

FEBRUARY
2020
02

STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]



LEADERSHIP BEYOND BOUNDARIES



CS ASHISH GARG
President, 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)

Message from the President

February 2020



Dear Students,

It gives me immense pleasure to pen down my first message as the President of our Alma Mater and while extending my best wishes to all of you share my thoughts and intent for the year to follow.

The month of February while having held significance for the students of this Institute has gained further connotation this year. The recent deliberations at a global level have given much strength to the concept of “stakeholder capitalism” which believes in the orientation of corporations and other entities to serve the interests of all their stakeholders. Understanding its heightened relevance in the modern day scenario and with a dire urge to align the same with our ideology, the Institute has brought forth the Company Secretaries (Amendment) Regulations, 2020.

These regulations while seeking to strengthen each milestone in the process of becoming a Company Secretary – right from the entry level resulting in equipping the prospective Company Secretaries have also been developed to provide for adequate post membership upskilling measures.

One of the key aspects of these Regulations is the introduction of the CS Executive Entrance Test (CSEET) to replace the existing CS Foundation Programme. The CSEET shall serve as the qualifying test for the candidates aspiring to pursue the Company Secretaryship Course.

As far as the grooming of aspiring professionals is concerned, the Institute has strived to alter and rework the existing Training structure, making ample room for budding Company Secretaries to understand their upcoming responsibilities, the accountabilities attached to them and brace themselves for the expectations of the India Inc.

And while these developments made through the Amendment Regulations have made the month much more significant, yet I would like to extend my heartiest congratulations to all the students who have passed the examinations with flying colours and my eternal best wishes to the students who appeared in the CS Examinations – December, 2019 but could not sail through. I hope that you will keep the mast of your hopes and aspirations and will march forward with greater zeal and motivation to become the Governance Professionals of tomorrow...

Best of luck !!!

CS Ashish Garg

President

The Institute of Company Secretaries of India

Inside

- Articles
- Budget Analysis
- Case Studies
- Regulatory Update
- Company Law Corner
 - Case Snippets
 - Legal Maxims
 - Quiz Time
 - Legal World
 - Examination
 - Membership
- News from Region

Attention Students

Guideline Answers are available at the Website of the Institute and may be accessed at <https://www.icsi.edu/student/academic-portal/guideline-answers/>

Announcement for the Students

Students are invited to contribute articles for Student Company Secretary e-journal at **academics@icsi.edu**

on the topic

“Digital Transformation in India Inc.”

Selected articles will be published in the forthcoming issue of Student Company Secretary e-journal



Articles

- **THEME ARTICLE - COMPANY SECRETARY : AN EMOTIONALLY INTELLIGENT LEADER**
- **E-COMMERCE BUSINESS MODEL**
- **GOODS AND SERVICES TAX ON LOTTERY IN INDIA**



Theme Article

COMPANY SECRETARY: AN EMOTIONALLY INTELLIGENT LEADER*

WHAT IS EMOTIONAL INTELLIGENCE?

As per Oxford English Dictionary, Emotional Intelligence means the ability to understand your emotions and those of other people and to behave appropriately in different situations. In other words, Emotional Intelligence also known as Emotional Intelligence Quotient (EIQ/EQ), is sometimes referred as the competency of a person to recognise and manage his own emotions and that of others in a way that a person becomes considerate of other's feelings in a manner that he/she can empathise with others, communicate effectively and can manage to turn arguments into fruitful discussions.

Emotional Intelligence is relatively a new concept, and it was Daniel Goleman, who popularised this concept, in 1995, defining emotional intelligence as "abilities of being able to motivate oneself and survive in the face of frustrations; to control impulse and delay gratification; to manage one's moods and keep distress from swamping the ability to think; to empathize and to hope" in his book 'Emotional Intelligence'.

As per Daniel Goleman, there are five components of emotional intelligence - Self-Awareness, Self-Regulation, Social Skills, Empathy and Motivation.

A person with considerable level of Emotional Intelligence is kind and patient to understand the various scenarios and has thoughtfulness to deal with them.

