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New Labour Reforms and Role of CS

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)
www.icsi.edu

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सत्यं वद। धर्मं चर।
"speak the truth abide by the law"

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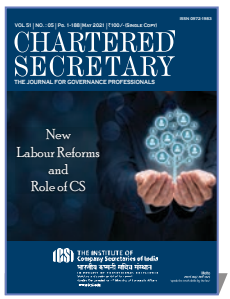

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ॐ द्यौः शान्तिरन्तरिक्षँ शान्तिः,
पृथ्वी शान्तिरापः शान्तिरोषधयः शान्तिः ।
वनस्पतयः शान्तिर्विश्वे देवाः शान्तिर्ब्रह्म शान्तिः,
सर्वं शान्तिः, शान्तिरेव शान्तिः, सा मा शान्तिरेधि ।।
ॐ शान्तिः शान्तिः शान्तिः ।।

May harmony transmit there in the entire sky just as in the tremendous ethereal space all over the place.
May harmony rule all over this world, in water and in all herbs, trees and creepers
May harmony stream over the entire universe.

May harmony be in the Supreme Being Brahman.

Also, may there consistently exist in all harmony and harmony alone.
Harmony, harmony, and harmony to us and all creatures!

Dear Professional Colleagues,

Let me at the very outset, begin by extending my sincere support towards all those members who have been impacted by this second wave of the pandemic. Your Institute is undertaking all measures possible to ease this journey of ours and face the challenges posed with combined strength. I would also take this moment to extend our deepest condolences to the families of the departed souls across the nation. The Institute has lost some of its most cherished members, past employees and many have had to bear the hardship of losing their loved ones. It is with heavy heart and great sadness that we at ICSI share the loss of CS H. M. Choraria, Past President and CS P. K. Mittal, Past Central Council Member, ICSI along with various other deceased members and pray for the Well-being of their families.

SUPPORTIVE MEASURES: STANDING TOGETHER IN TIMES OF CRISIS

With the above shloka and placing immense faith in the Lord Almighty, I hope and believe that we shall come out of this pandemic with strong force and grit. Further, understanding the need to undertake concrete measures while extending our solidarity with the entire ICSI Family, the Central Council has taken several measures:

- *Creation of a Special COVID- 19 Assistance Corpus of Rupees Ten Crores:* While the grief of the family members of the deceased is impossible to be compensated, realizing and understanding the financial crisis facing such families, the Institute has created a Special COVID- 19 Assistance Corpus of Rupees Ten Crore for members of the Institute who are Non CSBF Members and CSBF Members who are 60 years and above, who do not have insurance coverage of more than Rs.10,00,000/- (Rupees Ten Lakhs), by granting one time financial assistance to their legal heir of deceased Member(s) who have lost their life, between 1st April, 2020 to 31st March, 2022, due to Covid-19.
- *ICSI CARES:* In an attempt to expand the outreach of essential information as well as medical support and help to those in need, the ICSI in a unique initiative has not only developed a dedicated Plasma Bank Portal alongside its existing Blood bank Portal but has also launched a dedicated webpage collating information pertaining to the initiatives being undertaken at Chapter as well as Regional Level apart from creating a synergistic outreach between the members of fraternity who may be able to offer help of any sort to those in need so as to overcome the pandemic with our combined strength, patience and grit.
- *Increase in medical reimbursement limit from CSBF due to Covid-19 pandemic:* The managing committee of CSBF has decided to enhance the limits of medical reimbursement to curb the burden of medical expense for treatment of COVID-19 upto Rs. 1,50,000/- for reimbursement of medical expenses incurred by member for self or dependent family members and upto Rs. 1,00,000 for CS member (self only) who is not members of CSBF for meeting the expenses

born towards treatment of COVID exclusively. Members who have not yet become the member of CSBF are requested to become a life member by remitting a one-time subscription of Rs. 10,000/- through Institute's portal

- *UDIN and eCSin Amnesty Schemes, 2021:* Due to the widespread of COVID-19 pandemic and the lockdowns imposed, there have been genuine cases where default has happened in the creation and generation of UDIN and eCSin and the defaulting members are willing to rectify the default and disclose the details. The UDIN Amnesty Scheme-2021 and eCSin Amnesty Scheme-2021 have been put in place to provide ample opportunity for rectification of the same.

- *Waiver for credit hours requirements for 2020-21:* Continuous Professional Education (CPE) is important for further capacity building and constant upskilling of the members by keeping them abreast with latest developments in profession, widening their knowledge base and improving their skills to maintain the cutting edge by providing training and expertise in critical areas of professional interest. It is with this thought and intent that the ICSI (Continuous Professional Education) Guidelines, 2019 had been rendered effective from 1st April 2020. Considering the difficulties posed by the pandemic and in order to facilitate the members in fulfilling the mandatory requirement of CPE Credits for the year commencing 1st April, 2020 to 31st March, 2021, the Council of the Institute had initially extended the last date for obtaining the mandatory CPE credits by the members till June 30, 2021. Later on, further clarification had been issued regarding awarding of the Structured CPE Credits to members for attending the programmes organized by HQs, ROs, Chapters, CCGRT and CoE through electronic mode during May 1, 2021 till June 30, 2021.

- However, in view of the ongoing circumstances and situations, the Central Council at its Special Meeting has decided to grant complete waiver of the shortfall in the CPE Credit Hours (both structured & unstructured) for the Financial Year 2020-21.

- *Efforts for extension of the last date for payment of Annual Membership Fee:* In view of the professional difficulties arising across the members' base and holding a lenient view, the Council, subject to the approval of the Ministry of Corporate Affairs, has decided to provide extension in the last date for payment of Annual Membership Fee, Certificate of Practice and Licentiate fee in the FY 2021-22 from 30th June, 2021 to 30th September, 2021.

KNOWLEDGE UPGRADATION: A NEVER ENDING JOURNEY TOWARDS EXCELLENCE

विद्या नम नरस्य रूपामधिकम प्रच्छन्न गुप्तं धनं
विद्या भोगकरी यश: सुखकारी विद्या गुरूणाम गुरु:।
विद्या बन्धुजनो विदेशगमने विद्य परं दैवतं
विद्या रजसु पूज्यते नहि धनं विद्या विहीन: पशु:।।

(Knowledge is human's extra beauty. It's a hidden treasure. Through knowledge, one can enjoy different happiness. It brings success and also the guru of guru. During foreign visit, knowledge is our kin. Only knowledge is worshiped and not wealth. One who doesn't possess this knowledge is truly an animal.)

While the lockdowns might have altered the conventional learning pedagogies but it is our combined strengthened approach that the alteration has been imbibed with grace in our learning processes. From PMQ Courses on Internal Audit, Corporate Governance and Arbitration to dedicated Crash Course to create a better understanding of the Practical Aspects of ICSI Standards; the registrations have also been commenced for various other existing Certificate Courses and Crash Courses.

It is indeed a matter of great pride and honour that two Webinars were conducted jointly with CSIA on the themes 21st Century Company Secretary: Facilitating innovation in Board Governance and Climate Change and The Corporate Secretary: Influencer or Implementer. The deliberations and discussions during these events were indeed scintillating and exhilarating.

As far as knowledge enhancement is concerned, the role of publications cannot be surpassed. In view of the growing needs of professionals, two subject oriented FAQs have been rolled out in the form of publications on SEBI (PIT) Regulations, 2015 and Corporate Social Responsibility. We thoroughly believe that both these publications shall support and better clarity to the members and other professionals in their endeavours undertaken in this arena.

INITIATIVES FOR STUDENTS: HANDHOLDING THE FUTURE

Fredrich Nietzsche said and I quote, "The future influences the present just as much as the past." For an institution which considers its students to be the future torch bearers of good governance not just in India Inc. but the entire nation, it is of extreme significance that due care is given to accord this brigade both Well-being in times of distress along with avenues of learning and growth as well.

In view of all these and more, temporary relaxation, subject to MCA approval, shall be provided to the Students who have qualified CS Executive Entrance Test (CSEET) and are scheduled to appear in the 12th Examinations in 2021 conducted by the Central and State Boards, to seek provisional registration to the Executive Programme subject to submission of proof of passing the 10+2 examinations within six months from the date of such provisional registration to the Executive Programme; temporary relaxation has also been provided in the Training Guidelines for conducting all types of training program through online mode till 30th September 2021. The Institute, with a view to protect the interests of the Students, their well-being and safety in view of Covid-19 Pandemic situation, has further decided that the Examinations for Foundation, Executive and Professional programme for June-2021 session stand postponed.

To keep the learning journey intact even in the backdrop of challenging circumstances, the Institute of Company Secretaries of India has created a unique platform in the form of Bi-weekly Interactive Video sessions to deliberate upon crucial aspects of modules and subjects and clarify academic queries of students in a streamline manner by Academic Officers and Expert Faculties.

To quote Martin Luther King, "We must accept finite disappointment, but we must never lose infinite hope". The times are trying, the disappointments aplenty… we have lost friends, we have lost either ones in our family or those we considered as close as family, the most basic necessities have become luxuries and luxuries well have been redefined. Yet, with each passing day, something which is expected from all of us as human beings first and professionals later is to hang on to every single ray of hope and to find silver linings no matter howsoever dark the clouds maybe… For it is this hope that shall lead us out and it is now more than ever the need to say these words arises that,

"Together we can. Together we will."

Stay safe. Stay healthy.

With warm regards,

Yours Sincerely

CS Nagendra D. Rao
President, ICSI

INITIATIVES UNDERTAKEN DURING THE MONTH OF APRIL, 2021

INITIATIVES FOR MEMBERS

ICSI UDIN AMNESTY SCHEME, 2021

The Institute considering the challenges being faced due to global pandemic COVID-19 and taking into account the genuine cases where default has happened and the defaulting PCS are willing to rectify the default and disclose the details and hence a UDIN Amnesty Scheme be released wherein a PCS may:

- Generate UDINs missed earlier,
- Modify UDIN details recorded at the time of generation,
- Complete online process through STP Mode
- Revoke the UDINs not used,

while having immunity from disciplinary proceeding and without fees.

The window shall be kept open from 20th April, 2021 upto 15th May, 2021.

ICSI eCSIN AMNESTY SCHEME, 2021

Due to the widespread of COVID-19 pandemic and the lockdowns imposed, there have been genuine cases where default has happened and the defaulting members are willing to rectify the default and disclose the details. In view of the same, the eCSin Amnesty Scheme-2021 has been put in place wherein members may:

- Generate the eCSin, if not yet generated;
- Rectify the eCSin details recorded at the time of generation for appointment;
- Update information in the eCSin generated ;
- Revoke eCSin if employment already ceased;

The Institute has launched eCSin Amnesty Scheme - 2021 for resolving the various issues being faced by the members and to provide comfort to them in eCSin generation, rectification and revocation. The Scheme has been made effective from April 20, 2021 to May 15, 2021.

The members applying under ICSI eCSin Amnesty Scheme, 2021 shall be granted immunity from the applicability of the provisions of the eCSin Guidelines in respect of the eCSin for which request under this Amnesty Scheme has been made and disciplinary proceedings shall not be initiated or entertained in this respect.

FORMATION AND RECOGNITION ACCORDED TO STUDY CIRCLES

ICSI has been creating knowledge upgradation avenues by promoting the formation of Study Circles as well as giving recognitions to new Study Circles being created by various corporate groups. In the month gone by, a new Study Circle was formed namely 'Howrah Study Circle' and recognition was granted to a Corporate Study Circle, i.e., 'Bandhan Study Circle' under EIRC for the year 2021-22. These Study Circles shall open new doors of professional discussion and deliberation.

GUIDANCE AND ADVISORIES

The Institute has issued Guidance to members in practice for smoothly carrying out professional assignments on the basis of electronic records and by affixing Digital Signatures. Advisory has also been issued to members for issuing Secretarial Audit Reports. Further, the Institute has issued the amended ICSI (CPE) Guidelines, 2019 and the FAQs on the same have also been revised in line with the amended Guidelines in view of the various queries received from the members including the members residing overseas.

REPRESENTATIONS SUBMITTED

During the month, suggestions on the following were submitted to various Regulatory Authorities:

- Request for extension in timelines due to COVID-19 submitted to Ministry of Corporate Affairs on April 15, 2021.
- Request for extension in timelines due to COVID-19 submitted to SEBI on April 16, 2021.
- Request for extension in timelines due to COVID-19 submitted to Ministry of Corporate Affairs on April 28, 2021.
- Request for extension of timelines for depositing unspent amount of ongoing CSR project in separate bank account under section 135 of the Companies Act, 2013 due to second wave of COVID-19 submitted to Ministry of Corporate Affairs on April 28, 2021.
- Request for extension in timelines due to COVID-19 submitted to SEBI on April 22, 2021.
- Comments on SEBI Consultation Paper on Review of Regulatory provisions related to independent Directors.

MANDATORY CPE CREDITS FOR THE YEAR 2020-21

Continuous Professional Education (CPE) is important for further capacity building and constant upskilling of the members by keeping them abreast with latest developments in profession, widening their knowledge base and improving their skills to maintain the cutting edge by providing training and expertise in critical areas of professional interest.

Accordingly, the Council of the Institute issued the ICSI (Continuous Professional Education) Guidelines, 2019 which came into effect from 1st April 2020. Under the present Guidelines, every member is required to obtain the CPE Credits as under:

Member's age	CPE Credits in a year (1st April – 31st March)	
	Employment	Practice
Below 60 years	20	20
Above 60 years(If member is in gainful employment/ holding CoP)	10	10

The maximum number of CPE Credits that may be obtained by a member through web-based learning activities such as webinars is capped at 8 in a year with the overall limit of 12 CPE Credits under unstructured category.

No set-off of excess CPE Credits obtained under unstructured category is permitted against the CPE Credits to be obtained under structured category. Neither is any carry forward of the excess CPE Credits allowed under the Guidelines. The said Guidelines are available at https://www.icsi.edu/media/webmodules/CPE-Gls.pdf

Considering the difficulties posed by the pandemic and in order to facilitate the members in fulfilling the mandatory requirement of CPE Credits for the year commencing 1st April, 2020 to 31st March, 2021, the Council of the Institute has extended the last date for obtaining the mandatory CPE credits by the members till **June 30, 2021**. The Institute has further issued clarification regarding awarding of the Structured CPE Credits to members for attending the programmes organized by HQs, ROs, Chapters, CCGRT and CoE through electronic mode during May 1, 2021 till June 30, 2021.

In view of the ongoing circumstances and situations, the Central Council at its 276th (Special) Meeting held on 5th May, 2021 has decided to grant complete waiver of the shortfall in the CPE Credit Hours (both structured & unstructured) for the Financial Year 2020-21.

WEBINARS CONDUCTED

During the month, the following Webinars were conducted with the intent of knowledge enhancement and upgradation of our members:

- Webinar on "Procedural Issues in GST - GST ITC, GSTR 2A/2B, HSN/SAC CODE, E-INVOICING, QRMP, etc." with PHD Chamber of Commerce and Industry held on 22nd April, 2021.
- International Webinar on 21st Century Company Secretary: Facilitating innovation in Board Governance jointly with CSIA held on 29th April, 2021.

PUBLICATIONS RELEASED

- *Compendium of Circulars under the Companies Act, 2013 (2013 to 2021)*

The Companies Act, 2013 has undergone a host of developments since its enactment and enforcement by way of Amendment Acts and Notifications, Orders and Circulars; each of which has played a significant role in further bringing about ease of doing business while strengthening the governance framework. In view of the same, the ICSI has collated all the General Circulars rolled out till date by MCA and brought out a dedicated publication under the aegis of Compendium of Circulars under the Companies Act, 2013. The aim of the same is to provide a handy ready reckoner to the professionals by segregating the Circulars on a Chapter-wise basis. The publication was released on Friday, 16th April, 2021.

- *FAQs on Corporate Social Responsibility*

The MCA on 22nd January, 2021 notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.The said amendments have introduced significant changes in carrying out the CSR activities by India Inc. With a view to guide the members a webinar on "New dimensions: Corporate Social Responsibility" was conducted by ICSI. Considering the queries received during the webinar, these FAQs have been framed to aid the stakeholders in understanding the new concepts and substantial changes introduced in CSR. The publication was released at the International Webinar on Facilitating innovation in Board Governance jointly with CSIA held on 29th April, 2021.

ORIENTATION SESSION OF CERTIFICATE COURSES

Orientation Session of Certificate Courses was held on 16th April, 2021 in order to make all the candidates registered across 10 certificate courses familiar with the course structure, e-Learning portal of the ICSI etc. More than 1750 candidates have registered in various courses launched by the ICSI in pertinent subjects such as Securities Laws, Corporate Restructuring, Corporates Social Responsibility, IBC, Intellectual Property Rights, FEMA, Independent Director, Commercial Contract Management, POSH. The Orientation Session was graced by Chief Guest CS V Sreedharan, Past Central Council Member, ICSI; President, ICSI; Vice-President, ICSI, CS Manish Gupta, Chairman PMQ Course Committee & Council Member, ICSI and CS Deepak Kumar Khaitan, Member PMQ Course Committee & Council Member, ICSI.

CRASH COURSES LAUNCHED

ICSI continuously endeavors to ensure that its members' knowledge stay up to date with changing times. The pace of change is probably faster than it's ever been and this is a feature of the new normal that we live and work in. Keeping this motive, the ICSI has come up with two Crash Courses, one on **Labour Laws** and second on **ICSI Auditing & Secretarial Standards** to make its members aware and updated on the nuances of the subjects and more than 300 Candidates have registered themselves in these two Crash Courses.

ICSI SOCIAL CONNECT

In these critical times with surge in COVID pandemic, several humanitarian initiatives were taken. Members were sensitised about registering themselves on ICSI Social Connect portal for ***plasma donation***.

Members were urged to inform how they may be of help to others in need for arranging hospital treatment, oxygen, medicines, vaccine, medical equipment, food, COVID/ medical insurance, isolation centres, plasma, etc. Information shared by the members have been hosted on Institute's website as ICSI COVID Heroes.

Members were sensitised about the benefits of becoming a life member of **CSBF** where COVID related medical expenses are also reimbursable in addition to other benefits.

REVISED LIMITS OF CSBF

The managing committee of CSBF in its 114th (Special) Meeting decided the following scheme to curb the burden of medical expense for treatment of COVID-19:

- *Upto Rs. 1,50,000/- for reimbursement of medical expenses incurred by member for self or dependent family members (in deserving cases*) for meeting the expenses born towards treatment of Covid exclusively.*
- *Reimbursement of medical expenses upto Rs. 1,00,000 (in deserving cases*) for CS member (self only) who is not members of CSBF for meeting the expenses born towards treatment of COVID exclusively.*

** Deserving case limits annual income to Rs.7,50,000/- in the last financial year.*

Members who have not yet become the member of CSBF are requested to become a life member by remitting a one-time subscription of Rs. 10,000/- through Institute's portal (http://www.icsi.edu) with 'Form-A' duly filled in and signed available at the link: https://www.icsi.edu/csbf/home. Contribution to the CSBF can be made through http://www.icsi.in/ICSIDonation/ as contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961.

ICSI ACADEMIC COLLABORATIONS WITH UNIVERSITIES AND ACADEMIC INSTITUTIONS

ICSI "Academic Collaborations with Universities and Academic Institutions" initiative is aimed to establish a connect between ICSI and various Universities and institutions of national repute, through a memorandum of understanding (MoU) covering a number of schemes under one umbrella towards learning and development of students, academicians and professionals.

During the month of April, 2021 MoUs were signed to facilitate a comprehensive partnership in joint academic research, joint workshops, professional development & faculty development programmes under the ICSI Academic Collaboration Initiative with the following:

- *KIIT (Deemed) University, Bhubaneswar*
- *Jawahar Lal Nehru Government College, Faridabad*
- *Chanakya National Law University, Patna*

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

- **Workshops organized**
  - One Week Online Capacity Development Workshop on Insolvency Laws (with specific focus on Insolvency and Bankruptcy Code, 2016) jointly with NLU, Mumbai, ICSI and IBBI from 5th April, 2021 to 11th April, 2021.
  - Workshop on 'Role of professionals & committee of creditors during CIRP & Liquidation' on 17th April, 2021.
  - Workshop on 'Pre Pack Paradigm in India' on 24th April, 2021
- **IBC Executive Certificate Course jointly with ICSI**

On 21st April, 2021, IBC Executive Certificate Course was launched jointly with ICSI. It will be a course spanning over 4 months with once a week class from imminent IBC experts.

- **LIT UP (Limited Insolvency Examination Training)**

Pursuant to Regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, an individual is eligible for registration as an Insolvency Professional only after passing Limited Insolvency Examination conducted by IBBI.

ICSI IIP organized three days intensive training program for preparation of Limited Insolvency Examination from 9th April, 2021 to 11th April, 2021.

INITIATIVES FOR STUDENTS

BI-WEEKLY PHONE IN / VIDEO INTERACTIVE SESSIONS FOR STUDENTS OF ICSI

The Institute of Company Secretaries of India has created a unique platform to deliberate upon crucial aspects of modules and subjects and clarify academic queries of students in a streamline manner by Academic Officers and Expert Faculties. The details of the sessions conducted during the month of April, 2021 are as under:

Session	Date	Subject
1st	6th April, 2021	Company Law
2nd	8th April, 2021	Tax Laws
3rd	13th April, 2021	Governance, Risk Management, Compliances and Ethics
4th	16th April, 2021	Financial and Strategic Management
5th	20th April, 2021	Setting up of Business Entities and Closure
6th	22nd April, 2021	Drafting, Pleading and Appearances
7th	27th April, 2021	Corporate Funding and Listing in Stock Exchanges
8th	30th April, 2021	Insurance Laws and Practice

PRELIMINARY EXAM ENROLLMENT STATUS FOR JUNE 2021 EXAM

Students who are appearing in June 2021 exam can check their preliminary exam enrollment status for June 2021 exam at the following link. https://smash.icsi.edu/Scripts/Enrollment/Admin/PreliminaryEnrStatus.aspx

COMPANY SECRETARY EXECUTIVE ENTRANCE TEST (CSEET)

To test the aptitude of the candidates required for the profession of Company Secretaries, Company Secretary Executive Entrance Test (CSEET) has been introduced as the qualifying test for registration to Executive Programme through the Company Secretaries (Amendment) Regulations, 2020. Various initiatives were taken for the CSEET students:

- *CSEET to be conducted on 8th May, 2021 through remote proctored mode*

On account of COVID-19 Pandemic precautions, the Institute has decided to conduct the next CSEET on Saturday, the 8th May 2021 through Remote Proctored mode instead of conducting the same from Test Centers. Candidates are allowed to appear for the test through their own laptop/ desktop

from home/ such other convenient place. Candidates shall not be allowed to appear through smart phone (mobile)/ tablet etc. In view of the Remote Proctored mode, the Viva Voce portion stands removed for the CSEET to be held on 8th May 2021.

- *Admit card for CSEET being held on 8th May 2021*

Candidates appearing in the Company Secretary Executive Entrance Test (CSEET) which is scheduled to be held on Saturday, 8th May, 2021 can download their Admit Card alongwith instructions to the candidates by visiting the link: https://tinyurl.com/yjhmd98k which will be available for download from 14:00 Hours on 29th April , 2021 onwards by entering their CSEET Registration Number (i.e. Unique Id) and Date of Birth.

- *CSEET(July session) will be held on 10th July, 2021*

July 2021 Session of CSEET will be held on 10th July, 2021 through remote proctored mode. Students can register upto 15th June, 2021 for CSEET which is the next cut-off date of CSEET registration. Registration can be done at https://smash.icsi.in/Scripts/CSEET/Instructions_CSEET.aspx

- *Commencement of online CSEET classes*

Most of the Regional/Chapter Offices have commenced classes for the students appearing in CSEET to be held in July 2021. Interested students can click at the link to contact Regional/Chapter offices: https://www.icsi.edu/media/webmodules/websiteClassroom.pdf

COMMENCEMENT OF CRASH COURSE/ REVISION CLASSES

Regional/Chapter Offices of the Institute are conducting Crash Course/Revision Classes for the students of Foundation/Executive/Professional Programme appearing in June 2021 exam. Interested students can contact the nearest Region/Chapter to join the classes. Details of Regional/ Chapter offices are available at https://www.icsi.edu/media/webmodules/websiteClassroom.pdf

ONLINE DOUBT CLEARING CLASSES

Online doubt clearing classes are being conducted for the students appearing in June 2021 exam for all stages, all subjects and students of both new and old syllabus. The online classes are being conducted in particular for the students appearing in June 2021 examination; however other students of the Institute can also join the classes. The classes are being taken by renowned and distinguished faculties with enriched teaching experience. The students can submit their queries through Google link which will be sent to them after registration. They can also interact live with the faculties through the chat box during the classes. Students are required to register at the following link to attend the classes https://tinyurl.com/uz7j7jf

VIDEO BYTES OF ICSI RANK HOLDERS OF DECEMBER 2020 EXAMINATIONS

Video bytes of ICSI Rank Holders of December 2020 Examinations who have undergone classes at ICSI Class Room Teaching Centres at Regional/Chapter Offices are inspiration to all other fellow students who aspire to be at top managerial positions. To watch the video bytes, click on the link https://www.icsi.edu/media/webmodules/Dec_2020_rank_holder.pdf

STUDENT COMPANY SECRETARY, CS FOUNDATION E-BULLETIN AND CSEET E-BULLETIN

The Student Company Secretary e-journal for Executive/ Professional programme students of ICSI, CS Foundation course e-journal for Foundation programme students of ICSI and CSEET e-bulletin covering the latest update on the subject on the CSEET have been released for the month of **April**, **2021**. The journals are available on the Academic corner of the Institute's website at the link: https://www.icsi.edu/e-journals/

RECORDING OF VIDEO LECTURES

ICSI is recording video lectures of eminent faculties for the students of ICSI which help them to prepare for the examination. Students of the Institute can access recorded videos available on the E-learning platform by logging in to https://elearning.icsi.in

Login credentials are sent to all registered students at email. After successful login, go to "My courses" or "My Communities" section, where you will find the recorded videos and other contents.

TEMPORARY RELAXATION FOR COMPLYING WITH PRE-EXAM TEST & ONE DAY ORIENTATION PROGRAMME- JUNE, 2021 SESSION

The Institute has given temporary relaxation to the students to comply with Pre-Exam Test & One day Orientation Programme to enable them to enroll for June, 2021 Session by 25th March, 2021 (without late fees) and 9th April, 2021 (with late fees) without checking the status of compliance with the aforesaid requirements. Such relaxation is being allowed subject to the condition that the students shall comply with the requirement of Pre-Exam Test & One day Orientation Programme by 16:00 Hours, 31st July, 2021.

IMPORTANT LINKS FOR STUDENTS

To facilitate and update the students, a list of important links at the website of the Institute has been compiled. Students can go through the links given below to get all important details:

- For Student Services related updates: https://www.icsi.edu/media/webmodules/Student_Services_links.pdf
- For Academic updates: https://www.icsi.edu/media/webmodules/Academic_links.pdf
- For Training related updates: https://www.icsi.edu/media/webmodules/Training_Links.pdf

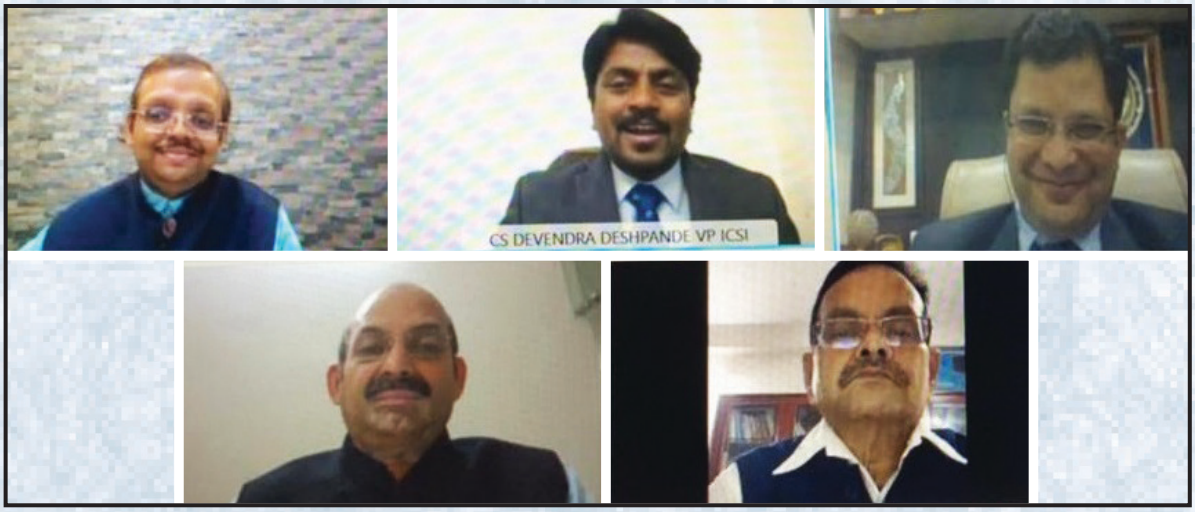
OTHER INITIATIVES

- *Info Capsule- A Daily update* for members and students, covering latest amendment on various laws for the benefits of our members and students available at https://www.icsi.edu/infocapsule/
- *Case Digest Series 7* have been uploaded at: https://www.icsi.edu/student/sample-case-studies/
- *CSEET Mock Test-6 can be accessed at:* https://www.icsi.edu/media/webmodules/CSEET/ICSI_MOCKTEST6.pdf

Glimpses of ICSI Webinars

WEBINAR ON

ORIENTATION PROGRAMME FOR CERTIFICATE COURSES HELD ON 16TH APRIL, 2021



WEBINAR ON

INAUGURAL SESSION OF FIRST ALUMINI MEET FOR NEWLY INDUCTED MEMBERS (EASTERN REGION) HOSTED BY EIRC OF ICSI HELD ON 24TH APRIL, 2021

Glimpses of ICSI Webinars

WEBINAR ON

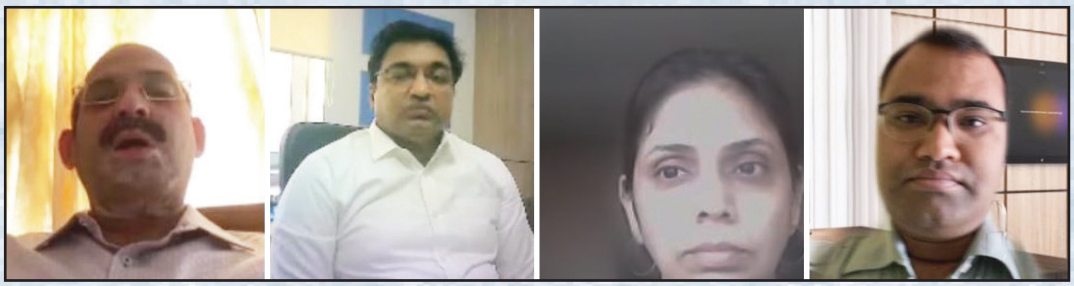
FIRST PANEL DISCUSSION ON "CHALLENGES FOR CS IN EMPLOYMENT AND THEIR EMERGING ROLE IN CORPORATE SECTOR" HOSTED BY EIRC OF ICSI HELD ON 24TH APRIL, 2021

WEBINAR ON

SECOND PANEL DISCUSSION ON "CHALLENGES FOR CS IN PRACTICE AND ROADMAP TO ESTABLISH, MANAGE AND GROW THE PRACTICE" HOSTED BY EIRC OF ICSI HELD ON 24TH APRIL, 2021

WEBINAR ON

ONLINE IBC WORKSHOP CONDUCTED BY MNLU, MUMBAI IN COORDINATION WITH ICSI, ICSI-IIP & ICSI-WIRC ON 5TH APRIL, 2021



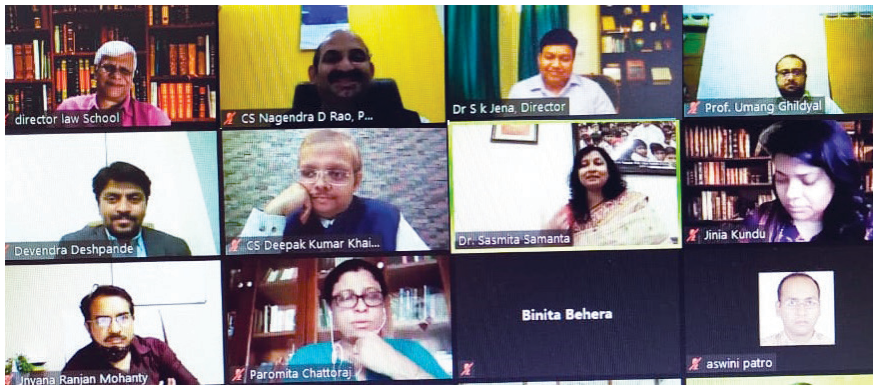
Glimpses of ICSI Webinars

WEBINAR ON

21ST CENTURY COMPANY SECRETARY: FACILITATING INNOVATION IN BOARD GOVERNANCE HELD ON 29TH APRIL, 2021

ICSI Academic Connect

MOU WITH KIIT DEEMED UNIVERSITY, BHUBANESWAR



MOU WITH PT. JAWAHAR LAL NEHRU GOVERNMENT COLLEGE, FARIDABAD

MOU WITH CHANAKYA NATIONAL LAW UNIVERSITY, PATNA

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(Under the jurisdiction of Ministry of Corporate Affairs)

Report of ICSI Samadhan Diwas held on Thursday, 15th April 2021

The Samadhan Diwas is an initiative by the ICSI towards on the spot solution of the grievances of the trainees and trainers.

The ICSI has successfully organized Third Samadhan Diwas on Thursday, 15th April 2021.

Glimpses of the ICSI Samadhan Diwas

Total 43 student attended and the Institute resolve all the issues on the spot. The Director (Training & Placement), ICSI along with other officials of the Directorate of Training had interacted, listened to the pending issues / grievances of the students and resolved the same , the students were having queries in the following areas:

1. Issues relating to Switchover from Old training to New Training Structure
2. Pending registration in Classroom EDP, e-EDP, e-MSOP
3. Instant issue of sponsorship letters for Practical Training
4. Exemption related matters in Practical Training
5. Resolving the issues of Training Completion Certificate

The students appreciated the efforts of the institute for creating a platform for direct interaction to solve their matter on the spot and requested to continue the same for the benefit of the stakeholders.

Team ICSI

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ICSI/Trg/2021 24th April, 2021

Circular No. Trg/10/2021

Temporary Relaxation in the Training Guidelines for conducting all types of training programme through online mode instead of physical batches (classroom mode) due to persistent rise of COVID 19 cases in India.

Due to recent surge of Covid 19 cases in India, many states have imposed night curfew and also imposed partial/ complete lock down in many cities where the number of covid cases are more. Many State Governments have imposed restrictions in organising social, cultural, political, academic, sports, and religious gatherings. The schools, colleges, training centres, coaching institutions have been directed to be closed by the respective State Governments to a certain period of time.

In view of the above, all the physical batches of training programmes which are being organised by ICSI Regional Offices, CCGRT, CoE, and various chapters are hereby suspended with immediate effect. However, the students could avail the following "online" training facilities till 30th September 2021.

a. The students can attend 15 days classroom mode Executive Development Programme (EDP) under the new Training Structure, 15 days Academic Development Programme (ADP) under the Modified Training Structure, 8 days EDP & 24 hours Professional Development Programme (PDP) under the Earlier Training Structure, being organized On-line by Regional offices, CCGRT, CoEs and all eligible chapters of ICSI.

b. All the newly registered Executive Students are required to undergo One Day Orientation Programme (ODOP) being organized by the Regional offices and Chapters. The students can either complete it Online on ICSI e learning portal or can attend the On-line ODOP being organized by Regional offices, and all eligible chapters of ICSI through virtual mode.

c. The students under the earlier and modified training structure who have completed their practical training and other applicable training can undergo e MSOP organized by the Institute on its e learning portal. The eligible students can register through https://www.icsi.edu/student/e-msop

d. Further, the students can also enrol for online MSOP being organized by the Regional offices of ICSI through virtual mode.

e. The relaxation in the eligibility criteria for applying e MSOP, i.e- 'temporary removal of requirement of two years' time bar between passing Professional Programme Examination and e-MSOP registration' , is further relaxed upto 30th September 2021. Hence, all the eligible students under earlier and modified training structure irrespective of their date of passing could register in e MSOP subject to fulfilment of other conditions.

f. The candidates who have got exemption in Practical Training after 3rd February 2021 are required to complete Corporate Leadership Development Program (CLDP) on residential mode not less than one month. However, such candidates are given relaxation to attend the CLDP online through webinar mode to be organized by CCGRT/CoE as a temporary relaxation in the CLDP Guidelines.

The attendance during online/ virtual training programme is mandatory for the registered students in all the sessions for getting the Completion Certificate. The students can visit the ICSI stimulate portal from time to time in order to know the schedule of training program.

(CS Asish Mohan)
Secretary, ICSI

Copy to :

1. All Regional offices, CCGRT, CoE, Chapters with an advice to suspend all types of physical batches training programme with immediate effect and to switchover to online/Virtual mode training till 30th September 2021.
2. The President, ICSI, New Delhi
3. The Vice President, ICSI and Chairman, TEFC
4. The Chairman of the Regional Councils of ICSI
5. The Chairman of the Management Committee of the Chapters
6. The Director(Training),ICSI, New Delhi.

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Important Decisions in Light of COVID-19

ICSI/ID/04/2021 **08th May, 2021**

Important decisions taken by the Council of the ICSI at its 276th (Special) Meeting held on 5th May, 2021.

1. Complete waiver of the shortfall in the CPE Credit Hours (both structured & unstructured) for the Financial Year 2020-21, in view of COVID- 19 pandemic.

2. Creation of a Special Covid- 19 Assistance Corpus of Rs. 10,00,00,000/- (Rupees Ten Crores only) for members of the Institute who are Non CSBF Members/ CSBF Members who are 60 years and above, who do not have insurance coverage of more than Rs.10,00,000/- (Rupees Ten Lakhs), by granting one time financial assistance to their legal heir of deceased Member(s) who have lost their life, between 1st April, 2020 to 31st March, 2022, due to Covid-19. As per the guidelines to be issued by ICSI, the Financial Assistance will be as under:

Category of Members	Eligible Amount (in Rupees)
Non CSBF Members	Rs.5,00,000/- (Rupees Five Lakhs only).
CSBF Members who are 60 years and above	Rs.2,00,000/- (Rupees Two Lakhs only), in addition to benefits under CSBF.

3. Subject to approval from the Ministry of Corporate Affairs –

   a) Extension of the last date for payment of Annual Membership Fee, Certificate of Practice and Licentiate fee in the FY 2021-22 from 30th June, 2021 to 30th September, 2021.

   b) Temporary relaxation be provided to the Students who have qualified CS Executive Entrance Test (CSEET) and are scheduled to appear in the 12th Examinations in 2021 conducted by the Central and State Boards, to seek provisional registration to the Executive Programme subject to submission of proof of passing the 10+2 examinations within six months from the date of such provisional registration to the Executive Programme.

IMPORTANT EXAMINATION ANNOUNCEMENT

The Institute, with a view to protect the interests of the candidates, their well-being and safety in view of Covid-19 Pandemic situation, has decided that the Examinations for Foundation Programme, Executive Programme (Old and New Syllabus) and Professional Programme (Old and New Syllabus) scheduled to be held from 1st June, 2021 to 10th June, 2021 stand postponed.

The examination schedule, depending upon the situation of pandemic will be reviewed based on directives/guidelines of the various Government departments issued from time to time and revised time table for the said Examinations will be issued and hosted on the website of the Institute www.icsi.edu in due course of time. A notice of at least 30 days will be given before the start of the Examinations.

The candidates are advised to take note of the above.

Stay Home, Stay Safe !!

(DR. SANJAY PANDEY)
Joint Secretary (Examinations)
4th May, 2021

Call for Articles

Call for Articles for publication in Chartered Secretary Journal – June, 2021

The month of June is marked by the celebration of the World Environment Day on 5th June every year. Also connoted as the United Nations' principal vehicle for encouraging awareness and action for the protection of the environment, each year, World Environment Day has provided a new theme that major corporations, NGOs, communities, governments and all celebrities worldwide adopt to advocate environmental causes.

Given the ongoing circumstances and in alignment of our thoughts with the theme for World Environment Day this year, i.e., Generation Restoration, the Institute of Company Secretaries stands committed to support the Government's initiatives undertaken to fast track the process of environment protection and restoration.

In view of the fact that in the India Diaspora, the concern for environmental protection has not only been raised to the status of fundamental law of the land, but it is also wedded with human rights approach and keeping in sight the need of corporates for right handholding by professionals in this regard, we are pleased to inform that the June 2021 issue of Chartered Secretary Journal will be devoted to theme **"Environmental Legislation - The role of CS in Practise and Employment"** covering *inter alia* the following aspects:

- The National Green Tribunal Act, 2010
- The Air (Prevention and Control of Pollution) Act, 1981
- The Water (Prevention and Control of Pollution) Act, 1974
- The Environment Protection Act, 1986
- The Hazardous Waste Management Regulations
- Environmental Legislations and their relevance in Urban Planning
- Issue and Challenges with EPA
- Role of a Company Secretary in the Global Environment

And many more…

Furthermore, as part of International **Day for the Elimination of Sexual Violence in Conflict,** which is observed globally on **19th June** each year, we also invite articles from authors on the topic **"POSH at work place- Its impact and influence in Corporates".**

Members and other readers desirous of contributing articles may send the same latest by Thursday, May 20, 2021 at nitin.jain@icsi.edu for considering in the June 2021 issue of Chartered Secretary.

The length of the article should ordinarily be between 2,500 - 4,000 words. However, a longer article can also be considered if the topic of discussion so demands. The articles should be forwarded in MS Word format.

All the articles are subject to plagiarism check and will be blind screened. Direct reproduction or copying from other sources is to be strictly avoided. Proper references are to be given in the article either as a footnote or at the end. The rights for selection/rejection of the article will vest with the institute without assigning any reason.

We look forward to your co-operation in making this initiative of the Institute a success.

Regards,

Team ICSI

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Crash Course on
Related Party Transactions- Compliances & Taxation
for ICSI Members

Fees: Rs. 3000/-plus GST

Award of CPE: 10 (Ten) structured CPE upon completion

INTRODUCTION

Related party relationships are a normal feature of business and commerce. Therefore, disclosure of related party transactions, outstanding balances and relationships is important as it may affect assessments of an entity's operations and the entity's risks and opportunities by users of financial statements, with the motive of brushing up the skills of its members, ICSI launches online Crash Course on Related Party Transactions.

COURSE DELIVERY

The course will be conducted through web based interactive sessions. All participants will be provided with the PPT, if any, shared by the faculty and video recordings of all sessions on LMS Platform. No separate study material/ reference material shall be provided by the ICSI.

LMS platform shall be made available with login id and password and can also be accessed via androids and IOS App.

COURSE DURATION

The Course will be imparted in total 5 Session to be conducted on weekdays from 5:30 PM to 7:30 PM

AWARD OF CERTIFICATE

Certificate of Completion will be awarded by ICSI to all the candidates, upon successfully completion of the course and MCQ based assessment.

FOR REGISTRATION PLEASE VISIT

https://www.icsi.edu/crash-courses-icsi/

COURSE COVERAGE

- RPT under the Companies Act, 2013
- RPT under the Securities Laws
- Accounting Standard (AS) 18 & Indian Accounting Standard (Ind AS) 24 - Related Party Disclosures
- International & Domestic Transfer Pricing
- Calculations and Practical case studies

Clarifications/Queries : For any queries please write to us at certificatecourses@icsi.edu

CS Nagendra D. Rao
President The ICSI

CS Manish Gupta
Council Member The ICSI &
Chairman PMQ Course Committee

Connect with ICSI www.icsi.edu | | **Online Helpdesk : http://support.icsi.edu**

Articles P - 25

Part - I Articles

the working hours, intervals etc. and also denied the overtime payment wages for such increase in working hours. The trade union and Federation of Trade Unions filed writ petition before Supreme Court challenging the Notifications issued by State of Gujarat. The Supreme Court analyzed the case detail and allowed the appeal filed by the petitioners. The Supreme Court held that Section 5 of the Factories Act could not have been invoked to issue a blanket notification that exempted all factories from complying with humane working conditions and adequate compensation for overtime, as a response to a pandemic that did not result in an 'internal disturbance' of a nature that posed a 'grave emergency' whereby the security of India is threatened.

Labour Codes Reforms Helping to Build a Future of Safer and Fairer Work 65

Vrunda Jani

Labour law also known as employment law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates many aspects of the relationship between trade unions, employers and employees. In other words, Labour law defines the rights and obligations of workers, union members and employers in the workplace. Indian constitution provides numerous safeguards for the protection of labour rights. These safeguards are in the form of fundamental rights and the Directive principle of State policy. In the wake of the global pandemic and the nation-wide lockdown, a heavy constraint has been put on individuals as well as the economy. To minimize the impact of the pandemic on the general public as well as business establishments and ensure minimum disruption in the supply chain, ***many amendments, advisories and announcements have been introduced which would ideally subsist during the containment period, but could have long-term implications***.

Navigating through the new Labour Codes 70

Abhinav Kumar K P and Ranjith Krishnan

Labour is one of the essential factors driving the business and is integral to economic growth of the nation. The dynamic requirements of present times warrant that the age-old laws which are no longer relevant are revisited and new laws are brought in for catering the current needs. Towards this end, the Government has endeavored to consolidate the 44 labour laws into 4 Codes which are comprehensively structured and carry the essence of labour welfare which existed in the old laws. To improve ease of compliance and ensure uniformity in labour laws, the central labour laws have been consolidated into broader groups like industrial relations, wages, social security, safety, welfare and working conditions, etc. The Codes do away with the multiplicity of existing labour laws which often had different provisions and definitions for similar concepts. These Codes also contain provisions which are relatable to present pandemic times like migrant workers, authority to give relaxations from application of certain laws in time of pandemics, disasters, etc. The Codes also emphasize the need to be adept with technology in the digital era of today, and provide for provisions like online registration of establishments, Aadhar based registrations for unorganized workers, etc. These new laws also bring forth plethora of opportunities for the professionals in practice and for the employed professionals as well.

The New Labour Codes – Resurgence of Age-old Legislations 76

Amisha Chaturvedi

In this article, the author has given an insight of evolution of the old and redundant labour laws into the four (4) new Labour Codes. The article also highlights the connect of the labour laws with the constitution of India, the concept of Industrial Jurisprudence in last few decades and dictates the dynamic changes which were long due to come into parlance with the ever changing and dynamic business environment. The author is of the view that these new codes shall be of immense benefit to the Indian Industry, while they are ready to compete with Global Leaders.

A Critical Analysis of the Labour Reforms -A Much Needed Change? 82

Sumit Kochar

In the Constitution of India, "Labour" comes under the concurrent list. This gives the power to both the state as well as the legislature to make as well as amend the laws. With time and circumstances the concept of labour law keeps changing which shows its dynamic nature. Recently, the parliament had passed three bills that completely changed the face of labour laws. All the existing 29 Labour Law statutes have been consolidated and only this new law which has been passed will be governing labour laws in India.

The three new Bills which have been passed by the parliament are The Code on Social Security Bill , 2020 , The Occupational Safety, Health, and Working Conditions Bill, 2020 and The Industrial Relations Code Bill, 2020. These bills consolidate the major labour laws governing employment, social welfare, industrial relations, and workplace safety and health. This article aims to lay out the salient features of the three new bills along with analysing the impact of the same.

Family Business Code (FBC) for Listed and Unlisted Family Businesses in India 87

Dr. TR Madan Mohan and Sharadha V and Mukund Mohan K

Family businesses are a significant segment of a nation's industrial structure. However, many businesses may not survive a transfer from first generation to next and majority become defunct within two decades of demise of founder. Good corporate governance of both family and their business are key to survival, growth and sustenance. Many countries have developed a best practice code that

helps family firms to grow and sustain across generations. Germany, Switzerland, Italy, Belgium and GCC countries have a governance code for family-owned businesses. India does not have a governance code or a national guidance specifically for family-owned businesses. This paper is an endeavour to fill that gap.

Part - II Articles

SEBI Advisory on Disclosures by Listed Entities with reference to the COVID-19 Pandemic - A Study 91

Hariharan N Iyer and Pradeep Ramakrishnan

COVID-19 has affected all spheres of the economy the world over. India was also not an exception. The corporate sector was also equally affected. During this epidemic, SEBI took lots of initiatives to ease the regulatory compliance by listed companies. The markets were kept open, which was widely welcomed by all stakeholders. investors make their investment decisions based on disclosures by listed companies. Therefore, meaningful disclosures are important for a vibrant securities market.

While SEBI has given certain relaxations in case of disclosures, there were companies who did take positive action in making disclosures. This article is an attempt to study the disclosures made by companies, especially those disclosures made with reference to the effect of COVID-19 with reference to individual companies. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have stipulated the various disclosures to be made by listed companies. The methodology is to study the literature on the subject with reference to Indian and international context, to analyse the disclosures made during the period April to September 2020 by top 1000 listed companies (by market capitalisation) in National Stock Exchange Limited and to study the impact of the pandemic in corporate governance and disclosure standards. The relevant data has been sourced from the disclosures made by listed companies to National Stock Exchange. The objective of this article is to analyse whether there has been an impact of COVID-19 on Corporate Governance and Disclosure Standards by doing a qualitative analysis of the disclosures made.

Overview of Corporate Social Responsibility in the Light of Recent Amendments 102

Sudhakar Saraswatula

India is the first and only country in the world which had mandated Corporate Social Responsibility (CSR) for certain corporate entities. The Concept of CSR has been imbibed by the Indian society from the very beginning and CSR aligns business operations with societal values. Charity and Philanthropy are not CSR, as they may be one-time activities whereas CSR is a long time commitment towards development of the society and its welfare. CSR is not doing charity or mere giving donations. CSR is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company's operations and growth." The spirit of CSR in the words of late JRD Tata is, *"To enrich quality of life in the society we operate in, we need to give back to the society manifolds than what we get from it" and "No success in material terms is worthwhile unless it serves the needs or interests of the country and its people".*

Dramatic Changes in CSR Provisions under the Companies Act, 2013 111

Dr. J Sridhar

There have been dramatic changes in CSR provisions under the Companies Act, 2013 as MCA vide notification dated 22 January 2021 has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 vide Companies (CSR Policy) Amendment Rules, 2021 These provisions have to be read in the context of The Companies Amendment Act, 2019 enacted on 31 July 2019; and The Companies Amendment Act, 2020 enacted on 28 September 2020. The provisions made have now become effective from 22 January 2021.This Article sets out in detail the important changes made in the CSR law, the Role of Board of Directors and CSR Committee and the Immediate Action-Points for companies. The new legal provisions relating to CSR have been summarised. The Definitions of some important terms such as 'administrative overheads', 'international organization', 'ongoing project' etc., have been highlighted. What constitutes CSR expenditure, CSR Policy, CSR implementation, Annual Action Plan, CSR Reporting, Unspent expenditure etc. are all explained.

Directors' Liability: Revisiting the Principles of Vicarious Liability 117

Ajay Agarwal

The challenges faced by the current regulatory framework governing director liability in India and the potential issues arising therefrom indicate that there is a need to re-assess the current framework. The overarching issue is that of the disparity between the onerous duties placed on independent directors and their liability risks, which emanates from various shortcomings and inconsistencies within the extant framework, such as the fragmented liability regime, the limitations of the independent director model and the inadequacies of protective mechanisms such as safe harbours and indemnities.

Given the nature of liabilities of independent directors, it is imperative that the regulatory framework governing them consist of adequate protections especially in cases where such directors have acted in good faith and not with a mala fide intent.

This article deliberates the need for certain measures that may be adopted in order to address the liability-related risks faced by independent and non-executive directors and to consequently strengthen corporate governance standards in India.

AT A GLANCE

State Governance – As Understood and Practiced in Ancient India with Special Reference to Cholas 122

S Kannan

Democracy is considered to be the best way to govern a country and its people. Many countries in the world today opt for democracy because it reflects the decision of the majority in determining who should rule and how the rule should be. India is one of the largest democratic countries in the world and it remains so. We have a Constitution which says who could be the representatives of the people. Our Constitution provides for micro level public management to macro level management of our country's affairs wherein at the peak we have our President as the Head of the State and the Government, Parliament, members of Parliament. Our Constitution provides for clear electoral system for electing people. Electing people to govern the State is not new to India. More than 1,100 years ago, a more elaborate and highly refined electoral system was prevalent in India. This article is all about it.

Intellectual Property Rights – an Overview 125

Meenu Choudhary

No qualm, IP protection is a significant element of economic progress. It provides protection to various inventions and innovations. It works as a reward for those who creates or generate new ideas. In this intellectual era, like other nations, India has also been trying to develop herself as an Intellectual Property Rights (IPR) friendly nation in the world. Pursuant to this, number of amendments in the laws allied to Intellectual Property Rights have been notified. Recently, National Intellectual Property Rights (IPR) Policy, a nationwide policy has been launched with an aims to incorporate and adapt global best practices to the Indian scenario. India is also a signatory to numerous International conventions, treaties and agreements with a view to protect Indian innovations in foreign countries. Global Innovation Index, 2020 recognised the Government of India's commitment to innovation in recent years and now India's position is in top 50 nations. In the last four years, India's position is improving in Global innovation index but still it has a long way to go.

Pre-Packaged Insolvency Resolution Process - "PIRP" for MSME Sector 130

Prashant Thakre

COVID-19 pandemic has impacted businesses, financial markets and economies all over the world, including India, and has impacted the business operations of micro, small and medium enterprises – ***MSME sector*** and exposed many of them to financial distress. Micro, small and medium enterprises are critical for India's economy as they contribute significantly to its gross domestic product and provide employment to a sizeable population it is expedient to provide an efficient alternative of insolvency resolution process for entities classified as micro, small and medium enterprises ensuring quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserves jobs & in order to achieve these objectives, it is considered expedient to introduce a ***Pre-Packaged Insolvency Resolution Process*** – "***P I R P"*** for ***M S M E*** *entities as registered under the* MSME Act 2006.

PIRP is basically in the nature of **One Time Settlement** ("**OTS**") with lenders before NCLT. It is introduced In Chapter III of the Principal IBC Act, the Chapter III A is inserted (Section 54 A to section 54 P). RIP can be initiated only when there is default in repayment of loan of **Rs. 10 lacs** & more. There is no upper limit prescribed for the default amount but off course the criteria being MSME should be satisfied to opt for PIRP process. Cooling period of 3 years is prescribed in order to deter the misuse of PRIP process. It means once the PRIP is initiated the second time initiation is prohibited for coming 3 years. Accordingly, companies shall think wisely before opting for the PIRP and shall be used only for the genuine causes.

In order to undertake the successful PRIP process the approvals of the Board of directors in Board Meeting, Shareholders to approve the move with special resolution in general meeting, unrelated Financial Creditors with 66% majority in COC meeting & National Company Law Tribunal i.e Adjudicating Authority are required. In order to restrict the wilful defaulters the provisions of section 29A are applicable. It means the resolution applicant has to satisfy the conditions enlisted in section 29A for submitting any resolution plan under PRIP as well like CIRP under section 9, 7 and / or section 10 of IBC. Further, the interest of operational creditors have been taken care of by specifically stating that COC cannot approve the resolution plan in case the resolution applicant has asked for the haircut to the debts due to the operational creditors and it is a very good move to keep the balance of interest of the stakeholders.

Resolution professional shall act as a facilitator rather than as a manager having control over the management of the company/corporate debtor except where NCLT has specifically passed an order to that effect considering the mismanagement of the company by the existing management.

It is believed that the **PIRP process** is a great enabler to the genuinely affected promoters of MSME Sector in India in the present situation of totally messed-up business conditions due to various reasons including Covid 19 pandemic. MSMEs can take advantage of this expedient initiative of PIRP process and streamline their businesses by having the restructuring of debts with lenders with the blessings of NCLT. It will be a boon for the MSMEs and consequently boon for the nation at large as after all as per the govt. data approximately 70% companies' falls under MSME sector in India.

Legal World P-135

- **LMJ 05: 05: 2021** All the questions of law are liable to be answered in favour of the appellants Tata group and the appeals filed by the Tata Group are liable to be allowed and the appeal filed by S.P. Group is liable to be dismissed.[SC]
- **LW 33: 05: 2021** We are of the view that the Tribunal has erroneously held that the application for reduction of share is not maintainable under Section 66 of the Act, consent affidavits from the creditors is mandatory for reduction of share capital, SPA cannot be utilized for making payment to non- promoter shareholders, consent from 171 non-promoter shareholders who are not traceable is required, selective reduction of shareholders of non-promoter shareholders is not permissible. [NCLAT]
- **LW 34: 05: 2021** We are unable to accept the submission that when land is leased out, if premium is fixed and instalments are given, it should be treated as a financial lease.[NCLAT]
- **LW 35: 05: 2021** OP-1 being the dominant entity was in a position to impose one-sided contractual obligations, and based on the analysis above, the Commission is of the view that the conduct of OP-1 is in violation of Section 4 of the Act. [CCI]
- **LW 36: 05: 2021** It cannot be said that filing of criminal complaint is with a view to oust competition in the present case and such an action is an abuse under provisions of Section 4 of the Act.[CCI]
- **LW 37: 05: 2021** The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.[SC]
- **LW 38: 05: 2021** Consequential relief need not be only in form of damages. It is for the employee to seek the consequential relief in the form that he/she would be entitled to in accordance with law.[Del]

From The Government P-145

- Clarification on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities
- Companies (Accounts) Second Amendment Rules, 2021
- Companies (Audit and Auditors) Second Amendment Rules, 2021
- Timelines for updation of Scheme Information Document (SID) and Key Information Memorandum (KIM)
- Relaxation in timelines for compliance with regulatory requirements
- Addendum to SEBI Circular on "Relaxation in adherence to prescribed timelines issued by SEBI due to COVID 19" dated April 13, 2020
- Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 / other applicable circulars due to the COVID-19 pandemic
- Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 due to the COVID-19 pandemic
- Disclosure of the following only w.r.t schemes which are subscribed by the investor: a. risk-o-meter of the scheme and the benchmark along with the performance disclosure of the scheme *vis-à-vis* benchmark and b. Details of the portfolio
- Alignment of interest of Key Employees of Asset Management Companies (AMCs) with the Unitholders of the Mutual Fund Schemes
- Standardizing and Strengthening Policies on Provisional Rating by Credit Rating Agencies (CRAs) for Debt Instruments
- Relaxations relating to procedural matters – Issues and Listing
- Guidelines for warehousing norms for agricultural/agri-processed goods and non-agricultural goods (only base/ industrial metals) underlying a commodity derivatives contract having the feature of physical delivery
- Circular on Reporting Formats for Mutual Funds
- Regulatory reporting by AIFs
- Setting up of Limited Purpose Clearing Corporation (LPCC) by Asset Management Companies (AMCs) of Mutual Funds

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Articles in Chartered Secretary

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1 ARTICLES

Decoding the Role of a CS: Wage Definition

An article that discusses the universal definition of wages that is common across the four new labour Codes. It examines the substantive content of the definition from multiple legal and operational perspectives. Following this, the article explains the impact of the definition's proviso relating to deemed wages as well as detailed analyses relating to its effect on payroll, salaries, computation of statutory benefits and variable pay.

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INTRODUCTION

The Second National Commission on Labour (SNCL) under the chairmanship of Ravindra Varma sought to provide us with an institutional framework that would kill two birds with one stone. A regulatory framework that would reduce cumbersome compliance requirements (thereby enhancing the competitiveness of industry) while ensuring adequate economic protection is afforded to workers was the task before the SNCL. Their mandate can be summarised under the two following heads:-

i. To suggest rationalisation of existing laws relating to labour in the organised sector

ii. To suggest an umbrella legislation for ensuring a minimum level of protection to the workers in the unorganised sector

The Second National Commission on Labour (SNCL) studied the evolution of Indian labour laws, the progress of Indian industry after independence, the impact of globalisation and various other matters such as social security, the unorganised sector and skill development. It arranged consultations with industry, union and academically oriented representatives and conducted surveys to come up with a set of recommendations of which one acted as the broad template for the labour codes. The Commission had recommended that existing labour laws should be consolidated into four/five groups based on their subject matter as follows:-

i. Industrial Relations

ii. Wages

iii. Social Security

iv. Safety

v. Welfare and Working Conditions

The framework proposed above manifested in the four labour codes that we see today, namely:-

- Code on Wages, 2019
- Code on Social Security, 2020
- Industrial Relations Code, 2020
- Occupational Safety, Health and Working Conditions Code, 2020

Till date, practicing company secretaries, serving their clients in the area of Labour Laws have faced a multitude of registrations, returns and records that were compliance requirements under labour laws. The above Codes have subsumed forty-four Central labour laws to boost economic growth by making compliance easier. This article shall examine a core conceptual change that shall simplify compliance as well as internal processes in an organization with the help of scenario analyses and illustrations.

THE UNIVERSAL DEFINITION OF WAGES & DEEMED WAGES

The most significant conceptual change brought in by the Code on Wages, 2019 (hereinafter referred to as Code in this Section) and arguably the biggest change across the four labour codes is the new definition of 'wages. For the first time, India's labour framework has a single, universally applicable definition of wages. This is a departure from the enactment-specific definition of wages currently prevailing in different labour legislations. For example, the definition of wages under the Employee Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as EPF Act) includes basic and dearness allowance but excludes house-rent allowance, whereas, the definition of wages under the Employees' State Insurance Act, 1948 includes almost all wage elements that are paid monthly

Conceptually, it may be divided into three parts for ease in understanding, these are the inclusive components of wage, the excluded allowances and the proviso to the definition. The inclusive components of wage as defined under Section-2(y) of the Code are as follows: -

(i) Basic pay

(ii) Dearness Allowance

(iii) Retaining Allowance

The addition of retaining allowance under the inclusive components of wage raises the question of what could classify as retaining allowance as the term is not defined under the Code. If we consider its definition under Section-6 of the EPF Act, the term is defined as follows: -

Retaining Allowance means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services

It is unclear whether the term retaining allowance will carry the same connotation as described above. For a larger part of organised workforce today, Retaining Allowance with reference to above connotation is not relevant. However, the much-used allowance is "Special Allowance", which employers have frequently used as well as misused to balance the salary structure to arrive at the agreed Cost to the Company with their employees. The importance of this Special Allowance cannot be overstated as its ambit will determine how it impacts "wages" for various benefits under labour laws and consequently will affect almost all employers. The question or possibility of classifying special allowances as allowances that could be treated as excluded components as discussed below will be an interesting trend to watch out for as Employers prepare for the Labour Codes and their impact.

The inclusive components of wage are considered for the computation and payment of statutory benefit, which is what distinguishes them from the next subject under focus, namely the excluded components. The excluded allowances are as follows: -

a. Any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;

b. The value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any other service excluded from the computation of wages by a general or special order of the appropriate Government;

c. Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

d. Any conveyance allowance or the value of any travelling concession;

e. Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;

f. House rent allowance;

> The Second National Commission on Labour (SNCL) studied the evolution of Indian labour laws, the progress of Indian industry after independence, the impact of globalisation and various other matters such as social security, the unorganised sector and skill development. It arranged consultations with industry, union and academically oriented representatives and conducted surveys to come up with a set of recommendations of which one acted as the broad template for the labour codes.

g. Remuneration payable under any award or settlement between the parties or order of a court or Tribunal;

h. Any overtime allowance;

i. Any commission payable to the employee;

j. Any gratuity payable on the termination of employment;

k. Any retrenchment compensation or other retirement benefit payable to the employee or any *ex gratia* payment made to him on the termination of employment;

These components are excluded from the ambit of wages as defined under Section-2(y) of the Code and hence are not considered for the computation of statutory benefit contributions. Their relevance becomes clearer when they are analysed alongside the proviso to the definition of wages that reads as follows: -

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one-half, or such other per cent. as may be notified by the Central Government, of all the remuneration calculated under this clause, the amount which exceeds such one-half or the per cent. so, notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause;

The proviso applies to all the aforementioned excluded components except gratuity and retrenchment compensation/ retirement benefit under clauses (j) and (k) respectively. It seeks to ensure that the ratio of included components to excluded components remains equal in terms of composing the total remuneration drawn by an employee. In other words, if the excluded components comprise of more than half of total remuneration, the difference between half of the total remuneration and excluded components will be added back to wages as defined under Section-2(y) as deemed wages as seen in the following illustration:

Components	INR
Basic	21,000
Dearness Allowance	3000
Retaining Allowance	0
Sum of Included Components	**24,000**
Bonus	1800
House Rent Allowance	13,980
Conveyance Allowance	5000
Commission	7500
Sum total of allowances	**28,280**
Remuneration	**52,280**
50% of remuneration	**26,140**
Proviso Applicable	**Yes**
Deemed Wages= Excluded Allowances minus (50% of Remuneration)	**2,140**

As can be seen from the above illustration, the proviso operates so as to ensure wages and excluded allowances that together, form remuneration, remain in a 50-50 ratio due to the addition of deemed wages. Let us now examine a scenario wherein the proviso is inapplicable.

Components	INR
Basic	21,000
Dearness Allowance	3000
Retaining Allowance	0
Sum of Included Components	**24,000**
Bonus	1800
House Rent Allowance	13,980
Conveyance Allowance	0
Commission	7500
Sum total of allowances	**23,280**
Remuneration	**47,280**
50% of remuneration	**23,640**
Proviso Applicable	**No**
Deemed Wages= Excluded Allowances minus (50% of Remuneration)	**N/A**

The above is an illustration of a wage structure that does not attract the application of the proviso and we see that application of the deemed wages formula results in a negative value. Through the above section and its illustrations, having understood how the definition operates *vis-à-vis* the proviso, let us now examine the overall impact of this change.

IMPACT OF WAGE DEFINITION

Our impact analysis of the wage definition can be discussed under the following heads: -

SALARY STRUCTURE

Due to the addition of deemed wages, employers should aim to structure wages in a manner that minimizes the scope for the same. This is because periodic addition of deemed wages, especially where employees are earning on a commission basis, can lead to fluctuations in statutory contributions. This may lead to increase in both the employer's and employee's liability towards EPF, ESI etc.

A positive benefit of the above definition is that insofar as entry-level employees are concerned, especially those who earn the major portion of their pay in the form of basic and dearness allowance, is that their take-home pay is likely to increase. Earlier, several emoluments would be added to wages for the calculation of statutory contributions towards PF and ESI, which would lead to a reduced take-home pay. Now, the same are excluded from the scope of wages and the proviso ensures that they can constitute a maximum of 50% of total remuneration. While it is a social requirement that employees are forced to contribute from the beginning of their working life towards such social security programs, the deductions at almost 30% of remuneration currently is a major factor in workers not choosing formal employments. This is a win-win as far as even the employer's contribution will go down as a result of the above.

Conversely, the salary structure of upper-management and executive level employees would have to be scrutinized, preferably as part of a full-fledged audit. The aim should be to identify the employees drawing large sums in the form of excluded allowances and how the same may be restructured to mitigate the impact of the definition at all salary levels in an establishment.

PAYROLL MANAGEMENT

Payroll processes would have to consider appropriately fluctuations in wages as described above where there are large number of employees drawing allowances. This may lead to issues in calculation of income tax as well. Payroll managers must ensure that necessary changes are made to the payroll management software or tool being used.

Another aspect for payroll managers to be wary of is that of overtime pay under Section-14 of the Code that requires employees doing overtime work to be paid at twice the rate of wages. This is applicable to every hour or part thereof worked in excess of normal working hours. Calculation of overtime wages would have to be tracked properly and the question relating to whether the same would be considered overtime allowance under the excluded allowances is another aspect to be analysed. Considering that the Code is now applicable to employees, the term which now covers universally all employees (as opposed to the Payment of Wages Act, 1936, that excluded workers drawing wages above Rs. 24000 a month), applicability of restrictions on Deductions

from wages, timely payment of wages, etc. will impact the payroll management. Large companies with thousands of employees now being the norm, such employers have to gear themselves up for the change.

VARIABLE PAY AND INCENTIVES

There are serious interpretational questions pertaining to whether variable pay/incentives form a part of wages. In an attempt to provide a legal answer to the same, the operative part of the wage definition and Section-17(1) of the Code leads us to come up with the following propositions: -

Incentives/Variable pay are provided for work done over and above the ordinary standard expected under the contract of employment

The first proposition draws support from the operative part of the wage definition which clearly provides that wages means all remuneration payable to a person for work done in respect of employment. Whereas, incentives and variable pay schemes are generally provided as inducement for carrying out extra work or tasks above and beyond the ordinary standard expected under the contract of employment. This proposition may be directly to the ratio in the case of *Bridge & Roof Co. (India) Ltd. vs. Union of India* where the Supreme Court held that production bonus is not part of wages as it involved producing beyond the normal standards and was not payable to all employees.

