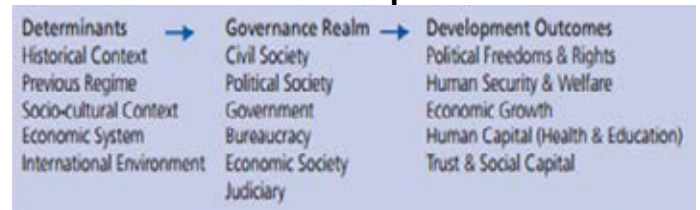
$$Y^t = \beta_1 x^t_1 + \beta_2 x^t_2 + \beta_3 x^t_3 + \dots + \beta_n x^t_n$$

$\beta_1, \beta_2, \dots, \beta_n$ are regression coefficients

Recent works internationally in development economics highlight the significance of governance as a very significant factor of economic development. Inclusive economic development is not only about increasing the size of the cake, but also to ensure that everybody has a piece of it. Governance is related to both, though in different ways. The idea that quality of governance contributes to improved human well-being and sustained development has gained widespread recognition. The concept of governance received greater attention as multilateral bodies such as the UNDP and the World Bank discovered that successful development required reforms in political and administrative regimes. Whether or not there is a direct correlation between good governance and improved human well being, experience shows that chronic poverty is generally associated with poor governance.

There are multiple and complex relationships between governance and development. The particular conditions of each country provide both constraints and opportunities to improve governance. The Framework for analyzing governance and development is given in Figure 3 which shows governance as an intermediary between the determinants and development outcomes -

Figure 3: Framework for analyzing Governance and Development



Source: odi Briefing Paper (2006): Governance, Development and Aid Effectiveness: A Quick Guide to Complex Relationships, March, www.odi.org.uk/resources/docs/218.pdf.

Good governance makes a difference when it comes to social and economic development.¹³ The quality of public governance in a developing country plays an important role in its ability to leverage the benefits of globalization.¹⁴ The role of governance

¹³ Hyden, Goran and Julius Court (2002), op.cit., p.29.

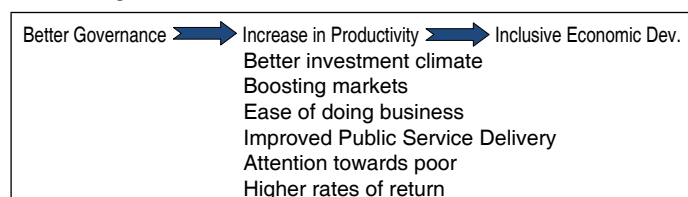
¹⁴ Murthy, N.R. Narayan (2009): A Better India A Better World, Penguin Books India, p.201.

lies in proper coordination, motivation and regulation of development efforts.¹⁵ Good governance, more than policies and reforms, is the key to India's achieving inclusive growth by translating outlays to outcomes¹⁶. Keeping with the world over trends, there has been a renewed emphasis on improving the quality of governance in our country. To begin with, the Government of India outlined a governance approach to development in the National Human Development Report 2001.¹⁷

Mechanisms through which Governance affects Economic Development

Through what channels does governance affects economic development? The answer is through multiple channels or mechanisms as shown in Figure 4. Neo-classical growth theory (Solow, 1957)¹⁸ and others (such as Kuznets, 1966)¹⁹ emphasized long ago that much of modern economic growth is due to increases in productivity and better macro-economic policies (or governance) increase productivity growth. Similarly, better governance results in better investment climate, boosts markets resulting into ease of doing business and higher attention towards poor.

Figure 4: Mechanisms through which governance affects inclusive economic development



Good governance, more than policies and reforms, is the key to achieving inclusive growth by translating outlay to outcome²⁰

ROLE OF DIFFERENT STAKEHOLDERS OF GOVERNANCE FOR FASTER AND MORE INCLUSIVE ECONOMIC DEVELOPMENT

For achieving faster and more inclusive economic development, it is essential to understand the role different players of governance should play, in the times to come.

State – Growth enhancing governance

A basic issue that arises in relation to governance is the proper role of government in economic development and economic management. The extent of state participation in the economy remains stubbornly large in India. The state continues to play an invasive role in land markets and public sector institutions still account for more than three-quarters of the financial sector's assets. This widespread government participation in economic

activity has been used to pursue the state's political agenda in a manner that has distorted markets and undermined economic governance.

The state has very important role in (i) maintaining macro-economic stability, (ii) developing infrastructure, (iii) providing public goods, (iv) preventing market failures (v) providing social security to poor and needy and (vi) promoting equity. A strong and pro-active role of the state is essential to foster inclusive economic development. Sound macroeconomic and structural policies are necessary for promoting economic progress and social change. In addition to managing a redistributive system, the government must also create a supportive macro-environment, which will help deliver rapid growth, inclusiveness and expansion in jobs. We infact want more of Growth-enhancing governance to attain inclusive economic development.

Table 1 mentions the functions of the state in addressing market failure and improving equity. It prescribes basic functions of a state, intermediate functions and activist functions.

Table 1: Functions of the State

	Addressing market failure		Improving equity	
Basic functions	Providing pure public goods: Defence Law and order Public health Macroeconomic management		Protecting the poor: Anti-poverty Programmes, Disaster relief	
Intermediate functions	Addressing externalities: Basic education Environmental protection	Regulating monopoly: Antitrust Policy Utility and regulation	Overcoming imperfect information: Insurance Financial regulation Consumer protection	Providing social insurance: Redistributive Pensions Family allowance Unemployment insurance
Activist functions	Coordinating private activity Fostering markets Cluster initiatives		Redistribution: Asset redistribution	

Source: World Bank (1997): World Development Report 1997: The State in a Changing World, Oxford University Press, p.27.

While markets have a natural propensity to deliver on efficiency, they do not have innate propensity for equity or equality. Hence it is true that for eradicating poverty and creating a more equitable and inclusive society, there is need for purposive action by the government. Government should play an enabling role *vis-à-vis* the market. On the other hand, when it comes to distribution and the mitigation of poverty, government has to be more proactive with policy interventions. The fact that markets are not naturally inclined to deliver on equity and poverty eradication does not

15 Agarwal, U.C. (2004): "Governance for Development", The Indian Journal of Public Administration, January-March, Vol. L, No.1, p.29.
 16 The Hindu (2010): "Good Governance key to achieving inclusive growth", 20 April..
 17 Planning Commission (2002), op.cit., p.117.
 18 Solow, R. (1957): "Technical Change and the Aggregate Production Function," Review of Economics and Statistics, 39, pp.312-320.
 19 Kuznets, S. (1966): Modern Economic Growth: Rate, Structure and Spread, New Haven: Yale University Press.
 20 Rangarajan, C. (2010): "Good governance key to achieving inclusive growth," The Hindu, 20 April.

mean that we should ignore the markets. The need of the hour is to have an enabling government. There is need to re-examine all laws that empower the government to interfere in markets. Today, the situation is one of an awkward juxtaposition of over-intervention in some respects and inadequate state participation in others.

We cannot really talk about economic governance in isolation. Good economic governance depends on political governance. The concept of economic governance and political governance cannot be disassociated from one another. We need an active state complementary to markets²¹. The persons at the helm of affairs of governance should be in favour of an approach that minimizes the role of the government, or at least requires it to compete with the private sector providers on equal terms.

Private Sector – Vigorous and vibrant

The role of private sector in accelerating the pace of economic development is bound to increase especially in a country like India where the public sector is over-pervasive in different arenas and has reached unsustainable levels. Private sector needs to play a more vigorous and vibrant role in all the sectors of the economy – primary, secondary and tertiary. Because of the squeezed fiscal resources and mounting public debt on the country, major investments in future especially in niche areas of its economy should come from private players.

The government should ease out the prevailing rules to not only facilitate but also attract new investments from private parties. In this age of cut-throat competition among states in India (many of whom organize Investors Meet on a grand scale), only the states with maximum ease of doing business, efficient governance and investor-friendly environment, will flourish. Moreover, the emergence of Public Private Partnerships have also increased the role of private industry in economic development. The adoption of Corporate Social Responsibility not as a mode of charity but a tool for effective corporate governance, has also enhanced the role which industry can play in modern day economy.

In his 2015 Independence Day speech, Prime Minister of India announced a new policy 'Start-up India, Stand up India' to promote financing for start-ups and extend incentives to encourage entrepreneurship and job creation. The start-up scene is buzzing as youngsters undaunted by the risk of new businesses and backed by investors are taking the plunge like never before. The start-up ecosystem in India promises to be the most vibrant in recent history. In this mission, the policymakers, investors and entrepreneurs should pool their minds to create an ideal system for the segment to grow and prosper.

Voluntary Sector – sensitive and motivated

Voluntary sector including Non-government organizations (NGOs), Community based organizations (CBOs) and Voluntary organisations (VOs) have a very crucial role to play in Himachal Pradesh's economy. To strengthen governance at the panchayat, state and central levels, it is essential to build mechanisms that institutionalize consultative planning to enable greater representation of the stakeholders. One way of

achieving the same is through institutionalized consultations with the voluntary sector. The voluntary sector can help build a self-reliant, motivated and harmonious social order by enabling people and people's groups to access democratic processes and entitlements that lead to empowerment. It can also present a critique of public functioning and provide alternatives.

Civil Society – strong and pro-active

Civil Society has a crucial role to play in social mobilisation and community participation. What civil society can do is exemplified by the fact that many public policies emerged out of civil society movements. These include Right to Information, Right to Food, Right to Education, amendments in women crime and juvenile justice laws etc. Government must strongly encourage partnerships with civil society including academic institutions, local colleges and universities.

Media - positive and responsive

The media also has a role in improving governance and enhancing inclusive development. The media through positive and responsive journalism, can and is having a huge impact on the way people are governed. The media needs to be more responsive to the needs and predicaments of the poorest people. Media is right to grumble about the way subsidies waste economic resources, but largely fails to denounce subsidies for the better off people, in the way subsidies for the unemployed and the hungry are savaged in the press.

Citizens – empowered and participative

Last but not the least, it is the citizen himself – the so-called 'Aam aadmi' who should not be sitting at the back of the governance machinery but should be the frontrunner, who decides not only the vision and direction, but also the pace and strategy of developmental efforts. The citizens should be more aware and participative in the governance process and should assert for their rights. It is observed that where citizens are enlightened, empowered and demanding, the governance automatically improves. We need to bring more discipline and work-culture in our societies and the young Indians should be the harbingers of this change.

Concluding Remarks

Governance in general, and economic governance in particular, has become very essential determinant of fast and inclusive economic development in all states and countries of the world. As the pace of liberalization, privatization and globalization has intensified and we have become more integral part of the market economy, the role of economic governance has increased manifold and has become most critical for economic development. There are different channels through which governance affects economic development. As we see the Indian economy driven more and more by private sector and the state redefining its strategies, the different stakeholders of governance would all have to play a synergized and coordinated role so as to achieve maximum welfare of the maximum number of people. The sooner it is done, the better it is for all of us.

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Comparison of Pre & Post Financial Performance after Mergers & Acquisitions



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INTRODUCTION

Mergers and acquisitions (M & A) is the area of corporate finances, management and strategy dealing which deals with purchasing and/or joining with other companies. Recent merger and acquisition is indicating the competitiveness, potentialities and capabilities within an industry. The more merger and acquisition activity there is, the fewer firms there are to compete against within a firm.

The evolution from segregation to economic integration has lead many business organization to increase the rate of merger and acquisition globally and India is also no exception.

Present merger and acquisition have an investment opportunity in some cases, if the merger and acquisition deals exhibit a majority share of a growing market after the merger and acquisition, it may signal that the company should purchase the stock of the target company equally, if the merger and acquisition seems unhealthy, then they may want to separate from the business interest.

The fact is that the amount and volume of merger and acquisition is accomplishing greater levels, merger and acquisition is most important because these activities have significant implications for firm performance.

VOLUME OF MERGERS & ACQUISITIONS WORLDWIDE



VOLUME OF MERGERS & ACQUISITIONS IN INDIA



OBJECTIVE OF RESEARCH STUDY

The increase in the volume of Mergers and Acquisitions globally and also in India encourages on the work relating to comparative study of pre and post corporate integration through Mergers & Acquisitions. Maximum studies were already conducted on the value effect the merger and acquisition have on stock prices and shareholders wealth. But only a few studies have been done on the long term performance of bidder firm after merger and acquisition. The research study tries to provide conclusive evidence that merger and acquisition is efficient or not.

RESEARCH DATA AND THEIR SOURCES

The data has been collected from Annual Reports of Companies with the focus on Mergers & Acquisition transactions in India during the financial year 2013-14. During the period, 9 companies of various sectors were selected and taken up for the analysis.

i. **Asian Paints-Ess Ess Bathroom Products:** The company on May 14, 2014 has entered into a binding agreement with Ess Ess Bathroom Products Pvt. Ltd and its promoters to acquire its entire front-end sales business including brands, network and sales infrastructure. Ess Ess produces high end products in bath and wash segment in India and taking them over led to a 3.3% rise in share price for Asian paints.

RIL- Network 18 Media and Investments: Reliance Industries Limited (RIL) took over 78% shares in Network 18 in May 2104 for Rs 4,000 crores. Network 18 was founded by Raghav Behl and includes moneycontrol.com, In.com, IBNLive.com, Firstpost.com, Cricketnext.in, Homeshop18.com, Bookmyshow.com while TV18 group includes CNBC-TV18, CNN-IBN, Colors, IBN7 and CNBC Awaaz.

ii. **TCS- CMC:** Tata Consultancy Services (TCS), the \$13 billion flagship software unit of the Tata Group, has announced a merger with the listed CMC with itself as part of the group's renewed efforts to consolidate its IT businesses under a single entity. At present, CMC employs over 6,000 people and has annual revenues worth Rs 2,000 crores. TCS already held a 51% stake in CMC.

iii. **Tata Power- PT Arutmin Indonesia:** India's largest private power producer, Tata Power, purchased 30% stake in Indonesian coal manufacturing firm for Rs 47.4 billion.

Sun Pharmaceuticals-Ranbaxy: Sun Pharmaceutical Industries Limited, a multinational pharmaceutical company headquartered in Mumbai, Maharashtra which manufactures and sells pharmaceutical formulations and active pharmaceutical ingredients (APIs) primarily in India and the United States bought the Ranbaxy Laboratories. Ranbaxy shareholders will get 4 shares of Sun Pharma for every 5 Ranbaxy shares held by them. The deal, worth \$4 billion, will lead to a 16.4 dilution in the equity capital of Sun Pharma.

Kotak Mahindra –ING Vysya Bank: Kotak Mahindra has merged with ING Vysya Bank creating a Rs. 2,00,000 crore institution, now becoming a fourth largest private bank with enhanced capacity and means to serve more customers across a wider national footprint.

Yahoo Inc.-Bookpad: The search engine giant, Yahoo, acquired the one year old Bangalore based startup Bookpad for a little under \$15 million. While the deal value is relatively small, this was the first acquisition made by Yahoo. Bookpad was founded by three IIT Guwahati pass outs and allows users to view, edit and annotate documents within a website or an app.

Microsoft India-Nokia: The Tech Giant Microsoft merged with Nokia in an effort to leverage its position in the smartphone market for 3.79 billion euros (\$5 billion) and the companies existing patents for an additional 1.65 billion euros (\$2.18 billion).

Facebook – WhatsApp: Facebook's acquisition of WhatsApp is one of the biggest acquisitions in the tech industry of 19 billion dollars. WhatsApp founded in 2009 had already acquired 450 million users, which is three times more than Facebook had acquired in the same period of time.

METHODOLOGY

The research is being carried out over various years' consideration of accounting based approach using the following financial tools:

- Liquidity or Solvency Parameters: - Current ratio, Liquidity ratio
- Leverage parameters :-Debt equity ratio, total debt to Long term funds
- Profitability Parameters:-Return on capital employed, return on net worth, and return on assets.

SAMPLE SIZE

The research is confined to the merger and acquisition cases in telecommunication, technology, pharmaceutical, home décor, banking, power, information technology and search giant during the period of 2013-14. The time period is confined to 3 years to judge the post mergers and acquisitions performance, the year when merger and acquisition has taken place is not considered for the analysis.

ANALYSIS

The financial analysis that estimates the returns of firm requires statistical techniques to be used to determine the significant returns.

Hypothesis: The hypothesis is taken that there is no significant difference in the mean ratios before and after merger.

$$\text{Mean } D = \frac{\sum D}{n}, \quad \sigma_{\text{diff}} = \frac{\sqrt{\sum D^2 - (D)^2(n)}}{n-1}, \quad t_c = \frac{|D - o|}{\sigma_{\text{diff}} / \sqrt{n}}$$

TABLE 1 : CURRENT RATIO

Name of the Company	Before Merger (X)	After Merger (Y)	Difference [D = X-Y]	Difference D ²
Asian Paints	1.35	1.52	-0.17	0.03
Reliance Industries Limited	1.41	1.27	0.14	0.02
Tata Consultancy Services (TCS)	2.66	2.73	-0.07	0.005
Tata Power	0.83	0.59	0.24	0.05
Sun Pharmaceuticals	1.34	1.78	-0.44	0.19
Kotak Mahindra Bank	0.19	0.17	0.02	0.0004
Yahoo Inc.	2.14	5.38	-3.24	10.50
Microsoft India	2.50	2.50	0	0
Facebook	9.59	10.6	-1.01	1.02
$\Sigma D = -4.53$				$\Sigma D^2 = 11.82$

t-test results

Financial Ratio	D	σ	t-test value
Pre-Merger to post merger current ratio	-0.50	1.09	1.38

TABLE 2 : LIQUIDITY RATIO

Name of the Company	Before Merger (X)	After Merger (Y)	Difference [D = X-Y]	Difference D ²
Asian Paints	0.76	0.88	-0.12	0.014
Reliance Industries Limited	0.96	0.87	0.09	0.008
Tata Consultancy Services (TCS)	2.66	2.73	-0.07	0.005
Tata Power	0.66	0.48	0.18	0.032
Sun Pharmaceuticals	1.12	1.43	-0.31	0.096
Kotak Mahindra Bank	0.19	0.17	0.02	0.0004
Yahoo Inc.	1.99	4.85	-2.86	8.18
Microsoft India	2.44	2.44	0	0
Facebook	9.04	9.95	-0.91	0.83
$\Sigma D = -3.98$				$\Sigma D^2 = 9.17$

t-test results

Financial Ratio	D	σ	t-test value
Pre-Merger to post merger liquid ratio	-0.44	0.96	1.375

TABLE 3 : RETURN ON CAPITAL EMPLOYED

Name of the Company	Before Merger (X)	After Merger (Y)	Difference [D = X-Y]	Difference D ²
Asian Paints	47.6	45.3	2.3	5.29
Reliance Industries Limited	11.5	12.7	-1.2	1.44
Tata Consultancy Services (TCS)	1.6	1.63	-0.03	0.0009
Tata Power	9	9	0	0
Sun Pharmaceuticals	0.40	0.98	-0.58	0.336
Kotak Mahindra Bank	0.90	0.96	-0.06	0.004
Yahoo Inc.	0.003	-0.0013	0.031	0.00096
Microsoft India	0.30	0.22	0.08	0.007
Facebook	0.13	0.03	0.1	0.01
$\Sigma D = 0.64$				$\Sigma D^2 = 7.09$

t-test results

Financial Ratio	D	σ	t-test value
Pre-Merger to post merger ROCE	0.07	0.94	0.223

TABLE 4 : RETURN ON NET WORTH (%)

Name of the Company	Before Merger (X)	After Merger (Y)	Difference [D = X-Y]	Difference D ²
Asian Paints	32.8	31.8	1	1
Reliance Industries Limited	12.9	13.4	-0.5	0.25
Tata Consultancy Services (TCS)	36.01	38.95	-2.94	8.64
Tata Power	7	6	1	1
Sun Pharmaceuticals	-0.38	0.21	-0.59	0.35
Kotak Mahindra Bank	0.13	0.12	0.01	0.0001
Yahoo Inc.	0.19	-0.0005	0.190	0.036
Microsoft India	0.24	0.15	0.09	0.0081
Facebook	0.08	0.02	0.06	0.0036
$\Sigma D = -1.68$				$\Sigma D^2 = 11.29$

t-test results

Financial Ratio	D	σ	t-test value
Pre-Merger to post merger RONW	-0.186	1.17	0.46

TABLE 5 : DEBT-EQUITY RATIO

Name of the Company	Before Merger (X)	After Merger (Y)	Difference [D = X-Y]	Difference D ²
Asian Paints	0.06	0.09	-0.03	0.0009
Reliance Industries Limited	0.45	0.45	0	0
Tata Consultancy Services (TCS)	0.02	0.03	-0.01	0.0001
Tata Power	0.80	0.69	0.11	0.012
Sun Pharmaceuticals	0.36	0.16	0.2	0.04
Kotak Mahindra Bank	4.81	5.29	-0.48	0.230
Yahoo Inc.	0.48	0.49	-0.01	0.0001
Microsoft India	0.91	1.20	-0.29	0.0841
Facebook	0.11	0.12	-0.01	0.0001
			$\sum D = -0.52$	$\sum D^2 = 0.37$

t-test results

Financial Ratio	D	σ	t-test value
Pre-Merger to post merger Debt-Equity Ratio	- 0.058	0.20	0.86

TABLE 6 : RETURN ON ASSETS

Name of the Company	Before Merger (X)	After Merger (Y)	Difference [D = X-Y]	Difference D ²
Asian Paints	0.17	0.18	-0.01	0.0001
Reliance Industries Limited	0.05	0.057	-0.007	0.000049
Tata Consultancy Services (TCS)	0.26	0.28	-0.02	0.0004
Tata Power	0.03	0.03	0	0
Sun Pharmaceuticals	0.19	0.11	0.08	0.0064
Kotak Mahindra Bank	2.1	2.3	-0.2	0.04
Yahoo Inc.	0.12	-0.0003	0.120	0.0144
Microsoft India	0.12	0.069	0.051	0.00260
Facebook	0.07	0.019	0.051	0.00260
			$\sum D = - 0.025$	$\sum D^2 = 0.067$

t-test results

Financial Ratio	D	σ	t-test value
Pre-Merger to post merger ROA	- 0.002	0.091	0.067

TABLE 7: TOTAL DEBT TO LONG-TERM FUNDS

Name of the Company	Before Merger (X)	After Merger (Y)	Difference [D = X-Y]	Difference D ²
Asian Paints	7.18	8.88	-1.7	2.89
Reliance Industries Limited	1.19	1.18	0.01	0.0001
Tata Consultancy Services (TCS)	8.87	12.29	-3.42	11.69
Tata Power	1.09	1.10	-0.01	0.0001
Sun Pharmaceuticals	1.07	1.02	0.05	0.0025
Kotak Mahindra Bank	2.96	3.31	-0.35	0.123
Yahoo Inc.	14.11	13.2	0.91	0.83
Microsoft India	2.41	2.21	0.2	0.04
Facebook	4.7	1.60	3.1	9.61
			$\sum D = -1.21$	$\sum D^2 = 25.19$

t-test results

Financial Ratio	D	σ	t-test value
Pre-Merger to post merger total debt to long-term funds	-0.135	1.76	0.228

t-test results of pre and post-merger & acquisition performance of all financial ratios

Financial ratios	D	σ	t-test value	Level of Significance
Premerger to postmerger Current ratio	-0.50	1.09	1.38	0.100
Premerger to postmerger Liquid ratio	-0.44	0.96	1.375	0.100
Premerger ROCE to postmerger ROCE	0.07	0.938	0.223	0.100
Premerger RONW to postmerger RONW	-0.186	1.17	0.46	0.100
Premerger to postmerger Debt-Equity Ratio	-0.058	0.20	0.86	0.100
Premerger to postmerger total debt to long term funds	-0.135	1.76	0.228	0.100
Premerger ROA to postmerger ROA	-0.002	0.091	0.067	0.100

RESULT

This technique helps to make proper interpretation like if the t-value show the positive sign, it refers to the level of significance comparable with the mean, an increase in ratio. The negative sign refers to the level of significance comparable with the mean, decrease in ratio, and if the sign has no change and its nearer and equivalent to the mean, it is statistically significant.

- The liquidity ratios, ie. current ratio and quick ratio improved after merger and acquisition and it is statistically insignificant, the hypothesis is accepted and hence concluded that mergers & acquisitions resulted in improved performance.
- In case of the profitability parameters, ROCE is improved, the hypothesis is accepted but RONW & ROA are statistically significant, i.e. it has decreased after the merger and acquisition.
- The leverage ratios like debt-equity ratio and total debt to long-term funds improved after the merger and acquisition and are statistically insignificant.

ADVANTAGES OF MERGERS

1. **Economies of Scale:** The bath business acquired by Asian Paints provides economies of scale in terms of availability of raw materials and manpower requirements leading to faster delivery and reliability.
2. **Technical Economies:** RIL acquired the control of Network 18 which will provide technical economies in terms of differentiating Reliance Jio's business by providing a unique amalgamation at the intercept of telecom, web and digital commerce via a suite of premiere digital properties.
3. **Operational & Organisational Efficiencies:** The amalgamation of TCS with CMC will enable TCS to consolidate CMC's operations in a single company with rationalized structure, enhanced reach, greater financial strength and flexibility and will aid in achieving economies of scale, more focussed operational efforts, standardisation and simplification of business processes and productivity improvements.
4. **Financial & Organisational Synergies:** The TATA Power merger with Arutmin will support TATA's upcoming power projects on the West Coast of India comprising 7,000 MW to be developed over the next 5 years which will require approximately 21 million tonnes of imported coal.
5. **Increase in Market Share & Entry in Global Markets:** Merger of Sun Pharma with Ranbaxy has made Sun Pharma the undisputed leader in the Indian Pharmaceutical Market with 9% market share and enhances presence in many markets including the US, emerging markets, and Europe.
6. **Complementary Branch Network & Revenue Synergies:** The merger of Kotak and ING Vysya Bank has enhanced the Kotak's presence in Southern India while expanding the network of branches and ATMs and resulting in saving on product introduction cost on account of readily available products and infrastructure.

7. **Expanding Technological capabilities:** Yahoo Inc. achieved three goals by merger with Bookpad, ie. growth in technical talent base, enhancement of technology and core product offerings, and expansion of audience and engagement.

8. **Increased Profitability & Opportunity:** The merger of Microsoft and Nokia will accelerate Microsoft's share and profits in phones, and strengthen the overall opportunities for both Microsoft and its partners across their entire family of devices and services and bringing together of the best of Microsoft's best software engineering with the best of Nokia's hardware engineering.

9. **Entry in global markets, growth & Expansion:** WhatsApp, being the leader in Asia and Latin America, Facebook can enter into the same. Facebook has a messenger, a big texting App in itself, a leader in US and France and merging with WhatsApp will have a huge network effect between the two.

LIMITATIONS OF THE STUDY

- i. The period of the study is upto March 2015, since only 3 years post merger and acquisition performance data is required for the research.
- ii. The research is only confined to long term performance measures, so short term returns are not taken into consideration in the announcement of merger and acquisition results.
- iii. The results are not compared with the control firms.

CONCLUSION

The study shows that the liquidity position of the merger and acquisition has improved but it is not statistically insignificant. The profitability position of the companies has positively increased in terms of return on capital employed, and it declined in terms of return on net worth and return on assets. The financial performance of the firms improved after merger in terms of current ratio, liquid ratio, ROCE, ROA, RONW but most of the ratios are statistically insignificant. There is a need to further study on the motive behind the merger and acquisition. Also the financial performance is not the only tool for merger and acquisition success. Restructuring is done for the synergies achieved after merger, i.e helping in making better utilization of resources which removes idle resources and also results in tax advantage, entry in global markets, helping to face competition, increases goodwill and many more.

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**ICSI
Invites**

**International Research Papers for its Global
Congruence on
International Corporate Governance Day
To be Held on 09 & 10 December 2016 @ Hyderabad,
Telangana, India**

Institute of Company Secretaries of India (The ICSI) is envisaging playing a lead role in corporate governance by promulgating the concept of "International Corporate Governance Code - ICGC". The objective is to cater the needs of present era corporate world which is spearheading across various nations not only sticking to the country in which it has its business establishment. This is the code which will become acceptable universally by all the corporate across the globe.

Accordingly for attaining this major objective of ICGC we need to provide significance to the concept. This significance can be achieved by following a dedicated day for corporate governance which will be observed internationally. And hence ICSI is mooted the idea of "International Corporate Governance Day - ICGD" by involving global investors, global stakeholders and regulatory bodies across the world.

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- NEED FOR ICGC & ICGD AND GLOBAL CONGRUENCE

All nations are having vivid procedures and norms for corporate in relation to the governance matters. In spite of all those governance norms, the corporate world is witnessing scams and scandals. This implies that there is still some gap to bridge in order to have an effective and efficient corporate world.

The challenge before us is to create a system of governance that promotes, supports and sustains economic development and not only restricting to listed entities, but extending to all unlisted companies, firms, societies and all business forms. The emphasis on governance reforms is growing around the world.

Governance is such an important aspect, without which none can achieve harmony in the working patterns and further to this it has to evolve day in and day out in accordance with the changing requirements both internally and globally in each and every aspect.

The need of the hour is to provide more significance to the universally acceptable International Corporate Governance Code

and to have an International day for Corporate Governance in order to create awareness and celebrating determination towards international promotion and recognition beyond the horizons of the respective countries.

On the occasion of "International Corporate Governance Day", the member participants can dwell upon various anomalies and can reverberate the sound policies and procedures for governance in the corporate in their respective countries.

