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10

STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

53rd ICSI Foundation Day

Powering Atmanirbhar Bharat through Entrepreneurship and Innovation

ICSI
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)

Azadi Ka Amrit Mahotsav

STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

October 2021

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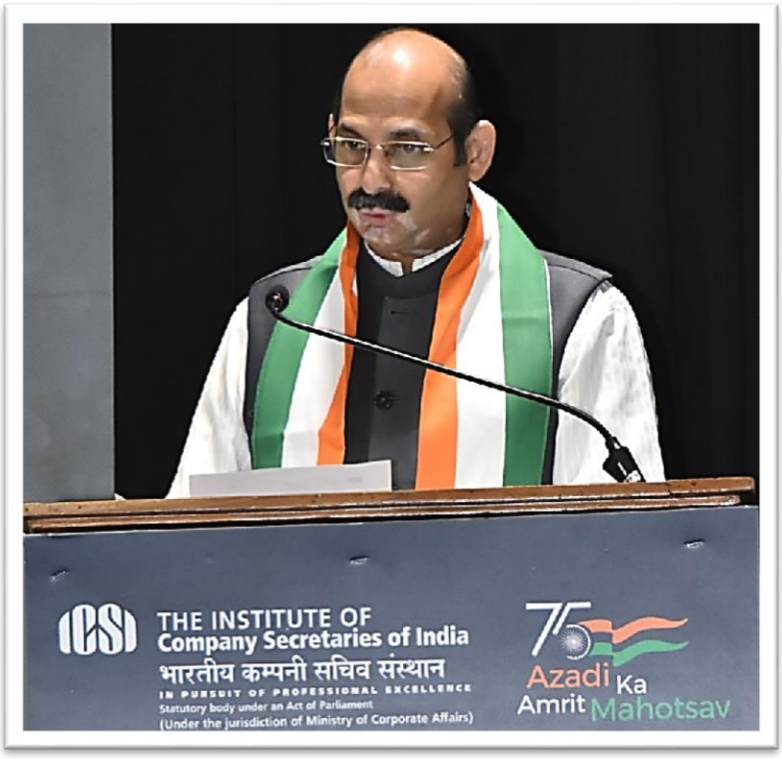

Patience, persistence, and perspiration make an unbeatable combination for success.
-Napoleon Hill

Dear Students,

The month of October while being a month of festivals and festivities across the nation holds utmost significance for the ICSI as well as its members, students and all its stakeholders for it is on the 4th of October, 1968 that the ICSI was formed and established and it is in commemoration of this event that the Foundation Day of the ICSI is celebrated with great fanfare on the 4th of October each year.

With the results for the CS Examinations – June, 2021 which had been postponed to August in view of the pandemic, being declared on 13th October, the celebratory mood just got elevated. In the same fervor, I extend my heartiest congratulations to all the students who have passed in the recently declared results of the CS Examination, especially those who made it to hall of fame, i.e., the toppers. May your future journey be equally rewarding!

For those of you who are yet to scale the peaks of success, I would like to take this opportunity to extend my best of best wishes and the age old mantra for success. Friends, leaders globally as well as men and women who have achieved great feats have laid the foundation of their achievements, accomplishments and successes on three pillars – Patience, persistence and perspiration – the combination quoted by Napoleon Hill above.

I believe, it is these qualities that shall guide your way and alight your path for the upcoming session of Examinations. Just as Rome was not built in a day, achieving our set goal and aim, striving for excellence is a process which solicits continuity – continuity of thought, continuity of action. And to be truthful, it is these traits that make us true professionals.

With the festivals of the month commemorating and celebrating the triumph of good over evil, seeking blessings of Maa Durga and Goddess Chamundeshwari, I would like to share the verses of the Devi Stuti

या देवी सर्वभुतेषु शांतिरूपेण संस्थिता ।
या देवी सर्वभुतेषु शक्तिरूपेण संस्थिता ।
या देवी सर्वभुतेषु मातृरूपेण संस्थिता ।
या देवी सर्वभुतेषु बुद्धिरूपेण संस्थिता ।
नमस्तस्यै नमस्तस्यै नमस्तस्यै नमो नमः ॥

On behalf of the ICSI family, I wish you and all your family members a very Happy Durga Puja and Vijaydashmi !!!

With warm regards,

(CS Nagendra D. Rao)
President
The Institute of Company Secretaries of India

RECENT INITIATIVES FOR STUDENTS

1. The **Student Company Secretary e-journal** for Executive / Professional programme students of ICSI has been released for the month of **September, 2021**. The same is available on the Institute's website at the weblink : *https://www.icsi.edu/e-journals/*
2. The **CSEET Communique (e-bulletin)** for the month of **September, 2021** containing the latest updates in respect of Papers of the CSEET has been placed on the ICSI Website. The same is also available at the CSEET Portal at the Institute's website at the weblink : *https://www.icsi.edu/student/cseet/cseet-e-bulletin/*
3. The **CS Foundation course e-bulletin** for Foundation programme students of ICSI has been released for the month of **September, 2021**. The same is available on the Institute's website at the weblink : *https://www.icsi.edu/e-journals/*
4. **Bi-weekly Academic interactive sessions for Students**: 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 streamlined manner by Academic Officers on the subject. The details of the sessions conducted so far are available at the weblink :
   https://www.icsi.edu/bi-weekly-academic-interaction/?edit&language=en
5. **Subject-wise Monthly updates** has been released for the month of August 2021. The same is placed on the ICSI website at the webink:
   https://www.icsi.edu/media/webmodules/Subjectwise_Monthly_Updates_August_2021_26102021.pdf
6. **Guideline Answers** for Executive and Professional Programme containing solved question papers for June 2021 session has been placed on the ICSI website at the weblink : *https://www.icsi.edu/student/academic-portal/guideline-answers/*
7. **Info Capsule** is being issued as an update on daily basis for members and students, covering latest amendments on various laws for the benefit of our members and students. The same is available on the ICSI website at the weblink
   https://www.icsi.edu/infocapsule/
8. **Launch and Conduct of Certificate Courses:** The Institute launched 11 certificate courses in subject like CSR, FEMA, GST, IPR, Forensic Audit, Commercial Contract Management, Securities laws, Independent Director, IBC, Corporate Restructuring and Corporate Reporting for its students and members. The Courses were kick-started through one orientation session which was held on 14th October 2021. These courses have been launched keeping in view the current importance of the subjects and practicality associated with these courses & their relevance for the students and their continuing learning. The first sessions in all the aforementioned courses have been conducted successfully and the lectures were delivered by eminent faculties from professional world.
9. **ICSI Conducted 9th Samadhan Diwas**: The ICSI has successfully organized Ninth Samadhan Diwas on Wednesday, 13th October 2021. The focus of the Samadhan

Diwas was to facilitate the stakeholders to resolve their queries on the spot. In the Samadhan Diwas student got opportunity to present their case and directly interact with ICSI officials.

10. **Registration for Online Doubt Clearing classes by ICSI for students appearing in December 2021 Exam- learn from the best faculties at nominal fee.**

    For details regarding payment, click below weblink:
    https://www.icsi.in/student/DelegateRegistration/tabid/137/ctl/DelegateRegistration/mid/454/EventId/109/Default.aspx

11. **Slogan writing Competition for the students during "The Rashtriya Ekta Diwas" (Bharat Ki Azadi Ka Amrit Mahotsav) - Topic: 75 glorious years of Independence**

    For details, click below weblink: *https://www.icsi.edu/media/webmodules/slogan.pdf*

12. **Poster Making Competition for the students during "The Rashtriya Ekta Diwas" (Bharat Ki Azadi Ka Amrit Mahotsav)- Topic: India's Freedom Struggle**

    For details, click below weblink:
    https://www.icsi.edu/media/webmodules/poster.pdf

13. **Essay Writing Competition for the students during "The Rashtriya Ekta Diwas" (Bharat Ki Azadi Ka Amrit Mahotsav) - Topic: Reducing Import Dependence: Atmanirbhata Ki Aur**

    For details, click below weblink: *https://www.icsi.edu/media/webmodules/essay.pdf*

14. **Elocution Competition for the students during "The Rashtriya Ekta Diwas" (Bharat Ki Azadi Ka Amrit Mahotsav) – Topic : Freedom of Speech: a boon or bane**

    For details, click below weblink:
    https://www.icsi.edu/media/webmodules/elocution.pdf

15. **Online Quiz Competition for the students on 27th October 2021 during "The Rashtriya Ekta Diwas" (Bharat Ki Azadi Ka Amrit Mahotsav) - Topic: India-It's struggle for Independence and 75 years of Indian Independence**

    For details, click below weblink:
    https://www.icsi.edu/media/webmodules/online_quiz.pdf

16. **Schedule of ICSI Classes at Regional / Chapter offices for DEC-21 session of Examination**

    For details, click below weblink:
    https://www.icsi.edu/media/webmodules/Schedule_of_classes_for_DEC_21_session_at_RO_CHAPTERS.pdf

17. **Provisional registration in CS Executive Programme for CSEET passed candidates**

    For details, click below weblink:
    https://www.icsi.edu/media/webmodules/CSEET/Announcement%20_students_12th_20211.jpg

18. **Online Current Affairs and General Knowledge quiz 2021**

    For details, click below weblink:
    https://www.icsi.edu/all-india-online-current-affairs-gk-quiz-2021/

19. **CSEET (January 2022 session)**

    For details, click below weblink:
    https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx

20. **Recorded video lectures for students of the Institute**

    URL to login: *https://el earning.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.

21. **Online CSEET classes**

    Online CSEET Classes are being conducted by Regional/Chapter Offices for the students appearing in CSEET to be held in November 2021.

    For schedule of classes and to contact coordinators, click below weblink:
    https://www.icsi.edu/media/webmodules/websiteClassroom.pdf

22. **Granting exemption to Graduates and Post Graduates from the recognized Universities from appearing in CSEET and enabling them to take direct admission in CS Executive Programme**

    For details, click below weblink:
    https://www.icsi.edu/media/webmodules/granting_exemption_230621.pdf

23. **Concession in the fees payable at the time of registration in CS Executive Program for the students who lost their parents/legal guardian/adoptive parents due to any reason, including Covid19 pandemic.**

    For details, click below weblink:
    https://www.icsi.edu/media/webmodules/Announcement_Concession_in_fees_in_case_of_death_of_parents.pdf

24. **Exam enrolment announcement for December, 2021 Examination**

    For details, click below weblink:
    https://www.icsi.edu/media/webmodules/Announcement_for_December_2021_Examination.pdf

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Academics

- **DUE DILIGENCE – A WAY TOWARDS SUCCESSFUL BUSINESS TRANSACTION**
- **INSOLVENCY PROFESSIONAL'S SUCCESS FEES & COMMERCIAL WISDOM OF THE COC**
- **RELIEF PACKAGE FOR TELECOM SECTOR- 4 YEAR MORATORIUM ON AGR DUES AND OTHER MEASURES**

DUE DILIGENCE – A WAY TOWARDS SUCCESSFUL BUSINESS TRANSACTION*

Introduction

Due Diligence (DD) has opened various gates of opportunities for professionals. Due diligence may be required for varied reasons including Mergers and Acquisitions, Important purchase of Assets, Checking Statutory or regulatory Compliances etc. It is evident from the present scenarios of business environment of the country that every major transaction like Public Offers, Takeovers, Merger & Amalgamations calls for the need of Due Diligence. Due diligence is conducted from the perspective of the both seller and the buyer. While the buyer checks aspects relating the financials, litigations, patents and complete magnitude of pertinent information, the seller lays emphasis on the background of the buyer pertaining to the financial capabilities of seller to complete the transaction and the ability to honor the commitments accepted. Achievement of growth is an integral part of any form of business organization and that calls for compromise and arrangements. The need for these transactions may be achieve economies of scales, expanding the geographical presence, technological upgradations, achieving competitive edge, regulatory requirement of cross border transactions etc. With the needs for entering into varied range of transactions, there comes the risk of failure of these transactions. There may be some hidden aspects which does not come in front on bare understanding of the available documents. Therefore, the need arises for due diligence, which can go in details and find out the unwanted and hidden risks associated with the transactions. As Company Secretaries are recognized by various regulatory authorities for conducting due diligence, it has become important to understand this topic in details. For eg. RBI has advised that the banks get the due diligence conducted by the company secretaries.

Transactions requiring due diligence

Due diligence may be required for varied reasons. The form of DD depends on the purpose for which it is conducted. Few of the purposes of DD is enumerated as under:

* *Directorate of Academics*

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Process of Due Diligence

1. Suitability and Compatability aspects

- In this step, the information is gathered from the perspective of checking the suitability of the other party. For eg. In case of a takover, the buyer will check the risks assosiated with the company and seller will check the financial ability of the buyer to complete the transaction.

2. Financial aspects

- In this step, the information related to the fairness of financial accounts may be checked.

3. Production aspects

- In this step, the ability of other party relating to productions may be checked.

4. Environment aspects

- In this step, various non-compliances of environmental laws may be checked.

5. Technology aspects

- In this step, the technological capabilities may be analysed.

6. Legal aspects

Scope of Due Diligence

It is necessary that before starting the conduct of due diligence, the scope should be decided. Confinement of scope always gives better results of the due diligence. The following points may be observed while deciding the scope:

i) Important points relating to the purpose of transaction.

ii) Important offices and departments required to be checked.

iii) Important Policies and Procedures.

iv) Important questions required to be answered.

v) Coverage of books and registers.

vi) Filling with various government offices or statutory authorities.

vii) Method of sampling.

viii) Meeting with the person in-charge of the records.

Vertical or Horizontal approach

One of the most important aspect of due diligence is finding out the approach required for DD. The decision on this point depends on the purpose of the transaction. If the transaction is specific, than the vertical approach will work better. For eg. In case of mergers specific information in detailed form would be beneficial. If the DD is for the purpose of compliance than Horizontal approach may be followed. For Eg. In case of secretarial audit, compliance

related to mostly all the laws are required to be checked. In horizontal approach more information may be checked and in vertical approach information in details may be checked. Time is also an important aspects while the deciding the approach to be followed. If time is limited, a professional can face the difficulty while checking the information in details.

Challenges in conducting due diligence

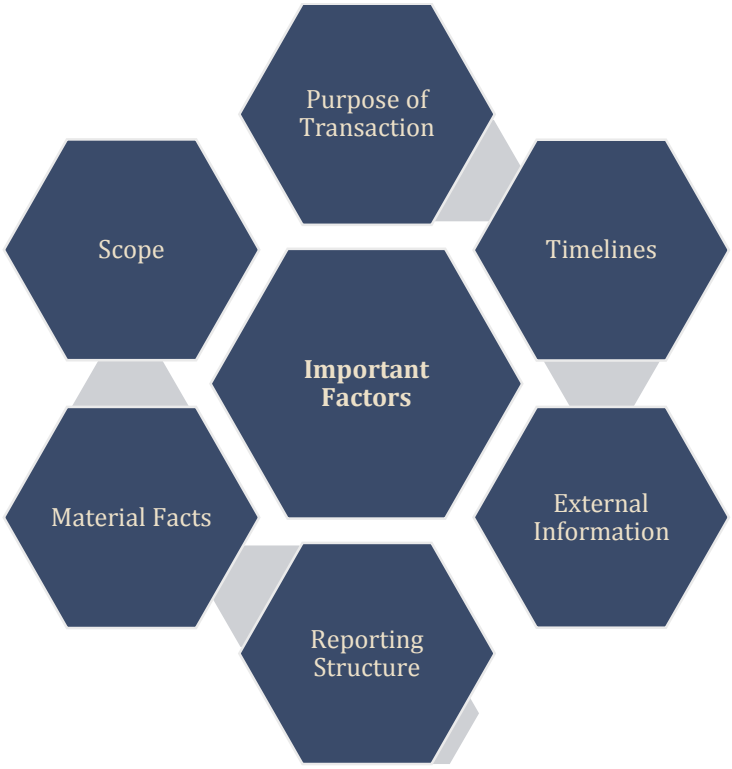
A professional may face many challenges while conducting due diligence. He needs to deal with these challenges and bring the best result of due diligence. Few examples of the challenges faced are as under:

i) Non-availability of the information or incomplete information: For eg. Non availability of evidence related to compliances. While dealing with difficulty, he can try to find the alternate source of getting the information.

ii) Lack of time: Many a times a professional cannot check all the information due to paucity of time. A professional may confine the scope of checking in this scenario.

iii) Non-cooperation by the employees: It is possible that few of the employees may start non-cooperating as this may lead to focus on their mistakes. Reporting to the concerned authority may be a good solution in this scenario.

Important factors to be remembered while conducting due diligence



Risk Analysis

DD may not only require the gathering of information but also includes to find out the risk associated with that particular information. Risk Analysis can only be done effectively by in-depth analysis of information. A general analysis may not fulfill the purpose. For enhancing the effectiveness of a transaction, it is necessary to analyse the risk associated with the information. The purpose of the Due diligence provides a fair idea how much depth analysis

is required. While reporting the risks, care shall be placed on the assumption made at the time of analysis.

Document Review

It is necessary to review all the important documents that are analysed for DD. The inclusive list of documents required to be reviewed is as under:

1. Review of MCA documents
2. Charter of the Company i.e. MOA and AOA
3. Statutory Registers including register of loan, charge, minute books etc.
4. Financial Statements for the current and previous years
5. Verification of Assets and Liabilities.
6. Compliance relating Laws of Taxation, Labour, Corporate Laws etc.
7. Statutory Liability.
8. Contingent liabilities.
9. Operational aspects.

Report writing

The most important part of due diligence is writing of report in a presentable form. If the report does not provide the actual view of the organization than the activity will become worthless. Identifying the problem is not the only work of due diligence. A good diligence report should also provide the suggestions for solving the problem. The report may *inter-alia* cover General Information, Financial Data, relevant business agreements, pending litigations, contingent liabilities, details of intangible assets like IPRs, marketing position, Internal Controls, Environmental compliance, position of CSR aspects, Human resource assets and the culture of the organisations. The report should also make the reference and purpose of the conducting DD. For eg. Whether it is conducted due to statutory requirements or for entering into Business transaction or as a fact finding analysis. The report should also include the source of information. List of document reviewed including the documents not available should also be the part of the report. Assumptions wherever made should be part of report. Reference to reliance on certain undertakings and certificates should also made part of DD report. Risk analysis section should also one of the mandatory part of the DD report. The report shall also state the confidentiality and restriction clause providing the limited use of the report, wherever feasible.

Importance of Due Diligence for Mergers and Acquisitions: Case analysis

Bharti – Zain Deal

Airtel acquired Zain a Kuwait based telecom company's assets in Africa's 15 countries. The company suffered low EBITDA even after 5 years. Various reasons like Africa's economy contributed to the failure of the acquisition. The due diligence of Bharti lacked somewhere to appreciate and identify the risks of failure in this acquisition. A comprehensive and complete due diligence could have placed Bharti Airtel in a better position.

Tata Corus deal

Tata steel completed acquisition of Corus in 2007, at the peak of the boom that ended with the Global Financial Crisis in 2008 by paying out $12.1 Billion (of which $6 Billion was debt) with the objective to pave the way for the Tatas to enter the UK steel sector. Global steel demand, especially in developed markets like Europe, has remained muted following the

financial crisis of 2008. Cheap Chinese steel dumped across the globe has rendered the business unviable in the face of the continuing financial crisis impact. Tata Steel over last 10 years has reduced the production capacity of Corus from 18 MTPA to 10 MTPA. The company further cut its European exposure by reducing the stake from 100% to 50% after combining the business with Thyssenkrup. Tata Steel used the cash box to shop for distressed assets in India – Bhushan Steel. But these new purchases mark the persistence of an old problem—debt. Tata – Corus transaction came at a time that commodity prices had peaked. The basis for valuation was production capacity despite an auction and reservations on valuations, Tata Steel ended up paying 30% more than the negotiated price – prestige at play. Finally, this was a leveraged buy out with no clear debt paring plan present with the buyer. The success of this could have been ensure by making the complete and comprehensive due diligence.

ESG Due Diligence

In the present business scenarios of the country, Issues such as child labour, carbon emissions, fair tax and corruption can make or tarnish the image of the organizations. It is necessary that enough care should be taken on the issues of environmental, social and governance (ESG). Therefore, ESG due diligence can act as deal maker or deal breaker. ESG due diliegence have become the important part of decision making before going for Mergers and acquisitions. It can help to overview of how emerging social and environmental megatrends are likely to affect the business. This aspect is so important that it may force for revaluation of the organization at the time of Mergers and Acquisitions.

Conclusion

Due diligence is required at the time of entering into any major transaction. It provides the security to one who wants to enter into a transaction. DD has gained its importance over time due to the changes in business culture of the country. With the growth of businesses, the chances for the fraud has also increased. In order to get rid of these fraud it is necessary that with every big decision should be backed with the surety of due diligence report. The completeness of due diligence and accurate reporting in one another aspect of DD. It is pertinent to note that incomplete due diligence or inaccurate reporting may be equal or worse than the conduct of due diligence. With all the reasonable steps, the due diligence may prove to the base of major corporate and business decisions.

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6. https://www.alphainvesco.com/blog/failed-mergers-and-acquisitions/

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INSOLVENCY PROFESSIONAL'S SUCCESS FEES & COMMERCIAL WISDOM OF THE COC*

Facts of the Case

An Appeal had been filed by the Resolution Professional of Corporate Debtor - 'Ariisto Developers Pvt. Ltd.' before National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi against observations and findings of the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in Para 23 of the impugned order dated 23.03.2021 passed in M.A. No. 3714 of 2019 in C.P. (IB) No. 2714 of 2018. By the impugned order, while approving the Resolution Plan submitted by Successful Resolution Applicant- 'Prestige Estates Projects Ltd.', the Adjudicating Authority disagreed with the Committee of Creditors ("CoC" for short) which has approved 'success fees' to the Resolution Professional of an amount of Rs.3 Crores.

3. Impugned Para 23 of the impugned order (Page 59) is as under:-

"23. Even though the plan is approved, we would like to disagree with the decision of the COC wherein it has approved the success fees to the RP. It has been made clear by the Hon'ble NCLAT in the matter of Mr. Devarajan Raman, Resolution Professional Poonam Drum & Containers Pvt. Ltd v. Bank of India Ltd. [Company Appeal (AT) (Insolvency) No. 646 of 2020] that the fees of the RP is not the commercial wisdom of the COC. The following para from the said judgment is hereby reproduced: ".

..Fixation of fee is not a business decision depending upon the commercial wisdom of the Committee of Creditors. We accordingly find this appeal lacking merit. The appeal is accordingly dismissed. No costs."

Therefore, we believe that by disallowing the success fees to the RP, we are not intruding in the commercial wisdom of the COC. Further, we believe the success fees amounting of Rs. 3 Crores is unreasonable. Also, it was only in the last meeting of the COC that the fees was claimed. We have been supervising this matter and are aware of all the scenarios since its admission and therefore, are aware that even the RP was uncertain about the success of the Resolution Plan. It was this Bench who had warned the RP time and again and thus, we believe that the success fees is merely an afterthought. We believe that if the RP was so certain, he should have claimed/ asked for the success fees in the beginning itself and now when the plan is approved. It was only in the distribution matrix that he/CoC had approved the success fees to the RP. With this observation, we direct the RP and the CoC to proportionately distribute the said amount of Rs.3 Cr. among the employees/ underpaid operational creditors/unsecured creditors of the corporate debtor and if left, it is to be proportionately distributed among the underpaid operational creditors."

* *Chittaranjan Pal, Deputy Director & CS Bharti Yadav, Executive (Academics), The ICSI*

Views expressed in the Article are the sole expression of the Author(s) and may not express the views of the Institute.

The grievance raised by the Resolution Professional is that:

- The approval of the success fees was a commercial decision of the CoC
- The Adjudicating Authority could not have interfered with the same while approving the Resolution Plan
- Directing distribution of the amount set apart for success fees.