Incentives/Variable pay are provided for under schemes falling outside the scope of the contract of employment and generally constitute a separate agreement between the employer and employee

The second proposition relies on the separation between a contract of employment and incentive schemes in an organization to reiterate the argument under the first proposition. It addresses the counter-argument that incentives/variable pay fall under clause-(i) of the excluded allowance i.e. commission, by creating the aforementioned delineation between the source of the pay. Its corollary is thus, that variable pay/incentives cannot be commissions as the latter is a mode of payment for work done ordinarily under the contract of employment. For example, a sales employee earning Rs. 15,000/- basic and 10% commission on every sale made is merely earning a portion of his pay in proportion to the ordinary work to be carried i.e. selling.

Incentives/Variable pay are not paid monthly and are thus outside the scope of wages

The third proposition relies on the requirement under Section-17(1) of the Code that relates to time of payment of wages. It states that wages for work done may be paid daily, weekly, fortnightly or monthly. In contrast to the above, incentives/variable pay are ordinarily paid on a quarterly or half-yearly basis, therefore, they cannot come under the scope of wages.

The above propositions read together support the argument that variable pay/incentives are outside the scope of wages *in toto*. While this is an aggressive interpretation, it is one that is rooted in realities of day-to-day business and one should imagine will garner support from other industry leaders.

STATUTORY BENEFITS

Under this portion statutory benefits through EPF, ESI, Bonus and Gratuity are analysed.

Employees Provident Fund

With respect to EPF, it is observed that the definition of *basic wages* under the EPF Act, 1952 versus that as per the wage definition under the Code are the same. *Basic Wages* is defined as all emoluments earned by an employee on duty or on leave/holiday with wages in accordance with the terms of the contract of employment. It excludes the cash value of food concessions, dearness allowance, house-rent allowance, overtime allowance and any presents made by the employer. However, Section-6 of the EPF Act, 1952 includes dearness allowance and retaining allowance into the scope of *basic wages*. Thus, a juxtaposition of the wage definition under the Code with that under the EPF Act does not reveal any major changes barring the proviso.

Another major point to be considered here is the ratio of the Supreme Court's judgment in the cases of *Surya Roshni Ltd. Vs. Employees' Provident Fund and Anr.* and *Regional Provident Fund Commissioner (II), West Bengal vs. Vivekananda Vidayamandir and ors.*

The Supreme Court's judgment relied on earlier judgments in the cases of *Bridge & Roof Co. (India) Ltd. Vs. Union of India*[1] and *Manipal Academy of Higher Education vs. Provident Fund Commissioner*[2]. It reiterated the principles laid down and held that all allowances that are paid **universally, necessarily** and **ordinarily** to employees must be considered a part of wages for provident fund contribution. The application of the ratio in this case to the definition of wages under the Code can have a significant impact on the calculation of provident fund contributions. The inter-play of the wage definition and the judgment is an important analysis as the new definition of wages specifically lists the allowances that are outside the scope of wages.

Consider the following scenario analyses that illustrate the effect of the wage definition on PF contributions and examines

[1] *A.I.R. (1963) S.C. 1474.*

[2] *(2008) 5 S.C.C. 428.*

the difference between the standard laid down in the Surya Roshni case and that under the Code: -

Where proviso is not applicable		Where proviso is applicable	
Components	**INR**	**Components**	**INR**
Basic	5,000	Basic	5,000
Dearness Allowance	2,000	Dearness Allowance	2,000
Sum of Included Components	**7,000**	**Sum of Included Components**	**7,000**
Bonus	583	Bonus	583
House Rent Allowance	2,000	House Rent Allowance	3,000
Conveyance Allowance	1,000	Conveyance Allowance	1,000
Commission	1,840	Commission	1,000
		Gratuity	337
		Overtime Allowance	2,000
Sum total of allowances	**5,423**	**Sum total of allowances**	**7,760**
Remuneration	12,423	**Remuneration**	14,760
50% of remuneration	6212	**50% of remuneration**	7,380
Deemed Wages= Excluded Allowances minus (50% of Remuneration)	N/A	**Deemed Wages= Excluded Allowances minus (50% of Remuneration)**	380
PF Wages as per Surya Roshni	**9,000**	**PF Wages as per Surya Roshni**	**9000**
PF Wages under Code	**7,000**	**PF Wages under Code**	**7,380**
Reduction in Employee Contribution	**260**	**Reduction in Employee Contribution**	**211**

From the above, it can be seen that the clear difference in liability of an employer under wages as per Surya Roshni and the wage definition under the Code has been brought out. There is a clear reduction in liability that can be directly attributed to the reduction in the scope of PF wages itself.

Employees' State Insurance

The scope of wages under the ESI Act differs from that under the labour code as under the former, wages includes additional remuneration paid at intervals not exceeding two months. For example, medical allowance and other payments made on a monthly basis are included as part of wages under the ESI Act. Similarly, even payments made to an employee in respect of any period of authorized leave, lock-out, legal strike or layoff are included within the scope of wages.

A scenario analysis conducted for ESI similar to the above for EPF, revealed that it is likely ESI contributions will go down as the number of allowances being considered as part of wages will go down. This applies to both, situations where the proviso applies and those where it does not. However, as seen in the case of provident fund contributions, if the proviso applies repeatedly there shall be fluctuations in liability for contribution which may lead to confusion.

Gratuity

The scope of wages under the Payment of Gratuity Act, 1972 is largely similar to that under the Code. There is one small difference which is that the Act includes all emoluments earned by an employee while on duty, or, on leave in accordance with the terms and conditions of his employment and which are paid to him in cash.

With respect to gratuity we have conducted a scenario analysis which also serves as an instance of how wage structure under the Code affects liability towards statutory benefits. The first scenario is where special allowance is considered as included component and the second is where special allowance is split into different allowances to avoid application of proviso. This involves a consideration of a broader question relating to whether special allowance comes under the clause stating any sum paid to employees for special expenses arising out of their nature of employment shall be excluded from the scope of wages. For the purpose of this illustration, it is assumed here that it does not fall under the aforementioned clause relating to excluded allowance.

Special Allowance Inclusive Aspect		Special Allowance Split	
Components	**INR**	**Components**	**INR**
Basic	21,960	Basic	21,960
Dearness Allowance	3,294	Dearness Allowance	0
Special Allowance	36,966	Special Allowance	15,540
Sum of Included Components	**62,220**	**Sum of Included Components**	**37,500**
Bonus	1,800	Bonus	1,800
House Rent Allowance	10,980	House Rent Allowance	10,980
Sum total of Allowances	12,780	Conveyance Allowance	3,294
Remuneration	**75,000**	Commission	21,426
Wages for Gratuity Calculation	**62,220**	**Sum total of Allowances**	**37,500**
Remuneration			**75,000**
Wages for Gratuity Calculation			**37,500**

The difference in liability in the two aforementioned scenarios is enormous and thus it would be beneficial to reorganise special allowance as opposed to retaining it as a disproportionally large sum in the wage/salary structure. The

importance of reorganising special allowance is amplified when we consider the period over which these wages will be considered for gratuity calculation. Therefore, it is imperative for employers to understand the skewed structures and their impact, vis-à-vis the Code and make the requisite changes.

Bonus

The scope of wages under the Payment of Bonus Act, 1965 and that under the Code are exactly the same. On an analysis, it has been found that there is no change insofar as liability for minimum bonus is concerned. However, employers who were in the practice of adding all emoluments to bring wages above the Rs. 21,000/- threshold for bonus cannot continue to do the same due to introduction of the proviso to the definition of wages.

ROLE OF A COMPANY SECRETARY

The role of a company secretary in relation to the plethora of changes brought about as a consequence of or indirect implication of the wage definition can be grouped under the following heads: -

CONCEPTUAL CLARITY AND COMMUNICATION

Being Compliance Officers of Companies, or as Practising members of the profession, it will require Company Secretaries to highlight the compliance implications of the changes brought by the Labour Codes that are likely to be implemented sooner than later. Considering that they have been passed by Parliament, assented to by the President and are only awaiting notification of rules, the Codes are likely to be brought into effect very soon. This is the first and most important duty that company secretaries are charged with, namely the duty of communicating the impact and implications of these changes to senior management and the board. Therefore, obtaining conceptual clarity is the first major step and understanding the changes vis-à-vis the framework that is a major part of the same. Communicating these changes as well as the potential impacts effectively is the next step and is equally important as very often, the emphasis in meetings is not on the changes in the law but the consequent impact of the same on business models, compliance and company practices. Here, a company secretary must bridge the information gap as well as answer doubts and queries effectively. To do so, it is also essential for a company secretary to bring interpretational challenges and grey areas to the management's notice. The questions surrounding variable pay and special allowance discussed earlier in this article is one such instance. Similarly, practicing company secretaries can advise clients according to their needs and requirements if they possess the aforementioned conceptual clarity.

WAGE STRUCTURE AUDIT

The next step would be to examine a company's payroll by conducting a detailed audit (Or have that commissioned) across all levels in an establishment, namely, entry-level employees, executives, middle level management and higher levels of management. For businesses that engage contractor labour, conducting the same contract labour level is also essential to mitigate risk. If the Contractor is not compliant, the codes solidify the eventual recourse to principal employers, therefore impact of a non-compliant contractor could be highly consequential. The analysis of the audit conducted will help company secretaries prepare a strategy for restructuring wages in consonance with the company's business model and balance sheet. It will also aid them in determining their approach to interpretational questions pertaining to topics like variable pay/incentives, special allowance and leave travel allowance.

First and most important duty that company secretaries are charged with, namely the duty of communicating the impact and implications of these changes to senior management and the board. Therefore, obtaining conceptual clarity is the first major step and understanding the changes *vis-à-vis* the framework that is a major part of the same. Communicating these changes as well as the potential impacts effectively is the next step and is equally important as very often, the emphasis in meetings is not on the changes in the law but the consequent impact of the same on business models, compliance and company practices.

INTERPRETATIONAL QUESTIONS

As stated above, the wage structure audit will offer company secretaries with an idea of areas where wages can be restructured and as a consequence, will allow them to tackle tougher interpretational questions. This is because there is a general lack of clarity on the answer to these questions and hence the best approach would be to develop multiple scenarios that can support proposals at the management level. The same will allow for fully informed decision-making and companies will be prepared for any eventuality as opposed to proceeding on the basis of a single interpretation that suits their judgement.

RELATIONSHIP WITH OTHER CODES

The Code on Wages, 2019 is not the only one to which the definition applies and the implications discussed in this article are confined by and large to the wage code and to some extent the Code on Social Security, 2020 owing to the analysis on statutory contributions. The definition of wages has a wide range of implications that are applicable to several topics such as social security for unorganized workers, gig/platform workers and building and other construction workers under the Code on Social Security, 2020. It has implications when we consider leave encashment and extra wages for overtime for workers under the Occupational Safety, Health and Working Conditions Code, 2020. This is directly connected to the point relating to conceptual clarity. If a company secretary possesses the same then it will be easier to connect the dots across the various Codes.

CONCLUSION

While the universal definition of wages brings in a significant amount of conceptual clarity in the context of the overall labour framework, it still needs to be analysed and understood in various contexts. The role of a company secretary is best suited to addressing these informational gaps and interpretational challenges. A company secretary would have to resolve the same by providing clients with a general understanding of the Codes as well as with business-specific risk analyses and business practices to ensure adapting to the changes under the Codes is a smooth process.

ARTICLE

Emergence of Four Labour Codes and Ease of Doing Business :Gains, Challenges and Concern of Employers Arising out of the Labour Reforms through Labour Codes

The Labour Codes in Four Volumes broadly based on the Recommendations of Second Labour Commission in 2002 captioned under "Ease of Doing Business" are enacted by the Parliament yet to be brought into effect. Can anyone consider this initiative – how far beneficial to the Capital and Labour in absence of strong apparent reactions either way by them?

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INTRODUCTION

The buzz words, ***"Labour Reforms",*** are not unfamiliar to the Business Community as well as the Trade Unions for the last over 3 decades. The Central Government brought ***"Economic Reforms"*** all of a sudden in the year 1991, resulting in Globalization of Trade& Business. Economic Reforms calls for immediate Labour Reforms to provide a helping hand in terms of eliminations of legal constraints and hurdles to the Indian Industry. Indian Industry was saddled with multiple legal restrictions causing hurdles for organizing /reorganizing/ rationalization of process and methods and most importantly the productivity etc. This was not attended to. Ever since, the Indian Business Entrepreneurs have been consistently pressurizing and pursuing the Central Government to bring out ***"Labour Reforms"*** to ease of doing Business due to global competitiveness with cost, quality and delivery.

The Central Government is expected to be flexible in engagement of human resource so that the business may ensure productivity coupled with international quality. Simultaneously, It must strive to eliminate the legal hurdles and restrictions pertaining to modernization, rationalization, adaptation to the latest technology and method improvements etc., As we have witnessed, the Central Finance Ministry would talk of the word ***"Labour Reforms"*** during the Finance Budget presentation every year. Indian Business would get motivated and attracted towards the steps to be taken with eagerness. The Trade Unions, upon hearing the word ***"Labour Reforms"*** would get emotionally charged and call for protest including organizing and inciting a ***"Bhart Bandh".*** The Central Government, watching the protest, would not take any further initiatives, and the year is gone. These are the chain of events, going on year on year.

Indian Business, for survival, expansions and to attract foreign direct investments, had to pass through plenty of hurdles by the Labour, coupled with legal restrictions. Business learnt over a period and consistently adopted systematic approaches to bring in ***"Change Management"***. Approaching the Labour, educate and convince them of the advantages in the Change Management from the points of view of security of employment, adequate remuneration and creating plenty of employment opportunities. Here, one must acknowledge the reciprocation by the Labour and their cooperation in all the endeavors. Thus, the Indian Business moved from ***"Confrontation to Collaboration".***

We have seen tremendous growth in the Business, entry of MNCs, job growth etc., during the past decades. Both Business and Labour accepted the concept of Change Management without relying upon any legal hurdles etc. The Central Government did not take any initiative. But, the words ***"Labour Reforms"*** did not miss in any annual financial budget.

Second Labour Commission was formed and was entrusted with the task of Labour Reforms from the point of view of eliminating/ simplifying the labour laws.

The Second National Commission on Labour, which submitted its report in June, 2002 had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:—

(a) Industrial relations;

b) Wages;

(c) Social security;

(d) Safety; and

(e) Welfare and working conditions

Here again, for nearly 15 years, after the submission of Report in 2002, the Indian Business did not see any initiative or progress or plans of actions to take up implementation of the Recommendations by the Central Government.

Now, we have been witnessing since, 2017, some initiatives were taken by the Central Government and accordingly, Labor Codes have come into place. The Draft Bills, consolidating various Labour Laws into Four Codes were published for debate amongst all stake holders in the year 2017. After suitable modifications in the Bills, the revised Bills were finally circulated in the year 2018 and 2019.

Now, all the Bills have been passed in the Parliament and after the assent of the President of India, now Four Codes have become Acts and the date of effectiveness is awaited.

The table shows the macro details of consolidation of the Labour Laws.

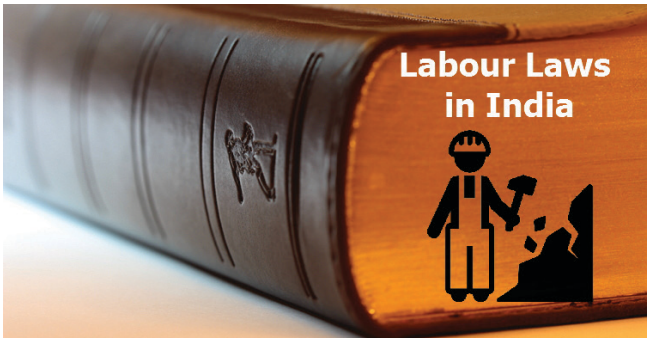
CODE	Definitions		Provisions	
	Existing	Code	Existing	Code
Code On Wages [4Legislations merged]	40	24	84	69
Code On IR [3 Legislations merged]	54	41	90	99
Code On Social Security [9 Legislations merged]	127	83	286	163
Code On Occupational Safety, Health & WC. [13 Legislations merged]	156	56	561	134
Number of Legislations merged: 29	377	204	1021	465

The Draft Bills of all Four Codes were published for opinions, suggestions or modifications if any by all the stake holders, namely, Industry, Trade Unions, consumers, and general public during the years, 2018 and 2019

But, it is unfortunate that the Industry has not availed the opportunity of addressing its issues, challenges, and concerns arising out of the Codes. No proper representations were made before the Government. Finally all the Bills were enacted as Acts and effective dates are awaited.

Now, there have been plenty of debates amongst the Business and many concerns are expressed as well as some challenging issues that may crop up resulting in increase in the legal petitions etc.

> The Central Government is expected to be flexible in engagement of human resource so that the business may ensure productivity coupled with international quality. Simultaneously, It must strive to eliminate the legal hurdles and restrictions pertaining to modernization, rationalization, adaptation to the latest technology and method improvements etc.



Let us examine the overall positive and advantages for the Industry, Trade Unions and in particular those engaged in unorganized sectors.

1. All the Labour Laws are unified under the Four Codes.
2. Aims at uniform application of Health, Safety, Occupational Health, welfare and working conditions to all Establishments, be it be commercial, manufacturing, plantations, mines etc.
3. Submissions of returns are centralized and digitalized.
4. Aims at Social Security Schemes to be extended to Un-organized sectors.
5. Recognition of Trade Union has been legalized, after 94 years of Trade Unions Act came into force.
6. Most of the existing provisions related to Social Security Schemes like, Provident Fund, ESIC, and payment of Gratuity, Payment of Bonus, and Compensation in cases of employment injuries etc are retained in the Codes. This avoids conflicts between Industry, Labour and the Governments.
7. Applicability of Standing Orders has been enhanced to 300 workmen as against 100.
8. Earlier concept of "Public Utility Services" is eliminated. Notice of 14 days is mandated for Strikes / Lockouts. Any sudden or lightning strikes are illegal.
9. An Industry can layoff, retrench or close in case the employment strength of workers is less than 300 without seeking permission from the Central/ State Governments.
10. Fixed Term Employment has been introduced which is aimed at employment of persons due to sudden demand or service by an Industry.

Let us examine the disadvantages for an Industry and also the concerns with challenges to be faced.

How far the Four Labour Codes addresses the main objectives and the intention of the Central Government 's "Ease of doing Business"?

1. Wage Administration and employee cost.

Employee Cost is highly significant to an Employer at all times includes forecasting. Employee Cost includes the direct and indirect outflows and more importantly it is very closely inter-related with the productivity or the output by an employee.

Let us examine each of these costs with reference to the Labour Codes.

Definition of ***"Wages"*** has been drastically redefined to make sure the "Contributory wages" shall be Fifty Percent of the total gross salary. Contributory wages to be taken for the purposes of payment of contribution to PF, payment of Gratuity and Payment of Bonus etc. This results in sizable financial additional liability to an Employer. The question is how to neutralize to additional liability either overall cost savings measures for the product or service or by way of increased productivity or output? Any attempts or efforts by the Employer to neutralize the additional financial burden, call for ***"Change Management".*** There is no relief provided under the Code and will have to prevail upon the Trade Union & workmen which are again matter of challenge. Let us discuss this in detail in the subsequent paragraph.

Fixation of Natinal Floor Level Wages under the Chapter of Minium Wages.

The fixation has been evolved in the light of evidence based fixation. Here, we may recall the Hon'ble Supreme Court judicial pronouncement endorsing the fixation of minimum wages based on evidence based one.

1. 2700 calories per head per day – 3 units are taken for a Family.
2. 66 metres of cloth per annum for the Family.
3. HRA @ 10% of sl.1.& sl.2.
4. Fuel, electricity, and misl @ 20 % Sl.1. 2. & 3.
5. Children education, medical, recreation etc @ 25 % of 1,2,3.

The above base has been endorsed by Supreme Court :

"***The recommendations assumed a 2400 calorie diet, while a 1992 Supreme Court judgment and the Indian Labour Conference of 1957 recommended setting the national minimum wage on the basis of a 2700 calorie diet".***

This revised fixation aims at ***"Need-based Minimum Wages"*** as envisaged by the Central Government. The Industries may not be against this enhancement, in case, the same is linked to productivity of labour. Now, in its absence, this poses another additional financial burden on the Employer. In addition, there is half yearly revision of Dearness Allowance. ***Wage theories propagate "Need Based Wages" which depends on the productivity of labour.***

2. Bipartite Machinery under the Code.

Firstly Works Committee consisting of representatives of Employer and Employees to discuss and resolve issues pertaining to working conditions like, ventilation, sanitations, water, restrooms cleanliness, sitting facilities etc. Generally, disputes or conflicts are not encouraged to discuss in this forum including individual / any group grievances.

Secondly, Greivance Redressal Machinery.

Here again, the Machinery is a team of representatives of Employer and Employees limiting to maximum Ten members. The Chairman of the Committee shall be on rotational basis of every six months. Any grievance by a worker or even group, may present any grievance before the Committee. The decision by the Committee is based on majority votes. **But, there is a raider**. Majority votes mean at least 50 % of the workers' representatives must endorse the decision along with the Employer. Is this practicable and possible? **Another major problem that** may arise here is there is a probability where the worker / group of workers does not accept the decisions of the Committee. If so, they can directly approach the Conciliation officer thus raising an Industrial Dispute through the Union. **This is a major concern for any Employer since it would result in sharp rise in Industrial Disputes**.

Here, the challenges for an Employer include the Proactive measures to be taken, namely, forecast any grievance, strategize the plans of actions and positive steps ensuring nil grievance so that no grievance may reach the Committee. However, once the grievance reaches the Committee, it is out of control as explained above. ***Managerial Effectiveness is the essence for any preventive and resolution steps.***

3. Change in Service Conditions.

This continues to be a challenge for an Employer to alter or change in service conditions without due process of Law as mandated at present under Sec.9A of the Industrial Disputes Act. What concerns any employer is that – any rationalization of process, methods, improvement in the process, increase in productivity, redeployments, flexibility in engaging or deployments etc are all included under the head **"Service Conditions".** In fact, during the last three decades, particularly after the Economic Reforms and Globalization in 1991, the Employers have been continuously urging for modification, relaxation or even elimination.

Now, it a matter of disappointment and concern that even under the new Codes, there are no changes envisaged.

Hence, this situation calls for a challenging task to neutralize the additional financial burden as we discussed earlier and continues to be so in case any strategic plan is adopted towards technical developments, innovations, innovative practices including expansions, generation of employments etc.

4. Outsourcing and contract labour management.

As we are fully aware, the Contract Labour [Regulation & Abolition] Act came into effect from 1971 wherein regulatory measures have been mandated like registrations, licensing by contractors, payment of wages not less than the prescribed minimum wages as notified by Central and State Governments, working conditions, social security coverage etc . The Central / State governments have been entrusted with the power of abolition of contract labour in any industry, class of industries etc in terms of Sec.10[1] of the Act. The Industry and the Trade Unions have been very familiar with their obligations and observing strict compliances. There have been number of cases of prohibitions in certain Industrial Establishments. Consequent to the rapid development of industrialization in the areas of Information Technology, BPO, ITES, manufacturing, service sector, hospitality and health care etc, there have been tremendous growth in employment opportunities and contributed significantly to reduce the unemployment in the country. The contract labour engagement and outsourcing have been prominently

dominated by all Central and State Government in all their activities and functions. At present, one can see remarkable growth in employment through outsourcing in the Industrial and Business circles.

Now, let us see what is in store for the Business.

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020, defines CORE and NON CORE ACTIVITIES. However, **Sec.57 of the Code prohibits engagement of contract labour in CORE AREAS**.

In the case of NON CORE AREAS, no issues, engagements are permitted.

Definition of Core Areas has been very vague and highly debatable.

"Core activity of an establishment" means any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity"

This will be a major challenge for all employers. The Code also specifies that in case of any conflict or differences in deciding what is Core and Noncore, the same may be referred to an Authority to be specified by the Central/ State governments. It means undergoing varied hindrances that will lead to litigations etc and the Business cannot wait any longer.

No doubt, the various types of outsourcing activities such as finance, administration, pay roll, wage administration, talent acquisitions, marketing, sales , purchase, IT / ITES / BPO sectors etc, do fall under the definition of "Core Activities". ***The question is how to face the challenge***.

There is a small leverage for arguments to continue to engage contract labour. Following is the extract of the definition of "Contract Labour".

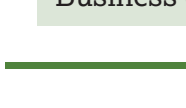
According to Sec. 2 (m) "contract labour" means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker ***but does not include a worker (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment;***

But, this is highly arguable, debatable and interpretations can be either way. We can be sure that this will be a major litigation when the Code comes into effect and the Trade Unions or even the Authorities might start questioning and creates conflicts***. It is too early to conclude that the employers have gained arising out the proviso.***

5. ***Worker Reskilling Fund***.

This is a newly introduced Chapter towards creating a Fund. This Fund is aimed at Skilling / Reskilling of workmen who are retrenched. The Funds are generated by contributions by Employers as well as the Government. The intention and purpose of the Code under this provision is good.

The rapid development of industrialization in the areas of Information Technology, BPO, ITES, manufacturing, service sector, hospitality and health care etc, there have been tremendous growth in employment opportunities and contributed significantly to reduce the unemployment in the country. The contract labour engagement and outsourcing have been prominently dominated by all Central and State Government in all their activities and functions. At present, one can see remarkable growth in employment through outsourcing in the Industrial and Business circles.



Now the Central Government has published Draft Rules and some of the State Governments have also published the Draft Rules.

Under these Draft Rules, it is surprising to see that the Employer is directed to contribute the amount equivalent to 15 days of wages for every completed year of service in cases of retrenchment of a workman. The amount to be credited to Central / State Authority online with details of name and bank details etc of the retrenched worker. In turn, the Authority will remit this amount to the retrenched workmen.

Now, here, where is the reskilling? The Employer has to pay retrenchment compensation under the Code which is a condition precedent at the time of retrenchment and then the Employer has to deposit the amount to the Fund. ***This is a double payment of retrenchment compensation.*** The purpose and intention of the Code is totally diluted.

6. ***Penalties.***

The penalties under all the Codes are ***very severe*** for each and every contravention of the provisions. The Minimum fine starts with Rs. Fifty thousand and goes up to Rs 4 Lakhs.

The imprisonment starts with Three months and goes up to 3 years.

Under the Code On Wages, any employee who gets the salary delayed or gets less salary or deductions are in excess, the Employee can directly file a complaint before a Magistrate against the Employer. **Hence, strict compliances under all the Four Codes is one of the challenge.**

Finally, when we scrutinize the positive sides of the Four Codes with the dis-advantages, concerns, threat of increase of litigations, challenging issues, how far one can say it is a Labour Reform with a purpose and intention of "Ease Of Doing Business"?

ARTICLE

Labour Codes and the Role of Company Secretary

All the major economies of the World inherited labour law system with serious inconsistencies. Every new law or its amendment thereof has increased the complexities further, rather than resolving it. The labour law regime in India has historically consisted of multiple Central and State legislations, each reflecting a set of compliances unique to the subject matter covered by that legislation. This has led to a system of governance with inherent inconsistencies and cumbersome.

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INTRODUCTION

The Second National Commission on Labour which submitted its report in June 2002 had suggested the formulation of labour codes similar to those in developed countries and recommended that the existing set of labour laws should be broadly amalgamated into the groups such as industrial relations, wages, social security, safety and welfare and working conditions. Based on the suggestions emanated from the commissions and task force set –up and after through deliberations, the Government of India has thought fit to have the labour code which amalgamates and subsumes about 30 legislations at present into 4 labour codes.

The President has granted assent to the four Labour Codes passed by the Parliament namely:

1. The Code of Wages, 2019 – subsumes 4 legislations relating to payment of wages, time of payment and bonus.
2. The Code on Social Security, 2020 – integrates 9 legislations in social security space.
3. The Industrial Relations Code, 2020 - consolidates 3 legislations relating to industrial relations.
4. The Occupational Safety, Health and Working Conditions Code, 2020 – amalgamates 14 labour laws relating to safety and health standards.

At the outset, it may be noted that consistency and uniformity to a greater extent has been maintained and addressed across the Codes unlike in the current labour legislations. The definition of various terms like employer, contractor, employee, wages etc. have been made uniform under the Labour Codes and the confusion brought about by varying definitions in the current labour legislation to a greater extent, been addressed under the Labour Codes.

NEED TO COMPLY WITH THE LABOUR CODES

The Companies Act, 2013 does not provide for Labour Law compliances. However Section 134(5), Section 204 and Section 205 of the Companies Act, 2013 indirectly state the requirement of Labour Law compliance with the Director Responsibility Statement requiring the Directors to ensure that the Company had devised proper systems to ensure compliance with the provisions of all applicable laws and such systems were adequate and operating effectively. The Secretarial Audit requires a report on compliance of all applicable laws including Labour Laws. Further, every assessee to whom the tax audit is applicable under Section 44AB of Income Tax Act, 1961 has to compulsorily comply with the statutory and tax law compliances. Tax Auditors are required to report the details of contribution towards Social Security Schemes, due date of its deposit under prescribed statute and actual date of deposits.

UNDERSTANDING THE APPLICABLE LAW IN AN ORGANIZATION

To comply with the Labour Code, a Company Secretary should know as to what are the applicable labour laws to a particular organisation so that the organisation could get the compliance issues addressed and documents prepared and records kept. With the technology in place, the Company Secretary can design a tool for ensuring a total compliance by preparing the compliance checklist, sending out advance reminders for the due dates of the compliances, updating the tool after complying with back-ups etc.

In short,

- Identify the applicable labour laws to the organisation including common labour laws and industry specific laws so as understand the requirement, records maintenance, compliance, returns to be furnished, their periodicity, any specific inspection and sample testing requirements and other related matters.
- Running the checks as to what is required to be complied with respect of each law. This can be done by preparing the check list for compliances separately for payment related and return related – routine and event based.

- Fixing the responsibility as to who should do what so to ensure that the compliance relating to all the applicable laws to the organisation is complied with. This can be done a monitoring checklist and regularly checking that the compliance is done in time
- Finally preparing report to Board on compliance matter in an appropriate format and submitting the report. The comprehensive report may be prepared containing the nature of compliance, due date on which the compliance is required to be made and the date of actual compliance.

I. The Code on Wages

The major highlights of the Code include:

A. Key Definitions

- **Wages** means all remuneration capable of being expressed in monetary terms including payment in kind except those components that are specifically excluded and the excluded component to be restricted to 50% of the wages and 15% for payment in kind.
- **Employer** means a person who employs the employees, whether directly or through contractor and includes the legal representative of a deceased employer.
- **Employee** means, any person employed on wages by an organisation to do work and includes any person employed in supervisory, managerial and administrative functions or any persons declared to be an employee by the appropriate Government.
- **Worker** means employee but excludes supervisors whose monthly salary is Rs.15,000/- or more and those employed in managerial and administrative capacity.

> To comply with the Labour Code, a Company Secretary should know as to what are the applicable labour laws to a particular organisation so that the organisation could get the compliance issues addressed and documents prepared and records kept. With the technology in place, the Company Secretary can design a tool for ensuring a total compliance by preparing the compliance checklist, sending out advance reminders for the due dates of the compliances, updating the tool after complying with back-ups etc.

- **Contract labour** means a worker who shall be deemed to be employed in the work of an organisation by or through a contractor and includes inter-state migrant worker but does not include those persons who are regularly employed by the contractor for any activity of his organisation

B. Prohibition of gender discrimination – The Code prohibits gender discrimination and mandates that pay parity should be ensured for all genders including transgender.

C. Minimum Wages -The appropriate Government is required to fix minimum rates of wages for all the employees. The minimum rates of wages fixed by the appropriate Government shall not be less than the floor wage and if the minimum rate of wages fixed by the appropriate Government is more than the floor wage, then, the appropriate Government shall not reduce such minimum rates of wages.

D. Payment of Wages

- The Code applies to all employees and the wage period shall be not more than a month and shall be paid in the mode as prescribed under the Code. Further, the wages shall be paid within two working days in case of removal, dismissal, retrenchment or resignation.
- The deduction shall be as permitted under this Code and shall not exceed 50% of such wages in a wage period. The deduction applies to both statutory and other deductions.

E. Payment of Bonus

- The Bonus shall be paid to employees based on the wage threshold to be notified within a period of eight months from the close of the accounting year. In case of dispute, the minimum bonus to be paid within eight months from the close of the accounting year and the balance to be paid within a period of one month from the date on which the award becomes enforceable or the settlement comes into operation.
- The Bonus can be withheld for specific situations as stated in the Code including for conviction for committing sexual harassment.

F. Records, Returns and Notices

- The Register to be maintained shall contain the details of the persons employed, muster roll, wages and such other details as may be prescribed.
- Every employer shall display a notice at a prominent place of the organisation containing the abstract of this Code, category-wise wage rates of employees, wage period etc. and shall issue wage slips to the employees in such manner as may be prescribed.

II. The Code on Social Security

The major highlights of the Code include:

A. Key Definitions

- **Building or other construction work**- The Work relating to construction, alteration, repairs, maintenance etc. but does not include works relating to any factory or mine or employing less than 10 workers and the total cost of such work does not exceed Rs. 50.00 lakhs.
- **Fixed Term employment -** The engagement of an employee on the basis of a written contract for a fixed period of time/ employment.
- **Inter-State migrant worker -** A person employed in an organisation and recruited to be employed in another State called destination state or subsequently changed the organisation within the destination State, under an agreement or other arrangement and drawing wages not exceeding Rs. 18,000/ p.m.
- **Aggregators**- A digital intermediary or a marketplace for a buyer to connect with the seller of the service provider like ride sharing services, food and grocery delivery services, logistic services etc.
- **Gig worker**- A person who performs work and earns from such activities outside of traditional employer-employee relationship.
- **Home-based worker** - A person engaged in the production of goods or services for an employer from his home or other premises other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.
- **Platform work** - A work arrangement in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment.
- **Self-employed worker** - A person who is not employed but engages himself in any occupation in the unorganised sector subject to a monthly earning of an amount or holds cultivable land subject to such ceiling as may be notified by the State Government.
- **Unorganised sector and Unorganised worker**– 'Unorganised sector' - an enterprise owned by individuals or self-employed workers and engaged in the production, sale of goods or providing service and employing less than 10 workers and an "Unorganised worker" means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code.

B. Registration under the Social Security Code - Registration is mandatory for each and every organisation covered by the Code and is not applicable to organisation which is already registered under any other central labour law.

C. **Employees Provident Fund–**This is applicable to every organisation in which 20 or more employees are employed and the employer and employee are required to make a contribution at the rate of 10% of the employee's wages and 12% for notified organisations.

D. **Employee State Insurance–**This is applicable to all organisations other than a seasonal factory in which 10 or more persons are employed. In case of hazardous or life-threatening organisation, it is applicable irrespective of the number of persons employed and for plantation industry, it can be voluntary coverage. The rate of contribution will be prescribed by the Central Government.

E. **Gratuity–**This is payable to employees for rendering continuous service of five years and for fixed-term employees, the gratuity is payable even if they are employed for less than five years.

F. **Maternity Benefit -** The employer can use common crèche facilities of the Central Government, State Government, municipality, private entity or of a non-governmental organisation or of any other organisation including any other common crèche in a manner agreeable to the organisations concerned.

G. **Employees' Compensation –**This is applicable to every person other than those covered by ESI employed in the scheduled categories at the rate and circumstances stated in the Code.

H. **Social Security and Cess for Building and Other Construction Workers**– A building worker who has completed 18 years of age but less than 60 of age engaged in building or other construction work for a minimum of 90 days during the preceding 12 months shall be registered as a beneficiary with the Building Workers' Welfare Board and a cess between 1% to 2% of the cost of construction for the social security and welfare of building workers collected from an employer shall be deposited with Building Workers' Welfare Board, unless exempted by the appropriate Government.

I. **Social Security for Unorganised Workers, Gig Workers and Platform Workers–**The Central Government and State Government to frame and notify social security schemes for different categories of unorganised workers, gig workers and platform workers which shall be funded among other things as stated in the Code including from corporate social responsibility.

J. **Employment Information and Monitoring –**Every employer shall report to career centre about the vacancy in the organisation as mentioned in the Code.

III. The Industrial Relations Code

The major highlights of the Code include:

A. Key Definitions

- **Strike -** The term 'strike' has been extended to include any concerted casual leave on a given day, taken by 50% or more workers employed in a particular industry.
- **Industry -**The term 'industry' has been expanded to cover any systematic activity carried on by cooperation between an employer and worker whether directly or by or through any agency for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes not being wants or wishes which are merely spiritual or religious in nature. It excludes institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service, activities of the appropriate/ Central Government relating to sovereign functions, defence research, atomic energy and space, domestic service, or any other activity notified by the Central Government.

B. **Appropriate Government -** The appropriate Government for Central Public Sector undertakings (CPSU) or industry controlled by the Central Government is the Central Government, even if its shareholding in the CPSU falls below 50% post the commencement of the Code.In all other cases, the State Government is the appropriate Government.

C. Industrial Relations and Disputes

- **Retrenchment, Lay-off and Closure -** The threshold limit for the layoff and retrenchment of the workers or shutdown of the organisation is 300 workers and if exceeds 300 workers, prior permission from the Government has to be obtained along with the retrenchment compensation payable.
- **Strike and Lock-out –** No strike or lock-out is permitted without giving adequate notice as stated in the Code and no strike or lock-out, is permitted during the pendency of a proceeding before tribunal, arbitrator and 60 days, after the conclusion of such proceedings

D. **Notice of Change –** A 21 day prior notice of such change is required to be given to the workmen unless it is of emergent situation or if such change is effected in accordance with the orders of the appropriate Government or in pursuance of any settlement or award.

E. **Grievance Redressal Committee -** Every Industrial Unit employing a minimum of 20 workers shall have atleast one Grievance Redressal Committee to address the grievance among the workers, even if the employer has an internal grievance redressal mechanism in place with a minimum of 10 members and with equal representatives of both workmen and employer including women members.

F. **Trade Union -** An organisation having Trade Union is required to have a "Negotiating Union" for negotiating with the Employers. If there is only one Trade Union in an organisation, then that Trade Union should be recognized by the Employer as a "Negotiating Union". In case of multiple recognised trade unions, one with the support of at least 51% of the workers on the muster roll of that organisation as members will be recognised as the sole negotiating union by the employer.

G. **Standing Orders–**The industry employing more than 300 workers or has employed 300 or more workers in the preceding 12 months is required to have the Standing Orders certified by the appropriate labour authorities and the certification process must be completed within 60 days from the date of the applicability.

H. Fixed Term Employment – An arrangement on the basis of a written contract of employment for a fixed period of time for doing the same work or work of a similar nature and all benefits extended to permanent workers such as hours of work, wages, allowances and other benefits like Gratuity, Provident Fund etc., are made available to such fixed-term employees as well, for the period that such person is employed.

I. Worker Re-Skilling Fund -The Code provides for the setting up of a fund namely 'Worker Re-Skilling Fund', by the appropriate Government to provide monetary support to retrenched workmen, for re-skilling purposes and fund will consist of the contribution of the employer equivalent to 15 days' wages last drawn by the worker immediately before retrenchment. This fund to be credited by the employer to such worker's account within 45 days of such retrenchment in the prescribed manner. This amount would be paid in addition to the compensation paid to a worker at the time of retrenchment.

IV. The Occupational Safety, Health and Working Conditions Code

The major highlights of the Code include:

A. Key Definitions

- **Contractor** means a person who undertakes to produce a given result for the organisation other than a mere supply of goods or articles of manufacture to such organisation , through contract labour, or supplies contract labour for any work of the organisation as a mere human resource, and includes a sub-contractor.
- **Factory' and 'Organisation'-** The term "Factory" means to include a place where 20 or more workers are employed in any manufacturing process with the aid of power and 40 or more workers without the aid of power and the term "Organisation" means where 10 or more workers are employed. If any existing law specifies a limit than the threshold prescribed under the Code, then the existing threshold will prevail. The onus is on employers to assess for determining the applicability of the Code to their organisation.
- **Occupier** - A person having ultimate control of a factory and includes any one of the Directors other than an Independent Director as stated in the Companies Act, 2013.
- **Manufacturing process**- The Code has expanded the definition of manufacturing process to include composing, offset, screen printing, three dimensional or four dimensional printing, prototyping, flexography or other types of printing process or book binding and additional process notified by the Central Government.

B. Registration of Organisations and Closure Requirements

- **Registration of Organisation**- All organisations to register within 60 days from the date of applicability of the Code unless they are registered under any Central labour law, or other law notified by the Central Government and any change in the registered particulars to be electronically intimated to the registering officer within 30 days of such change.
- **Closure of Organisation**–The intimation of closure of the organisation to be electronically done within 30 days of the closure, accompanied with a certification that all dues to workers employed in the organisation have been paid. Following this, the registering officer is required to cancel the registration certificate and remove the organisation from the register of organization within 60 days.

The Code has recognised the concept of deemed approval of the registration and cancellation of the registration in the event of failure of the registering officer to either issue a registration certificate or cancel the registration, as the case may be, within the prescribed time periods. The failure to obtain registration will debar an employer from employing any employee in the Organisation.

C. Licensing of Factories – Every factory has to undergo a two step licensing process, one when it employs 10 or more workers and the other when it qualifies to be a factory as per the amended definition under the Code.

D. Licensing of contractors - Every contractor has to obtain work-specific license for project based work orders and a national license for undertaking work in more than one State.

E. Employment of Women - The Women can be employed in all sorts of units including hazardous process provided the employers ensure safety and take appropriate measures before their employment including consent of the woman is obtained for working at night.

F. Provisions relating to Contract Labour

The Code applies to organisations including manpower supply contractor in which 50 or more contract labour are employed or were employed on any day in the preceding 12 months through contract.

The engagement of contract labour in core activities of the organisation is subject to certain exceptions. The assessment of whether a particular exception would apply to an activity or whether the activity would qualify as core activity is left to the designated authorities.

The Code states that the principal employers are responsible for providing the prescribed welfare facilities and occupational health and safety to the contract labour engaged at such organisation.

ROLE OF THE COMPANY SECRETARY UNDER THE LABOUR CODE

The Company Secretaries are vital link between the company and its stakeholders and being a "Principal and Compliance Officer" ensures that the organisation follows process, procedures and also complies various laws including Labour Laws as applicable to the organisation and also reviews and provides guidance to the organisation and its stakeholders who are discharging their responsibilities in running the

> The Company Secretaries are vital link between the company and its stakeholders and being a "Principal and Compliance Officer" ensures that the Company follows process, procedures and also complies various laws including Labour Laws as applicable to the organisation and also reviews and provides guidance to the organisation and its stakeholders who are discharging their responsibilities in running the organisation.

organisation. A Company Secretary is associated with the planning process, judgment, and compliance of various laws, financial matters, administration of general management and administration of tax laws including Labour Laws. The compliance of Labour Laws is as important for good corporate governance as any other corporate, economic and securities laws and by ensuring the compliance of various Labour Laws prevent unwanted lawsuits and penalty for non-compliance. With the technology in place, the Company Secretary can design a tool for ensuring a total compliance and to achieve the said purpose, a Company Secretary needs to set up adequate internal control system to minimize risks, Identify gaps and adequate measures to rectify the same and to implement an adequate system to ensure regular and timely compliance of the provisions of law.

Taking into the account the pivotal position the Company Secretaries are in and occupies and also being an "Compliance and Principal Officer", the role of Company Secretaries either in nature of advisory role or compliance role under various Labour Codes can be broadly summarized as follows:

- Compliance Officer – complying with the requirements of the Labour Code.
- Advisor – Advising and guiding the organisation to comply with the Labour Codes.
- Reporting of Compliance = Reporting of the Compliances to the Board and other stakeholders as appropriate.

ROLE AS COMPLIANCE OFFICER

As a compliance officer, the Company Secretary has to ensure the following:

- The Contractors being an Immediate Employer would be primarily responsible for compliance with all the applicable provisions of the Code and has license to engage the contract labour. The organisation being a Principal Employer will be liable for the defaults committed by the contractors under Labour Codes and the relevant authorities could proceed against the organisation being Principal Employers for defaults committed by such contractors.
- the engagement of contract labour in core activities in the organisation is avoided except in case of utmost requirement as stated in the Code. The Code states that the principal employers are responsible for providing the prescribe welfare facilities and occupational health and safety to the contract labour engaged in the Organisation.
- The Service condition and the applicable provisions of the Code are made applicable to all employees including those in managerial and supervisory cadre as well as for fixed-term employment and the fixation of wage period, deduction from wages, payment of wages and bonus should be as mentioned in the Code
- The organisation is duly registered under Labour Codes as required and also comply with the licensing requirements and closure requirements as stated in the Code. Further, the Registers, returns and reporting requirements as stated in the Codes are maintained as required by the Code.
- The prior permission from the Government is obtained for lay-offs and retrenchment if the number of workers is more than 300 workers and also to pay the retrenchment compensation as fixed by the appropriate Government. Further, in case of strike and lock-out to ensure that the workers are allowed to go on a strike/ declare lock-out, only after giving notice as stated in the Code and not to permit strike or lockout during the pendency of a proceeding before tribunal, national tribunal, arbitrator and 60 days, after the conclusion of such proceedings; or any period in which a settlement or award is in operation.
- The certification of Standing Orders is completed within 60 days of the applicability by appropriate authority in case the industrial organisation is employing more than 300 workers or has employed 300 or more workers in the preceding 12 months and if not done, adopt the model standing orders as notified by the Central Government.
- The appointment letter / employment contract is issued to all employees containing amongst other things governing health, safety and working conditions for all employees and implication of these rules.
- A person including a Director but not Independent Director having ultimate control of a factory is appointed as Occupier.
- The women employees are employed with adequate safety measures before their employment. Further, the women employees can be employed in night shifts between 7.00 P.M. to 6 A.M. subject to the consent of the woman is obtained before employing women employees during night shifts, and compliance with additional safeguards relating to their safety, holidays, working hours, etc., to be prescribed by the appropriate Government.
- The establishment working environment is safe, without risk to the health of the employees, adequate welfare facilities such as separate shelter-rooms, rest-rooms, canteens, ambulance facilities etc to all employees including transgender employees.

ROLE AS ADVISOR

The Company Secretary shall assist and advise the organisation to comply with labour codes:

- In fixing of wages and deduction from wages, the provisions of the labour code are followed. The Company Secretary shall advise the HR dept. in fixation of wages of the employees by taking into account the inclusion part, exclusion part and conditions which limit the quantum of exclusions in fixing the wage of an employee and ensure that deduction shall not exceed 50% of the wages and also the manner in which an employer could make deductions to their salary. The Employment agreement needs to be drafted taking into above all the above mentioned aspects.
- There should be no gender discrimination among the employees employed including transgender on pay aspects, service conditions, working conditions etc. and ensure that all provisions of the code are followed.
- To make contribution as appropriate, at the rate specified and within the limit as provided in the Code towards Social Security schemes of its employees and, if applicable, Cess in case of Building and Other Construction Workers as allowed under the Code and also with the guidelines that may be notified for the Social Security Schemes for Unorganised Workers, Gig Workers and PlatformWorkers.
- A 21 day's prior notice to be given of any change in terms of employment, except in case of any emergent situation or if such change is effected in accordance with the orders of the appropriate Government or in pursuance of any settlement or award.
- To constitute a Grievance Redressal Committee with equal representatives of both workmen and employer including women members and also a Safety Committee consisting of equal number of representatives of employers and workers including appointment of safety officers with such qualifications and perform such duties, as may be prescribed by appropriate Government.

ROLE IN REPORTING OF THE COMPLIANCES

The Company Secretaries being an expert in the relevant field of labour laws have a greater responsibility to ensure that the compliance relating to all the applicable laws to the organization is complied with. The Company Secretary could ensure that compliance relating to all other laws except Companies Act and market regulations are ensured /done by the respective departmental heads responsible for the function and the company secretary could periodically run a check and monitor where necessary the compliance and report to the Board and other stakeholders stating that all compliances required to be done are in fact complied. This reporting to the Board can be by way of periodic or through quarterly compliance report as part of Board agenda. Needless to mention, the Board of Directors would place reliance on the report provided by the Company Secretary on compliance matter.

CONCLUSION

The Code, in keeping with the principle to promote compliance rather than penalise employers and also adherence to stringent corporate governance principles and tougher transparency requirements will certainly make the organisation more open, and the Company Secretary plays a vital role in achieving this. In addition to compliance with the provisions of company law, the Company Secretary must appreciate and have an ever-increasing knowledge of the laws on the administration and operation of a Organisation. In today's case, in addition to its conventional efforts to ensure good governance, a good Company Secretary should also insure that his client recognizes the human face of corporate governance.

The Code on Wages, 2019: A Transformation of Existing Labour Laws to the New Era's Statute!!

Labour legislations play an important role in economic growth and facilitate ease of doing business all over the world. One of the major step of central labour ministry towards labour law reforms is consolidating existing various labour statutes into 4 Codes and one such code is "The Code on Wages, 2019". With consolidation of multiple definitions of various terms under previous labour statutes into a single definition under the code will help to solve confusion in its interpretation. It also mentions about the fixation of floor wage by the appropriate government based on minimum living standards of a worker. Compliance of labour legislations is of utmost important which every employer is required to be followed and thereby protect legal rights of workforce.

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INTRODUCTION

"Indian economy is projected to grow at 7.3% in the year 2021": quoted by United Nations. Corporates including Micro Small Medium Enterprises (MSMEs) play a bigger role in economic development and gives direct and indirect employment (ie. skilled/ semi/ unskilled jobs) to various workers. India is a second largest country in terms of workers after China wherein, around 94% of workers works in unorganized sector ranging from farmers, fishermen, those engaged in animal husbandry, beedi rolling, artisans, head loaders, toddy tappers to name a few and the remaining 6% employed in organized sector which includes workers employed by the Government, Public Sector Undertakings and Private sector enterprises. In order to achieve two-fold objectives, specifically to regulate the employer-employee relationship mainly to provide peaceful working atmosphere and at same time, promote the welfare of the workers, various labour laws were enacted. Labour laws are also known as 'Employment laws'.

REQUIREMENT FOR LABOUR CODE

Indian economy followed labour laws and practices constituted by British rulers. But we have hardly seen few amendments in labour laws till liberalization. In the early 1970's, labour laws were framed mainly to serve the manufacturing sector. But it does not sort out problems of service sector. Now, the World Bank ranked India in the 63rd position on "Ease of Doing Business" out of 190 countries. In order to strengthen such ranking and to bring in more investment from abroad for the "Make in India" project, it is pre-requisite that there must be good environment for doing the business along with good working conditions for the labours.

In India, the labour laws have always been a difficult subject and created confusion due to various factors like archaic laws, multiplicity of laws, various regulatory authorities, central vs. states legislations and so on. To circumvent such situation, it is necessary to revamp the labour laws on top priority basis by replacing outdated laws, which bring consistency and transparency in enforcement of labour statutes in line with new era of business environment. This will help the organisation particularly labour oriented enterprises in ease of doing business including compliance.

The important thing here is that the matters connected to the labours are in concurrent list under the constitution of India ("the Constitution") wherein both central and state government have equal powers to enact labour laws.

Table no. 1

Union list	Concurrent list
Regulation of labour and safety in mines and oil fields (Entry No. 55)	Trade Unions; Industrial and labour disputes (Entry No. 22)
Industrial disputes concerning Union employees (Entry No. 61)	Social Security and insurance, employment and unemployment (Entry No. 23)
Union agencies and institutions for "Vocational ...training..." (Entry No. 65)	Welfare of about including conditions of work, provident funds, employers "invalidity and old age pension and maternity (Entry No. 24)

Apart from above, there are allied articles under the Constitution connected to the labours like "equality of opportunity" for the citizens in employment or appointment to any office under the state (Article 16), "prohibits all trafficking and forced labour"(Article 23), "creates a right to work" (Article 41), workers should have the right to a living wage and "conditions of work ensuring a decent standard of life (Article 43) etc..

The Labour statutes are generally categorized as follows:

Table No. 2

Sl. No.	Statute enacted & enforced by the Central Govt. alone	Statute enacted by Central Govt.& enforced both by Central & State Govt. #		Statute enacted by Central Govt.& enforced by the State Govt. #		Statute enacted and enforced by the various State Govt. which apply to respective states. #	
1	The Employees' State Insurance Act, 1948	Minimum Wages Act, 1948		Plantations Labour Act, 1951		Kerala Agricultural Workers' Act, 1974	
		1.1	Kerala Minimum Wages Rules, 1958	1.1	Kerala Plantations Labour Rules, 1959 and other allied rules	1.1	Kerala Agricultural Workers Rules, 1975
2	The Employees' Provident Fund and Miscellaneous Provisions Act, 1952	Payment Of Bonus Act, 1965		Trade Unions Act, 1926		Kerala Headload Workers Act, 1978	
		2.1	Payment of Bonus Rules, 1975	2.1	Kerala Trade Unions Regulations, 1958	2.1	Kerala Headload Workers Rules, 1981
3	The Mines Act, 1952	Equal Remuneration Act, 1976		Workmen's Compensation Act, 1923		Kerala Labour Welfare Fund Act, 1975	
		3.1	Equal Remuneration Rules, 1976	3.1	Kerala Workmen's Compensation Rules, 1958 and other allied rules	3.1	Kerala Labour Welfare Fund Rules, 1977
4	The Dock Workers (Safety, Health and Welfare) Act, 1986.	Payment Of Wages Act, 1936		The Factories Act, 1948		Kerala Shops And Commercial Establishments Act, 1960	
		4.1	Kerala Payment Of Wages (General) Rules, 1958 and other allied rules	4.1	The Kerala Factories Rules, 1957	4.1	Kerala Shops And Commercial Establishments Rules, 1961
	So on…	Payment Of Gratuity Act, 1972		So on…		So on…	
		5.1	Kerala Payment Of Gratuity Rules, 1973				
		So on…					

 # Reference taken for state laws as Kerala state labour laws and rules

Accordingly, Central Government has passed more than 50 laws till date pertaining to labour and allied aspects while various state governments have passed more than 150 laws.

LABOUR CODE

As a part of major initiative of Central Government, Ministry of Labour and Employment enacted Code on Wages, 2019 ("the Code") (one of the major 4 labour codes) by simplifying, rationalizing and amalgamating existing 4 central labour legislations as given below:

Table No. 3

Particulars of the Code	Existing labour laws repealed	
	labour laws	Objectives
• Lok Sabha passed on July 30, 2019; • Rajya Sabha passed on August 2, 2019; • Assent of the President received on August 8, 2019.	The Payment of Wages Act, 1936 ("TPW Act, 1936")	To ensure payment of wages to employees are disbursed on time and no undue deductions are made.
	The Minimum Wages Act, 1948 ("TMW Act, 1948")	To enable fixing of minimum rates of wages in certain employments.
	The Payment of Bonus Act, 1965 ("TPB Act, 1965")	To provide for payment of bonus to persons employed in certain establishments on the basis of profits or production or productivity.
	The Equal Remuneration Act, 1976 ("TEM Act, 1976")	To mandate equal remuneration and to prevent gender discrimination in employment matters.

> The World Bank ranked India in the 63rd position on "Ease of Doing Business" out of 190 countries. In order to strengthen such ranking and to bring in more investment from abroad for the "Make in India" project, it is pre-requisite that there must be good environment for doing the business along with good working conditions for the labours.

APPLICABILITY AND SIGNIFICANCE OF THE CODE

The Code drafted mainly on the basis of the recommendations of the 2nd National Commission on Labour (NCL-II).The Code envisages applicability of its chapters I, II & III on all employees without any wage threshold or restriction of scheduled employment and ensures minimum wages along with timely payment of wages to all such employees. Currently, the provisions of The Payment of Wages Act, 1936 is applicable to workers and employees of wage limit upto Rs. 24,000 per month and The Minimum Wages Act, 1948 extended only to scheduled employments. Whereas, Chapter IV of the Code (i.e. Payment of Bonus) shall apply to the employees based on wage threshold which shall be notified by the appropriate government (Rs. 21,000 per month is the wage threshold under The Payment of Bonus Act, 1965).

In terms of non compliance, the Code makes the opportunity to employers for compounding the offence. Many labourers working in unorganized sector like farm labours, head loaders, persons working in restaurants and dhabas, chowkidars, painters, etc. who were out of the ambit of minimum wages will get legislative protection and privilege to receive minimum wages.

ANALYSIS OF THE KEY DEFINITIONS/ CONCEPTS UNDER THE CODE

EMPLOYEE

The term "Employee" (Section 2k) is defined to include all categories of persons (skilled, semi-skilled, and unskilled) employed on wages in an establishment including the persons working in the managerial and administrative capacity excluding apprentice and member of Armed forces.

The Supreme Court in the case of "Ahmedabad Private Primary Teachers' Association vs. Administrative Officer and others (AIR 2004 Supreme Court 1426) held that whether the teacher will be treated as "employee". In the respective case, it was pointed out that a trained teacher is not described in industrial field or service jurisprudence as a 'skilled employee'. Such adjective generally is used for employee doing manual or technical work. Similarly, the words 'semi-skilled' and 'unskilled' are not understood in educational establishments a describing nature of job of untrained teachers.

It was further mentioned that the teachers are also not employed in 'managerial' or 'administrative' capacity as under:

…even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in "managerial" or 'administrative' capacity.

The Supreme Court thus held that teachers to be out of the purview of the definition of 'employee'. The term employee under the code is an inclusive definition and appropriate government may include "teacher" in above definition in future.

WORKER

The term "Worker" (Section 2z) is defined to include all type of person (manual, unskilled, skilled, technical, operational clerical or supervisory work) employed for wage including working journalists and sales promotion employees. But it excludes the following:

Any person who is employed in:

a. Armed force; or

b. employed in the police service or as an officer or other employee of a prison; or

c. employed mainly in a managerial or administrative capacity; or

d. employed in a supervisory capacity drawing wage of exceeding Rs.15,000/- per month; or

e. Apprentice.

EMPLOYER

The code provides a clear definition of the term ''employer' as compared to existing labour laws for identifying the responsible person for fixing liability appropriately. The term Employer (Section 2l) is defined as

- A person who employs direct or indirect employees in his establishment;
- The head of such department if establishment is carried on by department of the Central Government/ State Government;
- Chief Executive in case of local body;
- Occupier of the factory;
- Manager or Managing Director of the establishment where the person or authority have control over the affairs of the company.

Includes a Contractor and Legal Representative of the deceased employer.

WAGE

Normally, the business organisation pays salary in the form of Cost-to-Company (CTC) consists mainly of a) Basic wage b) House Rent Allowance (HRA), Retiral benefits like PF, ESI, gratuity etc. and other allowance like leave travel allowance, leave encashment etc. The term Wage defined under the code is simple to understand language with exclusion of various components. The term "Wages" (Section 2y) means all remuneration payable to employees which includes Basic pay, Dearness allowance; and Retaining allowance, if any. But it excludes the following:

i. Statutory bonus,
ii. Value of house accommodation/ supply of water, light, medical attendance or other amenity,
iii. Employer's contribution to Provident fund, pension and interest accrued thereon,
iv. Conveyance allowance/ value of travelling concession,
v. Sum paid to defray special expenses,
vi. House Rent Allowance,
vii. Remuneration payable under award or settlement,
viii. Overtime Allowance,
ix. Commission,
x. Gratuity payable on termination,
xi. Retrenchment Compensation and Other Retiral Benefits/ Ex-gratia.

But, if payments made by the employers to the employees of excluded components under item (i) to (ix) exceed 50% of all remuneration payable as "wages" under the Code, such excess amount shall be deemed as remuneration and will be considered as "wages". In another words, employer must looked into inclusion as well as exclusion and make sure that exclusion shall not exceed 50% of total remuneration. For example, If Mr. A is getting salary of Rs. 80,000 p.m. and the exclusion mentioned above shall not exceed Rs. 40,000. Accordingly, corporate may bring down the allowances to a limit of 50% of basic wage. With this, basic wage portion may tend to increase on average of 30% to 50%. Also remuneration payable in kind to the employees which does not exceed 15% of total wages shall deemed to be form part of wage.

Also, the above changes in basic wage will tend to increase employer's contribution to PF rather than minimum required contribution ie. 12% of Rs. 15000 (ie. Rs. 1800). Thus higher contribution to PF will lead to increased cost to employer and lowers the take away salary to employees. Let us take same example as above ie., if Mr. A's CTC is Rs. 80,000 and Basic wage is Rs. 35000, then employer's and employee's contribution would be Rs. 4200 each towards PF as compared to earlier minimum required contribution as above. As a result of which, take away salary will be reduced to Rs. 71,600.

Also there will be huge impact on gratuity portion ie. it will go up if there is any change in basic wage. A Company has to pay gratuity equaling to 15 days of last drawn wage for each year of service. Accordingly, an increase in basic wage will lead to increase in gratuity benefit.

As far as Income tax liability is concerned, those who are in higher salary bracket will have to pay more tax. But their liability may be reduced to the extent of higher contributions for retirement subject to the overall limit of Rs. 1.50 lakhs under Sec 80C of the Income-tax Act, 1961.

FLOOR WAGE AND MINIMUM WAGE

The code introduced the new concept "Floor wage" wherein Central Government shall fix floor wage (Sec 9) taking into account minimum living standards of a worker in prescribed manner and the different floor wage may be fixed for different geographical areas like temperature, hazardous occupations, underground work etc. The minimum wage rates fixed by the Appropriate Government shall not be less than the floor wage. Also if minimum wage rates fixed is more than floor

wage, the appropriate government shall not reduce the said wage rate fixed earlier. The Appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding 5 years and consult with concerned Advisory Body.

Currently, Central Government has fixed a wage ceiling ie. 'National Floor Level Minimum Wage' ("NFLMW") which doesn't have statutory and legal binding on various State governments.

On the other way, it is purely advisory in nature due to which state government does not consider such wage ceiling. Fixation of NFLMW by appropriate government is a welcoming step in the code and help to bring uniformity in wage rate throughout the nation. This ensures minimum wage payment to the employees across the country.

TIME LIMIT FOR PAYMENT OF WAGES

The employer shall pay wages to the employees within the time limit (Sec 17) as follows:

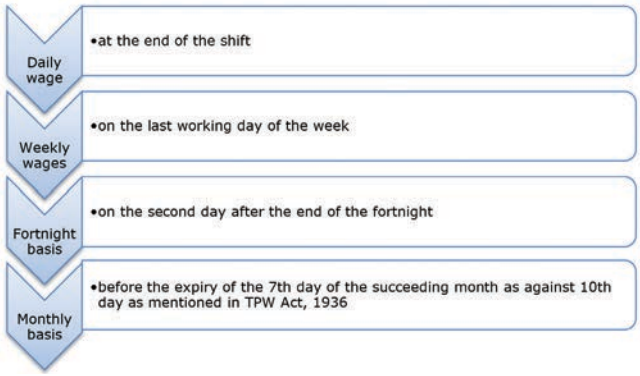

Figure no. 1

In case the employee is removed, dismissed, retrenched, resigns or becomes unemployed due to closure of an establishment, the wages are required to be paid within 2 working days.

EQUAL REMUNERATION FOR EQUAL WORK

There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender (ie. men, women or transgender). Thus, it applies to all employees (as against men and women workers as

mentioned under TEM Act, 1976) in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employees. Hence, the term "same work or the work of similar nature" is vital ingredient in determining the protection on ground of gender. The said concept derived from TEM Act, 1976.

The employer shall not,—

(i) for the purposes of complying with the Sec 3(1), reduce the rate of wages of any employee; and

(ii) make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

BONUS

The Code brings transparency in dealing with matters pertaining to Bonus. The gist of important provisions pertaining to the Bonus is as follows:

Table No. 4

Applicability of bonus to the Establishments (Sec 41(2))	**20 or more persons are employed or were employed on any day during an accounting year.**
Minimum days to be worked for Bonus eligibility (Sec 26 (1))	atleast 30 days in an accounting year
Minimum Bonus (Sec 26 (1))	8.33 % of the wages earned by the employee or Rs. 100, whichever is higher, whether or not such employer has any allocable surplus during the previous accounting year
Maximum Bonus amount (Sec 26 (3))	If the allocable surplus exceeds the amount of minimum bonus payable to the employees, employers shall in lieu of such minimum bonus, be bound to pay to every employees in proportion to wages earned by them subject to the maximum of 20% of wage.
Payment of bonus out of allocable surplus (Sec 31)	The bonus shall be paid out of the allocable surplus which shall be an amount equal to • 60% in case of a banking company and • 75% in case of other establishment, of the available surplus Available Surplus shall be computed as per Sec 33 of code.
Maximum time limit for Bonus payment (Sec 39)	• Within a period of 8 months from the close of the accounting year. • The above time limit can be further extended upto 2 years if there is sufficient reason by the employer.
Set on and setoff of Allocable surplus. (Sec 36)	• The allocable surplus exceeds the maximum bonus amount payable to the employees, the excess amount shall be carried forward for being set on in the succeeding accounting year. • The carry forward limit shall be 20% of the total wage of the employees in that accounting year. • Carry forward period shall be up to and inclusive of the 4th accounting year to be utilised for the bonus payment in a prescribe manner.
Non applicability of above provisions	Employees of/ under • LIC; • the Dock Workers (Regulation of Employment) Act, 1948; • an establishment under the authority of the Central Govt. or a State Govt. or a local authority; • the Indian Red Cross Society or like institution; • universities and other educational institutions; • Institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit; • public sector financial institution other than a banking company; • inland water transport establishments operating on routes passing through any other country; • Such other establishments as exempted by Central Govt. by notification.

Application of Chapter IV to establishments in public sector in certain cases (Sec 40)	If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both, is not less than 20% of the gross income, then, the provisions of Bonus shall apply to such establishment in public sector as they apply in relation to a like establishment in private sector.

ADVISORY BOARD

Advisory Board mainly act as an advisory to the appropriate government on certain matters mentioned in the below table:

Table No. 5

Particulars	Central Advisory Board	State Advisory Board
Composition	a. Representing employers; b. Representing employees which shall be equal in number of the members specified in (a) below; c. Independent persons, not exceeding one-third of the total members of the Board; d. 5 representatives of such State Governments; Above members shall be nominated by the Central Govt.	a. Representing employers; b. Representing employees which shall be equal in number of the members specified in (a) below; c. Independent persons, not exceeding one-third of the total members of the Board;
Chairman	Independent Member as nominated by the Central Govt.	• Independent Member as nominated by the State Govt.
Women Members	1/3rd of the total members shall be women.	
Terms of reference	Advise the Central Govt. on the following matters: • fixation or revision of minimum wages and other connected matters; • providing increasing employment opportunities for women; • the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf; • any other matter relating to this Code; • the Central Govt. may issue directions to the State Govt. as it deems fit in respect of matters relating to issues referred to the Board.	Advise the State Govt. on the following matters: • fixation or revision of minimum wages and other connected matters; • providing increasing employment opportunities for women; • the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf; • any other matter relating to this Code;

APPEAL

As per Sec 49, any person aggrieved by an order passed by the Authority (appointed under Sec 45(2) to hear and determine the claims which arises under the code) may prefer an appeal before Appellate Authority within 90 days and such appeal shall be disposed by such appellate authority within 3 months.

RECORDS, RETURNS AND NOTICES

Table No. 6

Maintain Registers	Must contain the details w.r.t. persons employed, muster roll, wages and such other details in a prescribed manner.	The Code seeks to provide single register as against multiple registers under existing laws and helps to provide better compliance in a simplified manner.
Display Notice in the notice Board at the prominent place of establishment	Must contain the details as follows: • abstract of this Code, • category-wise wage rates of employees, • wage period, • day or date and time of payment of wages, and • The name and address of the respective Inspector-cum-Facilitator.	
wage slips	In a prescribed format	
Non applicability of above provisions	To the employer to the extent he employs not more than five persons for agriculture or domestic purpose	

INSPECTOR-CUM-FACILITATOR

The appropriate government shall appoint "Inspector cum Facilitator" ("Inspector" under existing labour laws) ("ICF") who shall have dual responsibility of advising employers and workers relating to compliance with the provisions of this Code and also to inspect the establishments as assigned to them. The code confers jurisdiction of ICF on randomized selection of inspection irrespective of geographical limits under existing wage laws. Such jurisdiction may be throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments assigned to ICF by the appropriate Government. This will bring accountability and transparency in exercising their duties.

In order to support Digitalization, the Code authorizes Appropriate Government to lay down an inspection scheme which may also provide for generation of a web-based inspection and calling of information relating to the inspection electronically. As per Sec 51(6) of the code, ICF shall have following powers:

a. examine any person who is found in the establishment, whom the ICF has reasonable cause to believe, is a worker of the establishment;

b. require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;

c. search, seize or take copies of such register, record of wages or notices or portions thereof which ICF has reason to believe that offence has been committed by the employer;

d. bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and

e. Exercise such other powers as may be prescribed.