As an important initiative, ICSI would like to profess and create international consensus for "ICGD" and to make this a reality, there is a necessity to bring all the nations through their representatives to a single place and conduct one Summit called as "01st Global Congruence on International Corporate Governance Day"

OBJECTIVES:

- To comprehend the genesis and importance of Corporate Governance
- To put forth the concept of having an International Corporate Governance Code - ICGC
- To analyze various best practices in Corporate Governance across world
- To know the impact of non-adherence of best governance practices
- To ameliorate various Treatise and Conventions available in Corporate Governance
- To analyze and interpret various International Judgments in Corporate Governance
- To understand the significance of OECD Principles.
- To study the Corporate Governance Policies embraced in various Developed and Developing economies.
- To understand the relevance of various Mercantile Laws, Capital Markets & Securities Laws in ensuring corporate governance.
- To emphasize the significance for ICGC by promulgating International Corporate Governance Day – ICGD

To achieve the above objectives the following indicative tracks on which the Research Papers are invited

TRACKS:

- Significance of the measures/activities followed in olden days relating to governance - Importance of Corporate Governance – a new paradigm shift from the olden days
- Corporate governance should work as self-regulation or to be regulated by a regulator – Various international scenarios
- Scope to extend the corporate governance to various forms of business entities like unlisted companies, firms, societies, trusts etc
- Corporate Governance – Technological advancements
- Corporate Governance – Improves operational efficiency, Instrument of competitive strategies
- Corporate Governance – Tool for Economic stability of the nation
- Charm of Corporate Governance loosing – Steps to be taken to uplift Corporate Governance with futuristic outlook
- Concept of proposing a day as an “International corporate governance day” - various benefits by observing a day internationally allocated towards Corporate Governance
- Cases of violation of corporate governance.
- International Corporate Laws and Corporate Governance.
- Gaps to be filled in to strengthen Corporate Governance in various countries.
- Business ethics in ensuring Corporate Governance.
- Various dimensions of Corporate Governance.
- 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

RESEARCH PAPER / MANUSCRIPT GUIDELINES

- Original papers are invited from, Academicians, Research Scholars, Professionals, Industrial experts and Company Secretaries in employment & practice.
- 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.
- Authors are required to comply with the APA style of referencing only. For details on APA referencing style, please visit <http://www.apastyle.org>.
- 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 30 October 2016

Participants should email their research papers on the following email id: ccgrt@icsi.edu; globalcongruence@icsi.edu

FURTHER INFORMATION FOR AUTHORS / PARTICIPANTS

- The manuscripts will be subjected to a blind review process
- 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 papers will be selected will receive an Appreciation Letter from the institute and Program Credit Hours (PCH).
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- ICSI may pay honorarium as per the guidelines for selected papers on publication in the Chartered Secretary Journal which is blind refereed with ISSN 0972-1963
- The papers will be scrutinized by an Expert Committee and only high quality papers will be published in the Journal
- Few papers are selected for publication in the Souvenir to be published on the occasion of Global Congruence on International Corporate Governance Day having ISBN registration

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EXPRESSION OF INTEREST (EOI)

The Institute of Company Secretaries of India is a statutory professional body constituted under “The Company Secretaries Act, 1980” to develop and regulate the profession of Company Secretaries in India. The Institute has its Headquarters at New Delhi and functions under the jurisdiction of the Ministry of Corporate Affairs, Government of India. It renders services to students, members and other stakeholders through its Head Office in Delhi, four regional offices – one each in Delhi, Kolkata, Chennai & Mumbai, and sixty nine chapter offices all over the country.

ICSI very innovatively mooted the Idea of **International Corporate Governance Day** in order to establish high ethical and transparent Corporate houses in the entire world.

All nations are having vivid procedures and norms for corporate in relation to the governance matters. In spite of all those governance norms, the corporate world is witnessing scams and scandals. This implies that there is still some gap to be bridged upon in order to have an effective and efficient corporate world.

The challenge before us is to create a system of governance that promotes, supports and sustains economic development – with special consideration to environment and long term sustainability. The emphasis on governance reforms is growing around the world.

Governance encompasses the state, but it transcends the state by including the private sector and civil society organizations. As observed from recent scenario; all the countries are trying to implement good governance norms in all facets

As an important initiative, Institute would like to profess and create international consensus for “International Corporate Governance Day” and to make this a reality, there is a necessity to bring all the nations through their representatives to a single place and conduct one Summit called as “01st Global Congruence on International Corporate Governance Day” in Hyderabad during the month of December.

This International event is going to have around 200 to 300 foreign delegates from entire globe along with approximate 2000 National delegates to grace the occasion. The Invitation to galaxy of eminent persons includes Ms. Christine Lagarde, IMF Chief, Mr. Ban Ki Moon, UNO Secretary General and Hon’ble Prime Minister of India Shri Narendra Modi.

In this regard the ICSI invites EOI from the Central or state government/government corporations/ agencies/private organisations having repute and various Service Providers rendering Service in the categories mentioned below:

Venue Partner
Print Media Partner
Electronic Media Partner
Social Media Partner
Radio Partner
TV Partner
Hospitality Partner
Cultural partner
Publicity Partner
Travel Partner
Memento Partner
Event Partner

Interested organisations may seek clarifications and furnish their EOI with all the necessary documents in a sealed cover along with the covering letter duly signed by an authorized signatory on or before 31 August 2016 by 4 PM to the following address:

The Executive Officer
ICSI-Hyderabad Chapter
6-3-609/5, Ananad Nagar Colony
Kharatabad
Hyderabad -500 004
Phone: 040-23325458
Email: hyderabad@icsi.edu

3

LEGAL WORLD



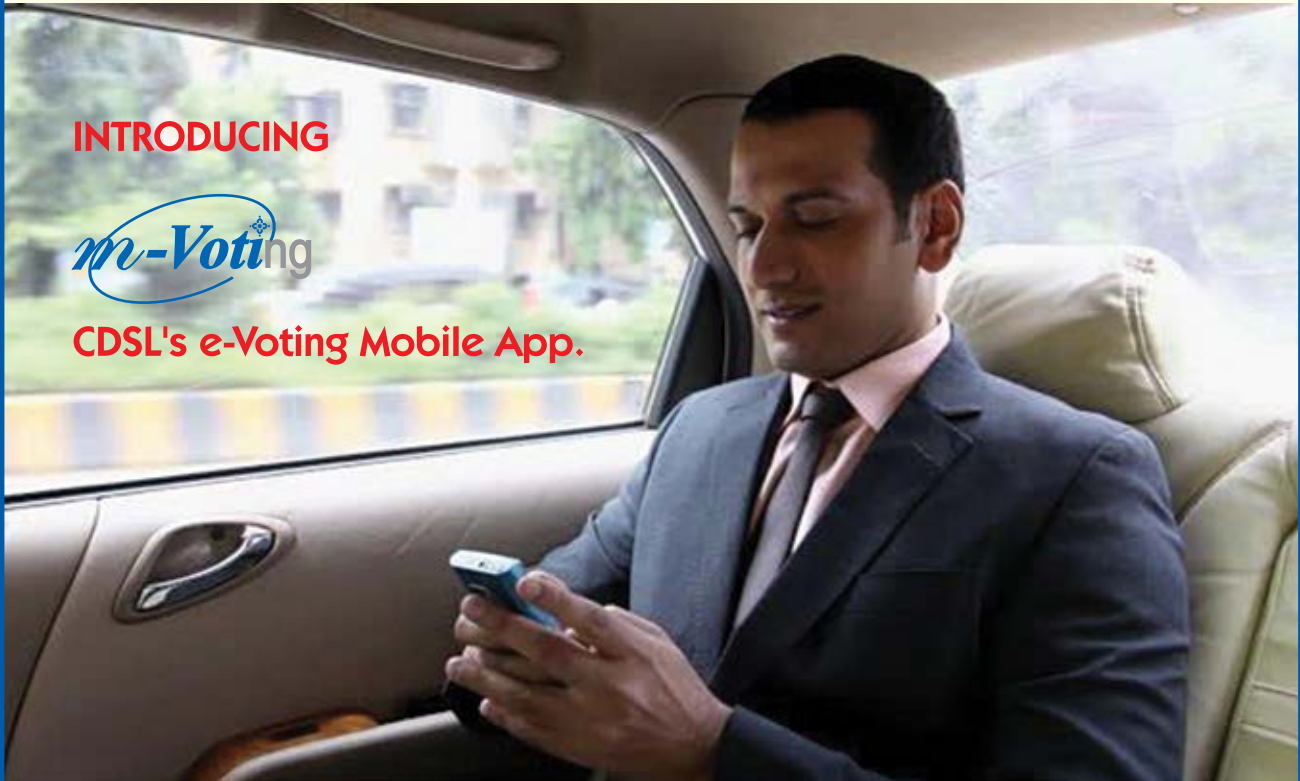
- RAM PRSHAD V. COMMISSIONER OF INCOME-TAX, NEW DELHI [SC]
- AIR FRANCE GROUND HANDLING PVT. LTD (IN LIQUIDATION) [DEL]
- BANDHU SYSTEMATIX PVT LTD v. REGISTRAR OF COMPANIES [DEL]
- IN RE: NEESA TECHNOLOGIES LIMITED & ORS [SEBI]
- STAR SPORTS INDIA PVT LTD v. PRASAR BHARTI & ORS [SC]
- RESERVE BANK OF INDIA v. ONICRA CREDIT INFORMATION CO LTD [DEL]
- INDO BURMA PETROLEUM CORPORATION LTD v. COMMISSIONER VAT DELHI & ORS [SC]
- XYZ v. REC POWER DISTRIBUTION COMPANY LTD [CCI]
- SOUTHWEST INDIA MACHINE TRADING PVT LTD v. CASE NEW HOLLAND CONSTRUCTION EQUIPMENT INDIA PVT LTD [CCI]

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Landmark Judgement

CS: LMJ: 9/07/2016

RAM PRSHAD v. COMMISSIONER OF INCOME-TAX, NEW DELHI [SC]

Civil Appeal No. 1946 of 1968

K.S.Hegde, P.Jaganmohan Reddy & H.R.Khanna, JJ.
[Decided on 24/08/1972]

Equivalent citations: 1973 AIR 637; 1973 SCR (3) 985; (1972) 42 Comp. Cas. 544; (1972) 2 SCC 696

Income tax Act, 1922 read with Companies Act, 1956 – managing director- nature of relationship with the company- Master and Servant or agency--Tests for-whether a managing director is an employee of the company- Held, Yes.

Brief facts:

Though this case relates to income tax on salary received by a managing director of a company, the crucial and interesting question which arose, to decide the correctness or otherwise of the taxation, was “Whether the managing director is an employee of the company or an agent?” We are concerned with this aspect of law laid down by the Supreme Court of India.

The appellant assessee became the first Managing Director on terms and conditions agreed to and embodied in an agreement dated 20.11.1955 between himself and the company. Under the said agreement, the appellant would get 10 per cent of gross profits of the company besides monthly fixed salary. For the assessment year 1956-57 the appellant was assessed in respect of Rs. 53,913/- payable to him as 10% of the gross profits of the company which he gave up soon after the accounts were finalised but before they were passed by the general meeting of the shareholders. The above amount was given up by him because the company would not be making net profits if the stipulated commission was paid to him. The appellant claimed that the amount given up by him was not liable to be included in his total income because the amount had not accrued to him at all, but the assessing officer included the same in his income as salary. This was confirmed and upheld by the Tribunal and the High Court in appeal. Hence the appeal came before the Supreme Court.

Decision: Appeal dismissed.

Reason:

On behalf of the assessee, it was contended that in order to assess the income as salary it must be held that there was a relationship of master and servant between the company and the assessee. For such a relationship to exist, it must be shown that the employee must be subject to the supervision and control of the employer in respect of the work that the employee has to do. Where, however, there is no such supervision or control it will be a relationship of principal and agent or an independent contractor. Applying these tests, it is submitted that the appointment of the assessee as a Managing Director is not that of a servant but as an agent of the company and accordingly the commission payable to him is income from business and not salary. In support of this contention, reference has been made to Halsbury's Laws of England, Bowstead on Agency and Treatises on Company Law by Palmer, Gower, Pennington and Buckley.

There is no doubt that for ascertaining whether a person is a servant or an agent, a rough and ready test is, whether, under the terms of his employment, the employer exercises a supervisory control in respect of the work entrusted to him. A servant acts under the direct control and supervision of his master. An agent, on the other hand, in the exercise of his work is not subject to the direct control or supervision of the principal, though he is bound to exercise his authority in accordance with all lawful orders and instructions which may be given to him from time to time by his principal. But this test is not universal in its application and does not determine in every case, having regard to the nature of employment, that he is a servant. A doctor may be employed as a medical officer and though no control is exercised over him in respect of the manner he should do the work nor in respect of the day to day work, he is required to do, he may nonetheless be a servant if his employment creates a relationship of master and servant. Similar is the case of a chauffeur who is employed to drive the car for his employer. If he is to take the employer or any other person at his request from place 'A' to place 'B' the employer does not supervise the manner in which he drives between those places. Such examples can be multiplied. A person who is engaged to manage a business may be a servant or an agent according to the nature of his service and the authority of his employment. Generally it may be possible to say that the greater the amount of direct control over the person employed, the stronger the conclusion in favour of his being a servant. Similarly the greater the degree of independence the greater, the possibility of the services rendered being in the nature of principal and agent. It is not possible to lay down any precise rule of law to distinguish one kind of employment from the other. The nature of the particular business and the nature of the duties of the employee will require to be considered in each case in order to arrive at a conclusion as to whether the person employed is a servant or an agent. In each case the principle for ascertainment remains the same.

Though an agent as such is not a servant, a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant. It is again true that a director of a company is not a servant but an agent inasmuch as the company cannot act in its own person but has only to act through directors who qua the company have the relationship of an agent to its capacity. Managing Director may have a dual capacity. He may both be a Director as well as employee. It is therefore evident that in the capacity of a managing director he may be regarded as having not only the capacity as persona of a director but also has the persona of an employee or an agent depending upon the nature of his work and the terms of his employment. Where he is so employed, the relationship between him as the Managing Director and the Company may be similar to a person who is employed as a servant or an agent for the term 'employee' is facile enough to cover any of these relationships. The nature of his employment may be determined by the articles of association of a company and/or the agreement if any, under which a contractual relationship between the Director and the

company has been brought about, where under the Director is constituted an employee of the company, if such be the case, his remuneration will be assessable as salary under section 7.

In other words, whether or not a Managing Director is a servant of the company apart from his being a Director can only be determined by the articles of association and the terms of his employment. A similar view has been expressed by the Scottish Court of Session in *Anderson v. James Sutherland (Peterhead) Limited [1941] SC 203*, where Lord Normand at p.218 said:

"..... *the managing director has two functions and capacities. Qua managing director he is a party to a contract with the company, and this contract is a contract of employment; more specifically I am of opinion that it is a contract of service and not a contract for service.*"

A number of cases have been referred before us but the conclusion in each of the decisions turned on the particular nature of employment and the facts disclosed therein. In each of these decisions the "context played a vital part in the conclusions arrived at".

A detailed consideration of all the cases cited and the passages from text books referred to before us does not assist us in coming to the conclusion that the test for determining whether the person employed by a company is a servant or agent is solely dependent on the extent of supervision and control exercised on him. The real question in this case is one of construction of the articles of association and the relevant agreement which was entered into between the company and the assessee. If the company is itself carrying on the business and the assessee is employed to manage its affairs in terms of its articles and the agreement, he could be dismissed or his employment can be terminated by the company if his work is not satisfactory, it could hardly be said that he is not a servant of the company.

The other terms of the agreement enumerate the powers and duties given to him under the articles of association. A perusal of the articles and terms and conditions of the agreement definitely indicate that the assessee was appointed to manage the business of the company in terms of the articles of association and within the powers prescribed therein. These terms are inconsistent with the plea that he is an agent of the company and not a servant. The control which the company exercises over the assessee need not necessarily be one which tells him what to do from day to day. That would be a too narrow view of the test to determine the character of the employment. Nor does supervision imply that it should be a continuous exercise of the power to oversee or superintend the work to be done. The control and supervision is exercised and is exercisable in terms of the articles of association by the Board of Directors and the company in its general meeting. As a Managing Director he functions also as a member of the Board of Directors whose collective decisions he has to carry out in terms of the articles of association and he can do nothing which he is not permitted to do.

Under s. 17(2) of the Indian Companies Act 1913 Regulation No. 71 of Table A which enjoins that the business of the company shall be managed by the directors is deemed to be continued in the articles of association of the company in identical term or to the same effect. Since the Board of Directors are to manage the business of the Company they have every right to control and supervise the assessee's work whenever they deem it necessary. Every power which is given to the Managing Director therefore emanates from the articles of association which prescribes the limits of the exercise of that power. The powers of the assessee have to be exercised within the terms and limitations prescribed thereunder and subject to the control and supervision of the Directors which in our view is indicative of his being employed as a servant of the company. We would therefore hold that the remuneration payable to him is salary. In this view, the other questions need not be considered, and the appeal is dismissed with costs.

LW: 42:07:2016

AIR FRANCE GROUND HANDLING PVT. LTD (IN LIQUIDATION) [DEL]

Co.Pet. 382/2016

Sudershan Kumar Misra, J. [Decided on 31/05/2016]

Companies Act, 1956 – section 497- voluntary winding up- Court accords approval.

Brief facts:

This is a petition filed under Section 497(6) of the Companies Act, 1956 by the Official Liquidator for voluntary winding up of Air France Ground Handling Private Limited.

The Company has passed a special Resolution in its Extraordinary General Meeting held on 09.11.2009 for voluntary winding up of the Company, wherein Mr. Manoj Kumar Malhotra was appointed as a Voluntary Liquidator of the Company. The Registrar of Companies was informed regarding the voluntary winding up and the appointment of the Voluntary Liquidator. Notices under Rule 315 of the Company (Court) Rules, 1959 were issued and requisite forms were filed with the Registrar of Companies.

The declaration of solvency was executed and approved by the Board of Director in their meeting held on 09.11.2009, and the same has been filed with the office of the Registrar of Companies in Form 149 as prescribed under Rule 488 of the Companies (Court) Rules, 1959.

The Voluntary Liquidator has filed the requisite forms, and notices were published in the Official Gazette on 12.12.2009 as well as in two newspapers namely "The Financial Express" (English) on 18.11.2009 and "Jansatta" (Hindi) dated 19.11.2009 along with the Memorandum of Association and Articles of Association with the Office of the Official Liquidator.

Decision & Reason:

Pursuant to Section 497 of the Companies Act, 1956, final Extraordinary General Meeting was held on 02.05.2011 and the Voluntary Liquidator filed the final accounts of the Company in Forms No.156 and 157, as prescribed under Rules 329 and 331 of the Companies (Court) Rules, 1959, before the Registrar of Companies and to the Official Liquidator.

The Official Liquidator has received 'No Objection Certificates' from the Registrar of Companies and the Income Tax Department. The Voluntary Liquidator of Air France Ground Handling Pvt Ltd. has filed an affidavit with the Official Liquidator to declare that no outstanding amount stands against the Company as on winding up date.

The Official Liquidator has scrutinized the records submitted by the Voluntary Liquidator and has recorded satisfaction that necessary compliances of Section 497 of the Companies Act, 1956 and the other relevant provisions of the Companies Act, 1956 have been made and that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or to the public.

The Official Liquidator, in these circumstances, has sought winding up and final dissolution of the Company from the date of filing of the petition, i.e., 07.04.2016.

In view of the above, and the satisfaction recorded by the Official Liquidator, the Company is wound up and shall be deemed to be dissolved with effect

from the date of the filing of the petition, i.e., 07.04.2016.

Copy of the order be filed by the Official Liquidator with the Registrar of Companies within the statutory period as per the Companies Act, 1956. The petition stands disposed of.

LW: 43:07:2016

BANDHU SYSTEMATIX PVT LTD v. REGISTRAR OF COMPANIES [DEL]

Co.Pet. 787/2015

Sudershan Kumar Misra, J. [Decided on 30/05/ 2016]

Companies Act, 1956- section 560- restoration of struck off company- court accords approval.

Brief facts:

The petitioner was incorporated with the Registrar of Companies, NCT of Delhi & Haryana (hereinafter called the "respondent") as a company limited by shares on 17.07.1984 vide Certificate of Incorporation No. 18703 of 1984-85 with the object of carrying on the business, *inter alia*, as manufacturers and/or dealers in all types of machinery, plant equipment accessories and spores required for and used for printing, binding, perforating, folding, stitching or manufacture of other stationery used for such purposes. Presently, the registered office of the petitioner is stated to be situated at 8-B, Bahadur Shah Jafar Marg, New Delhi- 110002.

The respondent initiated the proceedings under S.560 of the Companies Act, 1956 to strike the name of the petitioner off the register due to defaults in statutory compliances, namely, non-filing of Annual Returns from 2000 to 2015, and Balance Sheets from 1998 to 2015. It has been submitted on behalf of the respondent that procedure under S.560 was duly followed, with notices/letter as required under S.560(1) and S.560(3) sent at the registered office address of the petitioner. It is further submitted that notification under Section 560(5) was issued and published in the Official Gazette on 23.06.2007 mentioning the petitioner-company's name at Serial no.1503.

On the contrary the petitioner contented that it did not receive any notices/ letters/show-cause notices as required under Section 560(1) and (2) of the Companies Act, 1956, nor was it afforded any opportunity of being heard before action under Section 560(5) was taken by the respondent. The petitioner also averred that upon inspection of official records of the petitioner-company carried out by its authorised representative, no documents pertaining to Section 560 were found. It is further averred that no documents evidencing the basis on which the respondent came to the conclusion that the petitioner-company was not carrying on its business was either provided to the petitioner or was available on the records maintained with the respondent. The petitioner further contended that it has all through since its incorporation has been a working concern and at no point of time the petitioner has ever stopped carrying on the business or stopped its business operations.

Decision: Petition allowed.

Reason:

In *Purushottamdass and Anr. (BulakidasMohta Co. P. Ltd.) v. Registrar of Companies, Maharashtra, &Ors.* (1986) 60 Comp. Cas. 154 (Bom), the Bombay High Court has held, *inter alia*, that;

"18. The object of section 560(6) of the Companies Act is to give a chance to the company, its members and creditors to revive the company which has been struck off by the Registrar of Companies, within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice."

This decision has been followed by this Court in *Pancham Hotels Pvt. Ltd. v. Registrar of Companies, CP No. 554/2014; M/s Medtech Pharma (India) Pvt. Ltd. v. Registrar of Companies, CP No. 241/ 2009; M/s Santaclaus Toys Pvt. Ltd. v. Registrar Of Companies, CP 271/2009; M/s Deepsons Non-Ferrous Rolling Mills Pvt. Ltd. v. Registrar of Companies, NCT of Delhi and Haryana, CP No. 285/2009; M/s Kakku E and P Control Pvt. Ltd. & Anr. v. The Registrar of Companies, NCT of Delhi and Haryana, CP No. 409/2008 and M/s Sohal Agencies Pvt. Ltd. v. Registrar of Companies, NCT of Delhi and Haryana, CP No. 297/2009.*

Under the facts and circumstances, it is possible that notice in respect of action under Section 560 was not sent to the registered office of the company. Consequently, the condition precedent for the initiation of proceedings to strike off the name of petitioner from the Register maintained by the respondent was not satisfied. Looking to the fact that the petitioner is stated to be a running company; and that it has filed this petition within the stipulated limitation period, and to the decision of the Bombay High Court in *Purushottamdass and Anr. (BulakidasMohta Co. P. Ltd.) v. Registrar of Companies, Maharashtra, &Ors. (supra)*; it is only proper that the impugned order of the respondent dated 23.06.2007, which struck off the name of the petitioner from the Register of Companies, be set aside. At the same time, however, there is no gainsaying the fact that a greater degree of care was certainly required from the petitioner company in ensuring statutory compliances. Looking to the fact that annual returns and balance sheets were not filed for almost seventeen years, the primary responsibility for ensuring that proper returns and other statutory documents are filed, in terms of the statute and the rules, remains that of the management.

Accordingly, the petition is allowed. The restoration of the company's name to the Register maintained by the Registrar of Companies will be subject to payment of costs of Rs.22,000/- to be paid to the common pool fund of the Official Liquidator, and the completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late deposit of statutory documents within 8 weeks; the name of the petitioner company, its directors and members shall, stand restored to the Register of the respondent, as if the name of the company had not been struck off, in accordance with Section 560(6) of the Companies Act, 1956.

Liberty is granted to the respondent to proceed with penal action against the petitioner, if so advised, on account of the petitioner's alleged default in compliance with Section 162 of the Companies Act, 1956.

LW: 44:07:2016

IN RE: NEESA TECHNOLOGIES LIMITED & ORS [SEBI]

WTM/PS/46/WRO/JUN/2016

Prashant Saran, Whole Time Member [Decided on 02/06/2016]

SEBI (Issue and Listing of Debt Securities) Regulations, 2008 read with SEBI Act and Companies Act, 1956- issue of NCDs- violation of provisions- whether the company is liable for the violations- Held, Yes.

Brief facts:

On the basis of the material available on record i.e., correspondences exchanged between SEBI and NTL; complaint and additional documents received by SEBI and information obtained from the Ministry of Corporate Affairs' website i.e. MCA 21 Portal and IDBI Trusteeship Services Limited (ITSL), SEBI vide an ex-parte interim order dated June 03, 2015 (hereinafter referred to as 'interim order'), *prima facie* observed that Neesa Technologies Limited (hereinafter referred to as the 'Company' or 'NTL') had engaged in fund mobilizing activity from the public, through its offer and issue of Non-Convertible Debentures (hereinafter referred to as 'NCDs') and violated the provisions of Sections 56, 60, 73 and 117C of the Companies Act, 1956 and the provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as the 'ILDS Regulations').

Company and its directors filed replies contending that they have not violated any of the provisions of the companies Act or Regulations as alleged.

Decision: NCD's to be refunded with interest.

Reason:

In the present matter, the Company had offered and allotted NCDs to 341 persons during the financial year 2013-2014 and mobilized Rs.5.96 crore. Considering the number of persons to whom the NCDs were offered and issued, I conclude that the Company made a public issue of NCDs during the relevant period, in terms of the first proviso to section 67(3) of the Companies Act, 1956.

The Company had contended that the NCDs were treated as 'deposits' by RoC and therefore SEBI would not have jurisdiction in the matter. In this regard, I note that the Company vide letter dated November 05, 2014, had admitted issuing Non-Convertible Debentures. Further, the RoC notice dated July 07, 2015 has also mentioned about the NCDs for ` 5.96 crore. The allegation of the RoC *inter alia* is that the Company failed to pay the interest on such NCDs or pay back the money collected under such NCDs in violation of Section 74(1) and (2) of the Companies Act, 2013. Section 67(3) is in respect of "shares" and "debentures". In view of the same, the Company having admittedly issued debentures in a public issue is under the jurisdiction of SEBI.

Accordingly, Sections 56, 60 and 73 of the Companies Act, 1956 are required to be complied with by a company making a public issue of securities. In addition to the above, the Company was mandated to comply with 117C of the Companies Act, 1956 and the provisions of the ILDS Regulations in respect of its public offer and issuance of NCDs. These provisions have allegedly not been adhered to by the Company.

By making a public issue of NCDs, the Company had to compulsorily list such securities in compliance with Section 73(1) of the Companies Act, 1956. A Company making a public issue of securities cannot choose whether to list its securities or not as listing is a mandatory requirement under law. As per Section 73(1) of Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange. Further, there is no material to say that the Company has filed an application with a recognized stock exchange to enable the securities to be dealt with in such stock exchange. Therefore, the Company has failed to comply with this requirement.

As the Company failed to make an application for listing of such securities, the Company had to forthwith repay such money collected from investors under NCDs. If such repayments are not made within 8 days after the Company becomes liable to repay, the Company and every director is liable to repay with

interest at such rate. The liability of the Company to refund the public funds collected through offer and allotment of the impugned securities is continuing and such liability would continue till repayments are made. There is no record to suggest that the Company made the refunds as per law.

As the amounts mobilized through the issue of NCDs have not been refunded within the time period as mandated under law, it would therefore be appropriate to levy an interest @ 15% p.a. as provided for under the above section read with rule 4D (which prescribes that the rates of interest, for the purposes of sub-sections (2) and (2A) of section 73, shall be 15 per cent per annum) of the Companies (Central Government's) General Rules and Forms, 1956 on the amounts mobilized by the Company through its offer and issue of NCDs, from the date when the same was liable to be repaid till the date of actual payment to the investors.

Section 117C stipulates that, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. There is no record to suggest that the Company had created a debenture redemption reserve and has therefore violated Section 117C of the Companies Act, 1956.

As NCDs are 'debt securities' in terms of the ILDS Regulations, the Company was also mandated to comply with the provisions of the ILDS Regulations in respect of its public issue of NCDs. However, the Company failed to comply with the provisions of the ILDS Regulations.

From the foregoing, I conclude that the Company failed to comply with the provisions of Sections 56, 60, 73 and 117C of the Companies Act, 1956 in respect of its offer and issuance of NCDs and the aforesaid provisions of the ILDS Regulations and therefore liable for suitable action under the Companies Act, 1956, the SEBI Act and the ILDS Regulations including action for default under section 73(2) of the Companies Act, 1956.



LW: 45:07:2016

STAR SPORTS INDIA PVT LTD v. PRASAR BHARTI & ORS [SC]

Civil Appeal No.5252 of 2016 (Arising out of SLP (C) No. 8988 of 2014)

A.K. Sikri & Prafulla C. Pant, JJ. [Decided on 27/05/2016]

Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007- section 3- sharing of live feed without any advertisements- meaning and interpretation thereof- purposive interpretation by the Supreme Court.

Brief facts:

The present case involves the principle of 'purposive interpretation' of a statutory provision.

The appeal raises the issue regarding the scope of obligations of a Television Broadcasting Organisation under the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 (hereinafter referred to as "Sports Act"). We may mention at the outset that under Section 3 of the Sports Act, a Television Broadcasting Organisation is prohibited from carrying the live television broadcast of a sporting event of national importance on cable or Direct-to-Home (DTH) networks in India, unless it simultaneously shares the live broadcasting signals, without its advertisements, with the Prasar Bharati (respondent No.1) to enable it to retransmit the same on its terrestrial and DTH network.