Submission of the Insolvency Professional

The Appeal has referred to the various efforts made by the Appellant during the course of CIRP. It is argued that the assets of the Corporate Debtor were worth Rs. 1,089 Cr. and the same were handled and safeguarded by the Appellant; that he convened 20th CoC meeting; that there were more than 20 hearings before the Adjudicating Authority, Appellate Tribunal and the Hon'ble Supreme Court; that there were different classes of stakeholders which included approx. 100 number of Financial Creditors, approx. 400 number of homebuyers, who were required to be dealt with; that various meetings arranged between homebuyers and Resolution Applicant to harmoniously resolve the issues and concerns of homebuyers; that the Appellant successfully convened CoC meeting and got CoC's approval on the Resolution Plan. Learned Senior Counsel for the Appellant submitted that the issue can be only reasonableness of 'success fees'. According to the Senior Counsel, only CoC can consider if the success fees is to be paid and what should be the success fees. According to the Learned Senior Counsel, the Adjudicating Authority cannot look into this aspect as it is part of commercial wisdom of the CoC. Another contention is that if the Adjudicating Authority did not agree with the success fees, the Resolution Plan has to be sent back and Adjudicating Authority could not have meddled with the CIRP costs which are part of the Resolution Plan.

IBBI Circular on Fee and other Expenses incurred for CIRP

"Insolvency and Bankruptcy Board of India vide its Circular No. IBBI/IP/013/2018 12th June, 2018 ***inter-alia provides that:***

When a corporate debtor undergoes corporate insolvency resolution process (CIRP), an Insolvency Professional (IP) is vested with the management of its affairs and he manages its operations as a going concern. He complies with the applicable laws on behalf of the corporate debtor. He conducts the entire CIRP. Such responsibilities of an IP require the highest level of professional excellence, dexterity and integrity. He needs to be compensated for his professional services commensurate to his ability, duties and responsibilities. He also needs to pay fee or incur other expenses for various goods and services required for conducting the CIRP and or managing the operations of the corporate debtor as a going concern……. .

6. Keeping the above in view, the IP is directed to ensure that:-

(a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;

(b) the fee or other expenses incurred by him are directly related to and necessary for the CIRP;

(c) the fee or other expenses are determined by him on an arms' length basis, in consonance with the requirements of integrity and independence;

(d) written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained;

(e) supporting records of fee and other expenses incurred are maintained at least for three years from the completion of the CIRP;

(f) approval of the Committee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required; and

(g) all CIRP related fee and other expenses are paid through banking channel.

7. The Code read with regulations made thereunder specify what is included in the insolvency resolution process cost (IRPC). The IP is directed to ensure that:-

(a) no fee or expense other than what is permitted under the Code read with regulations made thereunder is included in the IRPC;

(b) no fee or expense other than the IRPC incurred by the IP is borne by the corporate debtor; and

(c) only the IRPC, to the extent not paid during the CIRP from the internal sources of the Corporate Debtor, shall be met in the manner provided in section 30 or section 53, as the case may be.

8. It is clarified that the IRPC shall not include:

(a) any fee or other expense not directly related to CIRP;

(b) any fee or other expense beyond the amount approved by CoC, where such approval is required;

(c) any fee or other expense incurred before the commencement of CIRP or to be incurred after the completion of the CIRP;

(d) any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor in relation to the CIRP;

(e) any penalty imposed on the corporate debtor for non compliance with applicable laws during the CIRP;

(f) any expense incurred by a member of CoC or a professional engaged by the CoC;

(g) any expense incurred on travel and stay of a member of CoC; and

(h) any expense incurred by the CoC directly;

(i) any expense beyond the amount approved by the CoC, wherever such approval is required; and

(j) any expense not related to CIRP…….

What is Reasonable 'Cost' and Reasonable 'Fee' ?

As regards reasonable costs, the Society for Insolvency Practitioners of India, in its statement of best practices on "PAYMENT OF CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS" observes:

"Insolvency professionals must ensure that the costs incurred are reasonable. To determine the reasonability of these costs, they should consider if the costs are -

(a) Directly related to the insolvency resolution process,

(b) Necessary for meeting the objectives of the insolvency resolution process, and the Code,

(c) Proportional to the work required to be done and the assets of the corporate debtor, and

(d) Determined on an arms' length basis, in consonance with the requirements of integrity and independence."

Submission of the Learned Counsel for Appellant

Learned Counsel for the Appellant averred that the CoC has to fix the expenses to be incurred by the Resolution Professional and the expenses include fee which will constitute Insolvency Resolution Process Costs. There is no express provision in the Code and Regulations prescribing or prohibiting as to the form in which fees can be charged or paid.

Relying on Regulation 34, Senior Counsel stated that the CoC has to fix the expenses to be incurred by the Resolution Professional and the expenses include fee which will constitute Insolvency Resolution Process Costs.

Relying on the above, learned Counsel for the Appellant submitted that Para 23 of the impugned order cannot be maintained and the Adjudicating Authority could not have interfered with the CIRP costs which were made part of the Resolution Plan. Referring to the impugned order, Learned Senior Counsel for the Appellant submitted that the Adjudicating Authority did not say that the success fees could not be charged. Learned Senior Counsel referred to the various acts performed by the Appellant to justify the grant of the success fees as approved by the Committee of Creditors.

Learned Senior Counsel for the Appellant accepted that there is no judgment of the Hon'ble Supreme Court of India which has considered whether or not quantum of fees accepted, is or not a commercial decision.

Observations of the NCLAT

IBBI has directed the Insolvency Professional that the fee payable to them should be reasonable; that the same should be 'directly related to and necessary for the CIRP'; that the fee should be determined on an arms' length basis, in consonance with the requirements of integrity and independence; that it should not include fee or other expenses not directly related to CIRP. Section 208(2) (a) of the IBC requires the Insolvency Professional to take reasonable care and diligence while performing his duties, including incurring expenses. Regulation 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 permits the CoC to fix the "expenses" to be incurred on the Resolution Professional and by the Resolution Professional. The "expenses" are to include the 'fee' to be paid to the Resolution Professional. Perusal of such provisions and Regulations clearly indicates a prior consultation of minds at initial stage of CIRP to see as to what is the reasonable fee to be incurred on the Resolution Professional or by the Resolution Professional. Claim of success fee squeezed in at the last moment when the Resolution Plan is being approved is more in the nature of taking a reward or gift than expenditure incurred on or by the Resolution Professional. Reference to term "success fee" in Annexure-B of the Circular dated 12.06.2018

which was view of the 'Society for Insolvency Practitioners of India' is a term which is unguided. Rather even the said society has a caveat to it when it mentions that the success and contingency fee is only to the extent that it is consistent with the requirements of integrity and independence of Insolvency Professionals. In our view, if the Resolution Professional seeks to have success fee at the initial stage of CIRP, it would interfere with independence of Resolution Professional which can be at the cost of Corporate Debtor. If success fee is claimed when the Resolution Plan is going through or after the Resolution Plan is approved, it would be in the nature of gift or reward. "Success fee"- term is contrary to what IBBI provided in its Circular dated 16.01.2018 that Insolvency Professional shall render services for a fee which is a reasonable reflection of his work. The fee has to be related to acts performed or to be performed for furtherance of the CIRP, for dues or expenses actually incurred. It has to be directly related to acts done or expenses incurred which are necessary for the CIRP. The role of the Resolution Professional has to be like a dispassionate person concerned with performance of his duties under the Code for reasonable fees and it cannot be result oriented.

Again, the Learned *Amicus Curiae* is right in his submissions that Circular dated 12.06.2018 is only a Circular which cannot be equated with the Rules and Regulations framed under the provisions of the IBC. Although reference has been made that Circular is issued in view of powers exercised under Section 196(1) (h) read with Regulation 34A of the CIRP Regulations, both the provisions have not been carefully referred to. Section 196(1) (h) relates to calling for any information and records from Insolvency Professional Agencies, Insolvency Professionals and Information Utilities. Regulation 34A of the CIRP Regulations relates to 'disclosure of costs'. The Regulation specifies that the IRP or the RP shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board. It is stated that the Circular has Annexure-C showing as 'Cost Sheet for Insolvency Resolution of Corporate Debtor' which is a format. The Learned Amicus Curiae submitted that even if Regulation 34A is relevant for the said purpose reference to Section 196(1) (h) was not correct. The Learned Senior Counsel for the Appellant submitted that reference to wrong provision would not effect as the correct provision was Section 196(1) (aa) which relates to promoting the development of, and regulating the working and practices of, insolvency professionals. It is argued that under Section 196(1) (p), IBBI can issue necessary guidelines to the insolvency professionals and the Circular should be read in that context. Although the reference to wrong clause can be ignored, still it shows that the attention of the Authority issuing the Circular missed details while referring to opinions as in Annexure-B. The Appellant is trying to take advantage of this so as to pick up from Annexure-B one word 'success fee' and ignoring other aspects benefit is sought to be taken. Apart from the fact that the Code or the Regulations as existing do not provide for fee on speculative basis, Circular dated 12.06.2018 also in the portion where directions are given or clarification issued does not make any such 'success fee' or 'contingency fee' payable. Thus, it cannot be said that charging of success fee is within the provisions of the Code or the Regulations. By indirect reference in a Circular it cannot be accepted that success fee as sought is legally chargeable or payable.

NCLAT held that 'success fees' which is more in the nature of contingency and speculative is not part of the provisions of the IBC and the Regulations and the same is not chargeable. Apart from this, even if it is to be said that it is chargeable, we find that in the present matter, the manner in which, it was last minute pushed at the time of approval of the Resolution Plan and the quantum are both improper and incorrect.

End Note

IPs and the CoC constitute key institutions of public faith under the IBC. The IBC, read with its regulations, has demarcated the responsibilities of an IP and of the CoC in the CIRP and also assigned certain responsibilities to them jointly. An IP, when acting as an IRP or RP, is vested with various statutory and legal duties and powers. He exercises the powers of the board of directors of the CD undergoing resolution, manages the operations of the CD as a going concern, protects the value of its property, and complies with applicable laws on its behalf. In fact, he conducts the entire CIRP. The stakeholders are required to cooperate with him in the discharge of his functions.

With respect to the fee and other expenses incurred by an IP, the Code of Conduct for the IPs contained under the First Schedule to the IP Regulations states that "the fee quoted by insolvency professionals should be reasonable, commensurate with the work to be handled." Further, the IBBI has issued the Cost Circular stating that the responsibilities of an IP require the highest level of professional excellence, dexterity, and integrity. An IP is obliged under section 208(2)(a) of the IBC to take reasonable care and diligence while performing their duties, including incurring expenses. In view of that, the IP needs to be compensated for their professional services commensurate to their ability, duties, and responsibilities. The IP must, therefore, ensure that not only is the fee payable to him/her reasonable, but that other expenses incurred by him/her are reasonable. What is reasonable is context specific and not amenable to a precise definition.

Source:

1. https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzIwMjEtMDktMjAvY291cnRzLzEvZGFpbHkvMTYzMjEyODkyNjU5MjY4OTc2OTYxNDg0ZjllOGIwZWIucGRm
2. https://www.ibbi.gov.in/uploads/publication/a30d234862670f06b5a128a1bf208083.pdf

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RELIEF PACKAGE FOR TELECOM SECTOR- 4 YEAR MORATORIUM ON AGR DUES AND OTHER MEASURES*

Introduction

A significant judgment was delivered by the Hon'ble Supreme court on October 24, 2019 in relation to the licensing agreement between telecom companies and the Department of Telecom (DoT). In its judgment, the Court upheld the interpretation given to Adjusted Gross Revenue (AGR) by the DoT and ruled against the telecom companies. The Supreme Court mandated telecom operators to pay Rs. 1,19,292 crore to the Department of Telecommunications as AGR dues. Of this, Bharti Airtel's dues are pegged at Rs. 43,980 crore, while Vodafone Idea's dues were Rs. 58,254 crore.

However, later in September 2020, the Supreme Court granted 10 years to the operators to make staggered payments of the AGR dues, including penalty, interest and interest on penalty through March 31, 2031.

Vodafone Idea, promoted by Aditya Birla Group and UK's Vodafone Group, has paid Rs. 7854 crore as AGR dues, whereas Bharti Airtel has paid Rs. 18,000 crore as AGR dues.

Definition of AGR

The dispute between DoT and the mobile operators was mainly on the definition of AGR. The DoT argued that AGR includes all revenues (before discounts) from both telecom and non-telecom services. The companies claimed that AGR should comprise just the revenue accrued from core services and not dividend, interest income or profit on sale of any investment or fixed assets.

In 2005, Cellular Operators Association of India (COAI) challenged the government's definition for AGR calculation.

In 2015, the TDSAT (Telecom Disputes Settlement and Appellate Tribunal) stayed the case in favour of telecom companies and held that AGR includes all receipts except capital receipts and revenue from non-core sources such as rent, profit on the sale of fixed assets, dividend, interest and miscellaneous income.

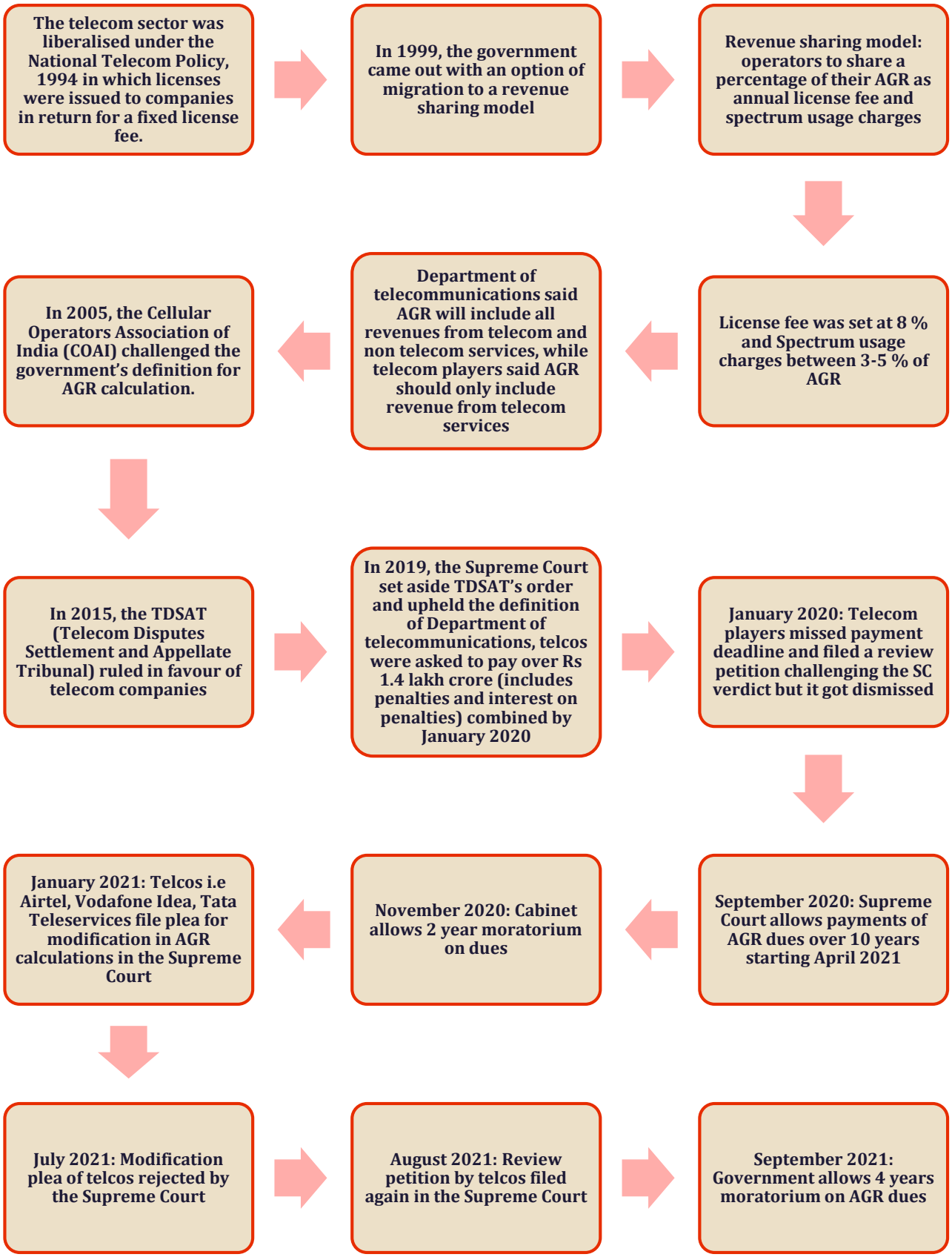
However, setting aside TDSAT's order, Supreme Court on October 24, 2019 upheld the definition of AGR as stipulated by the DoT.

In a significant decision the government in September, 2021, rationalized the definition of AGR, which had been a major reason for dispute for the sector by excluding non-telecom revenue of telecom companies on prospective basis.

* *Akansha Gupta, Assistant Director, The ICSI*

Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.

Chronology of events



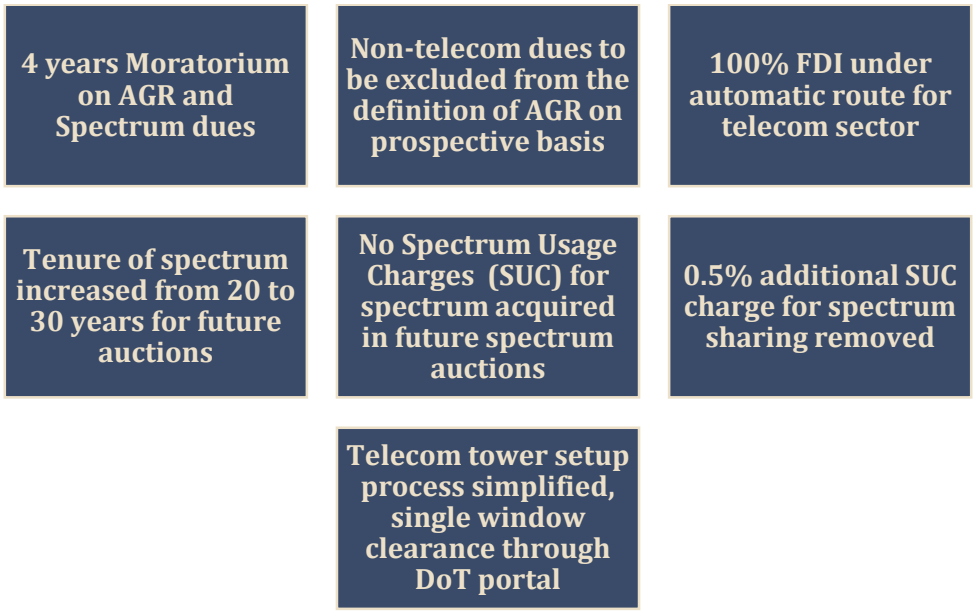
Measures approved for Telecom sector

The Union Cabinet approved several measures for the telecom sector. These measures seek to infuse liquidity, encourage investment and competition, and reduce the regulatory burden on the telecom service providers (TSPs). Key measures include:

- **Moratorium for outstanding dues:** A moratorium of up to four years will be allowed to the TSPs on payment of: (i) dues on account of license fees and spectrum usage charges for the years between 2003 and 2019 (as per a 2019 Supreme Court Judgement), and (ii) dues for spectrum purchased in past auctions (excluding 2021 auction). TSPs may pay interest amounts arising due to deferment of payment by way of equity. The central government will have an option to get equity in place of the outstanding dues at the end of the moratorium period.
- **Rationalization of levies:** Non-telecom revenue will be excluded from the definition of Adjusted Gross Revenue (AGR) on a prospective basis. AGR is the value of gross revenue after deduction of certain taxes and certain charges such as roaming charges from gross revenue. AGR also includes revenue from any non-telecom operations such as income from investments and income from property rent. Currently, the TSPs pay a percentage of their AGR to the central government in the form of license fees and spectrum usage charges.

  No spectrum usage charges will be levied for spectrum acquired in future auctions. Additional charges for spectrum sharing will also be removed. The interest rate applicable on late payment of dues will be reduced from October 1, 2021 (2% less than earlier). No penalty and interest on penalty will be levied on such delayed payments.
- **Bank Guarantees (BGs) rationalized:** The government approved a huge reduction in BG requirements (80%) against License Fee (LF) and other similar Levies. One BG would be enough instead of multiple BGs in different Licenced Service Areas (LSAs) regions in the country. For Auctions held henceforth, no BGs will be required to secure instalment payments. Industry has matured and the past practice of BG is no longer required.
- **FDI:** 100% Foreign Direct Investment under automatic route will be permitted in the telecom sector.
- **Procedural changes:** Spectrum auctions will be held in the last quarter of every financial year. For providing ease of doing business, cumbersome requirement of licenses under 1953 Customs Notification for wireless equipment has been removed and replaced with self-declaration.
- **Spectrum Tenure:** In future Auctions, tenure of spectrum increased from 20 to 30 years. Surrender of spectrum will be permitted after 10 years for spectrum acquired in the future auctions and No Spectrum Usage Charge (SUC) will be levied for spectrum acquired in future spectrum auctions. Further, the government has encouraged Spectrum sharing by removing additional SUC of 0.5% for spectrum sharing.

Major reforms in a nutshell



Conclusion

The above steps taken by the government would go a long way in relieving the financial stress the sector is facing, boosting investments, encouraging healthy competition, offering choice to customers, infusing liquidity, and reducing regulatory burden on Telecom Service Providers (TSPs). The government also noted that there will be further reforms when 5G is auctioned so that more players would enter the sector. The telecom sector has welcomed these measure by the government which will provide the much needed thrust to this sector for its growth and development.

Reference

- https://prsindia.org/files/policy/policy_annual_policy_review/Monthly%20Policy%20Review/2021-09-01/MPR%20September%202021.pdf
- https://indianexpress.com/article/explained/relief-package-telecom-sector-agr-dues-7511445/
- https://www.moneycontrol.com/news/business/cabinet-approves-moratorium-of-four-years-for-telcos-to-pay-agr-dues-7470291.html
- https://telecom.economictimes.indiatimes.com/news/telecom-the-agr-saga/86250201

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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)

Attention Students

Applicability of the Finance Act, 2020 for December, 2021 Examinations

Students may note that the Finance Act, 2020 i.e. Assessment Year 2021-22 / Previous Year 2020-21 is applicable in December, 2021 examinations for the following papers:

Executive Programme (Old Syllabus)

(i) Tax Laws and Practice (Module-1, Paper-4)

Executive Programme (New Syllabus)

(ii) Tax Laws (Module-1, Paper-4)

Professional Programme (Old Syllabus)

(iii) Advanced Tax Laws and Practice (Module-3, Paper-7)

Professional Programme (New Syllabus)

(iv) Advanced Tax Laws (Module-1 Paper-2)

Professional Programme (New Syllabus)

(v) Direct Tax Law and Practice (Module-3, Elective Paper-9.5)

Students may also note that: For Indirect Taxes:

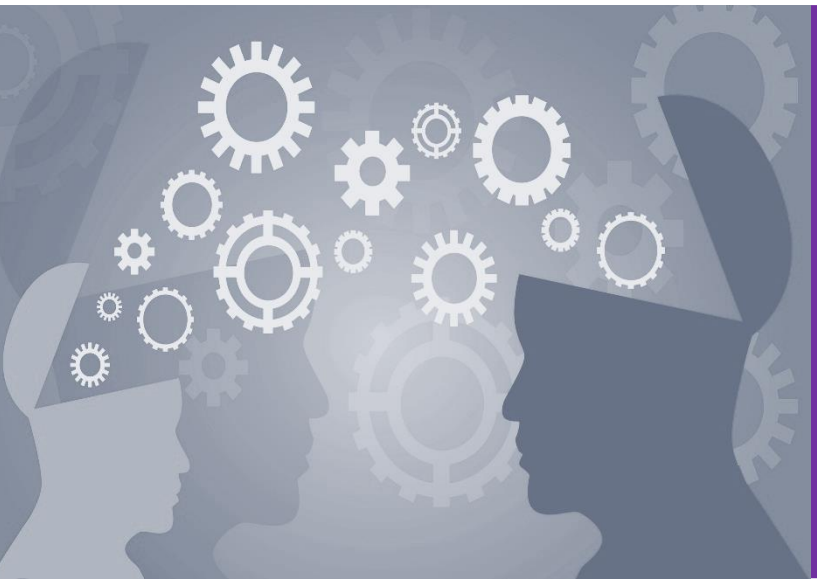
i. Goods and Services Tax (GST) is applicable for **Executive Programme (Old Syllabus)**

ii. Goods and Services Tax (GST) & Customs Law are applicable for **Executive Programme (New Syllabus)**

iii. Goods and Services Tax (GST) & Customs Law are applicable for **Professional Programme (Old as well as New Syllabus).**

Students are also required to update themselves on all the relevant Rules, Notifications, Circulars, Clarifications, etc. issued by the CBDT, CBIC & Central Government, on or before 31st May 2021 for December, 2021 Examination.