PAYMENT OF WAGES DURING LOCKDOWN PERIOD

During the COVID-19 pandemic lockdown, India was facing labour related problems like loss of employment, non payment of wages, migration of labours etc. In the light of such problems, Ministry of Home Affairs, Govt. of India in it's order dated March 29, 2020 directs employers to pay

> In order to support Digitalization, the Code authorizes Appropriate Government to lay down an inspection scheme which may also provide for generation of a web-based inspection and calling of information relating to the inspection electronically.

full wages on due date without any deduction to the workers during the lockdown period. Large no. of petitions were filed before the Apex court challenging constitutional validity of MHA order on the grounds that they violated Articles 14 and 19(1)(g) of the Constitution which was in contravention of the principles of 'equal work, equal pay' and 'no work, no pay' by not differentiating between the workers so covered and those who had been working during the lockdown.

Apex Court by way of order dated June 12, 2020 has directed all employers who were willing may negotiate terms and enter into a settlement with workers/ employees regarding payment of wages till industrial establishment(s) were closed down during the lockdown.

CONCLUSION

COVID-19 pandemic affected the growth of many business organizations and even makes its difficult to survive. With the emergence of the Code with various positive factors like Broad based applicability, transparency, uniform definitions, easier to understand and comply under the code together with the composition of offences, which help Corporates to do the business seamlessly under "Make in India" Project. It will provide protection and benefit to the workforce in organized and unorganized sectors to the greater extent. But on the other side, the Code provides the appropriate State Governments to make rules, for carrying out the provisions of the Code which may result in multiple statutory requirements in various states. We need to closely watch the draft rules whether it will affect the objective of Code of ease of the labour laws and compliance for employers. We, the Company Secretaries should be acquainted with new labour codes and understand the impact which may affect the employers/ business operations.

REFERENCE:

i. The Code on Wages, 2019

ii. Ministry of Labour & Employment, Government: https://labour.gov.in/

iii. Labour Commissionerate, Kerala: http://www.lc.kerala.gov.in/

iv. Ease of Doing Business rankings: https://www.doingbusiness.org/en/rankings

ARTICLE

Labour Reforms in India

Labour reforms are some important reforms taken by the Government of India among reforms in many other sectors since independence. It has often been viewed as changes in the labour laws to make it easy for entrepreneurs and industrialists to run their businesses without the pain of compliance and fear of punitive action by the states. The present study explores a brief reviews on the labour reforms by specifically pointing out some major labour law reforms undertaken by Government of India in recent years. The study identified some opportunities in the labour laws for Company Secretaries professionals who are both in job and also in practices. Most of the findings of the study are derived from secondary sources of information.

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INTRODUCTION

The Indian economy has witnessed a series of reforms encompassing all major sectors of the economy since the year 1991. It has marked a steady break from the post policy regime. The important substituting development strategy nurtured by the Indian planning regime since the year 1951 was given up in favour of an export-linked strategy. The economy has been no more kept aloof from the rest of the world.

Labour reforms are some important reforms taken by the Government of India among reforms in many other sectors since independence. It has often been viewed as changes in the labour laws to make it easy for entrepreneurs and industrialists to run their businesses without the pain of compliance and fear of punitive action by the states. However, it is the most opportune time for labour reforms in India basically for two reasons: first, China is fast losing its advantage as manufacturing hub as labour cost has trebled there in last one decade and second, the Government of India is truly committed to 'Make in India' and 'Ease of Doing Business in India" by attracting the investors and large businesses to set up their manufacturing bases in the country. Success of various such government's dream projects is dependent on how soon and how fast labour reforms are taken further. Following are some initiatives taken by the government in labours reforms so far in India.

In this article, we are discussing major reforms done in labour laws during past few years.

REFORMS IN LABOUR LAWS

The labour laws address the various administrative rulings (such as employment standing orders) and procedure to be followed, compliance to be made and it address the legal rights of, and restrictions on, working people and their organizations.

The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy.

The legislations can be categorized as follows:

- Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement.
- Labour laws enacted by Central Government and enforced both by Central and State Governments.
- Labour laws enacted by Central Government and enforced by the State Governments
- Labour laws enacted and enforced by the various State Governments which apply to respective States.

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Laws Enacted by Central Government

Following are some labour legislations which fall in this category.

1. The Employees' State Insurance Act, 1948
2. The Employees' Provident Fund and Miscellaneous Provisions Act,1952
3. The Mines Act, 1952

   The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
4. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore MinesLabor Welfare Fund Act, 1976
5. The Mica Mines Labour Welfare Fund Act, 1946
6. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
7. The Beedi Workers Welfare Cess Act, 1976
8. The Cine Workers Welfare (Cess) Act, 1981
9. The Beedi Workers Welfare Fund Act, 1976
10. The Cine Workers Welfare Fund Act, 1981
11. The Dock Workers (Safety, Health and Welfare) Act, 1986

Laws enacted by Central Government and enforced by both Central and State Government

Following are some of the examples of such legislations.

1. The Minimum Wages Act, 1948
2. The Payment of Bonus Act, 1965
3. The Payment of Gratuity Act, 1972
4. The Payment of Wages Act, 1936
5. The Maternity Benefit Act, 1961
6. Dangerous Machines (Regulation) Act, 1983
7. The Apprentices Act, 1961
8. The Equal Remuneration Act, 1976.
9. The Industrial Disputes Act, 1947
10. The Industrial Employment (Standing Orders) Act, 1946.
11. The Child Labour (Prohibition and Regulation) Act, 1986.
12. Sales Promotion Employees Act, 1976
13. Private Security Agencies (Regulation) Act, 2005
14. The Contract Labour (Regulation and Abolition) Act, 1970.
15. The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996
16. The Building and Other Construction Workers Cess Act, 1996
17. Unorganized Workers Social Security Act, 2008
18. The Inter -State Migrant Workmen (Regulation of Employment andConditions of Service) Act, 1979.
19. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
20. The Cine Workers and Cinema Theatre Workers (Regulation ofEmployment) Act, 1981
21. Working Journalists (Fixation of Rates of Wages Act, 1958
22. Merchant Shipping Act, 1958
23. Dock Workers (Regulation of Employment) Act, 1948
24. Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997

Laws Enacted by Central Government and enforced by State Government

Following are the list of such laws.

1. The Factories Act, 1948
2. The Weekly Holidays Act, 1942
3. The Employees' Compensation Act, 1923
4. The Trade Unions Act, 1926
5. The Motor Transport Workers Act, 1961
6. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
7. The Plantation Labour Act, 1951
8. The Bonded Labour System (Abolition) Act, 1976
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Personal Injuries (Compensation Insurance) Act, 1963
11. The Personal Injuries (Emergency Provisions) Act, 1962
12. The Sales Promotion Employees (Conditions of Service) Act, 1976
13. The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
14. The Children (Pledging of Labour) Act 1938
15. The Employers' Liability Act, 1938

ARTICLE

REFORMS IN CENTRAL LAW

Years 2019 and 2020 are landmark years in the history of labour reforms, when the country saw the nearly 29 Central Labour laws being amalgamated, rationalized and simplified into four labour codes viz.: (i) the Code on Wages, 2019, (ii) the Industrial Relations Code, 2020, (iii) the Occupational Safety, Health and Working Conditions Code, 2020 and (iv) the Code on Social Security, 2020, thereby bringing these laws in tune with the changing labour market trends and at the same time accommodating the minimum wage requirement and welfare needs of the unorganized sector workers, including the self-employed and migrant workers, within the framework of legislation. The reforms was a long drawn process spread over nearly three decades (table derived below details down chronology of labour reforms).

Chronology of Labour Reforms post 1991

S. No	Name of Commission/ Committee/Report	Year	Chairman/ Organisation	Recommendations
1	National Commission on Rural Labour	1991	Prof. C. H. Hanumantha Rao	Made recommendations for specific categories of workers, definition of migrant workers to cover all migrants, recommended a minimum wage of ` 20 per day at 1990 prices.
2	Simplification, Rationalization and Consolidation of Labour laws	1994	National Labour Law Association	Recommended the Indian Labour Code 1994. This Code was extensively quoted by the Second National Commission on Labour.
3	Ninth Five Year Plan Vol-2, Human & Social Development	1997-2002	Planning Commission	Existing labour laws cover a small segment of workforce. Ninth Plan aims at reducing the number of laws, with the objective that a smaller number of laws reach the entire workforce.
4	Mitra Committee	1997	Shri Mitra	Major recommendations in IR Act, definition of workman should have no nexus with wages drawn by workman, and should be made uniform in all labour legislations.
5	Commision on Review of Adminstrative Laws, Vol-I & II	1998	Shri P. C. Jain, Retd. Secy to Govt. of India	Endorsed recommendations of Mitra Committee. IR Act be renamed as Employment Relations Act in order to shift the focus from disputes to measures for harmonious relations. Amend Contract Labour Act to enable engagement of contract labour in all peripheral and seasonal activities.
6	Report of the Task Force on Employment Opportunities	2001	Dr. Montek. S. Ahluwalia	To increase share of organized sector in total employment problem of labour laws need to be addressed. Deletion of Chapter VB of Industrial Disputes Act. Introduce short term employment contracts where workers can be hired on contract basis by paying premium wage. Introduce “strike ballot” -a strike can be called only if supported by a qualifying majority of workers. Time limit for three years for filing industrial disputes. Amendment of Contract Labour (Regulation and Abolition) (R&A) Act, to allow outsourcing of peripheral activities from specialized firms.
7	Report of the Steering Committee on Labour & Employment for Tenth Five Year Plan (2002-07)	2001	Dr. S. P. Gupta, Member, Planning Commission	Labour laws to be modernised and made more harmonious. State Governments maybe permitted to amend labour laws as per their requirements, keeping in view the safety requirements of workers. Pension and unemployment benefit for unorganized workers to be considered.
8	Special Group on Targeting 10 million Employment Opportunities per year	2002	Dr. S. P. Gupta, Chairman, Planning Commission	State Governments may be permitted to amend labour laws as per their requirements, but keeping in view safety requirements of workers. Pension and unemployment benefit for unorganized workers to be considered. Avoid disproportionate regulatory burden on small scale units. Self certification by Units and random inspection may be allowed.

9	Second National Commission on Labour	2002	Shri Ravindra Varma	Existing set of Central labour laws be grouped into four or five broad groups pertaining to industrial relations, wages, social security, safety and welfare & working conditions and so on. The Commission opined, "… in an attempt to rationalize labour laws, we could, with advantage, group the existing labour laws into well recognised functional groups. While the ultimate object must be to incorporate all such provisions in a comprehensive Code, such a codification may have to be done in stages and what we have proposed is hopefully the first step'.Labour code should also lay down a floor of substantive labour rights or standards such as minimum wages, maximum hours of work, minimum standards of safety and health at workplace etc as a form of basic law which would be applicable to all workers. Need for National Floor Level Minimum Wage (NFLMW) applicable to all employments. States to fix Minimum Wages above NFLMW.
10	Tenth Five Year Plan, Vol-I & II, Labour Welfare & Social Security	2002-07	Shri K. C. Pant, Dy. Chairman, Planning Commission	Rigid labour laws applied to the organised sector make it difficult for the entrepreneur to rationalise labour than to dispose of capital assets when the need arises. Effective cost of labour to the entrepreneur can be many times the nominal wage bill. Reform labour laws. Exempt small scale industry from the rigour of labour laws by replacing Compliance through self-certification and introducing random inspection. State Governments authorised to amend labour laws as per their requirements. Encourage social dialogue to reduce industrial disputes. Legislative and administrative framework be created for providing social secuity cover to unorganised sector workers. A National Policy on Minimum Wages be evolved to reduce inter-state variations. Creation of a reliable information system for labour migration, initially by conducting a Survey.
11	National Commission for Enterprises in the Unorganized Sector	2009	Dr. Arjun Sengupta	Recommended a separate legislation for providing social security to unorganized sector workers and also a National Social Security scheme for providing minimum social security to the workers.
12	Eleventh Five Year Plan Vol-I, Inclusive Growth	2007-12	Dr. Montek Singh Ahluwaliah, Dy. Chairman, Planning Commission	Lack of flexibility in labour laws, such as Chapter V-B of the Industrial Disputes Act, 1947 and Contract Labour (R&A) Act, which focus on job protection, remains a psychological block for entrepreneurs against establishing new enterprises with a large workforce. Contract Labour (R&A) Act results in the industry letting go of opportunities for seasonal supplies, from external markets. In a globalized economy, manufacturers have to compete with rivals who enjoy greater flexibility, so it is necessary to find practical solutions for the problems created by these laws. Review existing laws and regulations to : encourage the corporate sector to move into more labour-intensive sectors and facilitate the expansion of employment and output of the unorganized enterprises that operate in the Labour-intensive sectors.
13	Report of the Working Group on Labour Laws & other Regulations for the Twelfth Five Year Plan (2012-17)	2007-12	Shri P. C. Chaturvedi, Secretary, M/o Labour & Employment	Consolidation, simplification and rationalization of labour laws to reduce multiplicity of laws and for better enforcement and effective compliance. This would help in moving closer to uniform labour policy on common issues. The Group recommended four cognate groups for consolidation: viz (A) Law governing Industrial Relations to include Industrial Disputes Act, Industrial Employment (Standing Orders) Act, and Trade Unions Act. (B) Laws governing Wages will cover Equal Remuneration Act, Minimum Wages Act, Payment of Bonus Act, and Payment of Wages Act.

				(C) Laws governing Social Security would cover Employees' State Insurance Act, Employees Provident Fund & Miscellaneous Provisions Act and Payment of Gratuity Act (D) Laws governing Working Conditions & Welfare would include Factories Act, 1948, Maternity Benefit Act, Workmen's Compensation Act, Contract Labour (R&A) Act and Inter-State Migrant Workers (RE&CS) Act and (E) Welfare Cess Laws -All Cess Act and Welfare Fund Acts to be clubbed into one Act.
14	Twelfth Five Year Plan Vol-II, Employment & Skill Development	2012-17	Dr. Montek Singh Ahluwaliah, Dy. Chairman, Planning Commission	Multiplicity of labour laws not conducive for development of factory sector. Need to simplify labour laws. Review labour laws which inhibit the hiring of short term interns and trainees
15	Economic Survey, Volume-II, Chapter-10	2014-15	Department of Economic Affairs, M/o Finance	Multiplicity of labour laws and difficulty in their compliance has been an impediment to Industrial development. In a major initiative for bringing compliance in the system and ensuring ease of doing business, a set of labour reform measures has been put forth by the government. Facilitating Presidential Assent for labour reforms in Rajasthan sets an example for further reform initiatives by the States.

Source: *Economic Survey, 2020-21.*

SOME MAJOR REFORMS ARE HIGHLIGHTED BELOW:

REFORMS IN WAGE

The Code on Wages, 2019

Based on the recommendation of the 2nd National Commission on Labour, the labour code on wages has been simplified. The Code on wages, 2019 amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto. The provisions relating to wages shall be applicable to all employments covering both organised as well as un-organised sectors.

The Code on wages, 2019 subsumes the following existing acts:

1. The Payment of Wages Act, 1936
2. The Minimum Wages Act, 1948
3. The Payment of Bonus Act, 1965
4. The Equal Remuneration Act, 1976

The salient features of the Code on Wages, 2019 are as follows:

1. It provides for floor wage for different geographical areas so as to ensure that no State Government fixes the minimum wage below the floor wage notified for that area by the Central Government. The Central Government shall fix floor wage taking into account minimum living standards of a worker in such manner as may be prescribed.
2. If the minimum rate of wages fixed by the appropriate Government earlier is more than the floor wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.
3. The appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding five years.
4. It provides that where a claim has been filed for non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deduction not authorised by the proposed legislation, the burden shall be on the employer to prove that the said dues have been paid to the employee.
5. The period of limitation for filing of claims by a worker has been enhanced to three years, as against the existing time period varying from six months to two years, to provide a worker more time to settle his claims.
6. The Payment of Wages Act read with Notification No. S.O. 2806 (E) dated August 29, 2017 issued by the Ministry of Labour and Employment, was applicable only to employees drawing wages below INR 24,000/- (Indian Rupees Twenty-Four Thousand only) per month. However, the Code makes no mention of any such threshold and it appears that the payment of wages provisions in the Code will be applicable to all employees.
6. The employer shall fix the wage period for employees either as daily or weekly or fortnightly or monthly subject to the condition that no wage period in respect of any employee shall be more than a month.
7. Code additionally provides that dismissal from service due to conviction for sexual harassment would also be considered as a ground for disqualification for receipt of bonus under the Code.
9. The Code provides for a graded penalty system for contraventions under the provisions of the Code. Unlike the provisions under the Minimum Wages Act and the Payment of Bonus Act which provide for punishment of imprisonment up to six months or with a fine which may extend to Rupees five hundred and Rupees one thousand respectively.
10. It provides that the wages to employees may also be paid by cheque or through digital or electronic mode or by crediting it in the bank account of the employee.

11. In order to remove the arbitrariness and malpractices in inspection, it empowers the appropriate Government to appoint Inspectors-cum-Facilitators in the place of Inspectors, who would supply information and advice the employers and workers.

12. It empowers the appropriate Government to determine the ceiling of wage limit for the purpose of eligibility of bonus and calculation of bonus.

13. It provides for compounding of those offences which are not punishable with imprisonment.

REFORMS IN INDUSTRY RELATIONS

The Industrial Relations Code, 2020

Based on the basis of the recommendation of the 2nd National Commission on Labour, the ministry has prepared labour Code on Industrial Relations.

The Industrial Relations Code, 2020 consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto.

The Industrial Relations Code, 2020 subsumes the following existing acts:

1. The Trade Unions Act, 1926;
2. The Industrial Employment (Standing Orders) Act, 1946; and
3. The Industrial Disputes Act, 1947.

The salient features of the Industrial Relations Code, 2020 are as follows:—

1. Industrial establishments pertaining to mine, factories and plantation having three hundred or more workers to take prior permission of the appropriate Government before lay-off, retrenchment and closure with flexibility to the appropriate Government to increase the threshold to higher numbers, by notification.

   Lay off means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason, to give employment to a worker whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

   Retrenchment means the termination by the employer of the service of a worker for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include voluntary retirement or retirement on superannuation or termination of services as a result of non renewal of contract, completion of tenure of fixed term employment, continued ill health.

2. Industrial establishment having three hundred or more workers to obtain certification of standing orders, if the standing order differ from the model standing order made by the Central Government.

   Matters to be provided in standing orders under this code.

   a. Classification of workers, whether permanent, temporary, apprentices, probationers, fixed term employment.
   b. Manner of intimating to workers periods and hours of work, holidays, pay-days and wage rates.
   c. Shift working.
   d. Attendance and late coming.
   e. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
   f. Requirement to enter premises by certain gates, and liability to search.
   g. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workers arising there from.
   h. Termination of employment, and the notice thereof to be given by employer and workers.
   i. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
   j. Means of redress for workers against unfair treatment or wrongful exactions by the employer or his agents or servants.
   k. Any other matter which may be specified by the appropriate Government by notification.

3. To define "workers" which includes the persons in supervisory capacity getting wages up to eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time.

4. The Code requires workers of all industrial establishments to give 60 days' advance notice of strike and does not permit them to proceed on strike within 14 days of such notice. Similar requirements have been prescribed for employers in relation to lock-outs.

5. The definition of "strike" expended to include concerted or mass casual leave by 50% or more workers employed in an industry on a given day.

6. Every industrial establishment employing twenty or more workers shall have one or more Grievance Redressal Committees for resolution of disputes arising out of individual grievances.

7. To provide the maximum number of members in the Grievance Redressal Committee up to ten in an industrial establishment employing twenty or more workers. There shall be adequate representation of the women workers therein in the proportion of the women workers to the total workers employed in the industrial establishment.

8. Engagement of a worker on the basis of a written contract of employment for a fixed period shall be eligible for gratuity if he renders service under the contract for a period of one year.

9. To set up a re-skilling fund for training of retrenched workers. The fund shall consist of the contribution of the

employer of an amount equal to fifteen days wages last drawn by the worker immediately before the retrenchment or such other number of days, as may be notified by the Central Government, in case of retrenchment only.

10. To empower the appropriate Government to exempt any industrial establishment from any of the provisions of the Code in the public interest for the specified period.

REFORMS IN SOCIAL SECURITY AND WELFARE

The Code on Social Security, 2020

The Code on Social Security has been enacted to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors. The Code on Social Security has vital provisions with respect to social security benefits to workers including unorganized workers, fixed term employees, Gig workers and Platform workers.

"**Unorganised sector**" means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

"**Organised sector**" means an enterprise which is not an unorganised sector.

The Code on Social Security 2020 subsumes the following existing acts,

1. The Employees' Compensation Act, 1923;
2. The Employees' State Insurance Act, 1948;
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
5. The Maternity Benefit Act, 1961;
6. The Payment of Gratuity Act, 1972;
7. The Cine Workers Welfare Fund Act, 1981;
8. The Building and Other Construction Workers Welfare Cess Act, 1996; and
9. The Unorganised Workers' Social Security Act, 2008

The salient features of the Code on Social Security, 2020, are:

1. Gratuity period for working journalist as defined in clause (f) of section 2 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955, reduced from five years to three years.
2. In the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on pro rata basis and not on the basis of continuous service of five years.
3. To empower the Central Government by order, to defer or reduce employer's contribution, or employee's contribution, or both, payable under EPF and ESIC, as the case may be, for a period up to three months at a time, as the case may be, applies, for whole of India or part thereof in the event of pandemic, endemic or national disaster.
4. To empower the Central Government to specify by notification, rates of employees' contributions to the Employees' Provident Fund Scheme and the period for which such rates shall apply for any class of employee.
5. The appropriate Government may, by notification, require that from such date as may be specified in the notification, the employer in every establishment or any class or category of establishments, before filling up any vacancy in any employment in that establishment or such class or category of establishments, as the case may be, shall report or cause to be reported, that vacancy to such career centre as may be specified in the notification, and the employer shall thereupon comply with such requisition.
6. A Social Security Fund shall be established by the Central Government for social security and welfare of the unorganised workers, gig workers and platform workers.
7. The contribution to be paid by the aggregators for the funding the Social Security Fund, shall be at such rate not exceeding two per cent., but not less than one per cent., as may be notified by the Central Government, of the annual turnover of every such aggregator who falls within a category of aggregators.

   "**Aggregator**" means a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider.
8. Corporate Social Responsibility Fund within the meaning of the Companies Act, 2013 may be utilised for social security of unorganised workers, gig workers and platform workers.
9. To provide for an establishment to be covered under Employees' Provident Fund (EPF) and under Employees State Insurance Corporation (ESIC) on voluntary basis even if the number of employees in that establishment is less than the threshold.
10. Employees State Insurance Corporation (ESIC) shall also be applicable to an establishment, which carries on such hazardous or life threatening occupation as notified by the Central Government, in which even a single employee is employed.
11. The Central Government shall continue to be the appropriate Government for the central public sector undertakings even if the holding of the Central Government reduces to less than fifty per cent. equity in that public sector undertaking after the commencement of all the four Code.

REFORMS IN OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS:

The Occupational Safety, Health and Working Conditions Code, 2020

The Occupational Safety, Health and Working Conditions Code 2020consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.

The Code is applicable to establishments engaged in hazardous or life threatening activities having less than 10 employees. It shall not apply to the offices of the Central Government, offices of the State Government and any ship of war of any nationality: Provided that the Code shall apply in case of contract labour employed through contractor in the offices of the Central Government or in the offices of the State Government, where, the Central Government or, as the case may be, the State Government is the principal employer.

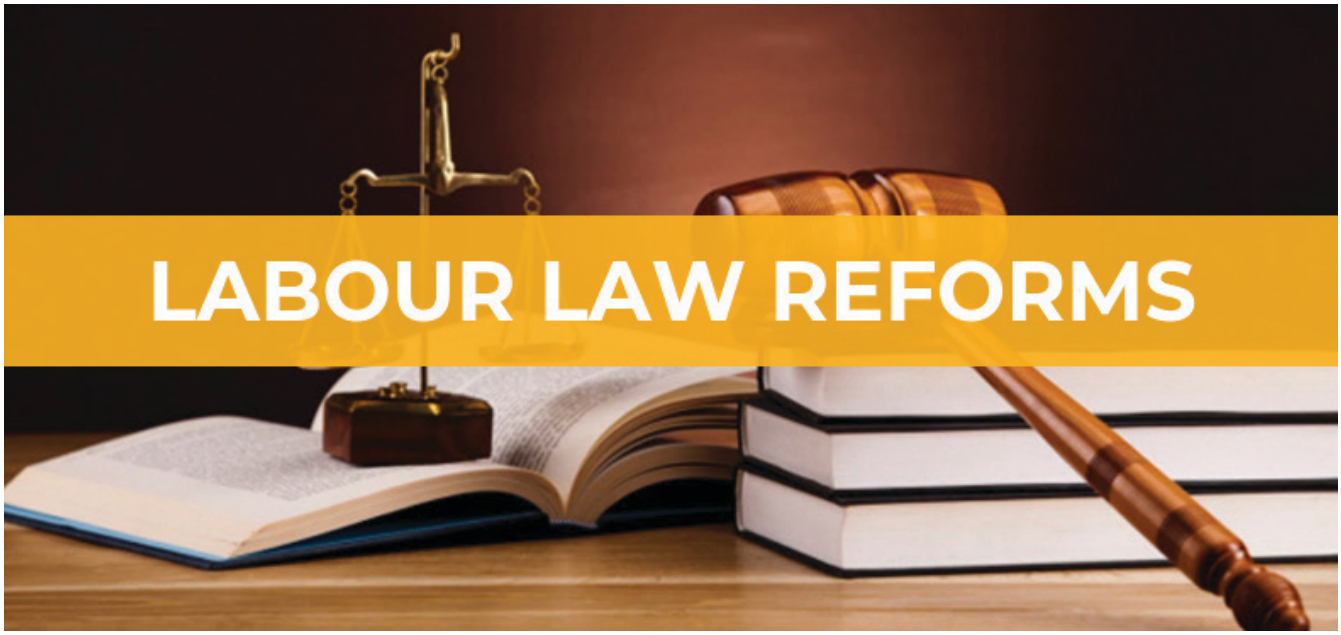
The Occupational Safety, Health and Working Conditions Code 2020 subsumes the following existing acts

1. The Factories Act, 1948;
2. The Plantations Labour Act, 1951;
3. The Mines Act, 1952;
4. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;
5. The Working Journalists (Fixation of Rates of Wages) Act, 1958;
6. The Motor Transport Workers Act, 1961;
7. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
8. The Contract Labour (Regulation and Abolition) Act, 1970;
9. The Sales Promotion Employees (Conditions of Service) Act, 1976;
10. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
11. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981;
12. The Dock Workers (Safety, Health and Welfare) Act, 1986;
13. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

The salient features of the Occupational Safety, Health and Working Conditions Code, 2020, are:

1. The 2020 Code increases the threshold in the definition of factory to: (i) 20 or more workers for premises where the manufacturing process is carried out using power, and (ii) 40 or more workers for premises where it is carried out without using power. (In the Factories Act, 1948, the threshold was 10 or more workers for premises where the manufacturing process is carried out using power, and 20 or more workers for premises where it is carried out without using power).
2. The definition of Contract Labour now also includes inter-State migrant worker but does not include a worker (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment.
3. Women shall be entitled to be employed in all establishments for all types of work under this Code and they may also be employed, with their consent before 6 a.m. and beyond 7 p.m. subject to such conditions relating to safety, holidays and working hours or any other condition to be observed by the employer as may be prescribed by the appropriate Government. If women are required for undertaking dangerous operations, the employer will provide adequate safeguards to them prior to their employment.
4. Provisions for contract labour shall apply to—
   (i) Every establishment in which fifty or more contract labour are employed or were employed on any day of the preceding twelve months through contract;
   (ii) Every manpower supply contractor who has employed on any day of the preceding twelve months fifty or more contract labour [In the Contract Labour (Regulation and Abolition) Act, 1970, the limit is 20 workmen].
5. Employment of contract labour in core activities of any establishment is prohibited. Provided that the principal employer may engage contract labour through a contractor to any core activity, if
   (a) the normal functioning of the establishment is such that the activity is ordinarily done through contractor; or
   (b) the activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be;
   (c) any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.
6. Journey Allowance to Inter State Migrant Workers - The employer shall pay, to every inter-State migrant worker employed in his establishment, in a year a lump sum amount of fare for to and fro journey to his native place from the place of his employment, in the manner taking into account the minimum service for entitlement, periodicity and class of travel and such other matters as may be prescribed by the appropriate Government.
7. No worker shall be required or allowed to work, in any establishment or class of establishment for more than—
   (a) eight hours in a day; and
   (b) the period of work in each day under clause (a) shall be so fixed, as not to exceed such hours, with such intervals and spread overs , as may be notified by the appropriate Government Subject to in case of mines.
8. No worker shall be allowed to work in an establishment for more than six days in any one week.
9. Extra wages to be paid for overtime which shall be wages at the rate of twice the ordinary rate of wages in respect of overtime work and no worker shall be required to work overtime by the employer without the prior consent of the worker for such work.
10. Employee shall be entitled for one-day leave for every twenty days of his work.

ARTICLE



REFORMS IN CONTRACT LABOUR

Returns under the Contract Labour (Regulation and Abolition) Act, 1970, Inter State Migrant Workmen (Regulation of Employment and conditions of Service) Act, 1979; and Industrial Disputes Act, 1947, which were half yearly need to be filed by all employers.

REFORMS IN UNORGANIZED WORKERS

All State Governments and Union Territories have constituted State Welfare Boards. The Government of Tamil Nadu has been implementing its own Act. Till 30.09.2017, an amount of approximate Rs. 37697 crore has been collected as Cess by the State Governments and Union Territories and an amount of Rs. 9651 crore has been spent on welfare schemes formulated by them.

REFORMS IN CONTRACT LABOUR

The Contract Labour (Regulation and Abolition) Act, 1970 was enacted to protect and safeguard the interests of persons who are working as contract labourer. It applies to every establishment /contractor in which 20 or more workmen are employed. It also applies to establishments of the Government and local authorities.

REFORMS IN CHILD AND WORK

The Child Labour (Prohibition & Regulation) Act, 1986 has been amended to the Child Labour (Prohibition & Regulation) Amendment Act, 2016. The act completely rejects any employment or work of children below 14 years of age in all occupations and processes.

- Subsequent to the amendment in Child Labour Act, Government has framed Child Labour (Prohibition & Regulation) Amendment Rules, 2017 after due consultations with stakeholders. The Rules cover provision for prevention, rescue and rehabilitation and convergence, definition of "help" in the family enterprises owned by the family of the child and regulation of child artists to ensure their safety and security. The Rules also provides for District Nodal Officer (DNO) and Task Force under the chairmanship of District Magistrate to ensure that the provisions of the Act are properly enforced.

- Ministry of Labour & Employment has developed an online portal PENCiL (Platform for Effective Enforcement for No Child Labour) in the year 2017.

- Re-alignment of NCLP Scheme with RTE Act, 2009

REFORMS IN PENSION

Implementation of Minimum Pension Provision. The minimum pension provision has been implemented in the year 2014 with change in slabs under various pensioners. Similarly National Pension Plan and Atal Pension Plan are further milestone reforms in pension done by the Government.

IMPACT OF REFORMS ON LABOUR MARKET

Following are four reasons to analyse the impact of reforms on labour market.

- **Labour Market Flexibility**

  The link between flexible wages and higher employment is essentially based on micro-economic tools of analysis and their generalization to macro-level not valid. Also there has been decline in the power of trade unions in shaping labour policies. Indian evidence shows that labour market flexibility is visible without any major labour market reforms. The reason for weakness of this link, essentially related to the effect of wage payments on aggregate demand.

- **The Link Between Reforms and Growth Rate**

  The link between economic reforms and growth rate needs to be viewed within a wider analytical framework than that which one finds in the reality. It may be useful to draw upon some technology used in the economy.

- **The Impact via Export Expansion**

  It is normally assumed that correction of factor price distortion through lowering of wages would lead to expansion of exports of labour infinitive goods thus bringing about a substantial expansion in labour absorption within the economy. For every commodity the range of technological choices is limited, discrete and does not permit continuous variations in capital labour ratio of the type assumed by neo-classicalthinkers.

- **Reforms and Job Security**

  An individual employee's standard of performance falls persistently below par, it should be within the management's right to dispense with the person's services after due warning/disciplinary action. The industrial relations mechanism should be made speedy enough to dispense the necessary action expeditiously,but judiciously.

ROLE OF COMPANY SECRETARIES

The Company Secretaries profession is now well established in India with a strong cadre of over 53,000 members. The ICSI is instrumental in promoting good governance norms and practices by creating conducive environment and acceptability of government policies on trade, commerce and industry.

- **Available opportunities and scope**

  Here is the great opportunity for the practicing company secretaries in assisting and helping the organizations to find out the number of laws which are applicable to them at the first place. The companies where no company secretary is required to be employed or company secretary is not employed, the practicing company secretaries have got a great opportunity to explore the areas of compliance in those companies under various laws that are applicable – it is a vast scope for the practicing secretaries since the laws are innumerable.

- **Excelling in Labour Laws**

  If one desires to excel in the area of labour laws, ample of opportunity is thrown open to them since day in and day out the employers are required to deal with the employee related issues and there are various compliance required to be done either in the form of filing returns, making payments, maintaining records and registers, complying with various conditions etc.

- **Concern of regulators on compliance**

  In the light of the above facts, each and every organization is concerned very much on compliance – especially on various labour laws applicable to them. Though the companies do have their HR department, still they prefer to take all precaution and ensure near total compliance and hence they seek the expertise from professional like company secretaries.

> Great opportunity for the practicing company secretaries in assisting and helping the organizations to find out the number of laws which are applicable to them at the first place. The companies where no company secretary is required to be employed or company secretary is not employed, the practicing company secretaries have got a great opportunity to explore the areas of compliance in those companies under various laws that are applicable – it is a vast scope for the practicing secretaries since the laws are innumerable.

CONCLUSION

The Codes are well-intentioned pieces of legislation that seek to strike a balance between the employer and employee's interests. In India, labour reforms were definitely needed. As a result, the government did its job by implementing the four labour codes, which offer employers more organisational flexibility. These codes were developed by the central government to reform various action plans and provide measures to improve efficiency. These labour codes on operational protection, health and working conditions, the Industrial Code, and the Social Security Code would usher in a new movement for India's workers.

The responsibility and the role of company secretary stands enlarged to a greater extent. Since every company would like to ensure compliance of all applicable laws trying to achieve excellence in corporate governance thereby aiming to ensure that all the stakeholders would feel proud to be associated with the company, it is important for the company secretary to ensure that he exercises his professional skill and diligence in ensuring the total compliance by shouldering a higher responsibility as expected and anticipated by the law makers.

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ARTICLE

Invoking Section 5 of Factories Act, 1947 during COVID -19

Due to GOVID the State of Gujarat invoked Section 5 of the Factories Act and granted exemptions to the industries and increased the working hours, intervals etc. The same has been challenged by the trade unions before the Supreme Court. The Supreme Court held that blanket exemption cannot be given since the COVID did not result in an 'internal disturbance' whereby the security of India is threatened.

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INTRODUCTION

The Factories Act ('Act' for short) is a product of a long struggle of worker unions to secure the right to human dignity in workplaces that ensure their safety and well-being. The first Factories Act was introduced in 1881 and was amended in 1891, 1911, 1934 and 1941. The current Act was enacted during the year 1948. The Factories Act, as it currently stands, was enacted to guarantee occupational health and safety. It ensures the material and physical well-being of workers by fastening responsibilities and liabilities on 'occupiers' of factories.

POWER TO GIVE EXEMPTION

Section 5 of the Act gives powers to the State Government in case any public emergency to give exemption to any factory or class or description of factories from all or any of the provisions of this Act except section 67 (prohibition of employment of young children) for such period and subject to such conditions as it may think fit. Such extension shall be made for a period exceeding three months at a time.

The explanation to section 5 (inserted with effect from 26.10.1976) defines the expression 'public emergency' as a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.

The Central Government declared nationwide lockdown to prevent the spread of COVID – 19 pandemic. The lockdown was extended several times by the Central Government. The economic activity came to a grinding halt. The business all over the country deteriorated. In order to give support during the pandemic the Gujarat Government invoked the provisions of Section 5 of Factories Act and gave exemptions to all factories registered under the Factories Act from various provisions relating to weekly hours, daily hours, intervals for rest etc. for adult workers under-

- Section 51 – working hours for adult – 48 hours in a week;
- Section 54 - working hours for adult – 9 hours in a day;
- Section 55 – interval for adults – half an hour for every 5 working hours;
- Section 56 - The periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest they shall not spread over more than ten and a half hours in any day.

The first notification in this regard was issued by the Gujarat Government to provide "certain relaxations for industrial and commercial activities" from 20.04.2020 till 19.07.2020. The State Government issued another notification on 20.07.2020 extending the exemption granted to factories from 20.07.2020 till 19.10.2020. The exemptions given to the Factories vide the above said notifications are subject to the following conditions-

- No adult worker shall be allowed or required to work in a factory for more than 12 hours in any day and 72 hours in any week.
- The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed 6 hours and that no worker shall work for more than 6 hours before he has had an interval of rest of at least half an hour.
- No Female workers shall be allowed or required to work in a factory between 7.00 PM to 6.00 AM.
- Wages shall be in a proportion of the existing wages (e.g. If wages for 8 hours are 80 Rupees, then proportionate wages for 12 hours will be Rs.120/-)

The said notifications have been challenged by a trade union and a federation of registered trade unions before the Supreme Court in **'Gujarat Mazdoor Sabha and another v. State of Gujarat' – Writ Petition (Civil) No. 708 of 2020 (decided on 01.10.2020).**

SUBMISSION OF THE PETITIONERS

The petitioners submitted the following before the Supreme Court-

- Section 5 of the Act enables Government to exempt any factory, or a class of factories, from its provisions only when a 'public emergency' exists.

- The explanation to Section 5 defines the expression 'public emergency' as a 'grave emergency' which threatens the security of India or of any part of the territory by war, external aggression or internal disturbance. Applying the interpretative principle of *noscitur a sociis*, the expression 'internal disturbance' will have a meaning which derives content from 'war' and 'external aggression' which endangers the security of India and would not include a pandemic or a lockdown.
- Though both Section 5 and the provisions of Article 352 of the Constitution (prior to its amendment in 1978) contain a reference to the expression 'internal disturbance', there is a crucial difference. Art 352 was premised on the satisfaction of the President while the power under Section 5 can be exercised only upon the objective existence of the conditions prescribed.
- Even if a threat to the security of India were to exist as an objective fact, the notifications must, to be valid, ameliorate the threat.
- Factories were open from 21.04.2020, which was the very next day after the first notification came into force. The purported justification of an economic chaos is a smokescreen to extract more work from the workers without paying them their overtime wages in onerous working conditions.
- Section 5 contemplates an exemption only to an individual factory or to a class of factories, and not a blanket exemption that extends to all factories.
- Section 65(2), and not Section 5, of the Factories Act enables suspension of Sections 51, 52, 54 and 56 to a class of factories owing to 'exceptional pressure of work'.
- Even if Section 65(2) (exemption is required to enable the factory or factories to deal with an exceptional press of work) were to apply to account for the exceptional pressure of work, a host of conditions under Section 65(3) are attracted in order to ensure labour welfare including a limit on weekly overtime and intervals between work which the notifications fail to adopt.
- The notifications do not specifically exempt the application of Section 59 of the Factories Act which mandates payment of double the wages for overtime. Yet they make overtime wages proportionate to the existing wages, which also violates the spirit of the Minimum Wages Act, 1948 and amounts to forced labour violating the workers' fundamental rights under Article 23, 21 and 14. and
- Three industrial accidents are reported to have occurred on 07.05.2020 at Vishakapatnam, Chattisgarh and Neyveli in hazardous industries which reopened after the lockdown with a skeletal workforce. The notifications in question will lead to similar disasters.

SUBMISSIONS BY STATE OF GUJARAT

The State of Gujarat submitted the following before the Supreme Court-

- The notifications are not *ultra vires* the Factories Act or unconstitutional.

- The State has issued the notifications by invoking its powers under Section 5 of the Act, under which it may exempt any factory or class of factories from all or any provisions of the Act in a public emergency.
- The COVID-19 pandemic is a 'public emergency' as defined in Section 5 of the Act. It has disturbed the 'social order of the country' and has threatened the even tempo of life in the State of Gujarat as well. As a result of the outbreak, emergency measures were required to be adopted to protect the existence and integrity of the State of Gujarat.
- The COVID-19 pandemic has caused 'extreme financial exigencies' in the State. The lockdown caused a slowdown in economic activities, leading to an 'internal disturbance' in the State within the meaning of Section 5. The State temporarily exempted factories and establishments from the operation of labour laws such as the Factories Act to overcome the financial crisis and to protect factories and establishments.
- The notifications do not violate Section 59 of the Act as they impose the condition of payment of wages for overtime work in proportion to the existing wages.
- Section 5 of the Factories Act confers the power of exemption to the State Government to exempt any factory or class of factories from its provisions. The State Government has the prerogative to determine whether all or only a class or description of factories were to be exempted. Listing of all classes of factories would have been an unnecessary exercise.
- The notifications have not been issued under Section 65(2) of the Factories Act, which can only be invoked to deal with an exceptional pressure of work.
- The notifications have been issued under Section 5 of the Act to ensure the maintenance of minimum production levels in factories. No targets for production have been fixed. Hence, there is no exceptional pressure of work within the meaning of Section 65(2). The purpose of the notifications is to deal with the COVID-19 pandemic and to ensure that the core functions of the economy continue to operate.

ARTICLE

> Section 5 of the Factories Act confers the power of exemption to the State Government to exempt any factory or class of factories from its provisions. The State Government has the prerogative to determine whether all or only a class or description of factories were to be exempted. Listing of all classes of factories would have been an unnecessary exercise.

- Under the notifications, workers are only allowed to work for three additional hours than the normal work day. Factories have also been directed to compensate the workers proportionately for the extra working hours. There is no exploitation of labour and factories are also able to sustain themselves.
- The notifications are not in violation of Articles 14, 21 and 23 of the Constitution.
- The impugned notifications must be understood in the context of the 'extreme financial exigencies arising due to the spread of COVID-19 pandemic' and have been deployed as 'a holistic approach to maintain the production, adequately compensate workers and take sufficient measures to safeguard the said factories and establishments in carrying out essential activities'.

The Respondent has placed reliance on instances of internal disturbance cited by the Sarkaria Commission, which include a natural calamity such as an epidemic, which paralyses the administration and the security of the State. The Respondent also relied on the judgment in 'Pfizer Private Limited, Bombay v. Workmen (Pfizer)' – AIR 1963 SC 1103.

ISSUES FOR ANALYSIS

The Supreme Court heard the submissions put forth by both the parties. The issues for analysis are-

- whether the notifications fall within the ambit of the power conferred by Section 5 of the Factories Act? and
- whether the COVID-19 pandemic and the nationwide lockdown qualify as a 'public emergency' as defined in Section 5?

The Supreme Court analyzed the provisions of section 5 of the Act. After analysis, the Supreme Court observed that Section 5 specifies-

- when an exemption can be granted;
- who can exercise the power to grant an exemption;
- who can be exempted;
- the conditions subject to which an exemption can be granted;
- the provisions from which an exemption can be allowed;
- the period of time over which the exemption may operate; and
- the manner in which the exemption has to be notified.

The existence of a public emergency is a pre-requisite to the exercise of the power to grant exemption under section 5 of the Act. The expression 'public emergency' may have a wide and, as we say in law, an elastic meaning. But the statute as it stands does not leave the expression 'public emergency' undefined. The explanation to Section 5 was introduced by the Factories (Amendment) Act of 1976. The explanation constricts the expression in two ways:

- by confining it to specific causes; and
- by requiring that a consequence must have emanated from those causes before the power can be exercised.

The Supreme Court observed that under Section 5 a situation can qualify as a 'public emergency', only if the following elements are satisfied:

- there must exist a 'grave emergency';
- the security of India or of any part of its territory must be "threatened" by such an emergency; and
- the cause of the threat must be war, external aggression or internal disturbance.

The originating causes of a 'public emergency' in Section 5 of the Factories Act are similar to those which Article 352 of the Constitution. The Supreme Court analyzed the provisions of Article 352 to 360 which contain emergency provisions-

- Article 352 – Proclamation of emergency by President of India;
- Article 353 - Effect of Proclamation of Emergency.-While a Proclamation of Emergency is in operation;
- Article 354 - Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation;
- Article 355 - Duty of the Union to protect States against external aggression and internal disturbance;
- Article 356 – Declaration of President's Rule in a State due to failure of constitutional machinery;
- Article 357 - Exercise of legislative powers under Proclamation issued under article 356;
- Article 358 - Suspension of provisions of article 19 during emergencies;
- Article 359 - Suspension of the enforcement of the rights conferred by Part III during emergencies
- Article 360 – Power of President of India to declare financial emergency.

The Supreme Court also analyzed the following judgments-

- 'S.R. Bommai v. Union of India' – (1994) 2 SCR 644;
- 'Extra-Judicial Execution Victims Families Association v. Union of India' – (2016) 14 SCC 578 2;

With reference to the above judgments the Supreme Court observed that the expression 'internal disturbance' must be interpreted in the context in which it is used. Under Article 352, an internal disturbance must be of the order of an armed rebellion threatening the security of India to proclaim an emergency. Similarly, in order to sustain a valid exercise of power under Article 356 on the ground of an internal disturbance, it must be of such a nature as to disrupt the functioning of the constitutional order of the State.

The Supreme Court also referred to Sarkaria Commission Report. The Sarkaria Commission recognized that a range of situations may qualify to be internal disturbances. The instances of 'internal disturbance' given by the Sarkaria Commission were in the context of Article 355 and Article 356, where the breakdown of the constitutional machinery of the State is in question. In any event, the Sarkaria Commission clarified that mere financial exigencies of a State do not qualify as an internal disturbance.

The power under Section 5 of the Factories Act can be exercised in a 'public emergency'. The explanation states that to constitute a public emergency, there must be a grave emergency. The emergency must be of such a nature as to threaten the security of India or a part of its territory. The threat to the security of India or a part of the territory must be caused by war, external aggression or an internal disturbance. The expression 'internal disturbance' cannot be divorced from its context, or be read in a manner divorced from the other two expressions which precede it. The Supreme Court held that in the absence of any one or more of the constituent elements, the conditions requisite for the exercise of statutory power will not exist.

The Supreme Court then took the second issue as to whether the COVID-19 pandemic and the ensuing lockdown imposed by the Central Government to contain the spread of the pandemic, have created a public emergency as defined by the explanation to Section 5 of the Factories Act.

The global pandemic caused by COVID-19 is an unprecedented situation with which countries all over the world are grappling. In India, the Central Government imposed a nationwide lockdown on 24.03.2020 for an initial period of 21 days to take effective measures to contain the spread of COVID-19, including, maintenance of essential supplies and services and healthcare facilities. The lockdown was subsequently extended until 31.05.2020. During the lockdown, economic activity in the country was brought to a standstill. There was a widespread migration of labour from the cities, where all avenues for work had closed. There was an unprecedented human migration, countless of the marginalized on foot, to rural areas in search of the bare necessities to sustain life. There has been a loss of incomes and livelihood. The brunt of the pandemic and of the lockdown has been borne by the working class and by the poorest of the poor. The State of Gujarat issued the impugned notifications purportedly to provide a fillip to industrial and commercial activities.

The contention of the petitioner is that the present situation does not threaten the security of India or a part of its territory. The Respondent has urged that the economic slowdown caused by the pandemic constitutes a public emergency, warranting the need to issue the impugned notifications curtailing the applicability of certain provisions of the Factories Act. The Supreme Court rejected the contention of the State that during times of a national emergency, all necessary efforts must be made to enhance the industrial production of the nation as held in 'Pfizer' case (supra). The case in 'Pfizer' case is an individual dispute and did not concern the exercise of emergency powers by the State under the Factories Act.

The pandemic has put a severe burden on existing, particularly public health, infrastructure and has led to a sharp decline in economic activities. The Union Government has taken recourse to the provisions of the Disaster Management Act, 2005.-- However, it has not affected the security of India, or of a part of its territory in a manner that disturbs the peace and integrity of the country. The economic hardships caused by COVID–19 certainly pose unprecedented challenges to governance. However, such challenges are to be resolved by the State Governments within the domain of their functioning under the law, in coordination with the Central Government. Recourse can be taken to them only when the conditions requisite for a valid exercise of statutory power exist under Section 5. The Supreme Court observed that this is absent in the present case.

The Supreme Court further observed that the impugned notifications made the following significant departures from the mandate of the Factories Act-

- increase the daily limit of working hours from 9 hours to 12 hours;
- increase the weekly work limit from 48 hours to 72 hours, which translates into 12 hour work-days on 6 days of the week;
- negate the spread over of time at work including rest hours, which is typically fixed at 10.5 hours
- enable an interval of rest every 6 hours, as opposed to 5 hours; and
- mandate the payment of overtime wages at a rate

"The economic hardships caused by COVID–19 certainly pose unprecedented challenges to governance. However, such challenges are to be resolved by the State Governments within the domain of their functioning under the law, in coordination with the Central Government. Recourse can be taken to them only when the conditions requisite for a valid exercise of statutory power exist under Section 5."

proportionate to the ordinary rate of wages, instead of overtime wages at the rate of double the ordinary rate of wages as provided under Section 59.

It would be fathomable, and within the realm of reasonable possibility during a pandemic, if the factories producing medical equipment such as life-saving drugs, personal protective equipment or sanitizers, would be exempted by way of Section 65(2), while justly compensating the workers for supplying their valuable labour in a time of urgent need. However, a blanket notification of exemption to all factories, irrespective of the manufactured product, while denying overtime to the workers, is indicative of the intention to capitalize on the pandemic to force an already worn-down class of society, into the chains of servitude.

The need for protecting labour welfare on one hand and combating a public health crisis occasioned by the pandemic on the other may require careful balances. But these balances must accord with the rule of law. A statutory provision which conditions the grant of an exemption on stipulated conditions must be scrupulously observed. It cannot be interpreted to provide a free reign for the State to eliminate provisions promoting dignity and equity in the workplace in the face of novel challenges to the state administration, unless they bear an immediate nexus to ensuring the security of the State against the gravest of threats.

The expression 'worker' as defined in the Factories Act, is broad enough to include persons who are indirectly employed as contract labour and contribute to the manufacturing process at the establishment. The COVID-19 pandemic in India, was accompanied with an immense migrant worker crisis, where several workers (including workers employed or contracted with factories) were forced to abandon their cities of work due to the halt in production which cut-off their meagre source of income. The notifications in question legitimize the subjection of workers to onerous working conditions at a time when their feeble bargaining power stands whittled by the pandemic. Clothed with exceptional powers under Section 5, the state cannot permit workers to be exploited in a manner that renders the hard-won protections of the Factories Act, 1948 illusory and the constitutional promise of social and economic democracy into paper-tigers. It is ironical that this result should ensue at a time when the state must ensure their welfare.

The Supreme Court held that the impugned notifications, in denying humane working conditions and overtime wages provided by law, are an affront to the workers' right to life and right against forced labour that are secured by Articles 21 and 23 of the Constitution. The Supreme Court allowed the writ petition filed by the petitioners. The Supreme Court further directed that overtime wages shall be paid, in accordance with the provisions of Section 59 of the Factories Act to all eligible workers who have been working since the issuance of the notifications.

CONCLUSION

The Supreme Court rightly held in the above said case that Section 5 of the Factories Act could not have been invoked to issue a blanket notification that exempted all factories from complying with humane working conditions and adequate compensation for overtime, as a response to a pandemic that did not result in an 'internal disturbance' of a nature that posed a 'grave emergency' whereby the security of India is threatened.

Labour Codes Reforms Helping to Build a Future of Safer and Fairer Work

This article covers the brief idea about the new Labour reforms in India, its applicability, duties of the employer, Labour Right in Indian Constitution, Role of Company Secretary in New reforms of Labour Laws and some of the Judgements on Labour Laws. Labour codes reforms helping to build a future of safer and fairer work

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INTRODUCTION

Labour law also known as employment law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates many aspects of the relationship between trade unions, employers, and employees. In other words, Labour law defines the rights and obligations of workers, union members and employers in the workplace.

Generally, labour law covers:

- Industrial relations – certification of unions, labour-management relations, collective bargaining and unfair labour practices;
- Workplace health and safety;
- Employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay

In the wake of the global pandemic and the nation-wide lockdown, a heavy constraint has been put on individuals as well as the economy. To minimize the impact of the pandemic on the general public as well as business establishments and ensure minimum disruption in the supply chain, many amendments, advisories and announcements have been introduced which would ideally subsist during the containment period but could have long-term implications. On the recommendations of the Second National Commission on Labour (2002), the Central Government proposed to replace 29 existing Labour Laws with four Codes to simplify and modernise labour regulation. The major challenge was to facilitate employment growth while protecting workers' rights.

The Labour Codes which were passed in both the Houses of the Parliament and received Presidential Assent are as follows:

1. Code on Wages
2. Industrial Relations Code
3. Social Security Code
4. Occupational Safety, Health and Working Conditions Code

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020 ("**OSH Code**") received the President's assent on September 28, 2020. The OSH Code has incorporated several key pieces of legislation on the working conditions of labour and consolidated it into one comprehensive act, including, inter alia, the Contract Labour (Regulation and Abolition) Act, 1970, the Factories Act, 1948, etc. The new codes are an exercise in ensuring a streamlining of the labour laws in the country.

The OSH Code, 2020 replaces 13 existing Laws: (a) The Factories Act, 1948 (b) The Mines Act, 1952 (c) The Dock Workers (Safety, Health and Welfare) Act, 1986 (d) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (e) The Plantations Labour Act, 1951 (f) The Contract Labour (Regulation and Abolition) Act, 1970 (g) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (h) The Working Journalist and other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (i) The Working Journalists (Fixation of rates of wages) Act, 1958 (j) The Motor Transport Workers Act, 1961 (k) The Sales Promotion Employees (Condition of Service) Act, 1976 (l) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (m) The Cine-Workers and Cinema Theatre Workers Act, 1981.

Applicability

The OSH code applies to establishment employing minimum 10 workers and to all mines and docks. All eligible

establishments should get registered under the code within 60 days from the date of applicability of the code. The employer at the time of registration should provide the information of inter-state migrant workers.

The existing registered establishments will be deemed to be registered under the code.

The OSH Code clarifies that wages do not include (a) bonus; (b) value of accommodation or light, water, medical attendance; (c) employer contribution towards any pension or provident fund; (d) conveyance allowance; (e) sum paid to employed person to defray special expenses; (f) house rent allowance; (g) overtime allowance and (h) gratuity, etc.

Duties of the Employer

Every employer is required to undertake the following:

- ensure that the workplace is free from hazards which cause or are likely to cause injury or occupational disease to the employees and comply with the OSH Code and the Government's directions on the same;
- provide free annual health examination or test, free of costs to certain classes of employees;
- provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of the employees;
- issue letters of appointments to employees; and
- ensure that no charge is levied on any employee for maintenance of safety and health at workplace including conduct of medical examination and investigation for the purpose of detecting occupational diseases.

The OSH Code prescribes a more stringent set of duties for employers with respect to factories, mines, dock work, building and other construction work or plantations, including (i) arrangements in the workplace for ensuring safety and absence of risk to health in connection with the use, storage and transport of articles and substances; (ii) provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all employees at work, etc.

The OSH Code has further clarified that it shall be the duty of the architect, project engineer or designer responsible for any building or construction work or the design of any project relating to such building, to ensure that, at the planning stage, due consideration is given to the safety and health aspects of the building workers and employees who are employed in the erection, operation and execution of such projects.

Advisory Boards

The Central Government will constitute the National Occupational Safety and Health Advisory Board which will advise the Government on matters related to policies, schemes, provisions, rules and regulations under the OSH Code. The State Government will constitute the State advisory Board to advise the State Government on matters related to administration of the OSH Code.

Health, Safety and Working Conditions

The Central Government is entitled to prescribe for provision of, inter alia, (i) cleanliness and hygiene; (ii) ventilation, temperature and humidity; (iii) adequate standard of humidification; (iv) potable drinking water; (v) adequate lighting; (vi) adequate standards to prevent overcrowding, etc.

Furthermore, the employer is required to provide and maintain welfare activities for employees as may be prescribed by the Central Government including (i) adequate and suitable facilities for washing to male and female employees separately; (ii) bathing places and locker rooms for male, female and transgender employees separately; (iii) sitting arrangements for all employees obliged to work in a standing position; (iv) adequate first-aid boxes or cupboards with contents readily accessible during all working hours; and (v) any other welfare measures which the Central Government considers, under the set of circumstances, as required for decent standard of life of the employees.

Inter-state Migrant Workers& Contract Workers

The Central Government will maintain an electronic database of inter-state migrant workers. The inter-state migrant workers may register themselves with the Government. The workers who have migrated from one sate to any other state and are self-employed in that other state may also register themselves. The Maximum working hours is fixed to 8 hours a day. Prior consent of workers is required for overtime work. Workers should get one day leave for every 20 days of work per year.

The Code is made applicable to establishments engaged in hazardous activities having less than 10 employees. Journey allowance for to and fro journey to native place to inter-state workers every year. Inter-state migrant worker can avail benefits of public distribution system either in his native place or in destination state where he is employed.

The applicability of Contract Labour Act for Central revised to 50 employees. Contractors may obtain license for 5 years.

> On the recommendations of the Second National Commission on Labour (2002), the Central Government proposed to replace 29 existing Labour Laws with four Codes to simplify and modernise labour regulation. The major challenge was to facilitate employment growth while protecting workers' rights.

There are special provisions for Women as shall be entitled to be employed in all establishments for all types of work under this code and they may also be employed with their consent before 06.00 AM and beyond 07.00 PM subject to conditions relating to safety, holidays and working hours to be observed by the employer.

INDUSTRIAL RELATIONS CODE, 2020

The Industrial Relations Code, 2020 (**IR Code**) seeks to consolidate and amend the laws relating to trade unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes.

It repeals and replaces the following three national labour laws:

- The Industrial Disputes Act, 1947
- The Trade Unions Act, 1926
- The Industrial Employment (Standing Orders) Act, 1946

CODE ON SOCIAL SECURITY, 2020

The Code on Social Security, 2020 (**SS Code**) seeks to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised sector.

It repeals and replaces the following nine national labour laws:

- The Employees' Provident Fund and Miscellaneous Provisions Act, 1952
- The Employees' State Insurance Act, 1948
- The Employees' Compensation Act, 1923
- The Maternity Benefits Act, 1961
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- The Cine Workers Welfare Fund Act, 1981
- The Payment of Gratuity Act, 1972
- The Unorganized Workers' Social Security Act, 2008
- The Building and Other Construction Workers' Welfare Cess Act, 1996

LABOUR RIGHTS AND INDIAN CONSTITUTION

Indian constitution provides numerous safeguards for the protection of labour rights. These safeguards are in the form of fundamental rights and the Directive Principle of State Policy.

Articles 14,19,21,23 and 24 comprise of fundamental rights promised under part III of the Constitution. Articles 38, 39, 39A, 41, 42, 43,43A and 47 form part of the Directive Principles of State Policy under Part IV of the Constitution, but they are not enforceable in a court of law.

Article 39, 39A, 41, 42, 43 and 43A collectively can be termed "Magna Carta of working class in India."

Article 14

Equality before the law which is interpreted in labor laws as "Equal pay for Equal work". It does not mean that article 14 is absolute. There are a few exceptions in it regarding labor laws such as physical ability, unskilled and skilled labors shall receive payment according to their merit.

In the case of Randhir Singh *vs* Union of India, the Supreme Court said that "Even though the principle of 'Equal pay for Equal work' is not defined in the Constitution of India, it is a goal which is to be achieved through Article 14,16 and 39(c) of the Constitution of India.

Article 19(1)(C)

Constitution guarantees citizens to form a union or association. The Trade Union Act, 1926 works through this Article of the Constitution. It allows workers to form trade unions.

Trade Unions provide the power to raise voice against atrocities done to the workers. Unionization brings power to the laborers. Trade Unions discuss various labor-related problems with the employers, they conduct strikes, etc.

Article 23

Constitution prohibits forced labor. In current times, forced or bonded labor is an offense which is punishable under the law. The Bonded Labor (Abolition) Act, 1976 prohibits all kinds of bonded labor and is declared illegal.

Article 24

Constitution prohibits all forms of child labor. Nobody can employ a child under the age of 14 to work. Child labor was a massive problem of our country in the earlier times and it still is happening but at a lower scale. The penalization of article 24 is severe.

Relevancy of Part IV (Article 36 – 51) on Labor Laws

Part IV of the Constitution of India, which is also known as the "Directive Principles of State Policy" aims to work toward the welfare of its citizens. DPSP cannot be enforced in the court of law, but it provides a guideline to the legislature for making labor laws in India.

Article 39(a)

"The State shall in particular, direct its policy towards securing; That the citizens, men and women equally, have the right to an adequate means of livelihood. It means that every citizen of the country has the right to earn a livelihood without getting discriminated on the basis of their sex.

Article 39(d)

Constitution says that "The State shall in particular, direct its policy towards securing; that there is equal pay for equal work for both men and women. Wages will not be determined on the basis of sex rather it will be according to the amount of work done by the worker.

Article 41

Constitution provides "Right to Work" which means that every citizen of the country has the right to work and the state with the best of its abilities will secure the right to work and education.

Article 42

Provides for the upliftment of the working conditions for workers. It talks about creating a suitable and Humane workplace. This article also talks about maternity relief, i.e leave provided to women when they are pregnant.

Article 43

Talks about the "living wage" for its citizens. Living wage not only includes the "bare necessities of life" but also the social and cultural upliftment of the person. It also includes education and insurances for a person.

The State shall constantly try to create opportunities in the fields of Agriculture and Industries with special reference to cottage industries.

ROLE OF COMPANY SECRETARY IN NEW REFORMS OF LABOUR LAWS

Company Secretaries (CS) are known as a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities and ensures that Board procedures are followed and regularly reviewed and provides guidance to Chairman and the Directors on their responsibilities under various laws including Labour Laws.

CS have been performing the task of one of the Principal Officers of the company under various enactments. The detailed educational background, legal knowledge and training that a CS acquires, makes him a adaptable professional capable of rendering a wide range of services to companies of all sizes, co-operative and other corporate bodies, firms etc. A CS is associated with the planning process, judgment, and compliance of various laws, financial matters, administration of general management and administration of tax laws including Labour Laws.

A Practicing CS, advises on good governance practices and compliance of various laws like Corporate Laws, Industrial Laws, Labour Laws and other Governance norms as prescribed under the Companies Act, 2013, SEBI Listing Regulations and compliance of various labour laws.

The compliance of Labour Laws is as important for good corporate governance as any other corporate, economic and securities laws. A Practicing CS by virtue of his knowledge and expertise in Labour Laws is competent enough to render value added services in ensuring the compliance of various Labour Laws to protect and further the interests of labour, industry and all stakeholders and at same time prevent unwanted lawsuits and penalty for non compliance.

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Some of the important compliance work that can be undertaken by a CS under Labour Laws is enumerated hereunder:

1. Registration of the establishment under various applicable Labour legislations.
2. Submission of returns on a regular basis.
3. Maintenance of appropriate records with regard to employees of the establishment under various labour legislations.
4. Ensure adequate facilities have been provided for the employees on behalf of the establishment under various labour legislations.
5. Draft employment agreements between the employer and employee and also specific non-disclosure agreements if required.

JUDGEMENTS ON LABOUR LAWS

1. In the matter of *Tata Refractories Limited, Jamshedpur v. Presiding Officer, Labour Court, Jamshedpur*, [W.P.(L) No. 2341 of 2001 decided on May 19, 2020], the Jharkhand High Court, while relying on the Supreme Court's decision in the matter of *National Engineering Industries Limited vs Shri KishanBhageria*, [1988 Supp (1) SSC 82], held that, where the various works of the workman identified as 'co-ordinator' were only performed on the orders of the employer, and who had no independent authority to take any decision which would have bound the employer in any way, such person would not qualify as a 'supervisor' and is to be excluded from the definition of a 'workman'.

   Further, in the matter of the Management, *Sree Annapoorna Sree Gowrishankar Hotel Private Limited vs The Presiding Officer, Labour Court, Coimbatore*, [W.P. No. 7733 of 2018 and W.M.P. No. 9091 of 2018 decided on July 28, 2020], the Madras High Court while relying upon the Supreme Court's decision in the matter

of S.K. Maini v. Carona Sahu Company Limited, [(1994) 3 SCC 510], held that, in order to determine whether an employee is a 'workman' or not under Section 2(s) (Workman) of the ID Act, the principal nature of work performed by the employee concerned needs to be ascertained.

2. In the matter of *Dilip Kumar Sharma vs Assistant General Manager, UCO Bank,* [W.P. No. 2805/2016 decided on May 8, 2020], a Single Bench of the Madhya Pradesh High Court, while relying upon the decision of its Division Bench in the matter of *Project Officer I.C.D.S., Narsinghpur v. Mohanlal Kumhar (Prajapati)*, [W.A. No. 11/2017], held that, there cannot be a straightjacket formula which prescribes that a daily-rated employee needs to be only reinstated along-with back wages or without back wages instead of a lump sum compensation and the same, needs to be decided on a case to case basis.

   The Court, in the instant case, upheld the order of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur that payment of compensation in lieu of reinstatement was just and proper to the petitioner who was only a daily-rated employee.

   Further, in the matter of *Tata Refractories Limited, Jamshedpur vs* Presiding officer, *Labour Court, Jamshedpur,* [W.P.(L) No. 2341 of 2001 decided on May 19, 2020], the Jharkhand High Court, while relying on the guidelines issued by the Supreme Court in the case of *Rajasthan State Road Transport Corporation, Jaipur vs. Phool Chand (Dead) Through LRs*., [Civil Appeal No. 1756 of 2019, decided on September 20, 2018] and *Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya,* [(2013) 10 SCC 324], held that, where no plea was made by the workman before the court claiming reinstatement with back wages, the workman shall only be reinstated with continuity of service.

   Furthermore, in the matter of *Lakhamshi Govindji Haria School vs Kirit Bhupatbhai Bhatt*, [R/Special Civil Application No. 4848 of 2017 decided on May 29, 2020], the Gujarat High Court held that, considering there was a delay in raising a dispute by the workman, an award of a lumpsum compensation was justified, instead of granting reinstatement with continuity of service and back wages.

3. In the matter of *Gujarat State Transport Workers Federation v. Gujarat State Road Transport Corporation*, [R/Special C.A. No. 18289 of 2019, decided on June 30, 2020], the Gujarat High Court by relying on the Supreme Court's decision in the matter of *State Bank of India Staff Association v. State Bank of India*, [(1996) 4 SCC 378], held that, even though a trade union can appoint a retired employee and/or outsider as its office bearer, the management of a company is not under an obligation to negotiate with such retired employee and/ or outsider.

CONCLUSION

The enactment of the OSH Code comes at a crucial juncture wherein the rights of the workers have been debated heatedly on every fora and their plight has captured the spotlight during the pandemic. There is a clear impetus in the OSH Code to address the issues that have come to the fore, including that of the inter-state migrant workers. We take this opportunity to congratulate the Indian government for their stupendous efforts towards codification of Indian labour laws. We sincerely hope the codes fulfil the promise of ease doing business in India and at the same time ensure benefits and protection for the workers, thereby ensuring that the Indian economy succeeds and thrives in a post-Covid world.

REFERENCES :

1. https://labour.gov.in/sites/default/files/OSH_Gazette.pdf
2. https://prsindia.org/billtrack/the-occupational-safety-health-and-working-conditions-code-2020

ARTICLE

Navigating through the New Labour Codes

Labour is an essential and integral part of any business activity and is direct contributing factor to gauge economic growth of a nation. Given the importance of labour, it is pertinent to have laws that promote labour welfare without burdening the businesses with administrative aspects. The extant labour laws in India are decades old and relate to those scenarios where the technological advancements were not as rampant as today. To address changing needs from time to time, many amendments were made to these laws, resulting in multiplicity of legislations. In current times, where compliance is monitored through 'magnified lens' the business expects relevant and comprehensive laws to cater to the growing business needs, than to comply with archaic and irrelevant laws. Taking note of the dynamic business needs the government endeavored to consolidate the multifarious labour laws to ensure compliance. Also, the object of this consolidation of legislations, was to uphold the principle of labour welfare without compromising the current day business needs. The Central Government has stated that there are over 140 state and 40 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security and wages. To improve ease of compliance and ensure uniformity in labour laws, the central labour laws were consolidated into broader groups such as industrial relations, wages, social security, safety, and welfare and working conditions. Thus, the Labour Codes can be stated to be the off-age legislations, which give an impetus to ease of doing business over and above the labour welfare.