Over the years, it has been realised that 'Intelligence Quotient' or 'IQ' alone is not enough for a person to be successful at work, a person needs to value his own thoughts and that of others to be successful and fulfilled. It's the EQ that helps a person overcome adversity.

A person who carefully analyses other person's mood, can clearly see his expectations which helps him to plan things in a better way.

Communication is the most important 'social skill' in life. And communication not just involves speaking, reading or writing, but it also involves effective listening. Emotional Intelligence revolves around the concept of first understand others to be understood. A person should be capable enough to care about other's circumstances and appreciate and believe in another person's feelings in connection with that situation and then intend to provide an effective solution to the problem. Most people listen with an intent to reply, a trait not displayed by a person who has a high EQ. A person who is emotionally intelligent is an empathetic listener, who tries to deeply and emotionally understand the other human soul.

* Ridima Gulati, Company Secretary, IHHR Hospitality (Andhra) Pvt. Ltd.

Views expressed in the Article is the sole expression of the Author and it does not express the views of the Institute.

When people are really disturbed and are struggling with a chaos, all they really need is someone who understands them with the pure desire to listen and who allows the other person to express themselves.

A person who listens to others, gradually becomes influencing and the whole atmosphere around them changes as the sense of maturity and stability, which is evident by the people who are seeking the advice as they start relying more on that person for their issues.

With the help of emotional intelligence, a person can gain trust of others and as it is rightly said 'Trust is the highest form of human motivation. It brings out the very best in people'.

Before elaborating and connecting the emotional intelligence element with our profession, let's walk through the role of Company Secretaries, in the next section.

UNDERSTANDING THE ROLE OF A COMPANY SECRETARY

We have heard on various occasions and read in several places, that a Company Secretary being a key managerial personnel, is a part of the senior management of the Company who acts as a link between the Company and its Board of Directors, shareholders, other stakeholders, government and regulatory authorities. Though, the above definition is true, but there is more to the role of a Company Secretary.

A Company Secretary is not just any personnel employed by the company, but a Corporate Governance Professional who acts as a counsellor to the board of directors on the matters related to the Company. We are responsible for guiding the board of directors to take the business decisions in the light of good governance. The Board of Directors rely on us to look over the compliances associated with the vital decisions. A Company Secretary being a significant member of the senior management acts as a person who has an inner sense of right or wrong in the conducts and who is entrusted with the duty to impel the Board towards the right action.

In fact, if we go a little deeper with understanding the role of Company Secretaries, we have more to our responsibilities, and our role is not just confined with reporting to the Board of Directors and liaising with the regulatory authorities, but we are also the Governance Leaders, who ensure good governance practices are being adopted throughout the Company and across various departments.

The phrase 'Good Governance Practices' is often confused with fulfilling compliance requirements with best and fair practices. However, there is a hidden meaning in there, which a Company Secretary must understand to become a 'Governance Leader' in a true sense. A Governance Leader is the one who develops a sincere attitude towards governance. He understands that good governance is not only about 'what' practices are to be adopted in an organisation, but also 'how' they are to be adopted, so that it not only fulfils the compliance requirements, but it also renders satisfaction to all the stakeholders involved in that decision, be it the Board, the other members of the senior management, employees, banks, regulatory authorities and every person who is likely to be affected by that decision.

Thereby it makes the role of a Company Secretary not limited to compliance and regulatory function but also with management of people, so that fair policies and procedures are adopted rendering a win-win situation for each affected group. We have to make sure that satisfaction and mutual benefit of a decision is shared by everyone.

Company Secretaries, are expected to participate in the process of formulating board decisions and need to look at the legal aspects and simultaneously try to gauge the reaction of the shareholders and various stakeholders who are going to be affected by those decisions. It is the responsibility of a Company Secretary to have a thorough due diligence before the Company takes

any decision and the process of due diligence shall not only involve technical and legal aspects, but also the understanding and awareness of the sentiments and feelings of the concerned classes.