Joint Secretary (SG)
Dte. of Academics



Practice Mentor

APPEAL TO APPELLATE AUTHORITY UNDER GST IN INDIA*

Goods and Services Tax (GST) being implemented in our country is a dual GST i.e. every supply attracting the levy will be leviable to both central tax as well as state tax. So does this mean that if a taxpayer is aggrieved by any such transaction, he will have to approach both the authorities for exercising his right of appeal? The answer is a plain NO.

The Act has provisions for cross empowerment between Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) / Union Territory Goods and Services Tax (UTGST) officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction. The Act also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/revision/rectification against the said order will lie only with the proper officers of that Act only (CGST Act), so also if any order is passed by the proper officer of SGST, any appeal/review/revision/rectification will lie with the proper officer of SGST only.

Appeal to Appellate Authority

Section 2(8) of the CGST Act, 2017 defines *"Appellate Authority"* as an authority appointed or authorised to hear appeals as referred to in section 107.

Section 107 of CGST Act, 2017

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

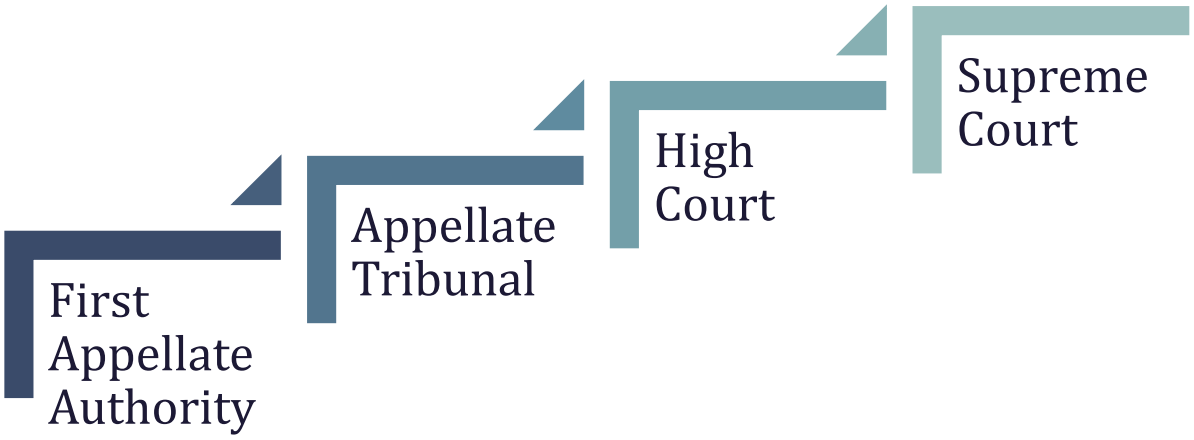
(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

* *Prepared by CS Pankhuri Agrawal, Consultant, The ICSI.*

Views expressed in the Article are the sole expression of the Author(s) and may not express the views of the Institute.

Appeals under GST

The CGST Act provides for a four-layered appeal structure as under:



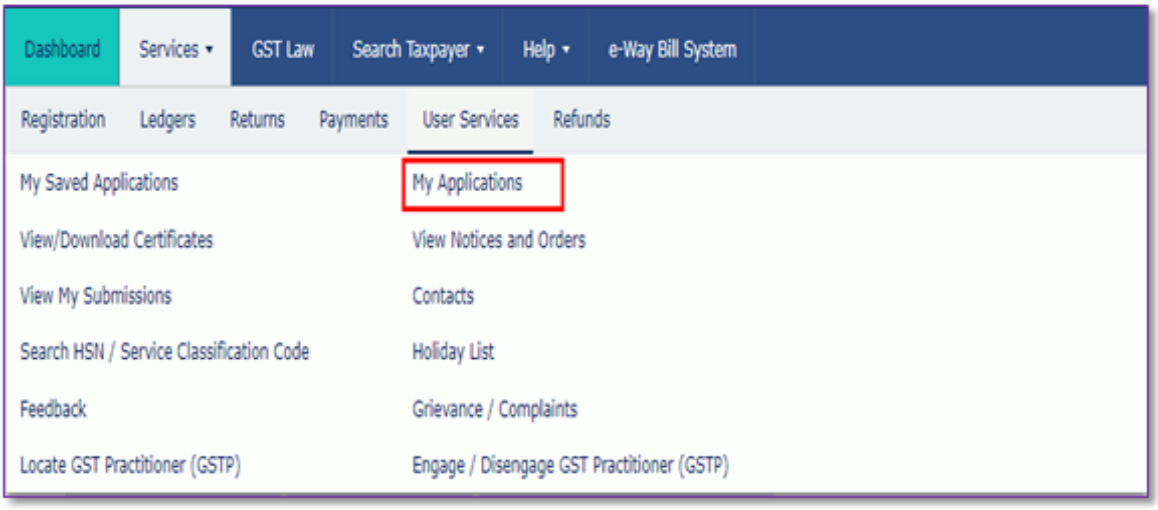
How to Appeal to First Appellate Authority under GST in India

Any person who thinks that the order or decision by the adjudicating authority is not as per law then such person can file an appeal to the Appellate Authority by following the below steps:

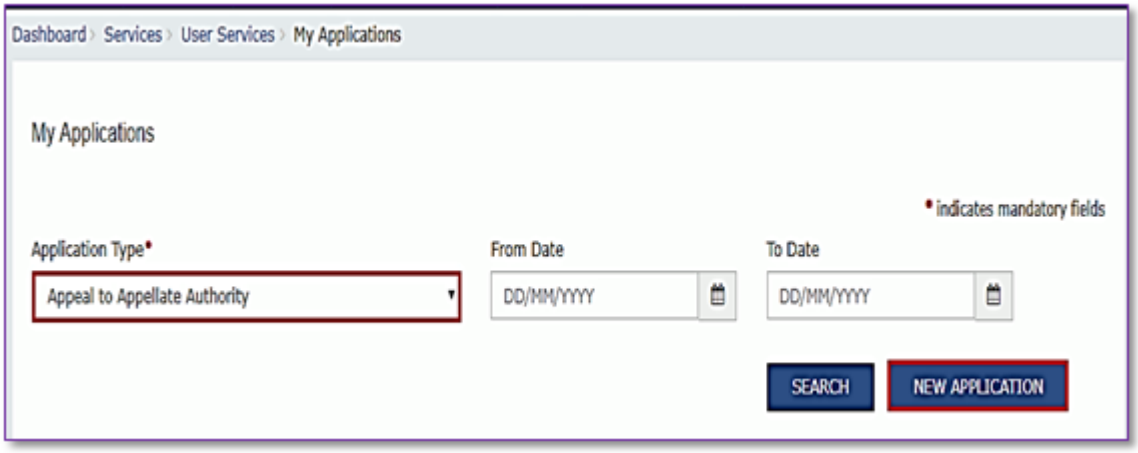
1. *Visit www.gst.gov.in*
2. *Login to the GST Portal with valid credentials –*

User Id *******
Password *******

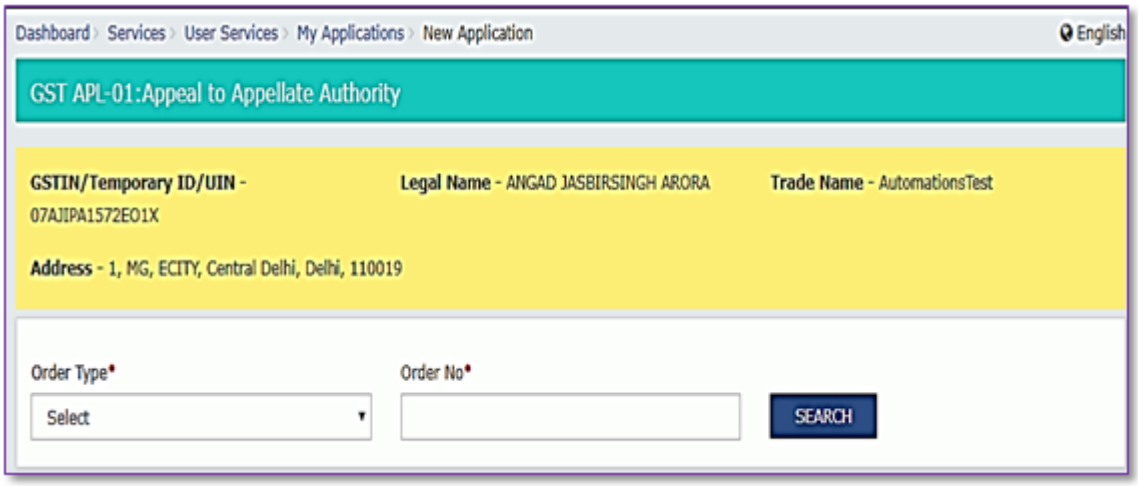
3. *Go to the tab User Services and then click my applications*



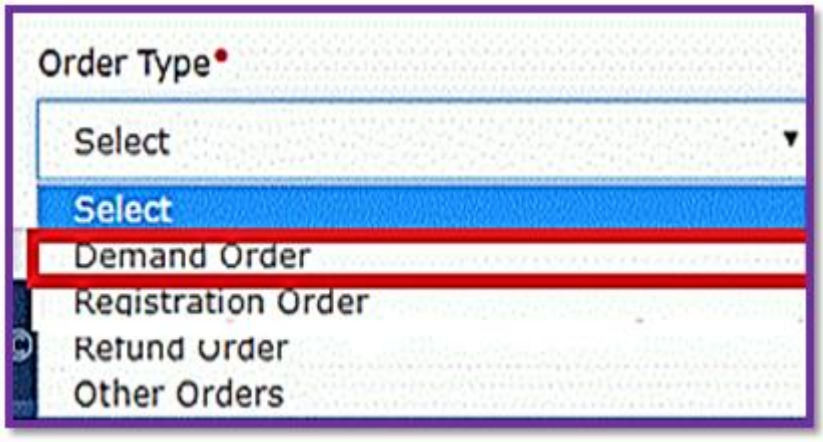
4. *The **My Applications** page is displayed. Select the Application Type as **Appeal to Appellate Authority** from the drop-down list.*
5. *Click the **NEW APPLICATION** button.*



The **GST APL-01: Appeal to Appellate Authority** page is displayed.

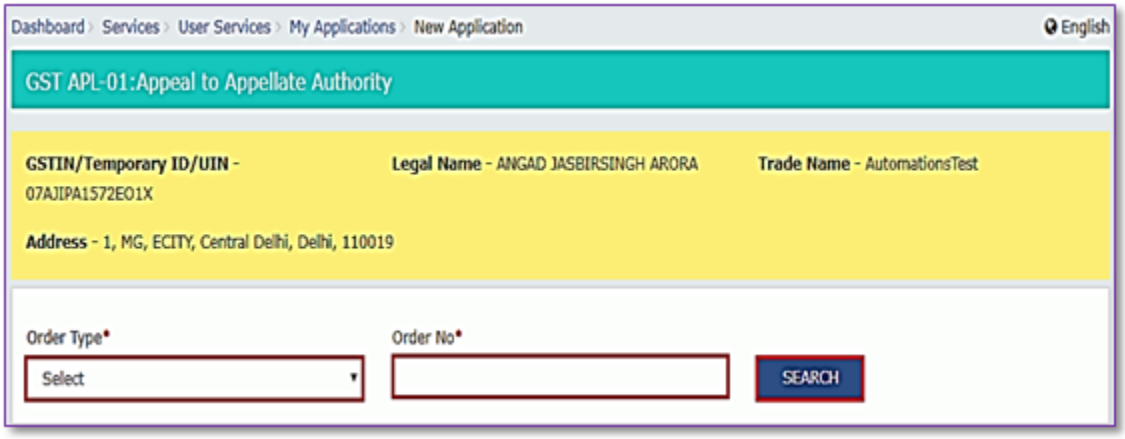


6. *Select the Order Type as **Demand Order** from the drop-down list.*

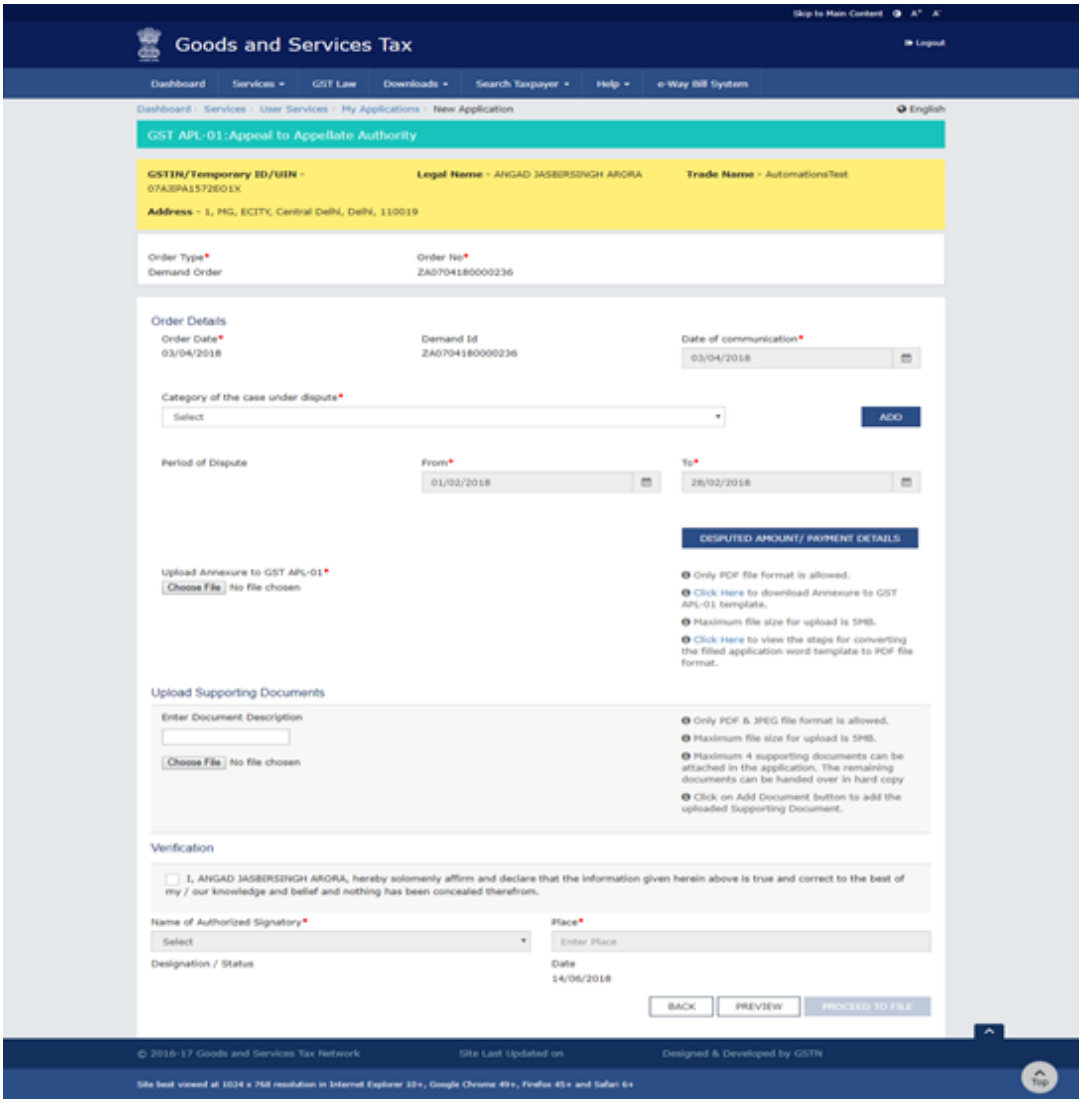


7. *In the **Order No** field, enter the Order Number issued by adjudicating authority.*

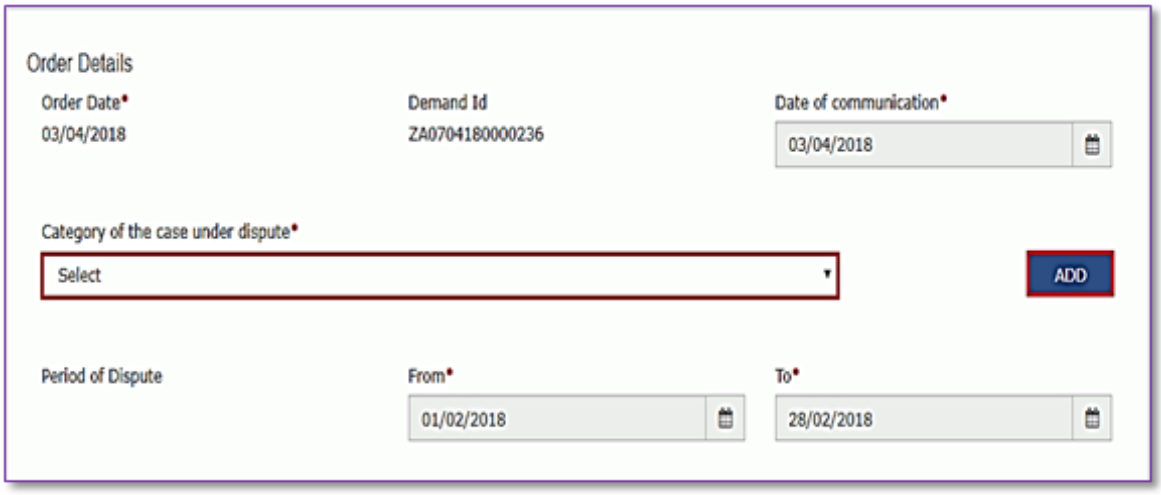
8. *Click the **SEARCH** button.*



9. *The **Order Details** page is displayed.*

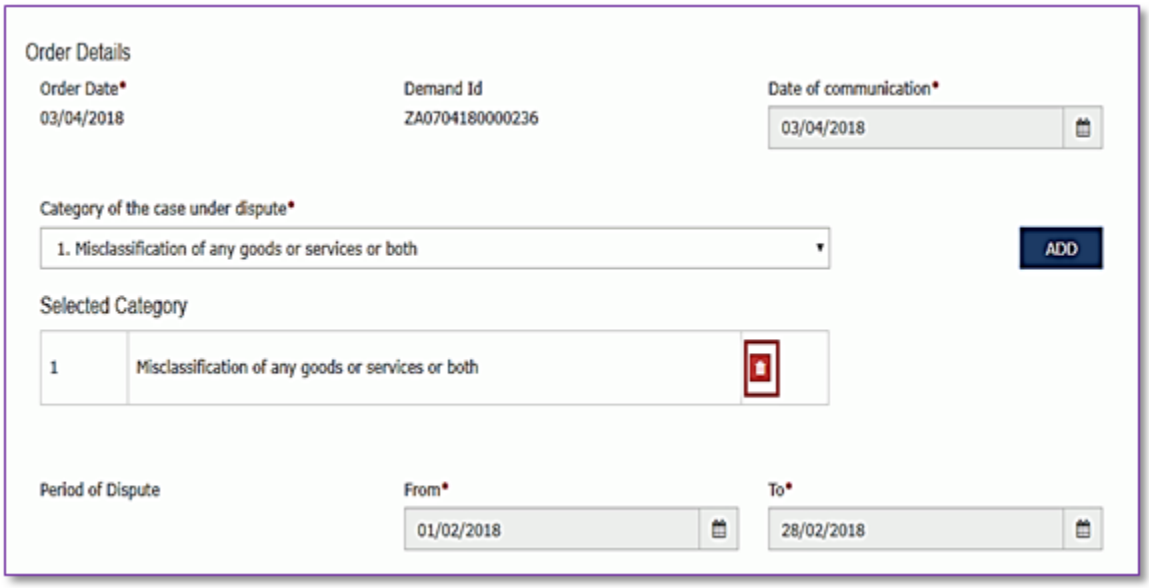


10. *Select the **Category of the case under dispute** from the drop-down list.*
11. *Click the **ADD** button.*



Note:

- Date of Communication and Period of Dispute is displayed on the screen. However, we can edit the same.
- We can add multiple line items from the Category of the case under dispute drop-down list by clicking the **ADD** button.
- We can click the **DELETE** button to delete the details added.



12. *Upload Annexure to GST APL -01.*
13. *To preview the Application before filing, Click the **PREVIEW** button.*
14. *The PDF file will be downloaded. Open the pdf file and check if all the details are correctly updated.*

FORM GST APL-01

[Refer Rule 108(1)]

Appeal to Appellate Authority

1	GSTIN/Temporary ID/UIN -	07AJIPA1572E01X
2	Legal Name -	ANGAD JASBIRSINGH ARORA
3	Trade Name -	AutomationsTest
4	Address -	1, MG, ECITY, Central Delhi, Delhi, 110019
	Order Type -	Demand Order
5	Order No - ZA0704180000236 Order Date -	03/04/2018
6	Designation and address of the officer passing the order appealed against	Assistant Commissioner 1 and JCCT (Administration), Dhanbad Division, Dhanbad, Vanijya Kar Bhawan, Near-Randhir Verma Chowk, Court Campus, Dhanabd,Dhanbad,826001
	Demand Id -	ZA0704180000236
7	Date of communication of the order to be appealed against -	03/04/2018
8	Name of the authorised representative -	NA

Category of the case under dispute -

1	Misclassification of any goods or services or both

9	Details of Case under dispute	
(i)	Brief issue of case under dispute -	Refer to Annexure
(ii)	Description and clarification of goods/ services in dispute -	Refer to Annexure
(iii)	Period of Dispute - From - 01/02/2018 To -	28/02/2018

(iv) Amount under Dispute

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of Dispute	Tax/Cess	0	0	30000	0	30000	30000
	Interest	0	0	0	0	0	
	Penalty	0	0	0	0	0	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	

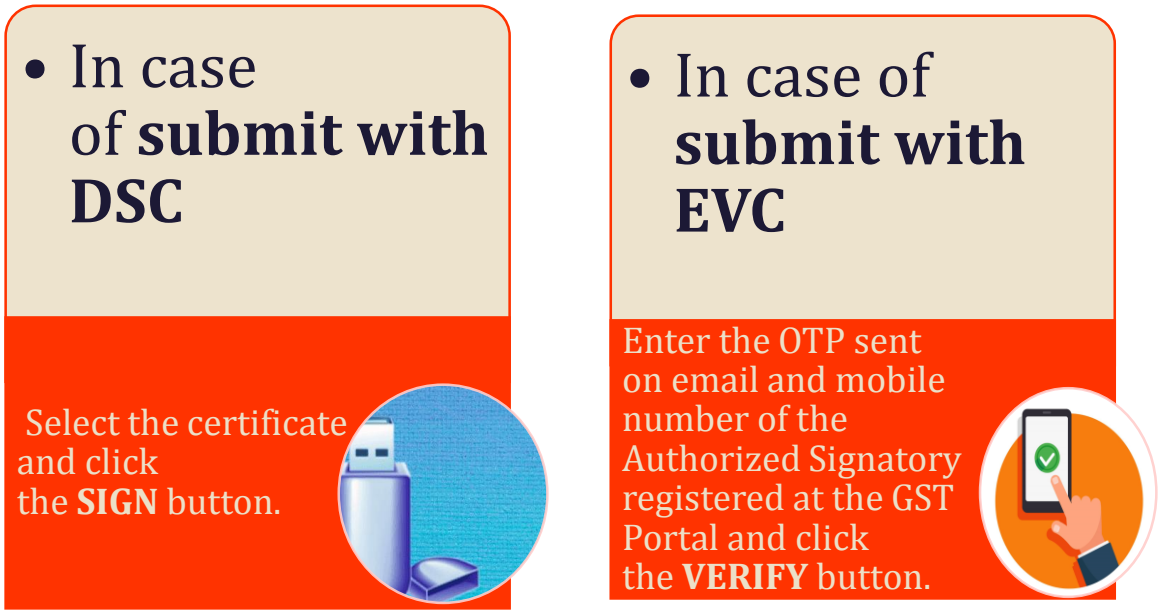
15. *Select the* ***Name of the Authorized Signatory*** *from the drop-down list.*

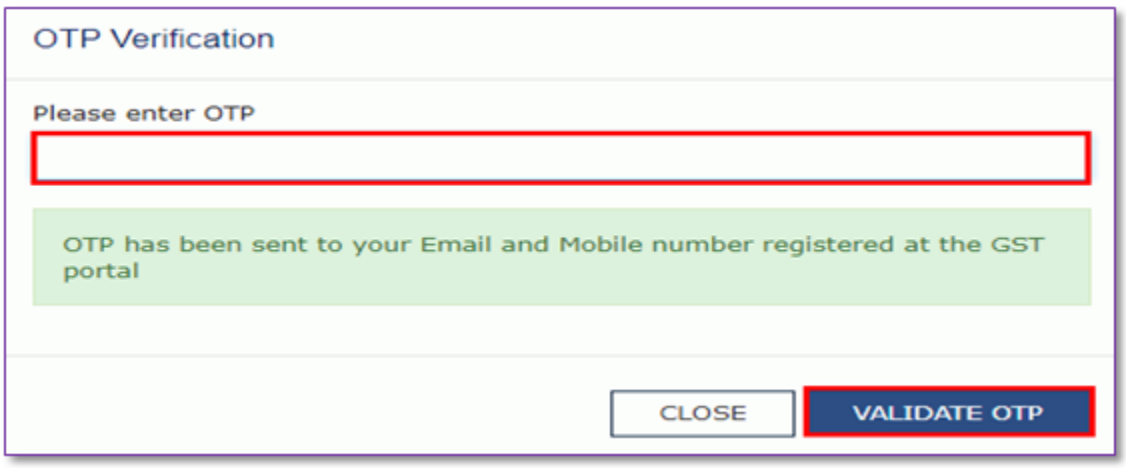
16. *Enter the* ***Place*** *where application is filled.*

17. *Click the* ***PROCEED TO FILE*** *button.*

18. *Click the* ***PROCEED*** *button.*

19. *Click the **SUBMIT WITH DSC** or **SUBMIT WITH EVC** button.*





20. *A confirmation message is displayed that form has been signed. You can click the **DOWNLOAD** button to download the acknowledgement receipt.*

Once an appeal against a demand order is filed, an email and SMS is sent to the taxpayer and Appellate Authority.