The appellant shared the 'on ground live feed' of the cricket match with the respondent but the feed contained the logos of the content provider and sponsors. The respondent considered this as to be violation of the provisions of section 3 and its interpretation ultimately came before the Supreme Court.

Decision: Appeal dismissed.

Reason:

We have given our due, deep and pervasive consideration to the submissions of counsel for both the parties, which they deserve. It is clear from the contents of the arguments that the contentions are virtually the same which were projected before the High Court; the only difference could be that the arguing counsel have projected a melange of much more clarity, deftness and dexterity in their pellucid arguments.

At the outset it needs to be remarked that vires of the provisions of Section 3 of the Sports Act are not questioned. It is only interpretation that has to be placed on the said provision, on which the parties have joined issue. Therefore, we have to ascertain the true meaning and scope of Section 3 of the Act and on attaining this task, answer to the issue would become available.

We may also mention that though the provisions of Rule 5 of the Rules were challenged on the ground that these are *ultra vires* Section 3 of the Act, after the High Court has negated this challenge, this argument was not persisted in this Court. Therefore, we have also to proceed in the matter, keeping in view the provisions of Rule 5 of the Rules. We may, however, hasten to add the reason given by the High Court in repelling the argument that Rule 5 of the Rules is *ultra vires* Section 3 is well founded even otherwise. With the aforesaid preliminary remarks, we proceed to analyse the arguments and discuss the issue involved.

It is a common case of the parties that the "world feeds" which the appellant shares with Prasar Bharati is covered by the definition of 'broadcasting' under Section 2(b) of the Act and in that sense the appellant provides broadcasting network service as defined in Section 2(d) of the Act. Further, the 'world feed' would amount to 'content' under Section 2(h) of the Act. It is these contents which are to be mandatorily shared by the appellant with Prasar Bharati. However, at the same time such contents have to be 'without its advertisements'.

First thing which we need to deliberate upon is as to whether the logos of the advertisers contained in the 'world feed' shared by the appellant with Prasar Bharati amounts to 'advertisement'. As noted above, the plea of the appellant in this behalf is that since the broadcast signal of the sporting event provided by the event organiser (ICC in the instant case) includes these logos and the appellant is supposed to share the same as it is with Prasar Bharati, it would not be treated as advertisements. It is also argued that these are not commercial advertisements as the appellant is not getting any revenue from the sponsors. To our mind, this is a specious argument to ward off the situation with which

the appellant is confronted with. These are, thus, commercials of the sponsors which would clearly be treated as not only advertisements but commercial advertisements. Once we hold that what is shown are advertisements, the question as to whether these advertisements are shown because of some arrangement between the organisers of the tournament and the sponsors or as a result of arrangement between the broadcasters, i.e. the appellant, and the sponsors is immaterial. What is prescribed, in no uncertain terms, is that sharing of the live broadcasting signal has to be without advertisements. The application of rule of purposive interpretation would go against the appellant and in favour of the respondent.

With this, we advert to the next question, namely, whether the word 'its' refers to the advertisements that are booked only by the broadcasters, namely, the appellant in the instant case? Let us now understand the meaning of the word 'its' occurring in the obligation cast upon the broadcasting service provider to share the live broadcasting signals 'without its advertisements'. From our aforesaid discussion, it becomes clear that the sharing of the signals has to be without any advertisements and if the advertisements are also to be included in the signals, there has to be sharing of the revenue.

It becomes clear that the words 'without its advertisements' which follow immediately after the words 'unless it simultaneously shares the live broadcasting signal' has to be given a meaning that such broadcasting signals are to be without advertisements, whether it is of the content rights owner, content holder or that of television or radio broadcasting service provider.

It is made crystal clear by providing the definition of 'content rights owner' or 'holder' in Rule 2(b) of the Rules, 2007. Rule 3(3) takes the issue beyond any pale of doubt when it mentions that the signals to be shared with Prasar Bharati by the content rights owner or holder are to be the best feed that is provided to broadcast service provider in India and has to be 'free from commercial advertisements'. Thus, even if it is ICC which has included those advertisements/logos, the feeds have to be without those logos/advertisements inasmuch as nobody can dispute that the content rights owner are content holder, i.e., ICC in the instant case has included those logos/advertisements from purely commercial angle. Thus, the arrangement between the ICC and the appellant, is totally inconsequential.

The upshot of the aforesaid discussion would be to conclude that there is no merit in the instant appeal which is, accordingly, dismissed with costs.

LW: 46:07:2016

RESERVE BANK OF INDIA v. ONICRA CREDIT INFORMATION CO LTD [DEL]

LPA 370/2016

Badar Durrez Ahmed & Sanjeev Sachdeva, JJ. [Decided on 31/05/2016]

Credit Information Companies (Regulations) Act, 2005- section 5(3)-determination of number of credit information agencies-whether determination is mandatory before granting certificate of registration- Held, No.

Brief facts:

The appellant (RBI) under Section 5(2) of the Credit Information Companies (Regulations) Act, 2005 (hereinafter referred to as 'the said Act') rejected the application of the respondent for a Certificate of Registration as a Credit

Information Company. The appellate authority also rejected the appeal of the respondent. The respondent filed the writ petition challenging the above two orders.

The learned Single Judge, by virtue of the impugned judgment, after hearing counsel for the parties, disposed of the petition, by directing the respondent to file a fresh application and the appellant to determine the number of credit information companies under section 5(3) of the Act. RBI challenged this direction before the Division Bench.

Decision: Partly allowed.

Reason:

According to the learned counsel for the appellant, the impugned judgment is contrary to the statutory provisions of the said Act. In particular, the grievance is that the direction given to the appellant to consider the application of the respondent without there being any determination under Section 5(3) of the said Act and without using the same as a ground for rejecting the said application, is contrary to the scheme of the Act. According to the learned counsel for the appellant, the appellant is required to first determine the total number of Credit Information Companies which may be granted Certificates of Registration under Section 5(3) of the said Act and it is only thereafter that the application of the respondent can be considered.

This argument was also raised before the learned Single Judge and, in our view, the learned Single Judge has rightly repelled the same. This is so because there is no mandate under Section 5(3) requiring the Reserve Bank of India to prescribe the total number of Credit Information Companies. That is a discretion which has been given to the Reserve Bank of India and the same is evidenced by the use of the word "may". The use of the word "may" is not always determinative of whether a provision is mandatory or discretionary. But, in the present context, we read Section 5(3) as a discretion which has been vested in the Reserve Bank of India.

The point that is to be considered is whether an application can be moved by a prospective registrant under Section 4(1) and the same has to be considered by the Reserve Bank of India on the principles stipulated in Section 5(1) and Section 5(2) thereof? As long as there is no maximum number of Credit Information Companies stipulated and there do not exist that number of companies, any prospective Credit Information Company can move an application under Section 4(1) of the said Act and the same has to be disposed of in accordance with law. However, there is also no bar on the Reserve Bank of India in simultaneously considering the application and also determining the total number of Credit Information Companies which may be granted a certificate under Section 5(3) when an application by a prospective Credit Information Company is moved under Section 4(1) of the said Act.

In view of this interpretation to the said provision, we feel that the impugned directions given in paragraph 20 of the impugned judgment only needs to be tweaked. The only change that would be necessary, in our view, would be a change in direction No. (iv). Instead of the existing (iv), the following (iv) be substituted:-

"(iv) The respondent RBI can simultaneously while considering the application of the respondent, if it so deems necessary, also enter upon a determination under Section 5(3) of the said Act." The appeal is partly allowed to the aforesaid extent.



Tax Laws

LW: 47:07:2016

INDO BURMA PETROLEUM CORPORATION LTD v. COMMISSIONER VAT DELHI & ORS [SC]

Civil Appeal No. 5103 of 2016 (Arising out of SLP(C) No.15206 of 2012) with batch of appeals.

T.S. Thakur & Uday Umesh Lalit, JJ. [Decided on 13/05/2016]

Delhi Vat Act- tax on petrol and HSD – tax concession on price hike of petrol & HSD- roll back of price hike- whether assessable value to be reduced by the price hike portion- Held, No.

Brief facts:

On 01.06.2006 rates of Petrol and High Speed Diesel were increased by Rs.4/- and Rs.2/- respectively from the midnight of 5/6th June, 2006. This increase in rates would have resulted in ad valorem increase in Value Added Tax (VAT) at the rate of 0.66 paise per litre of Petrol and 0.22 paise per litre of High Speed Diesel. With a view to grant some relief in the price rise to the customers, the Government of National Capital Territory of Delhi issued a Memorandum dated 20.06.2006 to the effect that tax will be calculated and payable on the pre-revised price. Accordingly Delhi Vat act was also amended.

On 30.11.2006 there was partial roll back of prices of Petrol and High Speed Diesel which had been enhanced with effect from 06.06.2006. The prices were again rolled back and brought to pre 06.06.2006 status w.e.f. 16.02.2007.

The appellant oil companies filed their VAT Returns with the Tax Authorities and continued to deduct amounts of Rs.4/- per litre on Petrol and Rs.2/- per litre on High Speed Diesel from the prevailing sale price and charged/recovered VAT in respect of sale price so reduced by Rs.4/- and Rs.2/- as stated above. The sales tax department took objection to this practice and imposed tax on the deducted rolled back prices. The matters were carried in appeal by the appellants before various authorities and ultimately came before the Supreme Court.

Decision: Appeal dismissed.

Reason:

According to the appellants, the benefit in terms of the proviso in question was to the extent of VAT chargeable and payable in respect of the amount of increase and the benefit so quantified must be made available regardless of any variation or decrease in the rates of Petrol and High Speed Diesel. For example, if the price before the increase in rates is taken to be x and the price were to be x+4 as a result of increase w.e.f. 06.06.2006, the benefit of VAT payable in respect of the element of increase i.e. 4 must be available even if

upon partial roll back the price were to be x+1 or upon full roll back the price were to be x itself. If the logic is accepted, upon full roll back, according to the appellants the VAT would be payable on x-4.

In our view, the proviso ought to be given normal and natural meaning keeping in mind the context, object and reasons for its enactment and incorporation. The idea was to protect the interest of the consumers by giving exemption in respect of enhanced ad valorem VAT payable on account of increase in prices of diesel and petrol from 06.06.2006. On the element of increase no additional ad valorem VAT was payable and according to the proviso the increased component was not to be part of sale consideration. Consequently VAT was not to be charged in respect of such increased component, as per definition of the term "sale price" which came to be controlled by introduction of the proviso. When there was no increased component and therefore no liability to pay VAT in respect of such increased component, benefit under the proviso ceased to be applicable. The proviso cannot be given operation beyond the element of increase, so much so that even after complete roll back, the benefit in respect of that amount must operate. That certainly was not the intent. The idea was to grant benefit only in respect of that element of VAT respecting increase in rates and not beyond. If that component of increase ceased to be in existence, the benefit of proviso also ceased to be in operation.

We, therefore, affirm the view taken by the High Court and the Appellate Authority and are not persuaded to take a different view in the matters. Affirming the judgment of the High Court, these appeals are dismissed without any order as to costs.



Competition Laws

LW: 48:07:2016

XYZ v. REC POWER DISTRIBUTION COMPANY LTD [CCI]

Case No. 33 of 2014

S. L. Bunker, Sudhir Mittal, Augustine Peter, U. C. Nahta, Dr. M. S. Sahoo & Justice G. P. Mittal. [Decided on 05/05/2016]

Competition Act, 2002- sections 3 & 4- abuse of dominance- holding company financing of rural electrification projects- subsidiary company focuses on developing and investing in electricity distribution and related activities- whether abuse of dominance- Held, No.

Brief facts:

Rural Electrification Corporation Limited (hereinafter, 'REC') was incorporated in the year 1969 with the main objective to finance and promote rural electrification projects in the private and public sector in India. It finances rural electrification projects across India and also provides loans to Central/ State Sector Power Utilities, State Electricity Boards, Rural Electric Cooperatives, NGOs and Private Power Developers. RECPDCL, a wholly owned subsidiary

of REC, was set up in the year 2007 with specific focus on developing and investing in electricity distribution and related activities.

The Informant has alleged that RECPDCL has been leveraging its association with REC for securing work related to consultancy services in relation to proposed rural electrification projects, mainly preparation of Detailed Project Report (DPR), by giving verbal assurance of securing approvals for the financing of such projects by REC. It has been alleged that RECPDCL has secured various orders relating to consultancy services in case of rural electrification projects from the state distribution utilities under the Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) scheme on the pretext that REC is the nodal agency for implementation of RGGVY. It has thus, distorted competition in the market for consultancy services related to the said project.

The Informant was further aggrieved because of the awarding of DPR preparation work to RECPDCL on nomination basis by various state utilities without following the tendering process in complete disregard to the CVC guidelines and competition law principles. This allegedly amounted to denial of market access to the competitors of RECPDCL in the consultancy market. Thus, as per the information, the manipulation of competition by RECPDCL under the aegis of REC amounted to contravention of the provisions of Sections 4(2) (c) and 4(2) (e) of the Act.

Decision: Case closed.

Reason:

The Commission has perused the DG report and the replies/objections filed by the Informant and the OP, along with the material available on record, besides hearing the counsels appearing for the parties.

Issue I: Leveraging of Dominant Position:

The DG concluded that REC's dominance in rural electrification financing was directly translating into the award of consultancy work by the PIAs to RECPDCL. In the absence of any evidence to support the contrary, the DG relied on these circumstantial evidence to establish that REC group was using its position of dominance in the market of financing of rural electrification projects in India under RGGVY/DDUGJY to protect the market for consultancy services for rural electrification projects under RGGVY/DDUGJY in India in violation of Section 4(2) (e) of the Act.

The Commission has considered the findings of the DG and the submissions of the parties on the issue of leveraging. The leveraging doctrine applies when a firm has sought to use its dominance in one relevant market to enter into or protect the second market without competing on merits in that market. In the instant case, the DG's investigation reveals that RECPDCL garnered a significant share of the secondary relevant market in the first year of its operation, i.e. 2013-14. It also brings out the fact that award of DPRs during the period of investigation was mainly on nomination basis.

In this regard, the Commission notes that the DG has relied upon the responses of various competitors and consumers of RECPDCL to conclude that OP group was using its dominant position in the first relevant market to ensure that DPR work was awarded to RECPDCL in the second relevant market. Such work was awarded on nomination basis, the reason for which, as per the DG was not sufficiently explained by the Discoms/consumers.

The Commission, therefore, looked into the evidence relied upon by the DG to examine whether the conclusions so drawn are in accordance with the responses of the aforesaid parties or not. Having considered the statements made by the competitors of OP, the Commission is of the view that there is no clear evidence on record to infer that the OP group leveraged its dominant position to ensure awarding of work to OP.

Thus, it is apparent that there is no evidence on record either to show that REC has leveraged its dominant position in the first relevant market to enter into or protect the second relevant market or to show that REC has given any assurance to Discom's that their decision to appoint RECPDCL as a consultant for the preparation of DPRs would lead to approval of the project. The Commission is, therefore, of the view that there is no concrete evidence on record to establish that OP group has leveraged its dominant position in the first relevant market to enter into or protect the second relevant market. Therefore, the allegation of violation of the provisions of Section 4(2) (e) of the Act does not stand established.

Issue 2: Denial of Market Access:

The second element in the enquiry of a case under denial of market access is with regard to the anti-competitive effect/distortion in the market because of such conduct. The Commission notes that the DG has primarily relied upon the award of DPRs on nomination basis to RECPDCL. During 2013-14, RECPDCL was awarded 70 DPRs on nomination basis out of total 189 DPRs prepared by the consultants i.e. 37% of the total market. Further, the market share of RECPDCL in the second market, including all DPRs prepared by it for 2013-14, is approximately 40%. The Commission notes that although the entry of RECPDCL in the second market has led to a reduction in the market share for the other consultancy firms, the market was nevertheless contestable. The responses from the Discoms (i.e. the consumers of RECPDCL) have clearly revealed the reasons for their preference for appointing RECPDCL. Thus, in the absence of a conduct on the part of OP group, the reduction in the market share for some of the players cannot be relied upon to infer anti-competitive conduct on the part of OP group. Further, the data submitted by RECPDCL depicts that the percentage of DPRs prepared by it has decreased in the year 2015-16 to approximately 36% which further weakens the allegation regarding denial of market access. With more than 60% market shared by the other consultancy firms and in absence of any evidence regarding OP group's influence on the Discoms' decision to follow the nomination route, the Commission is of the view that contravention of Section 4(2) (c) cannot be made out in the instant case.

Thus, the evidence on record is not sufficient to establish that REC, as the nodal agency for implementation of the RGGVY scheme and as one of the appraising authorities of rural electrification projects under the scheme, exercised undue influence on the PIAs or meted out any discriminatory treatment to the competitors of its subsidiary RECPDCL in order to enter into or protect the relevant market of preparation of DPRs.

In view of the above discussion, the Commission is of the opinion that no case of contravention of the provisions of Section 4 of the Act is made out against the OP group and the matter is ordered to be closed forthwith.

LW: 49:07:2016

**SOUTHWEST INDIA MACHINE TRADING PVT LTD v.
CASE NEW HOLLAND CONSTRUCTION EQUIPMENT
INDIA PVT LTD [CCI]**

Case No. 97 of 2015

Devender Kumar Sikri, S. L. Bunker, Sudhir Mittal, Augustine Peter, U. C. Nahta, Dr. M. S. Sahoo & Justice G. P. Mittal.
[Decided on 03/05/2016]

Competition Act, 2002- sections 3 & 4- abuse of dominance- contract for sale of machinery- seller refuses to sell on the ground

of misuse by the buyer- whether abuse of dominance-Held, No.

Brief facts:

The Informant had issued two purchase orders for the purchase of the 50 units Backhoe Loader and 10 units of Soil Vibratory Compactor on OP. Later on the informant place another optional purchase order for the purchase of 100 units of Backhoe Loader and 80 units of Soil Vibratory Compactor.

It appears that the informant had sold these equipment in auction and exported the same. The OP after supplying 35 units out of the 50 units of the Backhoe Loaders, stopped further supplies and informed the informant that it will take appropriate legal actions against it for selling the equipment in auction and exporting the same thereby jeopardising the market of it in these countries.

According to the Informant, such conduct of OP amounts to entering into anti-competitive agreement in contravention of the provisions of Section 3 of the Act. It has been further alleged that through such conduct, OP had: (i) directly or indirectly imposed an unfair and discriminatory condition in the sale or purchase of goods; (ii) limited and restricted the market for goods and denied market access; (iii) sought to impose supplementary obligations which have no bearing with the subject matter of the contract; and (iv) used its dominant position in one relevant market to protect other relevant market. For these purported reasons, it has been alleged by the Informant that the conduct of OP is in contravention of the provisions of Section 4 of the Act as well.

Decision: Case closed.

Reason:

The Commission is of the view that the instant case concerns the following two relevant markets: (a) market for manufacture and sale of Backhoe Loaders in India; and (b) market for manufacture and sale of Vibratory Soil Compactors in India.

The Informant had portrayed OP as a top-tier player in the Backhoe Loaders Segment. However, it could not provide any material which could establish dominance of OP in this relevant market. It is relevant to note that the Commission, in its order dated 11th March 2014 in Case No. 105/2013, had *prima facie* found JCB to be in a dominant position in the relevant market for manufacturing and sale of Backhoe Loaders in India. Given these facts and circumstances, the Commission is of the view that OP cannot be regarded as a dominant enterprise in the relevant market for manufacture and sale of Backhoe Loaders in India.

As regards the market for manufacture and sale of Vibratory Soil Compactors in India, the Commission observes the presence of other players such as JCB, Volvo, Escorts, Dynapac, Greaves, etc. in the soil compactors business in India, indicating availability of choice to consumers. Given the materials available on record, OP cannot be regarded as dominant in the relevant market for manufacture and sale of Vibratory Soil Compactors in India as well.

In view of the foregoing, it emerges that OP does not enjoy dominant position either in the market for manufacture and sale of Backhoe Loaders in India or in the market for manufacture and sale of Vibratory Soil Compactors in India. In the absence of OP being dominant in any of the relevant markets as delineated *supra*, the Commission does not see a case of contravention under Section 4 of the Act.

The Commission further notes that the case does not involve any agreement between persons engaged in similar/identical business. Thus, no case under Section 3 of the Act is also discernible from the facts presented in the information. In light of the above analysis, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.

4

FROM THE GOVERNMENT



■ Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016

■ Companies (Removal of Difficulties) Third Order, 2016

■ Companies (Acceptance of Deposits) Amendment Rules, 2016



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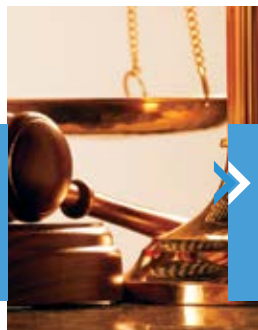
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Corporate Laws

01 Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016

[Issued by the Ministry of Corporate Affairs vide File No. 01/05/2013-CL-V, dated 30.06.2016. To be published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i)]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016.
- (2) They shall come into force from the date of their publication in the Official Gazette.
2. In the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, (hereinafter referred to as the principal rules),-
 - (i) in rule 3, the expression "Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO)" shall be omitted.
3. in rule 5 of the principal rules,-
 - in sub-rule (l), "clauses (v), (vi), (vii) and (ix) to (xi)" shall be omitted
 - (b) in sub-rule (2),-
 - for the words "the name of every employee of the company, who", the words "the names of the top ten employees in terms of remuneration drawn and the name of every employee, who-" shall be substituted;
 - in sub-clause (i) for the words "sixty lakh rupees", the words "one crore and two lakh rupees" shall be substituted;
 - in sub-clause (ii) for the words "five lakh rupees per month" the words "eight lakh and fifty thousand rupees per month" shall be substituted;
4. For Form MR-I of the principal rules, the following form shall be substituted, namely,-

.....*

Amardeep Singh Bhatia
Joint Secretary

*Form No. MR-I is not reproduced here for want of space. Readers may log on to mca.gov.in for

the form.

02 Companies (Removal of Difficulties) Third Order, 2016

[Issued by Ministry of Corporate Affairs vide F. No. 1/33/2013-CL-V, dated 30.06.2016. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii)]

Whereas, the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on 29th August, 2013 and section 1 thereof came into force on the same date;

And, whereas, the provisions contained in section 139, which provides for appointment of auditors has come into force on the 1st April, 2014;

And, whereas, sub-section (2) of section 139 of the said Act provides that no listed company and the prescribed class of companies shall appoint or re-appoint-

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years;

And, whereas, first proviso to sub-section (2) provides for period for which the individual auditor or audit firm who or which have completed term provided under such sub-section shall not be eligible for re-appointment as auditor in the same company;

And, whereas, the third proviso to sub-section (2) provides that every company, existing on or before the commencement of this Act which is required to comply with provisions of sub-section (2) shall comply with the requirements of such sub-section within three years from the date of commencement of the said Act;

And, whereas, as per provisions of sub-section (1) of section 139, the companies are required to appoint auditor at the annual general meeting who shall hold office from the conclusion of that meeting till the conclusion of sixth annual general meeting;

And, whereas, difficulties have arisen regarding compliance with the provisions of third proviso to sub-section (2) of section 139 in so far as they relate to the period within which companies would comply with provisions of sub-section (2) of section 139 of the said Act;

Now, therefore, in exercise of the powers conferred by sub-section (l) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the above said difficulties, namely:-

1. Short title and commencement.- (1) This Order may be called the Companies (Removal of Difficulties) Third Order, 2016.
- (2) It shall be deemed to have come into force from 1st April, 2014.
2. In the Companies Act, 2013, in section 139, in sub-section (2), for the third proviso, the following proviso shall be substituted, namely:-

"Provided also that every company, existing on or before the commencement of this Act which is required to comply with the provisions of this sub-section, shall comply with requirements of this sub-section within a period which shall not be later than the date of the first annual general meeting of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act."

Amardeep Singh Bhatia
Joint Secretary

03 Companies (Acceptance of Deposits) Amendment Rules, 2016

[Issued by Ministry of Corporate Affairs vide File No. 1/8/2013-CL-V, dated 29.06.2016. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

In exercise of the powers conferred by sections 73 and 76 read with sub section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies(Acceptance of Deposits) Rules, 2014, namely:-

(1) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as the principal rules), in rule 2, in sub-rule (1), in clause (c),-

(i) in sub-clause (ix), for the words "five years" the words "ten years" shall be substituted;

(ii) after sub-clause (ix), the following sub-clause shall be inserted, namely,-

"(ixa) any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.";

(iii) for sub-clause (xi), the following sub-clause shall be substituted, namely:-

"(xi) any non-interest bearing amount received and held in trust;"

(iv) in sub-clause (xii),-

(A) after item (d) and before the proviso, the following items shall be inserted, namely:-

"(e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of

acceptance of such service whichever is less;

(f) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

(g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications; "

(B) in the Explanation, the words "referred to in the proviso" shall be omitted;

(v) in the Explanation, after sub-clause (xiv), for the words "shall be treated as deposits", the words "shall be considered as deposits unless specifically excluded under this clause" shall be substituted;

(vi) after sub-clause (xiv), the following sub-clauses shall be inserted, namely:-

(xv) any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982 (40 of 1982);

(xvi) any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India;

(xvii) an amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person.

Explanation.- For the purposes of this sub-clause, -

I. "start-up company" means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry;

II. "convertible note" means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument.

(xviii) any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it".

3. In Rule 3 of the Principal rules,-

(i) in sub-rule (3),-

(a) for the words "twenty five per cent.", the words "thirty five per cent." shall be substituted;

(b) the following proviso shall be inserted namely:

- "Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified."
- (ii) for sub-rule (8), the following sub-rule shall be substituted, namely:-
- "(8).- (a) Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3,
- (b) The credit rating referred to in clause (a) shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits, from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, issued by the Reserve Bank of India, as amended from time to time."
4. in rule 4 of the principal rules, for sub-rule (2), the following sub-rule shall be substituted, namely:-
- (2) Every eligible company intending to invite deposits shall issue a circular in the form of an advertisement in form DPT-1 for the purpose in English language in an English newspaper having country wide circulation and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated, and shall also place such circular on the website of the company, if any."
5. in rule 5 of the principal rules, in sub-rule (1), for the proviso, the following proviso shall be substituted, namely:-
- "Provided that the companies may accept deposits without deposit insurance contract till the 31st March, 2017 or till the availability of a deposit insurance product, whichever is earlier."
6. after rule 16 of the principal rules, the following rule shall be inserted, namely:-
- "16A. Disclosures in the financial statement.- (1) Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director.
- (2) Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors."
7. in the principal rules, in the Annexure, in Form DPT-1, the following para shall be inserted, namely:-
- "6. DISCLAIMER.- It is to be distinctly understood that filing of circular or circular in the Form of advertisement with the Registrar should not in any way be deemed or construed that the same has been cleared or approved by the Registrar or Central Government. The Registrar or Central Government does not take any responsibility either for the financial soundness of any deposit scheme for which the deposit is being accepted or invited or for the correctness of the statements made or opinions expressed in the circular or circular in the Form of advertisement. The depositors should exercise due diligence before investing in the deposits schemes."