Further, throwing light on the role of Company Secretaries who are in practice, it is to be noted they are not just dealing with intellectual and legal concepts of the profession, but their role also includes understanding that how compliances may impact people, and how they can affect huge range of emotions of the clients. A Company Secretary in practice, has to deal, persuade and negotiate on various matters not only with his / her clients, but also with various other parties involved. We have to make sure that we can advise our clients to provide best possible solutions, which shall relieve them out of the stress, be it emotional, financial or personal.

So, it can be concluded from this section, that along with the technical skills related to compliances and law, one needs to learn the art of tact and diplomacy, being extremely careful about what to say or do, because in taking any decision related to a company, it's not just one person involved but a set of people. However, along with being considerate of feelings, a Company Secretary also have the responsibility of doing the right things.

Therefore, Emotional Intelligence matters even more for a Company Secretary. He has to understand and manage his emotions while playing multiple roles, satisfying the Board, the senior management, the shareholders, the regulatory authorities, the employees, and also when there are conflicting interests amongst all these groups; he needs to empathise with each group and understand their side of stories and concerns. However, he should always keep in mind to be true to himself and maintain the dignity and integrity of the position.

APPLYING EMOTIONAL INTELLIGENCE WHILE PERFORMING THE DUTIES OF A COMPANY SECRETARY

As discussed in the previous section, a Company Secretary has varied roles, from being a corporate governance advisor within the company as a key managerial personnel to providing professional guidance in the capacity of a Company Secretary in practice.

A successful Company Secretary should think beyond the technical knowledge and develop emotional intelligence. It is often asked that if emotional intelligence is inherent or it can also be learned? The answer is a good news for everyone, this is not an inborn talent, but with conscious efforts, one can practice being sensitive towards other's emotions and feelings.

For applying emotional intelligence, it is important to understand the five components of emotional intelligence, one by one: Self-Awareness, Self-Regulation, Social Skills, Empathy and Motivation:

The first component is self-awareness, which means being aware of your own emotions. A person who is capable enough to understand his own reactions to various situations, can relate with others' emotions and reactions to a particular situation. A person who is self-aware also knows how their own emotions may have an impact on others. Therefore, taking an example, while explaining the lay off to the employees, a Company Secretary should be aware of his own emotions, and shall consider 'what if' he would have been laid off and accordingly be sensitive in breaking the news to the concerned employees.

We have to recognise how our feelings can affect us and other people and that ways, we will be able to relate more with others.

The second component is self-regulation, which means to stay in control and do not let emotions overpower the important decisions. A person of integrity always takes care of what is more important and essential to do that won't impact a long term decision. Sometimes, a Company Secretary is caught in the emotions of being a 'Yes Man' to the management or 'doing what is

right'. Sometimes, a situation might arise where the Board might be taking a decision, which benefits the promoter group, and has an ill impact on the other shareholders; here, a Company Secretary, who is self-regulated, shall not support any decision, he/she knows is not in the benefit of the organisation as a whole.

We should remember as professionals that the Board might be powerful or a client might be offering a handsome professional fees, but then upholding your own integrity is in your hands. It is all about learning to control your emotions, not suppressing them.

The third component of Emotional Intelligence is social skills. When we say social skills, it means having and maintaining good relationships with people and also having the ability to develop new relationships easily. A person with social skills is confident and humble, confident enough to convince others of his decisions without hampering the relations and humble enough to listen to others and respecting the same.

A Company Secretary in practice, who possesses high level of emotional intelligence, interacts effectively with his clients and can grow his professional networking by being sympathetic and polite towards his clients. This skill allows them to read the people they are working with and to understand their concerns.

Also, the relationship we maintain with the directors on the Board as their close confidante helps to build trust amongst them and we can have more open discussions and better decision making.

The fourth component is empathy and one of the most important components in being an emotionally intelligent leader. Empathy means keeping yourself in someone else's position and trying to understand the other person's point of view. Empathy doesn't mean to agree with someone on everything or pleasing everybody, as it is impossible, rather it means to thoughtfully consider others' feelings and making intelligent decisions.