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INTRODUCTION

"Labour was the first price, the original purchase - money that was paid for all things. It was not by gold or by silver, but by labour, that all wealth of the world was originally purchased"

- Adam Smith

India is currently among the most preferred destinations for Foreign Direct Investment (FDI) and also one of the top three globally emerging markets just behind China and Brazil. While India improved its rankings by 14 points in Ease of Doing Business (EODB) from 77 in 2019 to 63 in 2020, it slipped by 10 points in Oxfam's Commitment to Reducing Inequalities (CRI) Report from 141 in 2019 to 151 in 2020. Present times are globally challenging on the economic front due to the pandemic which exposed the scale of inequalities globally as also in India and the tectonic shift in the way businesses are functioning. India is making its best efforts in aligning with these dynamic times by bringing in legislative and other regulatory changes. The shift in the labour laws is one such endeavour to change according to the current times. As part of this legislative realignment, the Indian government decided to condense the 44 existing labour laws into four codes. The codes involve social security, occupational safety, health and working conditions and industrial relations, of which, the Code on Wages Bill, 2019, was the first one to be passed. Considering the teething issues and business preparedness involved in overhaul of the labour codes and its implementation, Government of India has deferred the effective date for application of these new Codes.

NEED FOR THE NEW CODE

In India, there has been a plethora of labour laws dealing with a wide spectrum of labour related aspects. Apparently, the labour laws coexisted in large numbers both at the Central and state levels. These laws were introduced at different points of time, part by part without having a holistic view and addressing labour concerns in a micro sense. Such a gradual need-based change in labour laws has resulted in multiplicity of such laws, with hordes of varying definitions and containing redundant provisions. Also, several laws had varying definitions for common terms such as 'appropriate government', 'worker', 'employee', 'wages', etc. Further, some laws have very minimal relevance in the present-day conditions, for example, provisions relating to white washing walls as per The Factories Act, 1948.

Amongst other aspects, the multiplicity of labour laws has also resulted in high administrative burden on business enterprises as multiple labour laws require various returns, registrations and inspections, requiring repetitive efforts for the compliances on the same matter thus contributing to wastage of valuable resources and having implications for the effectiveness of the

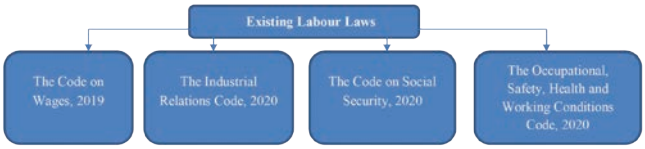
Indian economy as a whole. These legal requirements resulted in Organisations opting for contract labour mainly with a view to reducing onerous complexities that were inherent in the labour law compliances. However, this led to problems of a different dimension in the sense that the rights of the labourers relating to wages, social security and other working conditions were not enforced to the same extent as that of permanent workmen. Many studies indicated that while on one hand the compliances were cumbersome, the enforcement of protection of the interests of labourers in general in India has been weak.

GENESIS OF THE NEW LABOUR CODES

Labour falls under the Concurrent List of the Constitution, whereby both Parliament and State legislatures can make laws regulating it. The Central government has stated that there are over 140 state and 40 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security and wages. The Second National Commission on Labour ('Commission') found existing legislations to be complex, with archaic provisions and inconsistent definitions. To improve ease of compliance and ensure uniformity in labour laws, the Commission recommended the consolidation of central labour laws into broader groups such as (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions.

In 2019, the Ministry of Labour and Employment introduced four Bills on labour codes to consolidate 29 central laws. These Codes regulate: (i) Wages, (ii) Industrial Relations, (iii) Social Security, and (iv) Occupational Safety, Health and Working Conditions. While the Code on Wages, 2019 was passed by Parliament, Bills on the other three areas were referred to the Standing Committee on Labour. The Standing Committee submitted its reports on all three Bills. The government has replaced these Bills with new ones and the Presidential assent was received in 2020.

Overview



As indicated above, the existing labour laws were comprehensively condensed into four codes. This write-up in brief touches upon the laws subsumed and key features of each code.

THE CODE ON WAGES, 2019

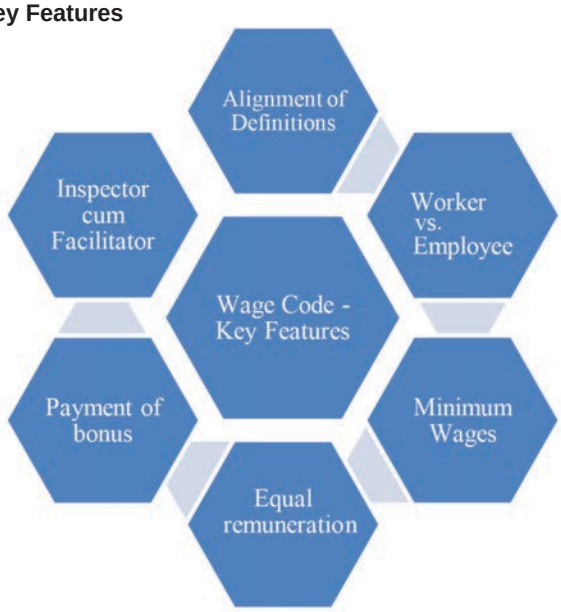
The Code on Wages, 2019 (**'Wage Code'**) is the first amongst the Labour codes to receive legislative approval and subsequently, the assent of the President of India in August 2019.

Laws subsumed

The Wage Code consolidated the laws relating to wages, bonus and matters connected therewith or incidental thereto. The Wage Code subsumes the following four existing labour law enactments:

- The Payment of Wages Act, 1936;
- The Minimum Wages Act, 1948;
- The Payment of Bonus Act, 1965; and
- The Equal Remuneration Act, 1976.

Key Features



Alignment of Definitions: The Wage code specifically defines 'wages' for the purposes of computation and payment to employees. This alignment puts to rest the various litigations which arose on account of variations in the definition of 'wages' across the laws subsumed. Further, the Wage Code provides for timely payment of wages and minimum wages irrespective of the industries and sectors.

'Worker' vs. 'Employee': The Wage Code provides for a broader definition of the term 'employee' as compared to 'worker', thereby spelling out the dichotomy between the two.

Minimum Wages: Minimum wages in relation to scheduled employments were prescribed in the Minimum Wages Act, 1948. However, the Wage Code empowers the appropriate government to fix wages in all industries. The concept of 'floor wage' has been introduced. The floor wage is finalized by the Central Government considering the minimum living standards of a worker as applicable for different geographical areas. Further, the State Governments shall not be allowed to fix a minimum wage rate which is lower than the floor wage determined by the Central Government. The Wage Code provides that the minimum wages shall be revisited and revised by the appropriate governments every five years.

Equal Remuneration: The Wage Code prohibits discrimination on ground of gender in relation to the wages paid by the employers or with reference to recruitment or similar nature of work. This is akin to the requirements of The Equal Remuneration Act, 1976. The Wage Code ensures non-discrimination against all genders, as compared to the erstwhile law, wherein the genders were mentioned as male and female.

Payment of Bonus: There is no significant change as compared to Payment of Bonus Act, 1965. The Wage Code also mentions the disqualifications for receiving bonus in line with Payment of Bonus Act, 1965 like fraud, riotous

or violent behavior, or theft. However, the only additional disqualification is dismissal from service due to conviction for sexual harassment.

Inspector cum Facilitator: The earlier legislations had the concept of inspections and examinations done by inspectors to ensure compliance of the enactments. Presently, under the Wage Code, the inspector raj has been transformed to 'Inspector-cum-Facilitator' who shall be a facilitator towards compliance and not just an inspecting authority. It is also mandated that the employer is given an opportunity to rectify the non-compliance if any, within the specified time by the Inspector-cum-Facilitator, before any prosecution proceedings.

THE INDUSTRIAL RELATIONS CODE, 2020

The Industrial Relations Code 2020 ('Relations Code') consolidates and amends the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto. It governs important aspects of the employer-employee relationship such as working conditions, collective bargaining, re-skilling etc.

Laws subsumed

The Relations Code subsumes the following legislations:

- Industrial Disputes Act, 1947;
- Industrial Employment (Standing Orders) Act, 1946; and
- Trade Unions Act, 1926.

Key Features

Alignment of Definitions: The Relations Code encompasses and aligns the definitions across the subsumed legislations. For example, the definitions include working journalists, promotion employees, etc. Further, those individuals working in a supervisory capacity and drawing less than Rs. 18,000 per month (or any amount as notified by the Central Government) have now been covered under the definition of 'worker'.

> The floor wage is finalized by the Central Government considering the minimum living standards of a worker as applicable for different geographical areas. Further, the State Governments shall not be allowed to fix a minimum wage rate which is lower than the floor wage determined by the Central Government. The Wage Code provides that the minimum wages shall be revisited and revised by the appropriate governments every five years.

Fixed Term Employment: The concept of fixed term employment was introduced by various State Governments vide notifications has now been given statutory recognition. It allows employers greater flexibility in hiring in tandem with supply and demand. Fixed-term employees are eligible to receive gratuity on a proportionate basis, if they render service for a period of one year under their respective contract of employment. They are given parity with permanent employees with respect to working conditions, wages, allowances, and other benefits.

Thresholds: The threshold for applicability provisions relating to Standing Orders has been increased to 300 workers i.e., the provisions of Chapter IV - 'Standing Orders' under the Code would apply to those establishments wherein 300 workers or more are employed on any day during the preceding twelve months. Further, 'appropriate government' has been authorized to exempt any industrial establishment or class thereof from all or any of the provisions under the Code.

Trade Unions: The Code provides extensively on law relating to trade unions. The Code mandates that where there is more than one trade union in an establishment, the status of sole negotiating union will be given to that union which has 51% of the employees as its members. Incase no trade union has more than 51% of members, then the employer shall constitute a 'negotiation council' for negotiations.

Layoffs: The Code provides that those industrial establishments employing not less than 300 workers or such higher number of workers as may be specified by the appropriate government, are required to obtain prior permission of the government for lay-off, retrenchment and closure.

Lockouts & Strikes: The Code imposes a blanket prohibition on strikes and lock-outs in all industrial establishments without notice. Thus, no unit can go on strike in breach of contract without giving notice 60 days before the strike or within 14 days of giving such a notice, or before the expiry of any date given in the notice for the strike. Strikes are also prohibited during the pendency of conciliation proceedings as well as within 7 days of the conclusion of such proceedings. Similarly, strikes during the pendency of proceedings before an industrial tribunal or

60 days after their conclusion are prohibited. The Industrial Disputes Act, 1947 contained similar provisions, however they were applicable only to public utility services.

THE CODE ON SOCIAL SECURITY, 2020

The purpose of Code on Social Security, 2020 (**'Social Code'**) is to amend and consolidate the laws relating to social security with an objective to extend social security to all employees and workers either in the organized or unorganized or any other sectors connected therewith or incidental thereto.

Laws subsumed

The Social Code subsumes the following enactments:

- The Employees' Compensation Act, 1923;
- The Employees' State Insurance Act, 1948;
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
- The Maternity Benefit Act, 1961;
- The Payment of Gratuity Act, 1972;
- The Cine- Workers Welfare Fund Act, 1981;
- The Building and Other Construction Workers Welfare Cess Act, 1996; and
- The Unorganised Workers' Social Security Act, 2008.

Key Features

Career Centre: The Social Code brings forth the definition of career centre 'as any office including employment exchange, place or portal established by the Central Government for providing career services'. The objective of such career centers is to provide a platform to persons seeking employment and those who seek to employ, by providing information about vacancies.

Aggregator: The definition of aggregator denotes 'a digital intermediary or marketplace for a buyer or user of a service to connect with the seller or the service provider'. The introduction of this definition ideates two new aspects namely, platform workers and gig workers. The Platform workers refers to individuals engaged in platform work which is defined to mean a work arrangement outside of a traditional employer-employee relationship in which organisations/individuals use an online platform for problem-solving or to provide specific services. A gig worker is defined as a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship.

Scope: The Social Code allows an establishment to voluntarily seek coverage under Employees' Provident Fund (EPF) and the Employees' State Insurance Corporation (ESIC), even if the number of employees in such an establishment is lower than the specified requirement.

Social Security Schemes: The Code empowers the Central Government to frame social security schemes for unorganised workers, gig workers and platform workers and members of their families with respect to providing benefits under the ESIC. The Central Government is authorised to frame schemes for providing social security benefits to self-employed workers and to any other class of persons it deems fit.

Registration: The Code contains provisions for registration of every unorganised worker, gig worker or platform worker based on a self-declaration provided either electronically or otherwise. This provision helps the unorganized workers to register based on the Aadhar Number.

Fixed Term Employees: One of the striking features of the Security Code is the benefits the code provides to fixed term employees. The Code mandates that in case of fixed term employees, the employer shall pay gratuity on a pro rata basis unlike the pre-existing requirement of continuous service of five years.

Further, in addition to the above features, the penalties and offences under the Security Code have now been overhauled. The Code provides the employers an opportunity to correct the non-compliance, if any for any offence prior to the initiation of prosecution or proceedings. However, repeat offenders are given enhanced punishments and offences by companies are given stricter penalties that extend beyond the corporate veil.

THE OCCUPATIONAL, SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

Pursuant to the recommendations of Second National Commission on Labour, the Occupational Safety, Health and Working Conditions Code, 2020 ('OSHW Code') was promulgated to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment. The OSHW Code shall come into force on such date as the Central Government may, by notification appoint.

Laws Subsumed

The OSHW Code subsumes the following extant legislations:

- Factories Act, 1948;
- Contract Labour (Regulation and Abolition) Act, 1970;

- Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- Motor Transport Workers Act, 1961;
- Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
- Mines Act, 1952;
- Dock Workers (Safety, Health and Welfare) Act, 1986;
- Plantations Labour Act, 1951;
- Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955;
- Working Journalist (Fixation of Rates of Wages) Act, 1958;
- Sales Promotion Employees (Condition of Service) Act, 1976; and
- Cine Workers and Cinema Theatre Workers Act, 1981.

Key Features

Scope: The OSHW Code applies to establishments having atleast 10 workers in employment. It also applies to mines, docks and establishments carrying out any hazardous or life-threatening activity. Employees include workers and all other persons earning wages for any work, including managerial, administrative or supervisory work. Select provisions of the OSHW Code relating to health and working conditions apply to all employees irrespective of the nature of industry.

Exemptions: One of the key features of this Code is that it empowers the appropriate government to exempt any workplace or activity from the Code incase of any public emergency, disaster or pandemic for a period of upto one year. Further, the State Governments can exempt new factories from the Code for a specified period for creating more economic activity and employment.

Registrations: The Code provides that the covered establishments shall register within 60 days (of commencement of the Code) with registering officers, appointed by the Central or State Government. Further, the Code also mandates obtaining of licenses for those who hire beedi and cigar workers.

> One of the striking features of the Security Code is the benefits the code provides to fixed term employees. The Code mandates that in case of fixed term employees, the employer shall pay gratuity on a pro rata basis unlike the pre-existing requirement of continuous service of five years.

Employer's obligations: The Code states that the employer shall – provide a workplace which is free from hazards, provide annual health examinations in notified establishments and informing relevant authorities in case of any accidents at workplace leading to death or serious bodily injury to any employee. Additional obligations are cast on employers in factories, mines, docks, plantations and buildings/construction work, including provision of risk-free work environment and instructing employees on safety protocols.

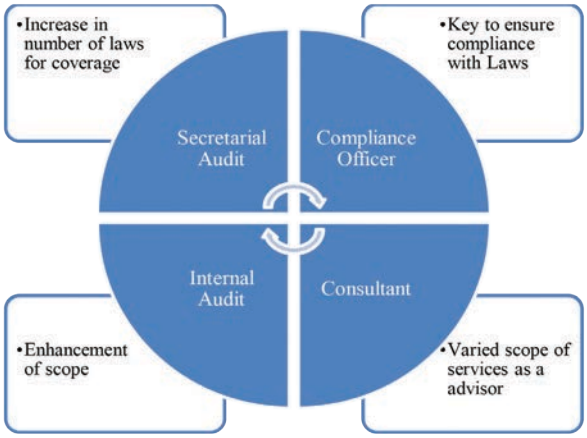
Work hours: Workers will be required/allowed to work for not more than 8 hours in a day and cannot be required to work for more than 6 days a week. Further, they shall receive one leave for every 20 days worked per year. For overtime work, workers must be paid at twice the rate of daily wages. Prior consent of workers is required for overtime work. Women employees can also work after 7 PM and before 6 AM, subject to any safety related conditions that may be prescribed by the Government.

Advisory Boards: The Central and State Governments will set up Occupational Safety and Health Advisory Boards at National and State levels. These Boards will advise the respective governments on the standards, rules and regulations to be framed under the Code.

Also, the government can appoint inspector cum facilitators to conduct inspections and inquiries into accidents. They have certain powers incase of factories, mines, docks and building construction works including reducing the number of employees working in sections of establishment and prohibiting work in dangerous situations.

ROLE FOR PROFESSIONALS

The new labour codes present opportunities to the Company Secretaries and other professionals. By virtue of their background and expertise, the Company Secretaries, both in employment and in Practice would have a significant role in the emerging scenario in which the new labour codes will be implemented in the next few years. Some of the key areas where CS would play a role are briefly covered below: -



Compliance Officer: It is quite likely that services of Company Secretaries in employment would be called upon and entrusted with responsibilities for monitoring and / or ensuring compliances of labour codes in their capacity as Principal Officer. In fact, while the necessary Rules are framed, due recognition should be given to the salutary work discharged by Company Secretaries in industry.

Consultant: Practising Company Secretaries (PCS) could consider specializing in the areas of compliance of labour laws and offer consultancy and advisory services to their clients. Even with simplification and rationalization of the labour laws in the form of Labour Codes, it is pretty much unlikely that compliances of labour laws would become simple and easily comprehensible for large companies. It is not that corporates would neglect these compliances, but they may treat these compliances as non-core activity and outsource these activities to professionals having expertise to handle and provide these services. Interested members in the fraternity of PCS could consider specializing in offering these outsourced services effectively to the corporate sector.

Internal Audit: Under Section 138 of the Companies Act, 2013, certain companies are mandatorily required to have an Internal Audit system and are also required to appoint an Internal Auditor. With the new labour codes, companies are likely to consider expanding the scope of internal audit to extend to labour law compliances, which can be referred to as a detailed check of the adequacy and relevance of the policies and procedures followed by the company for ensuring compliances of the Labour Codes with a view to highlight inadequacies, deviations and violations in a timely manner, so that prompt corrective action can be taken. A PCS may consider this area of internal audit to be of interest in times to come.

Practising Company Secretaries (PCS) could consider specializing in the areas of compliance of labour laws and offer consultancy and advisory services to their clients. Even with simplification and rationalization of the labour laws in the form of Labour Codes, it is pretty much unlikely that compliances of labour laws would become simple and easily comprehensible for large companies.

Secretarial Audit: Currently, the scope of Secretarial Audit under Section 204 of the Companies Act, 2013, extends to the coverage of compliances with respect to labour laws generally and not specifically. The Secretarial Auditor therefore lays emphasis on the existence of a Compliance Management System which is commensurate with the size and nature of the business of the Company rather than a 100% check-box approach. Going forward, with the new Labour Codes coming into force, the complexities of the Compliance Management System would undergo changes and transition. Further with the changing emphasis of the Labour Codes, it is also likely that the Central Government may consider enhancing the scope of Secretarial Audit to specifically cover compliances of certain parts of the Labour Codes, which could enhance the scope of Secretarial Audit.

CONCLUSION

Adaptability to change is the best response to any challenges. It is no different even for addressing the challenges emanating from changing business needs. Codification of the scattered labour laws into four Codes is one of the legislative steps towards rationalizing and making the legal requirements business friendly. These codes capture the legislative essence of labour protection without undermining the business interests. Further, in the era where working from home is the norm and digital life is omnipresent, industry would be appreciative of the Government's intent of enhancing the ease of doing business and giving impetus to technology driven registrations and regulations. Thus, the Labour Codes are reflective of present-day needs driving the objective of labour welfare and protection without causing administrative burden on businesses. It is expected that Company Secretaries would have a significant professional role in the wake of implementation of the new Labour Codes.

The overhaul of labour related laws was imminent, but long pending under various government regimes. The present government has given impetus to streamlining and liberalizing the labour laws and has walked the talk on this key area of business. These labour codes which are in line with the present day's business needs will go a long way to compliment the ease of doing business in India.

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ARTICLE

The New Labour Codes – Resurgence of Age-old Legislations

The article has given an insight of evolution of the old and redundant labour laws into the four new Codes. The article also highlights the connect of the labour laws with the constitution of India, the concept of Industrial Jurisprudence in last few decades and dictates the dynamic changes which were long due to come into parlance with the ever changing and dynamic business environment.

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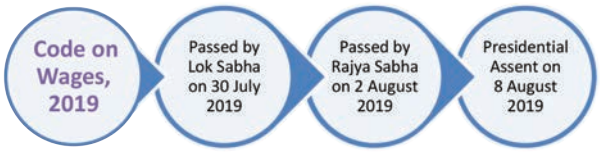
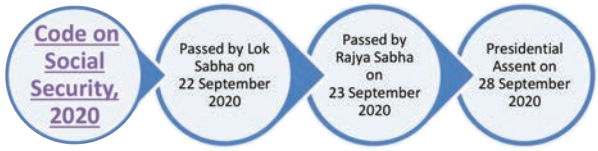
INTRODUCTION

The Ministry of Labour and Employment, Government of India changed the overall legislation concerning the Acts and Rules for the Labourers, Wage Earners, Employees, Employers, Establishments, Factories, Corporates basically the whole of organized and unorganized sectors. These acts were long due for a complete overhaul in the new and changed business scenario particularly in the context of global commercial and business practices. Therefore, the said Ministry had introduced the Code on Wages, 2019 and three (3) New Labour Codes for the regularisation of the acts governing the harmonization of man with the machines. These codes are *inter-alia:*





The unprecedented legacy of the following Twenty-Nine (29) age old laws have been consolidated into the above mentioned Four (4) consolidated and exhaustive Codes:

I. The Employees Compensation Act, 1923
II. The EPF and M.P. Act, 1952
III. The ESIC Act, 1948
IV. The Maternity Benefit Act,1961
V. The Industrial Disputes Act, 1947
VI. The Trade Unions Act, 1926
VII. The Equal Remuneration Act, 1976
VIII. The Unorganized Workers' Social Security Act, 2008

IX. The Minimum Wages Act, 1948

X. The Payment of Wages Act, 1936

XI. The Payment of Bonus Act, 1965

XII. The Factories Act, 1948

XIII. The Mines Act, 1952

XIV. The Payment of Gratuity Act, 1972

XV. The Employees Exchange (Compulsory Notification of Vacancies) Act, 1959

XVI. The Cine Workers Welfare Fund Act, 1981

XVII. The Cine Workers and Cinema Theatre Workers Act, 1981

XVIII. The Building and other Construction Workers Cess Act, 1996

XIX. The Industrial Employment Standing Order Act, 1946

XX. The Dock Workers (Safety, Health and Welfare Act, 1986)

XXI. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

XXII. The Building and other Workers (Regulation of Employment and Conditions of Service) Act, 1996

XXIII. The Plantations Labour Act, 1951

XXIV. The Contract Labour (Regulation and Abolition) Act,1970

XXV. The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979

XXVI. The Motor Transport Workers Act, 1961

XXVII. The Sales Promotion Employees (Condition of Service) Act, 1976

XXVIII. The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955

XXIX. The Working Journalist (Fixation of rates of wages) Act, 1958;

CONSTITUTION OF INDIA VIS-À-VIS THE LABOUR LAWS

Our Indian Constitution protects, supports and act as a guideline to various labour laws for their effective implementation and functioning. The Articles of Constitution of India which deals with the Labour related matters can be summarised as follows:

- Article 14 - Equality before law
- Art 19 (1) (c) -Right of all citizen to form an associations or unions
- Article 23 –Prohibition of traffic in human being and forced labour
- Article 24 – Prohibition of Child Labour in factories and hazardous employment
- Article 39 – Directive Principles of State Policy, *inter-alia*
  - Citizens, Men and Women equally have right to adequate means of livelihood.
  - Equal pay for equal work for all.
  - Health and strength of workers and tender age of children are not abused and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.
  - Equal Opportunity and facilities for children to develop in a healthy manner and protection against exploitation and moral and material abandonment.

In a landmark judgment **(MC Mehta vs State of Tamil Nadu & Ors)** (AIR 1997, SC 699 (1996) 6 SCC 756) on child labour, the Supreme Court pointed out the actual position of Child Labour in India as dealt in later part of 90's. The flavor of the vision of Constitution with respect to children was brought out by the Hon'ble Court before the public at large. The judgment emphasized the relation between poverty and child labour and also threw light on the failure of States to eliminate the child labour, and their lack of zeal to deal with it.

INDUSTRIAL JURISPRUDENCE

Industrial Jurisprudence, is a progress of mainly post-independence period although its origin may be traced back to the industrial revolution. Pre-independence was existed in a simple form in our country. The development of Industrial Jurisprudence can meaningly be noticed not only from surge in labour and industrial laws but also from a large number of Industrial Law matters adjudicated by the Supreme Court, High Courts and various labour law tribunals etc. It also affects directly a significant population of our country consisting of Industry Owners, Industry Workers & their families and other external stakeholders. Those who are affected indirectly constitute a still larger bulk of the country's population.

With the start of the twentieth century, a new division of Jurisprudence known as Industrial Jurisprudence has industrialised in our country. This division of law altered the outdated law relating to master and servant and had abridged the old theory of *laissez faire* based upon the 'freedom of contract' in the greater concentration of the civilisation because that theory was found wanting for the development of pleasant-sounding and cordial relations between the employers and employees. Individual agreements have been swapped by a standard form of statutory contract through legislation and judicial interpretation. The outdated right of an employer to hire and fire his workmen at his will, has been subjected to many manacles. Industrial Tribunals can, by their award make a contract which is binding on both the parties, creating new right and daunting new commitments ascending out of the award. There is no question of the employer agreeing to the new contract and it is binding even though it is undesirable to the other party. The conception of new commitments is not by the parties themselves. Any or both of them may be conflicting to it, nevertheless it binds them. Thus, the idea of some authority making a contract for the workmen and employer is a strange and novel idea and is foreign to the basic principle of the law of contract.'

Similarly, there is change in the concept of master and servant. One who participates with capital is no more a master and one who puts in efforts is no more a servant. They are employer

and employees; the former may hire the latter but he can no more fire them at his will. The interest of the workers is in many respects protected by legislation. Both are now parties in an enterprise, without one yielding to the higher status of another but as co-sharer in the partnership. Even the right of labour participation in the management has been given legislative recognition to the utter despair of the capitalist. Most of the benefits claimed by a workman are not part of his bargain with the employer when the latter employed him or are not due to them on account of any contract but of "status".

Hence, over the year this Industrial Jurisprudence has developed an eminent division of law and has seen radical changes over the century. So, the need of further advancement in these regulations were the need of the hour. More importantly in order to make India best-fit to compete with global industrialisation, it is important to move to better relationship between the master and servant or the principal and employee.

Let us critically examine the salient features of these new Codes and their impact in the normal paradox.

1. The Code on Wages, 2019

One of the most important reform is the change in the definition of wages (i.e.) "wages" means all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes basic pay, dearness allowance, retaining allowance excluding any bonus payable which does not form part of the remuneration payable under the terms of employment, House Rent Allowance, any pension or provident fund and the interest accrued thereon, conveyance allowance, special expenses ,overtime allowance, commission, gratuity, retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment provided that the total excluded components should not exceed 50% of the total remuneration. The SSC aims to provide the basic social security benefits like provident fund, insurance and gratuity to workers in both organised and unorganised sectors. It extends the reach of the Employees' State Insurance Corporation and the Employees' Provident Fund Organization (which regulate benefits such as provident fund, insurance, pension, etc.) to the workers in the unorganised sector and the platform and gig workers.

2. The Social Security Code, 2020

In this context, "Social Security" means the measures of protection afforded to employees, unorganised workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed. Under this Code and under this definition, the category of Gig Worker and Platform Worker has been introduced as, "Gig worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer employee relationship. "Platform Worker" means a person engaged in or undertaking platform work such as people and organisation engaged in providing an online platform for various services

> The development of Industrial Jurisprudence can meaningly be noticed not only from surge in labour and industrial laws but also from a large number of Industrial Law matters adjudicated by the Supreme Court, High Courts and various labour law tribunals etc. It also affects directly a significant population of our country consisting of Industry Owners, Industry Workers & their families and other external stakeholders. Those who are affected indirectly constitute a still larger bulk of the country's population.

compensated monetarily. Apart from this, the definition of "Employee" has also been expanded to include workers employed through contractors and inter-state migrant workers.

Major changes have been introduced in the aspect of the Employees Provident Fund (EPF) Scheme like making Aadhaar based registration mandatory, inclusion of any establishment having 20 or more workers under EPF with categorisation of self-employed and other categories under the EPF. Upon non-depositing of deducted employee contribution from salary, the applicable penalty amount has been increased from Rs. 10,000/- to Rs. 100,000/- and the imprisonment has been increased from one year to three years. The subsequent failures to pay contributions attract imprisonment of two to five years and fine of three lakh rupees.

By virtue of the changes in the EPF scheme, the concept of Fixed Term Employees has also been introduced. "Fixed term employment" means the engagement of an employee on the basis of a written contract of employment for a fixed period, provided that his hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee doing the same work or work of a similar nature and he shall be eligible for all benefits, under any law for the time being in force, available to a permanent employee proportionately according to the period of service rendered by him even if his period of employment does not extend to the required qualifying period of employment. The new code has introduced various thresholds to include permanent and fixed term employees under the eligibility criteria for gratuity. Unlike the old law, the gratuity period for working journalists has been reduced from five to three years. The reach of Employee State Insurance Scheme has also been introduced to a wider section now by including plantation, platform and gig workers in its ambit as well. Due to the change in the definition of wages and the fact that the various social security amenities such as Provident Fund, Gratuity, ESIC, etc. have now been pegged as a percentage of the 'wages' and not just the basic or basic plus dearness allowance. By virtue of this, there is

a change in the total pay-outs on account of social security and retirement benefits and depending on the employment letters and salary breakup of existing employees, even the take-home salary of employees may be affected. Even TDS calculations based on the revisions in the take-home is now considered as the obligation of the employer to deduct TDS in case of salary. If we speak in a layman's language, then the take home salaries have increased by decreasing long term benefits.

The concept of career centres has also been introduced in the new SSC. A "Career Centre" means any office (including employment exchange, place or portal) established and maintained in the manner prescribed by the Central Government for providing such career services (including registration, collection and furnishing of information, either by the keeping of registers or otherwise, manually, digitally, virtually or through any other mode) as may be prescribed by the Central Government, which may, inter alia, relate generally or specifically to persons who seek to employ employees, persons who seek employment, occurrence of vacancies and persons who seek vocational guidance and career counselling or guidance to start self-employment.

There have been significant changes concerning the maternity benefits extended to females such as every establishment belonging to Government and to every shop or establishment in which ten (10) or more employees are employed, or were employed, on any day of the preceding twelve months. According to the SSC, woman shall not work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy and shall be entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence along with maternity benefit of maximum 26 weeks of which not more than 8 weeks shall precede the expected day of delivery. Every female employed in the establishment is entitled to a medical bonus of Rs. 3,500/- or such amount as notified by the Central Government from the employer, if no pre-natal confinement or post-natal care is provided for by the employer free of charge.

3. The Occupational Safety, Health and Working Conditions Code, 2020

The Code on Occupational Safety, Health and Working Conditions, 2020 seeks to regulate the health and safety conditions of workers in establishments with 10 or more workers. This code shall not apply to the central government offices but it is applicable to contract labour employed through contractor in the offices of the Central Government or in the offices of the State Government, where, the Central Government or, as the case may be, the State Government is the principal employer. It is applicable to any establishment for e.g. a shop, factory, building, construction site, dock, port or port area where the strength of workers is more than 10. In this code, the concept of Inspector-cum-Facilitators has been introduced for conducting inspections which may be web-based inspections and calling out information from any establishments and persons besides web-based inspections including randomised inspections as well.

The registration of new establishments has been made mandatory under this code and within 60 days of the provisions of this code becoming applicable, every establishment must get itself registered with a separate registration number. This will help in the elimination of multiple registrations as required in the earlier legislations. The employers are required to issue the appointment letters to every employee in the format as prescribed under the provisions of this code. The employer has to ensure that the workplace and establishments are free from any hazards, complaint with all the prescribed measures for the health and safety of employees and workmen and the employers are required to undertake complete health examination of all the employees, who have attained the age of 45 years or more annually and the employees are also required to take appropriate steps to take care of their health and safety.

As per the provisions of this code, it is now compulsory that all employers have to make sure that the establishment is maintaining healthy and safe working conditions with reference to hygienic and clean working stations and premises which are properly ventilated with proper waste disposal systems. Employers are also required to provide various services for the welfare of their employees such as canteens, dispensaries and the establishments where 50 or more females are employed, the employer must provide the facility of creche in the nearby vicinity or jointly with other establishments in pursuance with the provisions of this code.

One of the major reforms with this code is the elimination of gender disparity. Women are entitled to be appointed in all the establishments equally as men and are now allowed to work between 07:00 PM and 06:00 AM subject to their own consent. The premises where any process relating to manufacturing is being carried on shall be declared as "factory" irrespective of the number of workers and a site appraisal committee shall be set up

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by the Government for scrutinising and approving the application for the expansion of such factories involving any hazardous processes.

The concept of "Contract Labour" has also been intensified in this code wherein any establishment where 50 or more Contract Labours are or were employed on any day of the preceding 12 months through contract and every manpower supply contractor who has been employed on any day of the preceding 12 months; 50 or more of contract labour. The contractor is required to obtain a license prior to commencement of such contract work and the contractor shall be liable to maintain healthy and safe working conditions in such establishment. The distribution and payment of wages in such contract-based employment may be paid electronically through bank transfer upon discretion of the principal employer. In case of 10 or more migrant workers in any organisation, the provisions relating to migrant workers shall apply. According to this code, any person recruited by an employer in a state for his business /establishment situated in another state is also a migrant worker and the employer is bound to provide same facilities to the migrant workers such as safe and suitable conditions of work, benefits regarding ESI and provident fund, facility of medical check-up etc. The employer(s) are bound to pay an amount to cover up the To and Fro journey of the migrant workers from his native place to the place of occupation once every year.

The code has now introduced more rigorous penalties for the violation of its provisions. In case of a contravention, the penalties may go from Rs. 2 lacs and extend upto Rs. 5 lacs with imprisonment as well and such amount collected from the penalties may be utilised in a Social Security Fund set up for the protection and welfare of unorganised workers.

4. The Industrial Relations Code, 2020

The IR Code targets to streamline the laws regulating industrial disputes and trade unions in India by assimilating the three major legislations viz. Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947. There have been various new concepts introduced by this code amongst which a very interesting concept introduced is, "Fixed Term Employees". It means the engagement of a worker on the basis of a written contract of employment for a fixed period, provided that his hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature and he shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute and he shall be eligible for gratuity if he renders service under the contract for a period of one year.

In terms of this code, an "employee" means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed by an industrial establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.

On the other hand, the definition of the employer has been completely changed. According to the ID Code, "Employer" means a person who employs, whether directly or through

any person, or on his behalf or on behalf of any person, one or more employee or worker in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified by the head of the department in this behalf or where no authority is so specified, the head of the department, and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes a factory, the occupier of the factory a manager of the factory, contractor, executive or a legal representative of a deceased employer.

The definition of "Industry" has also been modified as "industry" means any systematic activity carried on by co-operation between an employer and worker whether or not such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) but excluding institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or (ii) any activity carried on by the departments of the Central Government dealing with defence research, atomic energy and space or any domestic service.

The definition of industrial dispute has also been modified as "industrial dispute" means any dispute or difference between employers and employers or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person and includes any dispute or difference between an individual worker and an employer connected with, or arising out of discharge, dismissal, retrenchment or termination of such worker and "industrial establishment or undertaking" means an establishment or undertaking in which any industry is caried on.

Apart from these, few other changes notified by this code are prohibition of strikes and lockouts without giving a prior notice of 14 days and this provision is applicable to all the establishments whether organised or unorganised.

Relating to industrial disputes, arbitration can be resorted either by the employer or worker and the workers may also approach the tribunal for adjudication of the dispute relating to dismissal, retrenchment, termination of employment within 45 days after the conciliation of the dispute was made. Industrial establishments are now required to take prior permission from the government before a retrenchment or lay-off and if a worker is suspended during a pending investigation or inquiry, then he will be entitled to a subsistence allowance payable at 50% of the wages for the first 90 days of the suspension and 75% for the remaining period of suspension.

According to the 2nd report of the National Commission on labour, Chapter- VIII, Para 8.10"The Fundamental Rights that our Constitution guarantees to every citizen include the right to life, and as the Supreme Court has pointed out, the right to livelihood is inherent in the right to life. The ultimate object of social security is to ensure that everyone has the means of livelihood. It follows, therefore, that the right to social security is also inherent in the right to life according to the Supreme Court of India, India is Constitutionally a socialist state. The principal aim of socialism is to eliminate inequality of income and status and to provide a decent standard of living to the working people".

Social security measures are significant from two view point: First, they constitute an important step towards the goal of a welfare State. - Secondly, they enable workers to become more efficient and thus reduce wastage arising from industrial disputes, Lack of social security impedes production and prevents formation of a stable and efficient labour force. Therefore, social security measures are not a burden but a wise investment which yields good dividends.(Source: V V Giri, Labour Problems in Indian Industry, P-248)

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iv. Labour and Industrial Laws – Central Law Publication

ARTICLE

A Critical Analysis of the Labour Reforms - A Much Needed Change?

International investors have long demanded labour reforms in India, believing that the country's labour and employment laws are responsible for restricting investment interest by pressuring private employers to be small and generating a myriad of compliances and regulatory restrictions. In this sense, the consolidation of major central labour laws governing employment, social welfare, industrial relations, and workplace safety and health is a positive advancement that demonstrates the government's endeavors to improve the business environment and amend domestic laws to reflect current best practices.

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INTRODUCTION

"All labour that uplifts humanity has dignity and importance and should be undertaken with painstaking excellence."

– Martin Luther King Jr

In the Constitution of India, "Labour" comes under the concurrent list. This gives the power to both the state as well as the legislature to make as well as amend the laws. With time and circumstances the concept of labour law keeps changing which shows its dynamic nature. Recently, the parliament had passed three bills that completely changed the face of labour laws. All the existing 29 Labour Law statutes have been consolidated and only this new law which has been passed will be governing labour laws in India.

The three new Bills which have been passed by the parliament are The Code on Social Security Bill, 2020, The Occupational Safety, Health, and Working Conditions Bill, 2020 and The Industrial Relations Code Bill, 2020. This article aims to lay out the salient features of the three new bills along with analyzing the impact of the same.

A. The Social Security Code, 2020 (SS Code)

The SS Code is intended to improve employees' access to social security benefits such as provident funds, pensions, and gratuities. It expands the scope of the Employees' State Insurance Corporation and Employees' Provident Fund Organization (which control benefits such as provident fund, insurance, and pension) to unorganized sector staff, platform and gig workers. Additionally, the SS Code provides gratuity benefits for fixed-term workers without requiring a minimum service period, as is required under the current regime. The SS Code incorporates nine labour laws pertaining to social security, namely the Employees' State Insurance Act, 1948, the Employees' Compensation Act, 1923, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Maternity Benefit Act, 1961, the Payment of Gratuity Act, 1972, the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, and the Cine-Workers Welfare Fund Act, 1973.

The key provisions of the SS Code are as follows:

i. **Payment of Medical Bonus-** The Maternity Benefit Act, 1961 provided for the payment of a medical bonus of up to Rs. three thousand five hundred, with the Central Government having the option of raising the medical bonus up to a limit of Rs. twenty thousand. The SS Code has eliminated the twenty thousand upper limit.(Seema Jhingan S. R., 2020)

ii. **Social Security Organisation-** As mentioned previously, the SS Code includes the establishment of such bodies to administer various social security schemes. These organisations shall consist of the following: (a) an Employees State Insurance Corporation chaired by a Central Government-appointed chairperson to administer the ESI Scheme (b) a Board of Trustees chaired by the Central Provident Fund Commissioner to administer the EPF, EPS, and EDLI Schemes and (c) National and State Social Security Boards chaired by the Central and State Ministers for Labour and Jobs, respectively.

iii. **Social Security Schemes-**The Social Security Code authorizes the Central Government to inform various social security programmes for the benefit of workers, including the following: Employees' Provident Fund (EPF) Scheme: specifies the establishments or classes of establishments to which provident funds shall be formed for employees or any class of employees, Employees' Pension Scheme (EPS): for the purpose of offering superannuation pensions, retiring pensions, and permanent complete disablement pensions to employees, as well as widows pensions, children's pensions, orphan pensions, and candidate pensions payable to beneficiaries, and Employees' Deposit-Linked Insurance (EPDLI) Scheme: for the purpose of offering life insurance to employees of any establishment or class of establishments. (Seema Jhingan, 2020)

iv. **Wages-**The SS Code has sought to align the term 'wages' with the 2019 Code on Wages. The term 'wages' applies to all remuneration, whether in the form of salaries, benefits, or otherwise, that would be payable to an employee in

respect of his or her employment if the employment conditions were met, and includes basic pay, dearness allowance, and retaining allowance, but excludes, among other items, any bonus not included in the remuneration, value. However, a proviso to the definition provides that if the omitted components of the definition exceed percent of the total remuneration paid, the excess sum shall be construed as 'wages', so that the pay proportion remains at fifty percent.

v. **Offences and Penalties-** The SS Code penalises various offences such as failure to make contribution, failure to pay gratuity, or failure to comply with other SS Code obligations with incarceration, a fine, or both, depending on the nature of the offence committed.
Additionally, the SS Code imposes severe penalties for violations of any clause of any of the legislations sought to be repealed by the SS Code. Additionally, if an employer commits a subsequent offence of failing to pay contributions, fines, cess, maternity benefit, gratuity, or compensation, the employer faces a minimum of two years imprisonment, which can be increased to five years, as well as a fine of Rs.3,00,000/-.

ANALYSIS OF THE SS CODE

- In an unprecedented move, the SS Code recognises the importance of providing social security services, such as life and disability insurance, health and maternity benefits, provident fund, and skill upgradation, to employees in the unorganised sector, which make up a large portion of the workforce but are not covered by any of the current welfare schemes. The SS Code requires the Central Government and State Governments to establish social security plans for workers such as home based workers, Self-employed workers, wage workers, gig workers, platform workers, etc.
- Further the SS Code, 2020 provides gratuity rights to employees that provide continuous service along with fixed-term workers. Particularly if fixed-term workers the contract duration is shorter than 5 years, those workers will be paid gratuity depending on the length of their work contracts on a pro-rata basis. Whereas under the Payment of Gratuity Act, 1972. This particular decision is in tandem with the paradigm shift occurring within the Indian workforce, as a result of decline in the duration of various jobs, employers hire workers on contractual basis. Further this also deals with the contention of unions that employers often retrench employees before the end of the gestation period of 5 years, which entitles employees to gratuity payments.
- Moreover, the SS Code proposes the setting up of career centers which would in turn replace employment exchanges. The role of such centers would be to collect and produce information pertaining to employers and those in need of such employment along with providing career counseling and vocational guidance. This development, if implemented appropriately and effectively has the potential to enhance the employability of workers, employment opportunities and the skill development system of the country.
- SS Code introduces harsher sanctions on employers that refuse to make the necessary payments to social security schemes. For example, failure to pay pledges imposed by the SS Code will result in incarceration for a term of 1-3 years as well as a penalty of Rs.100,000. Business owners who fail to offer the required maternity care to their employees can encounter up to a year in prison or a fine of Rs. 50,000. Serial criminals may be sentenced to a minimum of 2-5 years imprisonment or a compensatory payment of Rs. 300,000 under SS Code. The enhanced sanctions under SS Code are supposed to serve as a deterrent in the future. That being said, in reality, the implementation of current social security legislation has been very weak, and non-compliance is widespread throughout all business domains. The Government will need to solve this problem when enforcing the updated legislative framework.

SS Code recognises the importance of providing social security services, such as life and disability insurance, health and maternity benefits, provident fund, and skill upgradation, to employees in the unorganised sector, which make up a large portion of the workforce but are not covered by any of the current welfare schemes. The SS Code requires the Central Government and State Governments to establish social security plans for workers such as home based workers, Self-employed workers, wage workers, gig workers, platform workers, etc.

B. The 2020 Code for Occupational Safety, Health, and Working Conditions

The OSH Code's purpose is to govern the occupational safety, welfare, and working conditions of establishment employees. The OSH Code aims to broaden its applicability to a variety of staff, including audio-visual technicians, interstate migrants, and sales promotion personnel. Additionally, it aims to advance gender equality by allowing women workers to work at night with their consent. Additionally, the OSH Code incorporates the principle of deemed registration of establishments in order to avoid lengthy administrative delays, stating that if an establishment is registered under any applicable statute, it is deemed to be registered under the OSH Code. The OSH Code incorporates thirteen labour laws relating to safety, health, and working conditions, namely the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, the Contract Labour (Regulation and Abolition) Act, 1970, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979 and the Factories Act, 1948.

The key provisions of the OSH Code are as follows:

i. **Rights of Employee-** (a) to obtain information from the employer about employee health and safety at work and

to communicate to the employer any inadequacies in the employer's provision for employee safety or health in connection with work operation at the workplace, and if not satisfied, to the inspector-cum-facilitator, if he has a fair suspicion of imminent serious personal injury or death, or imminent danger to health, he can immediately notify his employer and simultaneously notify the inspector-cum-facilitator, (b) If the employer is convinced that an imminent danger exists, he is expected to take immediate remedial action and to notify the inspector-cum-facilitator of the action taken in the manner specified by the Government and (c) If the employer is not comfortable with the presence of any imminent danger as perceived by his/her staff, he shall immediately refer the matter to the inspector/facilitator, whose opinion on the existence of such imminent danger shall be conclusive.(Jaisingh, 2020)

ii. **Constitution of Advisory Boards-** The OSH Code provides for the establishment by the Central Government of a National Occupational Safety and Health Advisory Board ("National Advisory Board"), which shall be empowered to advise the Central Government on matters relating to (a) the standards, rules, and regulations to be declared under the OSH Code (b) the implementation of OSH Code provisions and (c) the formulation of policy relating to Occupational Safety and Health. Additionally, the OSH Code provides for the establishment of a similar board at the state level ("State Advisory Board") to advise the respective State Governments on matters arising from the OSH Code's administration in their State.(Jaisingh, 2020)

iii. **Health, Safety and Working Conditions-** The employer is required to provide and maintain such welfare activities for employees as the Central Government can prescribe, including, (a) adequate and suitable facilities for washing male and female employees separately, (b) bathing areas and locker rooms for male, female, and transgender employees separately and (c) sitting arrangements for all employees required to work in a standing position.

iv. **Employment of Contract Labour and Inter-State Migrant Workers-** The OSH Code increased the minimum number of contract workers to fifty from twenty in order for the OSH Code to apply. The principal employer of the establishment is required to provide welfare facilities as defined in the OSH Code to contract labour working in the establishment. The OSH Code, in a move that should prove beneficial, provides for a traditional licence for factories, industrial premises used for beedi and cigar work, and contract labour. Additionally, it has been clarified that no contractor can engage contract labour without first obtaining a licence under and in accordance with the OSH Code. Additionally, the OSH Code protects the rights of Inter-State Migrant Workers by requiring contractors to extend all benefits available to a worker under various labour laws to inter-state migrant workers. Additionally, the employer of each relevant institution is expected to pay a lump sum fare to and from the place of employment for each interstate migrant worker.

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ANALYSIS OF THE CODE FOR OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS

While the Code for Occupational Safety, Health and Working conditions has ushered in numerous developments which are going to be crucial in promoting ease of doing business and reducing the multiple clearances and registrations, there are a certain issues which still remain to be unclear , these are elucidated below.

- The code only deals with establishments employing 10 or more workers and leaves out establishments employing below 10 workers. This has lead to the argument that such exemptions encourage employers to refrain from expanding in order to be exempt from regulations. This also leaves out employees in such establishments from the safety net of regulation which safeguards their basic rights against unsafe working conditions. It is to be noted that the notion across countries globally is to not exempt smaller establishments from labour regulations but to incorporate a mixed approach.
- Further, the code bars Civil courts from adjudicating over matters pertaining to the code. The code enables an Administrative Appellate authority to decide over such matters. Under the present laws on health and safety , workers have the right to approach labour courts and industrial tribunals for matters pertaining to wages ,work hours etc. However, the code does not put in place a judicial method of deciding over matters under the code. As a result, if in case a party is aggrieved by the decision of the tribunal , the party does not have the option to approach the lower judiciary.
- There seems to be ambiguity with respect to the definition of "wages", the code mentions "wages" in provisions pertaining to overtime and leaves but fails to define the term. According to the Code on Wages, 2019, 'wages' means basic pay, dearness allowance and retaining allowance whereas the Payment of Gratuity Act, 1976 excludes retaining allowance. It remains to be unclear as to what definition of wages is to be followed.
- The code lays down certain general provisions which are applicable to all establishments, further it also lays down certain additional requirements which are only applicable to a certain category of workers such as mine workers , journalists , sales promotion employees etc. The regulatory requirement shifts with respect to the nature of the industry, for instance special provisions which are required for hazard prone establishments such as mines and factories. The rationale for the application of such special provisions remains to be unclear. Further, the code mandates special leave for sales promotion workers. Along

with defining the threshold of working hours of journalists to be 144 hours in 4 weeks. Whereas, for other workers, the working hours is to be laid down through rules. The rationale of such differential treatment of sales promotion employees and working journalists remains to be unclear.

- The Code specifies several welfare services, working practices for employees and safety and health regulations. It does not, however, prescribe the criteria and instead enables the pertinent government to direct them. These principles are defined in the Acts that are being incorporated into the Code. The Laws that regulate mines, factories and beedi employees, for instance, prescribe an upper limit of 9 working hours a day and 48 hours a week. Likewise, several of these statutes require drinking water, toilets and sanitation as well as first aid services. The real dilemma lies in what minimum standards for working hours, safety practices, and workplace conditions (such as drinking water and sanitation) should be defined in the Code itself. It should be noted that a few of the Code's clauses coincides with the Maternity Benefit Act of 1961, which has not been incorporated into the Code. The Code enables the central government to draft policies to provide crèches in workplaces comprising over than 50 employees, however it is not mandated. Whereas the Maternity Benefit Act of 1961 mandates these institutions to provide crèches.

C. Industrial Relations Code, 2020

The IR Code seeks to harmonise India's laws governing labour disputes and labour unions. To the benefit of employers, the IR Code has introduced several provisions with respect to retrenchment, lay off and closure of the establishment which offer enhanced freedom to industrial establishments, additionally it also creates provisions for amicable resolution of disputes between employers and employees. The Industrial Relations Code incorporates three labour laws governing industrial relations, namely the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947.

The key provisions of the IR Code are as follows:

i. **Applicability of Special Provisions: Lay-off, Retrenchment and Closure in Certain Establishments-** The ID Act and the Industrial Relations Code, 2019 ("Previous IR Bill") contained several special clauses requiring employers to receive advance permission from the relevant government before laying off/retrenching workers or shutting an institution, among other items. These rules applied to those categories of enterprises that employed one hundred or more employees on an annual basis within the preceding twelfth month. The IR Code has been amended to increase this threshold to 300 or more workers, i.e., direct permission from the relevant government is not allowed to lay off/retrench employees or close an institution if the number of employees in the establishment is less than the above threshold. Additionally, while the previous IR Bill permitted the relevant government to change the threshold if required, the IR Code requires the government to inform a greater number of staff, maintaining a minimum applicability threshold of three hundred jobs across India. (Seema Jhingan S. R., 2020)

ii. **Increase in Wage Ceiling for Worker-** The term 'workman' was described in the ID Act to exclude those in supervisory positions, earning more than Rs.10,000/- per month, or performing primarily managerial functions. The IR Code raised the minimum wage for a 'worker' in a supervisory capacity to Rs.18,000/- or any other amount as the Central Government may inform.

iii. **Fixed Term Employment-** The IR Code also includes a new expression, 'fixed term job,' which applies to an employee who is hired for a given amount of time according to a written contract. (a) worker employed on a temporary basis will be entitled to the same benefits as a permanent worker doing the same or similar work; (b) will be eligible for statutory benefits proportionate to the service period rendered, regardless of whether the employment period meets the statute's qualifying period; and (c) will be eligible for gratuity if the service period is for a period of one year or more.(Seema Jhingan S. R., 2020)

iv. **Wages-** The IR Code redefines the term 'wages' to cover any remuneration, whether in the form of compensation, benefits, or otherwise, payable to an employee in connection with his or her job whether the employment conditions (express or implied) are met. This covers minimum wages, dearness fee, and keeping allowance, but not, for example, any compensation not included in

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the wage. However, a proviso to the definition states that if the definition's excluded components surpass fifty percent of the overall remuneration paid, the excess balance is construed as 'wages'. This step is necessary to preserve the fifty-fifty pay ratio.

v. **Central and State Recognition of Trade Unions-** The IR Code empowers the Federal and State Governments to recognise a labour union or an alliance of trade unions as a central or state trade union. Given that the IR Code lifted the requirement for obtaining prior government approval for lay-off/retrenchment from one hundred to three hundred employees, it is likely that employers will have more freedom in hiring and terminating employees without requesting prior government approval. Additionally, by raising the ceiling for the requirement of a standing order in industrial establishments to over 300 employees, it means that industrial establishments with less than 300 employees will be excluded from the requirement.

vi. **Definition of Industry-**The new IR code excludes from the definition of industry the following ;Institutions owned/ managed by organisations entirely or partly involved in charitable, social or philanthropic service or any activity of the appropriate Government pertaining to sovereign functions of said appropriate government which includes acts carried out by Government departments dealing with research pertaining to defence research, atomic energy and space or Domestic services or Any activity, so notified by the Central Government.

vii. **Amendment to the definition of Industrial Dispute-** The definition of Industrial disputes has been expanded to incorporate any dispute between a worker and an employer pertaining to any discharge, retrenchment or termination of said worker withing its definition.

viii. **Standing Orders-**The new IR Code stipulates that provisions pertaining to standing orders shall be applicable to industrial establishments with three hundred workers. The employers are required to form standing orders on matters listed out in the 1st schedule of the IR Code. Further, the IR Code stipulates that the certifying officer must conclude the process of certification of the draft standing order within a period of 60 days, or else the draft standing orders will be deemed to be certified.

ANALYSIS OF THE INDUSTRIAL REGULATION CODE, 2020

- The Code mandates a prior notice before the event of a strike or a lock-out, which has to be given to the conciliation office within a period of 5 days. Upon which conciliation proceedings will begin during which strikes and lock-outs would remain prohibited. In the event that the conciliation is unsuccessful and an application has been made to the Tribunal by either of the parties, strikes and lock outs would be prohibited during said period. This time frame could extend past the 60 day notice, hence these provisions could hinder the strike or lockout on the notified date. Such requirements are present under the Industrial Disputes Act, 1947 as well but are restricted to public utility services. However, the rationale for extending such restrictions on all establishments remains to be unclear.
- With respect to the provisions pertaining to sole unions, the code lays down that a union which has more than 51% of the workers shall be recognised as the sole negotiating council. In the event that such a requirement is not met, representatives of unions with more than 20% of the workers will form the sole negotiating council. It is pertinent to note that unions with 10% or 100 workers can only be registered as a union. The code is silent with respect to situation where there exist multiple unions which have 10% of the workers but none of them have crossed the threshold of 20%.
- The Code lays down the definition of workers as any person that works for hire or reward. The definition excludes individuals working in an administrative or managerial or supervisory capacity with wages upwards of Rs.18000. The code does not define the terms "manager" or "supervisor". Additionally, these terms are also mentioned under the three labour code. Moreover, the bill uses the term "contractor" and does not define the same. Similarly, the Bill lays down the definition of an "industrial" establishment to be any establishment under which industrial activities are carried out. However, the bill does not lay down a definition for the term "establishment".
- The 2020 Bill proposes that Industrial Tribunals and National Industrial Tribunals shall be established to settle conflicts arising from the Bill. It specifies that rulings issued by a Tribunal shall be binding after 30 days. In such cases, however, the government can delay implementation of the award for certain reasons concerning the country's economy or social welfare. This occurs either when the federal or state governments are a partner to the appeal in dispute or when a National Tribunal has granted the award. The government may also require that the award be rejected or amended. The notice as well as the order will be presented in the parliament. The issue is if such a clause would breach the doctrine of separation of powers among the executive and the courts, as it enables the executive to overturn a tribunal's decision via government intervention. Furthermore, it begs the question as to if there exists any conflict of interest since the latter has the authority to change an award deemed by the Tribunal in a case where they are a party.

Family Business Code (FBC) for Listed and Unlisted Family Businesses in India

While family businesses are a key part of any nation's industrial system, evidence shows very few survive across generations. Only way companies can sustain and grow across generations happens when they adopt good governance practices covering both family and their business areas. In this paper, we present a governance code for family-owned businesses, both listed and unlisted.

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INTRODUCTION

India has a rich business history with a significant number of businesses still being controlled and managed by families (Chahal and Sharma, 2020). Family Business in India contributes to over 70 percent of its GDP. An article on the Hindu business line quoted the Credit Suisse 2018 report stating that India has the third-largest number of family-run businesses in the world after the US and China with 111 publicly listed family-owned businesses with a combined market capitalization of $839 billion. Besides this, as of 2017, it reports India to have 10.68 lakh active unlisted private limited companies and 66,063 unlisted public limited companies. However, CII observed that only 13 percent of the Family businesses survive till the 3rd generation and only 4 percent go past the third. Without agreed-upon operating norms, families have less direction when conflicts arise (Sinha and Govindaraj, 2020). The family members embrace several roles, with thin lines between executive and governance facets. This sometime can lead to conflict and jeopardize the sustainability of the business. Interlocking directorships, intermediate relationships and tacit dependencies which are quite common among family business may affect quality of governance. Good corporate governance of both family and their business are key to survival, growth and sustenance.

Germany, Switzerland, Italy, Belgium, GCC block and many other countries have a governance code for family-owned businesses (AIDAF, 2017, Buysse, 2009, Continuum and Prager Dreifuss 2008, Cuomo, et al. 2016, FBCG 2016, FBNed 2003, FRC 2018, Rinvest Institute, 2015). The code is a list of mechanisms and rules (or expectations) to which everyone adheres to in a family business. A family business code covers the governance mechanisms for family, interfaces with corporate governance at the business level, professionalization, limits on insiders, remuneration for family and family members, succession and social responsibilities. Family business code assists family-owned businesses to adopt a holistic approach to balance family and business interests and successfully preserve the business for generations to come. India does not have a governance code or a national guidance specifically for family-owned businesses.

India's culture, traditions entwined in community practices and values instilled within family businesses make the governance complex and unique. It is not uncommon to see family board restricted to first-born or male progenies only. Such restrictive practices are leading to family disputes between the siblings or between successive generations. Protracted litigations are likely to affect the performance of the business units the family owns.

Family business owners and their board recognize they need a list of mechanisms and rules (or expectations) to which everyone adheres to in a family business. What they need is a code that is cognizant of the size and development of both family and business and effective enough to meet the evolving business context. They desire to have a family business code that covers the governance mechanisms for family, interfaces with corporate governance at the business level, professionalization, limits on insiders, remuneration for family and family members, succession and social responsibilities. Their interest in investing and adhering to a family business code is to adopt a holistic approach to balance family and business interests and successfully preserve the business for generations to come. Family business owners and the boards lack a touchstone for common decision-making to build profitable and sustainable businesses, define boundaries and

The authors would like to thank family business owners, trustees of the board, academicians, members of ICAI, ICSI and legal professionals who supported and actively contributed to this study.

rules for family and business interactions, and mechanism to preserve long-term ownership of the businesses. Lack of a standardized family business code is also limiting GRC professionals in their assessments of a family business and identifying what areas need improvements. Towards filling this gap, we have attempted to a family business code for Indian family-owned businesses.

METHOD

We first analysed family business code of Germany, Switzerland, Italy, Belgium and GCC countries, and listed common measures. We then conducted a questionnaire survey reaching out to members of ICAI, ICSI, family business owners, academicians, legal professionals across India. Wherever possible we also conducted telephonic interview to get feedback on the measures and their applications to Indian business environment.

FAMILY BUSINESS CODE DIMENSIONS

Based on telephonic interviews and questionnaire data, 12 dimensions emerged as family business code measures for Indian family businesses.

Family business goals refer to the family unwritten and written objectives of doing business and include vision, core values and practices that are embedded in governance and policies of its business including successions plans, way of carrying on day-to-day activities of the business, business ethics, loyalty, employee welfare and social relevance.

Family governance structures refer to dispute resolution mechanisms and family business council (FBC) or cousin consortia (CC) or other forms, both informal and formal, that family business used to manage their business and family interests. Governance structures bring in professionalism to a family business. This includes family board (size 5-8 members), tenure and rotation of family members, equal representation amongst all family branches or otherwise, women representation on FBC, Succession rights of wife and daughters to FBC, FBC composition of family and non-family, non-family and nominated members (with and without voting rights), and family board activism (collective process and access to information and decision-making).

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Family governance processes includes number of board representation amongst different siblings, voting rights, nominations, decision rights, meeting rules, accountability of FBC, removal of members from FBC, decision-making, intra-family buying & white knight limitations, if any (restricting one family to buy shares of one family tree and vest complete control) and financial reporting and proprietary audits (both internal and external), Compliance and technological changes and advancements to be overlooked by one member each for the entire business.

Conflict and dispute resolution include conflict resolution mechanisms that sets means and processes for resolving conflicts amongst family members and the businesses owned by the family. This may include advisory and dictatorial roles, formal and informal dispute resolution mechanisms within FBC and amongst family members, internal member's mediation mechanisms, third party professional involvement, and options on when to litigate. The Family council or the family business board (cousin's consortia) can create or nominate an individual or a group of family members to address the conflicts. Family business board can also refer to external arbitrators or trusted advisors to provide an objective or neutral suggestion. Finally, in case the recommendations are unaccepted, the family business board must have provisions for legal recourses.

Family ownership control refers to the legal structures and mechanisms that are adopted to protect the business and family from opportunism and guile. This includes separation of the CEO and chairperson role for the business units, choose or select to positions for business units owned by family, rotation or stability amongst family members on FBC, inheritance of shares of companies whenever a separation or marriages affects the business, issuance of dual-class stocks to control family ownership and ward off any potential hostile takeover. This can cover distributions amongst owners, mediation options, and restrictions on transfer of shares because of divorce or death, buy-sell provisions, dissolution of companies, spousal consents, and automatic buy-out mechanisms to protect ownership interests among others.

Family Communications includes formal communications through FBC or respective business groups on business and other areas, code of conduct in formal meetings, communication protocols for sharing and receiving feedbacks through formal mechanisms only, communication codes

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for FBC or any of its members seeking information from a business unit, FBC Media policies among others.

Family rituals and preserving identity refer to the assets and allocations family businesses make to preserve their identity (cultural or religious grants and activities). Family Business builds and reinforces the culture to balance personalities and self-interests across generations using rituals, traditions and routines. Rituals such as all annual family meet, back to root celebrations, founder's oath ceremony, among others have a symbolic meaning to the family and show cultural, religious and ethnic practices of the family. Traditions and routines are choice-based events such as village fest or cultural meet or dinner meet to encourage informal getting together and discussions about the business and family. This will however, have to be financed by the Family Business Board through the royalties they earn or the interest from the corpus and not by the company.

Corporate governance of family business units include a number of family and independent directors on board, occupation and professional expertise of independents, advisory board composition (insiders vs professionals), women directors, separation of chair (FBC chairperson or nominee) and CEO (professional), formal audit, remuneration and risk committees, performance review of boards (inclusion of FBC or nominees or self-managed) and adoption of robust GRC tools to track and report ESG.

Family member assessment and assimilation includes formal structures and process through FBC or other informal mechanisms reporting to FBC to support each family member to see their fitment with business, periodic assessment of family members in business, remuneration benchmarks, family member replacement policies from business units, family member career management policies in non-business areas

Succession Management refers to who the next successor is, their method of appointment or election and induction, mode of succession on cases of adopted children, no children or heir, and step-children, Succession on emergency, marriage, pre-nuptial or divorce implications on the succession, Restrictions and Inclusion of gender, first-born bias, in-laws into business, Method of transfer of ownership, succession mechanisms (intrapreneurship, education, learn from shop-floor), involvement of insiders and non-family professionals in identification, grooming, evaluation and continual mentoring of successors, succession tenure, number of attempts and exit options.

Family wealth management includes creation of corpus, family office set-up, involvement of family in Family Office or professional managements, profit sharing or royalties to family trust, management of corpus, percentage to be reinvested into existing business, allocation areas and risk preferences, buy-backs, M&A, reporting and review of wealth growth.

Philanthropy and CSR include the family business commitment to social causes, focus areas for investment and continued support. Mechanisms to involve family members, options to create Section 8 or Section 25 Companies or foundations headed by family members and its relationship and governance by FBC, alignment of causes to vision and values, reporting and review of CSR.

APPLICATIONS OF THE FAMILY BUSINESS CODE

The proposed family business code addresses unique requirements of different constituents. For family business owners, the code works as a checklist to self-rate how many of these dimensions are in use, which have been considered, which have been considered but not implemented yet and which are in force and yielding results. This assessment serves as a starting point for their board to realize the best practices and the gaps. It would serve as a roadmap for the family business owners to invest and direct "governance structures, process and practices" required to support growth and expansions with requisite controls.

Family businesses and GRC consultants can use the family business code to assess the current stage of governance maturity and adopt a governance maturity model to drive improvements. External agencies like analysts, bankers and investors can use the code to evaluate an unlisted/ listed family business and create maturity models. **Stage 1** family businesses may have a weak alignment of company's vision mission and goals with limited governance structures and mechanisms to manage business and family interests. **At stage 2**, while business and family goals have broad governance structures, conflict resolution mechanisms may be weak. Business units have no formal structures to facilitate feedback and communication; there is an irregular performance evaluation and little support to family members on career management; they make succession plans with an emphasis on male heir & first-born restrictions along with irregular philanthropic duties.

At stage 3, the family business is more matured, it brings in professionalization of business with a clear definition of company goals, presence of governance structures like family council, Family Assembly, cousins consortia or other forms to manage business and family interests. Formal conflict resolution mechanism along with clear legal structures and mechanisms exist to protect the business and family. Family assembly or other structures are required to conduct and facilitate formal communication within respective business groups in business and other areas. Formal structures to assess family members in business, remuneration benchmarks and family member replacement policies from business units are available. Succession plans with gender bias but no restrictions on the first born. Family office and a formal Wealth Management committee exist.

At Stage 4 the family business governance is optimal, governance structures manage business and family interests including equal representation amongst all family branches or otherwise, women representation on FBC, Succession rights of wife and daughters. Conflict resolution with inclusion of internal and external mediators, well-defined legal structures and mechanisms to protect the business and family may be in force. Effective family communications are in place with code of conduct in formal meetings, communication protocols for sharing and receiving feedbacks through formal mechanisms. Mechanisms to reinforce the culture, balance personalities and self-interests across generations using rituals, traditions and routines among other forms shall exist. Succession planning and execution with focus on merit not on gender or firstborn shall be in force. Formal and clear public engagement, political donations and philanthropy policies are in force.

CONCLUSION

Family businesses are unique, leading towards differing requirements on the governance. The code proposed needs more empirical validation. However, the family business code suggested here serves as a tool for family businesses to evaluate where they are and what investments they require to stay profitable and survive across generations.

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SEBI Advisory on Disclosures by Listed Entities with reference to the COVID-19 Pandemic - A Study

The COVID-19 pandemic has affected all spheres of the economy the world over and India is no exception. The corporate sector has also been equally affected. In the wake of the pandemic, SEBI took various initiatives to ease the regulatory compliance by listed companies. The markets were kept open, which was widely welcomed by all stakeholders. Investors continued to make their investment decisions based on disclosures by listed companies. While SEBI allowed certain relaxations in case of disclosures, there were companies who did take positive action in making disclosures. This article is an attempt to study the disclosures made by companies, especially those disclosures made with reference to the effect of COVID-19 with reference to individual companies, before and after SEBI's advisory on COVID-19 related disclosures.

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INTRODUCTION

1. The COVID-19 pandemic has had an unprecedented impact on all spheres of the economy. Corporates and individuals alike continue to bear the brunt of the epidemic.

2. Listed companies are also equally affected by the pandemic as any other corporate. Listed companies also have the burden of additional cost of compliance compared to an unlisted company. Disclosures being the bedrock for a market to function efficiently, listed companies had an arduous task ahead.