Sources:

- https://tutorial.gst.gov.in/userguide/appeal/index.htm#t=appeal_manual.htm
- https://tutorial.gst.gov.in/userguide/appeal/index.htm#t=appeal_faq.htm

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REGULATORY UPDATE

COMPANY LAW

1. Extension of time for holding Annual General Meeting for the Financial Year ended on March 31, 2021 (September 23, 2021)

The MCA has extended the time for holding of Annual General Meeting by the companies, for a period of two months beyond the due date by which the companies are required to conduct their AGMs for the financial year 2020-21 ended on March 31, 2021. Accordingly, respective ROCs have issued extension orders, which are available at the link below:

https://mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/extension-agm.html

2. Extension of tenure of the Company Law Committee (September 23, 2021)

The tenure of the Company Law Committee is further extended by one year from the date of expiry of the last order i.e. till September 16, 2022.

For details:
https://www.mca.gov.in/bin/dms/getdocument?mds=%252BpaAmGaQ%252Bcc0bTDekaOWIQ%253D%253D&type=open

3. Extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014-reg. (General Circular No. 15/2021, dated September 27, 2021)

In view of the extraordinary disruption caused due to COVID-19 pandemic, the MCA has decided that if cost audit report for the financial year 2020-21 by the cost auditor to the Board of Directors of the Companies is submitted by October 31, 2021 then the same would not be viewed as violation of Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014.

Consequently, the cost audit report for the financial year ended on March 31, 2021 shall be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the cost audit report by the company. However, in case a Company has got extension of time for holding Annual General Meeting, then e-form CRA-4 may be filed within the timeline provided under the proviso to Rule 6(6) of the Companies (Cost Records and Audit) Rules, 2014.

For details:
https://www.mca.gov.in/bin/dms/getdocument?mds=KGlUmY7RepuZpkNfr7ThCw%253D%253D&type=open

4. e-booklet - Boost to Ease of Doing Business and Investment in the Country - Decriminalization of offences under the Companies Act, 2013 (September 30, 2021)

The MCA has released e-booklet on Boost to Ease of Doing Business and Investment in the Country - Decriminalization of offences under the Companies Act, 2013 and the same is available on the website for reference of the stakeholders.

For details:
https://www.mca.gov.in/bin/dms/getdocument?mds=nXllAwYIa6uGSNLsmr3CAQ%253D%253D&type=open

SECURITIES LAWS AND CAPITAL MARKETS

1. Revised guidelines for Liquidity Enhancement Scheme in the Equity Cash and Equity Derivatives Segments
(Circular No. SEBI/HO/MRD/DSA/CIR/P/2021/623 dated September 01, 2021)

SEBI vide its circular dated April 23, 2014 permitted stock exchanges to introduce liquidity enhancement schemes in the equity cash and equity derivatives segments to enhance liquidity in illiquid securities.

SEBI has modified said circular and provides that the liquidity enhancement schemes shall have prior approval of the Governing Board of the Stock Exchange which will be valid for one year. The Governing Board of the Stock Exchange may give yearly approval till the time the scheme is in operation. Further, its implementation and outcome shall be monitored by the Governing Board at quarterly intervals. The Stock Exchange shall introduce liquidity enhancement schemes on any security. Once the scheme is discontinued, the scheme can be re-introduced on the same security.

The above will also be applicable to existing schemes. Other conditions prescribed in aforesaid SEBI Circular dated April 23, 2014 shall remain unchanged.

For details:
https://www.sebi.gov.in/legal/circulars/sep-2021/revised-guidelines-for-liquidity-enhancement-scheme-in-the-equity-cash-and-equity-derivatives-segments_52305.html

2. Alignment of interest of Asset Management Companies ('AMCs') with the Unit-holders of the Mutual Fund Schemes
(Circular No. SEBI/HO/IMD/IMD-IDOF5/P/CIR/2021/624 dated September 02, 2021)

SEBI has decided that based on the risk value assigned to the schemes, asset management companies ('AMCs') shall invest minimum amount as a percentage of assets under management ('AUM') in their schemes as provided son in the Annexure to this circular. The mandatory contribution already made by the AMCs in compliance with the applicable MF Regulations shall not be withdrawn. However, such contribution can be adjusted against the investment required by the AMC as per this circular.

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. Details of investment by AMCs in each of their mutual fund scheme(s) shall be disclosed on the website of AMCs and AMFI.

For details:
https://www.sebi.gov.in/legal/circulars/sep-2021/alignment-of-interest-of-asset-management-companies-amcs-with-the-unitholders-of-the-mutual-fund-schemes_52344.html

3. Linking of PAN with Aadhaar

(PR No.27/2021 dated September 03, 2021)

As per Central Board of Direct Taxes (CBDT) notification G.S.R 112(E) dated February13, 2020, the Permanent Account Number (PAN) of a person allotted as on July 01, 2017 shall become inoperative if it is not linked with Aadhaar by September 30, 2021 or any other date specified by CBDT.

Since, PAN is sole identification number for all transactions in the Securities Market, in view of the said CBDT notification, all SEBI registered entities including Market Infrastructure Institutions (MIIs) should ensure compliance of said notification and accept only operative PAN (i.e., linked with Aadhaar number) by the client while opening new accounts post September 30, 2021 or any other date specified by CBDT.

For details:
https://www.sebi.gov.in/media/press-releases/sep-2021/linking-of-pan-with-aadhaar_52368.html

4. Position Limits for Currency Derivatives Contracts

(Circular No. SEBI/HO/MRD2_DCAP/P/CIR/2021/626 dated September 07, 2021)

SEBI has revised the client level position limits for Currency Derivatives Contracts, per stock exchange. The revised position limits shall also apply to Non Resident Indians (NRIs) and Category II FPIs that are individuals, family offices, and corporates. The position limits for Category I FPIs and Category II FPIs (other than individuals, family offices, and corporates) shall continue to remain the same as specified by SEBI. Stock Exchanges/ Clearing Corporations are advised to specify additional safeguards/ conditions, as deemed fit, to manage risk and to ensure orderly trading.

For details:
https://www.sebi.gov.in/legal/circulars/sep-2021/position-limits-for-currency-derivatives-contracts_52450.html

5. Introduction of T+1 rolling settlement on an optional basis

(Circular No. SEBI/HO/MRD2/DCAP/P/CIR/2021/628 dated September 07, 2021)

SEBI has introduced T+1 rolling settlement on an optional basis. With effect from January 01, 2022, a Stock Exchange may choose to offer T+1 settlement cycle on any of the scrips, after giving an advance notice of at least one month, regarding change in the settlement cycle, to all stakeholders, including the public at large, and also disseminating the same on its website.

After opting for T+1 settlement cycle for a scrip, the Stock Exchange shall have to mandatorily continue with the same for a minimum period of 6 months. Thereafter, in case, the Stock Exchange intends to switch back to T+2 settlement cycle, it shall do so by giving 1-month advance notice to the market. There shall be no netting between T+1 and T+2 settlements.

T+1 means that settlements will have to be cleared within one day of the actual transactions taking place.

For details:
https://www.sebi.gov.in/legal/circulars/sep-2021/introduction-of-t-1-rolling-settlement-on-an-optional-basis_52462.html

6. SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021 (September 07, 2021)

SEBI vide gazette notification dated September 07, 2021 amends the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette.

The amendments, inter-alia, provides the "'non-convertible debt securities', 'non-convertible redeemable preference shares', 'non-convertible securities', 'perpetual debt instrument' and 'perpetual non-cumulative preference share' shall have the same meaning as defined under the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

Further, the regulation 15, and regulation 16 to regulation 27 w.r.t. the corporate governance provisions shall apply to a listed entity which has listed its non-convertible debt securities and has an outstanding value of listed nonconvertible debt securities of Rs. 500 crore and above.

However, in case an entity that has listed its nonconvertible debt securities triggers the specified threshold of Rs. 500 crore during the course of the year, it shall ensure compliance with these provisions within six months from the date of such trigger.

Also it has been provided that these provisions shall be applicable to a 'high value debt listed entity' on a 'comply or explain' basis until March 31, 2023 and on a mandatory basis thereafter.

For details:
https://www.sebi.gov.in/legal/regulations/sep-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2021_52488.html

7. SEBI Chairman's Speech at 12th Financial Markets Summit of CII (September 16, 2021)

Speaking at 12th Financial Markets Summit of CII, Shri Ajay Tyagi, Chairman, SEBI, said-

- 'Building India for a new World' needs encouragement and growth of the capital markets to meet the funding requirements of growing economy. At present, capital market share in the overall fund raising in India is nowhere near the proportions in the developed countries.
- Post the onset of Pandemic, individual investors' participation in stock markets has increased.
- SEBI has progressively strengthened the margining provisions. These improvements have held the trading and clearing system in good stead in the present scenario of tremendous increase in turnover and individual investors' participation in the market.
- The fund raised through IPOs more than doubled in FY21 to around INR 46,000 Crore from around INR 21,000 crore in the previous financial year. Based on the applications filed with SEBI, the equity raising through IPOs this year is likely to

surpass the highest amount ever raised in any financial year during the last decade.

- InvITs and REITs have become very popular in the last few years for fund raising and monetization of infrastructure and real estate assets. As on 31st August, 2021, there are 15 InvITs and 4 REITs registered with SEBI.
- With the potential to attract a lot of capital, Alternative Investment Funds (AIFs) can be a suitable vehicle to channel funds from sophisticated investors, individual and institutional, to purchase distressed loans from banks and NBFCs.
- Sustainable development and addressing the climate change concerns have emerged as priority areas. SEBI came out with Business Responsibility and Sustainability Reporting norms for the listed corporates.
- SEBI has launched another investor education programme called - SMARTs (Securities Market Trainers) programme. Individuals and organisations with knowledge and experience in securities market and interest in creating investor awareness are empaneled as SMARTs.

For details:
https://www.sebi.gov.in/media/speeches/sep-2021/chairman-s-speech-dated-september-16-2021-at-12th-financial-markets-summit-of-cii_52621.html

8. Clarifications with respect to Circular dated April 28, 2021 on 'Alignment of interest of Key Employees ('Designated Employees') of Asset Management Companies (AMCs) with the Unitholders of the Mutual Fund Schemes'

(Circular No. SEBI/HO/IMD/IMD-I/DOF5/P/CIR/2021/629 dated September 20, 2021)

SEBI, vide its Circular dated April 28, 2021, has provided that a part of the compensation of Key Employees of the AMCs shall be paid in the form of units of the schemes in which they have a role or oversight.

In this regard, SEBI has clarified that junior employees (a designated employee of the AMC below the age of 35 years excluding CEO, head of any department and Fund Managers) shall be required to invest 10% during October 01, 2021 to September 30, 2022 and 15% during October 01, 2022 to September 30, 2023, in the MF units.

However, all junior employees shall be mandatorily required to invest 20% w.e.f. October 01, 2023 onwards. Further, it has been provided that other designated employees shall be mandatorily required to invest 20% in the MF units w.e.f. October 01, 2021.

The phased implementation for junior employees shall cease to apply from the date such employee attains the age of 35 years.

For details:
https://www.sebi.gov.in/legal/circulars/sep-2021/clarifications-with-respect-to-circular-dated-april-28-2021-on-alignment-of-interest-of-key-employees-designated-employees-of-asset-management-companies-amcs-with-the-unitholders-of-the-mutual-_52703.html

9. Risk Management Framework (RMF) for Mutual Funds

(Circular No. SEBI/HO/IMD/IMD-1 DOF2/P/CIR/2021/630 dated September 27, 2021)

To protect the interests of investors and to ensure that mutual funds render high standard of service, SEBI has come out with a revised risk management framework. With the overall objective of management of key risks involved in mutual fund operation, the revised Risk Management Framework (RMF) shall provide a set of principles or standards, which inter alia comprise the policies, procedures, risk management functions and roles & responsibilities of the management, the Board of AMC and the Board of Trustees.

SEBI's new RMF terms risk management as an independent and specific function of the asset management company. For each risk such as investment risk, compliance risk, operational risk, and cyber security the asset management company should appoint a dedicated risk officer. In addition to these officials, there should be a chief risk officer (CRO) in each asset management company.

The RMF seeks to clearly define the roles of risk personnel and mention the same on the fund house's website. Though the CRO is responsible for the overall risk, along with the management, both board of AMC and trustees should also be responsible.

AMCs shall perform a self-assessment of their RMF and practices and submit a report, thereon, to their Board along with the roadmap for implementation of the framework. Compliance with the RMF should be reviewed annually by the AMC.

The detailed RMF for mutual funds are placed at Annexure-A.

For details:
https://www.sebi.gov.in/legal/circulars/sep-2021/risk-management-framework-rmf-for-mutual-funds_52943.html

10. SEBI Board Meeting

(PR No.28/2021 dated September 28, 2021)

The SEBI Board met on September 28, 2021 where it, interalia, approved the following:

- The framework for Gold Exchange and SEBI (Vault Managers) Regulations, 2021.
- The creation of the Social Stock Exchange (SSE), under the regulatory ambit of SEBI, for fund raising by social enterprises (SE).
- The proposal to amend the existing regulatory framework for delisting of equity shares pursuant to open offer as provided under the extant Regulation 5A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The revised framework aims to make M&A transactions for listed companies a more rational and convenient exercise, balancing the interest of all investors in the process.
- Relaxation in the eligibility requirements related to Superior Voting Rights (SR) Shares framework.

- The amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, in relation to regulatory provisions on related party transactions (RPTs).
- The Investor Charter of SEBI for investors in the securities market. The Investor Charter, inter-alia, includes the Vision statement of SEBI for investors. Mission statement, Rights and Responsibilities of Investors, Do's and Don'ts for investors in securities market, etc.
- The amendment to SEBI (Alternative Investment Funds) Regulations, 2012 allowing Category III AIFs to calculate concentration norms based on Net Asset Value of the fund instead of investable funds for investment in listed equities of investee companies.
- The amendments to SEBI (Mutual Funds) Regulations, 1996 to enable introduction of Silver Exchange Traded Funds with certain safeguards in line with the existing regulatory mechanism for Gold ETFs.
- The amendments to the SEBI (Portfolio Managers) Regulations, 2020 and the SEBI (Alternative Investment Funds) Regulations, 2012, to facilitate Co-investment by investors of Alternative Investment Funds (AIF) through portfolio management route.
- To facilitate investment in Indian securities markets through the FPI route by Alternative Investment Funds (AIFs) set up in International Financial Services Centres (IFSCs), the Board considered and approved the proposal to amend the SEBI (Foreign Portfolio Investors) Regulations, 2019 for permitting Resident Indians (other than individuals) to become constituents of FPIs that are registered as AIFs in IFSCs
- Amendment to Schedule II of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 - Criteria for determining 'Fit and Proper Person'

For details:
https://www.sebi.gov.in/media/press-releases/sep-2021/sebi-board-meeting_52976.html

11. Swing pricing framework for mutual fund schemes

(Circular No. SEBI/HO/IMD/IMD-II DOF3/P/CIR/2021/631 dated September 29, 2021)

SEBI has introduced the swing pricing framework for open ended debt mutual fund schemes (except overnight funds, Gilt funds and Gilt with 10-year maturity funds), to protect investors in debt mutual funds.

Swing pricing is a mechanism that imposes certain cost on exiting investors (since they are contributing to a downward spiral in NAV) while incentivizing entering investors (since they are helping to stem the downward spiral in NAV). This framework shall be applicable with effect from March 1, 2022.

Swing pricing shall be made applicable to all unitholders at PAN level with an exemption for redemptions upto Rs. 2 lacs for each mutual fund scheme for both normal times and market dislocation.

When swing pricing framework is triggered and swing factor is made applicable (for normal time or market dislocation, as the case may be), both the incoming and outgoing investors shall get NAV adjusted for swing factor.

All AMCs shall make clear disclosures along with illustrations in the SIDs including information on how the swing pricing framework works, under which circumstances it is triggered and the effect on the NAV for incoming and outgoing investors. AMCs shall have laid down policies and procedures pertaining to swing pricing which are approved by board of AMC and Trustee.

This circular shall be applicable with effect from March 1, 2022.

For details:
https://www.sebi.gov.in/legal/circulars/sep-2021/circular-on-swing-pricing-framework-for-mutual-fund-schemes_52997.html

12. 'Guidelines for Investment Advisers' - Extension of timelines

(Circular No. SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/632 dated September 30, 2021)

SEBI earlier extended the timelines for Investment Advisers (IAs) to conduct the annual compliance audit for the financial year ended March 31, 2021. On receipt of representations from IAs, the timeline for compliance with the requirements has now been extended by three months.

For the financial year ending March 31, 2021, the IAs are now required to conduct the annual compliance audit by December 31, 2021 and submit the adverse findings of the audit, if any, by January 31, 2022. Further, it has been provided that the IAs shall obtain a certificate from an auditor by December 31, 2021.

For details:
https://www.sebi.gov.in/legal/circulars/sep-2021/guidelines-for-investment-advisers-extension-of-timelines_53049.html

INDIRECT TAX LAWS

Goods and Services Tax

1. Clarification on doubts related to scope of "Intermediary" (Circular No. 159/15/2021- GST dated September 20, 2021)

The definition of intermediary services specifically mentions that intermediary "does not include a person who supplies such goods or services or both or securities on his own account". Use of word "such" in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of "intermediary".

For details:
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20159_14_2021_GST.pdf;jsessionid=16BFC9E9EEDC70F4BE8206265EEB6EEC

2. Clarification in respect of certain GST related issues (Circular No. 160/16/2021- GST dated September 20, 2021)

With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended vide the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.

For details:
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20160_14_2021_GST.pdf;jsessionid=7F2597CB0A11A69478F92A2B0275B28B

3. Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017 (Circular No. 161/17/2021- GST dated September 20, 2021)

Supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of section 2(6) of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

For details:
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20161_14_2021_GST.pdf;jsessionid=9A153A181F1C3B96B404F314F3B83CFE

4. Notification to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017 (Notification No. 35/2021- Central Tax dated September 24, 2021)

In the Central Goods and Services Tax Rules, 2017, — (1) In rule 10A of the said rules, with effect from the date as may be notified, -

(a) after the words "details of bank account", the words "which is in name of the registered person and obtained on Permanent Account Number of the registered person" shall be inserted;

(b) the following proviso shall be inserted, namely:-

"Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor."

For details:
https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-35-central-tax-english-2021.pdf

5. Notification to amend Notification No. 03/2021 dated 23.02.2021 (Notification No. 36/2021- Central Tax dated September 24, 2021)

The Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 03/2021-Central Tax, dated the 23rd February, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 132(E), dated the 23rd February, 2021, namely: - In the said notification, in the first paragraph after the words "hereby notifies that the provisions of", the words, brackets, figure and letter "sub-section (6A) or" shall be inserted.

For details:
https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-36-central-tax-english-2021.pdf

6. Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act (Circular No. 162/18/2021- GST dated September 25, 2021)

The refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be.

For details:
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20162_18_2021_GST.pdf;jsessionid=4BC7EBEC4E76C8E02A0B1629FCA8672A

7. Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting (Circular No. 163/19/2021- GST dated October 06, 2021)

Based on the recommendations of the GST Council in its 45th meeting held on September 17, 2021, at Lucknow, clarification, with reference to GST levy, related to the following are being issued through this circular:

i. Fresh vs dried fruits and nuts;

ii. Classification and applicable GST rates on Tamarind seeds;

iii. Coconut vs Copra;

iv. Classification and applicable GST rate on Pure henna powder and leaves, having no additives;

v. Scented sweet supari and flavored and coated illaichi;

vi. Classification of Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues and applicable GST rate;

vii. GST rates on goods [miscellaneous pharmaceutical products] falling under heading 3006;

viii. Applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822;

ix. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations;

x. External batteries sold along with UPS Systems/ Inverter;

xi. Specified Renewable Energy Projects;

xii. Fiber Drums, whether corrugated or non-corrugated.

For details:
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20163_18_2021_GST.pdf;jsessionid=BAFBBB23B5BE1F84B2953FA7E108D037

8. Clarification regarding applicable GST rates & exemptions on certain services (Circular No. 164/20/2021- GST dated October 06, 2021)

The issue-wise clarifications are given below:

- **Services by cloud kitchens/central kitchens:**

  Clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

The word 'restaurant service' is defined in Notification No. 11/2017 – CTR as below: - 'Restaurant service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

The explanatory notes to the classification of service state that 'restaurant service' includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. It is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under 'restaurant service', as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC].

- **Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities":**

  It is clarified that services provided by any institutions/ NGOs under the central scheme of 'Scholarships for students with Disabilities' where total expenditure is borne by the Government is covered under entry 72 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 and hence exempt from GST.

For details:
https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20164_2021_GST.pdf;jsessionid=985A984E780B53BC0F9586E6062A1BAC

DIRECT TAX

1. Extension of timelines for filing of Income-tax returns and various reports of audit for the Assessment Year 2021-22 [Circular No. 17 Dated September 9, 2021]

Sr. No.	Particulars	Original Due Date	Extended Due Date	Further Extended Due Date
1.	Furnishing Return of Income for AY 2021-22			
(a)	Regular Assessees	31.07.2021	30.09.2021	31.12.2021
(b)	Tax Audit Assessees	31.10.2021	30.11.2021	15.02.2022
(c)	Assessees with Transfer Pricing Report	30.11.2021	31.12.2021	28.02.2022
(d)	Belated / Revised Return	31.12.2021	31.01.2022	31.03.2022
2.	Furnishing Tax Audit Report	30.09.2021	31.10.2021	15.01.2022
3.	Transfer Pricing Report	31.10.2021	30.11.2021	31.01.2022

For details:
https://incometaxindia.gov.in/communications/circular/circular-no-17-of-2021.pdf

2. Income-tax (29th Amendment) Rules, 2021 [Dated September 13, 2021]

The Central Board of Direct Taxes notifies Income-tax (29th Amendment) Rules, 2021 to amend Income-tax Rules, 1962. The Amendment inserts a provision prescribing income- tax authority under second proviso to clause (i) of sub-section (1) of section 142 as follow:

Rules12F: The Rule provides that the prescribed income-tax authority under second proviso to clause (i) of sub-section (1) of section 142 shall be an income-tax authority not below the rank of Income-tax Officer who has been authorised by the Central Board of Direct Taxes to act as such authority for the purposes of that clause.