Amardeep Singh Bhatia
Joint Secretary

RECONSTITUTION OF THE DISCIPLINARY COMMITTEE

Pursuant to Section 21B(1) of the Company Secretaries Act, 1980, the Government of India, Ministry of Corporate Affairs has nominated two members on the Disciplinary Committee of the Institute until further orders of MCA. Accordingly, the composition of the Disciplinary Committee for the year 2016-17 is as under:-

CS Mamta Binani, President, ICSI	Presiding Officer
CS Ahalada Rao V., Council Member, ICSI	Member
CS Santosh Kumar Agrawala, Council Member, ICSI	Member
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32	MS. VIMLA RUPANI	FCS - 8642	NIRC
33	MRS. SMITA PANKAJ AGARKAR	FCS - 8643	WIRC
34	SH. YOGESH CHOUDHARY	FCS - 8644	WIRC
35	MRS. PRITI MADHUR JOSHI	FCS - 8645	WIRC
36	SH. RAMESH YEDLURI	FCS - 8646	SIRC
37	MS. MEENU JUNEJA	FCS - 8647	NIRC
38	SH. AMIT VASISTHA	FCS - 8648	SIRC
39	SH. SANJAY KUMAR BABU	FCS - 8649	NIRC
40	SH SUBASH MITTAL	FCS - 8650	NIRC
41	MS. HIMANSHU MALIK	FCS - 8651	WIRC
42	MS. MANSI LUNAWAT	FCS - 8652	WIRC
43	SH. S MAHADEVAN	FCS - 8653	SIRC
44	SH. PUNIT KUMAR GOYAL	FCS - 8654	WIRC
45	SH. RAJINI KANTH MULUGU	FCS - 8655	WIRC
46	SH. K RAMKUMAR	FCS - 8656	SIRC
47	MR. PRIYANKA BHATNAGAR	FCS - 8657	NIRC
48	MS. RASHMI DINESH MAMTURA	FCS - 8658	WIRC
49	MS. PARUL HARI OM SARDA	FCS - 8659	WIRC
50	MS RASHMI SHARMA	FCS - 8660	EIRC
51	MS. NEELAM	FCS - 8661	NIRC
52	SH. UDAY KESHAV PATWARDHAN	FCS - 8662	WIRC
53	SH. BHASKAR BHARAT UPADHYAY	FCS - 8663	WIRC
54	SH. AJAY YASHWANT JOSHI	FCS - 8664	WIRC
55	SH. A ARJUNAN	FCS - 8665	SIRC
56	SH. LALIT KUMAR CHAUDHARY	FCS - 8666	NIRC
57	SH. KAPIL RAMESH SANGHVI	FCS - 8667	WIRC

58	MS. PRAGATI PANDEY	FCS - 8668	NIRC
59	SH. ASHOK KUMAR GUPTA	FCS - 8669	NIRC
60	MR. ASTIK MANI TRIPATHI	FCS - 8670	NIRC
ASSOCIATES*			
1	MS. SONIA BANSAL	ACS - 45309	NIRC
2	MS. SHILPA AGARWAL	ACS - 45310	NIRC
3	MS. GURJEET KAUR	ACS - 45311	NIRC
4	MS. PRIYANKA GARG	ACS - 45312	WIRC
5	MR. NARESH KUMAR LALWANI	ACS - 45313	NIRC
6	MS. SMRITI MISHRA	ACS - 45314	NIRC
7	MR. P RAJA SEKARAN	ACS - 45315	SIRC
8	MR. DINESH NARAYAN KHANOLKAR	ACS - 45316	WIRC
9	MS. RESHMA AGRAWAL	ACS - 45317	WIRC
10	MS. NIRALI BAKULBHAI TANNA	ACS - 45318	WIRC
11	MS. PALLAVI GUJADHUR	ACS - 45319	EIRC
12	MS. JAYLAXMI MURARKA	ACS - 45320	EIRC
13	MS. DHARANI P V	ACS - 45321	SIRC
14	MR. SANKET PARWAL	ACS - 45322	WIRC
15	MS. VANDANA AJESHKUMAR SHELADIYA	ACS - 45323	WIRC
16	MS. ANCHAL NARESH KUMAR BANSAL	ACS - 45324	WIRC
17	MS. MADHURA VIJAY BHATAWDEKAR	ACS - 45325	WIRC
18	MS. GRISMA BISWAL	ACS - 45326	EIRC
19	MS. PUJA LOHIA	ACS - 45327	EIRC
20	MS. SWATI JHUNJHUNWALA	ACS - 45328	EIRC
21	MS. RICHA JAIN	ACS - 45329	EIRC
22	MR. AMIT SINGH	ACS - 45330	EIRC
23	MS. SWATI AGARWAL	ACS - 45331	EIRC
24	MS. SEBANKA SAHA	ACS - 45332	EIRC
25	MS. SINU SURALIA	ACS - 45333	EIRC
26	MR. HARJEET SINGH	ACS - 45334	EIRC
27	MS. RUPAL PODDAR	ACS - 45335	EIRC
28	MS. PARUL BERIWALA	ACS - 45336	EIRC
29	MS. SRITY AGARWAL	ACS - 45337	EIRC
30	MR. AMIT MUKHERJEE	ACS - 45338	EIRC
31	MR. MANISH TIWARY	ACS - 45339	EIRC
32	MS. PRERNA MALL	ACS - 45340	EIRC
33	MR. SNEH TRIVEDI	ACS - 45341	EIRC
34	MS. NIDHI BHUPAL	ACS - 45342	NIRC
35	MS. MIRA HALDER	ACS - 45343	EIRC
36	MS. ABHILASHA MUNDHRA	ACS - 45344	EIRC
37	MR. AAKASH KUMAR SINGH	ACS - 45345	EIRC
38	MS. RUCHIKA MAHESHWARI	ACS - 45346	EIRC
39	MS. NIKITA ROY	ACS - 45347	NIRC
40	MR. SAURAV GOEL	ACS - 45348	NIRC
41	MR. RAJA SARAOGI	ACS - 45349	EIRC
42	MR. PANKAJ RATHI	ACS - 45350	SIRC
43	MR. DINESH KUMAR	ACS - 45351	NIRC
44	MR. SUMIT BEHL	ACS - 45352	NIRC
45	MR. SHOBHIT TANDON	ACS - 45353	NIRC
46	MR. DHEERAJ KUMAR JAIN	ACS - 45354	NIRC
47	MR. HIMANSHU AGARWAL	ACS - 45355	NIRC
48	MS. NEHA RAWAT	ACS - 45356	NIRC
49	MR. VINEET RATTAN	ACS - 45357	NIRC
50	MR. GOUTENDRA PRATAP SINGH	ACS - 45358	NIRC
51	MR. RAVI VERMA	ACS - 45359	NIRC
52	MR. PANKAJ RAWAT	ACS - 45360	NIRC
53	MS. ANUBHA MAHESHWARI	ACS - 45361	NIRC
54	MR. AKASH AGGARWAL	ACS - 45362	NIRC
55	MR. PANKAJ RAWAT	ACS - 45363	NIRC
56	MR. LALAN YADAV	ACS - 45364	NIRC
57	MS. RIVONIKA PUNIA	ACS - 45365	NIRC
58	MR. LAKSHAY PRAKASH	ACS - 45366	NIRC
59	MR. HIMANSHU IPLANI	ACS - 45367	NIRC
60	MR. ANKIT BISHT	ACS - 45368	NIRC
61	MS. SHELLY GUPTA	ACS - 45369	NIRC
62	MS. ANU LUTHRA	ACS - 45370	NIRC
63	MS. OJASVEE GUPTA	ACS - 45371	NIRC
64	MR. DHARMENDER KUMAR	ACS - 45372	NIRC
65	MS. HEENA	ACS - 45373	NIRC
66	MS. DEVIKA MONANI	ACS - 45374	NIRC
67	MS. JAGRITI SHARMA	ACS - 45375	EIRC

*Admitted during the period from 20.05.2016 to 19.06.2016.

68	MR. AKSHAT	ACS - 45376	NIRC	139	MS. MEGHNA PIPLANI	ACS - 45447	NIRC
69	MS. DISHA RAJVANSHI	ACS - 45377	NIRC	140	MS. DIVYA BHARTI	ACS - 45448	NIRC
70	MR. SUMIT ARORA	ACS - 45378	NIRC	141	MS. AISHWARYA SHARMA	ACS - 45449	NIRC
71	MR. SUMIT KAUSHIK	ACS - 45379	NIRC	142	MS. SHIVANI MEHRA	ACS - 45450	NIRC
72	MS. LAXMI RUNGTA	ACS - 45380	NIRC	143	MS. SURBHI MUNDRA	ACS - 45451	NIRC
73	MS. DIPTI MISHRA	ACS - 45381	NIRC	144	MS. POONAM AGARWAL	ACS - 45452	NIRC
74	MS. MAMTA	ACS - 45382	NIRC	145	MS. NEHA GANDHI	ACS - 45453	NIRC
75	MR. ABHISHEK VARSHNEY	ACS - 45383	NIRC	146	MS. ANKITA SINGLA	ACS - 45454	NIRC
76	MR. ANKUR KHETAN	ACS - 45384	NIRC	147	MS. JAGRITI AGGARWAL	ACS - 45455	NIRC
77	MS. SHWETA CHAWLA	ACS - 45385	NIRC	148	MS. HEENA BEHRANI	ACS - 45456	NIRC
78	MS. DEEPANSHI AGGARWAL	ACS - 45386	NIRC	149	MS. MANPREET KAUR RIYAR	ACS - 45457	NIRC
79	MS. NIDHI GUPTA	ACS - 45387	NIRC	150	MS. ANAMIKA KALA	ACS - 45458	NIRC
80	MS. RINKY TAYAL	ACS - 45388	NIRC	151	MR. WAQAR SIDDIQUI	ACS - 45459	NIRC
81	MS. NIKITA DHAWAN	ACS - 45389	NIRC	152	MS. TEENA AGARWAL	ACS - 45460	NIRC
82	MR. GOURANSH CHAWLA	ACS - 45390	NIRC	153	MS. DEEKSHA KAKU	ACS - 45461	NIRC
83	MS. SHRUTI MITTAL	ACS - 45391	NIRC	154	MR. CHIRAG BHAYAL	ACS - 45462	NIRC
84	MS. AMANPREET KAUR NANDA	ACS - 45392	NIRC	155	MR. NITIN SAMADHIYA	ACS - 45463	NIRC
85	MR. SANDEEP SINGH	ACS - 45393	NIRC	156	MS. KOMAL MEHRA	ACS - 45464	NIRC
86	MS. SUKRITI MANNA	ACS - 45394	NIRC	157	MS. DISHA KALSI	ACS - 45465	NIRC
87	MS. NEHA DHIR	ACS - 45395	NIRC	158	MS. POOJA CHHABRA	ACS - 45466	NIRC
88	MS. MANISHA SONI	ACS - 45396	NIRC	159	MS. SUGANDHA KHANNA	ACS - 45467	NIRC
89	MS. DIVYA KWATRA	ACS - 45397	NIRC	160	MS. SHWETA	ACS - 45468	NIRC
90	MR. BHARAT ASWANI	ACS - 45398	NIRC	161	MS. SHIVANGI SINGH	ACS - 45469	NIRC
91	MS. PARIDHI PATNY	ACS - 45399	WIRC	162	MS. KANCHAN GUPTA	ACS - 45470	NIRC
92	MR. JAGSIR SINGH	ACS - 45400	NIRC	163	MS. NEHA MIRZA	ACS - 45471	NIRC
93	MS. ANJALI PACHOLI	ACS - 45401	NIRC	164	MS. TANYA KUKREJA	ACS - 45472	NIRC
94	MS. SWATI DHINGRA	ACS - 45402	NIRC	165	MR. PRASHANT K BOHRA	ACS - 45473	SIRC
95	MR. ASHOK	ACS - 45403	NIRC	166	MR. RUDHRU KRISHNA	ACS - 45474	SIRC
96	MS. PRATIBHA KOTHARI	ACS - 45404	NIRC	167	MS. MADHUMITHA GOPALAN	ACS - 45475	SIRC
97	MS. SWATI MAHESHWARI	ACS - 45405	NIRC	168	MS. POOJA BANG	ACS - 45476	SIRC
98	MR. ARUN KUMAR	ACS - 45406	NIRC	169	MR. ABHILASH S	ACS - 45477	SIRC
99	MR. DHEERAJ KUMAR	ACS - 45407	NIRC	170	MR. PRABIN K	ACS - 45478	SIRC
100	MS. KOMAL MUNDRA	ACS - 45408	NIRC	171	MR. V CHANDRA SEKHAR PATNAIK	ACS - 45479	SIRC
101	MS. DEEPA KUMARI	ACS - 45409	NIRC	172	MR. SANDESHA	ACS - 45480	SIRC
102	MS. PRIYANKA BAHAL	ACS - 45410	NIRC	173	MS. M SATHYABAMA	ACS - 45481	SIRC
103	MR. VIBHU GAUTAM	ACS - 45411	NIRC	174	MR. GAJENDRA N	ACS - 45482	SIRC
104	MR. SHOBHIT VASISHT	ACS - 45412	NIRC	175	MS. RAMYANKA YADAV K	ACS - 45483	SIRC
105	MS. SEEMA CHAUDHARY	ACS - 45413	NIRC	176	MS. GOWRI SREEKANTH G	ACS - 45484	EIRC
106	MS. KRATI GARG	ACS - 45414	NIRC	177	MR. ROHIT RAMACHANDRAN	ACS - 45485	SIRC
107	MS. SHWETA KHANDELWAL	ACS - 45415	NIRC	178	MS. MALAVIKA M	ACS - 45486	SIRC
108	MS. ASHIMA GUPTA	ACS - 45416	NIRC	179	MS. POONAM KUMARI D	ACS - 45487	SIRC
109	MS. SHIVANGI CHOUDHRY	ACS - 45417	NIRC	180	MS. SRUTHY MOL T	ACS - 45488	SIRC
110	MS. SURABHI AGRAWAL	ACS - 45418	NIRC	181	MS. POOJA RAMESH KUKREJA	ACS - 45489	SIRC
111	MS. ANSHITA GOYAL	ACS - 45419	NIRC	182	MS. SAILAJA B	ACS - 45490	SIRC
112	MS. PRERNA GARG	ACS - 45420	NIRC	183	MS. SRUTHI GIREESH	ACS - 45491	SIRC
113	MS. VARSHA VASHISTHA	ACS - 45421	NIRC	184	MS. PRIYADARSHINI V	ACS - 45492	SIRC
114	MR. PRATIK PANGARIA	ACS - 45422	NIRC	185	MS. ASHA D HEGDE	ACS - 45493	SIRC
115	MS. SAVITA KUMAWAT	ACS - 45423	NIRC	186	MS. MAHESHWARI GARIMA	ACS - 45494	SIRC
116	MS. YASHIKA ARORA	ACS - 45424	NIRC	187	MS. VARSHA R S	ACS - 45495	SIRC
117	MR. ENU JAIN	ACS - 45425	NIRC	188	MS. CHINCHUMOL GEORGE	ACS - 45496	SIRC
118	MR. PARVEEN KUMAR	ACS - 45426	NIRC	189	MS. G JOSEPHIN DAISY	ACS - 45497	SIRC
119	MS. SHEFALI TAMBHI	ACS - 45427	NIRC	190	MR. MIDHUNKUMAR E M	ACS - 45498	SIRC
120	MS. ANITA RAMNANI	ACS - 45428	NIRC	191	MS. KRITHIKA D THAKKAR	ACS - 45499	SIRC
121	MS. SUNAINA WALIA	ACS - 45429	NIRC	192	MS. RESHMI VARGHESE	ACS - 45500	SIRC
122	MS. PRIYANKA GUPTA	ACS - 45430	NIRC	193	MR. RAVINDER REDDY SURUKANTI	ACS - 45501	SIRC
123	MS. PARUL SHARMA	ACS - 45431	NIRC	194	MS. MALAVIKA DEVAIAH	ACS - 45502	SIRC
124	MS. AISHWARYA SINGH	ACS - 45432	NIRC	195	MS. J P S NEELAM SAI	ACS - 45503	SIRC
125	MR. DILKHUSH JAT	ACS - 45433	NIRC	196	MS. NANDINI AMIT CHAVAN	ACS - 45504	WIRC
126	MS. SHIPRA PAREEK	ACS - 45434	NIRC	197	MS. PALLAVI KISHOR DHAVANE	ACS - 45505	WIRC
127	MR. RAHUL JAIN	ACS - 45435	NIRC	198	MS. TEJAL ANIL BHOSLE	ACS - 45506	WIRC
128	MS. PAYAL	ACS - 45436	NIRC	199	MR. DHANRAJ BALAPRASAD BAHETI	ACS - 45507	WIRC
129	MR. ABHISHEK MEHROTRA	ACS - 45437	NIRC	200	MR. RAHUL VIJAYKUMAR KABARA	ACS - 45508	WIRC
130	MR. LAKSHAY VAID	ACS - 45438	NIRC	201	MR. SREEKANT ASHOK PUROHIT	ACS - 45509	WIRC
131	MS. AASIMA KHURSHID KHAN	ACS - 45439	NIRC	202	MS. KHUSHBOO NIKHIL DESAI	ACS - 45510	WIRC
132	MR. CHANDRANSHU SHARMA	ACS - 45440	NIRC	203	MS. HARSHADA RAVIKIRAN SASWADKAR	ACS - 45511	WIRC
133	MS. SARITA SAINI	ACS - 45441	NIRC	204	MS. GAURI HAMANT GOKHALE	ACS - 45512	WIRC
134	MS. ANKITA	ACS - 45442	NIRC	205	MR. DARSHIL DILIPBHAI SHAH	ACS - 45513	WIRC
135	MS. ISHA JINDAL	ACS - 45443	NIRC	206	MR. PRAMOD SURESH SURYAVANSHI	ACS - 45514	WIRC
136	MS. RENU KUMARI	ACS - 45444	NIRC	207	MS. ANJANA MAHENDRA JAGGER	ACS - 45515	WIRC
137	MS. SHIVANI DHASMANA	ACS - 45445	NIRC	208	MS. HIRAL DIPSINHBHAI KASHELA	ACS - 45516	WIRC
138	MS. VIBHA ARORA	ACS - 45446	NIRC	209	MS. RANA PRIYANKABEN GAJENDRASINH	ACS - 45517	WIRC

210	MS. PRIYANKA PATIDAR	ACS - 45518	WIRC	280	MR. TUSHAR VASUDEV DESHPANDE	ACS - 45586	WIRC
211	MS. CHAITALI ASHOK SHIRODKAR	ACS - 45519	WIRC	281	MR. DHANANJAY JITESH PANDEY	ACS - 45587	NIRC
212	MS. DEEPALI BHATIA	ACS - 45520	WIRC	282	MR. VIKASH SHARMA	ACS - 45588	EIRC
213	MR. KAUSTUBH PRAMOD MEHENDALE	ACS - 45521	WIRC	283	MS. POONAM GUPTA	ACS - 45589	EIRC
214	MS. ISHA PAWAN AGRAWAL	ACS - 45522	WIRC	284	MR. SACHIN KUMAR	ACS - 45590	NIRC
215	MS. KRISHNA DILIPBHAI NAIK	ACS - 45523	WIRC	285	MR. NEERAJ PURI	ACS - 45591	NIRC
216	MR. VICKY THAKWANI	ACS - 45524	WIRC	286	MS. TARUNA KUMARI KHOKHAWAT	ACS - 45592	NIRC
217	MS. PAYAL SHAILESHBHAI KUKDE	ACS - 45525	WIRC	287	MR. LALIT KUMAR TAPARIA	ACS - 45593	EIRC
218	MS. SEEMA MANISH KUMAR KAPADIA	ACS - 45526	WIRC	288	MR. PRATIK RAJENDRAKUMAR KORALWALA	ACS - 45594	WIRC
219	MS. NAMRATA SUHAS GADRE	ACS - 45527	EIRC	289	MR. PRAFULLA KUMAR KACHOLIA	ACS - 45595	WIRC
220	MS. NAMRATA SUHAS GADRE	ACS - 45527	EIRC	290	MS. APURVA AVADHUT PRABHUDESSAI	ACS - 45596	WIRC
221	MR. VAISHY SHIVKUMAR BHOLANATH	ACS - 45528	WIRC	291	MS. POOJA TRIVEDI	ACS - 45597	WIRC
222	MR. YASH JANAK PANCHAL	ACS - 45529	WIRC	292	MS. DISHA HARESHBHAI SHAH	ACS - 45598	WIRC
223	MS. SNEHAL VILAS KAREKAR	ACS - 45530	WIRC	293	MS. IPSHITA PANDE	ACS - 45599	EIRC
224	MR. SHASHANK SHEKHAR RAI	ACS - 45531	WIRC	294	MS. SNEHA SINGH	ACS - 45600	EIRC
225	MR. VIKAS JAIN	ACS - 45532	WIRC	295	MS. SWETA AGARWAL	ACS - 45601	EIRC
226	MS. SHRUTIKA MAHENDRA BORHADE	ACS - 45533	WIRC	296	MR. SHYAM KUMAR RATHI	ACS - 45602	EIRC
227	MS. CHINTIKABEN HASMUKHBHAI SHAH	ACS - 45534	WIRC	297	MR. PRIYA DATTA JOSHI	ACS - 45603	EIRC
228	MS. MRINALI GUHA	ACS - 45535	WIRC	298	MS. POOJA VORA	ACS - 45604	EIRC
229	MR. CHAUBISA DEEPAK KUMAR KUSHALCHANDRA	ACS - 45536	WIRC	299	MS. SUNANDA BOTHRA	ACS - 45605	EIRC
230	MS. GAURI KEDAR MEHENDALE	ACS - 45537	WIRC	300	MR. SURAJIT CHANDA	ACS - 45606	EIRC
231	MS. FORUM MUKESH PANCHAL	ACS - 45538	WIRC	301	MS. ANJALI GUPTA	ACS - 45607	EIRC
232	MS. ITISHA PRAFFUL JAIN	ACS - 45539	WIRC	302	MS. JANU PADIA	ACS - 45608	EIRC
233	MS. URVASHI HARSHAD PANDYA	ACS - 45540	WIRC	303	MS. KHUSHBOO GUPTA	ACS - 45609	EIRC
234	MS. KHUSHBOO KABRA	ACS - 45541	SIRC	304	MR. UMESH VARMA	ACS - 45610	EIRC
235	MR. SANDEEP PATEL	ACS - 45542	WIRC	305	MS. SNEHA AGARWAL	ACS - 45611	EIRC
236	MS. DISHA RASIKBHAI MATALIYA	ACS - 45543	WIRC	306	MR. PRADIP KUMAR PURBEY	ACS - 45612	EIRC
237	MR. MEHTA DEVESH UPENDRA	ACS - 45544	WIRC	307	MS. ANITA KUMARI CHHAJER	ACS - 45613	EIRC
238	MR. AGRAWAL SACHIN RAJENDRA	ACS - 45545	WIRC	308	MS. ANITA KUMARI GUPTA	ACS - 45614	EIRC
239	MR. NARESH KUMAR NANJIBHAI MANIYA	ACS - 45546	WIRC	309	MS. NEHA SURAJ SHAH	ACS - 45615	EIRC
240	MS. MONIKA GOURISHANKAR DARAK	ACS - 45547	WIRC	310	MS. RAVEENA GOEL	ACS - 45616	EIRC
241	MR. CHETAN RAJGOPAL BHUTADA	ACS - 45548	WIRC	311	MS. PRIYANKA BIHANI	ACS - 45617	EIRC
242	MR. BAROT GAURAVKUMAR KIRITKUMAR	ACS - 45549	WIRC	312	MS. SHWETA DUBEY	ACS - 45618	EIRC
243	MS. NIKI SURYAKANT KANDOI	ACS - 45550	WIRC	313	MS. NITISHA JAISWAL	ACS - 45619	EIRC
244	MS. POOJA PODDAR	ACS - 45551	WIRC	314	MS. ARADHANA NATHANY	ACS - 45620	EIRC
245	MR. AJAY KUMAR RAMNAYAN VISHWAKARMA	ACS - 45552	NIRC	315	MS. SHIKHA GOENKA	ACS - 45621	EIRC
246	MS. RUCHA RAVINDRA PANDE	ACS - 45553	WIRC	316	MS. MAHUA SINGHA	ACS - 45622	EIRC
247	MS. ARPITA HARSHAD DOSHI	ACS - 45554	WIRC	317	MRS. DIPIKA AGARWAL	ACS - 45623	EIRC
248	MS. VYOMA MANAN VYAS	ACS - 45555	WIRC	318	MS. SONAM GUPTA	ACS - 45624	NIRC
249	MR. JAY HARISH SHAH	ACS - 45556	WIRC	319	MS. MANISHA JAGGI	ACS - 45625	NIRC
250	MS. CHANDNI VARDANI	ACS - 45557	WIRC	320	MS. PRIYA GOEL	ACS - 45626	NIRC
251	MS. KINJAL KOTAK RAJNIKANT	ACS - 45558	WIRC	321	MR. AMBUJ GOYAL	ACS - 45627	NIRC
252	MS. RIYA RAJESH MALU	ACS - 45559	WIRC	322	MS. SONAL SHARMA	ACS - 45628	NIRC
253	MS. SHILPI KABRA	ACS - 45560	WIRC	323	MS. DIVYA CHUGH	ACS - 45629	NIRC
254	MS. PRIYA GANDHI	ACS - 45561	WIRC	324	MR. SHEKHAR PAREEK	ACS - 45630	NIRC
255	MS. MANSI MANISHBHAI VEJANI	ACS - 45562	WIRC	325	MS. POONAM SHARMA	ACS - 45631	NIRC
256	MR. ANKIT NILESHBHAI THAKRAR	ACS - 45563	WIRC	326	MS. PRIYANKA RAMESH DHANJANI	ACS - 45632	NIRC
257	MS. VRISHTI KAUSHIK	ACS - 45564	WIRC	327	MR. DEVESH PANT	ACS - 45633	NIRC
258	MR. VICKEY KANAIALAL PATEL	ACS - 45565	WIRC	328	MS. GARIMA YADAV	ACS - 45634	NIRC
259	MS. JUHI RAJENDRA KUMAR CHATURVEDI	ACS - 45566	WIRC	329	MR. ARVIND KUMAR KUSHWAHA	ACS - 45635	NIRC
260	MS. SUMITI NARESH MULTANI	ACS - 45567	WIRC	330	MR. SHITIJ SHARMA	ACS - 45636	NIRC
261	MS. SHAH POOJA RAKESH	ACS - 45568	WIRC	331	MS. MAHIMA BANSAL	ACS - 45637	NIRC
262	MS. BHOOMI DIPEN YAJNIK	ACS - 45569	WIRC	332	MS. SURBHI VIJAYVARGIYA	ACS - 45638	NIRC
263	MR. DILIP KUMAR GAJANANDBHAI NIKHARE	ACS - 45570	WIRC	333	MS. SONIA GUPTA	ACS - 45639	NIRC
264	MR. DILIP KUMAR GAJANANDBHAI NIKHARE	ACS - 45570	WIRC	334	MS. SHREYA SANCHETI	ACS - 45640	NIRC
265	MS. RIYA KIRITKUMAR DOSHI	ACS - 45571	WIRC	335	MS. JASLEEN KAUR	ACS - 45641	NIRC
266	MS. PAYAL JAYANTKUMAR GAJIWALA	ACS - 45572	WIRC	336	MR. DEVENDRA KUMAR MADHESIA	ACS - 45642	NIRC
267	MS. SUNAKSHI VILENDRA JAGGA	ACS - 45573	WIRC	337	MR. HARSH TIWARI	ACS - 45643	NIRC
268	MS. JHALAK ATULBHAI SHAH	ACS - 45574	WIRC	338	MS. SHALU	ACS - 45644	NIRC
269	MS. NEHA RAJKUMAR JAIN	ACS - 45575	WIRC	339	MS. MEENAKSHI CHOUHAN	ACS - 45645	NIRC
270	MR. RAJESH GHANSHYAMDAS LACHHWANI	ACS - 45576	WIRC	340	MS. SHEEBA GOGIA	ACS - 45646	NIRC
271	MS. DIVYA BHERULAL LADDHA	ACS - 45577	WIRC	341	MS. MANISHA BHATIA	ACS - 45647	NIRC
272	MS. DARSHNA NARENDRABHAI MANIYAR	ACS - 45578	WIRC	342	MR. JITENDER	ACS - 45648	NIRC
273	MS. NIDHI ASHOK JAIN	ACS - 45579	WIRC	343	MR. KRISHAN LAL GULATI	ACS - 45649	NIRC
274	MR. M H SUHAZ	ACS - 45580	SIRC	344	MS. SONAM PATHAK	ACS - 45650	NIRC
275	MR. RAJESH PRASAD	ACS - 45581	EIRC	345	MR. PRIYANSHU KUMAR KANDHWAY	ACS - 45651	NIRC
276	MR. NITUL BORUAH	ACS - 45582	NIRC	346	MS. NAMRATA GUPTA	ACS - 45652	NIRC
277	MR. SIMON AJAY KUMAR	ACS - 45583	SIRC	347	MS. KRATI MAHESHWARI	ACS - 45653	NIRC
278	MS. DIVYA Y	ACS - 45584	SIRC	348	MS. SHWETA AGGARWAL	ACS - 45654	NIRC
279	MR. PRASHANT SATISH PARADKAR	ACS - 45585	WIRC	349	MS. PRIYA KSHTRIYA	ACS - 45655	NIRC
				350	MS. SHIVANI TRIPATHI	ACS - 45656	NIRC