Empathy is particularly important today as a component of effective leadership. Sharing a scenario to explain it better, there was a merger of three companies, creating dismissals in all the divisions of the two companies, which were merging in the third one. The Company Secretary of 'Company A' declared the news in a very depressing tone and conveyed that people will soon be fired. However, they will be compensated well by the company including continuation of health insurance for up to one year. The speech made the employees of 'Company A' heart broken and confused. On the other hand, the Company Secretary of 'Company B', told his staff that he is himself worried about his own position in the company and can relate to their reactions on hearing about such dismissals in the company, but at the same time, he also explained that why the merger was important for the company. He promised that he will continue to bridge their concerns with the management and will keep them informed of the future actions. In contrast to the Company Secretary of 'Company A', he did not demoralise the employees and it resulted in maintaining the productivity of the employees as it is. Therefore, it is again our duty to empathise with the emotions of the employees, who are being impacted by the decisions of the Board. We, being in the close proximity with the Board can understand why the decision of merger was important, but he/she shall also understand that the feelings of the employees who might lose their jobs. 'Company A' tried to give monetary compensation to the employees, however, the message wasn't conveyed in a generous manner and it left them hurtful.

Also, the art of empathising with others plays an important role for a Company Secretary in Practice. It is important to deepen the connections with clients and allow them, to confide about their feelings and discuss their problems. Particularly, in our profession, we know there can be non-compliances on the part of a client, it is our duty not to scare him with the penalties and fines that he can face, rather we should be calm enough to make him understand a solution which would help him avoid any other future troubles.

Even the clients who work with the practicing professionals, not just want someone who advises them technically and begin stating all the legal provisions, they want someone they can discuss their commercial concerns too. And for that, we have to step out of the role of being compliance advisors, as we have to empathise that what these business decisions mean to our clients.

Now, fifth component of high Emotional Intelligence is motivation. People who are emotionally intelligent have the ability to motivate themselves. The approach of the emotionally intelligent leaders towards satisfaction goes beyond high professional fees, increments, appreciation or promotion. Their passion towards their work and profession leads them to make sound decisions for the organisation as a whole. Company Secretaries often deal with the situations where a law suit has been initiated towards the company, and he/she is required to work beyond his/her own scope of work to understand the case. A Company Secretary who has a positive approach and who is keen to provide a way out of such a law suit, might work day in and day out, taking assistance from as many departments as he thinks would be necessary, reading as many files as he can and will focus on the solution as he knows that the law suits can spoil the reputation of the company if not dealt properly. On the other hand, a Company Secretary who keeps on thinking about the rewards and the appreciation he would get by completing a work, might finish the work but might not be able to satisfy himself or the management, fully. To be a successful Company Secretary, that spark of passion about our work is always required.

As Peter Drucker said, effective people are not problem-minded; they are opportunity-minded.

We deal with varied groups of people ranging from top level management who are concerned about bringing business in the company, to the employees who have concerns when they want to withdraw some amount from their employees' provident fund for their daughter's marriage. Unless, we are self-motivated, we cannot see the learning opportunities in different situations we need to deal with.

Not to say, that a Company Secretary should not possess ability, knowledge and expertise of his area of practice, but emotional intelligence is an important and indispensable ingredient for being a powerful leader.

CONCLUSION

The process of learning emotional intelligence is not easy. A Company Secretary has to be committed towards making oneself an emotionally intelligent professional, every day.

A Company Secretary whether in employment or in practice, who practices all the components of the emotional intelligence, with thoughtfulness and patience, will not only make the organisation successful or serve the clients optimally, he will feel satiated and contribute immensely towards the vision and mission of the profession. And as Stephen Covey stated in his book, 'The 7 Habits of Highly Effective People' that 'I can act with integrity. I don't have to react to the emotion, the circumstance. I can be truly proactive, value driven, because my values are clear'. Let's make it our mantra and let's not keep ourselves confined to the four walls of compliance, practices and procedures, let's lead the industry in an emotionally intelligent manner!

E-COMMERCE – LEGAL PERSPECTIVE*

INTRODUCTION

Electronic commerce and data are emerging as key enablers and critical determinants of India's growth and economic development. India is the fastest growing market for the e-commerce sector.



Source: IBEF

E-commerce in India has attracted investors from across the world.