For details:
https://incometaxindia.gov.in/communications/notification/notification-no-109-2021.pdf

3. No Section 194A TDS on Interest payment to Scheduled Tribe by Scheduled Bank [Notification No. 110 Dated September 17, 2021]

CBDT notifies that no Section 194A TDS will be deducted by 'Scheduled Bank on payment of interest, other than interest on securities to Scheduled Tribe residing in any specified area, and the payment as referred above is accruing or arising to the receiver as referred to in section 10(26) if the payment made or aggregate of payments made during the previous year does not exceed 20 Lakhs rupees.

For details:
https://incometaxindia.gov.in/communications/notification/notification-no-110-2021.pdf.pdf

4. CBDT notifies pension fund, namely '2452991 Ontario Limited' Section 10(23FE) [Notification No. 111 Dated September 16, 2021]

CBDT notifies pension fund, namely, '2452991 Ontario Limited' under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after 16th September, 2021 but on or before the 31st day of March, 2024 subject to fulfilment of certain conditions.

For details:
https://incometaxindia.gov.in/communications/notification/notification-no-111-2021.pdf

5. CBDT notifies pension fund, namely '276522 Ontario Limited' Section 10(23FE) [Notification No. 112 Dated September 16, 2021]

CBDT notifies pension fund, namely, '276522 Ontario Limited' under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after 16th September, 2021 but on or before the 31st day of March, 2024 subject to fulfilment of certain conditions.

For details:
https://incometaxindia.gov.in/communications/notification/notification-no-112-2021.pdf

6. Government extends certain timelines to ease compliances [Notification No. 113 Dated Sept. 17, 2021]

The Central Government, in continuation of its commitment to address the hardship being faced by various stakeholders on account of the Covid-19 pandemic, has, on consideration of representations received from various stakeholders, decided to extend timelines for compliances under the Income-tax Act, 1961 in the following cases, as under:

- Time limit for intimation of Aadhaar number to the Income tax Department for linking of PAN with Aadhaar has been extended from 30th September, 2021 to 31st March, 2022.
- The due date for completion of penalty proceedings under the Act has also been extended from 30th September, 2021 to 31st March, 2022.

- Time limit for issuance of notice and passing of order by the Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988 has also been extended to 31st March, 2022.

For details:
https://incometaxindia.gov.in/communications/notification/notification-no-113-2021.pdf

7. Notification No. 114 [Dated September 20, 2021]

The Central Government hereby specifies the pension fund, namely, the BCI IRR India Holdings Inc., as the specified person for the purposes of the sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 subject to the fulfilment of the certain conditions.

For details:
https://incometaxindia.gov.in/communications/notification/notification-no-114-2021.pdf

8. Notification No. 115 [Dated September 20, 2021]

The Central Government hereby notifies for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961, 'Gujarat Electricity Regulatory Commission', Gandhinagar (PAN AAAAG0638C), a commission established by the state government of Gujarat, in respect of the certain specified income arising to the Commission subject to fulfilment of certain conditions.

For details:
https://incometaxindia.gov.in/communications/notification/notification-no-115-2021.pdf

9. Income Tax 30th Amendment Rules 2021 [Notification No. 117 Dated Sept. 24, 2021]

The Central Board of Direct Taxes hereby makes the Income-tax (30th Amendment) Rules, 2021 as per which, in the Income-tax Rules, 1962, in rule 10TD [Safe Harbour Rules], in sub-rule (3B), for the words and figures "assessment year 2020-21", the words and figures "assessment years 2020-21 and 2021-22" shall be substituted.

For details: https://egazette.nic.in/WriteReadData/2021/229929.pdf

BANKING LAWS

1. Tokenisation – Card Transactions: Permitting Card-on-File Tokenisation (CoFT) Services (Notification no. RBI/2021-22/96CO.DPSS.POLC.No.S-516/02-14-003 / 2021-22 dated September 07, 2021)

On a review of the tokenisation framework and to enable cardholders to benefit from the security of tokenised card transactions as also the convenience of CoF, it has been decided to effect the following enhancements –

a. Extend the device-based tokenisation1 framework referred to at paragraph 1 above to CoF Tokenisation (CoFT) as well.
b. Permit card issuers to offer card tokenisation services as Token Service Providers (TSPs).
c. The facility of tokenisation shall be offered by the TSPs only for the cards issued by / affiliated to them.
d. The ability to tokenise and de-tokenise card data shall be with the same TSP.
e. Tokenisation of card data shall be done with explicit customer consent requiring Additional Factor of Authentication (AFA) validation by card issuer.

For details: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12159&Mode=0

2. Prompt Corrective Action Framework - UCO bank (Notification No. FEMA 23(R)/(5)/2021-RB dated September 08, 2021)

The performance of the UCO Bank, currently under the Prompt Corrective Action Framework (PCAF) of RBI, was reviewed by the Board for Financial Supervision. It was noted that as per its published results for the year ended March 31, 2021, the bank is not in the breach of the PCA parameters. The bank has provided a written commitment that it would comply with the norms of Minimum Regulatory Capital, Net NPA and Leverage ratio on an ongoing basis and has apprised the RBI of the structural and systemic improvements that it has put in place which would help the bank in continuing to meet these commitments. Taking all the above into consideration, it has been decided that UCO Bank is taken out of the PCA restrictions subject to certain conditions and continuous monitoring.

For details: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12167&Mode=0

3. Large Exposures Framework (LEF) – Credit Risk Mitigation (CRM) for offsetting – non-centrally cleared derivative transactions of foreign bank branches in India with their Head Office (Notification no. RBI/2021-22/97 DOR.CRE. REC.47/ 21.01.003/2021-22 dated September 09, 2021)

It is advised that the Indian branches of foreign banks shall be permitted to reckon cash/unencumbered approved securities, the source of which is interest-free funds from Head Office or remittable surplus retained in Indian books (reserves), held with RBI under 11(2)(b)(i) of the Banking Regulation Act,1949 as CRM, for offsetting the gross exposure of the foreign bank branches in India to the Head Office (including overseas branches) for the calculation of LEF limit, subject to the certain conditions.

For details: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12160&Mode=0

4. Application for Aadhaar e-KYC Authentication Licence (Notification no. RBI/2021-22/98 DOR.AML.REC 48/14.01.001/2021-22 dated September 13, 2021)

In terms of Section 11A of the PML Act, 2002, entities other than banking companies may, by notification of the Central Government, be permitted to carry out authentication of client's Aadhaar number using e-KYC facility provided by the Unique Identification Authority of India (UIDAI). A detailed procedure for processing of applications under the aforementioned Section for use of Aadhar authentication services by entities other than banking companies has been provided by the Department of Revenue, Ministry of Finance. Accordingly, Non-Banking Finance Companies (NBFCs), Payment System Providers and Payment System Participants desirous of obtaining Aadhaar Authentication License - KYC User Agency (KUA) License or sub-KUA License (to perform authentication through a KUA), issued by the UIDAI, may submit their application to this Department for onward submission to UIDAI.

For details: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12161&Mode=0

5. Master Direction – Reserve Bank of India (Market-makers in OTC Derivatives) Directions, 2021 (Notification no. RBI/FMRD/2021-22/84 FMRD.FMD.07/ 02.03.247/2021-22 dated September 16, 2021)

The draft Reserve Bank of India (Market-makers in OTC Derivatives) Directions, 2020 were released for public comments on December 04, 2020. Based on the feedback received from the market participants, the draft Directions were reviewed and have since been finalised. RBI has issued Master Direction – Reserve Bank of India (Market-makers in OTC Derivatives) Directions, 2021.

For details: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12163&Mode=0

6. Master Circular on Investments by Primary (Urban) Co-operative Banks (Notification no. RBI/2021-22/100 DOR.MRG.REC.50/21.04.141/2021-22 dated September 20, 2021)

The Reserve Bank of India (RBI) has released Master Circular on Investments by Primary (Urban) Co-operative Banks. UCBs should not undertake any purchase/sale transactions with broking firms or other intermediaries on principal-to-principal basis.

For details: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12164&Mode=0

7. Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021 (Notification no. RBI/2021-22/100 DOR.MRG.REC.50/ 21.04.141/2021-22 & RBI/DOR/2021-22/86 DOR.STR.REC.51/21.04.048/2021-22 dated September 24, 2021)

The Reserve Bank of India (RBI) has released draft frameworks for Securitisation of Standard Assets & Sale of Loan Exposures on June 8, 2020 for comments from various stakeholders. Based on the examination of the comments received, the RBI has issued the Master Directions on Securitisation of Standard Assets and Sale of Loan Exposures.

For details: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=52288

INSURANCE LAWS

1. **Product Structure for Cyber Insurance (Circular no. IRDAI/NL/ CIR/ MISC/ 242/09/2021 dated September 08, 2021)**

   There are rising incidences of cyber attacks along with a growing number of high profile data breaches. The online exposures for individuals, business organizations, offices and other establishments continue to increase more so in the current pandemic situation. The Authority had, therefore, constituted a working group with a focus to examine the possibility of bringing standardisation of Cyber Liability Insurance policy wording. The Working Group, after conducting wide consultations with various stakeholders, and after internal deliberations concluded that standardisation of policy wording is not desirable at this juncture keeping in view of the evolving nature of legislative frameworks in dealing with cyber risk, fast growing digital ecosystem, increasing interconnectedness globally and complexity of IT systems and emergence of new risks.

   For details:
   https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4560&flag=1

2. **Title Insurance Products (Circular no: IRDAI/CIR/MISC/243/09/2021 dated September 08, 2021)**

   Title insurance is a form of indemnity insurance that protects a potential owner of a property against financial loss from defects in title to real property. The policy is a retrospective one where the insured is protected against losses arising from the events that occurred prior to the date of issuing the policy. In order to ensure that the general insurers offer basic Title Insurance covers for legal liabilities of promotors/developers in case of any loss caused to allottees due to defective title of the property, protection for individual buyers for the purchased units in projects and to facilitate easy marketability of these products, the Authority had constituted a Working Group to suggest, inter alia, product construct and policy wording for two new products in addition to the existing products.

   For details:
   https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4558&flag=1

3. **IRDAI (Trade Credit Insurance) Guidelines, 2021 (Circular no. IRDAI/NL/GDL/MISC/244/09/2021 dated September 08, 2021)**

   The Insurance Regulatory and Development Authority of India (IRDAI)has issued revised guidelines on Trade Credit insurance considering the evolving insurance risk needs of various sectors and response to changing market conditions. The guidelines shall come into force with effect from 1st November, 2021.

   For details:
   https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4561&flag=1

4. **Extension of timelines for sale and renewal of short term Covid specific health insurance policies (Circular no. IRDAI/HLT/REG/CIR/246/09/2021 dated September 13, 2021)**

   Reference is invited to the short term Covid specific health insurance policies permitted to be offered by all Insurers. All insurers are permitted to offer and renew short term Covid specific health policies up to 31.03.2022. Accordingly, Corona Kavach Policies offered as per Guidelines on Covid Standard Indemnity based Health Policy and Corona Rakshak Policies offered as per Guidelines on Covid Standard benefit based Health Policy are also permitted to be offered and renewed by all insurers up to 31.03.2022.

   For details:
   https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4562&flag=1

5. **Issuance of Electronic Policies and Dispensing with physical documents and wet signature on the proposal form (Circular no. IRDAI/NL/CIR/MISC/247/09/2021 dated September 13, 2021)**

   The exemptions granted for issuance of electronic policies as well as dispensing with physical document and wet signature have been extended upto the period 31/03/2022.

   For details:
   https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4563&flag=1

6. **Extension of timelines for (a) Issuance of Electronic Policies and (b) Dispensing with Physical documents and wet signature on the proposal form in respect of health insurance policies (Circular no. IRDAI / HLT / REG / CIR/ 248/09/2021 dated September 14, 2021)**

   In view of the continuing situation of Covid-19 pandemic, the timelines for (a) issuance of electronic policies and (b) dispensing with physical signatures and wet signature on the proposal form in respect of health insurance policies, stand extended up to 31st March, 2022.

   For details:
   https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4565&flag=1

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Company Law Corner

PROCEDURE FOR THE APPOINTMENT OF INDEPENDENT DIRECTOR

Introduction

Independent Directors

As per Sec 149(4) of the Companies Act, 2013 (hereinafter referred to as "**the Act**"), every listed public company shall have at least one-third of the total number of directors as Independent Directors. Further, Central Government has prescribed, under Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014, that companies with specified limits as on the last date of latest audited financial statements, as mentioned below shall also have at least 2 directors as Independent Directors: -

i. Public companies having paid up share capital of Rs. 10 crore or more; or

ii. Public companies having turnover of Rs. 100 crore or more; or

iii. Public companies which have in aggregate, outstanding loans/borrowings/ debentures/ deposits/ exceeding Rs. 50 crores.

- ✓ In case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, then they shall appoint such higher number of independent directors.
- ✓ Further if there is any intermittent vacancy of an independent director then it shall be filled up by the board of directors within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later.
- ✓ Once the company covered under above sub-rule (i) to (iii) of Rule 4, ceases to fulfil any of three conditions referred in Rule 4 above, for three consecutive years, then it shall not be required to comply these provisions until such time as it meets any of such conditions.

Definition of an Independent Director

As per Sec 149(6) of the Act, an Independent Director means a director other than a managing director or a whole-time director or a nominee director who does not have any material or pecuniary relationship with the company/ directors. Section 149(6) of the Companies Act, 2013 prescribes the criteria for independent directors which are as follow: -

Section 2(47) of the Companies Act, 2013 prescribed that *"Independent Director" means an Independent Director referred to in sub-section (6) of section 149*"

a. Who in the opinion of the Board, is a person of integrity and possesses relevant industrial expertise and experience;

b. Such individual shall not be, whether at present or in the past, a promoter of the company or of its holding, subsidiary or associate company and shall not be related to any promoter or Director in the company or its holding, subsidiary or associate company;

c. Such individuals must not have pecuniary relationship other than remuneration as such director or having transaction not exceeding 10% of his total income or such amount as may be prescribed during the two immediately preceding financial years or during the current financial year with the company or its promoters/directors/holding/subsidiary/ associate company;

d. none of whose relatives—

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to 2% or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

e. He must not either directly or any of his relatives-

(i) hold or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed.

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm;

(iii) holds together with his relatives 2% or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives 25% or more of its receipts from the company, any of its

promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company, then also he is not eligible for office of independent director; or

f. who possesses such other qualifications as prescribed in Rule 5, which prescribes that an independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

Prerequisites for the Appointment of Independent Director

1. The person who will be appointed as an Independent Director shall have an Active Director Identification Number (DIN). [Section 152(3)]

2. A person shall not be eligible for appointment as an Independent Director of a Company, if he/she has any disqualification for appointment as a Director in the Company. [Section 164]

3. The total number of directorships of Independent Director shall not exceed the maximum limit as provided under section 165(1).

4. Company may select Independent Director from the databank containing names, addresses and qualifications of persons who are eligible and willing to act as Independent Directors, maintained by any body, institute or association, as may be notified by Central Government. [Section 150]

5. In case the company is incorporated before 1st January, 2018, the status of the company must be **'Active Compliant Company'.** [fourth Proviso of Rule 25A of the Companies (Incorporation) Rules, 2014]

Procedure with Checkpoints

Meeting of Nomination and Remuneration Committee	Convene a meeting of Nomination and Remuneration Committee to pass a resolution for specifying the criteria for determining qualifications, experience and independency of the person to be appointed as independent director and for recommendation of the person to the board for appointment as an independent director.
The company shall make arrangements to obtain-	• DIN • Consent in writing from the proposed Independent Director regarding to act as a Director in Form DIR-2. • Declaration from the proposed Independent Director in Form DIR-8 confirming that he/she

	is not disqualified to act as a director under section 164. • Details of other entities in which he is interested including his shareholdings therein. • Declaration regarding complying the provisions of section 149(6) in respect of independency of person to be appointed as an independent director.
Complete formalities regarding calling of Board Meeting	• Issue notice of Board Meeting to all the Directors of Company at their addresses registered with the Company, at least 7 days before the date of Board Meeting or within such time as may be permissible for the company in accordance with its Articles of Association read with the provisions of Sec 173 of the Act. • To transact urgent business, the Notice may be given at shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such Meeting. • Attach Agenda, Notes to Agenda and Draft Resolution with the Notice.
Meeting of Board of Directors	Convene and hold the board meeting as per the notice and pass the following board resolutions thereat: i. For appointment of independent director for a tenure upto the maximum period of 5 years at a time, subject to shareholders approval at the General Meeting. ii. Fixing of day, date, time and venue for calling general meeting, if resolution is not to be transacted through postal ballot. iii. Approving notice for calling general meeting to pass ordinary resolution for appointment of independent director in the company OR approve notice of postal ballot in case resolution is to be passed through postal ballot.
Intimation to the Stock Exchange	Listed Company shall submit the disclosure of such appointment to the stock exchange within 24 hours from the conclusion of the Board Meeting.

Website updation	Listed company shall disseminate the terms and conditions of appointment of Independent Directors on the website of the Company within 2 working days from the date of passing of Board Resolution for appointment of Independent Director as required under Regulation 46(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
Complete formalities regarding minutes of the board meeting as per Section 118 of the Companies Act, 2013	• Prepare draft minutes of the board meeting and circulate, within a period of 15 days from the date of the conclusion of that meeting, to all directors, by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means, for their comments. • The Directors shall communicate their comments, if any, on the draft minutes within 7 days from the date of circulation of the draft minutes. • Add the suggested comments given and get the final draft of the minutes approved by the Chairman. • Entered the minutes in the minutes book within 30 days from the date of conclusion of the board meeting. • Minutes of the board meeting shall be signed and dated by the chairman of the said meeting or by the chairman of the next Meeting. • The copy of the signed minutes duly certified by the Company Secretary or where there is no Company Secretary by any Director authorised by the Board, shall be circulated within 15 days of signing of the minutes to all the Directors.
Filing of Form DIR-12 with the ROC	After the Board Meeting, a Return of Appointment of Directorship (Form DIR-12 mentioning the Designation as Additional Director under category of Independent Director (Non-Executive) is required to be filed with Registrar within 30 days of

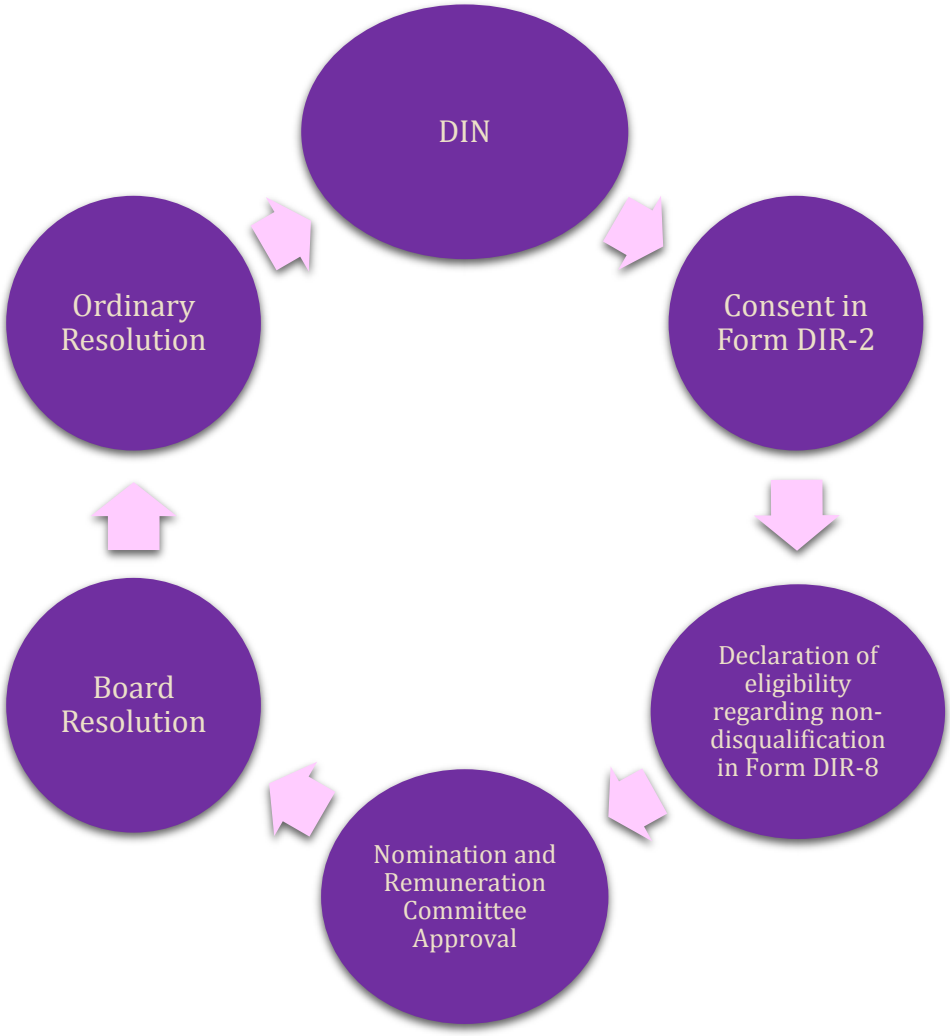
	appointment with copy of Board Resolution along with Consent to Act as Director and Declaration about his disqualifications. In case of Companies other than OPC and Small Company, the return is also to be certified by a Company Secretary/Chartered Accountant/Cost Accountant. Following documents will be required as an attachment with Form DIR-12: a. Certified True Copy of the Board Resolution passed b. DIR-2 Consent to Act as Director c. DIR-8 Declaration by Director d. Declaration of Independence under section 149(7) e. Details of interest in other entities f. Letter of Appointment.
Meeting of Shareholders	• Send notice of general meeting to all directors, shareholders, auditors, secretarial auditors and debenture trustee, if any, of the company atleast 21 clear days before the date of general meeting or within such time as required or allowed under its Articles of Association read with Sec 101 of the Act, either in writing or through electronic mode. • Convene and hold the general meeting and pass the Ordinary Resolution for obtaining shareholders confirmation for the appointment of Independent Director.
Intimation to the Stock Exchange	Listed Company shall submit the proceedings of general meeting to the stock exchange within 24 hours from the conclusion of the Board Meeting.

Complete formalities regarding minutes of the shareholders as per Section 118 of the Companies Act, 2013	• Minutes shall be entered in the Minutes Book within 30 days from the date of conclusion of the Meeting. • Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within 30 days of the General Meeting.
Letter of Appointment	Issue letter of appointment to the appointee director containing the details such as term of appointment, fiduciary duties, remuneration etc. as specified under Schedule IV of the Companies Act, 2013.
File Form DIR-12 with ROC	After the General Meeting, a Return of Appointment of Directorship (Form DIR-12 for change in Designation from Additional Director to Director (under category of Independent Director (Non-Executive) is required to be filed with Registrar within 30 days of appointment with copy of Ordinary Resolution along with consent to act as director and declaration about his disqualifications. In case of Companies other than OPC and Small Company, the return is also to be certified by a Company Secretary/Chartered Accountant/Cost Accountant. **Following documents will be required as an attachment with Form DIR-12** a. Certified True Copy of the Ordinary Resolution passed b. DIR-2 Consent to Act as Director c. DIR-8 Declaration by Director d. Details of interest in other entities e. Letter of Appointment.

Requirements after appointment of Independent Director

1. Obtain disclosure of interest in Form MBP-1 pursuant to Section 184(1) of the Companies Act, 2013. Form MBP-1 given by director should be taken note by passing board resolution at the first meeting of the board in which he participates as a director.
2. Company should make necessary entries in the Register of Director and Key Managerial Personals and registers of contract and arrangements in which Directors are interested in Form MBP-4.
3. Make arrangements to post terms and conditions of the appointed independent director on the website of the company.
4. Make sure that the Company and appointed Independent Directors shall abide by the Code for Independent Directors specified in Schedule IV of the Companies Act, 2013.
5. Ensure that a statement on declaration given by the independent director under section 149(7) is furnished in the Board of Directors' Report of the company.