351	MS. KARISHMA KHATRI	ACS - 45657	NIRC	422	MR. SAGAR PARMANAND KHATRI	ACS - 45728	WIRC
352	MS. KARISHMA JAISWAL	ACS - 45658	NIRC	423	MS. NISHA KISHU GIDWANI	ACS - 45729	WIRC
353	MR. KANHI LAL	ACS - 45659	NIRC	424	MS. VORA KRUPA SANJAY	ACS - 45730	WIRC
354	MS. ANJALI PANDEY	ACS - 45660	NIRC	425	MR. GAURAV ANIL JUWATKAR	ACS - 45731	WIRC
355	MS. PRIYANKA JANGID	ACS - 45661	NIRC	426	MS. ADITI PRAFULBHAI GORASIA	ACS - 45732	WIRC
356	MS. PANKHURI KHANNA	ACS - 45662	NIRC	427	MS. BHAVISHA KAMLESHKUMAR KHAKHKHAR	ACS - 45733	WIRC
357	MS. YASHIKA GULATI	ACS - 45663	NIRC	428	MR. HARSH KETANKUMAR SHAH	ACS - 45734	WIRC
358	MS. PURVI JAIN	ACS - 45664	NIRC	429	MS. SHRADDHA SUNIL KABRA	ACS - 45735	WIRC
359	MS. KSHIPRA BANSAL	ACS - 45665	NIRC	430	MS. MANALI GOYAL	ACS - 45736	WIRC
360	MS. KANIKA KUMAR	ACS - 45666	NIRC	431	MS. AESHA MASHRU	ACS - 45737	WIRC
361	MR. MAHESH KACHHAWA	ACS - 45667	NIRC	432	MS. UMA GOENKA	ACS - 45738	EIRC
362	MS. BHAWNA BHOJWANI	ACS - 45668	NIRC	433	MS. VINISHA JAIN	ACS - 45739	WIRC
363	MS. MEGHA MONGA	ACS - 45669	NIRC	434	MR. NEELAMJYOTI BORA	ACS - 45740	EIRC
364	MS. SHARMA GARGEE	ACS - 45670	NIRC	435	MS. GUNJAN JAIN	ACS - 45741	WIRC
365	MS. ASHU BANSAL	ACS - 45671	NIRC	436	MR. VIKASKUMAR R JALAN	ACS - 45742	WIRC
366	MS. SWATI RATRA	ACS - 45672	NIRC	437	MR. AMAL M S	ACS - 45743	SIRC
367	MS. CHHAVI KOTHARI	ACS - 45673	NIRC	438	MR. RAKESH KUMAR	ACS - 45744	NIRC
368	MS. SWATI JAIN	ACS - 45674	NIRC	439	MR. FAIZAN SIDDIQUI	ACS - 45745	NIRC
369	MS. KAVITA SHARMA	ACS - 45675	NIRC	440	MS. VEENA SEETARAMA HEGDE	ACS - 45746	SIRC
370	MS. MEGHA AGARWAL	ACS - 45676	NIRC	441	MR. KANAK SINGH CHOUDHARY	ACS - 45747	NIRC
371	MS. VASUPRADHA S	ACS - 45677	SIRC	442	MS. PRAMILA KUSHWAHA	ACS - 45748	NIRC
372	MR. SANDEEP CH	ACS - 45678	SIRC	443	MR. GAURAV CHOUDHARY	ACS - 45749	EIRC
373	MR. N ADHITIYAN	ACS - 45679	SIRC	444	MR. JAI PRAKASH JINDAL	ACS - 45750	EIRC
374	MR. SRINIVAS PALLAPU	ACS - 45680	SIRC	445	MS. PRIYANKA GULATI	ACS - 45751	EIRC
375	MS. NAGASHRUTI NAGARAJ HARANAHALLI	ACS - 45681	SIRC	446	MS. TRIPTI GUPTA	ACS - 45752	NIRC
376	MS. SWATHIKA S	ACS - 45682	SIRC	447	MR. PRABHAS SINGH	ACS - 45753	NIRC
377	MR. RAGHAV B	ACS - 45683	SIRC	448	MS. MONIKA JAGGI	ACS - 45754	NIRC
378	MS. SEETHAL P RAMACHANDRAN	ACS - 45684	SIRC	449	MR. HARSHIT JAIN	ACS - 45755	NIRC
379	MS. L SHEETAL NAHAR	ACS - 45685	SIRC	450	MS. MITI SHIKHAR SRIVASTAVA	ACS - 45756	NIRC
380	MS. NIVASHNY BALASUBRAMANIAM	ACS - 45686	SIRC	451	MR. SANKET BANSAL	ACS - 45757	NIRC
381	MR. MUDITH A	ACS - 45687	SIRC	452	MR. AAMIR KHAN	ACS - 45758	NIRC
382	MS. PADMAVATHI VARADARAJAN	ACS - 45688	SIRC	453	MR. SAURABH JAIN	ACS - 45759	NIRC
383	MR. SHARATH BABU R M	ACS - 45689	SIRC	454	MR. RAJ PRAKASH VERMA	ACS - 45760	EIRC
384	MS. SWATI SUBRAYA HEGDE	ACS - 45690	SIRC	455	MR. DHEERAJ KUMAR SHARMA	ACS - 45761	NIRC
385	MS. AMAL A AZEEZ	ACS - 45691	SIRC	456	MS. REEMA RANI	ACS - 45762	NIRC
386	MS. PRIYANKA ANIL KUMAR JAIN	ACS - 45692	WIRC	457	MS. VIRALBEN MANSUKHLAL MEHTA	ACS - 45763	WIRC
387	MS. APRAJITA SHARMA	ACS - 45693	WIRC	458	MS. SHWETA SATYANARAYAN	ACS - 45764	SIRC
388	MS. SHAH MAITRY HARNISHBHAI	ACS - 45694	WIRC	459	MS. SWAPNA DILIP GOSAVI	ACS - 45765	WIRC
389	MS. VRUNDA UMESH SHAH	ACS - 45695	WIRC	460	MR. HARDIKKUMAR JAYANTILAL RATANI	ACS - 45766	WIRC
390	MS. PRACHI MAHESH KOLWANKAR	ACS - 45696	WIRC	461	MS. KASIFABANU DOSTMOHAMMED MEMON	ACS - 45767	WIRC
391	MS. PANKHURI GOYAL	ACS - 45697	WIRC	462	MR. MUKESH GOPALBHAI LIMBACHIYA	ACS - 45768	WIRC
392	MR. SHRIRANG SHRIDHAR GOSAVI	ACS - 45698	WIRC	463	MS. AKANKSHA AKHILESH SRIVASTAVA	ACS - 45769	WIRC
393	MR. KOTECHA GUNJAN KISHOR	ACS - 45699	WIRC	464	MS. NUPUR LODWAL	ACS - 45770	WIRC
394	MR. VISMAY ASHOKKUMAR MAKWANA	ACS - 45700	WIRC	465	MR. SAGAR SURESHBHAI SARAIYA	ACS - 45771	WIRC
395	MS. NIDHI MUKESH SHAH	ACS - 45701	WIRC	466	MR. SHIVAM PATEL	ACS - 45772	WIRC
396	MS. SYLVIA DEREK D'SOUZA	ACS - 45702	WIRC	467	MR. NIKHIL ANILBHAI KHUNT	ACS - 45773	WIRC
397	MS. DARSHIKA DEEPAK PANDYA	ACS - 45703	WIRC	468	MS. SNEHA CHOWDHURY	ACS - 45774	EIRC
398	MS. POOJA RAVINDRA ITTAN	ACS - 45704	WIRC	469	MR. NIRBHAYA NATH JHA	ACS - 45775	EIRC
399	MR. PATADIA GAURAVKUMAR SURESHBHAI	ACS - 45705	WIRC	470	MR. SHREOSHI CHATTERJEE	ACS - 45776	EIRC
400	MS. PRIYANKA CHANDRASHEKHAR GOLE	ACS - 45706	WIRC	471	MS. KUMUD SOMANI	ACS - 45777	EIRC
401	MR. MILAN SURESHBHAI GANATRA	ACS - 45707	WIRC	472	MS. POOJA KIRIT DOSHI	ACS - 45778	EIRC
402	MS. PRIYANKA JAIN	ACS - 45708	WIRC	473	MS. NIKKI KEJRIWAL	ACS - 45779	EIRC
403	MR. RUTURAJ VINAY JOSHI	ACS - 45709	WIRC	474	MR. KUMAR GAUTAM	ACS - 45780	EIRC
404	MS. NEHA PRAKASH BOHRA	ACS - 45710	WIRC	475	MS. MANJARI JHUNJHUNWALA	ACS - 45781	EIRC
405	MS. ANITA PREM GIRI	ACS - 45711	WIRC	476	MS. ARPITA SINGH	ACS - 45782	EIRC
406	MR. BHARAT VINOD GOYAL	ACS - 45712	WIRC	477	MR. RAVI GUPTA	ACS - 45783	NIRC
407	MS. MITALI CHAKRABORTY	ACS - 45713	WIRC	478	MR. KAMAL CHAUHAN	ACS - 45784	NIRC
408	MS. NUPUR CHAKRABORTY	ACS - 45714	WIRC	479	MR. AVI AGGARWAL	ACS - 45785	NIRC
409	MR. VINAY MANGAL AGRAWAL	ACS - 45715	WIRC	480	MS. SHALU AGARWAL	ACS - 45786	NIRC
410	MS. VAIBHAVI PRAKASH PAWAR	ACS - 45716	WIRC	481	MS. PARUL GUPTA	ACS - 45787	NIRC
411	MR. ALIASGAR MUSTANSIR LOKHANDWALA	ACS - 45717	WIRC	482	MS. HARSHNA SAXENA	ACS - 45788	NIRC
412	MR. RAKESH MAHESHKUMAR NANWANI	ACS - 45718	WIRC	483	MS. PREETI RUSTAGI	ACS - 45789	NIRC
413	MR. NIKHIL NARENDRA SANKPAL	ACS - 45719	WIRC	484	MS. ASHU PAHWA	ACS - 45790	NIRC
414	MS. NIDHI KIRITKUMAR SHAH	ACS - 45720	WIRC	485	MS. DISHA ARORA	ACS - 45791	NIRC
415	MS. POONAM VINOD RAI POKIYA	ACS - 45721	WIRC	486	MS. NEHA KABRA	ACS - 45792	NIRC
416	MS. MEGHA BHASKAR VYAS	ACS - 45722	WIRC	487	MR. VIJAY SHARMA	ACS - 45793	NIRC
417	MS. JENNY LAXMAN CHAWLA	ACS - 45723	WIRC	488	MR. AMTESHWAR SINGH	ACS - 45794	NIRC
418	MS. DHWANI ARVIND VORA	ACS - 45724	WIRC	489	MR. VARUNENDRA KUMAR CHATURVEDI	ACS - 45795	NIRC
419	MS. RIYA MAHESH WAGHELA	ACS - 45725	WIRC	490	MS. PRIYANKA KUNDNANI	ACS - 45796	NIRC
420	MS. EKTA SEKSARIA	ACS - 45726	WIRC	491	MS. POOJA TIWARI	ACS - 45797	NIRC
421	MS. SUKHADA SUHAS NILANGIKAR	ACS - 45727	WIRC	492	MS. ANKIT NAGPAL	ACS - 45798	NIRC

493	MR. ANKIT NAGPAL	ACS - 45798	NIRC	564	MS. SHRUTI RATHI	ACS - 45869	EIRC
494	MS. RISHIKA SOTI	ACS - 45799	NIRC	565	MR. SANTANU KUMAR PANI	ACS - 45870	EIRC
495	MR. VIKRAM	ACS - 45800	NIRC	566	MR. AMIT KUMAR	ACS - 45871	EIRC
496	MS. POOJA SONI	ACS - 45801	NIRC	567	MS. VIDHIKA AGARWAL	ACS - 45872	EIRC
497	MS. TABASSUM KAGZI	ACS - 45802	NIRC	568	MS. TINA BAGARIA	ACS - 45873	EIRC
498	MS. DIVYA SHRIMALI	ACS - 45803	NIRC	569	MS. MALVIKA SINGH	ACS - 45874	EIRC
499	MR. PAAWAN SURANA	ACS - 45804	NIRC	570	MS. KARISHMA SHAW	ACS - 45875	EIRC
500	MR. MANISH SHARMA	ACS - 45805	NIRC	571	MS. KHUSBU AGRAWAL	ACS - 45876	EIRC
501	MS. JYOTI	ACS - 45806	NIRC	572	MS. WIDHI BAJAJ	ACS - 45877	EIRC
502	MR. SACHIN SAINI	ACS - 45807	NIRC	573	MS. SHILPA JHUNJHUNWALA	ACS - 45878	EIRC
503	MS. ANKITA BHARGAV	ACS - 45808	NIRC	574	MS. CHITRA LILADHAR PUNJWANI	ACS - 45879	EIRC
504	MS. PRIYA TYAGI	ACS - 45809	NIRC	575	MS. SHEETAL AGRAWAL	ACS - 45880	EIRC
505	MR. ADITYA SONI	ACS - 45810	NIRC	576	MR. CHANDRA SHEKHAR UPRETI	ACS - 45881	NIRC
506	MR. KARAN KATHURIA	ACS - 45811	NIRC	577	MR. RAKESH KOTHARI	ACS - 45882	NIRC
507	MR. RISHYANT KULSHRESTHA	ACS - 45812	NIRC	578	MS. PREETI MALIK	ACS - 45883	NIRC
508	MS. ANKITA NIGAM	ACS - 45813	NIRC	579	MR. BHUPINDER SHOKEEN	ACS - 45884	NIRC
509	MS. MONIKA	ACS - 45814	NIRC	580	MS. ARPIT SHARMA	ACS - 45885	NIRC
510	MS. HARLEEN KHANDUJA	ACS - 45815	NIRC	581	MS. KIRTI CHECHANI	ACS - 45886	NIRC
511	MR. HIMANK KHANDELWAL	ACS - 45816	NIRC	582	MR. SHEKHAR	ACS - 45887	NIRC
512	MS. SURBHI BHACHAWAT	ACS - 45817	WIRC	583	MS. JYOTI SACHDEVA	ACS - 45888	NIRC
513	MS. ABHIPSHA SRIVASTAVA	ACS - 45818	NIRC	584	MR. GIRVAR SINGH CHAHAR	ACS - 45889	NIRC
514	MS. JYOTI TIWARI	ACS - 45819	NIRC	585	MS. APURVA GOYAL	ACS - 45890	NIRC
515	MR. VISHAL JAIN	ACS - 45820	NIRC	586	MR. PARAS PANT	ACS - 45891	NIRC
516	MR. ASHISH GROVER	ACS - 45821	NIRC	587	MS. MONICA MALIK	ACS - 45892	NIRC
517	MR. PUSULURU KODANDA RAMI REDDY	ACS - 45822	SIRC	588	MS. ASTHA GULATI	ACS - 45893	NIRC
518	MR. DEEPAK K	ACS - 45823	SIRC	589	MS. TWINKLE AGRAWAL	ACS - 45894	NIRC
519	MS. DIVYA HIMANSHU JAIN	ACS - 45824	WIRC	590	MS. SWATI NEHRA	ACS - 45895	NIRC
520	MS. ANITHA G MENON	ACS - 45825	SIRC	591	MS. SHOBHA SHARMA	ACS - 45896	NIRC
521	MS. NITYA IRENE	ACS - 45826	SIRC	592	MS. RACHNA SINGH	ACS - 45897	NIRC
522	MS. LAKSHMI S	ACS - 45827	SIRC	593	MS. SRISHTI NARANG	ACS - 45898	NIRC
523	MR. YOGESH RAMESH ANGADI	ACS - 45828	SIRC	594	MR. TARANPREET SINGH SALUJA	ACS - 45899	NIRC
524	MR. CHANDAN GANAPATI HEGDE	ACS - 45829	SIRC	595	MS. NEHA JAIN	ACS - 45900	NIRC
525	MS. SWATHI BHOJAK	ACS - 45830	SIRC	596	MS. SHIKHA NATANI	ACS - 45901	NIRC
526	MS. URECA SHIRISH SHIROLE	ACS - 45831	WIRC	597	MR. PRATIK JAIN	ACS - 45902	NIRC
527	MS. ANJANA DILIP MEHTA	ACS - 45832	WIRC	598	MS. SHRABONI CHATTERJEE	ACS - 45903	NIRC
528	MS. TEJASWITA KISHOR DHEMBARE	ACS - 45833	WIRC	599	MS. ANKITA KAMLESH	ACS - 45904	NIRC
529	MS. SHAH KAUSHAL PRADHOKUMAR	ACS - 45834	WIRC	600	MS. DEEPIKA RANI	ACS - 45905	NIRC
530	MR. AMAR ANANDRAO PATIL	ACS - 45835	WIRC	601	MS. SALONI JAIN	ACS - 45906	NIRC
531	MS. SHRADDHA VIVEK BHAGWAT	ACS - 45836	WIRC	602	MR. YATISH SHARMA	ACS - 45907	NIRC
532	MS. UNNATI ASHOK AMODWALA	ACS - 45837	WIRC	603	MS. PRERNA JAIN	ACS - 45908	NIRC
533	MR. KEYUR KUMAR DINESHBHAI PAREKH	ACS - 45838	WIRC	604	MS. NEHA DIXIT	ACS - 45909	NIRC
534	MR. NIRMAL KHEMCHAND GUPTA	ACS - 45839	WIRC	605	MR. KAPIL VASWANI	ACS - 45910	NIRC
535	MS. AKANKSHA MUKESH SAXENA	ACS - 45840	WIRC	606	MS. JYOTI GUPTA	ACS - 45911	NIRC
536	MS. SODHANI SURBHI CHANDRA	ACS - 45841	WIRC	607	MS. MONA	ACS - 45912	NIRC
537	MR. RANPURA RAVI PRAKASHBHAI	ACS - 45842	WIRC	608	MR. PANKAJ KHANEJA	ACS - 45913	NIRC
538	MR. SONU KUMAR SHIVHARE	ACS - 45843	WIRC	609	MR. RAHUL CHANDAK	ACS - 45914	NIRC
539	MR. MANOJ HARSHADBHAI LOTIA	ACS - 45844	WIRC	610	MS. GOUWARDHAN SEPAT	ACS - 45915	NIRC
540	MR. RAHUL SUBHASH AWARI	ACS - 45845	WIRC	611	MS. ANKITA SONI	ACS - 45916	NIRC
541	MS. SWATI AGRAWAL	ACS - 45846	WIRC	612	MR. ANKIT KUMAR	ACS - 45917	NIRC
542	MS. KOMAL VINOD JAIN	ACS - 45847	WIRC	613	MS. MEGHNA NARULA	ACS - 45918	NIRC
543	MS. SHWETA NARESH KUMAR TEMANI	ACS - 45848	WIRC	614	MR. NITESH	ACS - 45919	NIRC
544	MR. DEEPAK DINADAYAL SHARMA	ACS - 45849	WIRC	615	MR. SAYANM MALHOTRA	ACS - 45920	NIRC
545	MS. SURABHI RAJESH PRADHAN	ACS - 45850	WIRC	616	MS. EKTA MIDDHA	ACS - 45921	NIRC
546	MS. ROMA MUKESH BHATT	ACS - 45851	WIRC	617	MR. RISHI KUMBHAT	ACS - 45922	NIRC
547	MS. MUMUKSHA BAFANA	ACS - 45852	NIRC	618	MR. DEEPAK JANGID	ACS - 45923	NIRC
548	MS. MANSI MAHESHKUMAR BAVISHI	ACS - 45853	WIRC	619	MS. AAKANSHA NAGDA	ACS - 45924	NIRC
549	MS. ROSHNI KHATRI	ACS - 45854	NIRC	620	MS. AADRA SHROTRIYA	ACS - 45925	NIRC
550	MS. NEHAL ANIL DAMLE	ACS - 45855	WIRC	621	MS. TWINKLE JAIN	ACS - 45926	NIRC
551	MS. RINNI ANIL SONI	ACS - 45856	WIRC	622	MS. RUBY SHARMA	ACS - 45927	NIRC
552	MR. RAJEEV JAGGI	ACS - 45857	NIRC	623	MS. HIMANI JAIN	ACS - 45928	NIRC
553	MS. SHIPRA AGARWAL	ACS - 45858	EIRC	624	MS. NEHA GUPTA	ACS - 45929	NIRC
554	MS. CHARU MAHARA	ACS - 45859	NIRC	625	MR. DEEPAK	ACS - 45930	NIRC
555	MR. SANDEEP VASANT KULKARNI	ACS - 45860	SIRC	626	MS. GARIMA GUPTA	ACS - 45931	NIRC
556	MS. DIVYA JAIN	ACS - 45861	NIRC	627	MS. HARSHITA SAXENA	ACS - 45932	NIRC
557	MR. SANDEEP LAXMIKANT JOSHI	ACS - 45862	WIRC	628	MR. RAKESH PANDURANG HULIHALLI	ACS - 45933	SIRC
558	MS. NIDHI SAMKIT SHAH	ACS - 45863	WIRC	629	MR. SENTHIL	ACS - 45934	SIRC
559	MR. LELE CHINMAY MOHAN	ACS - 45864	WIRC	630	MS. SAVITRI MANJANATH HEGDE	ACS - 45935	SIRC
560	MS. SHWETA JAIN	ACS - 45865	NIRC	631	MS. PRIYANKA PRANESH GANDMALI	ACS - 45936	SIRC
561	MR. MANJEET SINGH DHILLON	ACS - 45866	NIRC	632	MS. HANSIKA JAIN H	ACS - 45937	SIRC
562	MR. PRADEEP OM PRAKASH SHARMA	ACS - 45867	EIRC	633	MS. EKTA JAIN	ACS - 45938	SIRC
563	MS. MADHULIKA KUMARI	ACS - 45868	NIRC	634	MS. KHUSHBOO RAJESH TIWARI	ACS - 45939	WIRC

57	MS. KIRAN PREET KAUR KHUSHAL	ACS - 44647	NIRC	16428	120	MS. MONIKA GUPTA	FCS - 5466	NIRC	16491
58	MR. AJAY KUMAR THAKUR	ACS - 44714	NIRC	16429	121	MS. DEVANSHI PANKAJ SHARMA	ACS - 26672	WIRC	16492
59	MS. ANITA KUMARI PANDAY	ACS - 44716	NIRC	16430	122	MS. SHILPI GUPTA	ACS - 29103	SIRC	16493
60	MR. AMOL BHARAT SHRIMALI	ACS - 44780	WIRC	16431	123	MR. ADARASH KUMAR	ACS - 42764	EIRC	16494
61	MR. SAGAR HIMTHANI	ACS - 44817	WIRC	16432	124	MS. RAZIA TABASSUM	ACS - 40592	NIRC	16495
62	MR. ROHAN SURESH MEHRA	ACS - 44822	WIRC	16433	125	MS. HEENA AGRAWAL	ACS - 42736	WIRC	16496
63	MR. GOPAL SUNILCHANDRA RATHI	ACS - 44888	WIRC	16434	126	MS. ANKITA PINAKINBHAI PATEL	FCS - 8536	WIRC	16497
64	MR. SONU SAINI	ACS - 44943	NIRC	16435	127	MS. RAJESHWARI T RAVI	ACS - 42722	SIRC	16498
65	MS. SARVAGYA GOEL	ACS - 44644	NIRC	16436	128	MR. RAVIKUMAR VIJAYKUMAR LODAYA	ACS - 45087	WIRC	16499
66	MR. DARSHIT NAVINBHAI AHYA	ACS - 44987	WIRC	16437	129	SH. V K V SARMA	FCS - 2939	SIRC	16500
67	SH. S K AGRAWALA	FCS - 1323	EIRC	16438	130	SH. ARVIND KUMAR JAIN	ACS - 11577	NIRC	16501
68	MS. SHRADDHA RAJESH PANCHAMIA	ACS - 38255	WIRC	16439	131	MRS. SIMPAL SINGH VERMA	ACS - 20798	NIRC	16502
69	MS. NAMRATA CHAMPAKBHAI LAD	ACS - 41100	WIRC	16440	132	MS. SNEHAL PRASHANT THOKE	ACS - 26960	WIRC	16503
70	MR. ANANT NARASINHA BHAT	ACS - 41573	SIRC	16441	133	MS. ARCHANA SONI	ACS - 30986	NIRC	16504
71	MS. MINAL RAKESH JAIN	ACS - 43173	WIRC	16442	134	MS. DEEPIKA LODHI	ACS - 32223	NIRC	16505
72	MR. DIPAK KUMAR SINGH	ACS - 43995	NIRC	16443	135	MS. ANSHIKA JAIN	ACS - 36592	NIRC	16506
73	MS. NEHA JAIN	ACS - 44077	WIRC	16444	136	MS. ANITA SHAW	ACS - 37396	EIRC	16507
74	MR. VIKRAM RAJ G A	ACS - 44665	SIRC	16445	137	MS. NEHA DUBEY	ACS - 39526	NIRC	16508
75	MS. ARPITA SHASHIKANT SHAH	ACS - 44686	WIRC	16446	138	MR. MAYANK DAGA	ACS - 41279	EIRC	16509
76	MS. RUCHI SAMIRBHAI SHAH	ACS - 44815	WIRC	16447	139	MR. SANDEEP KUMAR	ACS - 41865	NIRC	16510
77	MR. PIYUSHKUMAR JIVARAJBHAI GEVARIYA	ACS - 44824	WIRC	16448	140	MR. HOLALKERE MANJUNATHA SETTY	ACS - 42235	SIRC	16511
78	MS. GARIMA GULATI	ACS - 42983	NIRC	16449		RAKESH			
79	SH. A V MANIKYA RAO	ACS - 8552	SIRC	16450	141	MS. JYOTI GUPTA	ACS - 42265	EIRC	16512
80	MRS. KHUSBOO JAIN	ACS - 25628	EIRC	16451	142	MS. MALLIKA TAYAL	ACS - 42859	NIRC	16513
81	MR. PREMJEET SINGH	ACS - 31903	EIRC	16452	143	MR. RANJIT BHALCHANDRA SANGAONKAR	ACS - 42977	WIRC	16514
82	MR. SUNNY	ACS - 35273	NIRC	16453		MS. SIMRAN KHOSA	ACS - 43139	NIRC	16515
83	MS. KOMAL MANGHARAM KESHWANI	ACS - 36354	WIRC	16454	144	MS. SHEFALI GOYAL	ACS - 43360	NIRC	16516
84	MR. VAIBHAV PRADEEPKUMAR ALAMWAR	ACS - 36691	WIRC	16455	145	MR. SHRIRAM PADMANABHA BHAT	ACS - 43501	SIRC	16517
85	MR. NITESH KUMAR SINGH	ACS - 40930	NIRC	16456	146	MR. RAMPRASAD NAGARAJ MADHUGIRI	ACS - 45302	SIRC	16518
86	MR. PRATEEK KOHLI	ACS - 40967	EIRC	16457	147	MS. POOJA PRAMOD GOYALKA	ACS - 44137	WIRC	16519
87	MS. KUMUD MOTH	ACS - 42421	EIRC	16458	148	MS. RASHI SHANKAR RAMUKA	ACS - 44555	WIRC	16520
88	MR. ROHAN JHAMB	ACS - 43393	NIRC	16459	149	MS. SWEETY AGARWAL	ACS - 44630	EIRC	16521
89	MR. CHANDRAKANT SHARMA	ACS - 43477	EIRC	16460	150	MS. NEHA SHARMA	ACS - 44741	NIRC	16522
90	MS. NEHA	ACS - 44494	NIRC	16461	151	MS. NISHA KUKREJA	ACS - 44748	NIRC	16523
91	MR. HARDEEP SINGH NIJHER	ACS - 44910	NIRC	16462	152	MS. ABIRAMI A	ACS - 44767	SIRC	16524
92	MR. RAGHAV PANCHAL	ACS - 44961	WIRC	16463	153	MS. PRERNA GUPTA	ACS - 44921	NIRC	16525
93	MS. BHARTI ROHILLA	FCS - 7687	NIRC	16464	154	MR. MOHAN REDDY	ACS - 45070	SIRC	16526
94	MS. POOJA JAKHOTIYA	ACS - 27358	WIRC	16465	155	MS. MONIKA SURYAKANT PAWAR	ACS - 45080	WIRC	16527
95	MR. SRIKANTH GODAVARTHI	ACS - 29143	SIRC	16466	156	MR. MOHIT VANAWAT	ACS - 45179	NIRC	16528
96	MS. SHUCHI KHANDELWAL	ACS - 30549	NIRC	16467	157	MS. PRIYA DUBEY	ACS - 45185	NIRC	16529
97	MS. KARISHMA DIXIT	ACS - 44924	NIRC	16468	158	MS. ISHITA TIWARI	ACS - 45189	NIRC	16530
98	MS. ADITI SANJIT BAGUL	ACS - 31399	WIRC	16469	159	MS. ANSHU CHOUHAN	ACS - 45198	NIRC	16531
99	MRS. DONA AGARWAL	ACS - 32538	EIRC	16470	160	MS. ASHWINI CHANABASAPPA	ACS - 45213	SIRC	16532
100	MR. UTKARSH RASTOGI	ACS - 33573	NIRC	16471	161	BUDAPPANAVAR			
101	MS. SWATI	ACS - 34233	NIRC	16472	162	MR. JOJO MATHEW	ACS - 45216	SIRC	16533
102	MS. PRACHI HARSHAD SHAH	ACS - 34628	WIRC	16473	163	MS. DIVYA RATHI	ACS - 45232	NIRC	16534
103	MS. PAYAL HARSHADRAI KOTHARI	ACS - 44066	EIRC	16474	164	MR. MEHTA YASH HINESHKUMAR	ACS - 45267	WIRC	16535
104	MS. HIMA GOEL	ACS - 40688	NIRC	16475	165	MS. RITU UMESH KUMAR RAVAL	ACS - 45275	WIRC	16536
105	MR. RAHUL GOEL	ACS - 41553	NIRC	16476	166	MS. PRERNA RAJENDRAPRASAD SHARMA	ACS - 43844	WIRC	16537
106	MR. PARESH SUHAS DANGE	ACS - 43652	WIRC	16477	167	MS. CHITRA KHATRI	ACS - 37990	NIRC	16538
107	MS. SUCHI AGARWAL	ACS - 44064	EIRC	16478	168	SH. V SRINIVASAN	FCS - 1414	SIRC	16539
108	MS. KRATI JAIN	ACS - 44207	NIRC	16479	169	MS. MADHAVI CHOUDHARY	FCS - 5614	SIRC	16540
109	MR. SHOUVIK DAWN	ACS - 44375	EIRC	16480	170	MS. CHARU SHANDILYA	ACS - 32640	NIRC	16541
110	MS. MONALI YOGESH SOLANKI	ACS - 44434	WIRC	16481	171	MR. SURYA PRAKASH JINARA	ACS - 37691	NIRC	16542
111	MS. MEGHA CHOWDHURY	ACS - 44567	EIRC	16482	172	MS. PARIDHI GARG	ACS - 37983	NIRC	16543
112	MS. CHELLAPPAN PRASANNA KUMARI	ACS - 44774	SIRC	16483	173	MS. ASHA NARDIA	ACS - 38648	EIRC	16544
113	MR. VISHALGIRI DHARMENDRAGIRI GOSAI	ACS - 44823	WIRC	16484	174	MS. AAFREEN FATMA KHAN	ACS - 39477	WIRC	16545
114	MR. BHAVYA ARVIND SHAH	ACS - 44965	WIRC	16485	175	MS. KRITIKA MOHATA	ACS - 41213	EIRC	16546
115	MR. RAVI KUSHWAH	ACS - 44990	WIRC	16486	176	MS. MEENU VERMA	ACS - 41663	NIRC	16547
116	MS. PREETI MAHESHWARI	ACS - 45001	WIRC	16487	177	MS. NISHA KUMARI	ACS - 42827	NIRC	16548
117	MR. ANIL KUMAR SAH	ACS - 45010	NIRC	16488	178	MS. MONIKA SABNANI	ACS - 43105	NIRC	16549
118	MR. SORABH JAIN	ACS - 45034	NIRC	16489	179	MS. AYUSHI AGARWAL	ACS - 43520	NIRC	16550
119	MR. AVINASH PRAKASH GANDHEWAR	ACS - 45131	WIRC	16490	180	MS. REEPTIKA BARMERA	ACS - 43565	NIRC	16551
					181	MR. HARSH DEEP SINGH	ACS - 43953	NIRC	16552