3. Normal life was and still continues to be badly affected world over due to the spread of COVID–19 pandemic. The Government of India, vide notification dated March 24, 2020 and addendum dated March 25, 2020 had ordered closure of all businesses except those involved in providing essential services. While such a lockdown and disruption unforeseen and beyond the control of the companies, it is important that the investors in the securities market receive timely and updated information about the company and its operations.

4. One of the important regulations for a listed company to comply as far as disclosures are concerned is the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations). SEBI, vide various circulars had provided relaxations to listed companies from compliance with certain provisions of the LODR Regulations.

5. As per Regulation 30 of the SEBI LODR Regulations, listed entities are required to disclose events of information to stock exchanges. The following provisions are particularly of relevance to this article:

   - Reg. 30(1)

     Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

   - Reg. 30(2)

     Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

   - Reg. 30(3)

     The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

   - Reg. 30(4) (i)

     The listed entity shall consider the following criteria for determination of materiality of events/ information:

   - the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

- the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;
- In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

➢ Reg. 30(4) (ii)

The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website.

6. Considering a black swan event like the COVID-19 pandemic, there are multiple uncertainties, which are composed of components and variables, many unknown at various points of time, which might lead to varied outcomes too. This certainly would involve revenue recognition, impairment of assets, valuation of stock, receivables, state of borrowings, contractual obligations, accounting issues etc. Hence it was only too important for managements to disclose the impact of the uncertainty on operations as well as the financial statements. SEBI in, September 2015[1] had issued a guidance to listed entities on the details to be disclosed while disclosing events under Regulation 30 of the LODR. Annexure I of the aforementioned circular specifies the details to be disclosed in cases of disruptions of operations due to natural calamity, force majeure and other events. This was more in the form of an explanatory circular, providing some clarity for the corporates to look for the way they should follow in making adequate disclosures especially during a pandemic like situation.

STEPS TAKEN BY VARIOUS SECURITIES MARKET REGULATORS ACROSS THE WORLD RELATED TO DISCLOSURE REQUIREMENTS FOR LISTED ENTITIES DURING THE COVID-19 PANDEMIC

The COVID-19 pandemic has had its impact across the globe. Therefore, securities market regulators world over were also confronted with the situation and how to deal with the same. Securities market regulators around the world have come out with their versions of guidance on disclosures during COVID-19 to be made by listed entities.

It would be pertinent to note the guidelines issued by some of the important securities market regulators around the world.

Securities and Exchange Commission, USA

The Securities and Exchange Commission, USA, issued a Disclosure guidance on disclosure and other securities law obligations that companies should consider with respect to the corona virus disease 2019 (COVID-19) and related business and market disruptions.

European Securities and Markets Authority (ESMA)

The European Securities and Markets Authority (ESMA) brought out recommendations to financial market participants on Market disclosure and Financial Reporting during COVID-19.

The Financial Conduct Authority, UK

The Financial Conduct Authority, UK advised that Companies must continue to assess carefully what information constitutes inside information at this time, recognising that the global pandemic and policy responses to it may alter the nature of information that is material to the prospects of the businesses.

Autoriteit Financiële Markten (AFM) the Dutch Supervisory Authority Financial Markets

The AFM emphasised that the provisions of the Market Abuse Directive continue to apply in full. Under these rules, listed companies are obliged to keep their investors informed of any delay.

The Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) Federal Financial Supervisory Authority Germany

BaFin advised that companies may need to apply stricter criteria in individual cases when determining what is to be considered "considerable" in the context.

Securities and Futures Commission, Hong Kong

The SFC said that the COVID-19 pandemic has caused prolonged operational difficulties amongst issuers and professional services firms that an issuer shall announce an estimation of when it expects to publish its annual report with an explanation of the factors that it considered in arriving at such estimation, and keep the market informed of the expected publication date of its annual report along with other updates as appropriate.

Similar guidance was issued by Canadian Securities Regulators. Thus, it can be seen that Regulators around the world have been unanimous in their opinion that issuers should disclose as soon as possible any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation in accordance with their transparency obligations.

SEBI'S INITIATIVE

1. As much as the other securities regulators, SEBI has always been seized of the fact that there is a need for investors in Indian listed securities to comprehend the impact of the COVID-19 pandemic on the operations of the listed entities. It is notable that protection of the interests of investors is the primary mandate for SEBI. In order to bring clarity in disclosures made by listed entities consequent to COVID-19 pandemic and to restrict companies to make selective disclosures there was a need to analyse the following factors:

   a. While it may not be possible for a listed entity to immediately assess the precise impact of the disruptions on its business & its finances, the following information needed to be provided, as soon as the same is available so that the investors have timely, adequate and updated information about the company:

[1] *SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 9, 2015*

- the factories/units functioning and closed down;
- steps taken to reduce/minimize CoVID-19 related uncertainties;
- estimation of the future impact of CoVID-19 on its operations and other material updates about the listed entities' business
- financial condition, capital / financial resources including overall liquidity position, demand on products or services or supply chain or methods used to distribute products or services etc.
- Any other information which would have material impact on the financials / operations of the company.

Further, to have continuous information about the operations of listed entity and keeping in mind the dynamic nature of the impact of the pandemic, every listed entity needs to provide regular updates may also be provided till complete normalcy is restored.

b. Once a listed entity is able to determine the impact of COVID-19 on its businesses and its finances, there is a need for it to disclose the same to the stock exchanges along with the details of its impact on:

- *capital and financial resources;*
- *liquidity position;*
- ability to service debt and other financing arrangements;
- assets;
- internal financial reporting and control;
- supply chain;
- demand for its products/services;
- future operating results etc.

c. When listed entities disclose material information related to the impacts of the COVID-19, they needed advice and guidance to take necessary steps to avoid selective disclosures and to disseminate such information broadly; there was a need, as stated earlier, depending on circumstances peculiar to the listed entity, that it might have to revisit, refresh, or update previous disclosures.

2. SEBI perhaps was one of the earliest regulators, to being in clarity in this sphere. SEBI issued a circular[2] in this regard, specifying that listed entities should endeavour to ensure that all investors have access to timely, adequate and updated information. Towards this end, SEBI encouraged listed entities to evaluate the impact of the COVID-19 pandemic on their business, performance and financials, both qualitatively and quantitatively, to the extent possible and disseminate the same. Perhaps with a view that the impact of this pandemic can be most reflected and understood from the financials of companies, SEBI also added in the guidance that, additionally, while submitting financial statements under Regulation 33 of the LODR, listed entities may specify / include the impact of the COVID-19 pandemic on their financial statements, to the extent possible.

[2] *SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/84 dated May 20, 2020*

SEBI encouraged listed entities to evaluate the impact of the COVID-19 pandemic on their business, performance and financials, both qualitatively and quantitatively, to the extent possible and disseminate the same. Perhaps with a view that the impact of this pandemic can be most reflected and understood from the financials of companies, SEBI also added in the guidance that, additionally, while submitting financial statements under Regulation 33 of the LODR, listed entities may specify / include the impact of the COVID-19 pandemic on their financial statements, to the extent possible.

3. When listed entities disclose material information related to the impact of COVID-19, they are not expected to resort to selective disclosures, keeping in mind the principles governing disclosures and obligations of a listed entity as prescribed in LODR Regulations, more specifically, having regard to the requirements of Regulation 4(2)(e) of the LODR on disclosure and transparency. Depending on circumstances peculiar to a listed entity and on account of passage of time, the listed entity shall revisit, refresh or update its previous disclosures. SEBI had stated in the circular that, keeping in mind the fact that companies are in a variety of sectors, the items of disclosure were indicative and not exhaustive; thus, giving leeway for companies to assess the relevance of these indicators since there will certainly be many other additional and relevant factors that may have an impact on the operations and consequently, financials of the company.

IOSCO GUIDANCE TO ISSUERS ON FAIR DISCLOSURE ABOUT COVID-19 RELATED IMPACTS

The Board of the International Organization of Securities Commissions (IOSCO), on May 29, 2020 issued a public statement highlighting the importance to investors and other stakeholders of having timely and high-quality information about the impact of COVID-19 on issuers´ operating performance, financial position and prospects[3]. IOSCO stated in its statement that:

"The pandemic and the uncertainty it has caused have material implications for financial reporting and auditing, including issuers' disclosures of current and reliable information material to investment decisions. Current circumstances

[3] *https://economictimes.indiatimes.com/markets/stocks/news/global-regulators-body-calls-for-fair-disclosure-by-listed-firms-on-covid-19-impact/articleshow/76095000.cms*

may make disclosures outside the financial statements more challenging and hence make high quality disclosures that much more important. In light of COVID19, IOSCO confirms its commitment to the development, consistent application and enforcement of high-quality reporting standards and disclosure regulations, which are critical to the proper functioning of the capital markets."

In its Statement on Importance of Disclosure about COVID-19, IOSCO stated that it[4]:

- *Reiterates the importance of disclosure of the impact on amounts recognized, measured and presented in the financial statements.*
- *Highlights the importance of transparent and complete disclosures, noting that in an environment of heightened uncertainty, disclosures should be entity-specific and transparent, particularly when involving significant judgments and estimates.*
- *Restates that in the current environment, it is important that issuers are mindful of the elements of reliable and informative non-GAAP measures.*
- *Notes that interim financial information will require more robust disclosures of material information and management's response to the changing circumstances.*
- *Reminds auditors of their responsibilities to report on Key Audit Matters (KAM), including how the auditor addressed the matters.*
- *Encourages issuers to balance the flexibility provided by regulators extending the period to file financial information with the responsibility to provide timely and comprehensive financial information that includes reasonable and supportable judgments.*

The disclosure of the impact of the pandemic on the operations of a listed entity is given paramount importance by regulators across the world. This is exemplified by events surrounding a listed company in the USA and the Securities and Exchange Commission (SEC), USA. On December 4, 2020, it so happened that a company settled charges with the SEC for making misleading disclosures about the impact of the COVID-19 pandemic on its business operations and financial condition.[5]

The efforts of SEBI were also acknowledged by the media, which opined that India's market regulator was ahead of both IOSCO and OECD in mandating listed corporates on disclosures during COVID times1. The assessment of 'going concern' at every interim period has also become an important consideration as companies prepared their financial reports.

The efforts of SEBI were also acknowledged by the media, which opined that India's market regulator was ahead of both IOSCO and OECD in mandating listed corporates on disclosures during COVID times[6]. The assessment of 'going concern' at every interim period has also become an important consideration as companies prepared their financial reports. All of these judgements and estimates would need to be continuously reassessed by companies using all reasonable and supportable information available—historic, current and forward-looking to the extent possible. Therefore, there is a need for companies to enhance the quality and consistency in their CoVID-19 disclosures.[7]

ANALYSIS - IMPACT OF THE PANDEMIC ON STATUS OF DISCLOSURE SUBMISSIONS BY LISTED ENTITIES

Before analyzing the impact of the SEBI guidance / advisory on COVID-19 related impact disclosures, there is a need to understand the impact of the pandemic on the logistics surrounding continuous disclosures made by listed entities as per the Listing Regulations.

The impact of the pandemic has been such that most companies have utilised the relaxation provided by SEBI to submit the financial results / corporate governance report / shareholding pattern, as can be seen from the following[8]:

a. Table 1. Status of submission of Financial Results for quarter ended March 31, 2020 and June 30, 2020 for top 1000 listed entities:

Quarter Ended	Submitted					Not Yet Submitted	Not Applicable[9]	Total
	By actual Due date		By Extended Due Date		Delayed Submission			
	Count	%	Count	%	Count			
March 2020	293	29%	692	69%	11	2	2	1000
June 2020	693	69%	283	28%	11	5	8	1000

[4] *https://www.iosco.org/news/pdf/IOSCONEWS568.pdf*

[5] *https://www.sec.gov/news/press-release/2020-306#:~:text=The%20Securities%20and%20Exchange%20Commission,business%20operations%20and%20financial%20condition.*

[6] *https://www.thehindubusinessline.com/opinion/sebi-leads-in-guiding-firms-on-disclosures/article33086278.ece*

[7] *https://www.livemint.com/opinion/online-views/opinion-challenges-in-reporting-amidst-covid-19-linked-uncertainties-11596001105595.html*

[8] *Data from filings made on www.nseindia.com*

[9] *Due to schemes of arrangement*

b. Table 2. Status of submission of Corporate Governance (CG) report and Shareholding pattern (SHP) for the quarter ended March 31, 2020, for top 1000 listed entities:

	Submitted					Not Yet Submitted	Not Applicable	Total
	By actual Due date (April 15, 2020)		By Extended Due Date (May 15, 2020)		Delayed Submission (post May 15, 2020)			
	Count	%	Count	%	Count			
CG	220	22	763	76.3	3	2	12	1000
SHP	395	39.5	594	59.4	10	1	0	1000

The above tables indicate the fact that listed entities have been immensely benefited by the extension of dates by SEBI for submission of filings; the corollary is also that they are also a measure of the impact on the operations of the companies that they had to resort to the extended timelines. While the degree of the impact can be observed from the tables it also drives home the point that this necessitated further disclosure on the effect of the pandemic on the operations of the listed entities.

ANALYSIS - DISCLOSURES ON IMPACT OF COVID 19

For the purpose of this paper, data was taken about disclosures by listed entities on the impact of COVID-19 on their businesses before and after the issue of the SEBI guidance. Regulation 30 of the LODR Regulations speak specifically about such disclosures.

Before going into the actual analysis of the compliance with the guidance, it is noted that a study was conducted by KPMG[10] on the disclosures made by listed entities on the impact of the pandemic on their business; this study was carried in July 2020, around two months after the SEBI guidance. It is noted from the analysis that at that time,

- **26 out of the Nifty 50 entities** had provided a quantitative narrative disclosure
- **16 of the Nifty 50 entities** provided information on the impact on revenue due to shutdown of factories
- **32 of the Nifty 50 entities** had disclosed that the management had carried out an impairment analysis.

This is a reflection of the fact that the SEBI's guidance has resulted in broader disclosures from the corporate.

The present analysis is after considering the top 1000 entities by market capitalization on NSE. Before we get into statistics surrounding the disclosures, it is important that the impact on the depth and quality of disclosures is analyzed. This would be best exemplified by the disclosures made by entities after SEBI's advisory, which is also reflective of the clarity afforded by the guidance. As stated earlier, listed entities had majorly informed only about the temporary closure / resumption of business operations prior to May 20, 2020 (i.e. before the date of issue of the SEBI advisory on COVID-19 impact).

A sample of three companies in the Nifty50 comprising varied sectors was taken to specifically analyze the impact of the SEBI guidance on the depth and granularity of disclosures prior to and after the SEBI advisory:

[10] *https://assets.kpmg/content/dam/kpmg/in/pdf/2020/08/aau-covid-19-caro-2020-us-gaap-financial-impact.pdf*

DISCLOSURES BEFORE THE SEBI ADVISORY

Company 1:

"March_2020

Pursuant to Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, we wish to inform you that in view of the pandemic of Novel Coronavirus (COVID19) the Company has decided to close down the operations at their Plant located at _____ from Monday, 23 March 2020 till further notice, to prevent further spread of Coronavirus. This action is also in line with the directions issued by the Government of ……."

Company 2:

"March ___2020

Pursuant to the …….. government directive to check the spread of the COVID-19 transmission, we are closing our operations with effect from ……"

"May ___ 2020

Pursuant to the latest Government directive regarding the COVID-19 situation, the suspension of production is extended till further notice"

"May__2020

"…the production will start from May___2020, strictly in accordance with the Government rules and regulations, with the Company's concern for the highest standards of safety"

Company 3:

March ___2020

The Company is very concerned about the welfare of its employees and has therefore adopted a work from home policy for all its offices across the country starting 17th March, 2020 and will continue with this policy till it is felt safe to work from office. Technology is being fully leveraged and as of now, critical back end operations are being managed with minimum staff, or remotely. With the banking system working efficiently, collection and payment processes continue to operate normally.

Manufacturing facilities

Based on the current circumstances, the Central and State Government directives and the Company's own risk

perception, the Company has decided to close down all its manufacturing units in all businesses across the country for 1 week, starting March___, 2020.The situation will be evaluated at the end of this week and further course of action will then be decided.

Retail stores

…..

All stores were closed on the 22nd March, 2020 in deference to the exhortation of the Prime Minister. However, based on the current COVID-19 situation and the Company's current assessment of risk to its employees and customers, a decision has been taken to shut all the stores (Company operated and franchisee operated) across all the brands till the 29th March, 2020, when the situation will be reviewed on whether to continue with the closure or not."

DISCLOSURES AFTER THE SEBI ADVISORY

The disclosures by the same companies, after the issue of the SEBI advisory, are as follows:

Company 1:

Disclosure on impact assessment as per SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/84 dt. 20 May 2020

This disclosure is to be read in conjunction with our various communications to stock exchanges from 23 March 2020 till date. Impact of COVID-19 pandemic is summarised as under: -

Particulars	***Comments from the Company***
Impact of COVID19 on business of the Company	*The COVID-19 pandemic is unprecedented, and the lockdown and other containment / precautionary measures have resulted in disrupted supply lines and sharp decline in demand. The impact was experienced in India as well as in other countries that we export to.* *The company, across its plants located at …… and various business locations has also experienced this adverse impact.* - *All manufacturing operations came to a near standstill for period ranging from 28 to 43 days between March and May* - *Shutdown of vendors resulted in disruption of supplies impacting production for exports and* - *Shutdown of dealers across India adversely impacted business in India*
Manner of restarting operations of the Company	*The company could gradually improve the operations from ~25% when plants were gradually opened in April / May 2020 and have now been able to ramp-up production to almost 70% of normal levels. However, things are far from normal as this is an unstable recovery due to sporadic local shutdowns in various parts of the country impacting both, demand as well as supply chain.* *Exports and domestic sales were both impacted due to restrictions on production from the beginning of the pandemic. However, exports continued thru the quarter basis our order book while domestic sales started in May-end.* *The Company gave extensive digital training along with training material to its vendors and dealers to ensure safe and smooth resumption of operations.* *The Company continues to adopt "Work from Home" policy for its employees, wherever possible.*
Steps taken to ensure smooth functioning of our operations	*The Company has taken various steps to support and safeguard multiple stakeholders to prepare restart business in a new normal, mainly in five areas:* *Protection of our employees, workers & staff alike* *Restart our supply chain* *Cater to demand, both in India and outside India* *Maintain our financial strength and* *Contribute to society* *We have also taken all requisite measures to adhere to the directives given by Government for COVID-19 management.* *Some of these include;* *Safety guidelines to its employees and workers*

	Appropriate training to staff and workers on safety *Regular sanitization and fumigation of the factory premises and offices* *Strictly follow the social distancing norms* *Thermal screening of all entrants and* *Distribution of masks* *Wherever possible, we have asked our employees to continue working from home. Requisite laptops and digital connectivity is ensured to enable Working from Home.*

<table>
<tr><th>Particulars</th><th>Comments from the Company</th></tr>
<tr><td>Estimation of the future impact of the pandemic on the Company's operations and on the demand for its products</td><td>To accurately estimate the future impact of this pandemic on the performance of The Company is difficult to assess, given the volatile and still evolving environment with fresh lockdowns being imposed.

Given our strong brand and financial stability coupled with committed suppliers and dealers, we are confident to get back to doing business and adjust to the new normal.

However, it is not possible to assess the future impact of this pandemic.</td></tr>
<tr><td>Impact on the Company's revenues and profitability</td><td>Reported volumes for April, May and June 2020 are tabulated below:

<table>
<tr><td>Particulars</td><td>April 20</td><td>April 19</td><td>Change</td></tr>
<tr><td>Domestic</td><td></td><td></td><td>-100%</td></tr>
<tr><td>Export</td><td></td><td></td><td>-80%</td></tr>
<tr><td>Total</td><td></td><td></td><td>-91%</td></tr>
<tr><td>Particulars</td><td>May 20</td><td>May 19</td><td>Change</td></tr>
<tr><td>Domestic</td><td></td><td></td><td>-83%</td></tr>
<tr><td>Export</td><td></td><td></td><td>-53%</td></tr>
<tr><td>Total</td><td></td><td></td><td>-70%</td></tr>
<tr><td>Particulars</td><td>June 20</td><td>June 19</td><td>Change</td></tr>
<tr><td>Domestic</td><td></td><td></td><td>-34%</td></tr>
<tr><td>Export</td><td></td><td></td><td>-28%</td></tr>
<tr><td>Total</td><td></td><td></td><td>-31%</td></tr>
</table>
However strict cost control measures helped in restricting the loss and EBITDA is lower by 65%.</td></tr>
<tr><td>Impact on the Company's capital and financial resources</td><td>No fresh equity capital was raised during this period. The company has adequate capital and financial resources to manage its business and continues to remain debt-free.</td></tr>
<tr><td>Impact on the Company's liquidity and ability to service debt and other obligations</td><td>The Company is a debt-free company and hence there are no interest or debt related obligations.

With large surplus cash and cash equivalents, liquidity position continues to be strong and we do not foresee any challenge in meeting our financial / other obligations.</td></tr>
<tr><td>Impact on the Company's assets</td><td>Based on our internal assessment, currently we do not foresee any challenge in recoverability of our major assets.</td></tr>
<tr><td>Impact on contractual obligations</td><td>There has been no breach of any contractual obligations by the Company or by the counterparties under their contracts with the Company.</td></tr>
<tr><td>Impact on Internal Financial Controls</td><td>There is no impact of this pandemic on the Internal Financial Controls of the Company. Wherever there was a challenge, suitable alternative of way of working has been established to ensure all controls are in place.</td></tr>
</table>

Company 2:

1. Impact of COVID-19 pandemic on the business

- *In light of the government policy on the COVID-19 pandemic, the Company had shut down the production and office operations at its facilities in …… and ……., Haryana in the month of March 2020. The Company had also closed its R&D Centre at …….. (Please refer to our disclosure dated March 22, 2020).*
- *Pursuant to the …… government directive to check the spread of the COVID-19 transmission, _____ had closed its plant operations from March 23, 2020 till May 24, 2020. _____ manufactures cars on a contract basis for the Company. (Please refer to our disclosures dated March 23, 2020, March 24, 2020, March 26, 2020, April 14, 2020 and May 25, 2020).*

  To maintain operations including the factories / units / office spaces functioning and closed down as mentioned above, the production and office operations at the …. and ……..plants of the Company were shut down in March 2020. Further, SMG had also closed its plant operations in March 2020. 3. Schedule, if any, for restarting the operations
- *The Company re-started production of …….. at its ____ plant from May 12, 2020. All activities have been carried out strictly in accordance with the government regulations and guidelines and observing the Company's own concern for the highest standards of safety. (Please refer to our disclosures dated May 6, 2020 and June 1, 2020).*
- *The Company re-started production of …….. at its …… plant from May 18, 2020. All activities have been carried out strictly in accordance with the government regulations and guidelines and observing the Company's own concern for the highest standards of safety. (Please refer to our disclosures dated May 17, 2020 and June 1, 2020).*
- *_____ re-started production of …….. from May 25, 2020, strictly in accordance with the government regulations and guidelines and by observing the Company's own concern for the highest standards of safety. (Please refer to our disclosures dated May 25, 2020 and June 1, 2020).*
- *The Company's showrooms opened in accordance with Centre and State guidelines in a graded manner across different cities. The remaining showrooms would open in due course if they are not in containment zone or if not specifically restricted by any local guidelines. (Please refer to our disclosure dated June 1, 2020).*

4. Steps taken to ensure smooth functioning of operations

- *The Company has been taking all recommended precautions in its operations against the spread of the COVID-19 pandemic, which includes sanitization and hygiene, temperature checks, maximizing video-conferencing and minimizing contact, closing employee travel, health and distancing advisories to employees and following all government directions on the subject. (Please refer to our disclosure dated March 22, 2020).*

  The Company remains committed to the safety and wellbeing of its employees, business partners and customers. The Company will continue to support government at the Centre and State levels and follow all advisories in combating COVID-19. (Please refer to our disclosure dated April 1, 2020).
- *The Company remains committed to the health, safety and well-being of all members across the value chain. Production across plants is being progressively increased consistent with maximum efforts to ensure safety and subject to the availability of employees. (Please refer to our disclosure dated July 1, 2020).*

5. Estimation of the future impact of COVID-19 on operations

While disclosing the financial results of the Company for the financial year ended March 31, 2020 and quarter ended June 30, 2020 the Company had also disclosed the following, in the notes to statement of such financial results:

The Company's operations and financial results for the quarter ended June 30, 2020 have been adversely impacted by the outbreak of COVID-19 pandemic and the consequent lockdown announced by the Government of India due to which the operations were suspended for part of the quarter and gradually resumed with requisite precautions. The results for the quarter are, therefore, not comparable with those for the previous quarters. (Please refer to our disclosure dated July 29, 2020).

- *The Company has considered the possible effects that may result from the COVID-19 pandemic on the carrying amounts of property, plant and equipment, investments, inventories, receivables and other current assets.*
- *In developing the assumptions relating to the possible future uncertainties in the global economic conditions because of this pandemic, the Company, as at the date of approval of these financial results has used internal and external sources on the expected future performance of the Company.*
- *The Company has performed sensitivity analysis on the assumptions used and based on current estimates expects the carrying amount of these assets will be recovered.*
- *The impact of COVID-19 on the Company's financial results may differ from that estimated as at the date of approval of these financial results. (Please refer to our disclosure dated May 13, 2020 and July, 29, 2020).*

6. Details of impact of COVID-19 on the Company's • capital and financial resources; • profitability; • liquidity position; • ability to service debt and other financing arrangements; • assets; • internal financial reporting and control; • supply chain; • demand for its products / services.

- *The capital and financial resources of the Company remain comfortable.*
- *The Company sold ……units in March 2020. This includes …… units in the domestic market, ……. units of domestic OEM sales and …… units of exports. With this, the Company ended FY 2019-20 with total sales of …… units. The sales during March 2020 are not comparable with sales in March 2019 due to the suspension of operations with effect from March 22, 2020, in line with national policy. (Please refer to our disclosure dated April 1, 2020).*

- *The production figures of the Company for the month of March 2020 (including the production figures of …… and ….. manufactured for sale to other OEM (Domestic)) was …. (as compared to ….. in March 2019). (Please refer to our disclosure dated April 7, 2020).*
- *The Company had zero sales in the domestic market, (including sales to OEM), in April 2020. This was because in compliance with the government orders all production facilities were closed. Meanwhile, following resumption of port operations, the first export shipment of ….. units was undertaken from the …… port, ensuring that all guidelines for safety were followed. (Please refer to our disclosure dated May 1, 2020).*
- *The Company exported …. units following resumption of port operations at …. and …. ports, ensuring that all guidelines for safety were followed. The Company posted total sales of ….. units in May 2020 (including …. units in domestic market and sales of .. units to other OEM). (Please refer to our disclosure dated June 1, 2020).*
- *The production figures of the Company for the month of May 2020 (including the production figures of SMG and …… manufactured for sale to other OEM (Domestic)) was …… (as compared to …… in May 2019). (Please refer to our disclosure dated June 9, 2020).*
- *The Company posted total sales of …… units in June 2020 (including ….. units in the domestic market and … units to another OEM). In addition, the Company exported … units in June 2020. The Company closed the first quarter of FY 20-21 with total sales of … units (… units domestic, … units to other OEM and … units exported). The sales performance during June 2020 and Q1 FY 20-21 should be seen in the context of the ongoing COVID-19 pandemic, lockdowns and restrictions required for safety. (Please refer to our disclosure dated July 1, 2020).*
- *The production figures of the Company for the month of June 2020 (including the production figures of SMG and …manufactured for sale to other OEM (Domestic)) were … (as compared to … in June 2019). (Please refer to our disclosure dated July 7, 2020).*
- *The liquidity position of the Company is expected to be comfortable. There has been no delay or default in payment of statutory dues or salaries or any other commitments of the Company.*
- *The Company has not resorted to any financing arrangements. The Company is able to service its creditors.*
- *There is no issue with respect to the fixed assets of the Company.*
- *The internal financial reporting and control system of the Company are adequate.*

7. *Existing contracts / agreements where non-fulfilment of the obligations by any party will have significant impact on the Company's business There are no such contract / agreements where non-fulfillment of the obligations by any party will have significant impact on the Company's business. 8. Other relevant material updates about the Company's business*

- *At the request of the Government of India, the Company examined its ability to assist in the production of ventilators, masks and other protective equipment. An arrangement has been entered into with _____, an existing approved manufacturer of ventilators. The Company would work with _____ to rapidly scale up production of ventilators. The intention is to reach a volume of 10,000 units per month.*
- *_____ would be responsible for the technology, performance and related matters for all the ventilators produced and sold by them. The Company would use its suppliers to produce the required volume of components and use its experience and knowledge to upgrade systems for the production and quality control of the higher volumes. Any other assistance required would also be provided. The Company would also help, to the required extent to arrange financing, and obtain all permissions and approvals required to enable the higher production. The Company would provide these services free of cost to _____.*
- *_____, a joint venture of the Company with _____, would be manufacturing 3-ply masks for supply to the Haryana and Central governments. Production is expected to start as soon as all approvals are received. _____ will provide 2 million masks free of cost as his own contribution.*
- *_____, a joint venture of the Company with the ____ family, would be manufacturing protective clothing as soon as all approvals are in place.*
- *All manufacturing units would take maximum care to protect the safety and health of the workers in accordance with the government recommended practices. (Please refer to our disclosure dated March 28, 2020).*
- *The Company has introduced a new range of 'Health and Hygiene', Genuine Accessories for car and personal care. In line with the need of the hour, this range of _____ caters to the customer demands, amidst the ongoing pandemic. These health and hygiene products are bifurcated into PPE and Car Care items. (Please refer to our disclosure dated June 4, 2020).*

Company 3:

COVID-19 Pandemic Situation- Update on Operations

A. Impact on the business

The lockdowns and restrictions imposed on various activities due to COVID – 19 pandemic have posed challenges to all the businesses of the company and its Subsidiaries.

The Company's operations were hit substantially from 17th March 2020 till the 1st week of May 2020, when lockdown was gradually lifted. Corporate offices, regional offices, retail operations and manufacturing facilities were fully shut during the period and the Company was able to get only very marginal sales through its online channel at the end of April but delivery for these have been affected due to classification of our products as non-essential so far.

……The ……. business of the Company has deferred the launch of two of its collections till a time that most of the stores are re-opened.

B. Ability to maintain operations including the factories/ units/office spaces functioning and closed down

As stated earlier, retail stores and manufacturing facilities were shut down entirely during the lockdown phase as the Company was not part of Government denominated essential services. Corporate and regional offices were also shut, but the Company adopted the work from home policy during the entire duration of the lockdown.

C. Schedule, if any, for restarting the operations and steps taken to ensure smooth functioning of operations

With the lifting of the lockdown restrictions, the Company has started re-opening its stores in the non-containment zones, after establishing thorough and well-rehearsed safety protocols. These protocols include encouraging customers to take appointment before a visit to the stores, making possible cashless payment in all stores, sanitizing products before and after every trial by customers, allowing limited number of persons inside the stores basis the store size, thermal screening, compulsory use of face masks, rotation of store staff, etc.

The Company has opened around 43 % of its stores across all businesses till date. All the mall stores however continue to be closed as per Government regulations. Based on representations being made by various Industry associations, the Company is hopeful that malls will also be opened in the next few weeks in non-containment zones along with High Street stores.

Manufacturing activities have commenced gradually in most of the facilities. However, production ramp up will be based on current inventory levels and the Company's estimate of demand. In the short term, it is therefore expected that manufacturing activity will be well below the normal. Manning at all facilities is also well below allowed norms and may remain so till production requirements go up to normal levels.

The Corporate office at …… re-opened on _____ with limited staff working from office in the initial phase.

D. Estimation of the future impact of CoVID-19 on its operations

The Company is predominantly dependent on retail operations being robust as it sells its products through nearly …. retail outlets in the country. The share of online business is around 2 % of its sales. The sales in stores that have opened up are at around 50 % of the sales in a normal period and is improving gradually. These are early days and the Company is not in a position to gauge with certainty the future impact on operations but expects normalcy to be achieved only after a quarter. Customer sentiment pointing to reduced spends on discretionary items might impact demand for most of the Company's products.

The drop in sales is also expected to impact store profitability in the near term and hence store roll outs will be calibrated in the immediate future till more clarity emerges.

E. Impact of COVID-19 on capital and financial resources, profitability, liquidity position, ability to service debt, assets and internal financial reporting and control

The Company is in a comfortable liquidity position due to adequate banking limits being in place and ability to issue Commercial Papers as the Company continues to enjoy the highest rating in both short term (A1 +) and long term (AAA) borrowings by … and …. The Company has successfully issued …. of Commercial Papers during April and May at extremely attractive rates to meet the funding requirements. The strong balance sheet of the Company is expected to be a key differentiator in the market place. This enables the Company to support its franchisees and vendors financially during this crisis.

Even before COVID-19, the Company embarked upon a Company-wide initiative to bring down costs and conserve cash. This programme is well under way and the Company is expected to get benefits as a consequence of these initiatives in future.

In last 2 months, the Company's operating cash flow was negative due to virtually zero sales during the first 6 weeks

of lockdown, increase in mark-to-market cash outflow on gold hedge due to rising gold prices and committed costs being incurred. However, these mark-to-market cash outflows is expected to be recovered when sale of …. commences. Thus, the COVID-19 situation is expected to adversely affect the profitability during the first half of this year.

The Company does not see incremental risk to recoverability of assets (Inventories, investments, Receivables, etc.) given the measures being taken to mitigate the risks. There is also no impact on internal financial controls due to the COVID-19 situation.

F. Impact of COVID-19 on supply chain

There is minimum disruption in the supply chain as most of the vendors have re-started their production and are ready to provide required supplies. Supplies from international vendors for watch business, eyewear business and for accessories have commenced.

Manufacturing facilities are ready for production and will commence depending on the demand and the inventory being liquidated.

G. Existing contracts/agreements where non-fulfilment of the obligations by any party will have significant impact on the listed entity's business

The Company is well positioned to fulfil its obligations and also does not foresee any significant impact on the business due to non-fulfilment of the obligations by any party.

H. Impact of COVID-19 on Key Subsidiaries of the company

During the last couple of months, due to lockdown, the retail operations of _____ were impacted adversely (many of the stores are in malls and they have not reopened as yet). However, since _____ has got a good proportion of sales from online operations, it is expected that these sales will help in the cash flows and profitability of ____.

_____ has not been impacted much by the situation as one of its Divisions (Aerospace and Defence), was categorised as essential services and therefore was able to carry out its operations. The plants have commenced operations from mid of April in a staggered manner with minimum manpower and has been able to service customers with finished goods stock so far.

Both the above subsidiaries have adequate liquidity/ banking limits to tide over the impact of COVID-19.

I. Annual Audited Accounts – FY 20

Generally, the Company publishes its annual audited accounts by second week of May of each year. However, due to the current situation, it is expected that the Board meeting to adopt the accounts is planned to be held in mid-June.

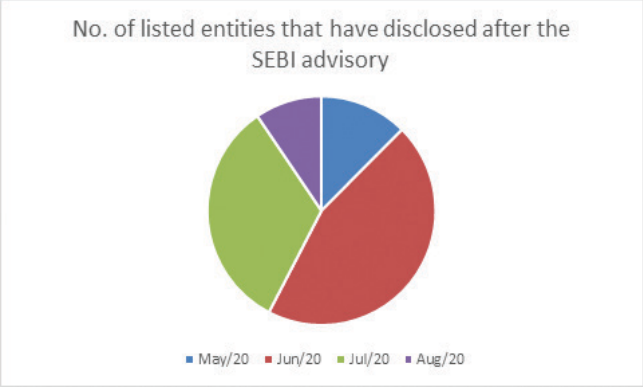
The above disclosures, as can be seen, even on the face of it, are very detailed and are of much greater profundity as compared to the disclosures made by these listed entities before the circular. Thus, the difference in the detail is evident of the impact of the SEBI advisory on the listed entities. The advisory has resulted in listed entities fathoming the extent of disclosures required and the depth to which they were made; this is proof of the impact of the circular.

J. Analysis - Statistics:

After the issue of the advisory on May 20, 2020, disclosures have been made by listed entities as follows:

- 121 listed entities have disclosed in May 2020 (between May 21, 2020 and May 31, 2020)
- 438 listed entities have made disclosures in June 2020
- 319 listed entities have made disclosures in July 2020
- 92 listed entities have made disclosures in August 2020
- 13 entities in September 2020
- 3 listed entities in October 2020
- One listed entity in November 2020

Chart 1.No. of listed entities that have disclosed after the SEBI advisory



Thus, one can see a palpable difference in June 2020 and later, after the issuance of SEBI's advisory. The above chart shows that in four months, the number of companies that have made comprehensive disclosures on the impact of COVID-19 on their operations have only increased.

It is also noted that 782 out of the top 1000 companies – almost 80% of the listed entities – have made complete and full disclosures, as companies recognized the value accruing due to such transparency and disclosures guided by SEBI's circular. Some of the disclosures as mentioned in this paper, portray the discerning differences in the quality and depth of disclosures. It is pertinent to note that SEBI circular was more in the nature of a guidance / advisory.

CONCLUSION

From the study it can be concluded that COVID-19 had indeed impacted the disclosure and governance of the corporate in India. At the times of crisis, the regulator often needs to lend a helping hand by providing guidance to the market entities. In that context, SEBI has done a commendable job. Due the timely and detailed advisory issued by SEBI, one can see that issuers have been able to provide transparency on the actual and potential impacts of COVID-19, to the extent possible based on both a qualitative and quantitative assessment on their business activities, financial situation and economic performance in their financial statements. The advisory has also guided listed entities to voluntarily making increased disclosures and in great depth, which has only resulted in increased information for all stakeholders, including minority investors. Therefore, as information is quintessential for an effective disclosure, and disclosures being the bedrock for an efficient securities market, listed companies are proactive in making disclosures despite the effect of such disclosures, provided the regulatory environment is conducive for it.

ARTICLE

Overview of Corporate Social Responsibility in the Light of Recent Amendments

India has attained the status of one of the fastest growing trillion-dollar economies in the world in 2018 and was poised to become a three trillion-dollar economy in 2019-20. However, this economic growth has not trickled down in an even manner and there exists significant rural-urban divide, poverty, malnutrition and challenges in education and health. Though India is aspiring to become a five trillion-dollar economy and poverty has been reduced, yet India is home to one-third of the world's poor and those who live on less than 1.24 dollar per day. A series of legislative efforts undertaken in the last decade need to be viewed against two key ideas: the idea that corporations act as partners in the social development process of the country and strengthening the social responsibility of business. This article examines the regulatory framework with respect of Corporate Social Responsibility in the light of recent amendments in the Companies Act, 2013

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INTRODUCTION

India is the first and only country in the world which had mandated Corporate Social Responsibility (CSR) for certain corporate entities. Inclusion of CSR in the statue is a unique provision in the world. In simple terms CSR is a company's sense of responsibility towards the community and environment in which it operates. The Concept of CSR has been imbibed by the Indian society from the very beginning and CSR aligns business operations with societal values. Many of the leading corporates across the world had realized the importance of being associated with socially relevant causes as a means of enhancing their corporate image and reputation. Tata and Birla are the two industrial houses in India who have taken up charity and philanthropic activities decades before the concept of CSR has arrived. However, charity and philanthropy are not CSR, as they may be one-time activities and long-term commitment may or may not be there. CSR is a long-term commitment towards development of the society and its welfare.

The spirit of CSR in the words of late JRD Tata is, *"To enrich quality of life in the society we operate in, we need to give back to the society manifolds than what we get from it" and "No success in material terms is worthwhile unless it serves the needs or interests of the country and its people"*

The importance of inclusive growth is now widely recognized as an essential part of India's quest for development and reiterates its commitment to include those sections of the society that were hitherto remain excluded from mainstream of development. In line with this national endeavour, CSR was conceived as an instrument for integrating social, environmental and human development concerns in the entire value chain of corporate business. As a first step towards mainstreaming the concept of business responsibilities, Ministry of Corporate Affairs (MCA) had issued "Voluntary Guidelines on Corporate Social Responsibility 2009, which were further refined subsequently as "National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011(NVG). Essentially this is a set of nine principles that offer Indian businesses an understanding and approach to inculcate responsible business conduct. These nine principles are

1. Conduct and Govern with ethics, transparency, and accountability - The principle recognizes that ethical conduct in all its functions and processes as the cornerstone of responsible business.
2. Provide goods and services that are safe and contribute to sustainability throughout their life cycle – this principle emphasizes that in order to function effectively and profitably business should work to improve the quality of life of people
3. Promote the well-being of all employees
4. Respect the interest of and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized
5. Respect and promote human rights
6. Respect, Protect and make efforts to restore the environment
7. While engaged to influence public and regulatory policy it should be done in a responsible manner
8. Support inclusive growth and equitable development
9. Engage with and provide value to their customers and consumers in a responsible manner

The above guidelines are not prescriptive in nature but seek to advise Indian businesses to take into account Indian social and business realities and global trends while promoting their businesses. Through these Guidelines, the Ministry urged the business sector to adopt the principles contained in the

> CSR was conceived as an instrument for integrating social, environmental and human development concerns in the entire value chain of corporate business. As a first step towards mainstreaming the concept of business responsibilities, Ministry of Corporate Affairs (MCA) had issued "Voluntary Guidelines on Corporate Social Responsibility 2009, which were further refined subsequently as "National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011(NVG).

Guidelines for responsible business practices. The adoption of these National Voluntary Guidelines will improve the ability of businesses to enhance their competitive strengths, improve their reputations, increase their ability to attract and retain talent and manage their relations with investors and society at large.

HIGH LEVEL COMMITTEE - 2015

To have a complete understanding of the working, implementation, and administration of CSR provisions of Companies Act, 2013 ('the Act') and emerging issues there under, a high-level committee was constituted in the year 2015, under the Chairmanship of Shri Anil Baijal. The terms of reference of the Committee were as under:

- To recommend suitable methodologies for monitoring the compliance by the corporates
- To suggest measures to be recommended by the Government with regard to the efficacy of CSR expenditure and quality of compliance by the companies
- To examine the monitoring mechanism of undertaking CSR and make suitable recommendations
- Any other matters incidental to the above or connected thereto

The Committee submitted its Report on September 22, 2015. The Committee after review of the CSR regulatory framework which was at an incipient stage, made a number of useful recommendations and also pointed out that since 2015 was only the first year of implementation of the Act, and since the statutory annual filings for financial year 2014-15 were still due, the Committee did not have adequate 'learning experience'. The Committee therefore recommended that another high-level committee be set up after a period of three years, to undertake an in-depth study of the entire gamut of issues relating to mandatory implementation of CSR.

HIGH LEVEL COMMITTEE - 2018

To review the CSR framework and make recommendations to develop a more robust and coherent CSR regulatory and policy framework, and underlying ecosystem, in 2018 another High-Level Committee was set up in 2018 under the Chairmanship of Shri Injeti Srinivas, the then Secretary, Ministry of Corporate Affairs. The Terms of Reference of this Committee include,

- To review the CSR framework as per Act, Rules and circulars issued from time to time
- To recommend guidelines for enforcement of CSR provisions
- To suggest measures for adequate monitoring and evaluation of CSR by companies
- To examine and recommend audit (financial, performance, social) for CSR, as well as, analyze outcomes of CSR activities/programmes/projects
- Any other matter incidental or connected thereto.

The Committee adopted the following broad principles while making its recommendations.

- Improving the CSR framework and ecosystem
- Easing the burden of compliance for businesses
- Focusing on accomplishment of impacts for every rupee invested
- Retaining the thrust of CSR as driven by Boards of companies
- Nurturing a culture of compliance through enhanced disclosures wherein penalties deter rather than punish
- Encouraging innovations and carrying out pilot studies for CSR to enable meeting SDGs
- This Committee submitted its Report on August 7, 2019.

Based on the recommendations of this Committee, suitable amendments were brought to the provisions of Section 135 and to the Rules thereof. These amendments have been brought into force effective January 22, 2021.

CORPORATE SOCIAL RESPONSIBILITY (CSR)

Business involvement in social welfare and development has been a tradition in India. Its evolution from individuals' charity or philanthropy to Corporate Social Responsibility, Corporate Citizenship and Responsible Business can be seen in the business sector over the years. *CSR is not doing charity or mere giving donations. CSR is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company's operations and growth."*The eighth principle of Non-Voluntary Guidelines on 'inclusive and equitable growth' focusses on encouraging business action on national development priorities including community development initiatives and strategic CSR based on the shared value concept. This principle of NVG was subsequently translated into a mandatory provision of Corporate Social Responsibility in section 135 of the Companies Act, 2013. While section 135 contains the provisions of CSR, Schedule VII of the

Act enumerates the activities that can be undertaken under CSR. The permissible CSR activities enlisted in Schedule VII are consistent with national priorities of sustainable and inclusive development. The Companies (Corporate Social Responsibility Policy) Rules, 2014 prescribe the manner in which the companies can undertake their CSR programs, projects and activities. NVGs are much wider in scope than the provisions of CSR and remain the guiding principles for corporates to conduct their businesses in a socially responsible, environmentally sustainable manner. Whereas CSR rules prescribes corporates to undertake CSR activities beyond their normal course of business.

Under the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 (the 'Rules'), the term Corporate Responsibility was comprehensively defined as under

"Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:-

(i) activities undertaken in pursuance of normal course of business of the company:

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that

(a) such research and development activities shall be carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act

(b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level

(iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act

(iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019)

(v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services

(vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India

STATUTORY PROVISIONS OF CORPORATE SOCIAL RESPONSIBILITY

APPLICABILITY OF CSR PROVISIONS

Pursuant to the provisions of section 135(1) of the Act, CSR provisions are applicable to companies as under:

Every company having

- net worth of rupees five hundred crore or more, or
- turnover of rupees one thousand crore or more or
- a net profit of rupees five crore or more,

during the immediately 'preceding financial year'. Prior to the Companies (Amendment) Act, 2017 this was 'in any financial year'. Hence it is very clear that when a company triggers the threshold limits during the immediately preceding financial year, then only the provisions of Section 135 becomes applicable.

However Rule (3)(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 states that "every company which ceases to be a company covered under subsection (1) of section 135 of the Act for three consecutive financial years shall not be required to – constitute a CSR Committee and comply with the provisions contained in sub-section (2) to (6) of the said section, till such time it meets the criteria specified in sub-section (1) of Section 135. This effectively means that once the threshold limits trigger based on the financials of the preceding financial year, the company has to comply with the provisions for the next three financial years. This is contrary to the provisions of the section and suitable amendment needs to be made.

Though companies may not fit into the criteria based on the net worth or turnover threshold limits, most of the companies have to comply with CSR provisions based on the net profit criteria wherein the limit is mere rupees five crore. Section 135 is applicable to every company whether public or private.

For this purpose, the terms 'Net worth' as defined under section 2(57) and 'Turnover' as defined under section 2(91) of the Act may be taken.

The term 'Net profit' is defined in the Rules as under

NET PROFIT

'Net profit' for the purpose of this section shall not include such sums as may be prescribed and shall be calculated in accordance with the provisions of section 198 of the Act. Net profit of a company shall be as per the financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following

- any profit arising from any overseas branches of the company, whether operated as a separate company or otherwise and
- any dividend received from other companies in India which are covered under and complying with the provisions of section 135 of the Act

In case of a foreign company covered in the Rules 'net profit' means net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381 read with section 198 of the Act.

As provided in the Rules every company including its holding or subsidiary and a foreign company defined under clause (42) of section 2 of the Act having a branch office or a project office in India, which fulfills the criteria specified above shall comply with the provisions of the Act and the Rules thereof.

Whether CSR provisions are applicable to charitable companies?

CSR provisions are applicable to every company and since section 8 companies are not exempted, CSR provisions are applicable to charitable companies also. However, other forms of charitable entities viz. trust and societies, are not required to comply with the CSR provisions, since they are not companies under the Act. These companies have to implement their CSR scheme separate to that of the CSR schemes they are implementing for or on behalf of other corporates.

RESPONSIBILITIES OF THE BOARD OF DIRECTORS

Constitution of a CSR Committee and formulation of a CSR Policy

Upon the applicability of the provisions of Section 135(1), the Board shall constitute a CSR committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Where a company is not required to appoint an independent director under section 149(4) of the Act, the company shall have two or more directors. The Board's report shall disclose the composition of such committee. The Board shall also approve the CSR Policy recommended by the CSR Committee and undertake the CSR activities mentioned thereat. The contents of such policy shall be indicated in the Board's report and shall also be placed on the website of the company, if any. The Board shall ensure that the activities as included in the CSR Policy of the Company are undertaken by the Company.

Spend two per cent of average net profits towards CSR expenditure

Pursuant to the provisions of section 135(5) of the Act, the Board shall ensure spending every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy. Companies (Amendment) Act, 2019 also inserted a provision that where a company has not completed the period of three financial years since its incorporation, average net profits of such immediately preceding financial years (since incorporation) shall be considered. While spending such money the company shall give preference to the local areas around it where it operates for spending the amount earmarked for CSR activities. However, it is not mandatory for the companies to spend CSR money in the local areas first and then at other areas, but preference shall be given to local areas. Local areas mean the areas around the operations or work locations of the company and not the Registered Office of the company. In

case a company have multiple work locations, it may find out the local areas which need the CSR support and take up the CSR activities accordingly. It may so happen that the local areas are self-sufficient and in such case the company may take up the CSR activities outside the local areas. MCA vide General Circular No 6/2018 dated May 28, 2018 clarified that this provision shall be followed in letter and spirit.

The Act and the Rules have not clarified that the average of net profits for the purpose of CSR would include any loss suffered by a company in a year. However, the logical interpretation is that only the "profits" would be averaged out and not the losses because of the usage of the words "net profits" and not "net earnings" or "net profits/losses".

Failure to spend / unspent CSR amount

In case the Board fails to spend the CSR amount, the Board shall in its report specify the reasons for not spending such amount and in pursuant to Companies (Amendment) Act, 2019, transfer such unspent amount to a Fund specified in Schedule VII of the Act, within a period of six months of the expiry of the financial year. Since this amendment was enforced effective January 22, 2021, any unspent amount on account of CSR as on March 31, 2021, shall be transferred to a Fund specified in Schedule VII of the Act on or before September 30, 2021.

Unspent amount pursuant to 'ongoing project'

Pursuant to the provisions of section 135(6) introduced under the Companies (Amendment) Act, 2019, any amount remaining unspent pursuant to any 'ongoing project', shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in this behalf for that financial year in any scheduled bank. Such account shall be called as the 'Unspent Corporate Social Responsibility Account' and such amount shall be spent by the company in pursuance of its obligation towards the CSR policy within a period of three financial years from the date of such transfer. In case the company fails to utilize such amount, the company shall transfer the same to a Fund specified in Schedule VII within a period of thirty days from the date of completion of the third financial year. As provided in the Rules, until a fund is specified in Schedule VII, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act." Rule 2(i) of the revised CSR Rules has defined 'Ongoing Project' as under

"Ongoing Project" means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the Board, based on reasonable justification;

Since the obligation on the company to transfer the unspent amount to a special account to be opened by the company in this behalf for that financial year in any scheduled bank, it is sufficient to open one bank account for one financial year by the company.

Since the amendment to sub-section 5 and newly inserted sub-section 6 are effective from January 22, 2021 and are applicable prospectively it appears that the unspent amount pertains to financial year 2020-21 only shall be transferred. However, for the sake of clarity MCA may give a clarification in this regard.

Excess amount spent on CSR activities

Where a company spends an amount in excess of the requirement provided under sub-section (5) of section135, pursuant to rule 7(3) of the Rules, such excess amount may be set off against the requirement to spend under sub-section (5) of section135 up to immediate succeeding three financial years subject to the conditions that –

(i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.

(ii) the Board of the company shall pass a resolution to that effect

CSR COMMITTEE

According to the provisions of Section 135 (1) of the Act, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility committee of the Board consisting of three or more directors out of which at least one director shall be an independent director. The term 'preceding financial year' was substituted for the term 'any financial year' by the Companies (Amendment) Act, 2017. Hence any company that triggers the threshold limits given above during the preceding financial year shall constitute such committee.

Under the Companies (Amendment) Act, 2020 a new sub-section (9) to section 135 was inserted, according to which, where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the CSR Committee shall not be applicable and the functions of such committee shall be discharged by the Board of Directors of such company. Though upon the applicability of the provisions of section 135(1) there is an obligation on the company to constitute a CSR committee, in view of the amended provisions under sub-section (9) a company need not constitute a CSR committee in case it does not require to spend in excess of Rs 50 lakhs on CSR.

Question arises that whether a company which had constituted the CSR committee and is required to spend on CSR less than Rs 50 lakhs can it dissolve the CSR committee? Rule 3(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 provides that every company which ceases to be a company covered under sub-section (1) of section 135 of the Act for three consecutive financial years shall not be required to constitute a CSR committee. This effectively means that a company once constituted a CSR committee can dissolve such committee only after it ceases to be a company covered under sub-section (1) for a period of three financial years. Hence, there is a clear contradiction between this Rule and the newly inserted sub-section (9). Since the provisions of the Act always prevails over the Rules, it can be interpreted that a company can technically dissolve the CSR committee if the CSR expenditure required does not

> According to the provisions of Section 135 (1) of the Act, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility committee of the Board consisting of three or more directors out of which at least one director shall be an independent director.

exceed Rs 50 lakhs. However, in case in the next year the CSR expenditure exceeds Rs 50 lakhs again the company has to constitute the CSR committee. Hence the company may take a conscious decision as regards CSR expenditure required to be spent in future years, before dissolving the CSR committee.

A question may also arise that in case a company though required to spend on CSR less than Rs 50 lakhs but voluntarily spent more than Rs 50 lakhs, whether such company can dispense with the CSR committee. From the wordings of sub-section (9) of section 135 i.e. "where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable". Since the obligation on the company is to spend less than Rs 50 lakhs it appears that provisions of constitution of CSR committee are not applicable to the company and such company may dispense with the CSR committee.

Functions of the CSR Committee

The CSR committee shall

- formulate and recommend to the Board a CSR policy which shall indicate the activities to be undertaken by the company in areas or subject specified under Schedule VII of the Act
- recommend the amount of expenditure to be incurred on the CSR activities
- monitor the CSR Policy of the company from time to time

schedule VII depicts activities which may be included by companies in their CSR policies. The items enlisted are broad-based and are intended to cover a wide range of activities. General Circular 21/2014 dated June 18, 2014 clarified that the entries in Schedule VII must be interpreted liberally so as to capture the essence of subjects enumerated in the said schedule.

As per the Rules, the CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely: -

(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act

(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4

(c) the modalities of utilisation of funds and implementation schedules for the projects or programmes

(d) monitoring and reporting mechanism for the projects or programmes; and

(e) details of need and impact assessment, if any, for the projects undertaken by the company:

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee based on the reasonable justification to that effect.

CSR POLICY

As defined under the Rules, CSR Policy refers to *a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.*

DISPLAY OF CSR ACTIVITIES ON THE WEBSITE OF THE COMPANY

The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

CSR EXPENDITURE

Expenditure can be classified as CSR expenditure if

- it is within the areas covered by Schedule VII and
- is as per CSR policy approved by the Company's Board of Directors

Companies are required to apply facts and circumstances in each case for categorization of such spends. CSR expenditure shall exclude expenditure incurred on activities undertaken in pursuance of its 'normal course of business'. Similarly, Programmes or projects or activities that are carried out as a pre-condition for setting up a business or as part of a contractual obligation undertaken by the company or in accordance with any other law, should not be considered as CSR expenditure.

Similarly, expenditure incurred on CSR projects or programmes or activities that benefit only the employees of the company and their families shall not be considered as CSR. However, expenditure incurred on programmes or activities that are for the benefit of the entire society without any restriction and incidentally also includes some employees or their families will still be considered as CSR expenditure as long as such benefits are not exclusively for the benefit of

such employees. Employees of the company for this purpose means as defined in clause (k) of section 2 of the Code on Wages, 2019.

Under Rule 7 of the Companies (Corporate Social Responsibility) Rules, 2014 CSR expenditure shall include all expenditure including contribution to corpus for projects or programmes relating to CSR activities approved by the Board on the recommendation of its CSR Committee. Rule 7 was substituted under the revised CSR Rules, where in the concept of corpus is not there. In view of this any contribution to corpus for projects does not amount to CSR expenditure.

Administrative Overheads

The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year. The administrative overheads of the company and of the entity through which the CSR money is being spent are covered in this five per cent.

As defined under the Rules *"Administrative overheads" means the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme*

Surplus arising out of CSR activities

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year. Any amount spent over and above the mandated CSR expenditure out of the surplus arising out of CSR activities is not available for set off against the future CSR expenditure.

Amount spent in excess of mandatory requirement

Pursuant to Rule 7(3), where a company spends an amount in excess of requirement provided under section135(5), such excess amount may be set off against the requirement to spend under section 135(5) of the Act, up to immediate succeeding three financial years subject to the conditions that –

- the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any and
- the Board shall pass a resolution to that effect.

Creation or acquisition of capital asset

Pursuant to Rule 7(4) of the Rules, the CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -

(a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or

(b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or

(c) a public authority:

Provided that any capital asset created by a company prior to the commencement of the Rules, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board, based on reasonable justification.

From the above it is clear that a company which spends the CSR money for creation or acquisition of capital asset, can't hold the asset in its name. It may be noted that it is mentioned about the capital asset created prior to the commencement of the revised CSR Rules and not the capital asset acquired. Does this mean the capital asset acquired by the company prior to the commencement of the Rules can continue to be held by the company? Though in spirit it is not so, a suitable clarification is required on this.

Under the Rules while creating or acquiring any asset the company should book such expenditure as CSR expenditure and can't capitalize. However, a company created a capital asset prior to the commencement of the Rules shall comply with this requirement i.e. such asset can't be held by the company. This effectively means such asset shall be transferred by the company in the name of the entities mentioned above. This may cause several Financial, Tax and Stamp duty implications.

CSR IMPLEMENTATION

According to Rule 4, the Board shall ensure that the CSR activities are undertaken by the company by itself or through -

(a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

From the above it is clear that a company may undertake the CSR activities on its own or through any implementing agency. Such entity may be established by the company in which case established track record of at least three years in undertaking similar activities is not required. But such entity shall be registered under sections 12A and 80G of the Income Tax Act, 1961.

A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with the Rules.

Registration of the entity to undertake CSR activity

Every entity which intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 with the Registrar of Companies, with effect from April 1, 2021, where in a unique CSR registration number is generated by the system. However, these provisions shall not affect the CSR projects or programmes approved prior to April 1, 2021. Where a company undertakes the CSR activities on its own no such registration is required.

The requirement of registrations under section 12A and 80G of the Income Tax Act and with the generation of unique CSR number on filing of form CSR-1, enables the Regulator to monitor the activities of the implementing agencies effectively.

Designing, Undertaking, Monitoring and Evaluation

A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR. It may be noted that the international organisations can't be engaged for implementing the CSR activities / programmes / projects. As defined under the Rules 'International Organisation' means *"an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply"*

Utilization of Funds

The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it. The Chief Financial Officer or the person responsible for financial management shall certify to the Board to the effect of utilization of such funds. In case of an ongoing project, the Board of a company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation of funds and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.".

CSR REPORTING

As per rule 8 of the Rules, the CSR reporting shall be done as under

(1) The Board's Report of a company covered under these rules pertaining to a financial year commenced prior to March 31, 2020 shall include an annual report on CSR containing particulars specified in Annexure I and financial year commenced on or after April 1, 2020 shall be in Annexure II to the Rules, as applicable.

(2) In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II to the Rules, as applicable.

This means the Board's report for the financial year closed March 31, 2021 shall include an annual report on CSR in Annexure II.

Impact assessment

Every company having an average CSR obligation of ten crore rupees or more in pursuance of sub section (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake an impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

Since the revised CSR Rules came into force effective January 22, 2021 the impact study shall be applicable to projects taken up or completed on or after such date. This effectively means that for any CSR project which was completed prior to January 22, 2021 the impact assessment is not necessary.

The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

A company undertaking the impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

To undertake impact assessment of large CSR projects undertaken by big conglomerates the ceiling of Rs 50 lakhs as impact assessment expenditure has no meaning. Hence it may be considered increasing such expenditure to at least 2% of the total CSR expenditure or Rs 50 lakhs whichever is higher.

CSR ACTIVITIES UNDER SCHEDULE VII OF THE ACT

Schedule VII of the Act provides the various activities which *may be* undertaken by the body corporates in India. Apart from the enumerated activities, the Government may prescribe any other activity which it thinks proper to be included within the ambit of CSR. Under Schedule VII the following activities may be included by companies in their CSR policies

- eradicating hunger, poverty, and malnutrition, including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation
- promoting education including special education
- promoting gender equality and empowering women
- ensuring environmental sustainability, ecological balance, protection of flora and fauna and conservation of natural resources, including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.
- protection of natural heritage, art and culture
- measures for the benefit of armed forces
- training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports
- contribution to Prime Minister's National relief fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)
- contribution to incubators
- rural development projects and slum area development and
- disaster management, including relief, rehabilitation and reconstruction activities

MCA vide its General Circular 21/2014 dated June 18, 2014 has clarified that "the entries in the said Schedule VII must

be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities".

However, as provided under Rule 2(d) of the Rules, the following do not constitute as activities falling under CSR:

(i) activities undertaken in pursuance of normal course of business of the company:

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that

(a) such research and development activities shall be carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act

(b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level

(iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act

(iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019)

(v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services

(vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India

PENAL PROVISIONS

From a comply or explain approach CSR provisions are transformed into attracting stringent penalties for its non-compliance. If a company is in default in complying with the provisions of section 135(5) or (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account as the case may be or one crore rupees, whichever is less. Every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account as the case may be or two lakh rupees, whichever is less. Under the Companies (Amendment) Act, 2019 every officer of the company who is in default was liable to be punished with imprisonment for a term which may extend to three years or with fine. This has been relaxed under the Companies (Amendment) Act, 2020.

CONCLUSION

The concept of Corporate Social Responsibility is gaining prominence over a period of time and CSR has emerged as an effective tool that synergizes the efforts of Corporate sector and the Social sector towards sustainable growth and development of societal objectives at large. In the words of Ratan Tata "A company should have in its DNA, a sense to work for the welfare of the community. CSR is an extension of individual sense of social responsibility. Active participation in CSR projects is important for a company". The major challenge to CSR is that still it is being felt as a charity or a mere statutory responsibility rather than discharging the responsibility voluntarily for the social cause. Anders Dahlvig, former President of Ikea (the Swedish furniture store chain) quoted in Financial Times. "It is not good enough to do what the law says. We need to be in the forefront of these social responsibility issues. "Efficient CSR requires effective partnerships among Corporates, NGOs and the Government to interwoven business with social inclusion, environment sustainability and corporate responsibility.

Dramatic Changes in CSR Provisions under the Companies Act, 2013

MCA vide notification dated 22 January 2021 has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 vide Companies (CSR Policy) Amendment Rules, 2021 making numerous changes in the law relating to CSR compliances. Section 135 of the Companies Act, 2013 had been amended by Companies (Amendment) Act, 2019 & 2020, which were however subject to certain Rules to be notified. With the set of Notifications of 22nd January 2021, the provisions made therein have now become effective from that date with a few changes.This Article sets out in detail the important changes made in the CSR law, the Role of Board of Directors and CSR Committee and the immediate action-points for companies.

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INTRODUCTION

Corporate Social Responsibility has perhaps been one of the single most important matters being subjected to significant discussions, review and then leading to amendments, which have been conclusively made recently.

The amendments have to be read in the context of –

a) The Companies Amendment Act, 2019 enacted on 31 July 2019; and

b) The Companies Amendment Act, 2020 enacted on 28 September 2020

The new legal provisions relating to CSR are summarised below: -

A. COMPANIES (AMENDMENT) ACT, 2019

Highlights of the relevant amendments pertaining to CSR are given below: -

1. Where there is an Unspent CSR amount, which does not relate to any ongoing project, the Company shall transfer such unspent amount to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year.

2. Where the amount remaining unspent is pursuant to any ongoing project, fulfilling such conditions as may be prescribed, the company will have to transfer the unspent CSR expenditure within 30 days from the end of the financial year to a special account to be opened in any scheduled bank to be called the `Unspent CSR Account'. Such amount shall be spent by the Company within a period of 3 financial years from the date of such transfer.

   If the same is not spent within this period, the Company shall transfer the same to a fund specified in Schedule VII within a period of 30 days from the date of completion of the third financial year.

3. Contravention of Section 135(5) & (6) will make the Company punishable with fine which shall not be less than Rs.50,000/-, but which may extend to Rs.25 lakhs and every officer in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine, which shall not be less than Rs.50,000/-, but which may extend to Rs.5 lakhs or with both.*[Changed under the 2020 Amendment Act]*

4. The Central Government may give such general or special directions, as it considers necessary to ensure compliance of provisions of this section and such company shall comply with such directions.

5. There is no change in the requirement where there is an Unspent amount as regards specifying the reasons for not spending the amount. The reasons for not spending have to be given.

6. Under the new section 454A, penalty will be double if there is a repeat default within a period of three years from the date of the previous order of penalty.

B. COMPANIES (AMENDMENT) ACT, 2020

Highlights of the relevant amendments pertaining to CSR are as under:

i) If the company spends an amount in excess of the requirements provided under Section 135, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner as may be prescribed. *[3 financial years prescribed under the Rules]*.

ii) If company is in default with the provisions of sub-section 5 or 6 (relating to compliances regarding unspent amount on ongoing and other projects etc.),

- the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent CSR Account, as the case may be or Rs.1 crore, whichever is less and

*(Past President, The ICSI)

- every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII or the Unspent CSR Account, as the case may be, or Rs.2 lakh, whichever is less.*[Penal provisions changed; Imprisonment provisions done away with]*

iii) Where the amount to be spent by a company under sub-section 5 does not exceed Rs.50 lakh, the requirement under sub-section 1 for constitution of CSR Committee shall not be applicable and the functions of such committee provided under this section shall, in such cases, be discharged by the board of directors of such company.

In a nutshell, the new provisions of section 135 can be summarized as under:

i) Where the amount is fully spent in the same year – no change in law

ii) Where the amount is spent in excess– can be set off in the next 3 Financial years.

iii) Where the amount is not fully spent in the same year – specify reasons for not spending in the annual report plus

a) If unspent CSR amount does not relate to any ongoing project

To transfer such Unspent amount to a Fund specified in Schedule VII within 6 months of the expiry of the financial year i.e. by 30 September.

b) If unspent CSR amount relates to any ongoing project

To transfer such unspent amount to the company's special bank account called `The Unspent CSR Account' within 30 days from the expiry of the financial year i.e. by 30 April; and

to spend such transferred amount within a period of three financial years as per company's CSR Policy.

If not spent within a period of three financial years, to transfer such unspent amount to a Fund specified in Schedule VII within 30 days of the expiry of the third financial year.

c) If there is a contravention of the above provisions

the company shall be punishable with a fine up to Rs.1 crore and every officer in default shall be punishable with fine up to Rs.2 lakhs.

C. COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2021:

Highlights of the Rules are as under:

i) Rule 2 on '**Definitions**' has been substituted with (i) addition of new terms such as 'administrative overheads', 'international organization', 'ongoing project' etc., (ii) collation of certain provisions under more appropriate heads and (iii) incorporation of parts of FAQs / Circulars of MCA.

ii) "**Administrative overheads**" means the expenses incurred by the company for "general management and

administration of CSR functions in the company". These would not include the expenses directly incurred for the designing, implementation, monitoring and evaluation of a particular CSR project or programme.

*[**Comments**: Apparently,the latter part would form part of the cost of the said project or programme, as Companies also currently include such expenses as Project costs. There is now clarity in the matter. Previously, capacity building of the personnel of the Implementing Agencies was also covered and now it is limited to the Company.]*

iii) "**Corporate Social Responsibility**" means activities undertaken by a company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following:

a) Activities undertaken in pursuance of normal course of business of the company. *[Exception has been provided for companies engaged in research and development activity of new vaccine, drugs etc. for Covid-19 for financial years 2020-21 to 2022-23.]*

b) Any activity undertaken by the company outside India. *[Exception has been made for training of Indian sports personnel representing any State or Union Territory at national level or India at international level.]*

c) Contribution of any amount directly or indirectly to any political party;

d) Activities benefiting employees of the company as defined in Clause (k) of Section 2 of the Code on Wages, 2019;

e) Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services*[earlier in FAQs of MCA];*

f) Activities carried out for fulfilment of any other statutory obligations under any law in force in India. *[earlier in FAQs of MCA.]*

iv) "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

*[**Comments**: Under the previous provisions, the CSR Policy was required to include –*

- *the list of CSR projects or programmes which a company plans to undertake;*
- *modalities of execution of such projects or programmes;*
- *implementation schedules for the same, and*
- *Monitoring process of such projects or programmes.*

Under the amended provisions, the CSR Policy is now required to include –

- *the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and*
- *guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.*

Considering the new requirements, most companies will now have to make a fresh CSR Policy, in substitution of their existing Policy.]

v) "**Ongoing project**" means a multi-year project undertaken by a company in fulfilment of its CSR obligations having timelines not exceeding three years, excluding the financial year in which it was commenced. It shall include such project that was initially not approved as a multi-year project, but whose duration has been extended **beyond one yea**r by the board, based on reasonable justification.