Significant Approvals and Requirements for the appointment



Conclusion

The Indian Corporate Laws including Companies Act as well as SEBI Regulations have entrusted the Independent Directors with powers and responsibilities so as to enable them to play an important role in establishment and functioning of an efficient Corporate Governance system in any company. Considering the very purpose of the appointment of an independent Director in a company, it is imperative that the process of appointment of an Independent Director is followed not just in letter of the law but also in the spirit of the law for the purpose of a sustainable growth of the corporate governance system in the company and thus eventually in the corporate world as a whole.

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Legal Maxims

S.No.	*Legal Maxim*	*Meaning*	*Usage & Example*
1.	*Inter vivos*	Between the living	Refers to a gift or other non-sale transfer between living parties. This is in contrast to a will, where the transfer takes effect upon one party's death. **For ex. This property may be transferred *inter vivos*.**
2.	*Intra vires*	Within the powers	Something done which requires legal authority, and the act is performed accordingly. **For ex. According to the Article of Association of the company, this transaction is *intra vires*.**
3.	*Ipse dixit*	He himself said it	An assertion given undue weight solely by virtue of the person making the assertion. **For ex. The person who is questioning the information once confirmed *Ipse dixit.***
4.	*Jus civile*	Civil law	A codified set of laws concerning citizenry, and how the laws apply to them. **For ex. The Code of Civil Procedure, 1908 is *jus civile.***
5.	*Lacunae*	Void, gap	A situation arising that is not covered by any law. Generally used in International Law, as all countries codify according to their own systems of law. **For ex. There was a *lacunae* in one clause of agreement.**

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Legal World

CORPORATE LAWS

Landmark Judgement

BLOOM DEKOR LTD& ANR v. SUBHASH HIMATLAL DESAI& ORS [SC]

Civil Appeals No. 1750 & 1751 of 1994

M. N. Venkatchelliah, P. B. Sawant & S. Mohan, JJ. [Decided on 09/09/2994]

Equivalent citations: 1994 SCC (6) 322; JT 1994 (6) 89; (1995) 82 comp Cas 591; (1994) 15 CLA 275; 1994 SCALE (4)60.

Injunction against public issue- registered office of the company was in Ahmedabad- injunctions obtained from courts other than Ahmedabad- whether in junction proper- Held, No. Supreme Court reiterates the principles of issuing injunction orders against a company.

Brief facts : The appellant-Company came up with a public issue. The respondents filed different injunction suits in different courts and got stay on the issue. The aggrieved appellant company approached the Apex Court, which was required to examine this kind of "remote place injunction seeking trend" and the validity thereof.

Decision : Appeals allowed.

Reason : What is surprising in this case is suits were filed before courts which have no jurisdiction whatever, namely, Morvi and Vadodara, though in the name of different persons all backed up by Ramlal Thakkar. No part of cause of action has arisen within the jurisdiction of either of these courts. Then again, the courts are approached at the last minute. Yet an order of ad interim injunction came to be passed without even notice to the appellant. The principles governing the grant of ad interim injunction in matters of this kind have been completely ignored. As a matter of fact, this Court in *Morgan Stanley Mutual Fund v. Kartick Das (1994) 4 SCC 225 : JT 1994 (3) SC 654* has clearly indicated such principles. Tested on those principles, the impugned orders are unsupportable.

From the above narration it is clear that the respondents have been clearly indulging in judicial adventurism. A string of suits comes to be filed one after the other. Late orders are obtained that too on applications filed without notice to the appellant. Unfortunately, the courts below wittingly or otherwise have aided this judicial adventurism without even determining whether they had Jurisdiction. Take for instance the suit in Morvi court. How does the said court get jurisdiction? What is the cause of action?

By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.

If the matter is viewed as a contract no part of cause of action has arisen within the jurisdiction of Morvi court. The same principle will be applicable to the suit before the Civil Court (Senior Division), Baroda; more so, in the light of Explanation to Section 20, the appellant-Company having its registered office in Ahmedabad. Therefore, we could expect the court to examine these aspects before granting an interim order. So much for cause of action.

This Court had occasion to lay down the principles governing the grant of injunction in such matters in Morgan Stanley Mutual Fund case (supra). It is stated thus:

"As a principle, ex parte injunction could be granted only under exceptional circumstances. The facts which should weigh with the court in the grant of ex parte injunction are-

"(a) whether irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court."

As to venue restrictions, the observations of this Court Morgan Stanley Mutual Fund (supra) are apposite. Paragraph 50 reads thus:

"As far as India is concerned, the residence of the company is where the registered office is located. Normally, cases should be filed only where the registered office of the company is situate. Courts outside the place where the registered office is located, if approached, must have regard to the following. Invariably, suits are filed seeking to injunct either the allotment of shares or the meetings of the Board of Directors or again the meeting of general body. The court is approached at the last minute. Could injunction be granted d even without notice to the respondent which will cause immense hardship and administrative inconvenience. It may be sometimes difficult even to undo the damage by such an interim order. Therefore, the court must ensure that the plaintiff comes to court well in time so that notice may be served on the defendant and he may have his say before any interim order is passed. The reasons set out in the preceding paragraphs of our judgment in relation to the fact which should weigh with the court in the grant of ex parte injunction and the rulings of this Court must be borne in mind."

It is not difficult to perceive that all these actions are nothing but attempts by one caucus of persons to baulk the appellant-Company from issuing or dealing with shares or debentures. The action of the respondents calculated to harm the interests of the appellant-Company must be viewed with serious concern and must be totally disapproved.

All the said suits mentioned in TP (C) Nos. 26 to 30 of 1994 will stand transferred to the file of senior most Civil Judge at City Civil Court, Ahmedabad and be tried along with Ahmedabad suit, CS No. 6630 of 1993. The transfer petitions are ordered accordingly.

NATIONAL SPOT EXCHANGE LIMITED vs. ANIL KOHLI- RP FOR DUNAR FOODS LTD [SC]

Civil Appeal No. 6187 of 2019

M.R. Shah & A. Bose, JJ. [Decided on 14/09/2021]

Insolvency and Bankruptcy Code, 2016 - section 61- appeals- limitation period – power of NCLAT to condone delay - delay of 44 days in filing appeal - NCLAT refused to condone the delay - whether correct - Held, Yes.

Brief facts : Feeling aggrieved and dissatisfied with the impugned order dated 05.07.2019 passed by the National Company Law Appellate Tribunal [NCLAT] whereunder the NCLAT has refused to condone the delay of 44 days in preferring the appeal against the order passed by the National Company Law Tribunal (hereinafter referred to as the 'NCLT'), rejecting the claim of the appellant herein, the appellant National Spot Exchange Limited has preferred the present appeal.

Decision : Appeal dismissed.

Reason : At the outset, it is required to be noted that the appellant herein has challenged the order passed by the adjudicating authority dated 6.3.2019 affirming the decision of the resolution professional of rejection of the claim of the appellant before the NCLAT. The appeal preferred before the NCLAT was under Section 61(2) of the IB Code. As per Section 61(2) of the IB Code, the appeal was required to be preferred within a period of thirty days. Therefore, the limitation period prescribed to prefer an appeal was 30 days. However, as per the proviso to Section 61(2) of the Code, the Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal, but such period shall not exceed 15 days. Therefore, the Appellate Tribunal has no jurisdiction at all to condone the delay exceeding 15 days from the period of 30 days, as contemplated under Section 61(2) of the IB Code.

In the present case, even the appellant applied for the certified copy of the order passed by the adjudicating authority on 8.4.2019, i.e., after a delay of 34 days. Therefore, even the certified copy of the order passed by the adjudicating authority was applied beyond the prescribed period of limitation, i.e., beyond 30 days. The certified copy of the order was received by the appellant on 11.04.2019 and the appeal before the NCLAT was preferred on 24.06.2019, i.e., after a delay of 44 days. As the Appellate Tribunal can condone the delay up to a period of 15 days only, the Appellate Tribunal refused to condone the delay which was beyond 15 days from completion of 30 days, i.e., in the present case delay of 44 days and consequently dismissed the appeal. Therefore, as such, it cannot be said that the learned Appellate Tribunal committed any error in not condoning the delay of 44 days, which was beyond the delay of 15 days which cannot be condoned as per Section 61(2) of the IB Code.

It is true that in a given case there may arise a situation where the applicant/appellant may not be in a position to file the appeal even within a statutory period of limitation prescribed under the Act and even within the extended maximum period of appeal which could be condoned owing to genuineness, viz., illness, accident etc. However, under the statute, the Parliament has not carved out any exception of such a situation. Therefore, in a given case, it may cause hardship, however, unless the Parliament has carved out any exception by a provision of law, the period of limitation has to be given effect to. Such powers are only with the Parliament and the legislature. The courts have no jurisdiction and/or authority to carve out any exception. If

the courts carve out an exception, it would amount to legislate which would in turn might be inserting the provision to the statute, which is not permissible.

It is also required to be noted that even the learned senior counsel appearing on behalf of the appellant has, as such, fairly conceded that considering Section 61(2) of the IB Code, the Appellate Tribunal has jurisdiction or power to condone the delay not exceeding 15 days from the completion of 30 days, the statutory period of limitation. However, has requested and prayed to condone the delay in exercise of powers under Article 142 of the Constitution of India, in the facts and circumstances of the case and submitted that the amount involved is a very huge amount and that the appellant is a public body. We are afraid what cannot be done directly considering the statutory provisions cannot be permitted to be done indirectly, while exercising the powers under Article 142 of the Constitution of India.

In view of the afore-stated settled proposition of law and even considering the fact that even the certified copy of the order passed by the adjudicating authority was applied beyond the period of 30 days and as observed hereinabove there was a delay of 44 days in preferring the appeal which was beyond the period of 15 days which maximum could have been condoned and in view of specific statutory provision contained in Section 61(2) of the IB Code, it cannot be said that the NCLAT has committed any error in dismissing the appeal on the ground of limitation by observing that it has no jurisdiction and/or power to condone the delay exceeding 15 days.

LABOUR LAWS

RAM MANOHAR LOHIA JOINT HOSPITAL & ORS v. MUNNA PRASAD SAINI & ANR [SC]

Civil Appeal No. 5810 of 2021 [@ SLP(C) No. 9097 of 2019]

Subash Reddy & Sanjiv Khanna, JJ. [Decided on 20/09/2021]

Industrial Disputes Act, 1947 - section 25F- contractual worker- Industrial award- non-regular posts- directions to reinstate the workman with full pay- workman was appointed on the non-regular post- whether direction as to reinstatement tenable - Held, No. Compensation enhanced.

Brief facts : The appellants, Ram Manohar Lohia Joint Hospital and two others, have filed this appeal taking exception to the order and judgment dated 15.11.2018 whereby Lucknow Bench of the High Court of Judicature at Allahabad has upheld the order dated 20.01.2010 passed by the Labour Court, Lucknow directing reinstatement of the first respondent herein, namely, Munna Saini along with compensation of Rs. 20,000/- (rupees twenty thousand only) for the period of unemployment and entitlement to full pay from the date of the said order.

Decision : Partly allowed.

Reason : The first aspect in the dispute was whether the first respondent workman was an employee of the second respondent, namely, Bombay Intelligence Security (I) Ltd or an employee of the appellant Hospital.

We have considered these documents but would not like to interfere with the factual findings recorded by the Labour Court, which has been affirmed by the High Court with respect to the engagement of the first respondent by the appellant hospital. It has been explained to us that the first respondent had impleaded the second respondent as a co-respondent in view of the stand taken by the appellant regarding the first respondent's engagement through the second respondent, which factum was disputed by the first respondent. No doubt, the appellant has also placed before us Annexure P-4, an agreement dated 01.04.2003 between the appellant and

the second respondent for engaging contractual workers, including 12 ward boys/aya/patient helpers, but this contract states that the payment will be made by the appellant to the second respondent every month within one week from the date of receipt of bill, which if required will be rectified to meet valid objections of the appellant. The reason why we would not like to rely upon the said agreement is that the Labour Court took notice of documents like attendance register/duty chart, copy of the joining report, salary payment register, etc. and then arrived at the conclusion with respect to the employer-employee relationship. The agreement would not by itself be a determinative factor as the first respondent is not a party to the agreement. The factual finding of the Labour Court is comprehensive and requires no interference. Thus, we are unable to accept the first contention of the appellant on the question of employer-employee relationship.

However, on the question of reinstatement and compensation payable, we are inclined to accept the alternative submissions made by the appellant. The appellant is a hospital run by the State Government which requires approval of the State Government for creation of regular posts and for recruitment and appointment. The procedure as prescribed under the relevant extant rules has to be followed. The first respondent has not asserted or claimed that the procedure prescribed was followed for his selection and appointment. On the other hand, the appellant is right in relying upon letter dated 30.03.1999 issued by the Special Secretary, Government of Uttar Pradesh granting permission to appoint 28 workers on contractual basis at the appellant hospital. Thereafter, by another letter dated 29.03.2003, the Assistant Secretary, Government of Uttar Pradesh, had granted approval for 106 posts to be held on contract and creation of 111 posts in the regular pay-scale. With regard to the posts to be filled on contract, fixed salary was payable and no other facility was to be provided to such employees. Before granting further benefits or facilities, approval of the Government was necessary. It is the case of the first respondent that he was appointed on a fixed salary and was neither entitled to nor granted any perks or other facilities. The appellant has placed before us the list of 111 regular posts, which does not include ward boys. On the other hand, the list of 106 contractual posts states that 35 ward boys/maids had to be appointed.

Therefore, the appointment of the first respondent was on contractual basis and not to a regular post on proper selection in terms of the rules. Pertinently, the respondent has not indicated his educational qualifications and whether he has necessary qualifications to work as a nurse or a ward boy. It is also obvious that the contractual term was over. In other words, the first respondent had worked with the appellant during the period September, 2003 to June, 2005. He has not worked thereafter. There is nothing on record to show and establish the appellant had not followed the rule 'last to come, first to go'. This is neither alleged nor proved.

In view of the facts stated above, it is clear that the first respondent was not a permanent employee but a contractual employee. There is no evidence to establish that the appellant had retained junior workers; such unfair trade practice is not alleged or even argued before us. The first respondent having worked for more than 240 days, termination of his services violated the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. Therefore, in the facts of the present case, we modify the order of the Labour Court by setting aside the direction for reinstatement and would enhance the compensation by awarding a lump sum amount.

COMPETITION LAW

IN RE: ALLEGED ANTI-COMPETITIVE CONDUCT BY MARUTI SUZUKI INDIA LIMITED IN IMPLEMENTING DISCOUNT CONTROL POLICY VIS-À-VIS DEALERS

Suo Motu Case No. 01 of 2019

A. K. Gupta, Sangeeta Verma & B. S. Bishnoi. [Decided on 23/08/2021]

Competition Act, 2002 - section 3- restrictive clauses in dealership agreements - differential discounts controlled- whether restrictive to the detriment of competition– Held, yes.

Brief Facts : The present matter was taken up *suo motu* by the Commission based on an anonymous e-mail dated 17.11.2017 received from a purported Maruti Suzuki India Limited ('MSIL')dealer, wherein it was, inter alia, alleged that MSIL's sales policy is against the interest of customers as well as the provisions of the Competition Act, 2002 (the 'Act'). It was alleged that the dealers of MSIL in the West-2 Region (Maharashtra State other than

Mumbai & Goa) are not permitted to give discounts to their customers beyond that prescribed by MSIL in the announced 'consumer offer'. If a dealer is found giving extra discounts, a penalty is levied upon the dealer by MSIL. This is called the 'Discount Control Policy' of MSIL. It was averred that, as such, a cartel is formed by MSIL within the dealerships, which is a policy of MSIL.

Decision : Cease & desist order passed with Penalty.

Reason : In the instant case, the RPM enforced upon the dealers by MSIL has led to denial of benefits to the consumers in terms of competitive prices being offered by MSIL dealers. When all the dealers are controlled by a Discount Control Policy, they are forced to sell the same product at the same price which, to a large extent, eliminates price competition amongst them. As such, due to almost nil intra-brand competition amongst MSIL dealers, the consumers would have had to purchase MSIL vehicles at fixed prices without flexible discounts being offered to them by MSIL dealers, thereby leading to charging of higher prices/ denial of discounts in kind, to them. Such arrangements perpetuated by MSIL restricted intra-brand competition amongst MSIL dealers, as it impaired their ability to compete with respect to prices in the sale and distribution of MSIL brand cars. There are numerous instances noted above whereby dealers have offered additional discounts to the MSAs assuming them to be genuine consumers and have been levied financial penalties for their such conduct by MSIL. As such, it is evident that had there been no Discount Control Policy enforced by MSIL, customers of MSIL would have been able to buy MSIL vehicles at lower prices. This has resulted in the denial of benefits to consumers, which would have otherwise been accrued to them in a healthy competitive environment between dealers. The anti-competitive impact of such a practice of MSIL is reinforced by the fact that MSIL has more than 50% market share in the passenger vehicles segment, as observed by the DG.

The Commission, however, is of the view that, imposition and enforcement of RPM by a player like MSIL, having a significant market share, not only thwarts intra-brand competition but also leads to the lowering of inter-brand competition in the passenger vehicles market. When a significant player such as MSIL imposes minimum selling price restrictions in the form of maximum discount that can be offered by the dealers, RPM can decrease the pricing pressure on competing manufacturers. This is more so in case of dealers who may be in an interlocking relationship with multiple manufacturers. When all dealers of MSIL are selling vehicles at similar prices, the prices of MSIL vehicle models can be easily comprehended by other players in the market. Being aware of the similar prices of MSIL's dealers due to prevalence of RPM in

the passenger vehicle segment, the other OEMs can easily monitor MSIL's prices and also factor it in their pricing strategy, thereby softening competition. As such, it relaxes competitive pressure upon them and they can price their competing models accordingly, which due to the prevalence of RPM, may be priced higher than a competitively determined price. This phenomenon creates an obstruction for consumers to avail the benefit of competition in pricing across different brands as well.

It is known that RPM as a practice by multiple manufacturers is conducive for monitoring of tacit collusion among such manufacturers. Higher prices under RPM can exist, even when a single manufacturer imposes minimum RPM. This is more likely in the case of multi-brand dealers who have significant bargaining power because of their ability to substitute one brand with another. Further, this leads to another likely anti- competitive effect of higher prices across all brands even if there is no upstream or downstream conspiracy, because preventing price competition on a popular brand would result in higher prices of competing brands as well, including those that have not adopted RPM. Thus, minimum retail price RPM has the effect of reducing inter-brand price competition in addition to reducing intra-brand competition.

Further, in terms of the factors stated under Section 19(3) of the Act, the impugned agreement/arrangement did not result in accrual of any consumer benefits; rather, the same resulted in denial of benefits to consumers as they were made to pay high prices. Further, the said arrangement/agreement is not resulting in any improvements in production or distribution of goods or provision of services. The arrangement/agreement perpetuated by MSIL also hindered in the distribution of goods and the provision of services in relation to new cars. The arrangement/agreement put in place by MSIL also resulted in creation of barriers to new entrants/dealers in the market as the new dealers would take into consideration restrictions on their ability to compete with respect to prices in the intra-brand competition of MSIL brand of cars. Hence, the arrangement perpetuated by MSIL in fixing the resale price of MSIL brand of cars in the manner, as discussed above, foreclosed intra-brand price competition for its dealers as well as stifled inter-brand competition.

The Commission is, however, of the view that by controlling the dealers' margin, inter brand competition softens due to ease of monitoring of retail prices by the competitors. This provides the manufacturer more liberty to regulate its own margin freely. Thus, RPM lowers the pressure on the margin of the manufacturer. As such, MSIL may have a motive to indulge in RPM through the Discount Control Policy. Anyhow, motive or *mens rea* of the alleged violator of Competition Law is of no value or significance.

However, the Commission is of the view that the SOP and SPG put in place by MSIL provide a very clear and detailed description for working of MSIL dealers in terms of services to be rendered to the customers and other pre-sales services. Further, admittedly, these services are also monitored by MSIL through MSAs and the imposition of penalties. As such, considering such detailed guidelines for dealers backed by sanctions, there is very little scope for issues like free riding. All dealers of MSIL are subjected to the SOP/SPG and non-compliance with the same also results in the imposition of penalties. As such, the justification put forth by MSIL, that RPM is required to eliminate the problem of free riding, is not tenable.

Though MSIL has argued that SOP/SPG may not be sufficient to solve the free-riding problem, and neither can they be fully monitored, the Commission observes that even a vertical restraint like RPM may not be the solution to such a problem. Eliminating price competition between dealers may not necessarily incentivise them to pass on the benefit of extra margins to

consumers by way of providing better complementary services and it may not necessarily add extra value to complementary services. Nonetheless, in any circumstances, even if a benefit in the form of improved complementary services may be resulting from RPM, the same does not outweigh the harm caused to the market due to significant reduction in intra-brand competition and softening of inter-brand competition, leading to higher prices for the consumers.

On the basis of the above analysis, the Commission concludes that MSIL not only entered into an agreement with its dealers across India for the imposition of Discount Control Policy amounting to RPM, but also monitored the same by appointing MSAs and enforced the same through the imposition of penalties, which resulted in AAEC within India, thereby committing contravention of the provisions of Section 3(4)(e) read with Section 3(1) of the Act.

Having considered the nature of the infringing conduct and the post-pandemic phase of recovery of automobile sector, the Commission takes a considerate view and deems it appropriate to impose a penalty of ₹200 crores (Rupees Two Hundred Crores) only upon MSIL, as against a maximum penalty permissible under the provisions of the Act, which may extend up to ten percent of the average of the turnover of the entity for the last three preceding financial years.

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Examination

1. DECLARATION OF JUNE, 2021 SESSION EXAMINATION RESULT

The result of CS Professional Programme and Executive Programme (Old/New Syllabus) examinations held in June, 2021 was declared on Wednesday, the 13th October, 2021 at 11.00 A.M. & 2.00 P.M. respectively. The result along with individual candidate's subject-wise break-up of marks was made available on Institute's website www.icsi.edu after the declaration of result.

2. ISSUING OF MARKS-SHEETS OF JUNE, 2021 EXAMINATION

As per the decision taken by the Institute, the dispatch of Result-cum-Marks Statement for Executive Programme Examination in physical form has been discontinued. Instead formal E-Result-cum-Marks Statement for Executive Programme (Old/New Syllabus) Examination June, 2021 has been uploaded on the website: www.icsi.edu for downloading by the students for their reference, use and records. No physical copy of the Result-cum-Marks Statement will be issued to Executive Programme candidates. However, the Result-cum-Marks-Statement for Professional Programme Examination is issued in physical form.

3. VERIFICATION OF MARKS OF COMPANY SECRETARIES EXAMINATIONS

In terms of Regulation 42 (2) of the Company Secretaries Regulations, 1982 as in force, a candidate can seek "Verification of Marks" in any subject(s) of CS examination within **twenty one (21)** days from the date of declaration of result. The application for verification of marks should be made by interested candidates in the prescribed mode with requisite **fee @ Rs. 250/- per subject within 21 days** from the date of declaration of result. Interested candidates can apply for verification of marks either through **on-line** mode or **off-line** mode by following the procedure hosted on the Institute's website (www.icsi.edu) at the URL: https://www.icsi.edu/media/webmodules/VOM.pdf

4. PROVIDING INSPECTION OR SUPPLY OF CERTIFIED COPY (IES) OF ANSWER BOOK(S) TO STUDENTS

The Institute has been providing the facility of inspection and/or supply of certified copies of answer book(s) to the candidates on their request as per Guidelines, Rules and Procedures framed by the Institute in this regard. The "Guidelines, Rules and Procedures for Providing Inspection and/or Supply of Certified Copy (ies) of Answer Book(s) to students" and the format of the application are given below.