182	MS. NEHA	ACS - 44389	NIRC	16553	28	MR. NITIN KUMAR GARG	FCS 8047	16223	NIRC
183	MR. RAMMURTHY AGILESH	ACS - 44876	SIRC	16554	29	MR. PRIYANKA SINGH	ACS 36442	14507	EIRC
184	MR. SAURABH AGGARWAL	ACS - 43524	NIRC	16555	30	MS. APURVA JAIN	ACS 28299	13500	NIRC
185	MS. NIDHI KHANDELWAL	ACS - 31808	NIRC	16556	31	MS. VIKAS	ACS 42199	15804	NIRC
186	MS. PAVITRA AGARWAL	ACS - 29922	NIRC	16557	32	MS. SIMRAT KAUR	ACS 32721	12517	NIRC
187	MR. SHIVAM SHARMA	ACS - 35727	WIRC	16558	33	MR. MOHIT RAMESH SARAONGI	ACS 33564	13559	WIRC
188	MS. SONAM GEDA	ACS - 43363	WIRC	16559	34	MR. PRASHANT SINGH	ACS 37717	14123	NIRC
189	MS. PRIYANKA GOPI	FCS - 6846	SIRC	16560	35	MS. SWATI VIJAN	ACS 39179	14968	NIRC
190	SH. SHAILESH VIJAY BAPAT	ACS - 26165	WIRC	16561	36	MS. POOJA MALHOTRA	ACS 24434	14937	NIRC
191	MS. NEHA SHARMA	ACS - 32773	NIRC	16562	37	MR. BIGHNES PRASAD GAUDA	ACS 42422	16083	EIRC
192	MS. KEENJAL CHETAN ZAVERI	ACS - 33414	WIRC	16563	38	MR. LINCOLIN BABU ARE	ACS 19447	12976	SIRC
193	MR. DINESH NARAYAN KHANOLKAR	ACS - 45316	WIRC	16564	39	MR. HIMANSHU MANCHANDA	ACS 36956	15106	NIRC
194	MR. SATISH KUMAR RAMASHRAY PRAJAPATI	ACS - 45280	WIRC	16565	40	MS. RITIKA VIDYASARIA	ACS 36443	14018	EIRC
195	MRS. BHAWANA SATENDER KASHYAP	ACS - 22896	NIRC	16566	41	MR. NIKHIL MADHAVAJI BHAI AMBALIYA	ACS 34194	12697	WIRC
196	MR. DHRUV RAJENDRAKUMAR RAVAL	ACS - 27899	WIRC	16567	42	MS. KAVYA B PARSAM	ACS 40064	14824	SIRC
197	MR. SANIL GANESH DHAYALKAR	ACS - 31036	WIRC	16568	43	MS. PAYAL JAYANTILAL MODI	ACS 35870	13265	WIRC
198	MRS. SAKSHI SANGHI	ACS - 37033	NIRC	16569	44	MR. HARCHARAN J	ACS 33394	13077	SIRC
199	MS. BINAL HARISHBHAI KOTHARI	ACS - 42148	WIRC	16570	45	MS. CHANCHAL GOYAL	ACS 37196	13980	NIRC
200	MR. HIRENKUMAR POPATBHAI VALA	ACS - 42685	WIRC	16571	46	MS. CHITRA S	ACS 39332	14714	SIRC
201	MS. KIRTI HAMIRBASIA	ACS - 43823	EIRC	16572	47	MS. SHIKHA TIWARI	ACS 42131	15916	EIRC
202	MS. SONAL SINGHAL	ACS - 44152	NIRC	16573	48	MR. VINOD CHANDRA MAMGAI	ACS 30118	15136	NIRC
203	MS. SHAMITA SINHA MAHAPATRA	ACS - 44282	EIRC	16574	49	MS. KHUSHBOO VIVEK JALAN	ACS 40853	16172	WIRC
204	MS. SREEDEVI RAMCHANDRAN PILLAI	ACS - 44460	SIRC	16575	50	MR. K S RAMAKRISHNAN	ACS 247	7742	SIRC
205	MS. VAISHALI TEJWANI	ACS - 44608	NIRC	16576	51	MR. BAL KRISHAN SHARMA	FCS 3619	15186	NIRC
206	MR. ASIF KHAN	ACS - 44633	EIRC	16577	52	MR. G S CHANDARAN	ACS 11848	15246	WIRC
207	MR. SANJIV VIJAY NAIDU	ACS - 44728	WIRC	16578	53	MS. RICHA GOYAL	ACS 24274	11379	NIRC
208	MS. PRIYANKA TEKCHANDANI	ACS - 44969	WIRC	16579	54	MS. GARIMA SMRITI	ACS 38312	14374	EIRC
209	MR. BRAJESH KUMAR CHAUHAN	ACS - 45146	EIRC	16580					
210	MR. SAHIVE ALAM KHAN	ACS - 45246	WIRC	16581					
211	MR. ASHWIN G R	ACS - 45207	SIRC	16582					
212	MR. BIRAJA PRASAD PANDA	ACS - 44627	EIRC	16583					
213	MS. RIDHIMA AGGARWAL	ACS - 35391	NIRC	16584					
214	MS. MANVI JAIN	ACS - 24907	NIRC	16585					

CANCELLED*

SL. No.	NAME	MEMB NO	COP NO.	REGION
1	MS. JANKI KISHINCHAND JETHWANI	ACS 36696	14973	WIRC
2	MS. PAVITRA AGARWAL	ACS 29922	11360	NIRC
3	MS. ASHA RANI	ACS 39007	14517	NIRC
4	MS. PREET GARG	ACS 15109	6462	NIRC
5	MS. RONAK VALLABHBHAI KALATHIYA	ACS 37007	13865	WIRC
6	MS. ASTHA MAHESHWARI	ACS 23428	14099	WIRC
7	MS. NISHA GUPTA	ACS 42708	16037	NIRC
8	MS. GARGI NITIN MOHRIL	ACS 43194	15922	WIRC
9	MR. SOMESWARA RAO ARTHAM	ACS 18979	11366	SIRC
10	MR. MOHAMMED MUNEEERALI T	ACS 31059	11483	SIRC
11	MS. KRISHANA SHARMA	ACS 40185	16352	NIRC
12	MR. GAURAV JAIN	ACS 39741	15234	NIRC
13	MS. SURUCHI BADOLA	ACS 38824	14564	NIRC
14	MR. PANKAJ KUMAR	ACS 29826	15383	NIRC
15	MS. ASHA HOODA	ACS 25262	10701	NIRC
16	MS. ROSHNI AGRAWAL	ACS 22065	8963	WIRC
17	MRS. NEHA RAWAT	ACS 35811	13250	NIRC
18	MS. RICHA KOTWAL	ACS 40857	15901	NIRC
19	MR. NITIN SHAH	ACS 30904	11540	NIRC
20	MS. PRIYANKA DHARAMNARAYAN TRIPATHI	ACS 42183	15767	WIRC
21	MS. DIVYA SUDRANIA	ACS 36414	13970	NIRC
22	MS. PRAMILA CHOPRA	ACS 40582	15977	NIRC
23	MS. AKANSHA CHUGH	ACS 38403	14415	NIRC
24	MR. AVNEET KUMAR	FCS 5821	4541	NIRC
25	MR. J C BHATTACHARYA	FCS 2515	4745	EIRC
26	MR. S N MUNDRA	ACS 4797	7486	WIRC
27	MR. DHRUV GUPTA	ACS 34989	15178	NIRC

*Cancelled during the month of May, 2016.

Appointment**A COMPANY SECRETARY IS REQUIRED**

for BGH Properties Private Limited, having its registered office in Mumbai and engaged in property business.

Candidate should be a qualified Company Secretary with 2 years of experience preferably having worked in similar Company.

Candidate should be capable of liaising with various Government Authorities.

Should have skills of writing, drafting and vetting of legal documents, agreements and contracts.

Interested candidates can apply with their resume to:-

The Directors, BGH Properties Private Limited, 212, 2nd Floor, T. V. Industrial Estate, 52, S. K. Ahire Marg, Worli, Mumbai - 400 030.

Company Secretaries Benevolent Fund



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

Region	LM No.	Name	Membership No.	City	Region	LM No.	Name	Membership No.	City
EIRC									
1	11329	SH. KESHAV DATT PANDEY	FCS - 8626	RANCHI	25	11354	MS. NIKITA RAHUL NAGARMAT	ACS - 25429	BANGALORE
2	11334	SH. RAVI BAMBHA	ACS - 14205	RANCHI	26	11356	MR. SUHAS VAMAN DIXIT	ACS - 31361	BELGAUM
3	11336	SH. SRIKANTA KUMAR PATTANAYAK	ACS - 24723	KOLKATA	27	11361	MS. TEJES JANARDHANAN	ACS - 34122	BANGALORE
4	11362	SH. SURENDRA KUMAR SIPANI	ACS - 11537	CHENNAI	28	11369	MR. SUJITH K RAVINDRANATH	ACS - 39757	THRISSUR
5	11370	SH. VIKASH KUMAR JAIN	ACS - 19135	GUWAHATI	WIRC				
6	11371	SH. PANKAJ JAIN	FCS - 5544	GUWAHATI	29	11330	SH. MANISH PARIKH	ACS - 17904	MUMBAI
NIRC					30	11331	MRS. CHANDANBALA OJAS MEHTA	FCS - 6122	MUMBAI
7	11328	SH. ATUL PRAKASH	FCS - 2230	NOIDA	31	11335	MR. AMAR DATTATRAY PATIL	ACS - 33156	KOLHAPUR
8	11338	SH. VIKAS KUMAR SHARMA	ACS - 26139	NEW DELHI	32	11337	MS. MEERA RASIKLAL MAKWANA	ACS - 33967	AHMEDABAD
9	11342	MR. GAURAV AGGARWAL	ACS - 43997	GR.NOIDA	33	11339	MS. KARUNA RAJESH	ACS - 44185	KALYAN (WEST)
10	11343	MS. PARIDHI GARG	ACS - 37983	GURGAON	34	11340	MR. DEEPAK AMARSHIBHAI VARIYA	ACS - 26456	MUMBAI
11	11344	MR. HIMANSHU HARBOLA	ACS - 28145	NEW DELHI	35	11341	MR. RONAK MAHESHKUMAR SHAH	ACS - 35001	MUMBAI
12	11345	MR. NISHANT KAUL	ACS - 42672	GHAZIABAD	36	11348	SH. K B GAVASKAR	ACS - 6637	MUMBAI
13	11347	MR. KUSHAL KUMAR	ACS - 33127	NEW DELHI	37	11351	MR. ROHIT SHRIVASTAVA	ACS - 38600	NAVI MUMBAI
14	11349	MR. NITIN KUMAR	ACS - 34148	CHANDIGARH	38	11353	MR. KAUSTUBH PRAMOD MEHENDALE	ACS - 45521	MUMBAI
15	11350	SH. MANISH AGGARWAL	FCS - 6714	CHANDIGARH	39	11359	SH. HIREN JAGDISHBHAI MISTRY	ACS - 18609	U S A
16	11352	MR. ANUKUL UDAI	ACS - 36040	ALLAHABAD	40	11363	MS. VIRALBEN MANSUKHLAL MEHTA	ACS - 45763	SILVASSA
17	11355	MR. ANOOP KHANDELWAL	ACS - 45028	AJMER	41	11364	SH. UDAY KESHAV PATWARDHAN	FCS - 8662	PUNE
18	11357	MR. ARUN GOEL	ACS - 32816	FARIDABAD	42	11366	MS. KEERTI SITARAM BHAT	ACS - 33964	PUNE
19	11358	MS. DEEKSHA KAKU	ACS - 45461	JAIPUR	43	11367	MR. JAYANT SHARAD SAGADE	ACS - 40811	MUMBAI
20	11360	MR. SAURABH PATHAK	ACS - 43521	FAIZABAD	44	11368	MS. RAMAA ADITYA DIXIT	ACS - 40618	NASHIK
21	11365	MR. BHUPINDER SHOKEEN	ACS - 45884	NEW DELHI	45	11372	MR. VISHAL PADAMRAJ BHANDARI	ACS - 46008	MUMBAI
SIRC									
22	11332	MR. MITHUN BALAGOPALA SHENOY	ACS - 30796	ERNAKULAM					
23	11333	MR. ABHILASH M K	ACS - 37281	MYSORE					
24	11346	MR. VIJAYA KUMAR B G	ACS - 40756	BENGALURU					

*Enrolled during the period from 21/05/2016 to 20/06/2016.

FORM – D
APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION
OF CERTIFICATE OF PRACTICE
See Reg. 10, 13 & 14

To
 The Secretary to the Council of
 The Institute of Company Secretaries of India
 'ICSI HOUSE', 22, Institutional Area, Lodi Road, New Delhi
 -110 003
 Sir,

I furnish below my particulars :

(i) Membership
 Number FCS/ACS:

(ii) Name in full
 (in block letters) Surname Middle Name Name

(iii) Date of Birth:

iv) Professional
 Address:

(v) Phone Nos. (Resi.) (Off.)

(vi) Mobile No Email id

(vii) Website of the member, if any

(viii) Additions to or change in qualifications, if any

Submitted for (tick whichever is applicable):
 (a) Issue _____ (b) Renewal _____ (c)
 Restoration _____

(a) Particulars of Certificate of Practice issued / surrendered/
 Cancelled earlier

Sl. No.	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP

(b) Unique Code Number
 (i) Individual/Proprietorship concern (ii) Partnership firm

3. Area of Practice

Sl. No.	Area of Practice	Please tick (If Applicable)
1	Corporate Law	
2	Financial Service and Consultancy	
3	Securities/Commodities Exchange Market	
4	Finance including Project/Working Capital/Loan Syndication(Specify the areas handling)	
5	Corporate Restructuring (Handling Merger, acquisitions, demerger issues etc). Specify the areas handling as drafting of scheme, appearing before various regulatory bodies for approval of scheme, getting the scheme implemented, legal compliances with various regulatory bodies etc)	
6	Excise/CUSTOMS (Filling of returns, Handling assessment, appearing before the appellate authority)	
7	Sales Tax/VAT Practice (Filling of returns, Handling assessment, appearing before the appellate authority)	

8	Income Tax Practice (Filling of returns, Handling assessment, appearing before the appellate authority)		
9	Company Law Practice (Filling of returns, Handling assessment, appearing before the appellate authority)		
10	Foreign Exchange Management (Specify the areas being handled i.e. filling of various forms/returns, appearing before RBI etc)		
11	Foreign Collaborations & Joint Ventures		
12	Intellectual Property Rights (Specify the areas being handled)		
13	Depositories		
14	Monopolies/Restrictive Trade Practices/Competition Law		
15	Consumer Protection Laws		
16	Arbitration and Conciliation		
17	Import and Export Policy & Procedure		
18	Environment Laws(Specify the areas)		
19	Labour & Industrial Laws (Specify the areas)		
20	Societies/Trusts/Co-operative Societies & NCTs (Non Co-operative Trust Societies)		
21	Financial Consultancy		
22	Other Economic Laws		
23	SEBI / Securities Appellate Tribunal		
24	Banking and Insurance		
25	Any Other Service (Please specify)		

4. i. I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including ICAI and the IC-WAI.
- ii. I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.
- iii a. I hereby undertake that, I shall adhere to the mandatory ceiling as regards issuing of Secretarial Audit Report (pursuant to Section 204 of the Companies Act, 2013) and certification/ signing of Annual Return (pursuant to Section 92 of the Companies Act, 2013) in terms of the GUIDELINES FOR ISSUING SECRETARIAL AUDIT REPORT, SIGNING AND CERTIFICATION OF ANNUAL RETURN respectively issued by the Institute from time to time.
- iii b. Accordingly, I state that I have issued _____ Secretarial

Audit Report and certified _____ Annual Returns during the financial year 2015-16*.

- iv. I state that I have issued / did not issue _____ advertisements during the year 20__ in accordance with the **Guidelines for Advertisement by Company Secretary in Practice** issued by the Institute*.
- v. I state that I issued _____ Corporate Governance compliance certificates under Clause 49 of the Listing agreement during the year 20____ ... *
- vi. I state that I have / have not undertaken _____ Audits under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 20... - ... *
- vii. I state that I have / have not maintained a register of attestation/certification services rendered by me/my firm in accordance with the **Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services Rendered by Practising Company Secretary/ Firm of Practising Company Secretaries** issued by the Institute*.
- viii. I hereby declare that I have complied with KYC norms issued by the Council of the ICSI.
- ix. I undertake to subject myself to peer review as and when directed by the Peer Review Board.
5. I send herewith Bank draft drawn on _____ Bank _____ Branch bearing No. _____ dated _____ / online payment vide acknowledgement No. _____ dated _____ / Cash payment at ROs/Chapters vide Acknowledgement No. _____ dated _____ for Rs. _____ towards annual certificate of practice fee for the year ending 31st March _____.
6. I hereby declare that I attended the following professional development programmes held during the financial year _____:

Sr. No.	Name of Programme	Organised by	Place	Date	Duration*	No. of Program Credit Hours Secured**	Details of Certificate for Program Credit Hours ***

* Please specify whether full day/half day/number of hour

** Extra sheet can be attached....

*** The extracts from ICSI portal about the Credit hours with self certification

7. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)

Place:

Date :

***Encl.

* Applicable in case renewal or restoration of Certificate of

Practice

** Rs. 1000/- Annual Certificate of Practice Fee (Rs. 500/- if applied during October-March)

- Copy of the relieving letter in case earlier in employment.
- Copy of Form DIR 12 regarding cessation of employment in case working earlier as Company Secretary.
- Copy of letter of cancellation of Certificate of Practice of other professional bodies if applicable.

EXTENSION OF LAST DATE OF PAYMENT OF THE ANNUAL SUBSCRIPTION FOR LICENTIATE FOR 2016-17

The payment of Licentiate Subscription for the year 2016-17 became due for payment w.e.f. 1st April, 2016. The last date for payment of the same was 30th June, 2016 which has now been extended upto 31st August, 2016. The annual Licentiate subscription payable is Rs.1,000/- per year.

Online payment of licentiate subscription is not available at present. The Licentiates who want to renew their enrolment as Licentiate, are requested to remit at the Institute's Headquarters or Regional/ Chapter offices a sum of Rs.1000/- (Rupees One thousand only) through cheque at par or Demand Draft payable at New Delhi drawn in favour of "The Institute of Company Secretaries of India" indicating their Name and Licentiate number on the reverse of the Cheque/ Demand Draft and the details of remittance may please be intimated at email id neeru.pandey@icsi.edu. The payment may please be made so as to reach the Institute on or before 31st August, 2016.

In case the Licentiate subscription for 2016-17 has already been remitted, please send the particulars of the remittance at email Id neeru.pandey@icsi.edu to link up the same and update the records.

For queries, if any, please write to Ms. Neeru Pandey, at email id neeru.pandey@icsi.edu or contact at telephone No. 011-45341065.

ATTENTION!

MEMBERS HOLDING CERTIFICATE OF PRACTICE

The Institute has brought out a CD containing List of Members holding Certificate of Practice of the Institute as on 31st March 2016. The CDs are available at the headquarters of the Institute and will be supplied free of cost to the members holding Certificate of Practice on receipt of request.

Request may please be sent to the Directorate of Membership at e-mail id: rajeshwar.singh@icsi.edu



List of Practising Members Registered For The Purpose of Imparting Training During The Month of May, 2016

ABHIJIT ANAND BARJE
FLAT NO.6, 3RD FLOOR, NISHIGANDH APT, BHARAT KUNJ SOC.
ERANDWANE PINCODE:411038, PUNE, MH

ABHILASH N. A.
FLAT NO. 4A, AC GOLD PHASE II, ST. JAMES ROAD, VYTTILA,
ERNAKULAM PINCODE:682019, KOCHI

ANKIT GUPTA
151, 1ST FLOOR, D-288/10, WADHWA BUSINESS CENTRE, NEAR, LAXMI
NAGAR METRO, VIKAS MARG PINCODE:110092, DELHI

ANKITA AGGARWAL
72 B, POCKET -A, MAYUR VIHAR, PHASE II, PINCODE:110091, DELHI

ANUBHUTI TRIPATHI
B-407, BHAKTI APARTMENTS, OM NAGAR, ANDHERI (EAST)
PINCODE:400069, MUMBAI

ARVIND KUMAR GUPTA
216 NATRAJ APPARTMENT, 67 I P EXTENSION, PINCODE:110092, DELHI

ASHISH MAHAWAR
AT- BHAGWATI BHAWAN, DHARAMSALA LANE, PINCODE:768001,
SAMBALPUR

ATIKA AGARWAL
D-180A, JAGRAJ MARG, BAPU NAGAR PINCODE:302001, JAIPUR

AZAD SINGH YADAV
VILL KALYANPURA, TEH BEHROR, POST KANKAR DOPA
PINCODE:301701, DIST. ALWAR

BHAVESH SURESH MEWADA
OM SHIV KRUPA CO-OP.HOC SOCIETY, A-WING, FLAT NO. 404, 4TH
FLOOR, MTNL ROAD, DADAR (W) PINCODE:400028, MUMBAI

DEEPA MALIK
LANE 2, FRIENDS COLONY, OPPOSITE KIET COLLEGE, MURADNAGAR
PINCODE:201206, GHAZIABAD

DEVRAJ GUPTA
KOTHI RAMGANJ, PINCODE:206001, ETAWAH

DHANYA THAZHY PUNNADATH
DOOR NO. 43/1110, B2 UTHRAM BLDG., VELIPPARAMBIL PIPELINE ROAD,
PALARIVATTOM PINCODE:682025, KOCHI

DIKSHANT MALHOTRA
904B, UNITECH ARCADIA, SOUTH CITY - II, PINCODE:122002, GURGAON

DURGA PRASAD YADAV
110-B, CITY PLAZA, REGAL SQUARE, ABOVE PAKIZA, SHOWROOM, M.G.
ROAD PINCODE:452001, INDORE

GAURAV GARG
121-122, GF, POCKET-3, SECTOR 24, ROHINI PINCODE:110085, DELHI

GAUTAM SURAJPRAKASH BHANDARI
GAURI-SADHANA CO-OP HSG SOC, A WING, FLAT NO. 404, 4TH FLR,

RATAN NAGAR, DAHISAR (EAST) PINCODE:400068, MUMBAI

GAYATHRI U K
18-N, TELEPHONE QUARTERS, OPPOSITE LEPAKSHI, NEAR RTC X
ROADS, MUSHEERABAD PINCODE:500020, HYDERABAD

GOPI NARAYANAN YADAV
NO. 29, PRECISION PLAZA, NEW NO. 397, ANNA SALAI, NEAR VANAVIL
(HDFC BLD), TEYNAMPET PINCODE:600018, CHENNAI

HARASHANAG G R
2539/3-7, 1ST FLOOR, 7TH MAIN MCC A BLOCK, JAGALUR PAPANNA
SANKIRANA PINCODE: 577004

KAMAL GURNANI
124/203, AGARWAL FARM, MANSAROVAR PINCODE:302020, JAIPUR

KANISHK ARORA
208, 2ND FLOOR, 6A/1, WEA, GANGA CHAMBER, KAROL BAGH, ABOVE
UNION BANK ATM PINCODE:110005, NEW DELHI

KARAN ARORA
513/16, PREETAM NAGAR, PINCODE:132001, KARNAL

KRITI KUMARI BIMAL KUMAR DHANUKA
B1, 202, PRATISTHA APP, NEAR PRAGATI NAGAR, PIPLOD
PINCODE:395007, SURAT

MIKET SHASHIKANT BAHUVA
A-6, NEW SUNITA PARK, SODAWALA LANE, BORIVALI WEST
PINCODE:400092, MUMBAI

MODU RAM SAIN
C/O RADHA KISHAN SUTHAR
KAMAL NIWAS, BHUWANA PINCODE:313001, UDAIPUR

NAINA JHANWAR
2728, SHREE KRISHNA SADAN, CHURCH ROAD, NEAR MAHILA ASHRAM
SCHOOL PINCODE:311001, BHILWARA

NAVA JYOTH PUTTAPARTHI
315, BHANU ENCLAVE, BESIDE ESI HOSPITAL, ERRAGADDA
PINCODE:500038, HYDERABAD

NIDHI ANAND
F-160, SUDERSHAN PARK, NEAR MOTI NAGAR, PINCODE:110015, NEW
DELHI

NIKETA SINHA
C/O SRI UJJAVAL KR. SINHA, RADHA KUNJ, NY/1-J, NEW YARPUR
PINCODE:800001, PATNA

NIKITABEN RASHMINKUMAR SHAH
FF-103, SARASWATI COMPLEX, 39, SAMPATRAO COLONY, ALKAPURI
PINCODE:390007, VADODARA

NISHTHA GUPTA
A-203, VIRAG ANUKAMPA RESIDENCY, SHANTI NAGAR, DURGAPURA
PINCODE:302018, JAIPUR

P S SENTHIL KUMARAVEL PANDIAN
" JYOTHI ", SITE NO.5, M K P COLONY, FIRST STREET,
MANIAKARAMPALAYAM ROAD, GANAPATHY PINCODE:641006,
COIMBATORE

PANKAJ KUMAR
S-51-52, S BLOCK, PARAMPURI CHOWK, UTTAM NAGAR, NEAR GANESH
SWEETS PINCODE:110059, NEW DELHI

POONAM CHAND JAIN
H. NO. 2382, SECTOR -16, PINCODE:121002, FARIDABAD

PRASANNA S GUPCHUP
B-105, GARDEN LOVE, OFF EKSAR ROAD, NEAR LAXMI NARAYAN
TEMPLE, BORIVALI (WEST), PINCODE:400091, MUMBAI

PRATEEK NAWAL

234, GROUND FLOOR, 6TH CROSS, 6TH MAIN, BTM LAYOUT STAGE 2
PINCODE:560076, BANGALORE

PRIYANKA AGGARWAL
C/9/28 1ST FLOOR, SECTOR 7, ROHINI PINCODE:110085, DELHI

RAGHAVENDRA REDDY BANA
C/O KRISHE, H. NO. 7-2-1813/5/A, FATHE NAGAR, SANATH NAGAR,
PINCODE:500018, HYDERABAD

RAJAT KASLIWAL
122/66A, OPP RAM TIRTH MARG, NEAR VIJAY PATH CIRCLE,
MANSAROVAR PINCODE:302020, JAIPUR

RAJVIRENDRA SINGH RAJPUROHIT
SHOP NO. 3, SAMBHU SADAN BLDG., DEV CHAND NAGAR, 60 FEET
ROAD, BHAYANDER WEST PINCODE:401101, THANE

RIDDHITA RAJKUMAR AGRAWAL
C.O SMT. USHAKIRAN AGRAWAL, VENUS APARTMENT, FLAT NO.201/A,
PLOT NO.181, BAJAJ NAGAR PINCODE:440010, NAGPUR

S PALANI KUMAR
412, 2ND FLOOR, 6TH STREET, EXTENSION, GANDHIPURAM
PINCODE:641012, COIMBATORE

SACHIN ARVINDBHAI THAKKAR
1712, VINOD CHEMBERS, OLS DARIYAPUR GATE, DARIYAPUR
PINCODE:380054, AHMEDABAD

SAJU PHILIP MANALEL
G-156/F-2, DILSHAD COLONY, PINCODE:110095, DELHI

SANJAY MALHOTRA
HOUSE NO : 2357, SECTOR 44-C, CHANDIGARH, PINCODE:160047,
CHANDIGARH

SANTOSH HARISHCHANDRA SHRIRAM
MALHAR WADI, NAVCHAR ROAD, NEAR ALLAHABAD BANK, MULUND
(EAST) PINCODE:400081, MUMBAI

SANTOSH KUMAR
Q. NO. 124/23, ROAD NO. 11, ADITYAPUR - 1, PINCODE:831013,
JAMSHEDPUR,

SATISH
F- 47, GANDHI VIHAR, PINCODE:110009, DELHI

SAURABH BASU
ALAPAN APARTMENT, 3RD FLOOR, 10/6/2 RAJA RAMMOHAN ROY ROAD,
PINCODE:700008, KOLKATA

SHAH JAINAM NAVINCHANDRA
18/19, DEEPMANGAL SOCIETY, OPP. T4TV HIGH SCHOOL, NR. JAIN
DERASE, ATHWAGATE PINCODE:395001, SURAT

SHIKHA NAREDI
GROUND FLOOR, VIRDI NIWAS, M-ROAD, BISTUPUR PINCODE:831001,
JAMSHEDPUR

SIDDHARTHA MURARKA
2ND FLOOR, YMCA BUILDING, 25 JAWAHARLAL NEHRU ROAD,
PINCODE:700087, KOLKATA

SIDHI MAHESHWARI
OUT OF MALPURA GATE, UPWARDS YASH TRADING COMPANY,
SANGANER PINCODE:302029, JAIPUR

SMRITI GOYAL
3A ISHAN MONDAL GARDEN ROAD, MOHONA BUILDING, FLAT NI-B1, 2ND
FLOOR PINCODE:700038, KOLKATA

SUMUKH SANJEEV VALIMBE
B-188 (TOP FLOOR), LOK VIHAR, PITAMPURA PINCODE:110034, DELHI
SUPRIYA KABRA

SHIV STORE, M G ROAD, NEAR BARUAH MARKET, FANCY BAZAR
PINCODE:781001, GUWAHATI

SURESH MARPU
DO NO. 31-38-256, RAJIV NAGAR, VADLAPUDI POST PINCODE:530046,
VISAKHAPATNAM

SUSHANT SUBHASH GAWADE
B-105, 1ST FLOOR, MANGALDEEP, CHS LTD, OPP. KELKAR COLLEGE,
MITHAGAR ROAD, MULUND (EAST), PINCODE:400081, MUMBAI

V C KHAMBHATA
14-B, JAWAHAR SOCIETY, HALAR ROAD, PINCODE:396001, VALSAD

VIPIN KUMAR
SURAJ KUND GAS GODOWN ROAD, INFRONT OF BADI KALI MANDIR,
MODHOPURAM COLONY PINCODE:273005, GORAKHPUR

VIPUL ARORA
904B, UNITECH ARCADIA, SOUTH CITY - II, PINCODE:122002, GURGAON

VIRAL MAHESHKUMAR SHAH
A/2, RAJESH APARTMENT, NARESH PARK, SHANTINAGAR, NEAR WADAJ
PINCODE:380013, AHMEDABAD

VIVEK KUMAR SHARMA
FLAT NO. 104, 1ST FLOOR, LOVINA COURTS, MUNGELI NAKA
PINCODE:495001, BILASPUR

YAMINI AGGARWAL
WZ 122, 123, OM VIHAR, PHASE -I, UTTAM NAGAR PINCODE:110059, NEW
DELHI

YUGANDHARA PRAKASH KOTHALKAR
PLOT NO. R-138, 'TAJSHREE SANKUL', RESHIMBAUG PINCODE:440009,
NAGPUR

OBITUARIES

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

CS A S Jeyakumar (16.03.1955 – 31.05.2016), a Fellow Member of the Institute from Navi Mumbai.