*[**Comments**: This term is important to decide on the compliances to be done, whenever there is an Unspent amount during the year. In the second part of the definition, the term "one year" apparently refers to "one financial year". Ongoing projects have to be made projects of 3+1 years only and not beyond. Companies cannot have perpetual engagement projects, as they will need to break them up from time to time.]*

vi) **CSR Implementation:**

CSR activities are to be undertaken by the Company by itself or through specified entities.

A Section 8 company, or a registered Public Trust or a registered Society which needs to undertake the CSR activities of the company **should be registered under Section 12A and 80G of the Income Tax Act, 1961.**

If it is not established by the Company, either singly or along with any other Company, it should have a track record of at least three years in undertaking similar activities.

CSR activities can also be carried out by such an entity established by the Central Government or State Government or by any entity established under an Act of Parliament or a State Legislature.

Such entity **shall also register itself with the central government by filing Form CSR-1 electronically with the Registrar, with effect from 1 April 2021.** This provision will not affect the CSR projects or programmes approved prior to 1 April 2021.

Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a CA in practice or a CS in practice or a Cost Accountant in practice.

> "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

On submission of CSR-1 on the Portal**, a Unique CSR Registration Number** shall be generated by the system automatically.

A company may engage International Organizations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR Policy, as well as for capacity building of their own personnel for CSR.

A company may also collaborate with other companies for undertaking CSR activities in such a manner that CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

The Board of a company shall satisfy itself that the funds so disbursed have been utilized for the purposes and in the manner as approved by it and **the CFO** or the person responsible for financial management **shall certify to that effect.**

In case of ongoing project, **the Board shall monitor the implementation of the project** with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

*[**Comments**: No CSR activity can be undertaken with Section 8 Company / registered Public Trust or registered Society, unless it has registration under section 12A and 80G. Due to an oversight perhaps, relaxation is not given for such entities even until 31 March 2021, unlike in the case of the new registration with MCA, where it comes into effect from 1st April 2021 only. Further, considering that all existing 80G registrations are required to be renewed with effect from 1 April 2021, one can expect a flood of applications with the IT Department, which may result in delays for companies to award any new projects in Q1-FY22. MCA needs to give extension of dates in this regard, say until 30 September 2021.]*

vii) **Annual Action Plan (AAP):**

The CSR committee shall formulate and recommend to the board, an Annual Action Plan in pursuance of its CSR Policy, which shall include the following:

a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects in Schedule VII of the Act;

b) The manner of execution of such projects or programmes, as specified in Rule 4(1);

c) The modalities of utilisation of funds and implementation schedules for the projects or programmes;

d) Monitoring and reporting mechanism for the projects or programmes; and

e) Details of need and impact assessment, if any, for the projects undertaken by the company. Provided that the board may alter such plans at any time during the financial year as per the recommendation of the CSR committee, based on reasonable justification to that effect.

*[**Comments**: Many of the earlier provisions contained for CSR Policy have been incorporated under the term "Annual Action Plan" (AAP).While CSR Policy need not be revised frequently, Annual Action Plan, as the name implies will have to be approved on an annual basis. At the beginning of the year, a Company may not be able to make a comprehensive list of CSR projects or programmes to be carried out during the year. The list can contain only the projects or programmes which are `on-going'. New projects/programmes which may be taken up during the course of the year cannot be listed down in AAP in the beginning of the year. AAP, therefore, will have to only state that there would be other CSR projects/programmes, which will be taken up in areas or subjects contained in Schedule VII of the Act as per proposals as may be received from time to time. Similarly, the modalities of utilisation of funds, implementation schedules, monitoring and reporting mechanism can be given only in general terms and not in elaborate details, which can only be for internal purposes.]*

viii) **CSR expenditure:**

The board shall ensure that the Administrative Overheads shall not exceed 5% of the total CSR expenditure of the company for the financial year.

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the "Unspent CSR Account" and spent in pursuance of CSR policy and Annual Action Plan of the company or transfer such surplus amount to a fund specified in Schedule VII within a period of six months of the expiry of the financial year.

Where company spends an amount in excess of requirement provided under section 135(5), such excess amount may be set off against the requirement to spend under section 135(5) upto immediate succeeding three financial years. Excess amount available for set off shall not include the surplus arising out of the CSR activities, if any.

The board shall pass a resolution to that effect.

The CSR amount may be spent by a company for creation or acquisition of a capital asset which shall be held by -

- a Section 8 company, or a registered Public Trust or registered Society having charitable objects and CSR Registration Number or
- beneficiaries of the said CSR projects in the form of self-help groups, collectives or entities or
- a Public Authority

Provided that any capital asset created by a company prior to 22 January 2021 shall on or before 21 July 2021 comply with the requirement of these rules, which may be extended by a further period of not more than 90 days, with the approval of the board, based on reasonable justification.

*[**Comments**: Companies have to review if there are any assets created by them, which are not held by any of the aforesaid entities. If so, they will have to start the process of the transfer of the Asset to the concerned entity. These can be time-consuming and hence, sufficient time should be given in the Rules to complete the process. Period of even 9 months may not be adequate in some cases. It should also be clarified that the cost of transfer incurred by the Company should be treated as CSR expenditure under section 135.*

In fact, when CSR Rules permit CSR activities to be undertaken by the Company itself, it is not clear as to why Capital Assets are mandated to be transferred to any of the persons specified in the Rules. If the Company has to establish such an entity with section 80G and 12A registrations, the time given to do so is too short, considering the time normally taken by Income Tax Authorities for granting such certificates/registrations.]

ix) **CSR Reporting:**

The Annual Report on CSR shall contain **particulars as specified in Annexure II** to the Rules.

Every company having average CSR obligation of Rs.10 crore or more in pursuance of section 135(5), in the three immediately preceding financial years, **shall undertake impact assessment through an independent agency** of their CSR projects having outlays of Rs.1 crore or more and which have been completed not less than one year before undertaking the impact study**.**

The **impact assessment reports shall be placed before** the board and shall be annexed to the annual report on CSR.

A company undertaking impact assessment may book expenditure towards CSR for that financial year, which **shall not exceed 5% of the total CSR expenditure for that financial year or Rs.50 lakh, whichever is less.**

*[**Comments**: The reporting format is extremely detailed where the company has any Unspent amount during a financial year for on-going projects or other projects.*

Many companies are already voluntarily undertaking impact assessment through an independent agency for all their major projects. The point to be noted is that as per the new Rules, the impact assessment has to be done at least one year after the completion of the project. The limit/ceiling of Rs.50 lakh seems to be quite low for large companies. Further, what happens to the Impact Assessments already done within one year after the completion of the project? Whether the Company will have to repeat the impact assessment for the same project?

Since the Rules have been notified only on 22nd January 2021, and one year after completion of any project would fall only in 2021-22, can it be interpreted that no Impact Assessment Report is to be attached to the annual CSR Report this year i.e. for the year 2020-21 for any of the companies?

Another question is whether there is any time limit for completion of the impact assessment for a project? Some large companies may have huge Impact Assessment reports and on multiple projects. How can these be annexed to the Annual Reports? MCA needs to clarify on all these points.]

x) **Display of CSR activities on website:**

The board of directors shall mandatorily disclose the composition of the CSR committee with attendance particulars and CSR Policy and projects approved by the board on its website for public access.

*[**Comments**: It is presumed that the reference is only to a particular financial year and not for an indefinite period.]*

xi) **Transfer of Unspent CSR Amount:**

Until a Fund is specified in Schedule VII for the purposes of Section 135(5) and (6), the Unspent CSR amount, if any, shall be transferred by the company to any Fund included in Schedule VII of the Act.

*[**Comments**: MCA needs to come out with clear notifications in this regard.]*

D. ROLE OF BOARD AND CSR COMMITTEE

From the relevant provisions of the Companies Act, 2013 and the Rules made thereunder, roles of Board and CSR Committee in relation to CSR can be summarised as under:

1. Board of Directors

Board will have the following functions/duties:

- Taking into account the recommendations of CSR Committee, to approve the CSR Policy of the Company and make necessary disclosures in its Annual Report and also on the Company's website in the prescribed manner.
- Ensure that the CSR activities are undertaken by the Company as per Annual Action Plan and as required under law.
- Give preference to the local areas around it, where it operates for spending the amount earmarked for CSR.
- Ensure in every financial year spend of 2% of the average Net profits of the Company made during the three immediately preceding financial years.
- If the Company fails to spend such amount, the Board shall in its Report made under section 134(3)(o) specify the reasons for not spending the amount and the unspent amount pursuant to any on-going project shall be transferred within a period of 30 days from the end of the financial year in any scheduled bank to be called the 'Unspent CSR Account' and the unspent amount relating to any other project will be transferred to a Fund specified in Schedule VII within a period of six months.

> Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the "Unspent CSR Account" and spent in pursuance of CSR policy and Annual Action Plan of the company or transfer such surplus amount to a fund specified in Schedule VII within a period of six months of the expiry of the financial year

- To approve based on reasonable justification, a project as 'an ongoing project', which initially was not approved as a multi-year project, but whose duration is to be extended beyond one year.
- To ensure that the CSR activities are undertaken by the Company itself or through –
  a) A Section 8 Company, a registered Public Trust or a registered Society, registered under section 12A and 80G of the Income Tax Act, 1961 established by the Company either singly or along with any other Company; or
  b) A Section 8 Company, a registered Public Trust or a registered Society, established by the Central Government or State Government; or
  c) A Section 8 Company, a registered Public Trust or a registered Society, registered under section 12A and 80G of the Income Tax Act, 1961 and having an established track record of at least three years in undertaking similar activities.
- To satisfy itself that the funds disbursed for CSR have been utilized for the purposes and in the manner approved by it, based on a Certificate to that effect from the CFO of the Company.
- In case of an ongoing project, to monitor the implementation of the project with reference to the approved timelines and year-wise allocation and to make modifications, if any, for smooth implementation of the project within the overall permissible time period.
- To approve, based on the recommendations of CSR Committee, the Annual Action Plan in pursuance of the Company's CSR Policy and to alter such plan at any time during the financial year based on reasonable justification to that effect.
- To ensure that the administrative overheads shall not exceed 5% of the total CSR expenditure of the Company for the financial year.
- Where the Company spends an amount in excess of requirement under section 135(5), such excess amount

may be set off against the requirement to spend under section 135(5) within immediate succeeding three financial years and board to pass a resolution to that effect.

- If the capital asset created by a Company prior to 22nd January 2021 is not transferred before 21st July 2021 to the prescribed persons, to approve extension by a further period of not more than 90 days, based on reasonable justification.
- Approve the Annual Report on CSR with the prescribed disclosures and place the same on the Company's website.
- To note the Impact Assessment Reports for the prescribed projects done during the year and to note that the same are annexed to the Annual Report on CSR.
- To ensure that the Company's website contains disclosures on the composition of the CSR Committee, with attendance particulars and CSR Policy and projects approved by the Board.
- And generally comply with the provisions of law on CSR.

2. CSR Committee:

CSR Committee will inter alia do the following:

- Formulate and recommend to the Board a CSR Policy for the Company.
- Recommend to the Board the amount of expenditure to be incurred on CSR activities.
- Monitor the implementation of the CSR Policy of the Company from time to time.
- Formulate and recommend to the Board an Annual Action Plan in pursuance of a CSR Policy containing inter alia the following:
  a) List of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII;
  b) Manner of execution of such projects or programmes, as specified in Rule 4(1);
  c) Modalities of utilization of funds and implementation schedules for the projects or programmes;
  d) Monitoring and reporting mechanism for the projects or programmes;
  e) Details of need and impact assessment, if any, for the projects undertaken by the Company and
  f) Alter the plan at any time during the financial year, based on reasonable justification.
- Where a Company collaborates with other companies for undertaking projects or programmes or CSR activities, CSR committees of respective companies should report separately on such projects or programmes in accordance with the rules.
- Chairman of CSR Committee will be a signatory to the Annual CSR Report.

E. IMMEDIATE ACTION-POINTS

- Considering the stringent provisions for compliances/ contraventions, it would be best if a Company meets the mandated expenditure within the same year and does not allow anything to be carried forward as unspent amounts. However, if there is a short or excess amount spent during a financial year, compliances have to be done carefully as stated earlier, viz. opening of an `Unspent CSR Account', transfer to a specified Fund, Board Resolution etc.
- Any amount spent in excess of the mandate can be carried forward for any of the next three financial years with an appropriate board resolution.
- Contribution to corpus was earlier specifically permitted, subject to certain conditions. The current Rules are silent on the same and even in the categories of exclusions, it is not mentioned. MCA needs to come out with a clarification.
- Company needs to come out with a fresh/revised CSR Policy.
- Annual Action Plan is to be formulated every year by the CSR committee and approved by the Board.
- Every project has to be distinguished between ongoing projects and other projects.
- Ongoing Projects have to be formally monitored by the Board with reference to timelines, year-wise allocation etc.
- Ongoing Projects have to be Projects of 3+1 years only and not beyond.
- Impact Assessment needs to be done for the prescribed companies for every project with outlay of Rs.1 crore or more and at least one year after completion of the project. A company may book expenditure towards CSR for that financial year, which shall not exceed 5% of the CSR expenditure for that financial year or Rs.50 lakhs, whichever is less. Such allowance is over and above the 'administrative overheads', which are allowed separately.
- The Section 8 Company / trust / society will require registration under section 12A and 80G and will also require registration with the Central Government/MCA under the CSR Rules.
- CFO has to specifically certify that the funds disbursed are utilized for the purposes and in the manner approved by the board.
- Capital Assets held by the Company have to be transferred to the specified persons within the specified period.
- CSR Annual Report for the financial year 2020-21 will in most cases be required under the new format, which is very detailed.

F. CONCLUSION

CSR Law has been amended in a sweeping manner. There are many complexities, which can be resolved only through clarifications to be issued by MCA. Considering the limited time available to the corporate sector for implementation of the new provisions, MCA needs to come out with urgent steps and clarifications to clear the ambiguities in the new law.

Directors' Liability: Revisiting the Principles of Vicarious Liability

Responsibilities and liabilities of Independent Directors have increased manifold during the recent years. There is an overarching issue of disparity between the onerous duties and liabilities placed on independent directors and the resources made available to them in order to fulfil these duties. The challenges faced due to the current regulatory framework governing director liability in India and the potential issues arising therefrom indicate that there is a need to re-assess the current framework. This article deliberates the need for certain measures that may be adopted in order to address the liability-related risks faced by independent and other non-executive directors and to consequently strengthen corporate governance standards in India.

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INTRODUCTION

In the wake of governance failures across numerous companies, the government and the securities markets regulator i.e. the Securities and Exchange Board of India ("SEBI") were forced to introduce stringent corporate governance standards coupled with a strict liability regime for directors. These requirements are currently reflected across several laws and regulations applicable to Indian companies, primarily being the Companies Act, 2013, Competition Act, 2002, Prevention of Money Laundering Act, 2002, Information Technology Act, 2000, Securities and Exchange board of India Act, 1992 amongst others.

Against this background, this article argues that when it comes to the liability of independent and non-executive directors for wrongful conduct, the existing legal framework is too stringent and leaves much scope for improvement. It seeks to establish a link between the liability-related risks faced by independent directors and the factors present in the current framework governing them that hamper their ability to exercise their independence effectively.

LIABILITY OF DIRECTORS UNDER COMPANIES ACT, 2013

Companies Act, 2013 imposes liability on directors and officers in primarily three ways:

- direct liability on those directors and officers who have contributed to the contravention or the offence by consenting, conniving or not acting diligently, thereby allowing the offence to take place;
- vicarious liability on those directors and officers who are in charge of and responsible to the company for the conduct of its business; and
- vicarious liability on those directors who are responsible for ensuring that the interest of all the stakeholders of the company is safeguarded and the company has processes and practices in place towards fulfilling the said purpose.

One of the key concepts under the Companies Act, 2013 is 'officer in default'. The term "officer in default is defined under Companies Act, 2013 as follows:

"officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:

i. whole-time director;

ii. key managerial personnel;

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

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

v. any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

vi. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

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

*The above views/ suggestions are my own and not of my employer.

This concept stresses more on role of a person in the company rather than mere designation and *as regards directors, he/ she would be considered as an 'officer in default' in case he/ she is aware of the wrongdoing by virtue of knowledge of or participation in proceedings of the board without objection*.

Further, Section 149(12) of the Companies Act, 2013 states that an independent director and a non-executive director not being promoter or key managerial personnel, *shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes and with his consent or connivance or where he had not acted diligently*.

The definition of the term 'fraud' under the Companies Act, 2013 also requires 'an intent to deceive' to be present, to constitute an act as fraud.

RECENT AMENDMENTS

The Government introduced a new sub-section (14A) in Section 212 of the Companies Act, 2013 effective August 15, 2019, which reads as follows:

"Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability."

Section 212(14A) pertains to cases where the report of the Serious Fraud Investigation Officer states that:

i. a fraud has taken place in a company; and

ii. due to such fraud, a director, Key Managerial Personnel (KMP), officer of the company or any other person or entity has taken undue advantage or benefit in the form of any asset, property, cash or otherwise.

In such cases, the said sub-section permits the Central Government to file an application before the National Company Law Tribunal with regard to disgorgement of such asset, property or cash and also for holding such director, KMP, other officer or any other person liable personally, without any limitation of liability. For the purpose of this section, it is considered reasonable that the amount that can be confiscated should be limited to the income/ assets acquired through such fraudulent activities.

Even the provisions of Section 149(12) of the Companies Act which contains few hygiene checks before penalizing independent directors have the following limitations:

- Independent and non-executive directors can be implicated not only for errors of omission and commission, but also for passive negligence, for instance, in cases where such directors have attended board meetings or merely received minutes of such meetings but have failed to record their concerns or objections, they cannot escape prosecution claiming that the decision was not taken with their knowledge or consent;

- The safe harbour provisions help in alleviating concerns relating to liability only after investigative or legal proceedings have been initiated and not at the stage where these directors are served with summoning notices; and

- Limited immunity under Companies Act, 2013 as stated above is specific to proceedings under the Companies Act, 2013 and does not protect these directors from the provisions of various other statutes which attribute civil and criminal liability to them for contraventions and offences by companies.

In all the cases where a safe harbour is provided to the independent directors, the burden of proof lies on the directors to prove that they were diligent in the discharge of their duties and had acted in a bona fide manner.

In fact, there have been instances where directors have been summoned as accused by trial courts despite them not having been named in the first information report or where the investigating agency itself had recorded in the charge sheet that it did not find any material to implicate them.

This is especially problematic in the context of independent and non-executive directors who are not involved in the day to day affairs of companies and primarily perform the role of overseeing and guiding the company management. Till the time any conclusion is drawn in relation to their conduct, they face significant inconvenience, harassment and embarrassment. Accordingly, it is reasonable that the onus of proving that a director is guilty should be on the investigating agency and not on the director.

WHY INDEPENDENT DIRECTORS ARE RUSHING FOR THE EXIT DOOR?

The exodus of independent directors from listed companies is swelling. As many as 1,344 independent directors resigned from companies listed on the National Stock Exchange of India Limited in financial year 2020 which was 45% more than financial year 2019 and an 80% increase from financial year 2018. Many of such resignations were post the companies having defaulted in its obligations or some other controversial matter being surfaced.

This has raised questions on the adequacy and reliability of information provided to the Board. The fact that independent directors typically resign without citing adequate reasons behind their decisions is a manifestation of the shortcomings of the safe harbour provisions.

> Section 149(12) of the Companies Act, 2013 states that an independent director and a non-executive director not being promoter or key managerial personnel, *shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes and with his consent or connivance or where he had not acted diligently.*

In the event of non-compliance with statutory obligations by companies, independent and non-executive directors are in a precarious position whereby in addition to substantial reputational harm, they face the risk of criminal liability being attributed to them, even for acts beyond their control.

Further in many cases, Directors' liabilities are long-tail in nature and this means that a claim can be made against them and their actions many years after decisions have been made.

This may have prompted SEBI to amend the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which has mandated independent directors to disclose detailed reasons for their resignation from a company and also to confirm that there is no other material reason for their resignation other than those provided. SEBI also requires listed companies to disclose these details to the stock exchanges. SEBI also recently issued a consultation paper for review of regulatory provisions related to Independent Directors wherein it is proposed that the entire resignation letter of an independent director should be made public along with a list of his/her present directorships and membership in board committees.

LIMITATION OF LIABILITIES OF DIRECTORS ACROSS VARIOUS JURISDICTIONS

The 'business judgement rule' is applicable in most jurisdictions, which is the presumption that a business decision made by a director was reasonable. Liability will not be established where the claimant suing the director cannot demonstrate that, in making the business decision, the director failed to act on an informed basis.

Following are the broad approaches adopted in different jurisdictions, for dealing with and regulating director's liability:

- **AUSTRIA**

  A director's liability to the company is excluded, if the shareholders give their consent by passing a resolution.

- **BELGIUM**

  Pursuant to article 554 of the Commercial Companies Code, the annual general meeting of shareholders is required to expressly decide whether or not relief from liability should be granted to the Directors. If the annual meeting decides to grant relief, the directors are shielded from liability to the company for the period prior to the annual meeting. They will not, however, be shielded from liability to individual shareholders or to third parties.

- **FRANCE**

  French law prohibits any limitation of directors' liability in the articles of association. Thus, provision in the Articles of Association which require the consent of shareholders for an action against a director are not valid.

  Regardless of any decision made by the shareholders in a general meeting, the company may still sue a director who acted outside the scope of his/her powers as a director.

- **ITALY**

  A director shall not be held liable in the event that:

  i. he did not attend the relevant board meeting, provided that he verified the minutes and informed the president of the board of auditors immediately of the unlawful resolution;

  ii. or he attended the relevant board meeting but voted against the resolution and informed the president of the Board of Auditors.

- **USA**

  Generally executive directors are often held responsible because they participate more actively and have greater knowledge of the company's activities, as opposed to directors who are independent. Further, independent directors are usually not held liable for their decisions, even if such decisions harm the corporation or its shareholders, if the decisions fall within the judicially developed safe harbour commonly known as the 'business judgment rule'.

  The judicial presumption underlying this rule is that independent directors make business decisions on an informed basis and with the belief, in good faith, that the decisions will serve the best interests of the corporation. This safe harbour protects independent directors from liability in instances wherein they have exercised due diligence and acted in an informed manner.

- **UK**

  U.K. company law, i.e., the Companies Act 2006 does not distinguish between the duties owed to a company by its executive directors and its non-executive directors. However, as non-executive directors are less involved with the day- to- day management of the company, they are usually not expected to demonstrate a standard of skill and care that is as high as the standard for executive management.

  It is accepted that non-executive directors are likely to devote significantly less time to a company's affairs than an executive director and that the detailed knowledge and

experience of a company's affairs that could reasonably be expected of a non- executive director will generally be less than that for an executive director.

JUDICIAL PRONOUNCEMENTS

In welcoming decisions by courts/tribunals, the old school of thought that 'the extent of liability of a director would depend on the nature of his directorship' has undergone a radical change.

Securities Appellate Tribunal (SAT) to the relief of independent directors, has upheld the view that 'a director's liability has a nexus with his role and not the designation/ position. SAT has appreciated the fact that independent directors may not be in a position to fully sojourn management fraud and would need to only prove that they have exercised necessary diligence in decision-making.

Synopsis of the above-mentioned views of Supreme Court/ SAT in recent cases is given below:

I. Shiv Kumar Jatia vs State of NCT of Delhi - *Active role coupled with criminal intent is a must*

- Mr. Shiv Kumar Jatia, Managing Director of M/s. Asian Hotels which runs Hyatt Regency Hotel had authorized Mr. P. R. Subramanian to apply for lodging license of the hotel.
- On account of contravention of the condition of the lodging license, there was a mishap and a guest got injured.
- Case was brought before the High Court which ordered for prosecution of the Managing director along with the other three accused.
- Mr. Jatia appealed before the Supreme Court against such impugned order of the High Court.
- The Supreme Court held that an individual cannot be made accused, unless there is a sufficient evidence of his '*active role coupled with criminal intent*'. Further such criminal intent must have direct nexus with the accused.
- The Supreme Court also stated that merely because Mr. Jatia was holding position as Managing Director, in absence of specific allegations of negligence with the criminal intent, he is not liable for prosecution.

II. Sunil Bharti Mittal vs. Central Bureau of Investigation & Ors- *Criminal intent alleged must have direct nexus with the accused.*

Supreme Court held that an individual can be held liable for an offence by the company:

- if there is sufficient evidence of the individual's active role coupled with criminal intent; or
- where the statute itself stipulates the liability of directors and other officials, such as under the Prevention of Money Laundering Act, 2002.

III. Mr. Soumen Chatterjee vs. Securities and Exchange Board of India- *Executive director cannot be held liable for company's violations on mere presumption of knowledge*

- Mr. Soumen Chatterjee was appointed as an Executive Director (ED) with the designation 'Director Research' at Guiness Securities Limited (GSL).
- SEBI found misappropriation of client securities and falsification of books in GSL and therefore on December 19, 2018, SEBI issued an ex-parte ad-interim order, against the Company and all its EDs, without analysing the specific roles and functions played by each ED in the organization.
- Mr. Chatterjee appealed to SAT contending that though he was designated as an ED, his work profile was limited to research related activities within the Company.
- SAT opined that the SEBI order against Mr. Chatterjee could not continue to have effect merely on the basis of his designation in GSL and the presumption of knowledge flowing from the said designation. SAT observed that a majority of the alleged misappropriation of securities took place before he was even appointed as a director of GSL.

DECRIMINALIZATION OF OFFENCES

In furtherance of the objective of the government to expedite greater ease of doing business for those companies that uphold the law, it set up the Company Law Committee (CLC) in September 2019 to look into the decriminalization of various offences under the Companies Act, 2013 with respect to the gravity of each offence. Taking into account the recommendations of the CLC, the government brought about most significant changes by decriminalizing offences under the Companies Act, 2013 through the Companies (Amendment) Act, 2020 in an endeavour to revamp the existing laws.

Keeping in mind the overall pendency of cases in courts and in an attempt to alleviate the burden of such courts, the

"Securities Appellate Tribunal (SAT) to the relief of independent directors, has upheld the view that 'a director's liability has a nexus with his role and not the designation/ position'. SAT has appreciated the fact that independent directors may not be in a position to fully sojourn management fraud and would need to only prove that they have exercised necessary diligence in decision-making."

Companies (Amendment) Act, 2020 seeks to enforce and adopt a principle-based approach in removing the imposition of penal consequences in case of minute and technical defaults.

The changes have been brought about by merely striking down parts of provisions which entail penal consequences to leave behind only the civil and monetary punishments whether with or without modifications. Decriminalization of offences is a quintessential move to uplift the confidence of Directors in running the company without the fear of being constantly taken to court for trivial offences. While there is a risk of attributing less due diligence due to the absence of criminal liability, this move is imperative for the protection of companies. The said changes are necessary in striking the right balance between the protection of the individual interests of the companies and the public interest at large.

Further, as businesses face increasing and unique challenges as a result of the COVID-19 pandemic, directors are under closer scrutiny which heightens the risk of potential claims and litigation. Therefore, directors and officers ("D&O") insurance cover is the need of the hour. D&O insurance policies protect directors and officers from alleged wrong doing in the scope of their duties. The policy also protects these individuals' assets and estates, as well as a company's assets.

CONCLUSION

While the Companies Act, 2013 includes safe harbours limiting the liability of independent directors and non-executive directors specifically, there is a plethora of other statutes as well as certain newly introduced provisions of the Companies Act, 2013 that not only do not contain such safe harbours, but also impose both, civil and criminal liability for non-compliance with their provisions by companies, on their directors and officers, without distinguishing between executives and non-executive.

The name 'independent director' itself suggests that they are independent i.e. they are neither expected to nor equipped to be aware of the day-to-day operations of the company, and would be responsible only for policy-level decisions taken by the board based on the information provided to them. The two most important attributes that define such directors are "sound judgement" and "inquiring mind" and as long as these attributes are shown to satisfaction, such directors should not be held guilty in the first place. Independent directors should be provided a safe and protected environment with certain check and balances, so that they can effectively perform their duties without worrying about ring-fencing themselves.

As regards whole-time directors, if they can prove that necessary processes were established and followed; policies were formulated and adhered to; internal controls were laid and that such controls were functioning adequately; necessary due diligence was exercised to prevent any mishap, they would stand a great chance in defending themselves in case any such untoward event occurs.

The liability framework for directors across all statues recognizing corporate offences should be harmonized with the Companies Act, 2013 by providing for the concept of 'officer who is in default' and enabling non-executive and independent directors to claim the protections designed specifically for them under section 149(12) of the Companies Act, 2013. The procedures followed by investigating agencies/ authorities for conducting investigations in relation to offences by companies must recognize the importance of creating safeguards for independent and other non-executive directors.

On one hand, the criteria for independence of independent directors is getting stricter with a view to ensure adequate distance between the directors and the company; whereas on the other hand, such directors are expected to micro-manage and ensure that the company is fully compliant in all aspects.

It is pertinent to note that the independent directors' interaction with the companies (in most of the cases) happen once a quarter for say, one day. In that one day, such independent directors are flooded with papers and numbers and documents and policies, which they have to review and approve. All the operations and activities that the company had carried out in a quarter is informed to the directors in a span of one day and in some times, 5-7 days in advance. It is to be noted that not all the independent directors of a company would be subject matter experts; they must be stalwarts in their respective fields and as such may not be able to comprehend such high magnitude of information flow that happens over a short span of time. Given this situation, it is unfair to hold the independent directors liable only because they failed to raise any objection or voice their concern over one or minor points included in the bundle of information. Such cases require a 'case-to-case basis' approach for investigation.

Accordingly, there is a need to formulate effective safeguards for the protection of independent directors especially on account of the co-relation between director independence and good corporate governance. The current framework governing the liability of such directors is riddled with incongruity and uncertainty. There is therefore a need to re-evaluate the extant framework in order to address the disconnect between the structural notion of independence and the substantive conduct principles that such directors are expected to abide by.

Going forward, Directors' main form of mitigation in the future is not going to be, 'I did not intend for this to happen'. Instead it moves the defense into the realms of, 'I put in a good system and reasonable processes to guard against this'.

ARTICLE

State Governance – As Understood and Practiced in Ancient India with Special Reference to Cholas

Democracy is not something India borrowed from the world. India is mother of Democracy. The concept and theory of democracy could very well be said as India's gift to the world. True democracy prevailed in India from time immemorial.

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INTRODUCTION

Governing a country is a mission without precincts. "Democracy" is considered to be the best way of governing a country and its people. Many countries in the world today opt for democracy simply because it reflects the decision of the majority in determining who should rule them and how the rule should be. Abraham Lincoln once said "Government of the people, by the people and for the people". Today his statement is considered as the definition of Democracy. In democracy, human rights, ethics, national integration and politics play an important role in the administration of the State.

Well, "Democracy" is not something India borrowed from the world. In fact, true democracy prevailed in India from time immemorial. On 10th December 2020, Mr. Narendra Modi, Prime Minister of India, while addressing the nation after laying the foundation stone for the new Parliament Building said, "India is mother of Democracy". The concept and theory of democracy could very well be said as India's gift to the world. India is a peace-loving country and by the virtue of its behaviour, practice and culture, it has always proved to the world that the best way of administration is permitting everyone around to participate in it. It is true that for thousands of years, this country was ruled by Kings and dynasties but even in those days, the common man had a say in the system of administering the country. Participation of common man in the administration is the essence of democracy. The common men had the power to choose their leader. Therefore, the leader or the ruler had the duty to follow the best practices for the benefit of his subjects. He was aware that should he fail to keep his subjects satisfied, he could be thrown out of the throne anytime. This helped in maintaining the equilibrium and balance in the administration.

Today, we live in a democratic country. India is one of the largest democratic countries in the world and it remains so since independence. We have a Constitution which clearly lays down who could be the representatives of the people and how these representatives are to be elected. Every State has a Legislative Assembly wherein members elected by the people meet and the majority run the Government. Councillors are representatives of Wards. Our Constitution provides for micro level public management to macro level management of our country's affairs wherein at the peak we have our President as the Head of the State and the Government, Parliament and the members of Parliament. Our Constitution provides for clear electoral system for electing people. Electing people to govern the State is not new to India.

More than 1,100 years ago, a more elaborate and highly refined electoral system was prevalent in India. Yes, indeed we had a much better system in place than the electoral system we have today. Uthiramerur, a village situated in Kancheepuram district, about 90 km from Chennai, has over 1,250 years of history. The village has three important temples, the Sundara Varadaraja Perumal temple, the Subramanya temple, and the Kailasanatha temple. These three temples have a large number of inscriptions, notably those from the reigns of Cholas.

"India is one of the largest democratic countries in the world and it remains so since independence. We have a Constitution which clearly lays down who could be the representatives of the people and how these representatives are to be elected. Every State has a Legislative Assembly wherein members elected by the people meet and the majority run the Government."

Prime Minister of India, Mr. Narendra Modi, while addressing the nation after laying the foundation stone for the new Parliament Building made a detailed reference to Uthiramerur inscriptions which talk about Kudavolai system. Kudam in Tamil means "Pot" and "Olai" refers to palm leaf. This system was a very notable and unique feature of the village administration of the Cholas. Each village was divided into about 30 wards. Each ward was represented by a representative who was elected through Kudavolai system. Names of the contestants from whom one could be chosen were written on palm leaf tickets. These palm leaves were put into a pot and shuffled. A young boy picked up palm leaves one by one from the pot. Persons whose name tickets bear were declared elected. 30 members for thirty wards were elected. This kind of unique election system was called Kudavolai system. Out of the thirty elected members, twelve members were appointed to the Annual committee; twelve members were appointed as the members of the Garden committee and six members to the Tank committee.

Uthiramerur inscriptions are so unique that they give a vivid description of the entire system that prevailed in the country at that point of time. It elaborates on the qualifications, disqualifications, mode of election, procedure to be adopted in electing from among the contestants, formation of various Committees, duration of the Committees, functions of the Committees, maintenance of accounts, qualifications of the accountant, registers to be maintained etc... It can be inferred from this that the inscriptions contain information to the minute details.

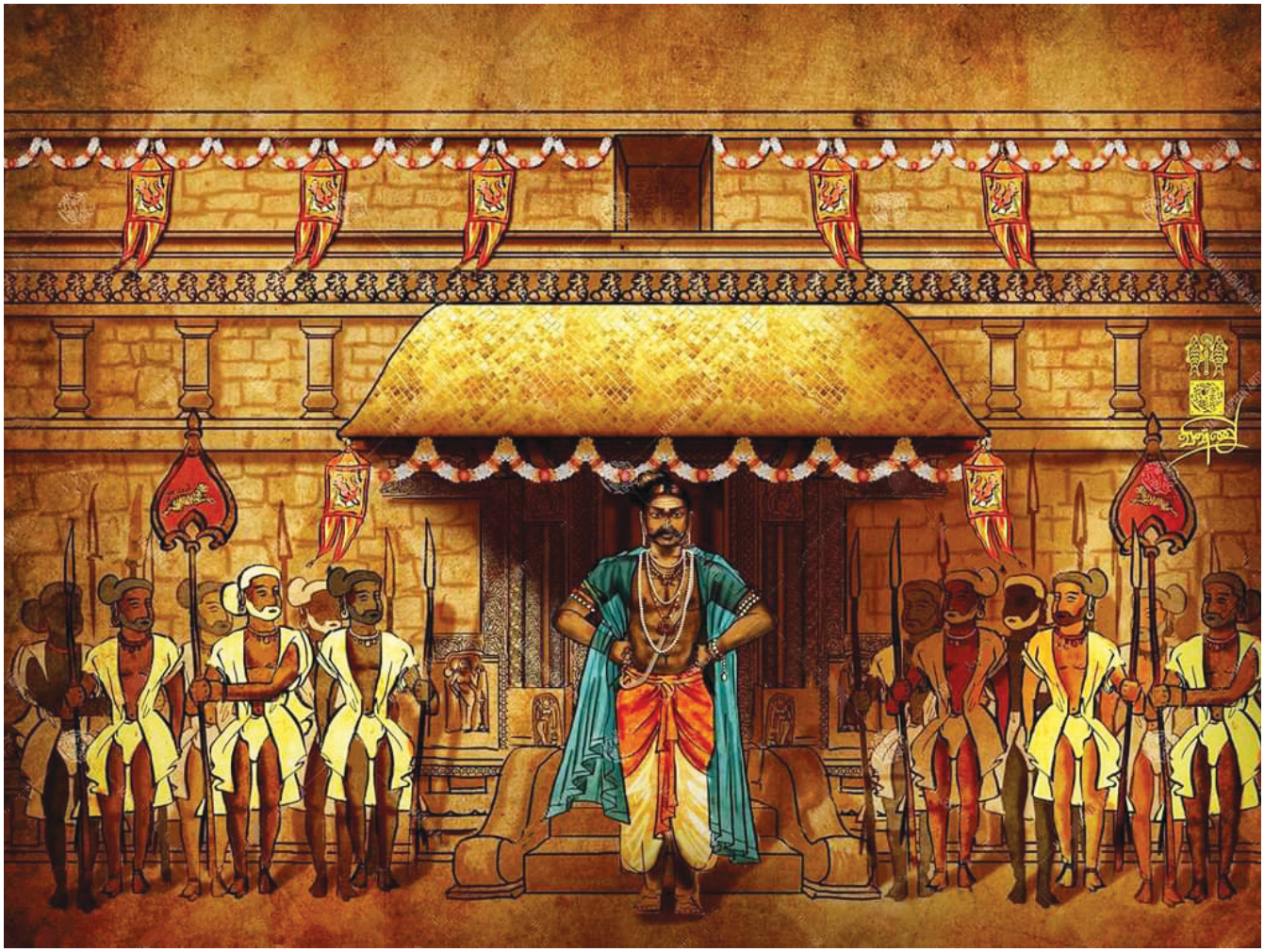
There were committees for the maintenance of irrigation tanks, roads, to provide relief during drought, to test gold, and so forth. There was another astonishing feature of the elective system in the village. The village assembly of Uthiramerur drafted the constitution for the elections. The essential criteria were age limit, possession of immovable property, and minimum educational qualification. Those who wanted to be elected should be above 35 years of age and below 70. Only those who owned land that attracted tax could contest elections. Another stipulation was that such owners should possess a house built on a legally owned site. An elected member would serve the Committee for a period of one year and could not contest again for the subsequent three terms.

Elected members who accepted bribes, misappropriated others' property, committed incest, or acted against the public interest suffered disqualification. The villagers even had the right to recall the elected representatives if they failed in their duties. Sadly, this right is not available for the voters today! When we had such a brilliant system of State Governance in this country, it is unfortunate that we look at Westerners for our understanding of democracy!

There was yet another king by name Manu Needhi Cholan whose name is used as symbol for fairness and justice. It is said that he killed his own son to provide justice to a cow. The story goes like this. The king hung a giant bell in front of his palace and ordered that anyone in need of justice may ring it. One day, he came out of his palace on hearing the ringing of the bell by a Cow. Upon enquiry, he found that the calf of that cow was killed under the wheels of his own chariot. In order to provide justice to the cow, he killed his own son under the chariot as a punishment to himself. He punished himself to make himself suffer as much as the cow. For this reason, he is referred to as Manu Needhi Cholan. A king who did upheld justice even for the cause of a Cow.

To evidence how the "righteousness" of rulers was considered vital by the commoners, one has to read and understand the epic Tamil literature, "Silapathikaaram *(the Tale of an Anklet)* in Tamil which is one of the five great epics and written more than 2000 years ago by Ilango Adigal. This epic story is a classic example of righteousness of people in power and provides the code of conduct for the people in high and responsible positions. Ilango Adigal says, *"Arasiyal pizhaittorkku aram koottrakum".* In simple terms, it means, people occupying the responsible and high positions in the society, if they do not adhere to righteousness, the very righteousness will destroy them. This is true even with the King and the Queen. In the epic story "Silapathikaaram", the Pandian King, without proper investigation erroneously orders to behead Kovalan, the husband of Kannagi for stealing the anklet of his queen. Kannagi storms to the palace and proves her husband's innocence and questions the King and his judgement. The Pandian King realises his mistake,

Uthiramerur inscriptions are so unique that they give a vivid description of the entire system that prevailed in the country at that point of time. It elaborates on the qualifications, disqualifications, mode of election, procedure to be adopted in electing from among the contestants, formation of various Committees, duration of the Committees, functions of the Committees, maintenance of accounts, qualifications of the accountant, registers to be maintained etc...



agonized by the miscarriage of justice, he was killed by his own regret.

There are several hundreds of such 'true stories' in our country. We cannot brush aside them as mere 'stories. A few of them have been recalled here to illustrate to the members of the professional fraternity that we have an enviable past in this country when it comes to learning of governance, administration, politics, peace, ethics, democracy and growth of economy.

During the rule of Cholas, the powers of the administration, more specifically the administration of Villages was decentralized. Cholas had a very good and efficient taxation system which helped development of the State through development of local areas. Undoubtedly, Chola rulers will be remembered for introducing the best local administration system which encouraged the common people to participate in the day to day administrative functions of the Village Panchayat administration which were based on the true democratic philosophies.

To drive home, references can be made to the great Thirukural written by Thiruvalluvar more than 2000 years ago. Thiruvalluvar has dedicated several chapters on governance applicable both with respect to the State and the individual. Though he lived during the times of monarchy he has written several couplets which are applicable even now to the rulers in democracy.

Couplet 384 reads in Tamil is:

அறனிழுக்கா தல்லவை நீக்கி மறனிழுக்கா மானம் உடைய தரசு.

Transliteration:

Araanizhukkaa Thallavai Neekki Maranizhukkaa

Maanam Utaiya Tharasu.

In the cited couplet Thiruvalluvar states that a true king is one who sticks to virtue, removes evil, and is spotless in valour. Even though King is considered as the supreme in a State, Thiruvalluvar says that a king should function with ethics not only in the administration of the state but also in his personal life. He stresses that it is essential for a King to be highly self-disciplined to bring honour to the state. This aptly applies to our leaders of the day and also how the State has to be governed.

Intellectual Property Rights – an Overview

Invention has transmuted the whole world. In the past ages, India also shown a tremendous growth in innovations, technology, in research and development which positively impact economic growth. Intellectual property rights aids as a foundation of creation and innovation in Indian economy. In this 21st century, existence of Intellectual property rights laws works as a protective mechanism, to enhance the competiveness, establish value and increase potential growth.

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INTRODUCTION

In India, there is a profusion of creative and innovative energies. Creativity and innovation are the key drivers contributing to the growth and development of any knowledge economy. There is an imperative need to protect these inventions and creative works of individuals and firms. For this Intellectual property (IP) plays an important role and backs immensely to our national and state economies. Basically, **Intellectual Property Rights** provide a legal protection to those who invent or creates it. The legal rights confer an exclusive right to the inventor or creator of the Intellectual property rights to utilize his creation for a specific period of time. In the context of globalisation, the innovation and creativeness assume greater significance to compete the stiff competitions. Policy framework for intellectual property rights is necessary as the development of the economy somewhere depends on it which provides the legal protection to the new discoveries and inventions. In India, we have well established legislative framework for safeguarding the IPRs. The TRIPs (Trade Related Intellectual Property) regime has emerged as the basic framework for ensuring intellectual property rights across the world. It is not the universal Intellectual property law. But it provides a basic framework. Every member of WTO should include TRIPs provisions in their domestic intellectual property legislations. Different amendments to the various existing Acts- Patent Amendment Act (2005), Copy right Amendment Act (2010), are made to strengthen domestic legal framework to fulfil the harmonization with the WTO's TRIPS agreement.[1] Similarly, a number of fresh legislations are made to upgrade the country's intellectual property regime. **India has recently joined three WIPO treaties designed to ease the search for trademarks** and **industrial designs, helping brand owners and designers in their efforts to obtain protection for their own work.**

[1]*https://www.indianeconomy.net/splclassroom/trips-and-indias-intellectual-property-rights-regime/*

INDIA'S TREATIES AND AGREEMENTS

India is a member of World Intellectual Property Organization, a body responsible for the promotion of the protection of intellectual property rights throughout the world. It is also a member of the following important WIPO-administered International Treaties and Conventions relating to IPRs.

India is signatory to the following international IP agreements:

1. **The Paris Convention** – Adopted in 1883, this was the first step taken to help creators ensure that their intellectual works were protected in other countries. **India became a member of this convention on December 7, 1998.** Under this, any person from a signatory state can apply for a patent or trade mark in any other signatory state, and will be given the same enforcement rights and status as a national of that country would be;

2. **The Berne Convention**– Adopted in 1886, each member state recognises the copyright of authors from other member states in the same way as the copyright of its own nationals. India has been the Member of **Berne Convention** since 28th April, 1928. It deals with the protection of works and the right of the authors.

3. **The Madrid System (Madrid Agreement and Madrid Protocol**) – Under this system, with the use of a single trade mark application, applicant can file registration of trademarks in several territories. It is governed by two treaties, '**the Madrid Agreement concerning the international registration of marks' (briefly known as Madrid Agreement) and the 'Protocol relating to the Madrid Agreement' (briefly known as Madrid Protocol).** Protection can only be provided to those countries who are the member countries and joined the system. Earlier, India was not a member to this protocol, but soon it comprehended its advantages and decided to become one of its signatories. Accordingly, the Trade Marks Act 1999 was modified by the Trade Marks (Amendment) Act, 2010, wherein 'Special provisions relating to protection of trademarks through international registration under the Madrid Protocol' was inserted in the Act. India joined the Madrid protocol with effect from **July 8, 2013**.

4. **The Patent Cooperation Treaty** – Under this treaty, one can pursue **instantaneously protection for an invention in different jurisdictions** through a single application. The Paris Convention for the Protection of Industrial

Property and the **Patent Cooperation Treaty** (PCT) both are binding on India from 7th December, 1998. It simplifies procedures and reduces costs for patent protection in multiple countries. With a single international application, an applicant can register in 152 countries.

5. **The Universal Copyright Convention**- Adopted in 1952, it is one of the principal international conventions for protecting copyrights around the world initiated by UNESCO. As certain articles in the Berne Convention were objected by few countries, Universal Copyright Convention was set up as an alternative to the Berne Convention. India is a member of the Berne Convention of 1886 (as modified in Paris 1971) as well as the Universal Copyright Convention of 1951.

6. **Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement**: One of the most important agreements of WTO is the TRIPS Agreement, came in to force on 1st January 1995. It covers various forms of intellectual property including: Copyrights and Related rights (like the rights of performers, producers of sound recording and broadcasting organizations)

    - Trademarks (also service marks)
    - Geographical Indications (including appellations of origin)
    - Industrial Designs
    - Patents (including protection of new variety of plants)
    - Layout-designs of Integrated Circuits
    - Undisclosed Information (Trade secrets and Test data)

The three important features of this agreement are:

- **Standards** – In respect of each of the IP areas, the agreement sets out the minimum set of standards for the protection of IPRs for all the member
- **Enforcement** – Each member nation is obliged to provide domestic procedures and remedies with respect to protection of IPR. Further, the agreement lays down certain other provisions so that right holders can effectively enforce their rights. These provisions relate to civil and administrative procedures and remedies and detailed specifications as to special requirements related to border measures and criminal procedures.
- **Dispute Settlement** – The agreements sets out that all the disputes arising between members of WTO with respect to the TRIPS obligations are subject to WTO's dispute settlement procedures.

From 2005 onwards, the WTO's TRIPs agreement became obligatory for India as ten-year transition period (1995-2005) has been given to make the domestic legislation compatible with TRIPs. Also, additional five-year transition period is also given to India because of not having product patent regime in critical sector like pharmaceutical. Consequently new laws were introduced during this period. [2]

[2] *https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#:~:text=These%20conventions%20are%20the%20Paris,Integrated%20Circuits%20(IPIC%20Treaty).*

> Intellectual Property Rights provide a legal protection to those who invent or creates it. The legal rights confer an exclusive right to the inventor or creator of the Intellectual property rights to utilize his creation for a specific period of time. In the context of globalisation, the innovation and creativeness assume greater significance to compete the stiff competitions.

7. **Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons (VIPs) & Persons with Print Disabilities:** India becomes the first country to approve the Marrakesh Treaty to enable access to published works for persons who are blind, visually impaired, or otherwise print disabled on 30th June, 2014. The main goal of **Marrakesh Treaty** is to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired and otherwise print disabled (VIPs).[3]

8. **WIPO Copyright Treaty (WCT) -** It is a special agreement under the Berne Convention which covers the protection of works and the rights of their authors in the digital environment. The two subject matters covered by this treaty are - computer programs, whatever the mode or form of their expression; and (ii) compilation of data or other material ("databases"). **India signed this treaty on December 25, 2018.**

9. In 2019, India assented to three key treaties**—Nice Agreement, Vienna Agreement and Locarno Agreement** for the trade mark owners and designers**.** Vienna Agreement establishes a classification for marks that consist of, or contain, figurative elements. **Nice agreement** is an International classification of goods and services for the purposes of registration of marks. **The Locarno Agreement** is for establishing an International classification for industrial designs. [4]

Hauge Agreement: India is not a signatory to the Hague Agreement, which governs the international registration of industrial designs. First adopted in 1925, the Agreement efficiently creates an international system – the Hauge System– that lets industrial designs to be secure in multiple countries or regions with minimal formalities. The Hague Agreement allows applicants to register an industrial design by filing a single application with the International Bureau of WIPO, enabling design owners to protect their designs with minimum formalities in multiple countries or regions. The Hague Agreement also simplifies the management

[3] *https://pib.gov.in/newsite/printrelease.aspx?relid=106012*

[4] *https://www.wipo.int/portal/en/news/2019/article_0021.html*

of an industrial design registration, since it is possible to record subsequent changes and to renew the international registration through a single procedural step.[5]

KEY ADVANTAGES OF SECURING THE INTELLECTUAL PROPERTY RIGHTS

1. **To secure the innovation**

   IP provides protection, recognition and royalty to unique ideas and new creation. Henceforth, it is decisive to protect the IP assets before they are illegally infringed by any third party.

2. **Accelerates the Business Growth**

   For small companies, losing a market share in the initial stage in a business can be hazardous to its business health in the long-term. It is very vital for them to armour their exclusive products or services, which can be used by the opponents for taking away the market share.

3. **Unique identity**

   Intellectual Property Rights helps to distinguish the products of one company to another and creates unique identity for the business.

4. **Generates revenues**

   Registering the intellectual property rights generates revenues and profits by turning your ideas in to commercially successful products which can improve the overall business growth.

TRENDS IN IPR- AT A GLANCE

Consistent growth over the years has been observed in filing of applications for protection of various Intellectual Property Rights. **Table 1** shown below indicates the trends in applications filed and granted/registered for different types of IPRs in India over the last five years. With respect to patents, the total number of applications filed were 2, 33,624of which 50,479(21.60%) were granted. The percentage of registered designs (77.77) and trade marks (71.20) were considerably higher (as compared to patent grants).

Table 1: Comparative trends of IPRs granted/registered for the last 5 years

Year	Patents			Design			Trademark		
	Filed	Granted	% Granted	Filed	Granted	% Granted	Filed	Granted	% Granted
2014-15	42,763	5,978	13.97	9327	7,147	76.62	210501	41,583	19.75
2015-16	46,904	6,326	13.48	11,108	7,904	71.15	2,83,060	65,045	22.97
2016-17	45,444	9847	21.66	10213	8276	81.03	278170	250070	89.89
2017-18	47,854	13045	27.25	11837	10020	84.64	272974	300913	110
2018-19	50,659	15283	30.17	12585	9483	75.35	323798	316798	97.83
Total	**2,33,624**	**50,479**	**21.60**	**55,070**	**42,830**	**77.77**	**13,68,503**	**9,74,409**	**71.20**

COMPARISON OF IPR REVENUE GENERATION

Table 2 below shows that during the year 2018 – 19, the total revenue generated was Rs. 86242.97 lakh, which is about 12.1 % higher than that of the previous year, The total revenue generated by the Patent and Design Office was Rs. 52123.8 (Patents Rs. 51518.03 & Designs Rs. 605.77 lakh), whereas the Trade Marks Registry generated a revenue of Rs.34119.17 lakh.

Table 2: Comparison of IPR Revenue Generation last five years

Year	Patents	Design	Trademark	Total (Rs.in lakh)
2014-15	374,00.71	2,31.50	138,13	51445.21
2015-16	39840.40	557.72	18316.01	58714.13
2016-17	41003.18	551.44	19236.89	60791.51
2017-18	47706.62	615.92	28611.35	76933.89
2018-19	51518.03	605.77	34119.17	86242.97

A gist of the amendments in rules and procedures taken during the year for improving efficiency and transparency in the functioning of IP Offices are elucidated in the following paragraphs:

- The Patents (Amendment) Rules implemented in 2016, results in improvement and simplification of patent procedures and IT enablement, the Patents Rules were further amended on 1st December, 2017 to provide the revised definition of Start-up as "Start-up" Annual Report 2018-19 13 means an entity in India recognized as a start-up by the competent authority under Start-up India initiative. In case of a foreign entity, an entity fulfilling the criteria for turnover and period of incorporation registration as per Start-up India Initiative and submitting declaration to that effect will be applicable."

- The mechanism to lodge feedback/suggestions/ complaints in respect of issues related to functioning of the office has been set up in the IPO website for the benefit of stakeholders.

[5] *https://www.wipo.int/treaties/en/registration/hague/summary_hague.html*

> Approve the Marrakesh Treaty to enable access to published works for persons who are blind, visually impaired, or otherwise print disabled on 30th June, 2014. The main goal of Marrakesh Treaty is to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired and otherwise print disabled (VIPs).

- Further proposal for amending the rules has also been forwarded to the Ministry for revising the statement of working of patents, i.e. Form 27,and incorporating the provision for timely submission of English translation of priority document to ascertain the date of priority as per PCT Regulations.

- In pursuant to Trade Marks Rules, 2017 introduced on 6th March, 2017, trademark procedures have been streamlined and simplified. The following benefits are available to stakeholders:

  - The amended rules will **cut** the **number** of **trademark** application **forms** to 8 from 74.

  - Uniform Application Form for all types of trademark applications,

  - **Individuals, start-ups,** and **small enterprises** have been **given** 50% **concession** in the official fee for filing of registration application

  - Concession of 10% in the prescribed fee for online filing of applications,

  - Allowing expedited processing for the entire trademark prosecution procedure on payment of fees (reduced fee for Individual/Start-ups/ Small Enterprises),

  - Provision for filing extensions for submission of Affidavit and Evidences have been removed so as to speed up the disposal.

- Pendency in examination of new applications has been brought down, in case of:

  - **Patents:** The pendency in examination of patent applications has been brought down during the year from the date of filing of request for examination.

  - **Trademark:** The pendency in examination of trademark applications has been reduced from around 14 months to less than 1 month. Further, in cases where no office objections and no third party oppositions, the registration certificates are issued within 7 months of filing of applications.

  - **Designs:** Pendency in examination of new applications has been brought down to about one month from the filing date.

  - **Copyright:** Pendency in examination of copyright applications has reduced to less than 1 month, which was 13 months prior to March 2017.

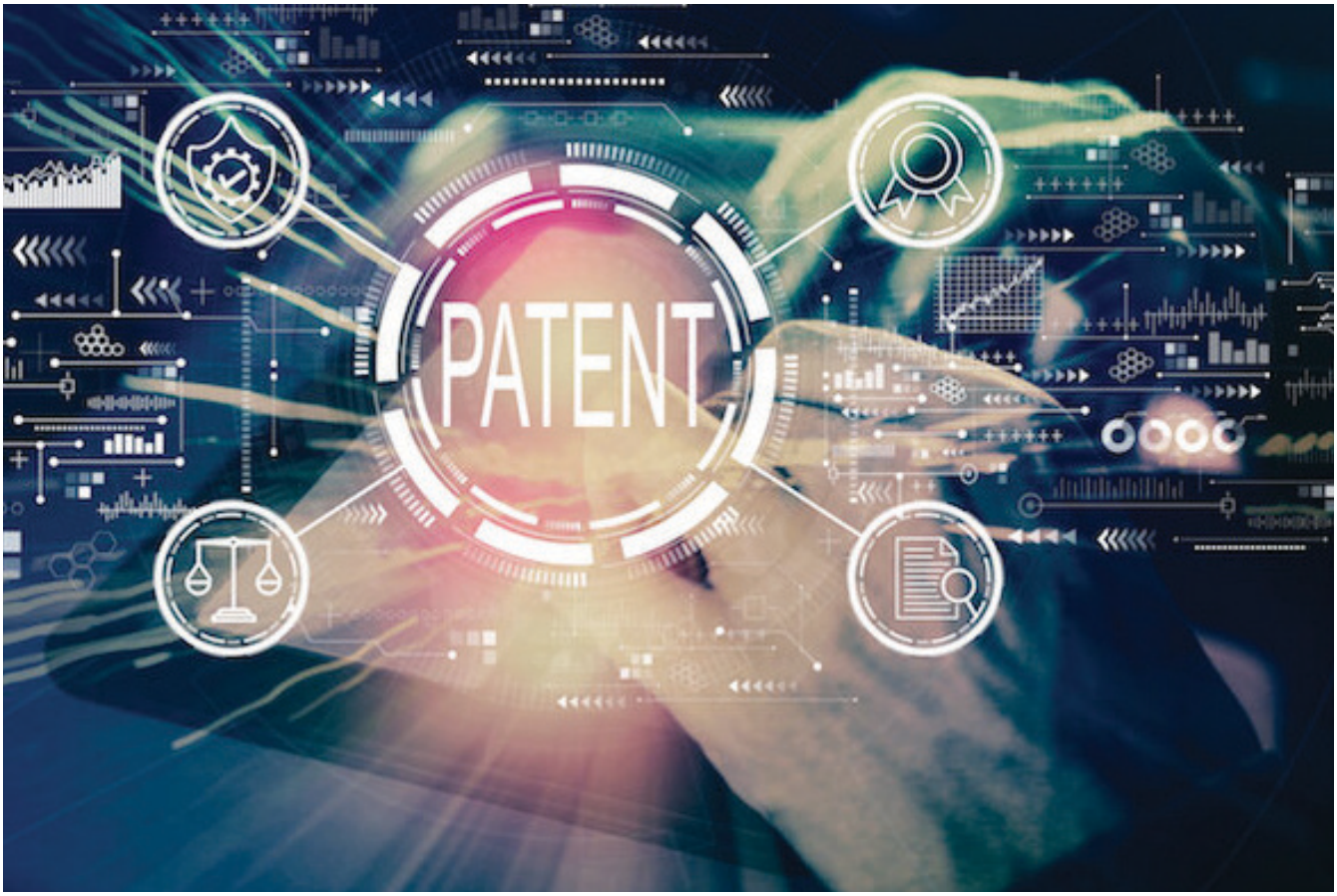
- The Copyright Office was transferred from MoHRD(**Ministry of Human Resource Development)** to DIPP (DPIIT) and subsequently brought under the administrative control of O/o CGPDTM in 2016-17. Meanwhile, numerous steps have been taken to reinforce the functioning of Copyright Office through digitization, re-engineering of registration processes and augmentation of manpower.

OTHER INITIATIVES

- Initiative for start-up, the DPIIT, a nodal agency for the purpose launched the "Scheme for Facilitating Start-ups Intellectual Property Protection (SIPP)".The Scheme, which was initially in force up to 31st March, 2017 has been subsequently extended for next 3 years. The scheme includes providing facilitators to start-ups for filing/ processing of their applications for patents, designs and trademarks and reimbursement of professional charges to facilitators by the Government.

NATIONAL INTELLECTUAL PROPERTY RIGHTS (IPR) POLICY

The Union Cabinet has approved the National Intellectual Property Rights (IPR) Policy on 12th May, 2016 that shall lay the future roadmap for IPRs in India. A nation-wide policy has been launched with an aim to improve the awareness about



the benefits of IPRs and their value to the rights-holders and the public. The scheme of IPR awareness – **Creative India, Innovative India** was launched from April 1, 2017 for duration of 3 Years (April 2017 – March 2020) by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. Salient feature of this Scheme is to conduct IP awareness programmes. The programmes include conducting workshops/seminars in collaboration with industry organizations, academic institutions and other stakeholders across the country, training programmes to create a resource pool of trainers who would conduct the IP Awareness workshops/seminars for the public, enforcement agencies and judiciary, awareness for ill effects of piracy and counterfeiting etc. In continuation with the goal of creating awareness on Intellectual Property and Innovation Management, R&D Institutions and Universities, 32 programmes have been successfully conducted with Industry associations in the year 2018-2019. Now, DIPP is the nodal point to coordinate, guide and oversee implementation and future development of IPRs in India, the responsibility for actual implementation of the plans of action will remain with the Ministries/ Departments concerned in their assigned sphere of work.[6]

These Awareness programmes propelled by the Government of India and issuance of Guidelines on the examination of computer-related inventions significantly improved the patentability environment to achieve more technological innovations and the Global Innovative Index Report of Sixth edition stands testimony for this. As per the Global Innovation Index 2020, China, Vietnam, India, and the Philippines are the economies that have achieved significant progress in their GII innovation ranking over time. All four are now in the top 50 among the lower middle income group; India now ranks 3rd among economy group, a new milestone.[7]

CONCLUSION

Intellectual Property Rights are the monopoly rights that provide the holders privilege of the exclusive right on their inventions. In this digitized and knowledge driven era, it is more important that IP holders are expected to know the benefits arising out of Intellectual Property rights. Indeed, National IPR Policy replicates the extent to which governments engage in educational campaigns promoting IPR awareness which is noteworthy. India continuously examined the accession to some multilateral treaties which are in India's interest and engage itself constructively in the negotiation of international treaties and agreements. It is crucial to develop IPR policy and law, strategy, administration and its enforcement policy in order to harness the full potential of IPRs for economic growth.

[6] *https://dipp.gov.in/sites/default/files/National_IPR_Policy_English.pdf*

[7] *https://www.wipo.int/edocs/pubdocs/en/wipo_pub_gii_2020.pdf*

ARTICLE

Pre-Packaged Insolvency Resolution Process - "PIRP" for MSME Sector

The President of India has promulgated the Ordinance namely The Insolvency & Bankruptcy Code (Amendment) Ordinance, 2021 to further amend I&B Code, 2016. By this Ordinance the provisions for Pre-packaged Insolvency Resolution Process are introduced in the Code by inserting Chapter III-A in the Code with addition of sections 54A to 54P & addition of the word Pre-packaged Insolvency at various places in the Code wherever required to give effect to the newly envisaged resolution for MSME sector in India through Pre-packed Insolvency Resolution Process.

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Preface: COVID-19 pandemic has impacted businesses, financial markets and economies all over the world, including India, and has impacted the business operations of micro, small and medium enterprises – ***MSME sector*** and exposed many of them to financial distress. The Government has taken several measures to mitigate the distress caused by the pandemic including increasing the minimum amount of default for initiation of corporate insolvency resolution process to one crore rupees and suspending filing of applications for initiation of corporate insolvency resolution process in respect of the defaults arising during the period of one year beginning from 25th March 2020. Such suspension for filing of applications for initiation of corporate insolvency resolution process has ended on 24th March 2021.

Micro, small and medium enterprises are critical for India's economy as they contribute significantly to its gross domestic product and provide employment to a sizeable population it is expedient to provide an efficient alternative of insolvency resolution process for entities classified as micro, small and medium enterprises ensuring quicker, cost-effective and value maximizing outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserves jobs & in order to achieve these objectives, it is considered expedient to introduce a Pre-Packaged Insolvency Resolution Process – "***PIRP"*** for ***MSMEs*** i.e the corporate persons classified as micro, small and medium enterprises as per MSME Act 2006 as amended and became effective from 1st July 2020.

What is MSME Sector in India…?

Class of MSME	Capital in Investment in Plant and Machinery or Equipment (Rs. In Crore)	Cap in Turnover (Rs. In Crore)	PIRP Applicability
Micro Enterprise	1 crore	5 crores	Yes
Small Enterprise	10 crores	50 crores	Yes
Medium Enterprise	50 crores	250 crores	Yes

What is the Pre-packaged Insolvency Resolution Process ("PIRP") under Insolvency Code…?

Important & notable points under PIRP for the MSMEs i.e Companies / LLPs which is referred to as Corporate Debtor in the process	
1.	**Nature of the process:** PIRP is basically in the nature of **One Time Settlement** ("**OTS**") with lenders before NCLT
2.	**Introduction of PIRP in IBC:** In **Chapter III** of the Principal IBC Act, the **Chapter IIIA** is inserted (**Section 54A to section 54P)- Pre-Packaged Insolvency Resolution Process**

3.	**Default amount to go for PIRP:** PRIP can be initiated only when there is default in repayment of loan of **Rs. 10 lakhs** & more. There is no upper limit prescribed for the default amount but off course the criteria being MSME should be satisfied to opt for PIRP process.
4.	**Cooling period of 3 years:** Company has not undergone PIRP or completed CIRP, as the case may be, during the period of three years preceding the initiation date.
5.	**Eligibility: Persons not eligible to be resolution applicant (Section 29A):** This applies to the PIRP framework. Broadly, it seems that the sub-committee is unwilling to provide a second chance to habitual/chronic defaulters. This is a departure from international practice, which allows CDs to submit resolution plan without any bar. There is a strong case for allowing CDs, irrespective of eligibility under section 29A of the Code, to submit resolution plan that will maximise value of the CD. The FCs are now more in tune with the insolvency regime and can take commercially wise decisions and consequently, we are of the view that the CoC should have the power to decide on all resolution plans including by an ineligible promoter and should not be mandated under law. Some kind of relaxation like exemptions for non-compliance with section 29(A)(c) (NPA of at least 1 year), should be considered so that a promoter is not disqualified due to other group entities. This can be particularly relevant for MSME's. Certain checks and balances like resolution value not less than the fair value of the CD can be introduced to address any concern on habitual/chronic defaulters.
6.	**Authorisations OR Approvals:** • Board of directors in Board Meeting • Shareholders to approve the move with special resolution in general meeting • Financial Creditors with 66% majority in COC meeting • National Company Law Tribunal i.e Adjudicating Authority – NCLT
7.	**Trade creditors / operational creditors interest:** PIRP can be exercised only when trade creditors/operational creditors interest is not affected
8.	**Limited role of Insolvency Resolution Professional:** Directors can engage consultant/ Insolvency Professional to prepare the resolution plan for restructuring the debt obligations of the company to be submitted before the lenders/ bankers of the company. The role of resolution professionals during the PPIRP is mostly supervisory in nature and not managing the CD like in a CIRP under the Code. The resolution professionals have to work in tandem with the management of the company i.e. corporate debtor i.e. CD who continue to manage the CD especially for collation of claims, preparation of information memorandum ("IM"), reporting avoidance transactions, and ensuring transparency and fairness of the entire process, safeguard stakeholders interests and compliance with laws. There is scope for friction between resolution professional and management of the CD, however, as highlighted earlier, the premise of the PPIRP is the willingness of the management of the CD to resolve the CD - without which pre-pack cannot be a viable option for resolution. Resolution professionals will need to be careful to avoid conflict of interest and maintain their independence and objectivity as required as regulated persons by the Insolvency and Bankruptcy Board of India ("IBBI"). The PIRP framework does not provide for replacement of resolution professional, which we think is not in the best interests and FCs should have the option to replace a resolution professional if unsatisfied.
9.	**Deliberation between Bankers/Lenders / Financial Creditors:** In case the lenders in consultation with each other finds it appropriate to accept the restructuring plan as envisaged by the company as duly approved by the shareholders of the company the same can be filed before the Adjudicating Authority i.e **National Company Law Tribunal** ("**NCLT**") for its approval.
10.	**Committee of Creditors – COC:** Committee of Lenders/bankers (financial creditors who are not related parties to the company) shall be formed to take the decisions in the process.
11.	**Appointment of Resolution professional:** While filing the application before NCLT for initiating the PIRP the Resolution Professional shall be appointed by the lenders – as may be suggested by the company or of the choice of lenders

12.	**Appointment of registered valuers:** The resolution professional shall within three days of his appointment, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor: **Fair value and liquidation value:** The registered valuers appointed under regulation 38 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor; The average of the value determined by the two registered valuers shall be considered the fair value or the liquidation value, as the case maybe. After the receipt of resolution plans in accordance with the Code and these Regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself orany other person.
13.	**Control over the company:** The existing management shall remain intact and the control of the company shall remain with the promoters/management of the company only and not taken over by the lenders in the PIRP unlike CIRP – ***This is the biggest relief to the promoters of the company***
14.	**Resolution professional – the facilitator instead of manager:** Resolution professional shall run the PIRP process as may be required under the provisions of IBC & directions of lenders & promoters. He shall act as facilitator between the company, lenders & the NCLT to smoothly complete the process.
15.	**PIRP Cost:** The cost of running the PIRP is the responsibility of the company. As compared to CIRP the cost of running PIRP is very lesser as basically it is kind of a voluntary restructuring of the company by the promoters and hence no unnecessary litigations and delay in completing the process.
16.	**Duration:** Time duration to complete the PIRP is 90 days
17.	**NCLT Approval:** Restructuring or resolution Plan as provided by the company shall be put before NCLT for its approval only when 66% of the COC members vote in favour of such plan under PIRP
18.	**Preference to PRIP Over CIRP by NCLT:** Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7 or section 9 or section 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.
19.	**What if PIRP failed…?** In case the COC not approved the restructuring plan then PIRP ends there only and the company shall stand at its original position of pre pre-pack initiation and there is no event of taking off the control of the company from the promoters/management of the company by the bankers/COC. Considering the existing stressed financial position the PIRP shall prove as a boon if tried for considering the expedient initiative by the Government in the resolution of financially stressed conditions with little cost & bigger benefits with no additional risk or losses or fear of losing the company to bankers.