Within a short period in the recent past, the significance of economic activities in the digital space has grown substantially, both globally and in India.

There is no universally accepted definition of e-commerce. Yet various definitions have been drawn by different organizations. Few of such definition of e-commerce are as below:

Department for Promotion of Industry and Internal Trade (DPIIT), FDI Policy, 2017: "e-Commerce" means buying and selling of goods and services, including digital products over digital and electronic network.

Ministry of Electronics and Information Technology (MeitY): "e-Commerce" is a type of business model, or segment of a larger business model, that enables a firm or individual to conduct business over an electronic network, typically the internet. Electronic commerce operates in all four of the major market segments: business to business, business to consumer, consumer to consumer and consumer to business.

Consumer Protection Act, 2019: "e-Commerce" means buying or selling of goods or services including digital products over digital or electronic network.

* Chittaranjan Pal, Assistant Director, The ICSI.

Views expressed in the Article is the sole expression of the Author and it does not express the views of the Institute.

Central GST Act, 2017: “electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network .

World Trade Organisation(WTO): The term "electronic commerce" is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. (Work Programme on Electronic Commerce, 1998)

DRAFT NATIONAL E-COMMERCE POLICY 2019

Draft National E-Commerce Policy prepared by Government of India addresses six broad areas of the e-commerce ecosystem viz. data, infrastructure development, e-commerce marketplaces, regulatory issues, stimulating domestic digital economy and export promotion through e-commerce. The Policy takes into account interests of all stakeholders including investors, manufacturers, MSMEs, traders, retailers, startups and consumers. The National e-Commerce Policy has been formulated with a vision to provide a level-playing field to all stakeholders, including the individual consumers and MSMEs and start-ups.

CCI: 'MARKET STUDY ON E-COMMERCE IN INDIA: KEY FINDINGS AND OBSERVATIONS'

The Competition Commission of India (CCI) released a Report titled 'Market Study on E-commerce in India: Key Findings and Observations' on 8th January, 2020.¹ The Market Study on E-commerce in India ('the study') was initiated by the CCI in April 2019 with a view to better understand the functioning of e-commerce in India and its implications for markets and competition. The objective was also to identify impediments to competition, if any, emerging from e-commerce and to ascertain the Commission's enforcement and advocacy priorities in light of the same.

The study, a combination of secondary research, questionnaire survey, focused group discussions, one-on-one meetings, a multi-stakeholder workshop and written submissions of stakeholders, covered the three broad categories of e-commerce in consumer goods (mobiles, lifestyle, electrical & electronic appliances and grocery), accommodation services and food services. 16 online platforms, 164 business entities [including sellers (manufacturers and retailers) and service providers (hotels and restaurants)] and 7 payment system providers from across India participated in the study. In addition, 11 industry associations, representing different stakeholder groups, also participated.

The study has helped to gather useful insights and information on the key features of e-commerce in India, the different business models of e-commerce players, and the various aspects of commercial arrangements between market participants involved in e-commerce. The study has also provided an opportunity to learn from business enterprises on how they are responding to the advent of digital trade and has helped gauge the key parameters of competition in digital commerce.

The study confirms that online commerce is gaining importance across the sectors studied. The share of online distribution and its relative importance vis-à-vis traditional channels varies significantly across products. This divergence constrains construction of a unified competition narrative and points to the need for product-specific assessment of market and competition dynamics. Online commerce, as the study shows, has increased price transparency and price competition. The search and compare functionalities of online platforms have lowered search cost for consumers and have provided them with a wide array of alternatives to choose from. For businesses, e-commerce has helped expand market participation by aiding innovative business models.

¹ Available at: https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-on-e-Commerce-in-India.pdf

The report released presents the key trends identified and also discusses the issues that may, directly or indirectly, have a bearing on competition, or may hinder realisation of the full pro-competitive potential of e-commerce. These include the issues of lack of platform neutrality, unfair platform-to-business contract terms, exclusive contracts between online marketplace platforms and sellers/service providers, platform price parity restrictions and deep discounts. The CCI is of the view that many of these issues would lend themselves to a case-by-case examination by the CCI under the relevant provisions of the Competition Act, 2002. The report outlines these issues and presents the observations of the CCI on the same without assessing whether a conduct is anti-competitive or is justified in a particular context.