CS A B Panchapakesan (11.07.1954-31.03.2016), a Fellow Member of the Institute from Chennai

CS Kalyan Kumar Mukherjee (16.09.1943 – 21.05.2016), a Fellow Member of the Institute from Hooghly.

CS P Ramaswamy (20.05.1923 -30.06.2015), an Associate Member of the Institute from Bangalore.

CS Kalyan Kumar Ghose (14.12.1957 -25.10.2015), an Associate Member of the Institute from Kolkata.

CS Sharad Kumar Gotecha (30.05.1959 -14.01.2012), an Associate Member of the Institute from Howrah.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.



List of Companies Registered for Imparting Training during the month of May, 2016

ABAD OVERSEAS PRIVATE LIMITED
40/1818 C 16, BAY PRIDE MALL, MARINE DRIVE,
ERNAKULAM, KOCHI

ACCORD REALTY PRIVATE LIMITED, SHOWROOM NO. 1,
STILT FLOOR, PRIDE PURPLE ACCORD BUILDING, S. NO.
3/6/1, PLOT NO. A, BANER ROAD, PUNE

ADITYA BIRLA HOUSING FINANCE LTD
ONE INDIABULLS CENTRE, TOWER 1, 18TH FLOOR,
JUPITER MILL COMPOUND, SENAPATI BAPAT MARG,
ELPHINSTONE ROAD, MUMBAI

AFFINITY GLOBAL SERVICES PRIVATE LIMITED
20B, ABDUL HAMID STREET, EAST INDIA HOUSE, 1ST
FLOOR, KOLKATA

ATHENA CHATTISGARH POWER LTD
7-1-24/1/RT, G1, B-BLOCK ROXANA TOWERS
GREENLANDS, BEGUMPET, HYDERABAD

B4S SOLUTIONS PRIVATE LIMITED
S-40, HARSHA COMPOUND, SITE-2, LONI ROAD
INDUSTRIAL AREA, MOHAN NAGAR, GHAZIABAD(23)

BHAGWATI FOODS PVT. LTD.
305, MANGALAM-A, 24, HEMANTA BASU SARANI, KOLKATA

BHARAT OMAN REFINERIES LIMITED
ADMINISTRATIVE BUILDING, REFINERY COMPLEX, POST
BORL RESIDENTIAL COMPLEX, BINA DISTRICT SAGAR,
BHOPAL

BHILOSA INDUSTRIES PVT LTD
BHAKTAWAR, 3RD FLOOR, NARIMAN POINT,
MUMBAI-400021

GARHA UTILBROCCE TOOLS LIMITED
16 RACE COURSE ROAD, INDORE

GLAUCUS LOGISTICS PRIVATE LIMITED
PLOT NO. 3, POCKET 2, SECTOR B, VASANT KUNJ, , DELHI

GREEN URJA PRIVATE LIMITED
626, SIXTH FLOOR, TOWER-A, DLF TOWER JASOLA, DELHI

GUJARAT GAJRA PINIONS LTD
426/D SUPER MALL NEAR NAVRANGPURA TEL.
EXCHANGE, G.G. ROAD , AHMEDABAD GUJARAT,
AHMEDABAD

HETERO LABS LIMITED
7-2-A2 INDUSTRIAL ESTATE, SANATHNAGAR, HYDERABAD

IMS LEARNING RESOURCES PVT. LTD.
6TH FLOOR, NCL PREMISES, E BLOCK, BANDRA KURLA

COMPLEX, BANDRA (EAST), MUMBAI - 400051

JASPER INDUSTRIES PRIVATE LIMITED
H.NO.5-10-173, 1ST FLOOR, VASANTHA CHAMBERS,
FATEH MAIDAN ROAD, BASHEERBAGH,
HYDERABAD-500004

KJS CEMENT LTD
N.H.7, REWA ROAD, RAJ NAGAR, VILLAGE-AMILIA, TEHSIL-
MAIHAR, DISTRICT -SATNA (MP) 485771

L&T TECHNOLOGY SERVICES LIMITED
L&T HOUSE, BALLARD ESTATE, MUMBAI

LEAP GREEN ENERGY PRIVATE LIMITED
484, KAMARAJ RAOD, UPPILIPALAYAM, COIMBATORE

LODHA VENTURES HOLDINGS PRIVATE LIMITED
7TH FLOOR, LODHA EXCELUS, APOLLO MILLS
COMPOUND, N. M. JOSHI MARG, MAHALAXMI, MUMBAI-
400011

MEDI ASSIST INDIA TPA PRIVATE LIMITED
TOWER D, 4TH FLOOR, IBC KNOWLEDGE PARK, 4/1,
BANNERGHATTA ROAD, BANGALORE - 560029

MEYER ORGANICS PRIVATE LIMITED
A-303, ROAD NO. 32, WAGLE ESTATE, THANE -400 604

MORNINGSTAR INVESTMENT ADVISER PRIVATE LIMITED
9TH FLOOR, PLATINUM TECHNOPARK, PLOT NO. 17/18,
SECTOR 30A, VASHI, NAVI MUMBAI – 400705

NARAYANI STEELS LIMITED
30-15-138/20, BINAYAKA COMPLEX, DABAGARDENS, 2ND
FLOOR, VISAKHAPATNAM

ORGANIC INDIA PRIVATE LIMITED
PLOT NO 266, FAIZABAD ROAD, KAMTA, P.O CHINHAT,
LUCKNOW

P N GADGIL JEWELLERS PRIVATE LIMITED
694, PNG HOUSE, NARAYAN PETH, KUNTE CHOWK, LAXMI
ROAD, PUNE

PUNJ LLOYD INFRASTRUCTURE LIMITED
78 INSTITUTIONAL AREA, SECTOR 32, GURGAON 122001

RELX INDIA PVT. LTD.
14TH FLOOR, BUILDING NO.10B, DLF CYBER CITY, PHASE
-II, GURGAON, HARYANA – 122002

SAMARPAN SYNTHETICS PRIVATE LIMITED
H1-185 TO 188 & G1-172(A), 173, 174 PHASE IV, RIICO, PUR
ROAD, BHILWARA

SHIVOM MINERALS LIMITED
P- 25, CIVIL TOWNSHIP, ROURKELA

SJS HEALTHCARE LIMITED
SATGURU PARTAP SINGH HOSPITALS, SHERPUR CHOWK,
G T ROAD, LUDHIANA

SMV BEVERAGES PRIVATE LIMITED
PLOT NO F 4 (A) MIDC INDUSTRIAL AREA, HINGNA,
NAGPUR

SPARK CAPITAL ADVISORS (INDIA) PRIVATE LIMITED
'REFLECTIONS' NEW NO.2, LEITH CASTLE CENTER
STREET, SANTHOME HIGH ROAD, CHENNAI

SS BIZ SUPPORT LLP
BRANCH OFFICE, SCO 355 2ND FLOOR MUGAL CANAL,
KARNAL-PANIPAT

SURANA AND SURANA
INTERNATIONAL LAW CENTRE, 61-63, DR.
RADHAKRISHNAN SALAI, MYLAPORE, CHENNAI

TESCO BENGALURU PRIVATE LIMITED
81 & 82, EPIP AREA, WHITEFIELD, BANGALORE-560066

TLG INDIA PRIVATE LIMITED
15TH FLOOR, URMI ESTATE, TOWER A, 95, GANPATRAO
KADAM MARG, LOWER PAREL WEST, MUMBAI

TRACTORS AND FARM EQUIPMENT LIMITED
77 NUNGAMBAKKAM HIGH ROAD, PLOT NO 13 DOOR NO
2 I CROSS STREET, JAGANNATHAPURAM VELACHERY,
CHENNAI

TRAFFIC MEDIA (INDIA) PRIVATE LIMITED, 27, BLOCK-C,
LANE-10, NEAR SAI CHOWK, MADHU VIHAR, IP EXTN.,
DELHI

TRAVELEX INDIA PRIVATE LIMITED
UNIT 201, A WING, PARADIGM TOWERS, MINDSPACE, LINK
ROAD, MALAD WEST, MUMBAI

TRIANZ HOLDING PRIVATE LIMITED
6TH FLOOR, KALYANI MAGNUM, #165/2 DORAISANI PALYA,
IIM POST, BANNERGHATTA ROAD BANGALORE KA 560076
IN, BANGALORE

TRIANZ HOLDING PRIVATE LIMITED, 6TH FLOOR,
KALYANI MAGNUM, #165/2 DORAISANI PALYA, IIM POST,
BANNERGHATTA ROAD BANGALORE KA 560076 IN,
BANGALORE

TRUETZSCHLER INDIA PRIVATE LIMITED
N.I.D.C ESTATE NR. LAMBHA VILLAGE, POST NAROL,
AHMEDABAD

TURNAROUND CORPORATE ADVISORS PRIVATE LIMITED
714, VISHWADEEP BUILDING, PLOT NO. 4, DISTRICT CENTRE,
JANAKPURI, NEW DELHI-110058

UNIHEALTH CONSULTANCY PRIVATE LIMITED
H-13 & H-14 EVEREST, 9TH FLOOR, 156 TARDEO ROAD,
MUMBAI 400034

VEERPRABHU MARKETING LTD.
BLOCK -C 2ND FLOOR, 30, JAWAHARLAL NEHRU ROAD,
700016, KOLKATA

VIGILANT MANAGEMENT AND LEGAL SOLUTIONS LLP
1788, GIRIKUNJ, OFFICE NO. 2, ABOVE BHARAT BOOK

SERVICE, FIRST FLOOR, DESHMUKH WADI, SADASHIV
PETH, PUNE

BODHTREE CONSULTING LIMITED
BLOCK A, WING 2, LEVEL 6, CYBER GATEWAY,
MADHAPUR, HITECH CITY, HYDERABAD

FRONTIER CAPITAL LIMITED
7TH FLOOR , TOWER 1, EQUINOX BUSINESS PARK,
PENINSULA TECHNOPARK, L.B.S.MARG, KURLA WEST,
MUMBAI

KALINDEE RAIL NIRMAN (ENGINEERS) LIMITED
F - 65, GAUTAM NAGAR, GULMOHAR PARK ROAD, DELHI

MORARJEE TEXTILES LIMITED
PENINSULA SPENTA, MATHURADAS MILLS COMPOUND,
SENAPATI BAPAT MARG, LOWER PAREL MUMBAI 400013

SILVERPOINT INFRATECH LIMITED
ANANTA BHAWAN, 94 VIVEKANAND NAGAR, ANDUL ROAD,
NEAR WEST BANK HOSPITAL, 3RD FLOOR, ROOM NO. 301,
HOWRAH - 711109

SREE SAKTHI PAPER MILLS
SREE KAILAS 57/2993 /94, PALIAM ROAD, ERNAKULAM,
KOCHI

TD POWER SYSTEMS LIMITED
27, 28 & 29 KIADB INDUSTRIAL AREA, DABASPET,
NELAMANGALA TALUK, BANGALORE 562 111

ZIGMA SOFTWARE LIMITED
26/7, SAHAPUR COLONY, GROUND FLOOR, PLOT NO. 260,
NEW ALIPORE, KOLKATA

Corrigendum

The picture appeared on page 29 of June issue of
Chartered Secretary Journal was wrongly printed.
The corrected picture is reproduced here.
The inadvertent printing error is regretted.



Attention Members - Online donation to CSBF on a click now

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For queries if any, you may write or call-
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Executive, CSBF cell

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Lodi Road, New Delhi – 110003

Phone: 011-45341088, Fax: 011-24626727

Email: saurabh.bansal@icsi.edu


csbf@icsi.edu

Note: Donation to the CSBF qualifies for the deduction under section 80G of the Income Tax Act, 1961. The online receipt serves this purpose as well.




NEWS FROM THE REGIONS

EASTERN INDIA REGIONAL COUNCIL

Programme	QR Code/Web link
Full Day Seminar on National Company Law Tribunal held on 25.06.2016 at HHI, Kolkata.	 https://www.icsi.edu/eiro/Archive.aspx
Mega Programme on the occasion of ICSI Capital Markets Week organised on 21.06.2016 at The Lalit Great Eastern, Kolkata.	
Half Day Workshop held on the occasion of PCS DAY on 15.06.2016 at ICSI-EIRC House, Kolkata.	
Indoor Cricket Tournament (Members v. Students) on 12.6.2016.	
First of its kind CS Acceleration Centre (CSAC) launched in Kolkata by ICSI on Saturday, 11th June, 2016.	
ICSI CONVOCATION – EASTERN REGION 2016 on 11th June, 2016 at Kalamandir Kolkata.	
Meeting of a delegation from EIRC with Hon'ble Governor, West Bengal on 9th June, 2016.	

BHUBANESWAR CHAPTER

Programme	QR Code/Web link
Celebration of PCS day on 15.06.2016	 https://www.icsi.edu/bhubaneswar/NewsEvents.aspx
Celebration of International Yoga day on 21.06.2016	
Mega programme on ICSI Capital Market Week on 22.06.2016 at Bhubaneswar	
SwatchhataPakhwada pledge on 28.06.2016	
SwatchhataPakhwada celebration in the Chapter Office Premises pledge on 30.06.2016	
Celebration of Van Mahotsava on 01/07/2016	


NORTH EASTERN CHAPTER

Programme	QR Code/Web link
ROUND TABLE ON CSR and Board Legal Environment and Board Processes & Procedure held on 3.6.2016	NA


RANCHI CHAPTER

Programme	QR Code/Web link
Awareness Programme on Commodity Futures held on 16.06.2016. Study Circle meet on "Awareness, Acknowledgement & Opportunity for PCS" to celebrate PCS Day held on 15.6.2016.	NA

NORTHERN INDIA REGIONAL COUNCIL

Programme	QR Code/Web link
Campus Placement* for 238th & 239th batch of MSOP participants (on the verge of getting CS Membership) held on 13.06.2016	 http://www.icsi.edu/Portals/70/News%20From%20NircJune2016.pdf
PCS Help Line on "Issue and Allotment of Securities under the Companies Act, 2013 read with the applicable Rules" held on 15.6.2016	
15.6.2016 Celebration of PCS Day on <ul style="list-style-type: none"> Emerging areas of Practice - PCS from Panchayat to Parliament; Showcase of the Profession – Start-up – Stand-up and A way forward 	
18.6.2016 ICSI Convocation – 2016 (1st Session) (Northern Region) – to give away certificate of membership of the Institute to newly admitted members	
20.6.2016 Inauguration of 15 days Master Class Room Study Sessions on NCLT & NCLAT	
21.6.2016 International Yoga Day	
21.6.2016 Celebration of Capital Market week on Transcending Horizons - Capital Market Way	
22.6.2016 Campus Placement for CS Trainees	
25.6.2016 One day seminar on NCLT - Changing Contours of Corporate Litigation & Meeting of Company Secretaries in Practice	

AGRA CHAPTER

Programme	QR Code/Web link
ICSI Capital Markets Week on: 'Transcending Horizons – Capital Market Way' held on 19.6.2016	 http://www.icsi.edu/agra/NewsEvent.aspx
PCS DAY celebration on 15.6.2016	

AJMER CHAPTER

Programme	QR Code/Web link
PCS day celebration on 15.6.2016	NA


BARAILLEY CHAPTER

Programme	QR Code/Web link
PCS Day Celebration on 15.6.2016	NA


FARIDABAD CHAPTER

Programme	QR Code/Web link
PCS Day Celebration on 15.6.2016 Blood donation camp organised on 12.6.2016 in association with Faridabad Donors Club, Mahavir International, Faridabad.	NA


KANPUR CHAPTER

Programme	QR Code/Web link
Mega programme held on 23.6.2015 to observe Capital Markets Week of ICSI	 http://icsi.edu/kanpur/home.aspx
PCS Day Celebration on 15.6.2016	
Study Circle Meeting on the occasion of PCS day celebration on Emerging Areas of Practice; CS from Panchayats to Parliament; and a way Forward	




LUDHIANA CHAPTER

Programme	QR Code/Web link
Study Circle Meeting held on 15.06.2016 on Opportunities & Role of Practising Company Secretaries	 http://www.icsi.edu/Portals/12/SCM-15-06-16.pdf


NOIDA CHAPTER

Programme	QR Code/Web link
PCS Day celebration on 15.06.2016	 www.icsi.edu/noida


SOUTHERN INDIA REGIONAL COUNCIL

Programme	QR Code/Web link
ICSI Capital Markets week on "Transcending Horizons - Capital Markets Way" on 25.06.2016	 https://www.icsi.edu/Portals/71/Resources/SircProceedingsmonthofJune2016.pdf
Inauguration of CS Acceleration Centre (CAC) on 08.06.2016	 http://www.icsi.edu/webmodules/SIRC_CAC.pdf
Half Day Seminar on "Companies Act 2013 v. Internal Financial Control & Important Changes Proposed in Companies Amendment Bill 2016" on 08.06.2016.	
ICSI PCS Day Special Programme on 15.06.2016	
Programme for Peer Reviewers on 27.05.2016	 http://www.icsi.edu/WebModules/Proceedings_Program_for_Peer_Reviewers_27052016.docx

AMRAVATI CHAPTER

Programme	QR Code/Web link
PCS Day Celebrations – Lecture Meet on Practising Company Secretaries – Role & Responsibilities held on 15.06.2016	 http://www.icsi.edu/portals/153/sem%2015.06.2016.pdf


BENGALURU CHAPTER

Programme	QR Code/Web link
Mega Event on Capital Market Week held on 18.06.2016 at Chapter premises	 http://bit.ly/28ZCj3y


CALICUT CHAPTER

Programme	QR Code/Web link
Participation in National Education Fair Mathrubhumi ASPIRE 2016 organised by Mathrubhumi one of the leading regional newspapers in Kerala on 29, 30 & 31.5.2016 at Kozhikode.	NA



HYDERABAD CHAPTER

Programme	QR Code/Web link
TV9 and KAB Education Summit at Nizam College Grounds, held from 3 to 5.6.2016	 http://www.icsi.edu/portals/2/ARJune16.pdf
10th Residential Programme for its members and students with their families on "Aggrandize yourself by Capitalizing Health & Wealth" held on 10 and 11.6.2016.	
PCS Day celebrated on 15.6.2016 by organizing an interactive meeting for Members and students at RD's Office, MCA, Hyderabad	
Twin Programmes for Twin City Members on Harnessing Skills - Harvest Results held on 18.6.2016	
Chapter organized on 21.6.2016 Yoga for Members and Students on the eve of International Day of Yoga	
Full Day Seminar on Transcending Horizons - Capital Markets Way held on 23.6.2016	


KOCHI CHAPTER

Programme	QR Code/Web link
Study Circle Meeting on 'Buy back of securities' held on 8.6.2016 at the Chapter premises.	 http://www.icsi.edu/kochi/NewsEvents.aspx
PCS Day Celebrated on 15.06.2016 on the theme "PCS- Experience over Generations".	
International Yoga Day Celebrated on 21.06.2016.	
The Chapter in association with Cochin Chapter of ICAI organized a seminar on 'Provisions of the NCLT in Companies Act 2013' on 31.5.2016.	



WESTERN INDIA REGIONAL COUNCIL AHMEDABAD CHAPTER

Programme	QR Code/Web link
The Institute observed Capital Markets Week on 'Transcending Horizons – Capital Market Way' from 18 to 25.6.2016 across the Country. A Program in this series was held at Ahmedabad Management Association at Ahmedabad on 25.06.2016.	 http://www.icsi.edu/ahmedabad/PPTCorner.aspx
Swachhta Pakhwada Celebrated at Chapter Office on 30.6.2016	
PCS Day Celebration held on 15.6.2016	 http://www.icsi.edu/Portals/25/Presentations/Write%20Up%20from%2011.06.2016%20to%2020.06.2016.pdf


INDORE CHAPTER

Programme	QR Code/Web link
Celebration of PCS Day on 15.6.2016	
Bhaskar Education Fair held on 21 and 22.6.2016	
Free Health Check-up Camp on 19.6.2016	http://www.icsi.edu/Portals/29/Activity%20Report%2018.05.16%20to%2020.06.16.pdf


PUNE CHAPTER

Programme	QR Code/Web link
ICSI Celebrates Swachhata Pakhwada (16-30 June, 2016)	
Celebration of International Yoga Day on 21.6.2016 AT Chapter premises	
HT Media'S Shine – 2016 "Career Fair"	http://www.icsi.edu/portals/32/CHARTERED_SECRETARY_21_30_06_2016.pdf
Study Circle Meeting on "SEBI (Prohibition of Insider Trading) Regulation"	
Half Day Programme on "Awareness on Recognition for PCS"	 http://www.icsi.edu/portals/32/CHARTERED_SECRETARY_11-20_06_2016.pdf


SURAT CHAPTER

Programme	QR Code/Web link
PCS Day celebrated on 15.6.2016 at Chapter office premises.	 http://www.icsi.edu/Portals/35/PICTURE/PCS%20Day.jpg


THANE CHAPTER

Programme	QR Code/Web link
Seminar on PCS Day Celebration on June 15, 2016	
International Yoga Day Celebration on June 21,2016	http://www.icsi.edu/thane/NewsEvents.aspx

VADODARA CHAPTER

Programme	QR Code/Web link
PCS Day Celebrated on 15.6.2016 at Vadodara	 http://www.icsi.edu/Portals/37/Write-up_15062016.pdf

ICSI – CCGRT

Programme	QR Code/Web link
ICSI-CCGRT celebrated PCS Day on 15.6.2016	 http://www.icsi.edu/Portals/86/Manorama/PRESS%20RELEASE.pdf

Appointment

A COMPANY SECRETARY IS REQUIRED

for Trapti Trading Investment Private Limited, having its registered office in Mumbai and engaged in Non Banking Financial Services (NBFC) activities.

Candidate should be a qualified Company Secretary with 2 years of experience preferably having worked in similar Company.

Candidate should be capable of liaising with various Government Authorities.

Should have skills of writing, drafting and vetting of legal documents, agreements and contracts.

Interested candidates can apply with their resume to:

Industry House, 1st Floor, 159, Churchgate Reclamation, Mumbai - 400020.

6

MISCELLANEOUS CORNER



- Ethics & Code of Conduct Corner
- Ethics and Sustainability Corner
- CG Corner
- NCLT Corner
- 17th National Conference of Practising Company Secretaries
- Replies to Brain Teasers

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

PROFESSIONAL AND OTHER MISCONDUCT IN RELATION TO COMPANY SECRETARIES

The expression “professional and other misconduct” is defined in Section 22 of the Company Secretaries Act, 1980. First and Second Schedule to the Company Secretaries Act, 1980 contains professional and other misconduct in relation to Company Secretaries.

First Schedule is divided into four parts and Second Schedule is divided into three parts. 11 items of Part I of the First Schedule and 10 items of Part I of the Second Schedule are applicable to Company Secretaries in Practice. 2 items of Part II of the First Schedule is applicable to members of the Institute in service. 3 items of Part III of the First Schedule and 4 items of Part II of the Second Schedule are applicable to members of the Institute in generally. Part IV of First Schedule and Part III of the Second Schedule deals with other misconduct in relation to members of the Institute generally.

This write-up elaborates item no. (1) to (10) of Part I of the Second Schedule to the Company Secretaries Act, 1980 in relation to members of the Institute in practice.

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE IN PRACTICE

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

“(1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;”

A Company Secretary in practice in the course of his professional engagement may come into possession of vital information. Such information has to be kept confidential unless consent of the client has been obtained to disclose is required by any law. Any communication acquired in the course of his professional engagement on behalf of his client, any communication or any advice given by him to his client in the course and for the purpose of his engagement is a privileged communication and should not be disclosed without the express consent of his client, the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional engagement.

“(2) certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice;”

This clause prohibits Practising Company Secretary (PCS) from certifying or submitting in his name a report of an examination of the matters relating to company secretarial practice unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice.

“(3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;”

A Company Secretary in practice has to clearly disclose in the report or statement, as the case may be, the sources of his information and the premises on which the forecast is based. He shall further take care that he does not vouch for the accuracy of the forecast. Restraint is therefore required in subscribing to reports/statements, the contents of which may or may not turn out to be true.

PCS should not certify any possible happening or non happening or give a report about the future e.g. it would be improper for a PCS to certify the future earning capacity, future shareholding pattern, future profitability or similar future figures and numbers.

“(4) expresses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;”

A professional has to be independent while expressing any opinion. He should not have any substantial interest in the business enterprises to which the report or statement pertains. This would create a conflict with his duty.

“(5) fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity;”

This clause underlines the need for full and complete disclosure as to make any statement or report with which he is associated, true in every possible respect. Half truth at times is more disastrous.

“(6) fails to report a material mis-statement known to him and with which he is concerned in a professional capacity;”

This clause deals with non-disclosure by a member in practice of a material misstatement known to him in any report with which he is concerned.

“(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;”

This clause deals with due care that a member in practice has to exercise in the discharge of his professional duties. The words “grossly negligent” imply that purely clerical errors or an omission to give more details in any recommended course of action will not fall within the sweep of this clause. What constitutes gross negligence would depend upon facts and circumstances of each case.

“(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;”

This clause deals with the duty of a member in practice to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion. Where the exceptions to the opinion are sufficiently material, a member in practice should refrain from expressing an opinion.

“(9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;”

This clause deals with the duty of a member in practice to invite attention to material departure from generally accepted secretarial practice. Where the standard secretarial practice in respect to any matter is not recommended by the Institute for its mandatorily adoption, a member in practice has to follow the existing well recognized secretarial practices and invite attention to departure which is material.

“(10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.”

This clause deals with the duty of a member in practice to ensure that the money of its client is separately accounted for and that such money is specifically used only for the purpose for which it is paid by its client. It is also the duty of a member in practice to ensure use of such money of its client within reasonable time only.

This write-up has been prepared and published for the reference of the members of the Institute. These views may be subject to judicial interpretation.

WHAT IS SUCCESS FOR YOU?

(Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurgaon)

Most of us learn that success equals some form of achievement in the world. For many it's not the achievement but the recognition and that they crave. For others it's not the arrival but the journey that generates the satisfaction of success. They value the process more than the prize. For some the pursuit of success will be avoided at all costs, sometimes for fear of failure, and sometimes for the fear of...success! And, for a few, just living simply and sincerely each day will be deemed to be successful enough!

At some stage, in all our lives, there's a good chance we will each stop and consider the question, "What does success mean to me?" even if it's only for a few fleeting minutes! However, if we don't contemplate this question deeply then it's likely we will blindly follow other's ideas, beliefs and measures of success, usually learned in childhood, craved in youth and then pursued into our adult years.

We may not notice the connection between our dissatisfaction and the absence of a consciously defined and chosen idea of a what 'successful life' looks like and feels like. It is the clarity of an inner vision of success and wisdom about success that gives focus to our energies. It also adds to the sense that we are creating meaningful life.

So what price success? That's the note that many of the modern day 'success gurus' begin and end on. It means how much are you prepared to sacrifice to achieve the success you want. How hard are you prepared to work? What are you willing to do to get there? Interesting questions, but they do make it all sound like hard work.

How do YOU define success? Is it simply the completion of the next task, another job well done, a promise kept, an exam passed, a medal won, a mountain climbed, a target hit, a happy family raised or the leaving of a legacy that ensures you will be remembered long after you have gone? Whatever you 'believe' success to be it will have a profound influence on your life. If you were to follow the predominant mindset in the world today then success would likely be measured by acquisition. The 'more' you have the more successful you will be seen to be.

MORE AND HIGHER

When we inherit and absorb the prevalent 'beliefs' that the world is a place of scarcity, that the purpose of life is survival, that we must accumulate stuff to prosper, and that the more you get the happier you will feel, then success equals 'more'. More can be almost any quantity – objects, money, properties, trophies, celebrity fame, fans, likes. And in the context of 'position', success simply means higher.

When we are taught to believe there is not enough to go around the media delights in keeping us abreast of upcoming shortages. If there aren't any obvious ones they will likely invent them for us! So we learn to speak the common language of 'not enoughness'

or 'scarcity'. We then struggle and strive for what we consider our rightful share of the 'great pie', before someone else gets it, and 'more' is not only good, but applauded when attained. Hence, for many, if not most, 'more' simply equals success.

So what does it mean to you to be successful? At what level, in what context and by whose standards will you measure your success?

IT'S IMMATERIAL!

If you were to give yourself some time to live in this question you would likely arrive at the fairly obvious insight that, at the deepest level, success in life is not a material thing, it is not something that can be possessed, or won, or even attracted! It is a state of being, some call it contentment, or happiness, or even peace. Why, after all, does anyone want 'more' of anything? Because they believe these inner states will result. These feelings are, for some, the deepest and most meaningful 'symptoms of success', but only when these states of being are internally stable and consistent and therefore not dependent on anything outside ourselves. In other words not dependent of 'more' of anything!

In the meantime success for most of us tends to be 'context specific'. As we consider 'context' we start to see why the kind of success we have been encouraged to pursue has many 'levels' and more than a few flaws.

The Context of SPORTING Success – in this context, it's obviously about competition and winning. It's about being number one and being recognized and glorified by others as the one/s who took the prize. How often are we reminded that no one remembers the runner up? But few seem to ask why would I want to be remembered? Should the desire to be 'not forgotten' have a 'danger sign' hung around it that says 'ego at work'?

Notice how much physical and emotional suffering is required to reach the sporting peaks. Seldom do we see relaxed and contented sports people as they take their struggling and striving very seriously. They will say it's worth the pain. Others would say life was meant to be a painful, tense and injurious affair, inflicted upon self by our self!

Was all sports not originally based on game, in which 'joy of play', for the sake of playing was given free reign? A time when faces smiled consistently and frustration, tension and anger were impossible.