Types of arrangements / resolution or restructuring plans as envisaged under IBC:

As envisaged in regulation 37 of CIRP regulations:	
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, ***including but not limited to the following:***	
Resolution Strategies	
1.	transfer of all or part of the assets of the corporate debtor to one or more persons
2.	sale of all or part of the assets whether subject to any security interest or not
3.	restructuring of the corporate debtor, by way of merger, amalgamation and demerger
4.	the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
5.	cancellation or delisting of any shares of the corporate debtor, if applicable
6.	satisfaction or modification of any security interest;
7.	curing or waiving of any breach of the terms of any debt due from the corporate debtor;

8.	reduction in the amount payable to the creditors;
9.	extension of a maturity date or a change in interest rate or other terms of a debt duefrom the corporate debtor;
10.	amendment of the constitutional documents of the corporate debtor;
11.	issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;
12.	change in portfolio of goods or services produced or rendered by the corporate debtor;
13.	change in technology used by the corporate debtor; and
14.	obtaining necessary approvals from the Central and State Governments and other authorities
15.	Any other type of **resolution strategy** may be introduced by the resolution applicant considering its legality and viability.

Pre-pack insolvency resolution - PIRP *Vs* normal IBC processi.e CIRP:

Criteria	Pre-Packaged Insolvency Resolution Process (PIRP)	Corporate Insolvency Resolution Process (CIRP)
Eligibility	Only MSMEs	All corporate debtors
Default threshold	Minimum Rs 10 Lacs	Minimum Rs 1 crore
Initiation by	Only Corporate Debtor (CD), post approval by shareholders & unrelated Financial Creditors	Financial Creditor/Operational Creditor/Corporate Debtor
Timeline	90 days to submit resolution plan to adjudicating authority, 120 days for entire process. No extension	180 days extendable upto max 330 days
Management Control	Corporate Debtor-in-Possession with Creditor-in-Control	Creditor in control
Resolution plan	CD to submit Base Resolution Plan. If CoC rejects, or if Operational Creditors not paid in full, competing bids can be invited.	EOIs invited from all prospective resolution applicants.
Section 29A applicability	Section 29A applicable	Section 29A applicable
Consequence of failure	Termination of PIRP, or liquidation or initiation of CIPR	Liquidation
Moratorium	Moratorium protection from date of commencement	Moratorium protection from date of admission of application by Adjudicating Authority
Termination	Can terminate process with minimum 66% of CoC votes	Section 12A to withdraw from CIRP with 90% vote of CoC
Other terms	If promoters not diluting equity as part of resolution, CoC needs to record reasons for it PIRP cannot run in parallel to CIRP3-year cool-off period from any other PIRP, CIRP	--

List of FORMS / FORMATS prescribed under PIRP Regulations –

Sr No	FORMS	Particulars
1.	**Form-1**	Application by corporate applicant to initiate PIRP under chapter IIIA of the code
2.	**FORM P1**	WRITTEN CONSENT of the resolution professional to act as the RP in the matter
3.	**FORM P2**	List of creditors of the corporate debtor i,e company
4.	**FORM P3**	Approval of terms of appointment of resolution professional
5.	**FORM P4**	Approval for initiating PIRP by the bankers / FCs

6.	FORM P5	Written consent to act as authorised representative for class of creditors if any
7.	FORM P6	Declaration by director/partners – eligibility

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8.	FORM P7	Declaration regarding existence of avoidance transaction(s)
9.	FORM P8	Report of the insolvency professional
10.	FORM P9	Public announcement - FOR THE ATTENTION OF THE CREDITORS OF THE COMPANY
11.	FORM P10	List of claims
12.	FORM P11	Invitation for resolution plans
13.	FORM P12	Compliance certificate for the resolution plan by Resolution Professional
14	FORM P13	Application for Termination Of PIRP
15	FORM P14	Application for vesting management with resolution professional

CONCLUSION

We believe that the PIRP process is a great enabler to the MSME Sector in India in the present situation of totally messed-up business conditions due to various reasons including Covid 19 pandemic. MSMEs can take advantage of this expedient initiative of PIRP process and streamline their businesses by having the restructuring of debts with lenders with the blessings of NCLT. Since the process shall be finally approved by the NCLT Tribunal the bankers/lenders shall be more enthusiastic to try for the best resolutions as there would be no suspicion on the part of bank officials with respect to the concessions given to the MSME companies under PIRP including any haircut taken by the bankers.

It will be a boon for the MSMEs and consequently boon for the nation at large as after all as per the govt. data approximately 70% companies' falls under MSME sector in India.

2 LEGAL WORLD

- TATA CONSULTANCY SERVICES LTD v. CYRUS INVESTMENTS PVT LTD & ORS [SC]
- BRILLIO TECHNOLOGIES PVT. LTD v. REGISTRAR OF COMPANIES & ANR [NCLAT]
- NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY v. ANAND SONBHADRA [NCLAT]
- INTERNATIONAL SPIRITS & WINES ASSOCIATION OF INDIA v. UTTARAKHAND AGRICULTURAL PRODUCE MARKETING BOARD & ORS [CCI]
- S. KANNAN & ANR v. ASIAN PAINTS LTD & ORS [CCI]
- RADHA KRISHAN INDUSTRIES v. STATE OF HIMACHAL PRADESH [SC]
- BANANA IP COUNSELS LLP v. NISHA KURIAN [Del]

Corporate Laws

Landmark judgement

LMJ 05: 05: 2021

TATA CONSULTANCY SERVICES LTD v. CYRUS INVESTMENTS PVT LTD & ORS [SC]

Civil Appeal No.440 - 441 0f 2020 with connected appeals

A.S.Bobde, A.S. Bopanna & V. Ramasubramanian,JJ. [Decided on 26/03/2021]

Companies Act,2013- section 242- oppression and mismanagement- removal of chairman- minority group alleges acts of oppression and mismanagement- NCLT dismissed the petition- NCLAT allowed the appeal of the minority group- Whether correct- Held, No.

Brief facts:

This is the final match between Tata sons and SP group in the fight in which CPM was removed from the Chairman post. NCLT upheld the action taken by Tata sons while, NCLAT on appeal, turned down the decision of the NCLT. Both the groups i.e., Tata and Tata trust companies on one hand and SP Group on the other hand challenged the decision of NCLAT. In total there were 15 Civil Appeals, 14 of which are on Tata's side, assailing the Order of NCLAT in entirety. The remaining appeal is filed by the opposite SP group, seeking more reliefs than what had been granted by the Tribunal.

Decision: Tata Sons appeals are Allowed. SP group appeals are dismissed.

Reason:

The first question of; aw arising for consideration is whether the formation of opinion by the Appellate Tribunal that the company's affairs have been or are being conducted in a manner prejudicial and oppressive to some members and that the facts otherwise justify the winding up of the company on just and equitable ground, is in tune with the well settled principles and parameters, especially in the light of the fact that the findings of NCLT on facts were not individually and specifically overturned by the Appellate Tribunal ?

Ans: But all these arguments lose sight of the nature of the company that Tata Sons is. As we have indicated elsewhere, Tata Sons is a principal investment holding Company, of which the majority shareholding is with philanthropic Trusts. The majority shareholders are not individuals or corporate entities having deep pockets into which the dividends find their way if the Company does well and declares dividends. The dividends that the Trusts get are to find their way eventually to the fulfilment of charitable purposes. Therefore, NCLAT should have raised the most fundamental question whether it would be equitable to wind up the Company and thereby starve to death those charitable Trusts, especially on the basis of uncharitable allegations of oppressive and prejudicial conduct. Therefore, the finding of NCLAT that the facts otherwise justify the winding up of the Company under the just and equitable clause, is completely flawed.

The second question of law arising for consideration is as to whether the reliefs granted, and directions issued by NCLAT including the reinstatement of CPM into the Board of Tata Sons and other Tata Companies are in consonance with (i) the pleadings made, (ii) the reliefs sought and (iii) the powers available under Sub-Section (2) of Section 242.

Ans: As we have seen already, the original motive of the complainant companies, was to restrain Tata Sons from removing CPM as Director. Subsequently, there was a climb down and the complainant companies sought what they termed as "reinstatement" of a representative of the complainant companies. Thereafter, it was modulated into a cry for proportionate representation on the Board.

In other words, the purpose of an order both under the English Law and under the Indian Law, irrespective of whether the regime is one of "oppressive conduct" or "unfairly prejudicial conduct" or a mere "prejudicial conduct", is to bring to an end the matters complained of by providing a solution. The object cannot be to provide a remedy worse than the disease. The object should be to put an end to the matters complained of and not to put an end to the company itself, forsaking the interests of other stakeholders. It is relevant to point out that once upon a time, the provisions for relief against oppression and mismanagement were construed as weapons in the armoury of the shareholders, which when brandished in terrorem, were more potent than when actually used to strike with. While such a position is certainly not desirable, they cannot today be taken to the other extreme where the tail can wag the dog.

The Tribunal should always keep in mind the purpose for which remedies are made available under these provisions, before granting relief or issuing directions. It is on the touchstone of the objective behind these provisions that the correctness of the four reliefs granted by the Tribunal should be tested. If so done, it will be clear that NCLAT could not have granted the reliefs of (i) reinstatement of CPM (ii) restriction on the right to invoke Article 75 (iii) restraining RNT and the Nominee Directors from taking decisions in advance and (iv) setting aside the conversion of Tata Sons into a private company.

The third question of law to be considered is as to whether NCLAT could have, in law, muted the power of the company under Article 75 of the Articles of Association, to demand any member to transfer his shares, by injuncting the company from exercising the rights under the Article, even while refusing to set aside the Article.

Ans: It was contended that Article 75 was repugnant to Sections 235 and 236 of the Companies Act, 2013. We do not know how these provisions would apply. Section 235 deals with a scheme or contract involving transfer of shares in a Company called the transferor company, to another called the transferee company. Similarly, Section 236 deals with a case where an acquirer acquired or a person acting in concert with such acquirer becomes the registered holder of

90% of the equity share capital of the Company, by virtue of amalgamation, share exchange, conversion of securities etc. These provisions have no relevance to the case on hand.

Even the contention revolving around Section 58(2) is wholly unsustainable, as Section 58(2) deals with securities or other interests of any member of a Public Company. Therefore, the order of NCLAT tinkering with the power available under Article 75 of the Articles of Association is wholly unsustainable. It is needless to point out that if the relief granted by NCLAT itself is contrary to law, the prayer of the S.P. Group in their Appeal C.A. No.1802 of 2020 asking for more, is nothing but a request for aggravating the illegality.

The fourth question of law to be considered is whether the characterisation by the Tribunal, of the affirmative voting rights available under Article 121 to the Directors nominated by the Trusts in terms of Article 104B, as oppressive and prejudicial, is justified especially after the challenge to these Articles have been given up expressly and whether the Tribunal could have granted a direction to RNT and the Nominee directors virtually nullifying the effect of these Articles.

Ans: Affirmative voting rights for the nominees of institutions which hold majority of shares in companies have always been accepted as a global norm. As a matter of fact, the affirmative voting rights conferred by Article 121 of the Articles of Association, confers only a limited right upon the Directors appointed by the Trusts under Article 104B. Article 121 speaks only about the manner in which matters before any meeting of the Board shall be decided. If it is a General Meeting of Tata Sons, the representatives of the two Trusts will actually have a greater say as the Trusts have 66% of shares in Tata Sons. Therefore, if we apply Section 152(2) strictly, the Trusts which own 66% of the paid-up capital of Tata Sons will be entitled to pack the Board with their own men as Directors. But under Article 104B, only a minimum guarantee is provided to the two Trusts, by ensuring that the Trusts will have at least 1/3 rd of the Directors, as nominated by them so long as they hold 40% in the aggregate of the paid-up share capital.

Under Section 10(1) of the Companies Act, 2013, the Articles of Association bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member. However, this is subject to the provisions of the Act. Article 94 of the Articles of Association of Tata Sons is in tune with Section 47(1)(b), as it says that upon a poll, the voting rights of every member, whether present in person or by proxy shall be in proportion to his share of the paid-up capital of the company. Therefore, a shareholder or a group of shareholders who constitute majority, can always seek to be in the driving seat by reserving affirmative voting rights. So long as these special rights are incorporated in the Articles of Association and so long as they are not in contravention of any of the provisions of the Act, the same cannot be attacked on these grounds.

Coming to the argument revolving around the duty of a Director, it is necessary that we balance the duty of a Director, under Section 166(2) to act in the best interests of the company, its employees, the shareholders, the community and the protection of environment, with the duties of a Director nominated by an Institution including a public charitable trust. They have fiduciary duty towards 2 companies, one of which is the shareholder who nominated them and the other, is the company to whose Board they are nominated. If this is understood, there will be no confusion about the validity of the affirmative voting rights. What is ordained under Section 166(2) is a combination of private interest and public interest. But what is required of a Director nominated by a charitable Trust is pure, unadulterated public interest. Therefore, there is nothing abhorring about the validity of the affirmative voting rights.

The claim for proportionate representation can also be looked at from another angle. RNT who was holding the mantle as the Chairman of Tata Sons for a period of 21 years from 1991 to 2012, actually conceded a more than proportionate share to the S.P. Group by nominating CPM as his successor. Accordingly, CPM was also crowned as Executive Deputy Chairman on 16.3.2012 and as Chairman later. CPM continued as Executive Chairman till he set his own house on fire in 2016. If the company's affairs have been or are being conducted in a manner oppressive or prejudicial to the interests of the S.P. group, we wonder how a representative of the S.P. Group holding a little over 18% of the share capital could have moved up to the topmost position within a period of six years of his induction. Therefore, we are of the considered view that the claim for proportionate representation on the Board is neither statutorily or contractually sustainable nor factually justified. 19.49 Placing reliance upon section 163 of the Companies Act, 2013, it was contended that proportionate representation is statutorily recognised. But this argument is completely misconceived. Section 163 of the 2013 Act corresponds to section 265 of the 1956 Act. It enables a company to provide in their Articles of Association, for the appointment of not less than two thirds of the total number of Directors in accordance with the principle of proportionate representation by means of a single transferable vote. First of all, proportionate representation by means of a single transferable vote, is not the same as representation on the Board for a group of minority shareholders, in proportion to the percentage of shareholding they have. It is a system where the voters exercise their franchise by ranking several candidates of their choice, with first preference, second preference etc. Moreover, it is only an enabling provision, and it is up to the company to make a provision for the same in their Articles, if they so choose. There is no statutory compulsion to incorporate such a provision.

Therefore, the fourth question of law is also to be answered in favour of the Tata group and the claim in the cross appeal relating to affirmative voting rights and proportionate representation are liable to be rejected.

The 5th question of law formulated for consideration is as to whether the reconversion of Tata Sons from a public company into a private company, required the necessary approval under section 14 of the Companies Act, 2013 or at least an action under section 43A(4) of the Companies Act, 1956 during the period from 2000 (when Act 53 of 2000 came into force) to 2013 (when the 2013 Act was enacted) as held by NCLAT ?

Ans: Interestingly, it is not disputed by anyone that today Tata Sons satisfy the parameters of section 2(68) of the 2013 Act. The dispute raised by the S.P. Group and accepted by NCLAT is only with regard to the procedure followed for reconversion. NCLAT was of the opinion that Tata Sons ought to have followed the procedure prescribed in Section 14(1)(b) read with Subsections (2) and (3) of Section 14 of

the Companies Act, 2013 for getting an amended certificate of incorporation. NCLAT was surprised (quite surprisingly) that Tata Sons remained silent for more than 13 years from 2000 to 2013 without taking steps for reconversion in terms of Section 43A(4) of the 1956 Act. While on the one hand, NCLAT took note of the "lethargy" on the part of Tata Sons in taking action for reconversion, NCLAT, on the other hand also took adverse notice of the speed with which they swung into action after the dismissal of the complaint by NCLT.

But what NCLAT failed to see was that Tata sons did not become a public company by choice but became one by operation of law. Therefore, we do not know how such a company should also be asked to follow the rigors of Section 14(1)(b) of the 2013 Act. As a matter of fact, Section 14(1) does not ipso facto deal with the issue of conversion of private company into a public company or vice versa. Primarily, Section 14(1) deals with the issue of alteration of Articles of Association of the company. Incidentally, Section 14(1) also deals with the alteration of Articles "having the effect of such conversion".

By virtue of the proviso to subsection(1A) of Section 43A of the 1956 Act, Tata Sons continued to have articles that covered the matters specified in subclauses (a), (b) and (c) of Clause(iii) of Subsection(1) of Section 3 of the 1956 Act. Though it did not have the additional stipulation introduced by Act 53 of 2000, namely the stipulation relating to acceptance of deposits from public, this additional requirement disappeared in the 2013 Act. Therefore, Tata Sons wanted a mere amendment of the Certificate of Incorporation, which is not something that is covered by Section 14 of the 2013 Act. NCLAT mixed up the attempt of Tata Sons to have the Certificate of Incorporation amended, with an attempt to have the Articles of Association amended. Since Tata Sons satisfied the criteria prescribed in Section 2(68) of the 2013 Act, they applied to the Registrar of companies for amendment of the certificate. The certificate is a mere recognition of the status of the company, and it does not by itself create one.

The only provision that survived after 13.12.2000 was Subsection (2A) of Section 43A. It survived till 30012019 until the whole of the 1956 Act was repealed. There are two aspects to Sub section (2A). The first is that the very concept of "deemed to be public company" was washed out under Act 53 of 2000. The second aspect is the prescription of certain formalities to remove the remnants of the past. What was omitted to be done by Tata Sons from 2000 to 2013 was only the second aspect of Subsection (2A), for which Section 465 of the 2013 Act did not stand as an impediment. Section 43A(2A) continued to be in force till 3001 2019 and hence the procedure adopted by Tata Sons and the RoC in July/August 2018 when section 43A(2A) was still available, was perfectly in order.

Therefore, question of law No. 5 is accordingly answered in favour of Tata Sons and as a consequence, all the observations made against the appellants and the Registrar of companies in Paragraphs 181, 186 and 187 (iv) of the impugned judgment are set aside.

Thus, in fine, all the questions of law are liable to be answered in favour of the appellants Tata group and the appeals filed by the Tata Group are liable to be allowed and the appeal filed by S.P. Group is liable to be dismissed.

LW 33: 05: 2021

BRILLIO TECHNOLOGIES PVT. LTD v. REGISTRAR OF COMPANIES & ANR [NCLAT]

Company Appeal (AT) No. 293 of 2019

Jarat Kumar Jain & Kanthi Narahari. [Decided on 19/04/2021]

Companies Act,2013- section 66- reduction of share capital- scheme envisaged reduction of capital by way of reducing promoter shares- NCLT rejected the petition- whether correct- Held, Yes.

Brief facts:

The Board of Directors of the Company resolved to reduce the equity share capital, by reducing 89,52,637/-equity shares of Re. 1/-each from non- promoter equity shareholders for a consideration of Rs. 5,61,33,034/- being 89,52,637/- equity shares of Re. 1/- each with premium of Rs. 5.27/- per share paid out of the Securities Premium Account. The Security Premium Account of Rs. 15,24,81,955/- shall accordingly be reduced to Rs. 10,53,01,558/-. Thereafter, an Extraordinary General Meeting was held on 04.02.2019, wherein by special resolution duly passed in accordance Section 66 (1) read with Section 114 of the Act, the 100% members present, voted in favour of the resolution for reduction of share capital of the Company.

NCLT observed that no objections have been received from creditors and consent affidavits on their behalf has not been produced. Ld. Tribunal held that as per Section 52 (2) of the Act, Security Premium Account may be used only for the purpose specifically provided under Section 52 (2) of the Act. Selective reduction in equity share capital to a particular group involving non-promoter shareholders and bringing the company as a wholly owned subsidiary of its current holding company and also return excess of capital to them. This is an arrangement between the company and shareholders or a class of them and hence, it is not covered under Section 66 of the Act. However, the case may be covered under Sections 230-232 of the Act. Wherein compromise or arrangement between the Company and its creditors or any class of them or between a Company and its members or any class of them is permissible. Therefore, the Company failed to make out any case under Section 66 of the Act and thus, the petition is dismissed with the liberty to file appropriate application as per extant provisions of the Act.

Decision: Appeal allowed.

Reason:

The grounds of dismissal of the Petition and issues raised by the Respondents were answered by the Appellate Tribunal as under:

Ground (i): No proper genuine reason has been given for reduction of share capital.

Ans: The non-promoter shareholders requested the company to provide them an opportunity to dispose of their shareholding in the petitioner company. (Please see Pg. 500 to 509 Vol. 3 of Appeal Paper Book). There is no law that a Company can reduce its capital only to reduce any kind of

accumulated loss. With the aforesaid it cannot be said that the Appellant Company has not given any genuine reason for reduction of share capital.

Ground (ii): Consent affidavit from creditors has not been obtained.

Ans: Admittedly, after service of notice, no representation has been received from the creditors within three months. Therefore, as per proviso to Section 66(2) of the Act, it shall be presumed that they have no objection to the reduction. Thus, we are of the view that the observation of Ld. Tribunal in Para 11 of the impugned order "It is observed that while objections have not been received from creditors, neither has any consent affidavits on their behalf been produced, with regard to reduction of share capital." is erroneous.

Ground (iii): Security Premium Account cannot be utilized for making payment to the non-promoter shareholders.

Ans: The argument of the Regional Director (NR) is that the "Securities Premium Account" can be applied only for the specific four purposes mentioned in Section 78(2) of the Act and for no other purpose. In my view, the interpretation advanced by learned counsel for the Regional Director (NR) is not correct. If the interpretation as advanced by the Regional Director (NR) is accepted, it would render otiose the provisions contained in sub-Section (1) of Section 78. The entire Section 78 has to be read as a whole and all the sub-Sections of this Section have to be read and interpreted so as to give a meaningful interpretation.

(After discussing various judgements) In the light of the aforesaid Judgments, we are of the view that the SPA can be utilized for making payment to non-promoter shareholders. We are unable to convince with the submissions made by Ld. Counsel for the Respondents that the amount laying the SPA can be applied by the company, only for the purposes which are specifically provided in sub-Section 2 of Section 52 of the Act and for no other purpose.

Ground (iv): Selective reduction of shareholders is not permissible.

Ans: It is clear, that majority shareholders have decided to reduce the share capital. Normally, decision of the majority is to prevail. It is also their right to decide the manner in which the shareholding is to be reduced and, in the process, they can decide to target a particular group (of course it is to be seen that this is not with mala fide and unfair motive which aspect is discussed hereinafter). Thus, such a step cannot be treated as buying back the shares and the provisions of Section 77A of the Act would not be attracted. Similarly, there is no question of following provisions of Section 391 of the Act, although in the instant case even the procedure prescribed therein has been substantially followed. Likewise, provisions of Article 300A of the Constitution of India would not be attracted.

In the light of aforesaid proposition of law, we can safely hold that selective reduction is permissible if the non-promoter shareholders are being paid fair value of their shares. In the present case, none of the non-promoter shareholders of the Company have raised objection about the valuation of their shares. It is nobody's case that the proposed reduction is unfair or inequitable. It is also made clear that the proposed reduction is for whole non-promoter shareholders of the company.

Ground (v): The Petition for reduction of capital under Section 66 of the Act, is not maintainable. However, it may be filed under Section 230-232 of the Act.

Ans: With the aforesaid citation, we hold that Section 66 of the Companies Act, 2013 makes provision for reduction of share capital simpliciter without it being part of any scheme of compromise and arrangement. The option of buyback of shares as provided in Section 68 of the Act, is less beneficial for the shareholders who have requested the exit opportunity.

Admittedly, there is a provision in Article 45 and 47 of the Article of Association that the company may by special resolution reduced its capital and, in the EGM, held on 04.02.2019 a special resolution was duly passed for reduction of share capital. The Appellant Company has pleaded the genuine reason for reduction of share capital and has secured the rights of 171 non- promoter shareholders who are not traceable.

With the aforesaid we are of the view that the Tribunal has erroneously held that the Application for reduction of share is not maintainable under Section 66 of the Act, consent affidavits from the creditors is mandatory for reduction of share capital, SPA cannot be utilized for making payment to non- promoter shareholders, consent from 171 non-promoter shareholders who are not traceable is required, selective reduction of shareholders of non-promoter shareholders is not permissible. The Tribunal has dismissed the Application on untenable grounds. Therefore, we hereby set aside the impugned order passed by the Tribunal and the reduction of equity share capital resolved by the special resolution set out in Paragraph 11 of the Petition is hereby confirmed.

LW 34: 05: 2021

NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY v. ANAND SONBHADRA [NCLAT]

Company Appeal (AT) (Ins) No.1183 of 2019

A.I.S. Cheema, A. B. Singh & Shreesha Merla, [Decided on 16/04/2021]

Insolvency and Bankruptcy Code,2016- CIRP- lease of industrial plot- whether a financial lease- Held, No.

Brief facts:

This Appeal has been field by the Appellant - New Okhla Industrial Development Authority (NOIDA - in short) against Respondent - Resolution Professional of Corporate Debtor - M/s. Shubhkamna Buildtech Pvt. Ltd. In the Corporate Insolvency Resolution Process (CIRP - in short) started against the Corporate Debtor, the Appellant a Statutory Authority filed Form 'B' as Operational Creditor for dues outstanding against lease of plot granted in favour of the Corporate Debtor which amount was of Rs.99,32,55,183. The Representative of the Appellant even attended COC (Committee of Creditors) as Operational Creditor. Later, the Appellant filed claim in Form 'C' seeking status of NOIDA as Financial Creditor. As there was no response by the Resolution Professional (RP - in short), the Appellant entered into correspondence and even moved Adjudicating Authority (National Company Law Tribunal, New Delhi) which passed Orders on 26.07.2019 and sent matter to the Resolution Professional but still when the Appellant was not treated as Financial Creditor, Application CA 257/ND/2019 was filed claiming that RP had disobeyed

earlier directions and that Appellant deserved to be treated as Financial Creditor and should be permitted to participate in COC with voting rights.

The matter was taken up before the Adjudicating Authority and the Adjudicating Authority after hearing both sides held that the lease deed concerned was not a financial lease as per the terms laid down under the guidelines of "Indian Accounting Standards". Thus, the present Appeal.

Decision: Appeal Dismissed.

Reason:

The Appellant, even after creating the lease kept with itself all the rights to control and monitor the project which was to come up. The Appellant of course now has tried to say in the Appeal that it was "only exercising minor supervision over the land use" (see 9.12 of the Appeal), which we do not agree to. What we can see from the Lease Deed which we have just referred in brief, is that the acts which could be performed by the lessee, were fully controlled by the Appellant. The lessee, of course, had the liberty to construct and transfer the flats by way of sublease. The above discussion shows that while risks and liabilities were transferred to the lessee, the rewards incidental to ownership were not transferred. There is no Clause of transfer of ownership at the end of lease term. There is no option given to the lessor to purchase the asset at a price that is accepted to be sufficiently lower than the fair value. The lease is for a term of 90 years. For life of a land, 90 years cannot be said to be major part of economic life of the asset. There are no calculations available, and the Lease Deed does not state that the present value of the lease payments amounts to at least substantially all of the fair value of the asset i.e., the land. The right to cancel the lease by the lessor are specified at various places in the lease deed, however, there is no option to the lessee to step out. There is no option available in the lease deed for the lessee to continue lease for secondary period. This is, leave apart, the indicator which requires that said secondary period should be at a rent that is substantially lower than market rent.

Thus, when we have gone through the Lease Deed keeping the classification of leases and the indicators mentioned above, we do not find that the lease deed in question can be said to be a finance lease. Keeping in view the Indian Accounting Standards, what appears broadly is that when lease involves real estate (like land in present matter) with a fair value different from it carrying amount, the lease can be classified as a finance lease if the lease transfers ownership of the property to the lessee by the end of the lease term or there is bargain purchase option. The lease must transfer substantially all the risks and also rewards incidental to ownership of the asset.

The argument of the Appellant trying to mix up transfer of ownership of the asset which is land with right to transfer flats to be constructed has no substance. Merely, because the lessee was given right to fix the price of the dwelling units to be constructed, that by itself is not sufficient to say that the lease of the land is a finance lease. The argument of the Appellant that lessee has an option to pay onetime lease rent and that if such right was exercised lessee would not be required to pay further rent and that this shows that present value of the lease payment amounts to at least substantially all of the fair value of the asset, is also baseless. No material is brought to show as to what is and would be the fair value. With regard to right to cancel lease, it is reserved with the lessor but not the lessee. The Appellant argues that the question of cancellation of lease deed by lessee would not arise as lessee would build and transfer dwelling units. This is speculative and cannot be helpful in construing the document. Again, it is not that the right to land would get transferred to the flat purchasers (who are referred rather as sub-lessees). We do not find substance in the arguments being raised by the Appellant to bring the Lease Deed within the requirements of Indian Accounting Standards. We rather find substance in the submissions of the Respondent as recorded in the Chart reproduced supra.

In the present matter, there is no sale of land. It is lease, for premium /rent with almost all rights controlled by the Lessor. We have gone through the provisions of Section 5(8)(f) and also when we keep the above observations of the Hon'ble Supreme Court of India, we are unable to persuade ourselves to accept the submission that when land is leased out, if premium is fixed and instalments are given, it should be treated as a financial lease. We do not find substance in this argument.

We may record that we are not finding fault with the various terms and conditions in the Lease Deed. It is a Lease Deed from a development authority which has the object of developing the township and thus wants to control the manner in which the constructions of housing come up. That purpose is alright. However, such lease does not fit in with the requirements of Indian Accounting Standards which we have referred. Just to be part of COC, the lease of land between developing authority and the builders cannot be considered or treated as a financial lease.

Competition Law

LW 35: 05: 2021

INTERNATIONAL SPIRITS & WINES ASSOCIATION OF INDIA v. UTTARAKHAND AGRICULTURAL PRODUCE MARKETING BOARD & ORS [CCI]

Case No. 02 of 2016

A.K. Gupta, Sangeeta Verma & B.S.Bishnoi. [Decided on 30/03/2021]

Competition Act,2002- section 4- abuse of dominance- OP 1 was the sole procurement authority in the State- procurement of alcoholic beverages by OP 1 resulted in decline of sale volumes for the informant- Held to be abuse of dominance by the CCI- penalty imposed.

Brief facts:

The present case has been initiated by the Informant against Uttarakhand Agricultural Produce Marketing Board ('OP-1'), Garhwal Mandal Vikas Nigam Ltd. ('OP-2') and Kumaun Mandal Vikas Nigam Ltd. ('OP-3') (collectively referred to as 'OPs'), alleging abuse of dominance in the procurement of liquor.

Decision: Allowed.

Reason:

The Commission notes that OP-1 was the only platform/ company for procurement of IMFL and the entire process of purchase and eventual sale was done through OP-1 itself. The contention that agreements were standard market agreements, and such clauses were not implemented is not relevant for assessment whether such clauses were unfair and one-sided and accordingly, abusive in nature. The Commission places reliance on its earlier decision in the matter of Surinder Singh Barmi case wherein it was held that it was immaterial whether inclusion of clause had any anti-competitive effect, rather the unfairness of the clause needs to be seen which could only be imposed by a dominant entity. In Belaire Case, the Commission had observed that the competition concern is that a dominant entity (builder/ developer in that matter) was in a position to impose such unfair clause in its agreement with customers and bind them into one-sided contractual obligations. The Commission accordingly in the present case, observes that OP-1 being the dominant entity was in a position to impose one-sided contractual obligations.

Based on the analysis above, the Commission is of the view that the conduct of OP-1 is in violation of Section 4(2)(c) and 4(2)(b)(i), 4(2)(a)(i) of the Act. With regard to conduct of OP- 2, the Commission based on record, notes that OP-2 did make sincere efforts to discharge its obligations, laid down under the Liquor Wholesale Order, though for some intermittent period, it is not found to have raised indents. However, the Commission is convinced of the explanation given by OP-2 that such duration during which OP-2 did not raise indents was solely on account of OP-1 and it (OP-2) had no intention not to procure in consonance with the Liquor Wholesale Order. With regard to the conduct of OP-3, the Commission observes that though the defence of OP-3, cannot be said to be at par with that of OP-2, but it has stated that indents raised were lost in fire and it was also placing indents over phone. OP-1 has not denied receiving indents from the said OPs. The Commission also notes that OP-2 and OP-3 were entirely dependent on OP-1 for obtaining supplies and they could not directly procure from the IMFL manufacturers. Thus, the Commission in the fact and circumstances does not deem it fit to hold OP-2 and OP-3 to be liable and in complicit with OP-1 in respect of the contraventions of the provisions of the Act.

In view of the findings recorded by the Commission, OP-1 is directed to desist from indulging in such anti-competitive conducts which have been found to be in contravention of the provisions of the Act. The directions are given particularly having regard to the fact that the conduct in question as well as the impugned agreement has ceased to exist with effect from 19.04.2016, and all the OPs have ceased to have any role in distribution and supply of IMFL in State of Uttarakhand in the wake of change of liquor policy which operated for a limited period, i.e., 27.04.2015 to 19.04.2016.

The Commission observes that in the present case the anti-competitive conduct on the part of OP-1 had not ceased of its own accord (as cited in the above case), but on account of change in the policy of Government whereby earlier Liquor Wholesale Order ceased to have any effect and OPs were released from performance of the activity of procurement and distribution of liquor. Further, the Commission also notes that OP-1 acted against the express provisions of the Liquor Wholesale Order, which also entailed violation of the provisions of the Competition Act, 2002. Besides, the conduct was also subject matter of litigations before the Hon'ble High Court, at the instance of affected parties being the retailers as well as manufacturers. There was abject failure in undertaking distribution based on demand, which in fact was the essence of the Liquor Wholesale Order rather than mere fulfilling of MGD obligations as has been countenanced by the said OP. Further, the pleas of OP-2, to supply in accordance with demand, was also given a cold shoulder, thereby resulting in imbalance of brand wise demand and supply of IMFL which adversely affected the market constituents.

The Commission thus, in light of the above facts and circumstances, and bearing in the mind the nature and periodicity of the contravention involved and the mitigating factors canvassed by OP-1, decides to impose a penalty of an amount of ₹ 1,00,00,000/ (Rupees One Crore only) on OP1.

LW 36: 05: 2021

S. KANNAN & ANR v. ASIAN PAINTS LTD & ORS [CCI]

Case No. 53 of 2020

A.K. Gupta, Sangeeta Verma & B.S.Bishnoi. [Decided on 12/04/2021]

Competition Act,2002- sections 3 & 4- filing of criminal complaint by OP- whether constitutes abuse of dominance- Held, No.

Brief facts:

The Informant was aggrieved by the conduct of Asian Paints, which has allegedly lodged a false criminal case against the Informant's partnership firm M/s Arcus Enterprises, which is engaged in the business of manufacturing of primers and paints under the brand-name 'Arcus'. It has been alleged that the Opposite Parties lodged a false complaint with the police authorities, which resulted in a criminal case being filed against M/s Arcus Enterprises. It has been alleged in complaint that M/s Arcus Enterprises is selling damaged products stating these were sold as 'Asian Paints'. This has been alleged to be false and being filed by Asian Paints in abuse of its dominant position to drive competition out of the market and deny access to competitors. Further, it has been stated that Asian Paints is using its status as one of the largest manufacturers of paints to harass, humiliate and drive competitors out of the market and is in contravention of provisions of Sections 4 and 3(4) of the Act.

Decision: Dismissed.

Reason:

Upon consideration of the facts and circumstances of the matter and other material on record, the Commission observes that the allegations in the instant matter relate to a criminal complaint being instituted against the Informant by Asian Paints, in which investigation is underway. The Commission is in agreement with the submissions made by Opposite Parties that no facts or evidence has been brought on record which indicate violation of either of the provisions of Section 3 or Section 4 of the Act. In fact, there is no relationship either of horizontal or vertical nature between Asian Paints and M/s Arcus Enterprises which can be

examined under Section 3 of the Act. Further, the information fails to disclose as to how the provisions of Section 4 have been attracted in the present case. It cannot be said that filing of criminal complaint is with a view to oust competition in the present case and such an action is an abuse under provisions of Section 4 of the Act. Accordingly, the Commission is of the opinion that no competition concern can be said to have arisen in the present matter. In view of the foregoing, the Commission is of the opinion that there exists no prima facie case, and the information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act.

The Commission observes that it has expressed no opinion on the merits of the criminal case filed against M/s Arcus Enterprises, save to the extent of analysis undertaken in the foregoing paragraphs in light of the provisions of the Competition Act, 2002.

Tax Laws

LW 37: 05: 2021

RADHA KRISHAN INDUSTRIES v. STATE OF HIMACHAL PRADESH [SC]

Civil Appeal No 1155 of 2021(@ SLP(C) No 1688 of 2021)

Dr. D.Y. Chandrachud & M.R. Shah,JJ .[Decided on 20/04/2021]

Himachal Pradesh Goods and Service Tax Act, 2017- Section 83- provisional attachment-Joint commissioner provisionally attached the appellant's receivables from its customers- whether tenable-Held, No.

Brief facts:

This appeal arises from a judgment and order of a Division Bench of the High Court of Himachal Pradesh. The High Court dismissed the writ petition instituted under Article 226 of the Constitution challenging orders of provisional attachment on the ground that an alternate remedy is available. The appellant challenged the orders issued by the Joint Commissioner of State Taxes and Excise, Parwanoo1 provisionally attaching the appellant's receivables from its customers. The provisional attachment was ordered while invoking Section 83 of the Himachal Pradesh Goods and Service Tax Act, 2017 and Rule 159 of Himachal Pradesh Goods and Service Tax Rules, 2017.

Decision: Allowed.

Reason:

This appeal raises significant issues of public importance, engaging as it does, the interface between citizens and their businesses with the fiscal administration. Legislation enacted for the levy of goods and services tax confers a power on the taxation authorities to impose a provisional attachment on the properties of the assessee, including bank accounts. The legislation in Himachal Pradesh, which comes up for interpretation in the present case, has conferred the power on the Commissioner to order provisional attachment of the property of the assessee, subject to the formation of an opinion that such attachment is necessary in the interest of protecting the government revenue. What specifically, is the ambit of this power? What are the safeguards available to the citizen? In interpreting the law, the court has to chart a course which will ensure a fair exercise of statutory powers. The legitimate concerns of citizens over arbitrary exercises of power have to be protected while ensuring that the legislative purpose in entrusting the authority to order a provisional attachment is fulfilled. The rule of law in a constitutional framework is fulfilled when law is substantively fair, procedurally fair and applied in a fair manner. Each of these three components will need to be addressed in the course of interpreting the tax statute in the present case.

Moreover, an order of provisional attachment was issued by the Joint Commissioner, which was withdrawn on 30 January 2019, after considering the representations made by the petitioner. On the very ground, without any material change in circumstances, another order of provisional attachment came to be issued by another Joint Commissioner. Therefore, it was the contention of the petitioner before the High Court that the subsequent order of provisional attachment is in substance and effect an order reviewing the earlier order withdrawing the order of provisional attachment which was not permissible and therefore the subsequent order of provisional attachment is without jurisdiction. The High Court has not considered this aspect. Both the earlier and the subsequent orders of provisional attachment are on the same grounds. Therefore, unless there was a change in the circumstances, it was not open for the Joint Commissioner to pass another order of provisional attachment, after the earlier order of provisional attachment was withdrawn after considering the representations made by the petitioner. This is an additional ground to set aside the subsequent order of provisional attachment. For the above reasons, we hold and conclude that:

- The Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107 (1).
- The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable.
- The High Court has erred in dismissing the writ petition on the ground that it was not maintainable.
- The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.
- The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment, the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that

therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

- The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment.
- The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue.
- In the facts of the present case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal.
- Under the provisions of Rule 159(5), the person whose property is attached is entitled to dual procedural safeguards.
- The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached.
- A final order having been passed under Section 74(9), the proceedings under Section 74 are no longer pending, as a result of which the provisional attachment must come to an end; and
- The appellant having filed an appeal against the order under section 74(9), the provisions of sub-Sections 6 and 7 of Section 107 will come into operation in regard to the payment of the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal.

For the above reasons, we allow the appeal.

General Laws

LW 38: 05: 2021

BANANA IP COUNSELS LLP v. NISHA KURIAN [Del]

CM(M) 552/2020 & CM APPL. 28255/2020

Navin Chawla,J. [Decided on 12/04/2021]

Specific Relief Act, - suit for declaration- contract of personal service- issuance of experience certificate was made as consequential relief- whether maintainable- Held, Yes.

Brief facts:

This petition has been filed by the petitioner challenging the order dated 11.08.2020 passed by the learned Additional Senior Civil Judge, rejecting the application of the petitioner filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code').

The above Suit has been filed by the respondent, who was working as a Senior Associate with the Petitioner, seeking a declaration that the termination letter was illegal, and that experience certificate be issued to her. She had tendered her resignation from the services, however, the petitioner herein, refused to accept the resignation and instead terminated the Employment Agreement of the respondent with effect from 21.01.2018.

Decision: Petition dismissed.

Reason:

The Suit filed by the respondent inter alia states that she had tendered her resignation from the petitioner firm on 29.12.2017. The Suit is, as is now, also been contended by the learned counsel for the respondent, not seeking specific performance of a contract of service and/or reinstatement in the petitioner firm. It seeks a declaration that the letter dated 29.01.2018 subsequently issued by the petitioner firm refusing to accept her resignation and terminating her services, be declared as illegal and as a consequential relief, the respondent has claimed that the petitioner be directed to provide an adequate experience letter and relieving letter to the respondent. The said relief is in form of getting an honourable discharge from the services of the petitioner firm. The suit therefore cannot be said to be one claiming declaration alone without any consequential relief.

The submission of the petitioner that the consequential relief can only be in form of damages, if at all, is also not acceptable. Consequential relief need not be only in form of damages. It is for the employee to seek the consequential relief in the form that he/she would be entitled to in accordance with law. Damages is not the only nature of consequential relief that can be sought by an employee. Equally, while there is no dispute on the proposition of law that the contract of personal service cannot be specifically enforced, the respondent herein is not seeking specific performance of her contract of service.

As far as prayer (c) in the plaint is concerned, the effect of the Suit having been filed by the petitioner in Bangalore Court and an FIR having been registered at its behest, is also a matter which will be considered by the learned Trial Court while deciding the Suit. Whether the Suit has been rendered infructuous by any subsequent event, is to be determined by the learned Trial Court once the parties lead their evidence in that regard. Equally, whether prayer (c) can or cannot be granted eventually, cannot lead to partial rejection of the plaint under Order VII Rule 11 CPC. As has been repeatedly held, there cannot be partial rejection of the plaint under Order VII Rule 11 of the Code. Accordingly, I find no infirmity in the order impugned in the present petition. The petition is dismissed.

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE

19th April, 2021

NOTICE UNDER RULES 6 AND 21 READ WITH CLAUSE (3) OF SCHEDULE 2 OF THE COMPANY SECRETARIES (ELECTION TO THE COUNCIL) RULES, 2006.

As you are aware, one seat from Eastern India Regional Constituency (EIRC) in the 13th Council of the Institute of Company Secretaries of India has become vacant due to resignation of one of the members. Election for filling casual vacancy from EIRC is tentatively scheduled on 24th September, 2021 at all places except Kolkata. The election at Kolkata is tentatively scheduled on two days, i.e., on 24th and 25th September, 2021.

2. In pursuance of Rule (3) (i) of Schedule 2 of the Company Secretaries (Election to the Council) Rules, 2006, it is proposed to have polling booths at addresses given in Column 3 of the following table at places which would have more than one polling booth:

Table: Addresses of Polling Booths

Column 1	Column 2	Column 3
PLACE	BOOTH NO.	ADDRESS
Kolkata	E-1	Eastern India Regional Council, ICSI-EIRC House 3A, Ahiripukur 1st Lane, Kolkata - 700019
	E-2	The Park Institution, 12, Mohanlal street Shyambazar, Kolkata – 700004
	E-3	The Calcutta Stock Exchange Ltd. 7, Lyons Range, Kolkata 700001
	E-4	Khalsa High School 73, Paddapukur Road Bhowanipur, Kolkata – 700 020
	E-5	Sarada Prasad Institution 108/18 Bidhan Nagar Road Kolkata – 700067

3. In pursuance to clause (3) (ii) of Schedule 2 of the Company Secretaries (Election to the Council) Rules, 2006, a voter in the place (city) listed in Column 1 of the above table wishing to vote at a particular polling booth at that place(city) listed in Column 2 of the said table against that place (city), may send a request in writing to the Returning Officer, at the Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodhi Road, New Delhi or by e-mail at e-mail ID secretary@icsi.edu on or before 19th May,2021 indicating his / her option for preferred polling booth in the following format:

Place	Preferred Booth No.	Membership No.	Name

(CS Asish Mohan)
Secretary and Returning Officer

3 FROM THE GOVERNMENT

- CLARIFICATION ON SPENDING OF CSR FUNDS FOR SETTING UP MAKESHIFT HOSPITALS AND TEMPORARY COVID CARE FACILITIES
- COMPANIES (ACCOUNTS) SECOND AMENDMENT RULES, 2021
- COMPANIES (AUDIT AND AUDITORS) SECOND AMENDMENT RULES, 2021
- TIMELINES FOR UPDATION OF SCHEME INFORMATION DOCUMENT (SID) AND KEY INFORMATION MEMORANDUM (KIM)
- RELAXATION IN TIMELINES FOR COMPLIANCE WITH REGULATORY REQUIREMENTS
- ADDENDUM TO SEBI CIRCULAR ON "RELAXATION IN ADHERENCE TO PRESCRIBED TIMELINES ISSUED BY SEBI DUE TO COVID 19" DATED APRIL 13, 2020
- RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 / OTHER APPLICABLE CIRCULARS DUE TO THE COVID-19 PANDEMIC

- RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 DUE TO THE COVID-19 PANDEMIC
- DISCLOSURE OF THE FOLLOWING ONLY W.R.T SCHEMES WHICH ARE SUBSCRIBED BY THE INVESTOR:
  A. RISK-O-METER OF THE SCHEME AND THE BENCHMARK ALONG WITH THE PERFORMANCE DISCLOSURE OF THE SCHEME *VIS-À-VIS* BENCHMARK AND
  B. DETAILS OF THE PORTFOLIO
- ALIGNMENT OF INTEREST OF KEY EMPLOYEES OF ASSET MANAGEMENT COMPANIES (AMCS) WITH THE UNITHOLDERS OF THE MUTUAL FUND SCHEMES
- STANDARDIZING AND STRENGTHENING POLICIES ON PROVISIONAL RATING BY CREDIT RATING AGENCIES (CRAS) FOR DEBT INSTRUMENTS
- RELAXATIONS RELATING TO PROCEDURAL MATTERS – ISSUES AND LISTING
- GUIDELINES FOR WAREHOUSING NORMS FOR AGRICULTURAL/AGRI-PROCESSED GOODS AND NON-AGRICULTURAL GOODS (ONLY BASE/INDUSTRIAL METALS) UNDERLYING A COMMODITY DERIVATIVES CONTRACT HAVING THE FEATURE OF PHYSICAL DELIVERY
- CIRCULAR ON REPORTING FORMATS FOR MUTUAL FUNDS
- REGULATORY REPORTING BY AIFS
- SETTING UP OF LIMITED PURPOSE CLEARING CORPORATION (LPCC) BY ASSET MANAGEMENT COMPANIES (AMCS) OF MUTUAL FUNDS

Corporate Laws

01 Clarification on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities

[Issued by the Ministry of Corporate Affairs Vide F. No. CSR-10 /9 /2020-CSR-MCA dated 22.04.2021. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

1. In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was darified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities ' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.
2. The companies may undertake the aforesaid activities in consultation with State Governments subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued by this Ministry from time to time.
3. This issues with the approval of competent authority.

SHOBHIT SRIVASTAVA
Deputy Director

02 Companies (Accounts) Second Amendment Rules, 2021

[Issued by the Ministry of Corporate Affairs Vide F. No. 1/19/2013-CL-V-Part III dated 01.04.2021. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

In exercise of the powers conferred by section 134 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Accounts) Second Amendment Rules, 2021.

   (2) They shall come into force with effect from the 1st day of April, 2021.

2. In the Companies (Accounts) Rules, 2014, in proviso to sub-rule (1) of rule 3, for the figures, letters and words "1st day of April, 2021", the figures, letters and words "1st day of April, 2022" shall be substituted.

K.V.R. MURTY
Joint Secretary

03 Companies (Audit and Auditors) Second Amendment Rules, 2021

[Issued by the Ministry of Corporate Affairs Vide F. No.1/33/2013-CL-V (Part) dated 01.04.2021. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

In exercise of the powers conferred by sections 139, 143, 147 and 148 read with 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 (Audit and Auditors) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Audit and Auditors) Second Amendment Rules, 2021.

   (2) They shall come into force with effect from the 1st day of April, 2021.

2. In the Companies (Audit and Auditors) Rules, 2014, in rule 11, in clause (g), for the words "Whether the company", the words, figures and letters "Whether the company, in respect of financial years commencing on or after the 1st April, 2022," shall be substituted.

K.V.R. MURTY
Joint Secretary

04 Timelines for updation of Scheme Information Document (SID) and Key Information Memorandum (KIM)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-I DOF2/P/CIR/2021/0560 dated 30.04.2021]

A. SEBI vide circular no. SEBI/HO/IMD/DF2/CIR/P/2021/024 dated March 04, 2021 has prescribed the procedure for updation of SID and KIM of Mutual Fund schemes. In this regard, based on the feedback received, it has been decided to modify paragraph 11 of the aforesaid circular as follows:

1. Paragraph 11.1 (i) shall be read as under:

   "11.1 (i) For the open ended and interval schemes, the SID shall be updated within next six months from the end of the 1st half or 2nd half of the financial year in which schemes were launched, based on the relevant data and information as at the end of previous month. Subsequently, SID shall be updated within one month from the end of the half-year, based on the relevant data and information as at the end of September and March respectively."

2. Paragraph 11.1 (iv) shall be read as under:

   "11.1 (iv) KIM shall be updated at least once in half-year, within one month from the end of the respective half-year, based on the relevant data and information as at the end of September and March and shall be filed with SEBI forthwith through electronic mode only."

B. Taking into account the difficulties expressed by the industry in light of continuing COVID-19 scenario, it has

been decided that the updation of SID and KIM for the half-year ended March, 2021 shall be completed by May 31, 2021.

C. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

HRUDA RANJAN SAHOO
Deputy General Manager

05 Relaxation in timelines for compliance with regulatory requirements

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/559 dated 29.04.2021]

1. In view of the situation arising due to COVID-19 pandemic, lockdown imposed by the Government and representations received from Stock Exchanges, SEBI had earlier provided relaxations in timelines for compliance with various regulatory requirements by the trading members / clearing members / depository participants, vide circular nos. SEBI/HO/MIRSD/DOP/CIR/P/2020/61 dated April 16, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated April 16, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/68 dated April 21, 2020 and SEBI/HO/MIRSD/DOP/CIR/P/2020/72 dated April 24, 2020.

2. Later, vide circular nos. SEBI/HO/MIRSD/DOP/CIR/P/2020/82 dated May 15, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/101 dated June 19, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/112 dated June 30, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/141 dated July 29, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/142 dated July 29, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/191 dated October 01, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/235 dated December 01, 2020 and SEBI/HO/MIRSD/DOP/CIR/P/2020/255 dated December 31, 2020, timelines / period of exclusion were further extended for certain compliance requirements.

3. In view of the prevailing situation due to COVID-19 pandemic and representation received from the Association of National Exchanges Members of India (ANMI), Stock Exchanges and Depositories, it has been decided to extend the timelines for compliance with the following regulatory requirements by the Trading Members / Clearing Members / Depository Participants / KYC Registration Agencies, as under:

S. No.	Compliance	Extended timeline / Period of exclusion
1.	Maintaining call recordings of orders / instructions received from clients.	Till June 30, 2021
2.	KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days.	Till June 30, 2021, documents may be uploaded on to the system of KRA within 15 working days. *A 30-day time period is provided to SEBI Registered Intermediary after June 30, 2021 to clear the backlog
3.	Issue of Annual Global Statement to clients.	Till June 30, 2021. *Relaxation is provided only if the client has requested for a physical statement.
4.	Submission of Internal Audit Report for HYE March-2021	Till July 31, 2021
5.	Net worth certificate in Margin Trading for CM Segment for HYE March 31, 2021	Till July 31, 2021
6.	Net worth certificate for all members for HYE March 2021.	Till July 31, 2021
7.	Reporting of Risk based supervision	Till July 31, 2021
8.	Risk Assessment Template	Till July 31, 2021
9.	Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications	Till July 31, 2021
10.	Client Funding Reporting	Till June 30, 2021
11.	Submission of System Audit Report for the period ended March 2021	Till July 31, 2021
12.	Submission of Cyber Security & Cyber Resilience Audit Report for the period ended March 2021	Till July 31, 2021
13.	To operate the trading terminals from designated alternate locations.	Till June 30, 2021
14.	Compliance certificate for Margin Trading for CM Segment for HY ended March 31, 2021	Till July 31, 2021
15.	System Audit /Cyber Audit Report – Algo / Type III Members for the period ended March 31, 2021	Till July 31, 2021
16.	Action taken/follow-on audit report for System Audit /Cyber Audit Report for 2019-20	Till July 31, 2021

Relaxation in time period for certain activities carried out by Depository Participant:

S. No.	Compliance	Extended timeline / Period of exclusion
1.	BO Grievances Report	Till May 31, 2021 for the month of April 2021 and till June 30, 2021, for the month of May 2021.
2.	Redressal of investor grievances	During period from April 01, 2021 to June 30, 2021 timeline permitted for redressal of grievances extended to 30 days.
3.	Closure of demat account	During period from April 01, 2021 to June 30, 2021 may be excluded in timelines of 30 days provided no charges shall be levied for the period after receipt of closure request.
4.	Processing of the demat requests	During period from April 01, 2021 to July 31, 2021 timeline of 15 days

4. Stock Exchanges / Clearing Corporations and Depositories are directed to bring the provisions of this circular to the notice of their members / participants and also disseminate the same on their websites.

5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Section 19 of the Depositories Act to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

NARENDRA RAWAT
General Manager

06 Addendum to SEBI Circular on "Relaxation in adherence to prescribed timelines issued by SEBI due to COVID 19" dated April 13, 2020

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/RTAMB/P/CIR/2021/558 dated 29.04.2021]

1. SEBI had issued Circular No. SEBI/HO/MIRSD/RTAMB/CIR/P/2020/59 dated April 13, 2020 wherein "Relaxations in adherence to prescribed timelines" for carrying out various shareholder requests and for other regulatory filings were granted to RTAs in view of the COVID-19 pandemic.

2. The Annexure to the aforementioned Circular listed out 12 specific items wherein such relaxation in prescribed timelines were granted. It has been now decided to add, 'Processing of the demat requests', to this list and accordingly the list of 13 items that are eligible for relief stand revised as follows;

Sr. No.	Particulars
1	Processing of Remat Requests
2	Processing of Transmission Requests
3	Processing of request for Issue of Duplicate Share Certificates
4	Processing of Requests for Name Deletion / Name Change / Transposition / Pending Share Transfers (Re-lodgement cases in the case of share transfers)
5	Processing of Requests for Consolidation / Split / Replacement of Share Certificates / Amalgamation of Folios
6	Handling Investor Correspondence / Grievances / SCORES complaint
7	Submission of Half Yearly Report to SEBI pursuant to Circular No. CIR/MIRSD/7/2012 dated July 5, 2012
8	Compulsory Internal Audit of RTAs by CA / CS / CMA holding Certificate of Practice and Certified Information Systems Auditor (CISA) / Diploma Information Systems Auditor (DISA) pursuant to Circular dated April 20, 2018, issued by SEBI
9	Submission of Audit Report by CISA / CISM qualified or equivalent auditor by QRTAs to SEBI along with comments of the Board pursuant to Circular dated September 8, 2017 issued by SEBI on Cyber Security and Cyber Security Resilience framework for QRTAs
10	Submission of Compliance Report by QRTAs duly reviewed by the Board of Directors of the QRTA to SEBI on Enhanced monitoring of QRTAs pursuant to Circular dated August 10, 2018 issued by SEBI
11	Regulation 74(5) of the SEBI (D & P) Regulations, 2018 w.r.t. verification and mutilation of share certificate
12	Regulation 76 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 w.r.t. audit of reconciliation of share capital
13	Processing of the demat requests

3. Relaxation is hereby being given to intermediaries / market participants w.r.t. compliance with the prescribed timelines which has been extended to July 31, 2021 in view of the COVID-19 situation. The aforesaid relaxation shall be applicable for items No. 1-13.

4. Additionally, regarding the half-yearly Internal Audit Report (IAR) to be submitted by RTAs within 45 days from the closure of the half year as mandated by NSDL Circular No. NSDL/CIR/II/19/2016 dated November 7, 2016 and CDSL Circular No. CDSL/AUDIT/RTA/1205 dated July 12, 2016; it has now been decided that the timeline of May 15, 2021 for submission of IAR by RTAs for half year ended March 31, 2021 has been extended to July 31, 2021 in view of the COVID-19 situation.

5. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. The Stock Exchanges and Depositories shall bring the contents of this circular along with the circular dated April 13, 2020 to the notice of all their respective constituents.

DEEPAK TRIVEDI
Chief General Manager

07 Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 / other applicable circulars due to the COVID-19 pandemic

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2021/557 dated 29.04.2021]

1. SEBI is in receipt of representations from listed entities, professional bodies, industry associations, market participants etc. requesting extension of timelines for various filings and relaxation from certain compliance obligations under the LODR Regulations *inter-alia* due to ongoing second wave of the COVID-19 pandemic and restrictions imposed by various state governments.

2. After consideration, it has been decided to grant the following relaxations from compliance with certain provisions of the LODR Regulations / other applicable circulars:

Sl. No	Regulation	Requirement	Due date	Extended deadline for the quarter / half year / year ending March 31, 2021
	For entities that have listed their debt securities under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue and Listing of Non-convertible Redeemable Preference Shares Regulations, 2013, and SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008			
1.	Regulation 52 (1) - Half-yearly financial results Regulation 52 (2) - Annual audited financial results	Forty-five days from end of the quarter / Sixty days from end of the financial year	May 15, 2021 / May 30, 2021	June 30, 2021
2.	Regulation 52 (7) read with SEBI circular no. SEBI/HO/DDHS/08/2020 dated January 17, 2020 on Statement of deviation or variation in use of funds	Along with the financial results (within 45 days of end of each quarter / 60 days from end of the financial year)	May 15, 2021 / May 30, 2021	June 30, 2021
	For entities that have listed their bonds under the SEBI (Issue and Listing of Municipal Bonds) Regulations, 2015			
3.	Requirements as per circular no. SEBI/HO/DDHS/CIR/P/134/2019 dated November 13, 2019 Annual audited financial results	Sixty days from end of the financial year	May 30, 2021	June 30, 2021
	For entities that have listed Commercial Paper			
4.	Requirements as per SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October 22, 2019 Half Yearly financial results Annual audited financial results	Forty-five days from end of the Half Year / Sixty days from end of the financial year	May 15, 2021 / May 30, 2021	June 30, 2021

3. Listed entities are permitted to use digital signature certifications for authentication/ certification of filings/ submissions made to the stock exchanges under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for all filings until December 31, 2021. Entities that have listed their municipal bonds may also opt to use digitally signed documents for making filings with Stock Exchanges in terms of SEBI circulars CIR/IMD/DF1/60/2017 dated June 19, 2017 and SEBI/HO/DDHS/CIR/P/134/2019 dated November 13, 2019. Entities that have listed Commercial Paper may also opt to use digitally signed documents for making filings with Stock Exchanges in terms of SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October 22, 2019.

4. The Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 101 of the LODR Regulations. This Circular is available at www.sebi.gov.in under the link "Legal→Circulars".

PRADEEP RAMAKRISHNAN
General Manager

08 Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 due to the COVID-19 pandemic

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CMD1/P/CIR/2021/556 dated 29.04.2021]

1. SEBI is in receipt of representations from listed entities, professional bodies, industry associations, market participants etc. requesting extension of timelines for various filings and relaxation from certain compliance obligations under the LODR Regulations *inter-alia* due to ongoing second wave of the COVID-19 pandemic and restrictions imposed by various state governments.

2. After consideration, it has been decided to grant the following relaxations from compliance with certain provisions of the LODR Regulations:

Sl. No	Regulation	Requirement	Due date	Extended deadline for the quarter / half year / year ending March 31, 2021

1.	Regulation 24A read with circular No. CIR/CFD/ CMD1/27/2019 dated February 8, 2019 relating to Annual Secretarial Compliance report	Sixty days from end of the financial year	May 30, 2021	June 30, 2021
2.	Regulation 33 (3) - Quarterly financial results / Annual audited financial results	Forty-five days from end of the quarter / Sixty days from end of the financial year	May 15, 2021 / May 30, 2021	June 30, 2021
3.	Regulation 32 (1) read with SEBI circular No. CIR/CFD/ CMD1/162/2019 dated December 24, 2019 on Statement of deviation or variation in use of funds	Along with the financial results (within 45 days of end of each quarter / 60 days from end of the financial year)	May 15, 2021 / May 30, 2021	June 30, 2021

3. Listed entities are permitted to use digital signature certifications for authentication/ certification of filings/ submissions made to the stock exchanges under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for all filings until December 31, 2021.

4. The Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 101 of the LODR Regulations. This Circular is available at www.sebi.gov.in under the link "Legal→Circulars".

AMY DURGA MENON
Deputy General Manager

09 Disclosure of the following only w.r.t schemes which are subscribed by the investor:

a. risk-o-meter of the scheme and the benchmark along with the performance disclosure of the scheme *vis-à-vis* benchmark and

b. Details of the portfolio

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/IMD/IMD-II DOF3/P/CIR/2021/555 dated 29.04.2021]

1. Please refer to SEBI Circular No. Cir/IMD/DF/13/2011 dated August 22, 2011, and all other subsequent circulars which deal with the disclosure of portfolio and performance of the scheme.

2. Based on the recommendation of Mutual Fund Advisory Committee (MFAC) and to enhance the quality of disclosure w.r.t. risk and performance and portfolio of the schemes, without creating information overload on the investor, it has been decided that the following disclosures shall be made to the investor only for the schemes in which the unitholders are invested as on the date on which the disclosures are stipulated:

   a) Mutual Fund/AMCs shall also disclose risk-o-meter of the scheme and benchmark while disclosing the performance of scheme vis-à-vis benchmark and

   b) Mutual Funds/ AMCs shall send the details of the scheme portfolio while communicating the fortnightly, monthly and half-yearly statement of scheme portfolio via email.

3. This circular shall be applicable with effect from June 1, 2021.

4. This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with the provision of Regulation 77 of SEBI (Mutual Funds) Regulation, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

BITHIN MAHANTA
General Manager

10 Alignment of interest of Key Employees of Asset Management Companies (AMCs) with the Unitholders of the Mutual Fund Schemes

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/IMD/IMD-I/DOF5/P/CIR/2021/553 dated 28.04.2021]

1. While SEBI has taken steps to standardize the scheme categories and characteristics of each category, the management of risk return profile of the schemes rests with the AMCs and the Key Employees.

2. In order to align the interest of the Key Employees of the AMCs with the unitholders of the mutual fund schemes, it has been decided that a part of compensation of the Key Employees of the AMCs shall be paid in the form of units of the scheme(s), as under:

   i. A minimum of 20% of the salary/ perks/ bonus/ non-cash compensation (gross annual CTC) net of income tax and any statutory contributions (i.e. PF and NPS) of the Key Employees of the AMCs shall be paid in the form of units of Mutual Fund schemes in which they have a role/ oversight.

   ii. The compensation paid in the form of units, as mentioned in 2(i), shall be:

      a. proportionate to the AUM of the schemes in which the Key Employee has a role/oversight. For this purpose, Exchange Traded Funds (ETFs), Index Funds, Overnight Funds and existing close ended schemes shall be excluded.

      b. paid proportionately over 12 months on the date of payment of such salary/ perks/ bonus/ non-cash compensation. In case of compensation paid in the form of employee stock options, the date of exercising such option shall be considered as the date of such payment.

      c. locked-in for a minimum period of 3 years or tenure of the scheme whichever is less.

iii. Further, with a view to allow the Key Employees to diversify their unit holdings, in case of dedicated fund managers managing only a single scheme / single category of schemes, 50% of the aforementioned compensation shall be by way of units of the scheme/ category managed by the fund manager and the remaining 50% can, if they so desire, be by way of units of those schemes whose risk value as per the risk-o-meter is equivalent or higher than the scheme managed by the fund manager.

iv. No redemptions of the said units shall be allowed during the lock-in period. However, AMC may decide to have a provision of borrowing from the AMC by Key Employees against such units in exigencies such as medical emergencies or on humanitarian grounds, as per the policy laid down bythe AMC.

v. No redemption of such units shall be allowed within the lock-in period in case of resignation or retirement before attaining the age of superannuation as defined in the AMC service rules. However, in case of retirement on attaining the superannuation age, such units shall be released from the lock-in and the Key Employee shall be free to redeem the units, except for the units in close ended schemes where the units shall remain locked in till the tenure of the scheme is over.

3. Clawback:

i. Units allotted to the Key Employees shall be subject to clawback in the event of violation of Code of Conduct, fraud, gross negligence by them, as determined by SEBI. Upon clawback, the units shall be redeemed and amount shall be credited to the scheme.

4. Oversight:

i. The compliance of the provisions of this circular shall be ensured by the AMCs and monitored by the Trustees. Any non-compliance in this regard, shall be reported in the quarterly CTR and half yearly trustee report.

ii. Every scheme shall disclose the 'compensation, in aggregate, paid in the form of units to the Key Employees', under the provisions of this Circular, on the website of the AMC.

5. Key Employees:

Key Employees of the AMCs shall include:

i. Chief Executive Officer (CEO), Chief Investment Officer (CIO), Chief Risk Officer (CRO), Chief Information Security Officer (CISO), Chief Operation Officer (COO), Fund Manager(s), Compliance Officer, Sales Head, Investor Relation Officer(s) (IRO), heads of other departments, Dealer(s) of the AMC;

ii. Direct reportees to the CEO (excluding Personal Assistant/Secretary);

iii. Fund Management Team and Research team;

iv. Other employees as identified & included by AMCs and Trustees.

6. The provisions of this circular shall not be applicable to Key Employees having role/ oversight only over ETFs, Index Funds, Overnight Funds and existing close ended schemes.

7. Modalities with respect to contribution of the Key Employees in close ended schemes and its applicability shall be provided in due course.

8. Applicability:

The provisions of this circular shall be applicable with effect from July 01, 2021.

9. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

DIVYA KULSHRESTHA
Deputy General Manager

11 Standardizing and Strengthening Policies on Provisional Rating by Credit Rating Agencies (CRAs) for Debt Instruments

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/ MIRSD/ MIRSD_CRADT/ P/ CIR/ 2021/ 554 dated 27.04.2021]

1. SEBI, vide circular numbered SEBI/HO/MIRSD/MIRSD4/ CIR/P/2016/119 dated November 1, 2016, had advised Credit Rating Agencies to frame detailed policy on provisional ratings.

2. In order to strengthen and standardize the policies on provisional rating, subsequent to consultation with various stakeholders, including credit rating agencies, it has been decided to prescribe as under:

2.1. Rating Symbol: All Provisional Ratings ('long term' or 'short term') for debt instruments shall be prefixed as 'Provisional' before the rating symbol in all communications viz. rating letter, press release / rating rationale, etc.