GUIDELINES, RULES AND PROCEDURES FOR PROVIDING INSPECTION AND/OR SUPPLY OF CERTIFIED COPY (IES) OF ANSWER BOOK(S) TO STUDENTS

1. These guidelines, rules and procedures for providing inspection and/or supply of certified copy(ies) of answer book(s) to students will be applicable beginning from June, 2020 session of examinations onwards. Under these guidelines, a student can seek inspection and/or supply of certified copy (ies) of his/her evaluated answer book(s).
2. A student who wishes to inspect and/or obtain certified copy(ies) of his/her answer book(s) of any subject(s) of a particular examination shall apply either on-line through the website of the Institute or off-line on the prescribed application form together with (a) requisite fee; and (b) self-attested photocopy of his/her Admit Card (Roll No.) or Student Identity Card so as to reach the Institute within 30 days from the date of declaration of the result.
3. A student who has inspected or received the photocopy of his/her answer book(s) of any subject(s) of a particular examination under the RTI Act, 2005 and wishes to address his/her grievances in respect of any error(s) or inconsistency in valuation of answer books, if any, should apply off-line on the prescribed application form together with (a) requisite fee; and (b) self-attested photocopy of his/her Admit Card (Roll No.) or Student Identity Card so as to reach the Institute within the 75 days from the date of declaration of result or 15 days of inspection or receipt of photocopy of the answer book(s) whichever is earlier.
4. Fee of ₹500 per subject/answer books is payable for supply of certified copy(ies) of answer book(s) and ₹450 per answer book for providing inspection thereof respectively. In case of off-line application, the fee shall be paid through Demand Draft drawn in favour of "The Institute of Company Secretaries of India", payable at New Delhi.
5. The off-line application Form, duly completed in all respect, together with the requisite fee and photocopies of the supporting documents, as mentioned in para 2/3 above, shall be superscribed "Application for providing Inspection/Supply of Certified Copies of Answer Books" and sent to:

   The Joint Secretary
   Directorate of Examinations
   The Institute of Company Secretaries of India
   C-37, Sector – 62, Institutional Area
   NOIDA – 201 309

6. Off-line application form without requisite fee and supporting documents and complete particulars, as indicated above, shall not be entertained.
7. Before providing inspection and/or supplying certified copy(ies) of answer book(s) to a student on his/her request, if it is noticed that any sub-question/question of his/her answer book(s) has inadvertently remained unevaluated or there is some posting or totalling error, the Institute would rectify such omission and commission and communicate the revised marks/result to the student. However, it may be noted that re-valuation of answers is not permissible under Regulation 42(2).
8. The inspection done and/or certified copies of the answer books supplied to the student shall be for his/her exclusive self-inspection/ personal reference and guidance only.
9. No other person except the student concerned would be allowed to inspect his/her answer book(s) on the designated date and time as communicated by the Institute. Similarly, on receipt of certified copy (ies) of the answer book(s), the applicant student shall be the sole custodian of it and he/she shall not part with the custody/possession of the same and shall not use the same for any other purpose(s).
10. If any error is found at any point of time as provided in para 7 above, the Institute shall have *suo motu* power to rectify the same.

APPLICATION FORM FOR PROVIDING INSPECTION AND/OR SUPPLY OF CERTIFIED COPY(IES) OF ANSWER BOOK(S)

(Before filling-up this form, please go through the Guidelines, Rules and Procedures)

The Joint Secretary
Directorate of Examinations
The Institute of Company Secretaries of India
C – 37, Sector – 62, Institutional Area
NOIDA – 201 309.

Dear Sir,

I, the undersigned, request you to supply me the certified copy(ies) of my answer books as per details given below :

PART – A

<table>
<tr><td>1.</td><td>Name of Student</td><td colspan="4"></td></tr>
<tr><td>2.</td><td>Student Regn. No.</td><td colspan="4"></td></tr>
<tr><td rowspan="5">3.</td><td rowspan="5">Complete Correspondence Address</td><td colspan="4"></td></tr>
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<tr><td colspan="4">PIN CODE :</td></tr>
<tr><td colspan="4">MOBILE :</td></tr>
<tr><td>4.</td><td>E-mail id</td><td colspan="4"></td></tr>
<tr><td>5.</td><td>Specify your request for:
(by ticking (₹) the appropriate box)</td><td colspan="2">Providing inspection of my answer book(s)</td><td colspan="2">Supply of certified copy(ies) of my answer book(s)</td></tr>
<tr><td rowspan="6">6.</td><td rowspan="6">Details about appearance in the subjects of examination for which copy(ies) of answer books is/are requested</td><td>Stage & Session of Exam.</td><td>Roll No.</td><td>Name of the Subject(s)</td><td>Marks Obtained</td></tr>
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7.	Details of fee remitted: (i) Rs.500 per subject/ answer book for supply of certified copy(ies); and (ii) Rs.450 per answer book for seeking inspection.	***Demand Draft No.***	***Date***	***Name of the Issuing Bank***	***Amount (Rs.)***

PART – B

Have you applied for Verification of Marks also ? YES / NO

(Tick the appropriate choice)

I have read the prescribed guidelines, rules and procedures and the same are acceptable to me.

My Email-ID, Mobile Number and Correspondence Address are the same as registered on my student's portal of the ICSI.

I hereby undertake that I am a *bona fide* student of the Institute and the above answer book(s) belong to me. For this purpose, I am enclosing self-attested photocopy of my Admit Card (Roll No.)/Student Identity Card issued to me by the Institute. In case, any particulars or statement is found to be false, the Institute may take appropriate action against me, as deemed fit.

Yours faithfully,

_____

(Signature)

Place: _____

Name: _____

Date: _____

5. HOW TO APPLY FOR PROVIDING INSPECTION OR SUPPLY OF CERTIFIED COPY(IES) OF ANSWER BOOK(S)

A candidate who wishes to inspect and/or obtain certified copy(ies) of his/her answer book(s) of any subject(s) of a particular examination, can apply either through **on-line** or **off-line** mode **within 30 days from the date of declaration of the result.**

On-Line Mode Procedure: For submitting application through on-line mode, candidates are advised to follow the procedure hosted on the Institute's website www.icsi.edu at the link given below:

https://www.icsi.edu/webmodules/Verification_of_Marks_of_CS_Exam.pdf

Off-Line Mode Procedure: In case any candidate wishes to apply for inspection or supply of certified copies of answer book(s) through off-line mode, he/she can download the Application Form available on the website and send the same duly filled in along with the requisite fee through Speed/Registered Post addressed to *The Joint Secretary, Dte. of Examinations, The Institute of Company Secretaries of India, C-37, Sector 62, Institutional Area, NOIDA – 201 309 (U.P.).* Candidates can also submit their applications at Regional/Chapter/Head Office (Noida).

Many a times it has been observed that, candidates are found confused with the procedure of inspection of their answer book(s) or getting the certified copies of their evaluated answer book(s). Thus, candidates may understand the procedures followed for inspection and supply of certified copies of answer book(s) as detailed below before they apply for the same:

S. No.	***Inspection of answer books***	***Supply of certified copies of answer books***
1.	Under Inspection of answer books, candidates can physically inspect the certified true photo copies of their answer books applied for.	In the case of providing certified copies of answer books, the certified true copies of the same in *pdf* format shall be uploaded on the website of the Institute and candidates can take the print out for their reference.
2.	Candidates can apply for inspection of their answer books either through on-line or off-line mode as per the prescribed procedure	Candidates can apply for certified copies of answer books either through on-line or off-line mode as per the prescribed procedure
3.	The prescribed fee for inspection is ₹450 per subject. If any candidate wishes to apply for Inspection of Answer Book(s) through off-line mode, he/she can download the prescribed Application Form available on the website and send the same duly filled in along with the requisite fee through Speed/Registered Post. The fee can be paid through Demand Draft drawn in favour of *"The Institute of Company Secretaries of India", payable at New Delhi.*	The prescribed fee for supplying certified copies of answer books is ₹500 per subject. If any candidate wishes to apply for supply of Certified Copy(ies) of Answer Book(s) through off-line mode, he/she can download the prescribed Application Form available on the website and send the same duly filled in along with the requisite fee through Speed/Registered Post. The fee can be paid through Demand Draft drawn in favour of *"The Institute of Company Secretaries of India", payable at New Delhi.*
4.	Before providing inspection to the candidates, the answer book(s) shall be processed as per the prescribed Guidelines in this regard.	Before providing certified copies of answer book(s) to the candidates, the same shall be processed as per the prescribed Guidelines in this regard.

5.	Candidates have to personally visit ICSI's Noida office, located at **C-37, Sector-62, Institutional Area, Distt - Gautam Budh Nagar, Noida 201309, (U.P.)** as per the specified time and date informed to them for inspecting their answer books. They have to carry Institute's I-card, copy of the E-Admit Card of the relevant session to establish their identity for inspecting their answer books. No other person will be allowed to accompany him/her during the process of inspection.	The scanned copy of the answer book(s) in *pdf* format shall be hosted on the website which can be accessed through a secured password. Necessary communication in this regard shall be sent to the candidate concerned through e-mail and SMS as registered on student's portal. Candidates can take the print out of the scanned certified copies of their answer books for their reference.
6.	The status/outcome of the application received for providing Inspection of the answer books will be shown on the Institute's website: *www.icsi.edu.* The candidate concerned can enquire about the status/outcome of his/her application by entering his/her Roll No. or Student Registration Number.	The status/outcome of the application received for supply of certified copies of answer books will be shown on the Institute's website: *www.icsi.edu.* The candidate concerned can enquire about the status/outcome of his/her application by entering his/her Roll No. or Student Registration Number.
7.	During inspection of the answer book(s), no queries regarding answers written by the candidates or award of marks shall be entertained. Copy of the answer book(s) shall not be provided to the candidates after the completion of inspection.	Candidates can take the print out of the scanned certified copies of their answer books for their reference from the link given to this effect from the website of the Institute. No photo copies of answer book(s) in physical form shall be dispatched to the candidates. No queries regarding award of marks shall be entertained by the Institute.

N.B:

1. In case of any doubt/ clarification, candidates may feel free to contact at: exam@icsi.edu.

2. The candidate should not share/mail the scanned copy of their answer book(s) with anyone including the Institute for any communication. In case of any grievance, they are advised to write the Institute without attaching the scanned copy of their answer book.

3. Students are advised to enroll for the next session of examination in time without waiting for the outcome of their certified copy. In case there is change in result, the examination fee paid shall be either refunded or adjusted against future payments.

6. CONDUCT OF CS EXAMINATIONS – DECEMBER, 2021

The examinations for Executive Programme (Old/New Syllabus) and Professional Programme (Old/New Syllabus) scheduled in December, 2021 will be held from 21st December, 2021 to 30th December, 2021 as per the Examination Time-Table (published elsewhere in this bulletin) at 172 examination centres in India and one overseas examination centre, viz., 1. Agra, 2. Ahmedabad Zone-I, 3. Ahmedabad Zone-II, 4. Ahmedabad Zone-III, 5. Ahmedabad Zone-IV, 6. Ahmednagar, 7. Ajmer, 8.Akola, 9.Aligarh, 10. Alwar, 11. Ambala, 12. Amravati, 13. Amritsar, 14. Aurangabad, 15. Ballary 16. Bareilly, 17. Beawar, 18. Belagavi, 19. Bengaluru Zone-I, 20. Bengaluru Zone-II, 21. Bengaluru Zone-III, 22. Bengaluru Zone-IV 23. Bhagalpur, 24. Bhayander, 25. Bhilai, 26. Bhilwara, 27. Bhiwani 28. Bhopal, 29. Bhubaneswar-1, 30. Bhubaneswar-2, 31. Bikaner, 32. Bilaspur, 33. Bokaro, 34. Chandigarh, 35. Chandrapur, 36. Chennai Zone -I, 37. Chennai Zone –II, 38. Chennai Zone –III, 39. Chennai Zone –IV, 40. Chennai Zone –V, 41. Chennai Zone –VI, 42. Chennai Zone –VII, 43. Chittorgarh, 44. Coimbatore, 45. Dehradun, 46. Delhi (East), 47. Delhi (North), 48. Delhi (South), 49. Delhi (West), 50. Dewas, 51. Dhanbad, 52. Dhar, 53. Ernakulam, 54. Erode, 55. Faridabad, 56. Gandhidham, 57. Gandhinagar, 58. Ghaziabad, 59. Gorakhpur, 60. Guntur-Amaravati, 61. Gurugram, 62. Guwahati, 63. Gwalior, 64. Hisar, 65. Hooghly, 66. Howrah, 67. Hubli-Dharwad, 68. Hyderabad Zone-I, 69. Hyderabad Zone-II, 70. Hyderabad Zone-III 71. Imphal, 72. Indore, 73. Jabalpur, 74. Jalgaon, 75. Jamnagar, 76. Jaipur, 77. Jalandhar, 78. Jammu, 79. Jamshedpur, 80. Jhansi, 81. Jhunjhunu, 82. Jodhpur, 83. Kanchipuram, 84. Kanpur, 85. Kannur, 86. Karnal, 87. Katni, 88. Kolhapur, 89. Kolkata Zone-I, 90. Kolkata Zone-II 91. Kolkata Zone-III, 92. Kolkata Zone-IV, 93. Kollam, 94. Kota, 95. Kottayam, 96. Kozhikode 97. Latur, 98. Lucknow, 99. Ludhiana, 100. Madurai, 101. Mangaluru, 102. Mathura 103. Meerut, 104. Modi Nagar 105.Moradabad, 106. Mumbai Zone-I, 107. Mumbai Zone-II, 108. Mumbai Zone-III, 109. Mumbai Zone-IV, 110. Mumbai Zone-V, 111. Mumbai Zone-VI, 112. Mumbai Zone-VII, 113. Mumbai Zone-VIII, 114. Muzaffarnagar, 115. Mysuru, 116. Nagpur, 117. Nanded, 118. Nashik, 119. Navi Mumbai Zone-I, 120. Navi Mumbai Zone-II, 121. Nellore, 122. Noida, 123. Palakkad, 124. Pali, 125. Panaji, 126. Panipat, 127. Patiala, 128. Patna, 129. Pimpri-Chinchwad, 130. Prayagraj 131. Puducherry, 132. Pune Zone-I, 133. Pune Zone-II, 134. Pune Zone-III, 135. Pune Zone-IV, 136. Raipur, 137. Rajkot, 138. Ranchi, 139.Ratlam, 140. Rewari, 141. Rohtak, 142. Rourkela, 143. Sagar, 144. Salem, 145. Sambalpur, 146. Satara, 147. Shimla, 148. Sikar, 149. Sirsi, 150. Siliguri, 151. Solapur 152. Sonepat, 153. Srinagar, 154. Surat, 155. Thane Zone-I 156. Thane Zone-II, 157. Thane Zone-III, 158. Thiruvananthapuram, 159.Thrissur, 160. Tiruchirapalli, 161. Tirunelveli 162. Tiruppur, 163. Udaipur, 164. Udupi, 165. Ujjain, 166. Vadodara, 167. Valsad, 168. Vapi, 169. Varanasi, 170. Vijayawada, 171. Visakhapatnam, 172. Yamuna Nagar and 173. Overseas Centre — Dubai.

NOTES:

1. *Ahmedabad Zone-I, Ahmedabad Zone-II, Ahmedabad Zone-III, Ahmedabad Zone-IV (Gujarat), Modi Nagar (*Uttar Pradesh), *Bhubaneswar-1, Bhubaneswar-2 (Odisha), Kolkata Zone-I, Kolkata Zone-II, Kolkata Zone-III, Kolkata Zone-IV (West Bengal), Bhiwani (Haryana) Rohtak (Haryana), Hyderabad Zone-I, Hyderabad Zone-II, Hyderabad Zone-III (Andhra Pradesh/Telangana), Nellore (Andhra Pradesh), Bengaluru Zone-I, Bengaluru Zone-II, Bengaluru Zone-III, Bengaluru Zone-IV (Karnataka), Kannur (Kerala), Kollam (Kerala), Sirsi (Karnataka), Udupi (Karnataka), Chennai Zone –I, Chennai Zone –II, Chennai Zone –III, Chennai Zone –*

IV, Chennai Zone –V, Chennai Zone –VI, Chennai Zone –VII (Tamil Nadu), Erode (Tamil Nadu), Kanchipuram (Tamil Nadu), Tiruppur (Tamil Nadu), Valsad (Gujrat), Dewas (Madhya Pradesh), Dhar (Madhya Pradesh), Katni (Madhya Pradesh), Ratlam (Madhya Pradesh), Chandrapur (Maharashtra), Latur (Maharashtra), Navi Mumbai Zone-I, Navi Mumbai Zone-II (Maharashtra), Mumbai Zone-VII, Mumbai Zone-VIII (Maharashtra), Nanded (Maharashtra), are on ad-hoc basis in view of COVID-19 pandemic.

2. *The Institute reserves the right to withdraw any centre at any stage without assigning any reason.*

3. *Please note that no request for change of examination venue will be entertained in respect of a particular city, where multiple examination venues exist.*

7. TIME-TABLE FOR DECEMBER, 2021 EXAMINATIONS

Time - Table for Foundation Programme, December 2021

Day and Date of Examination	***Subjects***		***Batch No.***	***Examination Timings***	
				From	***To***
Monday, 3rd January, 2022	Paper -1	Business Environment and Law	I	9.30 A.M.	11.00 A.M.
			II	12.00 Noon	1.30 P.M.
		AND	III	2.30 P.M.	4.00 P.M.
	Paper-2	Business Management, Ethics and Entrepreneurship	IV	5.00 P.M.	6.30 P.M.
Tuesday, 4th January, 2022	Paper-3	Business Economics	I	9.30 A.M.	11.00 A.M.
			II	12.00 Noon	1.30 P.M.
		AND	III	2.30 P.M.	4.00 P.M.
	Paper-4	Fundamentals of Accounting and Auditing	IV	5.00 P.M.	6.30 P.M.

THE INSTITUTE OF Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

COMPANY SECRETARIES EXAMINATIONS, DECEMBER, 2021

TIME-TABLE

EXAMINATION TIMING : 2:00 P.M. TO 5:00 P.M.

Day	*Executive Programme (Old Syllabus)*	*Executive Programme (New Syllabus)*	*Professional Programme (Old Syllabus)*	*Professional Programme (New Syllabus)*
21.12.2021 Tuesday	Cost and Management Accounting *(Module-I)* ***(OMR Based)***	Jurisprudence, Interpretation and General Laws *(Module-I)*	Advanced Company Law and Practice *(Module - I)*	Governance, Risk Management, Compliances and Ethics *(Module - I)*
22.12.2021 Wednesday	Industrial, Labour and General Laws *(Module-II)* ***(OMR Based)***	Securities Laws and Capital Markets *(Module-II)*	Information Technology and Systems Audit (Module - II)	Secretarial Audit, Compliance Management and Due Diligence *(Module - II)*
23.12.2021 Thursday	Tax Laws and Practice *(Module-I)* ***(OMR Based)***	Company Law *(Module-I)*	Advanced Tax Laws and Practice *(Module - III)*	Corporate Funding and Listings in Stock Exchanges *(Module - III)*
24.12.2021 Friday	Company Accounts and Auditing Practices *(Module-II)*	Economic, Business and Commercial Laws *(Module-II)*	Secretarial Audit, Compliance Management and Due Diligence *(Module - I)*	Advanced Tax Laws *(Module - I)*
25.12.2021 Saturday	**NO EXAMINATION**	**NO EXAMINATION**	**NO EXAMINATION**	**NO EXAMINATION**
26.12.2021 Sunday	Company Law *(Module-I)*	Setting up of Business Entities and Closure *(Module-I)*	Financial, Treasury and Forex Management *(Module - II)*	Corporate Restructuring, Insolvency, Liquidation and Winding - up *(Module - II)*
27.12.2021 Monday	Capital Markets and Securities Laws *(Module-II)*	Corporate and Management Accounting *(Module-II)* ***(OMR Based)***	Drafting, Appearances and Pleadings *(Module - III)*	Multidisciplinary Case Studies *(Module - III)* ***[Open Book Exam.]***
28.12.2021 Tuesday	Economic and Commercial Laws *(Module-I)*	Tax Laws *(Module-I)* ***(OMR Based)***	Corporate Restructuring, Valuation and Insolvency *(Module - I)*	Drafting, Pleadings and Appearances *(Module - I)*
29.12.2021 Wednesday	**NO EXAMINATION**	Financial and Strategic Management *(Module-II)* ***(OMR Based)***	Ethics, Governance and Sustainability *(Module - II)*	Resolution of Corporate Disputes, Non-Compliances and Remedies *(Module - II)*
30.12.2021 Thursday	**NO EXAMINATION**	**NO EXAMINATION**	***Elective 1 out of below 5 subjects (Module - III) [Open Book Exam.]***	***Elective 1 out of below 8 subjects (Module - III) [Open Book Exam.]***
			(i) Banking Law and Practice	(i) Banking - Law and Practice
			(ii) Capital, Commodity and Money Market	(ii) Insurance - Law and Practice
			(iii) Insurance Law and Practice	(iii) Intellectual Property Rights - Laws and Practices
			(iv) Intellectual Property Rights - Law and Practice	(iv) Forensic Audit
			(v) International Business-Laws and Practices	(v) Direct Tax Law and Practice
				(vi) Labour Laws and Practice
				(vii) Valuations and Business Modelling
				(viii) Insolvency - Law and Practice

Note: The Institute reserves 31st December, 2021, 1st, 2nd and 3rd January, 2022 to meet any exigency.

8. GUIDELINES AND PROCEDURE TO BE FOLLOWED FOR GRANT OF SCRIBE (WRITER) AND/ OR EXTRA TIME TO PHYSICALLY CHALLENGED/DISABLED CANDIDATES FOR WRITING COMPANY SECRETARIES EXAMINATIONS

1. Who is a Physically Challenged/ Physically Disabled Person?

1.1 An Orthopedically Challenged (OC) person is one who has –

a) Minimum of 40% physical defect or deformity which causes interference with the normal functioning of bones, muscles and joints, or

b) Locomotor disability, or

c) Any form of cerebral palsy.

1.2 Orthopedically Challenged person with Speech Impairment.

1.3 Deaf & Hearing Impaired (HI): The Deaf are those persons in whom the sense of hearing is non-functional for ordinary purposes of life, i.e., total loss of hearing in both ears. They do not hear; understand sounds at all even with amplified speech. Hearing impairment means loss of more than 60 decibels in the better ear in the conversational range of frequencies

1.4 Visually Challenged (Blindness or Low Vision) (VC) refers to a person who suffers from either of the following conditions:

(a) Total absence of sight;

(b) Visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses;

(c) Limitation of the field of vision sub-tending an angle of 20 degree or worse and so certified by the Medical Board/doctor of not below the rank of Civil Surgeon/ Medical Superintendent of a Central or State Government Hospital /Medical College.

(d) A person with impairment of visual functioning even after treatment of standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device.

2. Eligibility and Procedure for making request for a Scribe (*i.e.*, Writer) and/or Extra-Time:

2.1 A Physically Challenged / Disabled Student should make an application in the prescribed form available on the website of the Institute seeking help of a "Scribe" and/or Extra-Time together with the following documentary evidences at least forty five days in advance from the date of commencement of examination in which he/she intends to appear:

2.2 Disability Certificate issued by the Medical Board/doctor of not below the rank of Civil Surgeon/ Medical Superintendent of a Central or State Government Hospital /Medical College, certifying the nature (permanent or temporary) and percentage of disability and its duration affecting his/her ability and/or the normal physical functions; and

2.3 Letter of permission issued, if any, by Sr. Secondary Board/ University in 10th, 10+2 or degree examinations in which candidate had appeared.

2.4 Permission granted by other reputed professional Institutes/examining bodies such as – UPSC, SSC, State Public Service Commission, *etc.*, allowing such assistance of a Scribe and/or Extra-time in the earlier examinations.

2.5 An attested full size latest photograph depicting head to toes indicating name of the candidate on the backside of the photograph.

2.6 Application should be in candidate's own handwriting. In case the candidates could not write, then his/her representative(s) should write and forward the application.

2.7 Any other document(s) in support of request for grant of the facility of a Writer and/or Extra time as aforementioned.

3. Facilities and Concessions to a Physically Challenged/ Disabled Student:

3.1 The Institute/ Superintendent of Examination Centre shall arrange the scribe/writer as per the prescribed academic qualification to write the examination on behalf of a physically challenged candidate. In case, the candidate intend to bring his/her own scribe he/she may be allowed to do so subject to the verification of educational qualification by the Centre Superintendent concerned.