On the basis of the market study findings, the enforcement and advocacy priorities for the CCI in the e-commerce sector in India are, *inter alia*, the following:

- i. Ensuring competition on the merits to harness efficiencies for consumers
- ii. Increasing transparency to create incentive for competition and to reduce information asymmetry
- iii. Fostering sustainable business relationships between all stakeholders

The insights gained from the study will inform antitrust enforcement in these markets. Nonetheless, bargaining power imbalance and information asymmetry between e-commerce marketplace platforms and their business users are at the core of many issues that have come up in the market study. Thus, without a formal determination of violation of competition law, improving transparency over certain areas of the platforms' functioning can reduce information asymmetry and can have a positive influence on competition outcomes.

In view of the foregoing, the report enumerates certain areas for self-regulation by the e-commerce marketplace platforms. These have been advocated with a view to reduce information asymmetry and promote competition on the merits. The CCI under its advocacy mandate urges the e-commerce platforms to put in place the following transparency measures.

Search ranking

- i. Set out in the platforms' terms and conditions a general description of the main search ranking parameters, drafted in plain and intelligible language and keep that description up to date.
- ii. Where the main parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users, set out a description of those possibilities and of the effects of such remuneration on ranking.
- iii. Introduction of the above-mentioned features, however, should not entail, disclosure of algorithms or any such information that may enable or facilitate manipulation of search results by third parties.

Collection, use and sharing of data

Set out a clear and transparent policy on data that is collected on the platform, the use of such data by the platform and also the potential and actual sharing of such data with third parties or related entities.

User review and rating mechanism

Adequate transparency over user review and rating mechanisms is necessary for ensuring information symmetry, which is a prerequisite for fair competition. Adequate transparency to be maintained in publishing and sharing user reviews and ratings with the business users. Reviews

for only verified purchases to be published and mechanisms to be devised to prevent fraudulent reviews/ratings.

Revision in contract terms

Notify the business users concerned of any proposed changes in terms and conditions. The proposed changes not to be implemented before the expiry of a notice period, which is reasonable and proportionate to the nature and extent of the envisaged changes and to their consequences for the business user concerned.

Discount policy

- i. Bring out clear and transparent policies on discounts, including *inter alia* the basis of discount rates funded by platforms for different products/suppliers and the implications of participation/non-participation in discount schemes.

GOVERNING RULES & REGULATIONS

E-commerce companies are subject to various extant rules and regulations. Owing to the cross cutting nature of e-commerce, different laws and regulations across sectors govern the present e-commerce activities, some of which are Income Tax Act, 1961, Consumer Protection Act, 1986/2019, Information Technology Act, 2000, Foreign Exchange Management Act, 1999, Payment and Settlement Systems Act 2007, Companies Act, 2013 and laws related to Goods and Services Tax.

FOREIGN DIRECT INVESTMENT ON E-COMMERCE SECTOR

100% FDI under automatic route is permitted in marketplace model of e-commerce. FDI is not permitted in inventory based model of e-commerce. It may be noted that Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly and Marketplace based model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

Conditions for FDI in e commerce

- Digital & electronic network will include network of computers, television channels and any other Internet application used in automated manner such as web pages, extranets, mobiles etc.
- Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis.
- E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.
- E-commerce entity providing a marketplace will not exercise ownership or control over the inventory i.e. goods purported to be sold. Such an ownership or control over the inventory will render the business into inventory based model. Inventory of a vendor will be deemed to be controlled by e-commerce marketplace entity if more than 25% of purchases of such vendor are from the marketplace entity or its group companies.
- An entity having equity participation by e-commerce marketplace entity or its group companies, or having control on its inventory by e-commerce marketplace entity or its group companies, will not be permitted to sell its products on the platform run by such marketplace entity.