2.2. Standardized Term: A rating shall be considered as provisional, and not final, when it is contingent upon occurrence following steps or execution of following documents, as applicable:

a) execution of letter of comfort, corporate guarantee, or other forms of explicit third-party support;

b) execution of documents such as debenture trust deed/ debenture trustee agreement, legal agreements/ opinions, representations and warranties, final term sheet;

c) assignment of loan pools or finalisation of cash flow escrow arrangements;

d) setting up of debt service reserve account;

e) opening of escrow account; or

f) For a proposed Real Estate Investment Trust (REIT) or Infrastructure Investment Trust (InvIT), pending formation of a trust - only after receipt of SEBI Registration. However, the process of obtaining

rating may commence at the stage of the sponsor filing with SEBI for the registration of the Trust, subject to declaration from the sponsor to this effect being submitted to the credit rating agency.

In no case shall a rating, including provisional rating, be assigned by a credit rating agency for an issuer/ client evaluating strategic decisions, such as funding mix for a project, acquisition, debt restructuring, scenario-analysis in loan refinancing, etc.

2.3. Validity period:

a) The provisional rating shall be converted into a final rating within 90 days from the date of issuance of the debt instrument. The final rating assigned after end of 90 days shall be consistent with the available documents or completed steps, as applicable.

b) An extension of 90 days may be granted on a case-to-case basis by the CRA's rating committee(s), in accordance with the policy framed by the credit rating agency in this regard.

c) No CRA shall assign any provisional rating to a debt instrument upon the expiry of 180 days from the date of its issuance.

2.4. Disclosures in the press release / rating rationale: In addition to the disclosures already made by Credit Rating Agencies, the following disclosures shall be included in press release / rating rationale while assigning provisional ratings:

a) pending steps/ documentation considered while assigning provisional rating.

b) risks associated with the provisional nature of the credit rating, including risk factors that are present in the absence of completed documentation / steps.

c) rating that would have been assigned in absence of the pending steps/ documentation considered while assigning provisional rating. In cases where the absence of said steps/ documentation would not result in any rating being assigned by the CRA (for instance, in case of provisional rating for REIT/ InvIT – pending formation of trust), the CRA shall specify the same in the press release.

d) While assigning provisional rating to a debt instrument proposed to be issued, the press release shall specify that in case the debt instrument is subsequently issued, the provisional rating would have to be converted into final rating as per the validity period prescribed at Para 2.3 above.

e) While assigning provisional rating to an issued debt instrument, the press release shall specify the rating and timeline implications as per the validity period prescribed at Para 2.3 above.

f) Furthermore, in case of provisional ratings for cases mentioned in Para 2.2(f) above, the following disclosures shall also be required, whereverapplicable:

i. the broad details of the assets that are proposed to be held by the REIT/ InvIT, the proposed capital structure, etc.

ii. the rating rationale should disclose that the CRA has taken an undertaking from the sponsor stating that the key assumptions (relating to the assets, capital structure, etc.) are in consonance with the details filed by the sponsor with SEBI.

iii. In case of change in provisional rating due to change in aforesaid key assumptions, the press release shall state that the rating by the CRA is based on a declaration from the issuer that similar changes have been made in the filing with SEBI.

2.5. Unaccepted provisional rating: In case the provisional rating assigned is not accepted by the issuer (or sponsor, in case of REITs/InvITs), then in the "non-accepted ratings" published by credit rating agencies on their website the following supplementary disclosures shall be provided:

a) the details of the steps taken for assigning the provisional rating. For instance, in case of REITs/ InvITs, such disclosure shall contain the broad details of the assets to be housed under the Trust, the proposed capital structure, etc.

b) the rating referred to in Para 2.4 (c), viz. rating that would have been assigned in absence of the said steps/ documentation.

3. This circular is issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 read with the provisions of

Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999, to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

RICHA G. AGARWAL
General Manager

12 Relaxations relating to procedural matters – Issues and Listing

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/CFD/DIL2/CIR/P/2021/552 dated 22.04.2021]

1. SEBI vide Circular no. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020, granted one time relaxations from strict enforcement of certain regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening upto July 31, 2020.

2. Based on the representations received from the market participants, the validity of these relaxations was further extended for Rights Issues opening up to December 31, 2020, *vide* SEBI Circular No. SEBI/HO/CFD/DIL1/ CIR/P/2020/136 dated July 24, 2020.

3. The relaxation mentioned in point (iv) of the SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020, was further extended for Rights Issues opening up to March 31, 2021, *vide* SEBI Circular No. SEBI/HO/CFD/ DIL1/CIR/P/2021/13 dated January 19, 2021.

4. To ease and facilitate investors, the relaxation mentioned in point (iv) of the SEBI Circular No. SEBI/HO/CFD/DIL2/ CIR/P/2020/78 dated May 6, 2020, is further extended

and shall be applicable for Rights Issues opening up to September 30, 2021, provided that the issuer along with the Lead Manager(s) shall continue to comply with point (v) of the SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020.

5. In respect to mechanism and compliance requirements at point (iv) and (v) of the SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020, the issuer along with Lead Manager(s), Registrar, and other recognized intermediaries (as incorporated in the mechanism) shall also ensure the following:

   a. Refund for un-allotted / partial allotted application shall be completed on or before T+1 day (T: Basis of allotment day).

   b. Registrar to the issue, shall ensure that all data with respect to refund instructions is error free to avoid any technical rejections. Further, in case of any technical rejection of refund instruction, same shall be addressed promptly.

6. This circular is issued in exercise of powers conferred by Section 11(1) read with Section 11A of the Securities and Exchange Board of India Act, 1992 read with Regulations 299 and 300 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

7. A copy of this circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework/Circulars".

RAJESH K DANGETI
Chief General Manager

13 Guidelines for warehousing norms for agricultural/agri-processed goods and non-agricultural goods (only base/industrial metals) underlying a commodity derivatives contract having the feature of physical delivery

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DMP/P/CIR/2021/551 dated 16.04.2021]

1. Warehousing or Storage infrastructure and its ancillary services play a critical role in the delivery mechanism of the Commodity Derivatives Market. A robust and credible warehousing infrastructure is sine qua non for an effective Commodity Derivatives Market that can inspire confidence amongst the market participants and other stakeholders. With this objective, Regulation 43A of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 *("SECC Regulations")* provides, *inter-alia,* that every recognized Clearing Corporation *(hereinafter referred to as "CCs")* providing clearing and settlement services for commodity derivatives shall ensure guarantee for settlement of trades including good delivery. To fulfil this obligation, it is imperative on the part of the Clearing Corporations to ensure that their accredited storage facilities exercise due diligence for safety and quality of the goods deposited with them for the purpose of delivery on exchange platform.

2. It is, therefore, incumbent upon the Clearing Corporations to put in place a comprehensive framework of norms for adherence by the Warehouse Service Providers (hereinafter referred to as "WSP/s"), assayers and other allied service providers engaged by them for ensuring good delivery as mandated under the SECC Regulations.

3. At the outset, it is clarified that the norms prescribed in this Circular are the minimum requirements/standards which the Clearing Corporation will set out for compliance by its accredited WSPs and assayers and are to be complied with in conjunction with the applicable norms laid down by Warehousing Development and Regulatory Authority (WDRA) or any other government authority overseeing the warehousing or storage infrastructure and its ancillary services for the respective goods.

4. The Clearing Corporations are at liberty to prescribe additional norms/guidelines for compliance by their accredited WSPs, warehouses and assayers, if they deem so fit, for ensuring good delivery of commodities by them. However, it must be ensured by the Clearing Corporations that such additional norms specified are not in contravention with the provisions of this Circular.

5. The Clearing Corporations shall put in place necessary arrangements for ensuring compliance with the provisions of Regulation 43A of SECC Regulations. Further, the Clearing Corporations shall have necessary arrangements to ensure that in the event of bankruptcy or insolvency of the WSP or other such contingency, there must be no restrictions placed upon owners/depositors of the commodity desiring to take possession of their individually identified commodity and remove it from the accredited Warehouse(s).

6. On the basis of various observations, inputs/feedback received during visits to different warehouses, meetings held with the WSPs, stock exchanges, Clearing Corporations and other stakeholders, it has been decided that in supersession of the earlier norms issued vide SEBI Circular no. SEBI/HO/CDMRD/DMP/CIR/P/2016/103 dated September 27, 2016, SEBI Circular no. SEBI/HO/CDMRD/DMP/CIR/P/2018/136 dated October 16, 2018 and SEBI Circular no. SEBI/HO/CDMRD/DNPMP/CIR/P/2019/29 dated February 11, 2019 the Clearing Corporations shall frame guidelines in accordance with the revised norms as specified in the **Annexure.**

7. With this Circular, there will be uniformity in requirements for agricultural and agri-processed commodities and base/industrial metals, ease of doing business, rationalised regulatory compliance costs etc.

8. The norms laid down in this Circular shall come into effect from **June 01, 2021.**

9. The stock exchanges and Clearing Corporations are advised to:

   9.1. bring the provisions of this Circular to the notice of the members of the Exchange/Clearing Corporations and also to disseminate the same on their website.

   9.2. communicate the status of the implementation of the provisions of this Circular in the Monthly Development Reports to SEBI.

   9.3. to make necessary amendments to the relevant bye-laws, rules and regulations.

10. This Circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange

Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

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

NAVEEN SHARMA
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

14 Circular on Reporting Formats for Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-I DOF2/P/CIR/2021/550 dated 12.04.2021]

A. Pursuant to regulatory revamp exercise of SEBI (Mutual Funds) Regulations, 1996 (hereinafter called as "MF Regulations") and various circulars issued thereunder, a circular no. SEBI/HO/IMD/DF2/CIR/P/2021/024 dated March 04, 2021 has been issued. Further, based on the consultation with industry the formats for the following reports i.e. reports to be submitted by AMCs to Trustees, by AMCs to SEBI and by Trustees to SEBI have been reviewed and revised as under:

1. Reporting by AMCs to Trustees

1.1. Bi-monthly Compliance Certificate (BCC)

In partial modification to the SEBI circular No. MFD/CIR/09/014/2000 dated January 5, 2000, the Compliance Certificate to be submitted by the AMC to the Trustees on a Bi-monthly basis shall be discontinued.

1.2. Half yearly Compliance Certificate (HYCC) by AMC to Trustees

In partial modification to the SEBI circular No. MFD/CIR/09/014/2000 dated January 5, 2000, the Compliance Certificate to be submitted by the AMC to the Trustees on an half yearly basis shall be discontinued.

The contents of both BCC and HYCC have been suitably incorporated in the Quarterly Report by AMC to Trustees.

1.3. Quarterly Report by AMC to Trustees (QR)

The AMC shall submit QR to the trustees, as required in sub-regulation (4) of Regulation 25 of MF Regulations, on its activities and the compliance with MF Regulations and various circulars issued thereunder. The format of QR is prescribed at **Annexure I.** The same shall be submitted by AMC to Trustees by 21st calendar day of succeeding month for the quarters ending March, June, September and December.

2. Reporting by AMCs to SEBI

2.1. Compliance Test Report by AMC to SEBI (CTR)

To synchronize the frequency of submission of the CTR and QR, SEBI circulars No. MFD/CIR/5/360/2000 dated July 4, 2000, SEBI/ IMD/CIR No. 11 /36222/2005 dated March 16, 2005 and SEBI/IMD/CIR NO 6/98057/07 dated July 5, 2007 have been modified to the extent that, instead of exceptional reporting, complete CTR shall be submitted by

AMC to SEBI on a quarterly basis, by 21st calendar day of succeeding month for the quarters ending March, June, September and December. The revised format of CTR is prescribed at **Annexure II.**

3. Reporting by Trustees to SEBI

3.1. Half Yearly Trustee Report by Trustees to SEBI (HYTR)

a) In partial modification to the SEBI circular No. MFD/CIR/09/014/2000 dated January 5, 2000, the HYTR containing the broad coverage of report of trustees to SEBI has been revised & prescribed at **Annexure III.**

b) Trustees, shall submit corrective steps taken with respect to the non-compliance reported in the HYTR.

c) Trustees shall continue to submit HYTR for the half year ending September and March within two month from the end of the half year.

B. Applicability

1. For QR and CTR reports, the circular shall come into effect for reporting from the quarter ending June, 2021;

2. For HYTR report, the circular shall come into effect for reporting from the half-year ended March, 2021;

3. BCC and HYCC shall be discontinued subsequent to the effective date of the QR report as mentioned at paragraph B(1) above.

C. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

HRUDA RANJAN SAHOO
Deputy General Manager

15 Regulatory reporting by AIFs

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/549 dated 07.04.2021]

1. In terms of AIF Regulations and paragraph 3.2 of Circular No. CIR/IMD/DF/10/2013 dated July 29, 2013, AIFs are required to submit periodical reports to SEBI relating to their activity. To provide ease of compliance, it has been decided to review and rationalize the existing regulatory reporting requirements.

2. Accordingly, based on consultation with various stakeholders and recommendation of Alternative Investment Policy Advisory Committee, it has been decided that all AIFs shall submit report on their activity as an AIF to SEBI on quarterly basis within 10 calendar days from the end of each quarter in the revised formats as

specified in **Annexure I.** Further, Category III AIFs shall also submit report on leverage undertaken, on quarterly basis in the revised formats as specified in **Annexure II.**

3. AIFs shall submit these reports online through SEBI intermediary Portal.

4. Further, in partial modification to paragraph 3 of Circular No. CIR/IMD/DF/16/2014 dated July 18, 2014, any changes in terms of private placement memorandum and in the documents of the fund/scheme shall be intimated to investors and SEBI on a consolidated basis, within 1 month of the end of each financial year. Such intimation shall specifically mention the changes carried-out in the private placement memorandum and the documents of the fund/scheme, along with the relevant pages of revised sections/clauses.

5. The modified reporting requirements, as mentioned at paragraph 2 of this Circular, shall be applicable for quarter ending December 31, 2021 onwards. However, the provisions of paragraph 4 of this Circular shall come into effect immediately.

6. This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

7. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and under the drop down "Circulars" and "Info for - Alternative Investment Funds".

SANJAY SINGH BHATI
Deputy General Manager

16 Setting up of Limited Purpose Clearing Corporation (LPCC) by Asset Management Companies (AMCs) of Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/IMD-1 DOF2/P/CIR/2021/0548 dated 06.04.2021]

1. SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2021/17 dated February 2, 2021 prescribed the modalities for contribution of AMCs towards share capital of LPCC. In this regard, it was prescribed, *inter alia,* that the contribution from AMCs shall be in proportion to the Average AUM of open ended debt oriented mutual fund schemes (excluding overnight, gilt fund and gilt fund with 10-year constant duration but including conservative hybrid schemes) managed by them for the Financial Year (FY) 2019-20.

2. In consideration of the representation received from AMFI, paragraph 4 of SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2021/17 dated February 2, 2021 has been modified to the effect that the contribution of AMCs shall be based on Average AUM of debt oriented schemes, as detailed above, for the Financial Year (FY) 2020-21.

3. All other terms and conditions as stated in SEBI circular dated February 2, 2021 shall remain the same.

4. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of regulations 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

HRUDA RANJAN SAHOO
Deputy General Manager

THE INSTITUTE OF Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

ANNOUNCEMENT

QUALITY REVIEW BOARD OF ICSI INVITES APPLICATIONS FOR EMPANELMENT OF "QUALITY REVIEWERS"

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

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

Revised Eligibility criterion for Quality Reviewers-

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

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

II. An individual desiring to be empanelled
   a) Be empanelled Peer Reviewers and has completed minimum 5 assignments of Peer Review

The Board assigns review of Quality of services rendered by the members to Quality Reviewers.

For payment terms and other details please refer to Terms of Reference for Quality Reviewers available at https://www.icsi.edu/qrboard/home/

Interested persons may kindly apply in the enclosed format and send it through e-mail to qrb@icsi.edu

PROFORMA FOR INCLUSION OF NAME IN THE PANEL OF "QUALITY REVIEWERS" CONSTITUTED UNDER THE AEGIS OF "QUALITY REVIEW BOARD"

To,
Quality Review Board
The Institute of Company Secretaries of India
ICSI House
22, Institutional Area, Lodi Road
New Delhi - 1100 003

Photograph

1. Applicant's Name Mr/Ms/Dr. (in Capital Letter)

FIRST	MIDDLE	LAST

2. Father's/Husband's Name Mr. (in Capital Letter)

FIRST	MIDDLE	LAST

3. Date of Birth (DD MM YYYY)

4. Institute's Membership details:

Particulars	Membership Number	Month & Year of membership
ACS details		
FCS details		
COP details		

5. Contact details in CAPITAL letters

	Residential	**Professional**
Address		
City		
State		
PIN Code		
Phone No With STD Code:		
Mobile No.		
E-mail Address		

6. Details of academic, professional and Post Membership qualifications (Graduation onwards):

Examination Passed		University / Institution	Main subjects, if any
Name of Exam	Year		

7. Current Occupation (indicate major area(s) in which services rendered):

_____

_____

_____

8. Work experience:

Do you possess minimum fifteen years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company;

(Yes/No)

9. Are you empanelled Peer Reviewers who has completed minimum 5 assignments of Peer Review. If yes, please share the below details: (Yes / No)

   a. Peer Reviewer Code: _____

   b. Details of the Peer Review done:

Sl. no.	Name of the Practice Unit	Year of Review

Please add separate sheet, if required.

10. Details of Post Qualification Experience in Employment/Practice (if require, attach separate sheet)

Name of the Employer/s	Designation	Professional Experience		Work Assigned / Performed
		From	To	

11. Are you member of Council / Regional Council / Managing Committee of Chapter, if yes; please provide the details:

_____

_____

12. Other professional achievements, if any:

_____

_____

_____

_____

13. Whether any penal action under any law has been taken/pending against you during last 5 financial years and/or thereafter? (Yes/No)

If yes, please give details thereof:

_____

_____

_____

14. Whether you have been charged for any criminal proceedings / cognizance of offence.
If yes, please give details thereof: (Yes/No)

_____

_____

_____

_____

I hereby declare that the information given above is true and correct to the best of my knowledge and belief and that nothing has been concealed therefrom.

Place:

Date: *(Signature)*

(Name_____)

For Office Use Only:

1. Whether complete information in the prescribed format is given:

a.	a Fellow member of ICSI	Yes	No
b.	Possess at least fifteen years of post- membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company	Yes	No
c.	Be currently in practice of the of profession company secretaries	Yes	No
d.	Empanelled Peer Reviewers who has completed minimum 5 assignment of Peer Review	Yes	No

2. Whether all other applicable points of the form have been filled:

Yes ☐ No ☐

If no, give details _____

_____

3. Whether applicant is to be considered for allotment of reviews:

Yes ☐ No ☐

Remarks_____

_____

4. Reference No. allotted …….....

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI (APPELLATE JURISDICTION)

Company Appeal (AT) (CH)No.10 of 2021
Under section 421 of the Companies Act, 2013)
(Arising out of Interim Order dated 10.02.2021 passed in CP/794/2020 passed by the National Company Law Tribunal, Division-II, Chennai)

In the matter of:

M.s. Muralidharan
Address: Old No. 49, New No. 109, Satyadev Avenue, MRC Nagar,
Chennai - 600 028, Tamil Nadu, India. (Appellant 1)

Hrisha Consulting Private Limited
Address: Old No. 49, New No. 109, Satyadev Avenue, MRC Nagar,
Chennai- 600 028, Tamil Nadu, India. (Appellant 2)

And

M/s. Technology Frontiers (India) Private Limited
Registered Office Address: Plot No.38 Developed Plot Industrial Estate
Perungudi Chennai – 600096, Tamil Nadu, India. … Respondent 1

Ms. Mangalam Srinivasan Office
Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai - 600096, Tamil Nadu, India. … Respondent 2

Mr. Rajesh Kamat Office
Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai. 600096, Tamil Nadu, India. … Respondent 3

Mr. Vivek Raicha
office Address: Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai - 600096, Tamil Nadu, India. … Respondent 4

Mr. Paul Aiello
office Address: Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai. 600096, Tamil Nadu, India. ... Respondent 5

Mr. Suresh Prabhala
Office Address: Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai - 600096, Tamil Nadu, India. … Respondent 6

Mr. Mayank Agarwal
Office Address: Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai 600096, Tamil Nadu, India. … Respondent 7

Mr. Balamurugan IAS
office Address: Plot No.38 Developed Plot Industrial Estate Perungudi
Chennai 600096, Tamil Nadu, India. … Respondent 8

Mr. Chee Chong Tam
Interim Judicial Manager
Global Sports Commerce Pte. Ltd
No. 20, Cecil Street, 09-05 Plus, Singapore 049-075. … Respondent 9

Crest Investment Holding Pte. Ltd
Address: No.1, Kim Seng Promenande, No.13-11 West Tower,
Great World City, Singapore 237994. ...Respondent 10

Em Holdco I Pte. Ltd
No.10, Changi Business Park Central 2, No.05-01, Hansapoint at CBP,
Singapore 486030 …Respondent 11

Present:

For Appellant	:	Mr. K. Gaurav Kumar
	:	Practising Company Secretary
For Respondent No. 3,4,5 & 11	:	Mr. Nikhil Sakhardande, Sr. Advocate
	:	Mr. P. Giridharan, Advocate
For Respondent No. 7	:	Mr. P.H. Arvindh Pandian, Sr. Advocate
	:	Mrs. Gauri Rasgotra, Advoate

ORDER (VIRTUAL MODE)

1. Heard Mr. K. Gaurav Kumar, Practising Company Secretary appearing for the 'Appellants' as well as Learned Senior Counsel Mr. P. H. Arvindh Pandian appearing for Respondent No. 7 (Caveator) and Mr. Nikhil Sakhar Dande, Learned Senior Counsel appearing for Respondent No. 3 to 5 and 11 on behalf of Mr. P. Giridharan, Learned Counsel.

2. It is the case of the 'Appellants' that the draft resolution was not circulated to the 'First Appellant', which ought to have been circulated to all the Directors of the First Respondent Company as per section 175 of the Companies Act, 2013 read with Clause 6.2 of the Secretarial Standards of Meeting of Board of Directors. As such, it is the stand of the 'Appellants' that the 'Tribunal (National Company Law Tribunal, Chennai Bench) in Cp No. 794/2020 was not correct in not granting the 'Interim Relief' of suspending the circular resolutions dated 03.11.2020, which was passed in negation of 'Articles of Association' of the Company. In this connection, on behalf of the 'Appellants' it is pointed out that Clause 22.4 of the Articles of Association speaks of to the effect that 'A Circular resolution shall be deemed to have been duly passed by the Board, if it has been approved in writing (which include confirmation via electronic or other means) by a majority of directors constituting the Board for the time being'. By placing reliance on Clause 21.3 of the Articles of Association of the Company, the Practising Company Secretary for the 'Appellants' projects an argument 'majority includes' the consent of the 1st Appellant' and further that the stand of the 'Appellants' is that the resolution was not served to the 'First Appellant' and as such, the Resolution was passed without any authority and in violation 'Articles of Association' of the Respondent No. Company and resultantly ultra vires.

3. On behalf of the 'Appellants' a contention is raised that the 'Tribunal', while passing the impugned order was not right in issuing direction to consider creating an 'Interim Committee' to run the day to day affairs of the First Respondent/ Company, instead of referring the matter to 'Mediation' as per section 442 of the Companies Act, 2013. Apart from this, the Tribunal was not correct in making an observation in the 'Interim Order' dated 10.02.2021 in the main Company Petition that the Company was not run by the 'First Appellant', when the 'First Appellant' had borrowed personal loans and infused further finances to pay the salary and other expenses, to keep it as a 'going concern'.

4. Per contra, it is the submission of Learned Senior Counsel Mr. P.H. Arvindh Pandian appearing for

Respondent No. 7/Caveator that although the First Appellant was not served with the notice of Resolution by circulation but his Learned Counsel was served in this regard, and further the 'First Appellant' after coming to know about passing of the Resolution had given his reply and as such ,the 'First Appellant' cannot have any grievance about non issuance of any circular Resolution.

5. According to the Learned Senior Counsel Mr. P. H. Arvindh Pandian for the Respondent No. 7, the 'First Appellant' in is email dated 06.11.2020 had stated that he received everything on 05.11.2020 and further that the 'First Appellant' had resigned.

6. At this stage on behalf of the Respondent No. 7, it is brought to the notice of this 'Tribunal' the email dated 14.04.2020 sent by the 'First Appellant' addressed to Respondent No. 6 shows that only a 'decisive action' was sought for and as such, the 'First Appellant' cannot have any grouse in this regard.

7. The other argument projected on the side of the Respondent No. 7 is that the 'First Appellant' is also roped in, in the 'Interim Committee' as suggested by the National Company Law Tribunal, Division Bench II, Chennai in CP No. 794/2020 (vide its order dated 10.02.2021) to run the day to day affairs of the Respondent No. 1/Company and as such, the 'First Appellant' cannot have any real complaint.

8. Conversely, Mr. Nikhil SakharDande, Learned Senior Counsel for the Respondent No. 3, 4, 5 & 11 submits that Section 241 of the Companies Act, 2013, speaks of 'Oppression' and even an illegal act which is not 'oppressive' in nature cannot be challenged and in respect of section 175 of the Companies Act, 2013, the same being complied with, the 'First Appellant' got the 1st draft for circular resolution and offered his comments and as such, it cannot be characterised as an oppressive one in the eye of Law. Further more, there is a Singapore Court order and it cannot be side tracked when the 'First Appellant' has not been ousted and being a part of the 'Interim Committee'. Therefore, there is no oppressiveness as alleged by the 'First Appellant'.

9. Be it noted, that section 5(1) of the Companies Act, 2013 speaks of 'Articles" of a Company containing such matters, as may be prescribed etc. Section 6 of the Companies Act, 2013 enjoins that the provisions of the Companies Act, 2013 will override 'Memorandum', 'Articles' of a Company etc.

10. On a careful consideration of respective submissions advanced on either side, this ' Tribunal' without delving deep, at this juncture, is of the prima facie view that the implementation of the 'Circular Resolution' dated 03.11.2020 is to be stayed in respect of First Respondent/ Company, in furtherance of substantial cause of justice and accordingly, stays the implementation of Circular Resolution dated 03.11.2020 till the next date of Hearing, 11.06.2021.

11. In the meanwhile, it is open to the Learned Counsel for the Respondent No. 7 and Learned Counsel for Respondent No. 3, 4, 5, & 11 to file a detailed Reply/Response/Counter to the main appeal (not only through e filing and also through Hard copy before the 'Office of the Registry') and the copy of the same shall be served to the 'Appellants Side' before 07.06.2021.

12. Soon after the receipt of the Reply/Response/ Counter of the respective parties, it is open to the 'Appellants' to file 'Rejoinder' if any, (not only through e filing and also through Hard copy before the 'Office of the Registry), of course, after serving to the Learned Counsel for Respondent No. 7 and Respondent No. 3, 4, 5 & 11.

In respect of Respondents No. 1, 2, 6, 8, 9 & 10, Let notice be issued through Speed Post returnable by 11.06.2021. Let the Requisite together with process fee be filed by the Appellants within 3 days from today. Notice to the Respondents No. 1, 2, 6, 8, 9 & 10 is also directed to be issued to the e-mail address of the said Respondents, in the event of Appellants furnishing the same. Mobile number(s) of the Respondents No. 1, 2, 6, 8, 9 & 10 may also be furnished by the Appellants to the 'Office of the Registry'.

The 'Office of the Registry' is directed to List the matter on 11.06.2021.

[Justice Venugopal M]
Member (Judicial)

[V. P. Singh]
Member (Technical)

23.04.2021
KM

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

11th May, 2021

Dear Professional Colleagues,

Subject: First Virtual International Conference on Sustainable Finance, Economics & Accounting in the Pre- and Post- Pandemic Era [July 30-31, 2021]

As you are already aware, The Institute of Company Secretaries of India recently signed a Memorandum of Understanding with Indian Institute of Management – Jammu (IIM-Jammu) to facilitate a comprehensive partnership for imparting knowledge and skills.

It gives immense pleasure to inform you that our Academic Partner IIM-Jammu and University of BRADFORD, UK is organizing an **International Conference on Sustainable Finance, Economics & Accounting in the Pre- and Post- Pandemic Era** to be held on July 30-31, 2021 in virtual mode. Our members have an opportunity to present their Academic, Professional and Research paper, without payment of any registration fees. Members who do not want to present their paper but to participate in the Conference in virtual mode may also join without any registration fees.

The conference aims to bring together leading academic experts, Professionals , researchers and research scholars to exchange and share their ideas, experiences and research in the field of 'Sustainable Finance, Economics and Accounting'. Further details about the conference themes are available at: http://www.iimj.ac.in/icfea_conference

A detailed brochure of the conference is also attached herewith.

You can submit your paper through following link on or before 30th May 2021: https://forms.gle/iMs3ENMv2Z6xU9QC7

Please feel free to contact Prof Manoj Kumar, IIM Jammu at mkumar@iimj.ac.in or Dr. S K Jena, Director, Training, ICSI at sk.jena@icsi.edu for any further information in this regard.

Warm Regards,

(CS Nagendra D. Rao)
President

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NEWS FROM THE INSTITUTE

Institute News

MEMBERS RESTORED DURING THE MONTH OF MARCH 2021

SL. NO.	NAME	MEMB NO.	REGION
1	CS S VAGEESWARI	ACS – 10017	SIRC
2	CS TAMANNA B MODY	ACS – 13568	WIRC
3	CS JITENDRA KUMAR PALIWAL	ACS – 13573	NIRC
4	CS VINEET KUMAR SHARMA	ACS – 15087	NIRC
5	CS MANDEEP SINGH	ACS – 15135	NIRC
6	CS SANDEEP SHANTILAL CHORDIA	ACS – 16167	WIRC
7	CS N KRISHNA MURTHY	ACS – 16231	SIRC
8	CS POOJA SANGHI	ACS – 16878	WIRC
9	CS ABHAY KUMAR	ACS – 18055	NIRC
10	CS SANDEEP AGGARWAL	ACS – 18302	NIRC
11	CS SHIVANI CHOPRA	ACS – 19494	WIRC
12	CS RAJIV KUMAR	ACS – 19647	NIRC
13	CS ASHISH BHATT	ACS – 20531	NIRC
14	CS KOTAPATI PRABHAKAR RAO	ACS – 20604	SIRC
15	CS KRIPALI ANIL JAVALE	ACS – 22187	WIRC
16	CS AMIT SURESHRAO KAMBLE	ACS – 23113	EIRC
17	CS AMIT VIJAY KARIA	ACS – 23211	WIRC
18	CS ARVIND KUMAR	ACS – 25275	EIRC
19	CS NEHA RALHAN	ACS – 27629	NIRC
20	CS PARAMJEET SINGH BATRA	ACS – 30109	NIRC
21	CS PRIYANKA CHAUDHARY	ACS – 31710	NIRC
22	CS RASHMI RAJPUT	ACS – 38447	NIRC
23	CS HARDIKKUMAR MAHENDRABHAI PATEL	ACS – 40212	WIRC
24	CS KAVITA RAMLAKHAN JAISWAL	ACS – 40897	WIRC
25	CS ARPIT BHANDARI	ACS – 43644	NIRC
26	CS JIGYASA GOLIA	ACS – 43901	NIRC
27	CS ULHAS SHIVNATH BORSE	ACS – 44049	WIRC
28	CS SARGUN CHAWLA	ACS – 52338	NIRC
29	CS J SURESH	ACS – 8462	EIRC
30	CS HARPREET SINGH PURI	FCS – 3028	F/NIRC
31	CS VASIREDDY SRAMAN	FCS – 3044	SIRC
32	CS SANJAY KUMAR GUPTA	FCS – 6865	NIRC
33	CS DIVYA ARORA	FCS – 8833	WIRC

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF MARCH 2021

SL. NO.	NAME	MEMB NO.	COP NO.	REGION
1	CS DHRUV GUPTA	ACS – 34989	20571	NIRC
2	CS APPANA RAMKUMAR SEETA	FCS – 8149	9228	SIRC
3	CS APARAJITH JAYARAMAN	ACS – 21390	22058	SIRC
4	CS SHUBHAM BUDHIRAJA	ACS – 61426	22934	NIRC
5	CS SHYAM BALKRISHAN BHATTBHATT	ACS – 9113	22960	WIRC
6	CS SHYAM BALKRISHAN BHATTBHATT	ACS – 9113	22960	WIRC
7	CS POOJA GUPTA	ACS – 54196	20515	NIRC
8	CS NANDAN JAYANTBHAI MUNSHI	FCS – 3720	21632	WIRC
9	CS JALAJ SRIVASTAVA	ACS – 8498	3415	NIRC
10	CS SAROJANAND MISHRA	ACS – 24283	18297	NIRC
11	CS POONAM LASHWANI	ACS – 62671	23547	WIRC
12	CS HARDIK ARUNKUMAR JOSHI	ACS – 58557	23720	WIRC
13	CS LALIT RAJPUT	ACS – 52794	22332	NIRC
14	CS DIPALI SURYAKUMAR PITALE	ACS – 36192	21721	WIRC
15	CS PANAMGIPALLI RAJANI	ACS – 30933	23779	SIRC
16	CS SAKSHI BANSAL	ACS – 62230	23402	NIRC
17	CS NIDHI AGARWAL	ACS – 20562	21373	NIRC
18	CS AMIT GUPTA	ACS – 36403	17570	EIRC
19	CS SHILPI BAIN	ACS – 40141	20725	WIRC
20	CS MADHVI GOYAL	ACS – 42456	21956	NIRC
21	CS GOURAV LUGANI	ACS – 46894	23801	NIRC
22	CS AKANKSHA PARASHAR	ACS – 49090	19382	NIRC
23	CS RINA SINGH	ACS – 58750	22395	WIRC
24	CS SACHIN KUMAR	ACS – 40097	22673	EIRC
25	CS S SANTHANAGOPALAN	FCS – 4184	22163	SIRC
26	CS MONA KAUSHIK	ACS – 25230	23758	NIRC
27	CS NANDA MUNDRA	ACS – 48626	23226	WIRC
28	CS SHANTAL NAYAK	ACS – 63358	23760	WIRC
29	CS ARTI NISHANT JAIN	ACS – 63275	23726	WIRC
30	CS ANANTA NARAYAN PANDA	ACS – 13980	22857	NIRC
31	CS SHIVAM KAUSHIK	ACS – 56026	24095	NIRC
32	CS NEELAKSHI PRAKASH	ACS – 58442	22288	NIRC
33	CS SHUBHONITA SINGH	ACS – 56005	21133	NIRC
34	CS PRIYA GARG	ACS – 37727	23982	NIRC
35	CS PREETI SINGHAL	FCS – 9344	20317	NIRC
36	CS DIVYA ARORA	ACS – 52680	23764	EIRC
37	CS KIRTI MODI SINGH	FCS – 10351	23847	NIRC
38	CS SHIVANI ASHOK SHETH	ACS – 62429	23754	WIRC
39	CS NEHA BAJAJ	ACS – 59576	22742	NIRC

40	CS AMRITA JAISWAL	ACS – 34064	18280	WIRC
41	CS NEHA JAIN	ACS – 22814	13616	NIRC
42	CS VIRAL DEEPAK BHAI RANPURA	ACS – 28496	10361	WIRC
43	CS SURYA PRAKASH JETHLIA	FCS – 3464	4844	NIRC
44	CS SHUBHAM MITTAL	ACS – 61310	24241	NIRC
45	CS ANUJA SINGH PARIHAR	ACS – 38741	14581	NIRC
46	CS RAJESH AGRAWAL	ACS – 18911	15393	EIRC
47	CS JINAL PANKEEL SOLANKI	ACS – 27938	13394	WIRC
48	CS VIJAY KANT ASIJA	ACS – 13390	14413	NIRC
49	CS SONAM NANDWANI	ACS – 52672	22680	NIRC
50	CS PRIYA BANSAL	ACS – 48661	17768	NIRC
51	CS CHHAVI MAHESHWARI	ACS – 34484	19666	SIRC
52	CS SHRUTI GUPTA	ACS – 55188	21120	NIRC
53	CS GURDEEP SALUJA	FCS – 9662	17365	NIRC
54	CS MANJARI SINHA	FCS – 9392	9724	EIRC
55	CS DIVYA LEKSHMI SASIDHARANNAIR PUSHPAKUMARI	ACS – 63299	23931	SIRC
56	CS POOJA WADHWANI	ACS – 35629	23401	NIRC
57	CS NARESH TIWARI	ACS – 26932	12889	SIRC
58	CS ABHINAV AGARWAL	ACS – 52955	19717	NIRC
59	CS PRADEEP KUMAR RAY	FCS – 9561	15276	NIRC
60	CS MUNESH KUMAR GAUR	ACS – 39597	16420	NIRC
61	CS SUBIR BANERJEE	ACS – 8632	21825	NIRC

ATTENTION!

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link https://www.icsi.edu/member

PAYMENT OF ANNUAL LICENTIATE SUBSCRIPTION FOR THE YEAR 2021-2022

The annual Licentiate subscription for the year 2021-2022 has become due for payment w.e.f. 1st April, 2021. The last date of making payment is 30th June, 2021. The Licentiate subscription payable is Rs.1180/- inclusive of applicable GST@18%. The subscription will be paid ONLINE only using the link - http://stimulate.icsi.edu/ with your student login credentials.

Log in to the link - http://stimulate.icsi.edu/ with your student credentials.

Username – Will be your registration number.

You may reset the new password at https://smash.icsi.in/Scripts/GetPassword.aspx and login at https://smash.icsi.in/Scripts/login.aspx and https://stimulate.icsi.edu/.

Click Renew option and make the payment.

For any further queries, please write to member@icsi.edu or raise query at http://support.icsi.edu

CHANGE / UPDATION OF ADDRESS

The members are requested to check their professional and residential addresses and make changes, if any, online through Member Login following the given below steps:

- Login to portal www.icsi.edu
- Click Online services in the Menu and then click on Member
- Fill the User name: Enter your membership number (e.g. A1234) and Password. In case a member does not have/ remember his/her password, he/she can get the password by clicking on the "Retrieve Password" option. The password will be sent to his/her email/mobile registered with the Institute. Alternatively, he/she may send email at member@icsi.edu from his/her email registered with the Institute to get the password on the said email id.
- After login, go to Members Option then click on Manage Account
- Then click on Change of Address and professional / residential option and click Go button
- Then make changes required and Click on Submit.

Members are required to verify and update their address and contact details as required under Regulation 3 of the CS Regulations, 1982 amended till date

PAYMENT OF ANNUAL MEMBERSHIP & CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2021-2022

The annual membership fee and certificate of practice fee for the year 2021-22 has become due for payment w.e.f. 1st April, 2021. The last date for the payment of annual membership fee and certificate of practice fee will be 30th June, 2021

The annual membership and certificate of practice fee payable are as follows:

Particulars	Associate (admitted till 31.03.2020)	Associate (admitted on or after 01.04.2020)	Fellow
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360
Entrance fee**	Rs. 2360	Rs. 2360	Rs. 2360
Restoration fee***	Rs. 295	Rs. 295	Rs. 295

* Fee inclusive of applicable GST@18%. ** Fee inclusive of applicable GST@18% and applicable if annual membership fee is not received by 30th June, 2021. *** Fee inclusive of applicable GST@18% and applicable if annual membership fee and certificate of practice fee is not received by 30th June, 2021

A member who is of the age of seventy years or above can claim 75% concession (automatically calculated by the system) in the payment of Associate/Fellow Annual Membership fee. They may also take the help of and visit Regional / Chapter offices for making the payment of annual membership fee and certificate of practice fee. The contact list of Regional / Chapter office is available at https://www.icsi.edu/media/webmodules/ContactList_Regional_Chapter_Offices.pdf

A member who is physically challenged can seek concession in annual membership fee @ 50%. Concession of 50% is also applicable additionally to members who are of the age seventy years or above. The member needs to submit a medical certificate to this effect for seeking this concession

MODE & STEPS OF REMITTANCE OF FEE

The steps to make payment has been made easy and all should take note of the same. The fee can be remitted through ONLINE mode only using the payment gateway of the Institute's website www.icsi.edu. Steps to follow:

- Use Member tab on www.icsi.edu
- From the drop down Select heading Annual Membership or COP Fee for FY 2021-22
- At page you are NOT required to login
- Enter your membership number e.g. A1234/F1234
- Enter your DOB e.g. DD/MM/YYYY
- Click on Search
- Certificate of Practice Holders SHOULD Fill the Form D before paying Annual Membership fees.
- Check the details and pay the fee

Payment made through any other mode is not acceptable.

Please ensure the following before making online payment of annual membership fee which you will be required to comply with while making online payment of annual membership fee

1. Declaration of PAN & AADHAAR
2. Verification of your address as per Regulation 3 of the CS (Amendment) Regulations, 2020 by clicking on the given check box
3. Declaration of eCSIN (if applicable)
4. Declaration of UDIN (if applicable)
5. Declaration of GSTIN number (optional to claim the input tax credit)

For more detail kindly refer FAQs on home page of www.icsi.edu , if unclear raise query at http://support.icsi.edu

Team ICSI

LIST OF PRACTICE UNITS PEER REVIEWED DURING APRIL, 2021

Sl. No.	Name of the PU	City	Year of Review	Certificate No.
1	M/s. Neeraj Arora & Associates	New Delhi	2019-20	1189/2021
2	M/s. Khanna Ashwani & Associates	Ludhiana	2019-20	1190/2021
3	M/s. M. Maheshwari & Associates	Indore	2019-20	1191/2021
4	M/s. D. Sagar & Associates	Aurangabad	2019-20	1192/2021
5	M/s. VCAN & Associates	Hyderabad	2019-20	1193/2021
6	M/s. S G S Associates	New Delhi	2019-20	1194/2021
7	M/s. C. B. Mishra & Associates	New Delhi	2019-20	1195/2021
8	M/s. Anjum Goyal & Associates	Amritsar	2019-20	1196/2021
9	M/s. Rahul S & Associates	Jaipur	2019-20	1197/2021
10	M/s. RSMV & Co.	New Delhi	2019-20	1198/2021
11	M/s. Gagrani & Gagan	Mumbai	2019-20	1199/2021
12	M/s. Tushar Vora & Associates	Ahmedabad	2019-20	1200/2021
13	M/s. A. K. Jain & Associates	Chennai	2019-20	1201/2021
14	M/s. Kanishk Arora & Co.	New Delhi	2019-20	1202/2021
15	M/s. Bhambri & Associates	Ludhiana	2019-20	1203/2021
16	M/s. DRP & Associates	Vadodara	2019-20	1204/2021
17	Mr. Baldev Singh Kashtwal	Delhi	2019-20	1205/2021
18	Dr. K. R. Chandratre	Pune	2019-20	1206/2021
19	M/s. K. Prashant & Co.	Surat	2019-20	1207/2021
20	M/s. Atul Kulkarni & Associates	Solapur	2019-20	1208/2021
21	M/s. Shirin Bhatt & Associates	Delhi	2019-20	1209/2021
22	Ms. Dipika Kataria	Indore	2019-20	1210/2021
23	M/s. Preeti Pahwa & Associates	Gurgaon	2019-20	1211/2021
24	M/s. Jain Sharma & Associates	Jaipur	2019-20	1212/2021
25	M/s. Jain Aarti & Associates	Ghaziabad	2019-20	1213/2021
26	Mr. Ashish Karodia	Indore	2019-20	1214/2021
27	M/s. B. K. Sundaram & Associates	Tiruchirapalli	2019-20	1215/2021
28	M/s. Jaiprakash R. Singh & Associate	Mumbai	2019-20	1216/2021
29	M/s. Sanger & Associates	Panchkula	2019-20	1217/2021
30	M/s. Joshi Pahade and Associates	Nagpur	2019-20	1218/2021

31	Mr. Vishal Arora	Chandigarh	2018-19	1219/2021
32	M/s. B K Gupta & Associates	Ludhiana	2019-20	1220/2021
33	M/s. M. K. Madhavan & Associates	Chennai	2019-20	1221/2021
34	Mr. Manish Kumar Singhania	Hyderabad	2019-20	1222/2021
35	Mr. Narayana Subramaniam Sai	Mumbai	2020-21	1223/2021
36	M/s. S Ramesh & Associates	Jaipur	2019-20	1224/2021
37	M/s. KS & Associates	Mumbai	2020-21	1225/2021
38	M/s. Monika Chechani & Associates	Ahmedabad	2019-20	1226/2021
39	Mr. Veeraraghavan Narayanan	Thane-(w)	2019-20	1227/2021
40	M/s. M P Sanghavi & Associates LLP	Mumbai	2020-21	1228/2021
41	M/s. Vineeta Patel & Co.	Mumbai	2019-20	1229/2021
42	Mr. A. Kumar Reddy	Chennai	2019-20	1230/2021
43	M/s. Meghna Patel & Associates	Surat	2019-20	1231/2021
44	M/s. PKB & Associates	Jaipur	2020-21	1232/2021
45	M/s. H. S. Nijher & Associates	Ludhiana	2020-21	1233/2021
46	M/s. Jain Viney and Associates	Delhi	2020-21	1234/2021
47	M/s. ARKS & Associates	Pune	2019-20	1235/2021
48	M/s. Kiran Sharma & Co.	New Delhi	2019-20	1236/2021
49	M/s. Manoj H. Shah & Associates	Pune	2019-20	1237/2021
50	M/s. J. B. Bhave & Co.	Pune	2019-20	1238/2021
51	M/s. Zalak M T & Associates	Ahmedabad	2019-20	1239/2021
52	Mr. Shelton Mary Joseph	Thrissur	2020-21	1240/2021
53	M/s. P. P. Agarwal & Co.	New Delhi	2020-21	1241/2021
54	M/s. RVR & Associates	Hyderabad	2020-21	1242/2021
55	M/s. Manoj Shaw & Co.	Kolkata	2020-21	1243/2021
56	M/s. Sunny Kakkar & Associates	Khanna	2020-21	1244/2021
57	M/s. V. M. Kundaliya & Associates	Mumbai	2020-21	1245/2021
58	M/s. J. D. Khatnani & Associates	Ahmedabad	2020-21	1246/2021
59	M/s. G. S. Shetty & Associates	Mumbai	2019-20	1247/2021
60	M/s. Mohans & Associates	Ernakulum	2020-21	1248/2021
61	M/s. Mohans & Associates	Bangalore	2020-21	1249/2021

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भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Documents downloadable from the DigiLocker Platform

The National Digital Locker System, launched by Govt. of India, is a secure cloud based platform for storage, sharing and verification of documents and certificates. In the wake of digitization and in an attempt to issue documents to all the members in a standard format and make them electronically available on real-time basis, the Institute of Company Secretaries of India had connected itself with the DigiLocker platform of the Government of India. The initiative was launched on 5th October, 2019 in the presence of the Hon'ble President of India.

In addition to their identity cards and Associate certificates, members can also now access and download their Fellow certificates and Certificates of Practice from the Digilocker anytime, anywhere.


ACS No. 46681

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान

CERTIFICATE OF MEMBERSHIP

This is to certify that

CS NEELABH KAUSHIK

of

SILVASSA

was admitted as an

Associate

of

The Institute of Company Secretaries of India

on the Fifth day of August Two Thousand Sixteen

Given by the Council under the common seal of
The Institute of Company Secretaries of India,
on the Fifth day of August Two Thousand Sixteen

Secretary President

(This certificate is the property of the Institute)


CP No 7025

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान

CERTIFICATE OF PRACTICE

This is to certify that

CS NEELABH KAUSHIK

of

SILVASSA

bearing ACS - 46681 is entitled to

Practice as Company Secretary

This certificate is issued subject to the provisions of the Company Secretaries Act, 1980 and the regulations framed thereunder, as amended from time to time and shall be effective from

Tenth day of August Two Thousand Sixteen
and is renewable on year to year basis.

Given under the common seal of
The Institute of Company Secretaries of India,
on the Tenth day of August Two Thousand Sixteen

Secretary President

(This certificate is the property of the Institute)


THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान

Name : MR. NEELABH KAUSHIK

Membership No. : ACS-46681
Date of Membership : 05-08-2016
Date of Birth : 02-09-1984
Valid Upto : 31-03-2020
Professional Address :

Authorized Signatory

Residential Address :
Mobile :
Blood Group :

INSTRUCTIONS:
1. This Card is issued only for identification purpose and does not authorise card holder to represent the Institute.
2. The card holder is a member of the Institute at the time of issue of this card.
3. Under the Company Secretaries Act,1980/ Regulations 1982, continuance of the member is subject to compliance with certain requirements by member concerned. Hence, reference may be made to ICSI, wherever required.

ICSI House, 22 Institutional Area, Lodi Road, New Delhi-110003 tel : 011 4534 1000 website : www.icsi.edu
Support portal : http://support.icsi.edu

DigiLocker Verified

How to Access:

- Go to https://digilocker.gov.in and click on Sign Up
- You may download the Digilocker mobile app from mobile store (Android/iOS)

How to Login:

- Signing up for DigiLocker with your mobile number.
- Your mobile number is authenticated by an OTP (one-time password).
- Select a username & password. This will create your DigiLocker account.
- After your DigiLocker account is successfully created, you can voluntarily provide your Aadhaar number (issued by UIDAI) to avail additional services.

How to Access your Documents digitally:

On successful validation of credential go to "Pull Documents" in the Issued document section, select the partner name "The Institute of Company Secretaries of India" & document type "Identity Card" and enter the document details asked for to fetch the same.

We believe that this initiative shall go a long way in providing ease of access of all documents of our members and rendering them just a click away.

ICSI CONDOLES THE SAD DEMISE OF CS H M CHORARIA, PAST PRESIDENT OF ICSI

CS H M Choraria
Past President, ICSI

The Institute of Company Secretaries of India (ICSI) is deeply saddened to inform the sad demise of CS H M Choraria, Past President of ICSI (2006) and Past Chairman, EIRC of ICSI (1997 and from July, 1998 to December, 1998) on 26th April, 2021 in Kolkata. He was one of the illustrious past presidents of the Institute and had brought glory to our profession, through his dedicated work. He was a person of vision with commitment for professional excellence.

ICSI conveys it condolences to the bereaved family members of respected CS H M Choraria.

May the departed soul rest in Peace.

ICSI CONDOLES THE SAD DEMISE OF CS PRADEEP KUMAR MITTAL, PAST CENTRAL COUNCIL MEMBER OF ICSI

CS Pradeep Kumar Mittal
Past Central Council Member, ICSI

The Institute of Company Secretaries of India (ICSI) is deeply saddened to inform the sad demise of CS Pradeep Kumar Mittal, a Fellow Member and Past Central Council Member of ICSI (2004 – 2006; 2006 – 2010 and 2011 - 2014) on 2nd May, 2021 at New Delhi. He was one of the illustrious Fellow Member of the Institute and had brought glory to the profession, through his dedicated work. He was a person of vision with commitment for professional excellence.

ICSI conveys it condolences to the bereaved family members of respected CS Pradeep Kumar Mittal.

May the departed soul rest in peace.

OBITUARIES

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

CS R Ponnambalam (10.06.1934 – 31.01.2021), an Associate Member of the Institute from Kochi.

CS Atmaram Keshavanand Dhoundiyal (01.01.1950 – 12.03.2021), a Fellow Member of the Institute from Mumbai.

CS H G Gopalachar (14.11.1945 – 11.03.2021), a Fellow Member of the Institute from Bangalore.

CS J C Nag (03.05.1933 – 27.01.2021), a Fellow Member of the Institute from Kolkata.

CS Lakshmanan Jayaraman (24.05.1960 – 20.02.2021), a Fellow Member of the Institute from Hyderabad.

CS Srilatha Ravichandran (08.02.1961 – 20.03.2021), an Associate Member of the Institute from Hyderabad.

May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed souls rest in peace.

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IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Vision
"To be a global leader in promoting good corporate governance"

Motto
सत्यं वद। धर्मं चर। speak the truth. abide by the law.

Mission
"To develop high calibre professionals facilitating good corporate governance"

ICSI BLOOD Bank Portal

The ICSI Blood Bank Portal has a huge database of blood donors with information on Blood Groups with their location

To find a donor near you or
to register as a donor visit
https://www.icsi.in/bloodbank/

Connect with ICSI www.icsi.edu | Online helpdesk : http://support.icsi.edu

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ICSI SOCIAL CONNECT

TOGETHER WE CAN. TOGETHER WE WILL.

The Institute of Company Secretaries of India (ICSI) has considered it to be their responsibility to undertake initiatives so as to benefit not just its own members but other stakeholders and the society at large.

Over the years, various schemes have been initiated and collaborations been made by Members of ICSI using their good offices to get discounts for other members on either regional or pan India basis. We are pleased to inform you that all such schemes and initiatives have been brought under one umbrella of **ICSI Social Connect** and the same have been placed on the ICSI website.

The **ICSI Social Connect** tab on the website attempts to provide an easy and single point access to information about several welfare schemes of the Institute and their various aspects including eligible beneficiaries, types of benefits, scheme details, etc.

Continuing the trend of synergic advantage through collective bargaining, we would like to expand the benefit base for the members and students of the CS fraternity.

Soliciting your wholehearted support in this endeavour of ours, we earnestly request our members pursuing business activities or providing professional services to realise the mutual benefit of this initiative and connect with us to not just expand their business base but simultaneously connect with this league of professionals.

You may kindly share the details of such discounted deals/offers at ..... Please feel free to contact us for any other clarification and information.

All the benefits and discounts under **ICSI Social Connect** are accessible at: https://www.icsi.edu/profile/social/

Medical Assistance Providers:

CIMS · Dr. Prem Hospital · Dr Lal PathLabs · Eternal Hospital · Felix Healthcare · Fortis · Kailash Healthcare Ltd. · MAX Healthcare · Medeor Hospital · NEO Hospital · Park Hospital · SRL Diagnostics · Metro Group of Hospitals · Venkateshwar Hospital

Financial Assistance Providers:

BOB Financial · POONAWALLA FINANCE

Team ICSI


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Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)
UDIN
AMNESTY SCHEME, 2021
Revoke the UDIN not used
Modify the UDIN details
Generate UDIN if missed earlier
Complete Online Process - STP Mode
No Fees
Immunity from Disciplinary Proceedings
One Time - Limited Period Opportunity
OPENING DATE
20th April, 2021
CLOSING DATE
31st May, 2021
PERIOD COVERED IN SCHEME
All UDINs generated or to be generated till 31st May, 2021
For details of the scheme login to the UDIN portal: https://stimulate.icsi.edu/udin/
CS Nagendra D. Rao
President, ICSI
CS Manish Gupta
Council Member, ICSI &
Chairman, PCS Committee
Connect with ICSI
www.icsi.edu | Online Helpdesk : http://support.icsi.edu

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Mandatory Peer Review for Certifications and Audit Services

PBC:2021:PRC:1

Dear Professional Colleagues,

The Council of the Institute is committed to uphold the quality of services rendered by members and issues guidelines from time to time so as to establish a mechanism of self-governance by the members.

In this regards, the Council has issued Guidelines for mandatory applicability of Peer Review for Certification and Audit services as under:

Services	Applicability	Effective date (w.e.f.)
• Secretarial Audit Report / Annual Secretarial Compliance Report under SEBI (LODR) Regulations, 2015 • Certification of Annual Return in terms of Section 92 (2) of the Companies Act, 2013 • Compliance Certificate under Schedule V, Clause E of SEBI (LODR) Regulations, 2015 • Half yearly Share Capital Reconciliation Certificate under Regulation 40 (9) of SEBI (LODR) Regulation, 2015 • Quarterly Share Capital Reconciliation Certificate under Regulation 76 of SEBI (Depository Participants) Regulation, 2018	Top 100 companies as per market capitalization as on 31st March, 2020	April 1, 2020
	Top 500 companies as per market capitalization as on 31st March, 2021	**April 1, 2021**
	all listed companies	April 1, 2022
	all companies	April 1, 2023
• Internal Audit of Operations of the Depository Participants		April 1, 2020
• Diligence Report for Banks in case of Consortium Lending / Multiple Banking Arrangements		July 1, 2020

The step has been taken with a view to improve and maintain quality of professional services rendered by the member.

Looking forward for whole hearted support of the members towards creating a good corporate culture in the Country.

With Kind Regards,

CS Nagendra D. Rao
President

CS Devendra V. Deshpande
Vice President, and
Chairman, Peer Review Committee

VISION
"To be a global leader in promoting good corporate governance"

ICSI Motto
सत्यं वद। धर्मं चर। speak the truth. abide by the law.

MISSION
"To develop high calibre professionals facilitating good corporate governance"

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5

MISCELLANEOUS CORNER

- GST CORNER
- ETHICS IN PROFESSION
- CG CORNER
- STARTUP INDIA

NOTIFICATION NO. 07/2021 – CENTRAL TAX DATED 27TH APRIL, 2021

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2021.

   (2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, in rule 26 in sub-rule (1), after the third proviso, the following proviso shall be inserted, namely:-

"Provided also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of April, 2021 to the 31st day of May, 2021, also be allowed to furnish the return under section 39 in **FORM GSTR-3B** and the details of outward supplies under section 37 in **FORM GSTR-1** or using invoice furnishing facility, verified through electronic verification code (EVC).".

Source: https://www.cbic.gov.in/htdocs-cbec/gst/notfctn-07-central-tax-english-2021.pdf

PROFESSIONAL MISCONDUCT IN RELATION TO COMPANY SECRETARIES AS CONTAINED IN PART III OF FIRST SCHEDULE TO THE COMPANY SECRETARIES ACT, 1980.

The expression *"professional and other misconduct"* as defined in Section 22 of the Company Secretaries Act, 1980 shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

The two Schedules to the Company Secretaries Act, 1980 viz First Schedule and Second Schedule are further divided into parts. First Schedule is divided into four parts and Second Schedule is divided into three parts.

Part III of First Schedule contains 3 clauses on acts or omissions of professional misconduct which are applicable to Members of the Institute generally.

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct under Part III of the First Schedule to the Act, if he –

(1) not being a Fellow of the Institute, acts as a Fellow of the Institute.

This Item prohibits a member to act as a Fellow of the Institute while in fact he is not a Fellow member. An Associate is entitled to have his name entered in the Register as a Fellow after fulfilling the requirements as per the Company Secretaries Regulations, 1982.

(2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority

It is a duty of a member to supply information called for or to supply the requirements as asked for by the Council or any of its Committee and other authorities such as Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority. Non-compliance with this Item would tantamount to breach of code of conduct.

(3) while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

A member of the Institute, whether in practice or not, shall be guilty of professional misconduct if he gives any information which he knows it to be false, while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in clause (6) and (7) of Part I of First Schedule to the Company Secretaries Act, 1980.

CASE STUDY 1

In an Information case the Informant has *inter-alia* alleged that he had received an email from the Respondent wherein he had forwarded his firm's profile to him.

The Respondent has contended that he had no intention of solicitation of professional work from the Informant and that had his intention would have been to solicit professional work from him, he would have followed up with him.

The Board of Discipline held the Respondent "Guilty" of professional misconduct under clause (6) and (7) of Part I of First Schedule to the Company Secretaries Act, 1980, though the Respondent has admitted that he had no intention to solicitation of professional work but the fact is that the alleged email has been sent to the Informant with whom the Respondent had no business relationship can be calculated to indirectly secure publicity and solicitation.

CASE STUDY 2

The Complainant, had *inter-alia* alleged that the Respondent had issued the Compliance Certificate of a company for the year ended 31st March, 2010 without communicating with the Complainant as he had previously carrying out the assignment since the incorporation of the company. The Respondent has *inter-alia* submitted that he had sent the communication to the Complainant at his address through courier.

The Board of Discipline held the Respondent 'Guilty' of professional misconduct under clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 as mere posting of the letter is not sufficient to comply with the requirements of clause (8) of Part I of First Schedule to the Company Secretaries Act, 1980, but acknowledgement by the addresses of same is essential. However, in the instant case the Respondent had sent the written communication through courier but did not ascertain that it was received by the Complainant.

Governance: Putting the 'G' in ESG

Till quite recently the barometer of a company's performance was its financial performance, i.e., Profit and Loss Account, Balance Sheet, Return on Investment (ROI), Return on Equity (ROE) etc. It was considered that if a company is having high profits, robust balance sheet and high return on equity, investment etc. then the company is performing exceedingly well.

No doubt, a business needs to be profitable, need to have right magnitude of leverage and a robust return on capital invested but now the factors that determine a company's performance has undergone a sea change in today's digitally enabled modern day world.

Previously along with strong financial performance, production of quality products was sufficient to provide a distinctness to the organization but now organizations have to go beyond financial performance and product quality. Today in order to be termed as 'Good Business', a company or an organization needs to focus on environmental sustainability, engage with local communities and be socially conscious.

It is interesting to note that the definition of "good business" varies for different stakeholder groups according to a survey conducted by the Mahindra Group.

Urban and rural consumers will have a different interpretation of the concept, as will people of different ages or genders. Potential employees, current employees, shareholders, auditors, suppliers and service providers will all have their unique perspective on what makes a "good business". Thus, good business is a fluid concept with different stakeholders having varying perspectives.

But survey respondents broadly identified the following pillars as central to the concept of "good business"- Environmental Sustainability, Contribution to Society, Inclusivity and Ethics. But a crucial facet that the survey respondents tended to largely overlook was governance.

However, with the acronym of ESG (Environmental, Social and Corporate Governance) gaining steam it got widely accepted that a good business cannot exist without sound corporate governance. It has more of an influence on the "matrix of intangibles" like perception and reputation than, for example, environmental sustainability. It is more directly linked to a company's profitability and creditworthiness, for instance. It is intrinsic to value creation.

In another research study conducted by Reputation insights company RepTrak, which has worked with several blue-chip companies, carried out a study measuring reputation drivers between August 2019 and July 2020. The study found that over the 12 months, governance consistently ranked second, behind only a company's products, as a driver of corporate reputation.

In another study by RepTrak observed that a company's ESG score is a key differentiator in a consumer's purchase decision. About 60 per cent of the general public expressed a willingness to buy products from a company with a high ESG score compared to just 20 per cent willing to buy from a company with a low score.

The latter study focused on the overall ESG score of a company, which includes its environmental and social commitments. But, as highlighted above, with governance such a key component of the three, the study further emphasized its importance to reputation and overall business.

Thus, governance captured the center stage in the business world, as it is the governance that drives the business and ensures protection of interests of stakeholders.

REFERENCES:

1.https://www.business-standard.com/article/opinion/governance-putting-the-g-in-esg-121041501443_1.html

Congratulations!!!

The Institute of Company Secretaries of India (ICSI) extends its heartiest congratulations to former Central Council Member, Dr. Arvind Navare, Pune on the release of his name on Postal Stamp of Rupees five by the Indian Postal Department, Government of India.


GOVERNMENT OF INDIA भारत सरकार
DEPARTMENT OF POSTS डाक विभाग
सन्मान पत्र

Startups for Public Services

In recent years, startups in India have broken the glass ceiling and introduced the world to new-age sectors such as IoT, Ed-Tech, Med-Tech, etc., through innovation. The innovative startups are bringing a paradigm shift in consumer behaviour and easing the lives of millions.

The Startup India initiative realises the need for innovation in public service delivery to match the international trends and benchmarks to make India more efficient, competitive, and self-reliant.

Public procurement is an essential component of national economic growth. In 2019, public procurement marked its importance by being 20-22% of the then GDP. The introduction of Government e-Marketplace has entirely transformed the procurement process for the Government buyers by provide them eased and transparent buying-techniques.

Thereupon, it was realised that the involvement of startups in public procurement would bring value addition to the public services and help the startups to reap the benefit of large-scale Government buying.

THE WORKSHOP

Startups for Public Services is a series of workshops organised by the Department for Promotion of Industry and Internal Trade in collaboration with other Government entities, including their attached offices and undertakings to acquaint them with on-the-shelf innovative solutions offered by Indian startups.

The workshop will become a collaboration bridge between public administrators and innovators to augment public services. The workshop shall result in the pilot implementation of the relevant solution to check feasibility and feedback from technical officers to improvise the offering to make it more suitable for the public sector.

THE PILOT

The first series of the workshop is planned with five key ministries and their associated organisations and undertakings. As of the 15th of April 2021, three workshops have been concluded in collaboration with the Ministry of Power, Ministry of Petroleum & Natural Gas, and Department of Higher Education. 28 startups virtually presented their innovation pitch on preposition augmenting the public services.

The workshop exhibited participation by large-scale public sector enterprises such as NTPC, BPCL, HPCL,

GAIL, SJVN, MRPL, NHPC, etc. and government organisations such as AICTE, UGC, Council of Architecture, etc.

The innovation offered by startups received appreciation from the participating officers and realised the value addition to their services. Collectively, the sessions invited 82 on-the-spot and post-event meeting requests along with 120 pieces of feedback about the offering.

SELECTION OF STARTUPS

The shortlisted startups that participated in the workshop are the National Startup Award 2020 finalists. As a part of a nine-point handholding effort offered to National Startup Award 2020 finalists, the startups were enquired through a survey about their preference for government connection. The startups were further shortlisted depending on their relevance to the government entities.

The National Startup Awards 2020 received 1641 applications from startups spread across 23 States and 4 Union Territories across 12 sectors: Agriculture, Education, Enterprise Technology, Energy, Finance, Food, Health, Industry 4.0, Space, Security, Tourism and Urban Services. After a rigorous multi-level evaluation process, 192 finalists from these sectors were critically assessed by a professional jury panel comprising industry leaders and subject matter experts to select 36 winners. Products of many of these startups have the potential to be directly utilised for improving citizen service delivery.

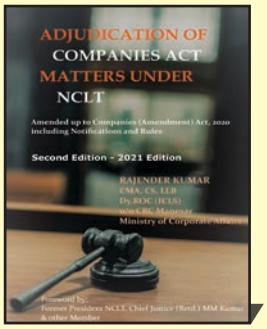
WAY FORWARD

Knowledge-share, trial implementation, and feedback to the Startups based on the expectations of the government buyers are a testament to the success of "Startups for Public Services".

The workshop series is planned to expand the outreach with other Ministries and Departments and their associated bodies. The workshop will shortly be open to other DPIIT recognised startups to augment the public service delivery and get a step closer to a self-reliant India.

BOOK REVIEW

"Adjudication of Companies Act Matters Under NCLT"



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Forwarded by : Shyam Babu Gautam, Technical Member of NCLT, Mumbai
Published by: Urmila Publication House, Gurgaon
Price: Rs. 2395
Binding – Perfect Binding

The present 2nd edition 2021 titled *"**Adjudication of Companies Act Matters under NCLT"*** is really a comprehensive book which covers the entire aspects of the matters related to the powers provided to the Hon'ble National Company Law Tribunal (NCLT) under the Companies Act, 2013. The author has done justice to the subject and covered all the related sections along with the commentary, relevant circulars, notifications, and exemptions available to various types of companies. The Author has also precisely covered various judgements which provides adequate clarity along with the through interpretation for the understanding of the readers, professionals, and other concerned persons.

The NCLT is a single window institution mixture of Judicial and Technical Members. Therefore, it has reduced pendency of cases being specialized forum spread in various places in the country, NCLT is a specialized forum for corporate law matters, specially the Company Law and time limit has been also fixed to discharge the matters.

No doubt that the author has gained through knowledge of the Company law and various amendments, and clarifications issued therein. The author got opportunity to work in different capacities as an officer of the Ministry of Corporate Affairs, in the NCLT, Allahabad Bench, and have practical experience for dealing in the various matters under the Companies Act.

In the present addition the Author has covered the most pertinent issues, observations and high lights, grey areas, that will all concerned in the understanding the prospective of adjudication of the Companies Act matters under the NCLT and has in the intelligent manner summarized the various complicated issues relating requirements for procedural part for seeking various approval from the NCLT under the provisions of the Companies Act, 2013, therefore it has focus the various sections in which the approval of the NCLT is required.

The Author has also provided the NCLT Rules as well as NCLAT Rules, along with the various applicable forms which needs to be used in the process. However, the detailed procedure for adjudication of offence through the NCLT, Registrar of Companies and Regional Director under section 441 of the Companies Act, 2013 through the e-adjudication process could also be covered in the book for seeking faster relief from the legal proceedings on account of violation of the various provisions of the Companies Act, 2013 and rules made there under.

I found all the requirements and procedural part for seeking approval of the NCLT in a single book which make this book unique and useful for the corporate, CS department executives, director of companies, shareholders, creditors, investors, and budding law/CS students, and it would be equally beneficial for practitioners, teachers and department officers and judges.

The Book also contains comparative analysis of sections and date of notifications of the various updated rules at relevant place for the easy reference of the readers and has also given relevant cases laws with the arguments which is considered very useful for the readers.

I appreciate that the Author has provided valuable contribution in his second edition with his practical knowledge and experience gained in the Company Law, therefore this book will be highly insightful for companies, its directors, which includes professional and independent directors, KMPs, auditors, to analyze their role and make up their mind for further course of action for proper understanding, review and absolute compliance as well as future proposed action for seeking various approvals of the NCLT and adjudication of matters under the Companies Act.

The author is complemented and appreciated for his second edition and I wish him for all success.

CS (Dr.) D.K. Jain

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