3.2 The academic qualification of a 'Scribe' (Writer) to write the examination on behalf of a physically challenged student should be one grade lower than the qualification required to enrol for appearing in CS Examination by the candidate.

3.3 Before commencement of the examination, the 'Scribe' (Writer) shall submit a suitable undertaking in the prescribed format confirming, that he/she fulfills the above criteria, to the Superintendent of Examination Centre for onward transmission to the Institute.

3.4 Every candidate with specified disability, whether using scribe or not, shall be entitled to 20 minutes extra time for every one hour of examination.

3.5 The Institute shall pay a lump sum amount of Rs. 400/- as out of pocket expenses/honorarium per paper to a scribe or the amount decided by the Examination Committee from time to time.

3.6 In addition to above, the following facilities shall also be provided to the candidates suffering from Dyslexia, Dysgraphia and Dyscalculia:

(a) Concession for spelling mistakes;

(b) The cover page of the main answer book(s) of such candidates should be affixed with stamp "Dyslexia, Dysgraphia and Dyscalculia and/ or paper written by a scribe".

(c) The examiners of such candidates be instructed accordingly.

4. Maximum Qualification of the Scribe (Writer)

The academic qualification of a Scribe to write the examination on behalf of a physically challenged student should be one grade lower than the qualification required from the candidate enrolled for appearing in CS Examination, i.e.,

(i) For CSEET, the qualification of Scribe should be 10th Class or Matriculation or pursuing 11th Class.

(ii) For Foundation Programme the qualification of Scribe should be 10th Class or Matriculation or pursuing 11th Class.

(iii) For CS Executive Programme Examination, the qualification of Scribe should be 12th Pass/10+2 Pass or more but lower than Graduation (Under Graduate) and should not have completed or pursuing CS, CA, CMA or LL.B.

(iv) For CS Professional Programme Examination, the qualification of Scribe should be Graduation but should not be Post Graduate and should not have completed or pursuing CS,CA,CMA, LLB or Post Graduation Course in Commerce, Management or Law Stream.

5. Duties and Responsibilities of Scribe (Writer)

(i) The scribe will read the questions for the candidate and write answers only as per the dictation of the examinee and the scribe shall not paraphrase, translate, add emphasis or embellish the dictation in any manner, i.e., the scribe shall only transcribe what is dictated to him by the examinee.

(ii) The scribe should be punctual, careful and should act in the exam as directed by the candidate without wasting time of the candidate.

(iii) The scribe should not make any claim or accept any money or money's worth from the candidate. The honorarium to Scribe shall be paid by the Institute.

(iv) The scribe should not put the candidate in emotional or stressful situation during the period of examination.

(v) Scribe should maintain distance with candidate prior and after the exam and not to exploit the candidate in any manner.

(vi) Scribe shall submit the required declaration/ acceptance in the prescribed format.

(vii) Scribe shall follow all instructions, guidelines, directions etc. of the Institute in true letter and spirit.

(viii) Failure to follow the above may impact the result/enrollment of the candidate apart from being booked under use of unfair means in examination.

6. Other important instructions for the Candidates (Examinees)

(i) In case the Scribe is provided by the Institute, the candidate shall be allowed to meet the Scribe at least one day prior to the commencement of examinations.

(ii) Candidate may be allowed to change the Scribe in case of emergency on the written application of the candidate and its approval from the Institute.

(iii) The Institute will provide Scribe thro' Superintendent of Examination centre, if candidate insist to bring his/her own scribe he/she may be allowed to do so subject to the verification of educational qualification by the Centre Superintendent concerned.

(iv) In case candidate brings his/her own scribe, he/she should submit a self-declaration submitting that the qualification of the scribe is as per the qualification permissible and in case of any concealment/misrepresentation of fact, the candidate will be debarred from appearing in the examination in addition to other disciplinary action as per The Company Secretaries Regulations, 1982 as in force.

(v) The Centre Superintendent shall have the authority not to allow a particular person to act as Scribe/Writer, if he is satisfied that such a person does not fulfil the criteria for being a Scribe/writer.

(vi) Physically disabled candidates who had been granted facility of writer's help/extra time in the previous CS examination(s) and wish to avail of such concession or assistance for writing the ensuring examination are required to apply again for each session of examination giving reference of communication allowing such facility granted in the past. In such cases, candidates are not required to submit the attested copies of the requisite documents and full size photograph.

(vii) It is clarified that in case of injuries of disablement of temporary nature such as fracture in the arm, forearm or dislocation of shoulder, elbow, wrist or any other illness, the candidates are not eligible to seek any concession or assistance of writer and/or extra time.

(viii) The duly filled-in application on the prescribed form along with the supporting documents, if any, should be sent to the Institute at the address given below at

The Joint Secretary Directorate of Examinations
The Institute of Company Secretaries of India
'ICSI House', C-37, Sector-62, Institutional Area Noida – 201 309 (U.P.)

(ix) Communication regarding grant of writer's help and/or extra time for writing the examinations is normally sent to the respective candidates before the commencement of each session of examination after the issue of Admit Cards/Roll Number.

(x) For quick disposal, the application for grant of writer's help and/or extra time should not be clubbed with any other query or correspondence.

The prescribed applications form for availing the facility of Scribe (Writer) and/or grant of extra time can be downloaded from the website of the Institute: www.icsi.edu at the URL given below: https://www.icsi.edu/webmodules/scribe_form.pdf

9. ANNOUNCEMENT REGARDING 'MERIT SCHOLARSHIP' AND 'MERIT-CUM-MEANS ASSISTANCE' IN RESPECT OF CS EXAMINATIONS- JUNE, 2021

ATTENTION STUDENTS APPEARED IN CS EXAMINATIONS

JUNE, 2021

The Institute awards "Merit Scholarships" and "Merit-cum-Means Assistance" to students for pursuing Executive Programme and Professional Programme on the basis of their meritorious performance in the examinations and on merit-cum-need basis on their passing Foundation Programme and Executive Programme examinations respectively, as per the criteria stipulated under the "Merit Scholarship (Company Secretaryship Course) Scheme, 1983" and "Merit-cum-Means Assistance (Company Secretaryship Course Scheme), 1983".

MERIT SCHOLARSHIP

In pursuance of para 7 of the "Merit Scholarship (Company Secretaryship Course) Scheme, 1983, 25 numbers of scholarships are awarded each for Executive Programme and Professional Programme Course per session only to registered students, purely in order of merit, from amongst the candidates who appeared and passed in all the subjects of their respective examination, at first attempt, in one sitting, without claiming exemption in any subject, on all-India basis and subject to fulfilling other terms and conditions as stipulated in the said scheme.

Accordingly, students who pass the Foundation Programme/Executive Programme Examination in June, 2021 and fulfill the conditions prescribed under the guidelines are eligible for award of Scholarship.

MERIT-CUM-MEANS ASSISTANCE

In pursuance of para 8 of the "Merit-cum-Means Assistance (Company Secretaryship Course) Scheme, 1983", 25 numbers of financial assistance are awarded each for Executive Programme and Professional Programme Course per session only to registered students. According to the scheme, a candidate has to apply in the prescribed form which can be downloaded from Institute's website: www.icsi.edu OR obtained from the Institute free of cost by sending a self-addressed stamped envelope, and submit his/her application within the specified date as notified from time to time. Any candidate applying for financial assistance should have passed the Foundation Programme/Both the Modules of Executive Programme Examination, at first attempt, in one sitting, without claiming exemption in any subject. If the candidate is employed or having an independent source of income, in that case his/her income should not be more than Rs.2,40,000 per annum and if he/she is dependent on his/her parents/guardian/spouse, then the combined income from all sources should not be more than Rs. 3,60,000 per annum and also subject to fulfilling other terms and conditions as stipulated in the said scheme.

A separate notification inviting applications for award of "Merit-cum-Means Assistance" is being published elsewhere in this issue.

10. NOTIFICATION FOR INVITING APPLICATIONS FOR 'MERIT-CUM-MEANS ASSISTANCE' IN RESPECT OF CS EXAMINATIONS - JUNE, 2021

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)

File No.205:Exams:2021
Dated, the 7th October, 2021

ANNOUNCEMENT

ICSI/CS/05/2021

MERIT-CUM-MEANS ASSISTANCE SCHEME, 1983

In pursuance of para 13 of the "Merit-cum-Means Assistance (Company Secretaryship Course) Scheme, 1983", as amended upto 9th April, 2015, applications are invited to reach the Institute in the prescribed form on or before ***25th November, 2021*** for award of 25 numbers of financial assistance each for pursuing Executive Programme and Professional Programme of the "Company Secretaryship" from students who fulfil the eligibility criteria laid down under the said scheme.

According to the scheme, a candidate applying for assistance should have passed Foundation Programme or Both Modules of the Executive Programme examination without exemption in any paper, at one sitting, in the first attempt in **CS June, 2021** examination and that Foundation passed candidate should registered as regular student for pursuing Executive Programme within three months from the date of declaration of their result. The total income of such an applicant, if employed or is having an independent source of income, should not be more than Rs.2,40,000/- per annum and if he/she is dependent on his/her parents/guardian/spouse whether partially or wholly, the combined gross income from all sources should not be more than Rs.3,60,000/- per annum.

Prescribed application form together with a copy of the Merit-cum-Means Assistance (Company Secretaryship Course) Scheme, 1983 can be downloaded from the Institute's Website at https://www.icsi.edu/media/website/Application%20Form.pdf. Applications not made on the prescribed forms and/or **without supporting documents**, incomplete applications, applications not fulfilling the eligibility criteria laid down under the scheme or applications not reaching the Institute on or before ***25th November, 2021*** are liable to be summarily rejected.

BY ORDER OF THE COUNCIL

(CS ASISH MOHAN)
SECRETARY

New Delhi – 110 003

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"
Connect with ICSI
ICSI Noida Office C-36 & 37, Sector-62, NOIDA (U.P.)-201 309
tel 0120- 4522 000 fax +91-120-4264 443, 4264 445 email info@icsi.edu website www.icsi.edu

11. WARNING AGAINST ADOPTION OF UNFAIR MEANS – JUNE, 2021 SESSION EXAMINATION

While considering matters concerning conduct of Institute's June, 2021 session Examinations, the Examination Committee of the Council of the Institute found the following examinees guilty of adopting of unfair means :

S.No.	*Roll Number*	*Registration Number*	*Stage of Examination*
1.	532493	240478954/02/2016	Professional Programme (Old Syllabus) Module: I & II
2.	527438	120612874/02/2012	Professional Programme (Old Syllabus) Module: I, II & III
3.	601239	140571243/08/2018	Executive Programme (New Syllabus) Module: I & II
4.	643613	440904914/11/2020	Executive Programme (New Syllabus) Module: I
5.	501702	140099151/08/2014	Executive Programme (Old Syllabus) Module: I & II
6.	644922	440902926/11/2020	Executive Programme (New Syllabus) Module: I
7.	646842	440865261/02/2020	Executive Programme (New Syllabus) Module: I
8.	639137	440877983/09/2020	Executive Programme (New Syllabus) Module: II
9.	512271	340622494/02/2018	Executive Programme (Old Syllabus) Module: I & II

Accordingly, the Committee – (a) cancelled the results of the above mentioned candidates in respect of their appearances in June, 2021 session examinations and (b) debarred the candidates from appearing in the next session of examinations, *i.e.*, December, 2021.

The Committee further observed that such an unbecoming behaviour was not befitting the aspirants intending to join the profession of 'Company Secretaryship' and, therefore, any such attempt to indulge in unfair practice by the examinees shall be viewed seriously.

Sd/-

(CS Asish Mohan)
Secretary, the ICSI

12. ANNOUNCEMENTS

IMPORTANT EXAMINATION ANNOUNCEMENT

CONDUCT OF CS FOUNDATION PROGRAMME DECEMBER, 2021 SESION IN ANYWHERE MODE THROUGH REMOTE PROCTORING ON 3RD AND 4TH JANUARY 2022

The Institute has decided to conduct Computer Based Examination (CBE) for Foundation Programme in anywhere mode through remote proctoring from December, 2021 Session onwards.

Accordingly, the next Foundation Programme Examination for December, 2021 Session will be held on 3rd and 4th January, 2022 in anywhere mode through remote proctoring. For detailed time table please refer website of the Institute www.icsi.edu.

8th October, 2021

JOINT SECRETARY

(EXAMS.)

ATTENTION STUDENTS!

VERIFICATION OF MARKS OF COMPANY SECRETARIES EXAMINATIONS – JUNE, 2021 SESSION

In terms of Regulation 42 (2) of the Company Secretaries Regulations, 1982 as in force, a candidate may apply for "Verification of Marks" in any subject(s) of CS examination **within 21 days** from the date of declaration of his/her result. The interested candidates can apply for verification of marks either through on-line or off-line mode as per prescribed procedure with requisite **fee @ Rs. 250/- per subject**. The guidelines/information regarding Verification of Marks are available on the website of the Institute at:

https://www.icsi.edu/media/webmodules/Guidelines_Providing_VOM.pdf

The on-line facility for applying for Verification of Marks will be operative from **Thursday, the 14th October, 2021 from 00:01 hrs till Wednesday, the 3rd November, 2021 up to 24:00 hrs.**

For Foundation Programme, the facility of Verification of Marks can be availed by those candidates only who have appeared in the Computer Based Examination through Lab/centre mode.

The last date of submitting applications for Verification of Marks is **3rd November, 2021.**

To optimize the use of on-line mode of payment, candidates are advised to submit their request/s through on-line mode for quicker and hassle-free response.

In case any candidate wishes to apply for Verification of Marks through off-line mode, he/she can download the Application Form available on the website and send the same duly filled in along with the requisite fee through Speed/Registered Post. The fee can be paid either by way of demand draft favouring *"The Institute of Company Secretaries of India" payable at New Delhi;* or *in cash at the Regional/Chapter/Noida Office.*

The procedure for submitting application for Verification of Marks is given on the website of the Institute under Examination Section at the link given below:

https://www.icsi.edu/webmodules/Verification_of_Marks_of_CS_Exam.pdf

For applying Verification of Marks through on-line mode, the interested candidates can access the following link: https://smash.icsi.in/scripts/login.aspx

Joint Secretary
Directorate of Examinations

ATTENTION STUDENTS!

PROVIDING INSPECTION OR SUPPLY OF CERTIFIED COPY (IES) OF ANSWER BOOK(S) OF CS EXAMINATIONS – JUNE, 2021

The Institute has been providing the facility of Inspection or Supply of Certified Copies of Answer Book(s) to the candidates on their request as per Guidelines, Rules and Procedures framed by the Institute in this regard.

A candidate who wishes to Inspect* and/or obtain Certified Copy(ies) of his/her Answer Book(s) of any subject(s) of a particular examination, can apply either through on-line or off-line mode as per the prescribed procedure **within 30 days from the date of declaration of the result.**

The on-line facility for applying for Inspection or supply of Certified Copies of Answer Book(s) will be operative from **Thursday, the 14th October, 2021 from 00:01 hrs till Friday the 12th November, 2021 up to 24:00 hrs.**

The prescribed fee for supply of Certified Copy (ies) of Answer Book(s) is **Rs. 500/-per subject** and fee for Inspection* of Answer Book(s) is **Rs. 450/- per subject**. The last date of submitting applications is **12th November, 2021.**

If any candidate wishes to apply for Inspection or supply of Certified Copy(ies) of Answer Book(s) through off-line mode, he/she can download the prescribed Application Form available on the website and send the same duly filled in along with the requisite fee through Speed/Registered Post. The fee can be paid either by way of demand draft favouring *"The Institute of Company Secretaries of India" payable at New Delhi;* or *in cash at the Regional/Chapter/Noida Office.*

The "Guidelines, Rules and Procedures for Providing Inspection and/or Supply of Certified Copy (ies) of Answer Book(s) to students" are available on the website of the Institute under Examination Section at the link given below:

https://www.icsi.edu/media/webmodules/Inspection_Certified_Copy.pdf

For applying Inspection or supply of Certified Copy (ies) of Answer Book(s) through on-line mode, the interested candidates can access the following link:

https://smash.icsi.in/scripts/login.aspx

*For Inspection candidates have to personally visit ICSI Noida Office at C-37, Sector-62, Institutional Area, Gautam Budh Nagar, Noida 201309 to inspect his/her answer book (s).

Joint Secretary

Directorate of Examinations

ANNOUNCEMENT

DIVISION OF AHMEDABAD CITY INTO ZONES FORCOMPANY SECRETARIES EXAMINATIONS

The following division has been made for Examination centres at Ahmedabad:

SL. NO.	CITY	ZONE	AREAS COVERED	CENTRE CODE
1	AHMEDABAD	ZONE-I	AMBLI, BOPAL, GHUMA, JIVRAJ, JODHPUR, JUHAPURA, SARKHEJ, SATELLITE, VASTRAPUR, VEJALPUR	487
2		ZONE-II	ASHRAM ROAD, BHATTHA, KALUPUR, KHANPUR, MAHALAXMI, NAVA VADAJ, NAVRANGPURA, PALDI, VASNA	488
3		ZONE-III	BAPUNAGAR, GHODASAR, ISANPUR, KRISHNANAGAR, MANINAGAR, NARODA, NAROL, NIKOL, ODHAV	489
4		ZONE-IV	BHADAJ, BODAKDEV, CHANDKHEDA, GHATLODIA, GOTA, GURUKUL ROAD, JAGATPUR, MEMNAGAR, SCIENCE CITY ROAD, S G HIGHWAY, SHILAJ, SOLA, THALTEJ, TRAGAD	490

Accordingly, candidates can select examination centres nearer to their place of stay/convenience. This division is applicable only for Executive Programme and Professional Programme examinations. Candidates from the above city can avail this facility while enrolling for December 2021 examination. However, due to paucity of accommodation, the candidates may be shifted from one zone to another.

JOINT SECRETARY

08th October, 2021 **DIRECTORATE OF EXAMINATIONS**

Membership

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)

ICSI SECRETARIAL EXECUTIVE CERTIFICATE

The ICSI Secretarial Executive Certificate is a unique initiative of the Institute of Company Secretaries of India (ICSI) for the CS Students to create a pool of semi qualified professionals.

ELIGIBILITY

A student who has:-

- passed the Executive Programme;
- completed EDP or any other equivalent programme;
- completed Practical Training as prescribed or exempted therefrom; and
- made an application along with such fee as applicable.

VALIDITY OF CERTIFICATE

- One calendar year from the date of issue
- Renewable on completion of 4 PDP Hours and payment of annual renewal fee of Rs.1000/-.
- The certificate will be renewed for a maximum period of two years only.

BENEFITS

- Entitled to use the description "ICSI Secretarial Executive".
- Seek employment with Practising Company Secretaries
- Gain relevant experience with India Inc.
- Serve the nation while preparing to become a full-fledged professional.
- Eligible to receive the coveted ICSI Journal 'Chartered Secretary'.

Procedure to apply shall be available at **http://bit.do/secicsi**

For queries, please write to **member@icsi.edu** or contact on Phone No.: **0120-4522000**

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

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LAUNCHING OF ONLINE LICENTIATE ENROLLMENT

ELIGIBILITY

A student who has:-

(i) A person who has completed the Final examination or Professional Programme examination of the Institute may, within six months from the date of declaration of results in which he has passed the Final examination or Professional Programme examination can apply for enrolment as a licentiate.

(ii) An Online application for enrolment as a Licentiate is to be made along with annual subscription of **Rs. 1180/-** (Rs. 1000/- Licentiate subscription + Rs. 180/- towards GST @18% applicable w.e.f. 1st July, 2017)

VALIDITY OF CERTIFICATE

(i) A licentiate shall not ordinarily be allowed to renew his enrolment for more than five years after passing the Final examination or Professional Programme examination.

(ii) The annual subscription of a licentiate shall become due and payable on the first date of April every year

(iii) Non-payment of annual subscription on or before the thirtieth of June of a year shall disentitle the person to use the descriptive letters Licentiate ICSI &; from 1st July of that year, until his annual subscription for the year is received by the Institute. The name of the person so disentitled shall be published in the Journal

The Institute of Company Secretaries of India launches the online module of Licentiate enrollment as a Licentiate of The Institute of Company Secretaries of India in accordance with Regulation 29 of the Company Secretaries Regulations, 1982.

BENEFITS

- Recognition as 'Licentiate ICSI or entitled to use the descriptive letters Licentiate ICSI
- Subscription of Chartered Secretary Journal
- Participate in the activities of the Institute, its Regional Council or Chapter as the case may be, subject to such conditions as may be imposed by the Council, Regional Council or Chapter, as the case may be
- Entitled to use Library facilities of the Institute, Regional Council or Chapter

Procedure to apply shall be available at http://stimulate.icsi.edu/

For queries, please write to member@icsi.edu or contact on phone number 0120-4522000

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News From Regions

SIRC

THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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SOUTHERN INDIA REGIONAL COUNCIL

Azadi Ka Amrit Mahotsav

Announces

Online Classes for CS Professional Programme (Module-I and Module-II) December, 2021 Examination. Students who have registered for Professional Programme may join the Online Classes.

Experienced Faculites

Batch starts on Wednesday, 20th October, 2021
(Classes may end by Second week of December, 2021)

Online Classes for Professional Programme

Module-I:
Timing: 7.00 am to 9.00 am
(Monday to Saturday)

Module-II:
Timing: 6.00 pm to 8.00 pm
(Monday to Saturday)

(Batch will commence if minimum 15 Students registered)

Fees: Rs. 7,200/- (per module)
Fees will not be refunded once classes commenced.

Mode of Payment of Fees (Online Transfer)
HDFC Bank : P. H. Road Branch;
Account Name: SIRC of the ICSI
SB Account No: 04921110000013
IFSC Code : HDFC0000492

Students attending Online Classes conducted by SIRC are exempted from pre examination test. Students have to pass the online test to be conducted by SIRC.

Students are required to enter the details in the Link after making the payment. Registered Students will be provided the Login ID & Password for online classes separately by email.
Google Form Link: https://forms.gle/auStJyWY2koAfYf1A

For further details contact :
Mr. C. Murugan, Executive (Admin), Southern India Regional Office, The Institute of Company Secretaries of India
ICSI-SIRC House, No.9, Wheat Crofts Road, Nungambakkam, Chennai-600034.
044-28268685/28222212 / siro@icsi.edu; chelliah.murugan@icsi.edu: Mobile: 9443796311

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"

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SOUTHERN INDIA REGIONAL COUNCIL

Azadi Ka Amrit Mahotsav

Announces

The Institute of Company Secretaries of India, Southern India Regional Council is organizing Online Crash Course for CS Executive Progamme Module I & II for the Students appearing in December 2021 Examination.

ONLINE CRASH COURSE

CS Executive Programme Module I & II for December 2021 Examination

(From 9th November, 2021 to 6th December, 2021)

Subject to the minimum enrollment of 15 Students

Experienced Faculties

Fees: Rs.2,500/- (Per Module)
(Fees will not be refunded once classes commenced)

Module - I
Timings: 10.00 am to 12.00 Noon

Module - II
Timings: 3.30 pm to 5.30 pm

From 09.11.2021 to 06.12.2021
(Monday to Saturday)

Online Mock Test

Module I	Module II
07.12.2021 to 10.12.2021	11.12.2021 to 14.12.2021

Mode of Payment (Online Transfer)
HDFC Bank : Poonamallee High Road Branch; Account Name: SIRC of the ICSI
SB Account No: 04921110000013; IFSC Code : HDFC0000492

Students are required to enter the details in the link after making the payment.
Google Form Link : https://forms.gle/riH2vL8hocnnBYuLA

Registered Students will be provided the log in ID & Password for online classes separately by email

For further details contact :

Mr. C. Murugan, Executive (Admin), Southern India Regional Office, The Institute of Company Secretaries of India
ICSI-SIRC House, No.9, Wheat Crofts Road, Nungambakkam, Chennai-600034.
Phone: 044-28268685/28222212 / siro@icsi.edu; chelliah.murugan@icsi.edu:

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Mission: "To develop high calibre professionals facilitating good corporate governance"

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Motto

सत्यं वद। धर्मं चर।

speak the truth. abide by the law.

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THE INSTITUTE OF Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

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Headquarters

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