The Context of BUSINESS Success – seems to range from building a large business to become highly profitable to being recognized for service excellence. Sometimes all three parameters are pursued, but unless they are prioritized there is the danger none will be achieved, leaving many stressed people in its wake. And if profit is prioritized over service it's fairly obvious that the energy behind the enterprise will become fear based and therefore quite

an unhappy endeavour. Which may explain why many business people know stress intimately. It's a serious business...business! And, that's usually when need turns into greed and the ripple effect touches many far and wide. Hence, the global financial turmoil that we see today.

The Context of ACADEMIC Success – intellectual prowess tends to be the way this kind success is measured and achieved, coupled with rather a good memory, naturally! It is often dependent on reacquiring peer approval and driven by the desire to join a select club. It can easily result in an, 'I know the most and the best' attitude and a closed and narrow mindset that tends to characterize the so called 'specialist' and the 'academic expert'. Is it now unnatural and therefore uncomfortable to be closed and narrow at any time and in any area of life? Unless you are water pipe!

The Context of Spiritual Success – is a state of being sometimes referred to as enlightenment. But is it achieved or restored, or both? Perhaps it's one fundamental difference from the other 'levels of success' is you wouldn't know someone has arrived at such an intangible and internal success unless you were in their presence for some time. Even then their simplicity and humility would probably deflect attention away from themselves. Can this form of incognito success still be classified as ... success? That is not to say that success in any of the above areas is not worth pursuing. As you form your mindset around success there is value in considering how success is viewed, defined and achieved in each context.

INNER SUCCESS

The whole idea of success takes on a meaning when we explore it in the context of our inner life. In this complex personal success is the mastery of one's own ability to stay calm and focused, non-reactive and proactive, especially in challenging situations. When you start to build your inner capacities and attributes of self mastery, then all the other levels of success previously highlighted become easier to achieve, and yet, paradoxically, less relevant and/or much less meaningful.

Here are a few of the characteristics of self-mastery that signal your success at a deeper level than the material.

Inner success look and feels more like the capabilities:

- To act with total honesty and integrity thus generating a clear conscience without which authentic happiness that we call 'contentment' is impossible
- To remain peaceful and stable when all around you are in crisis or chaos
- To value what you are more than what you have
- To be able to see past the weaknesses/ mistakes of others and focus on their inherent goodness/ strengths
- To be able to let go of the past and thereby not allowing it to cloud your judgment in the present
- To give without the desire for anything in return

Notice how intangible these measures are. No one else can

measure the efficacy of each or your success in implementing them, except yourself. Notice how we seldom ask ourselves why we cannot achieve and maintain these inner states of being and the kind of enlighten behaviors that we would probably all desire all the time. Unless we 'can do and be' all of these it is unlikely we will achieve the deepest measure of success which is to be content within our self and able 'to give' our best to others without condition.

As long as we desire to change the world, and that includes others, it means we are still trying to 'police the universe'. The enlightened soul however, has realized that is not 'my job'. They know that the light and power that emanates from a stable state of being, a contented state of being, from a giving intention, is one of the most influential gifts to others and to the world.

SUCCESS IS PERSONAL

As you reflect and contemplate on what success is going to look like and feel like to you, perhaps it's useful to include three key considerations.

- 1 Any success that is dependent on public recognition and acclaim will inevitably lead to insecurity and eventual depression, as does all forms of dependency.
- 2 When success is defined by an end product, an outcome, or some final achievement, then life tends to be a continuous struggling and striving to 'get there'. Our happiness is continuously delayed. In other words, not such a joy filled journey!
- 3 If success is defined by the acquisition or accumulation of anything then fear will always be lurking in the background. 'Fear of failure' which is the same as the fear of loss/ stress will be your companion.

No matter which way you look at it, success is a personal issue. Like other aspects of how to create a happy and fulfilled life, success tends to be shrouded in many illusions and delusions, depending on our upbringing. Its achievement is now championed by hundreds of success gurus and coaches, mentors and trainers, all waiting in the wings to advise and guide us. Many promising a 'magic formula' which can range from the secrets of attraction to the powers of self-belief, from the work harder ethic to the development of your creative genius, from how to 'unleash' your potential to invoking the angels of success to guide your entire life!

But before we listen to anyone (including this article) it's probably worthwhile finding a tree, on a quiet and sunny hillside, by a peaceful meadow, next to a meandering river, to sit and gently reflect on what only your own heart can tell you in response to the questions, "what does success really mean to me?".

It will of course generate many other questions. Like what is the purpose of my life? What do I value? But then 'they do say that when it comes to this unique and special journey called life there is a time when asking the 'right questions' is much more important than having the right answers.

CORPORATE GOVERNANCE CORNER

FRC published a final draft update to the UK Corporate Governance Code, United Kingdom

The Financial Reporting Council (FRC) after considering the feedback from public has now published final versions of the UK Corporate Governance Code (the Code), its Guidance on Audit Committees, and its Revised Ethical Standard. The new Code applies to accounting periods beginning on or after 17 June 2016 and applies to all companies with a premium listing of equity shares regardless of whether they are incorporated in the UK or elsewhere.

Details can be accessed at:

- UK Corporate Governance Code - <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Final-Draft-UK-Corporate-Governance-Code-2016.pdf>
- Guidance on Audit Committees - [https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Guidance-on-Audit-Committees-\(2\).pdf](https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Guidance-on-Audit-Committees-(2).pdf)

- Revised Ethical Standard - <https://www.frc.org.uk/Our-Work/Publications/Audit-and-Assurance-Team/Revised-Ethical-Standard-June-2016.pdf>

REMEMBER!!

11 July- World Population Day

15 July-World Youth Skills Day

30 July- International Day of Friendship

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.



Institute of Actuaries of India

Actuarial Common Entrance Test ACET

October 2016

Who is an Actuary?

An Actuary is a business professional who analyzes the financial consequences of risk. This is a niche profession with strict standards for qualifying and is also a global profession as it is recognized in most countries. The actuaries attract competitive salaries globally.

How to Apply?

Register Online for ACET at

www.actuariesindia.org

Registration Starts 15th July, 2016
Registration Closes 31st August, 2016
Examination on 01st October, 2016
Exam Centres in 27 cities of India

Who can Apply?

- Have a degree in or are studying for **Mathematical Sciences: Maths, Statistics, Econometrics or any other.**
- An Engineer or studying for it.
- A Management Graduate or studying for it.
- A Chartered Accountant, Cost Accountant or a Company Secretary or studying for any of these.
- Have a degree in Finance or studying for it, or any other, but you have love for Mathematics and skills in Numeracy.
- With minimum of 10+2 or even a maximum of a Phd in Maths or Stats or any other.

Contact 02267843333/3304 • Email: acet@actuariesindia.org



17TH NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES PCS @ Startup – Accelerate – Outpace



Days & Dates: Friday & Saturday, August 12-13, 2016
Venue: Welcome Heritage Glenview Resort, Kasauli, Himachal Pradesh

COVERAGE

1. Startup India – Professional Opportunities for PCS covering
 - Insolvency Laws
 - Goods and Services Tax
 - Arbitration Law
 - Real Estate Act
2. National Company Law Tribunal, Companies (Amendment) Bill, 2016, Competition Law
3. Spiritual Wellbeing / Self Motivation
4. Ease of Doing Business in India – Facilitations and Obstructions

Key Takeaways

- Explore new opportunities in the areas of practice
- Share knowledge amongst the peer group
- Interact with experienced and expert faculty
- Update and sharpen technical and professional skills /
- Build Professional Networking
- Enjoy the scenic beauty of Kasauli and rejuvenate

Speakers

- Eminent speakers and experts with comprehensive exposure to the practical aspects of the topics will address and interact with the participants.

Participants

- Company Secretaries and other Professionals in Secretarial, Legal and Management disciplines would be benefited by participating in the Conference. **All are requested to participate in the National Conference in large numbers and make it a huge success.**

CHAIRMAN, PCS COMMITTEE	PROGRAMME DIRECTOR	PROGRAMME COORDINATOR	PROGRAMME FACILITATOR	PROGRAMME CO-FACILITATOR
CS Ashish Garg Council Member, ICSI	CS Vineet K Chaudhary Council Member, ICSI	CS Manish Gupta Chairman, NIRC of ICSI	CS G S Sarin Chairman, Chandigarh Chapter of ICSI	CS Smriti Sud Chairperson, Shimla Chapter of ICSI

Tentative Programme Schedule**Day-1: Friday, August 12, 2016**

11:00 am to 1:00 pm	Delegate Registration
1:00 pm to 2:00 pm	Lunch
2:00 pm to 3:30 pm	Inaugural Session
3:30 pm to 04:00 pm	Tea / Coffee Break
04:00 pm to 05:30 pm	Session 1 Panel Discussion: Start Up India– Professional Opportunities for PCS <ul style="list-style-type: none"> • Insolvency Laws • Goods and Services Tax • Arbitration Law • Real Estate Act
05:30 pm to 07:00 pm	Session 2 Companies (Amendment) Bill, 2016 National Company Law Tribunal Competition Law
08:00 pm onwards	Cultural Evening & Networking Dinner
Day-2: Saturday, August 13, 2016	
9:00 am to 10:00 am	Interactive Session (for Members of ICSI only)
10:00 am to 11:15 am	Session 3 Spiritual Wellbeing / Self Motivation
11:15 am to 11:30 am	Tea / Coffee Break
11:30 am to 1:00 pm	Session 4 Panel Discussion: Ease of Doing Business in India- Facilitations and Obstructions
01:00 pm to 02:00 pm	Networking Lunch
02:00 pm to 03:00 pm	Closing Plenary

Articles for Souvenir-cum-Backgrounder

A Souvenir-cum-Backgrounder containing theme articles and other relevant information will be brought out to mark the occasion. Members who wish to contribute papers for publication in the Souvenir-cum-Backgrounder are requested to send the same on or before July 15, 2016 through email to CS Saurabh Jain, Deputy Director, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi–110003 at saurabh.jain@icsi.edu and devender.kapoor@icsi.edu.

The paper / article should not normally exceed 15 typed pages. Members whose papers/articles are published in the Souvenir-cum-Backgrounder of the Conference shall be entitled to grant of FOUR Programme Credit Hours and an honorarium of Rs. 2,500/-. The decision of the Institute shall be final in all respects. Members are also requested to mention their income tax PAN while submitting the articles, in order to enable us to expedite the payment of honourarium.

DELEGATE REGISTRATION FEE AND REGISTRATION PROCEDURE

Delegate Registration Fees (Incl. of Service Tax)

Delegate Category	Early Bird payment upto July 15, 2016	Early Bird payment upto July 31, 2016	Payment August 01, 2016 Onwards
Members	4000	4500	5000
Non-Members	4500	5000	5500
Accompanying Spouse/Children above 12 years	3000	3500	4000
Students/CSBF Members/ Senior Members (60 years and above)/ Partners of Peer Reviewed Practice Units (<i>Subject to the Presentation of Peer Review Certificate</i>)	3500	4000	4500

Registration fee is inclusive of service tax and covers Lunch (2), Dinner (1), Morning /Evening Tea/ Coffee with Cookies, Conference Kit & Backgrounder.

Accommodation

Accommodation on 'first come first served basis' has been arranged at the conference venue, i.e., Welcome Heritage Glenview Resort, Kasauli, Himachal Pradesh for outstation delegates.

Room Tariff (per delegate)

Room Occupancy basis	Accommodation charges for one night
Single Occupancy	Rs. 6000 (incl. of Taxes)
Double Occupancy / Twin Sharing (Delegates with Spouse or any other delegate)	Rs. 3500 (incl. of Taxes)
Triple Occupancy (Three delegates in one room)	Rs. 3200 (incl. of Taxes)

Alternative Accommodation arrangements

In addition to the accommodation arrangements at Welcome Heritage Glenview Resort, special arrangements have also been made at Kasauli Resorts, Kasauli, Himachal Pradesh for stay of delegates during August 12-13, 2016.

Room Tariff (per delegate)

Room Occupancy basis	Accommodation charges for one night
Single Occupancy	Rs. 5500 (incl. of Taxes)
Double Occupancy / Twin Sharing (Delegates with Spouse or any other delegates)	Rs. 2750 (incl. of Taxes)
Triple Occupancy (Three delegates in one room)	Rs. 2333 (incl. of Taxes)

Important Instructions:

- Standard Check in: 12th August, 2016 (12:00 Noon) / Standard Check out: 13th August, 2016 (12:00 Noon).
- Limited rooms are available.
- Any extra stay will be charged separately, subject to availability of rooms and receipt of reservation charges in advance.
- Delegates with chauffeur driven cars will have to pay extra charges for accommodation and food arrangements for driver during the Conference. These charges have to be paid immediately on arrival.
- Any extra facilities availed by the delegate during the stay have to be paid directly to Hotel.
- The accommodation is to be booked directly by the delegates by filling in the accommodation request form available at the link www.icsi.edu/17NationalConferenceofCS.aspx.

How to reach Kasauli:

- **By Air** - The most convenient option by air is to reach Chandigarh, 65 km away from Kasauli. The connecting flights to Chandigarh are available from Delhi, Mumbai, Hyderabad, Bengaluru, Srinagar, Kolkata and Indore.
- **By Train** - Kalka is the nearest railhead situated 40 km away. There are rail links available from cities like Amritsar, Delhi, Kolkata and Mumbai upto Kalka.
- **By Road** - Kasauli is well connected to Delhi and Chandigarh by road. Chandigarh is an hour's drive from Kasauli while Delhi can be reached in five and a half hours.

Pickup and drop at Chandigarh / Kalka

Special arrangements are being made for the group pickup and dropping of delegates and their family members from the Chandigarh Airport and railway stations at Chandigarh junction and Kalka. The details about the same will be hosted on the ICSI website.

Delegate Registration Procedure

Delegate Registration only through Online Mode: Delegates are requested to register for the Conference through Online Mode only. Please note that payments are not accepted through demand draft, cheque, cash, electronic transfer, etc. The entire fee is payable in advance and is not refundable once the nomination is accepted. For registration, please follow the link available at www.icsi.edu/17NationalConferenceofCS.aspx.

Programme Credit Hours

Members of the Institute attending the National Conference on both days will be entitled to grant of 8 (Eight) Programme Credit Hours. Students attending the National Conference will be entitled to 16 (Sixteen) hours of Professional Development Programme.

Advertisement in Souvenir-cum-Backgrounder

The Souvenir-cum-Backgrounder containing important information, programmes, lists, etc. would be widely circulated to professionals, corporate and regulatory authorities. Advertisement released in the Souvenir would receive wide publicity for Products, Services and Corporate Announcements. Members/Organisations are requested to release advertisements. Advertisement material/requests for stalls/sponsorship requests along with the cheque/demand draft drawn in favour of 'The Institute of Company Secretaries of India' may be sent to Ms. Preeti Kaushik Banerjee, Director, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi – 110003, Tel: 011-45341077 and email: preeti.banerjee@icsi.edu on or before August 05, 2016.

Advertisement Tariff

Color Ad	Rate (In Rs.)	Size	Black & White Ad	Rate (In Rs.)	Size
Back Cover	50,000	18cm x 24 cm	Full Page	15,000	18cm x 24cm
Inside Cover (Front/Back)	40,000	18cm x 24 cm	Half Page	10,000	18cm x 12cm
Special Page	25,000	18cm x 24 cm	Quarter Page	5,000	9cm x 12cm

Privilege rates for advertisement in souvenir by firms of PCS

B/W Advertisement	Rate (In Rs.)	Size	Benefits
Full Page	20000	18x24 cm	Delegate fee (Non Residential) exemption for 2 delegates
Half Page	10000	18x12 cm	Delegate fee (Non Residential) exemption for 1 delegate

Stalls

Stalls for display of products Sponsorships Rs. 25,000 per stall (maximum size 6' x 6')

Sponsorships

1.	Principal Sponsor	Rs. 5,00,000 (One)
2.	Gold Sponsor	Rs. 3,00,000 (One)
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4.	Lunch Sponsor	Rs. 2,50,000 (Two)
5.	Dinner Sponsor	Rs. 3,50,000 (One)
6.	High Tea Sponsor	RS. 1,00,000 (Three)
7.	Cultural Programme Sponsor	Rs. 1,00,000 (One)
8.	Sponsorship for Conference Kit	Rs. 1,25,000 (One)
9.	PCS Firm	Rs. 1,00,000 [@]

Service Tax Extra, if the sponsorship is from a body corporate / partnership firm, service tax would be deposited by the sponsor under the Reverse Charge Mechanism. Logo of all organizations providing sponsorships of Rs. 1,00,000/- and more will be put on the conference backdrop.

* Co-sponsors may be considered

@ Delegate fee (Non Residential) exemption for Twelve delegates.

For clarification or queries please contact the following:

- **Submission of articles for souvenir-cum-backgrounder & programme details**
 - o CS Saurabh Jain, Deputy Director – Tel: 011 – 45341035; email: saurabh.jain@icsi.edu
- **Advertisement material/requests for stalls/sponsorship requests**
 - o Ms. Preeti Kaushik Banerjee, Director – Tel: 011 – 45341077; email: Preeti.banerjee@icsi.edu
- **Delegate Registration and Accommodation**
 - o Mr. Devender Kapoor, Assistant Director – Tel: 011 -45341029; email: devender.kapoor@icsi.edu

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	Proposed fee	Existing fee	Proposed 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.

GST UPDATES

- Empowered Committee releases Model GST law in GST in a meeting held on 14th June, 2016 for public comments.
- GST to have three legislations –Central GST Act (CGST), State GST Act (SGST), Integrated GST Act (IGST).
- Four Business Processes on GST viz, Registration, Payment, Refund and Return released by Empowered Committee.
- Government open to consider withdrawal of proposed additional tax under GST
- Empowered Committee on GST to meet in July to finalize GST rates (Revenue Neutral Rate)

GST IN NEWS

- Constitutional Amendment Bill enabling GST likely to be passed by Rajya Sabha in forthcoming monsoon session of Parliament.
- All major political parties except Congress in favour of present proposed GST structure.
- All states including West Bengal except Tamil Nadu support the present GST.
- The issue of dual control of tax structure between the Centre and the States to be discussed in July meeting of Empowered Committee.
- GST may be levied on e-commerce transactions and free articles (e.g. buy one get one)

SALIENT FEATURES OF GST MODEL LAW

The “Model GST Law” has been released by Empowered Committee of State Finance Members on GST on June 14, 2016. The model law outlines the structure of the GST regime. The draft of “Integrated GST Bill, 2016” and “GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016” is also released along with it. The document provides the framework for levy and collection of CGST and SGST. Model law comprises of following two laws –

- Goods and Service Tax Act, 2016
- Integrated Goods and Service Tax Act, 2016

According to the model law released, GST rates will be specified in the Schedule to the Act. Online or e commerce transaction would also be under the GST ambit.

The Model GST law consists of:

- 162 + sections divided into 25 Chapters
- 4 schedules
- Rules relating to Valuation under GST
- Draft Integrated GST Act (IGST) consisting of 33 sections divided into 11 Chapters.

Key Features of the Model GST:

- Eligibility to Register
If the aggregate turnover of a dealer is over Rs. 9 lakh/annum, it is his/her duty to get registered under this law. The cap for dealers in the Northeast is Rs. 4 lakh.
- Taxable Person
The person registered under this law is only liable to pay tax if his aggregate turnover in a financial year is over Rs. 10 lakh. Such a cap for the Northeast is Rs. 5 lakh.

- Place of registration
The place of registration should be from where the goods or services are supplied. This helps with virtual marketplaces, mainly e-commerce.
- Taxable Event
Supply activities such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for consideration are all taxable events.
- Valuation Rules
Valuation Rules shall apply to the supply of goods and/or services under the IGST/CGST/SGST Bill
- Returns
Dealers shall be required to furnish monthly / annually / final returns as the case may be. These returns are for different periods / or frequencies / at intervals.
- Payment
Any tax, interest, penalty, fee, etc., shall be paid via internet banking or by using credit/debit cards or NEFT or RTGS. This amount shall be credited to the electronic cash ledger of dealer.
- Migration of existing taxpayers from GST
Every person already registered under the extant law will be issued a provisional certificate of registration. This certificate shall be valid for a period of six months, hence giving them enough time to make the changes in their model and furnish the required information, before the final certificate is provided.

GST: Some Interesting Facts

- GST is applicable in more than 140 countries
- First country to introduce GST was Canada in 1905
- Latest entrant to GST space is Malaysia in 2015
- Lowest GST rate in Aruba @ 1.5 %
- Highest GST rate in Hungary @ 27 %

SPECIAL ISSUES OF CHARTERED SECRETARY

It is proposed to bring out the special issues of Chartered Secretary on the following topics:

1. GST (August, 2016 issue)
2. LODR (September, 2016 issue)
3. Competition Law (November 2016 issue) and
4. Social Audit and CSR (December 2016 issue).

Members and others having expertise on the aforesaid subjects are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issues.

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



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 July 2016 highlighting **Replies to July 2016 Brain Teasers Column**.

Brain Teasers July 2016

Legal Jargons

Across

- method or logic of law
- brother judges
- civil wrong
- Stare Decisis

Down

- guidelines
- structured law
- legal pronouncement
- brother lawyers
- deliverance of law
- love of wisdom
- forbidden by law

CASE STUDY

1) Explorative case:-

Companies with personnel based in Britain might be in stormy waters post Brexit. London is a centre of choice to spread and control operations in mainland Europe. Typically because of familiarity of language cum similar business practices & laws.

EU law was overriding municipal laws on movement of people / movement of goods & services. Come Brexit in two years, will the changes affect Indian companies based in the UK. How will Indian companies and expatriates cope with this. If you had a crystal ball, what would you profess.

REPLY TO BRAIN TEASERS PUBLISHED IN MAY 2016 ISSUE OF CS

WINNER

FIRST PRIZE

Sangeeta Harpalani, FCS 6094

Solution to the Legal Puzzle

Across

1	P. Mukherjee	Thakur
2	V VGiri	Shah
3	V VGiri	Ray
4	S S Dayal	Ahmadi
5	S S Dayal	Verma
6	APJ Abdul Kalam	Babu

Down

1	R Prasad	Kania
2	S RadhaKrishnan	Sarkar
3	R Ventataram	Mishra
4	K.R. Narayan	Anand
5	P. Mukherjee	Lodha

Solution to the Case Study

Landlord A will succeed in reviving the original terms and conditions of the tenancy after the war. The facts given in the case are similar to the decided case of **Central London Property Trust Limited v High Trees House Limited 1947**.

Facts of the case

Central London Property Limited (CLP) leased a block of flats in London to High Trees House Limited (HTH). When due to beginning of the war conditions, the occupancy rates of the flats started getting reduced, the two parties agreed to reduce the rent to half. After the war was over after five years, the flats were back to full occupancy. CLP demanded full payment of rent. This was denied by HTH.

CLP won the case and it was held that the full rent was payable from the time the flats became fully occupied. The judgment given by Denning J was based on the previous case of **Hughes v Metropolitan Railway Co**. It was held that the promise to reduce the rent was a temporary arrangement while the block of flats were not fully occupied due to the conditions prevailing. But once the war ended the flats become fully occupied. The conditions prevailing when the reduction was made completely passed away. Hence CLP was entitled to get the complete rent as per the original promise. The reason stated for this decision was "A promise, intended to be binding, intended to be acted on and in fact acted on, is enforceable by law, even if there has not been consideration. It is binding in so far as its terms properly apply." But it was also held as an obiter statement that if CLP had tried to claim the full rent from the original period they would not be able to. This is based on Doctrine of Promissory Estoppel.

According to the Doctrine of Promissory Estoppel, when one party by its words or conduct made to the other a promise which was intended to affect the legal relations between them and to be acted on accordingly, then once the other party has taken his word and acted on it, the party who made the promise cannot be allowed to revert to the previous relationship as if no such promise has been made by him but must accept their legal relations subject to the qualification which he himself introduced even though it is not supported in point of law by any consideration.

Conditions under which such doctrine can be applied

- Some legal relationship exists between the parties
- A promise is made by one of the parties
- The second party relied on the promise made by the first party
- The party relying on the promise suffered some sort of detriment.
- The person making the promise is not prohibited from breaking the promise if under changed circumstances it would be unfair to him to continue with the promise.

Based on the above discussion, it can be held that after the end of the war, landlord A can revive the original terms and conditions but he cannot claim any arrears of rent during the war period as per the original agreement.

Other Prizes

None eligible.

CORPORATE DIRECTORS

Roles, Responsibilities, Powers and Duties of Directors by

Ashish Makhija



The Book Corporate Directors, with specific reference to the role, responsibilities, powers and duties of directors is useful not only for Practising Professionals like, Company Secretaries, Chartered Accountants, etc. but having potential source of information and knowledge for the directors in the company, Govt. officials and also as referencer to judicial authorities on the matters of complexity for deciding cases by or against the directors.

The Author Mr. Ashish Makhija, has written this book with valuable assemble, which is really challengeable contribution to the subject with his long professional background and the book has been divided into twenty six chapters with relevant heading for smooth reference and understanding of the need of the directors specifically Chapter Eight - Role and Responsibility of Directors;

Published by:

LexisNexis (A Division of Reed Elsevier India Pvt. Ltd.) 14th Floor, Building No. 10, Tower-B, DLF Cyber City, Phase-II, Gurgaon-122002, Haryana, India.

Pages : 1272

Price : ₹ 1295

Chapter Eleven - Liability of Directors; Chapter Seventeen - Relative, Related Party and Related Party Transactions, Chapter Twenty Two - Committee of Board and its Functions, etc.

However, the book basically focusses on the Companies Act and Listing requirements related issues. The Book also contains the great source of information by way of twenty five appendices for complete and easy reference for relevant matters of interest.

Directors are expected to take decision in the interest of the company and its stakeholders. They are seasoned administrators and capable managers, but sometimes they are not fully aware of their roles, responsibilities and duties in the frequent changes in the laws applicable to respective companies as well as on themselves also as a director. In view of that the Corporate Laws evolved specifically in the past three years now lay more emphasis on transparency, disclosure and risk management. The director's accountability has increased manifold and with the advent of the Companies Act, 2013, the liability of the director has gone up several notches. Moreover, the responsibility of the directors and independent directors has become part of the Companies Act and SEBI (LODR) Regulations, 2015, which have specifically defined the responsibility of directors and in case of the non-compliance of the applicable laws, they are accountable and liable for the consequences including huge amount of fine and even imprisonments apart from the concerned company. Therefore, it is imperative for directors to keep themselves abreast of their duties and expectations of the law makers, failure of which may result in liability and penalty. However, the Secretarial Standards for the Board and General Meetings made effective from 1st July, 2015 are very good steps for mandatory sharing of most desired information among the directors, like, detailed agenda items along with the draft resolutions, draft of the minutes of the meeting of the Board and Committees thereof, etc. which have been nicely elaborated in the Book.

The Companies Act, 2013, has introduced new concepts of independent directors, key managerial personnel, related parties, associate companies, small companies, corporate social responsibility and many more. There are substantial changes relating to effective management and administration of the companies. For listed public companies, compliance of the SEBI (LODR) Regulations is a very challenging task specifically; related party transactions; corporate governance report; and disclosure of price sensitive information. In Chapter Nineteen the author has beautifully compared the relevant provisions of the Companies Act, 2013 with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 effective from 1st December, 2015 which are applicable to Listed entities.

The author has also elaborated properly the difference in the requirements for the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 effective from 1st December, 2015 for the Independent directors with illustrations. Similarly for the related party transactions, for the listed entities, the SEBI (LODR) prevail over the Companies Act, 2013.

Different categories of directors such as non-executive, independent, nominee, women directors and executive directors have different role to play and also their responsibilities, accountability and liabilities are different. All the chapters in the Book have been composed for easy understanding of the Companies 2013 Act as well as SEBI (LODR) Regulations, 2015 and it will definitely help concerning directors to discharge their functions in the best spirit of law. The first chapter provides overview of the 2013 Act and separate chapters for each category of directors provide complete insight on the subject. A greater emphasis has been laid on the roles and responsibilities of directors covering the entire gamut of expectations.

The book also advices directors to build a 'Safety Net' around them, therefore the readers will find this chapter useful in their practical life while discharging their role as a director. For the directors who do not have finance background, the book includes a chapter on reading and understanding of Financial Statements. I am certain that careful reading of the book by any director will put them in good stead and he will be in a position to act with sheer confidence while ensuring his safety.

While complete lack of knowledge of corporate laws provisions is dangerous; little knowledge of legal provisions is equally harmful. Comprehending law could be hard but governance demands that directors must act with knowledge and understanding of legal provisions. Keeping this in view, the book has been designed to serve for all categories of directors providing them knowledge of the legal provisions in an easy and understandable manner.

Directors must understand that their responsibilities are not limited to only Company Law and SEBI Regulations, but travel beyond that to other Corporate and Tax Laws, like Income Tax Act, 1961, Negotiable Instruments Act, 1881 etc. which are having great impact on the status of the directors, specifically, that the ignorance of law is no excuse.

The book will also serve for compliance managers, company secretaries, researchers and even for the students and is considered very useful for the directors of corporate to serve the Board having full knowledge while discharging their duties in efficient manner specifically in view of the strict provisions for the Managing and Whole-time Directors being the Key Managerial Personnel and the Independent Directors, on which onerous responsibility is cast under various provisions of the Companies Act, 2013 as well as SEBI (LODR) Regulations, 2015, being the member and chairman of various important committees like Audit Committee, Nomination and Remuneration Committee, Corporate Social Responsibility Committee, etc..

Mr. Makhija must be complimented for introducing the book on Corporate Directors.

CS (Dr.) D.K.Jain
Practising Company Secretary and
Member, Editorial Advisory Board



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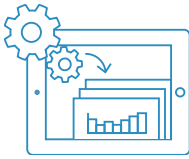


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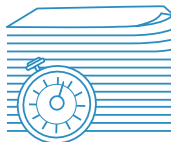
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