- In marketplace model goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.
- In marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India.
- In marketplace model, any warrantee/ guarantee of goods and services sold will be responsibility of the seller.
- E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field. Services should be provided by e-commerce marketplace entity or other entities in which e-commerce marketplace entity has direct or indirect equity participation or common control, to vendors on the platform at arm's length and in a fair and nondiscriminatory manner. Such services will include but not limited to fulfilment, logistics, warehousing, advertisement/marketing, payments, financing etc. Cash back provided by group companies of marketplace entity to buyers shall be fair and non-discriminatory. For the purposes of this clause, provision of services to any vendor on such terms which are not made available to other vendors in similar circumstances will be deemed unfair and discriminatory.
- E-commerce marketplace entity will not mandate any seller to sell any product exclusively on its platform only.
- E-commerce marketplace entity will be required to furnish a certificate along with a report of statutory auditor to Reserve Bank of India, confirming compliance of above guidelines, by 30th of September of every year for the preceding financial year.

E-COMMERCE UNDER THE CONSUMER PROTECTION ACT, 2019

Section 94 of the Consumer Protection Act, 2019 deals with measures to prevent unfair trade practices in e-commerce, direct selling, etc. it states that for the purposes of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers, the Central Government may take such measures in the prescribed manner.

CCI ORDER INVESTIGATION AGAINST FLIPKART AND AMAZON

In the case of *Delhi Vyapar Mahasangh, Informant and Flipkart Internet Private Limited Opposite Party No. 1 & Amazon Seller Services Private Limited and its affiliated entities Opposite Party No. 2 (Opposite Parties)*, Case No. 40 of 2019 Order dated 13th January, 2020 the informant alleges that there is a clear violation of Section 3(4) read with Section 3(1) of the Competition Act. Allegedly, there is an existence of various vertical arrangements between (i) Flipkart with their preferred sellers on the platforms; and (ii) Amazon with their preferred sellers on the platforms, respectively which leads to a foreclosure of other non-preferred sellers from the online marketplace. These preferred sellers are also alleged to be affiliated with or controlled by Flipkart/Amazon either directly or indirectly. Further, it is alleged that the e-commerce company provides deep discounts to a select few preferred sellers on its platform which adversely impacts non-preferred sellers such as members of the Informant. Besides receiving deep discounts, such assured sellers also receive preferential listing on the website. It is alleged that Amazon and Flipkart are able to cross-subsidise because of the huge amount of funding received from their investors, which has resulted in incentives that allow pricing below cost on their platforms, through their sellers, resulting in creation of high entry barriers and high capital costs for any new entrant in the market. Resultantly, the existing sellers find it difficult to launch their own portals or marketplaces in order to compete with the OPs.

The Commission has carefully perused the information, documents filed by the Informant and relevant information available in the public domain and the Commission notes that the Informant has levelled allegations against Flipkart and Amazon marketplaces under Section 4 of the Act on account of joint dominance. The Commission notes that it is a settled position that the Act does not provide for inquiry into or investigation into the cases of joint/collective dominance as the same is not envisaged by the provisions of the Act. Therefore, the Commission need not deliberate further on allegations on account of joint dominance as the same being untenable under the Act.

The Commission notes that Flipkart marketplace and Amazon marketplace are Ecommerce entities, following a marketplace based model of e-commerce. They essentially provide online intermediation services to sellers on one side and consumers on the other. These platforms / market places and the sellers selling on these platforms operate at different stages of the vertical/supply chain. Thus, any agreement between platforms and sellers selling through these platforms can be examined under section 3(4) of the Act, which deals with agreements amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services.

The issue of preferential listing should also be viewed in conjunction with the foregoing. Competition on the platforms may get influenced in favour of the exclusive brands and sellers, through higher discounts and preferential listing. Thus, the allegations are interconnected, and warrant a holistic investigation to examine how the vertical agreements operate, what are the key provisions of such agreements and what effects do they have on competition. Given that both the major platforms are stated to follow the same mechanics in terms of their exclusive tie ups and preferential terms with brands/sellers, competition between the platforms prima facie does not play a role in mitigating the potential adverse effect on competition on the platforms.

Thus, the Commission observes that the exclusive arrangements between smartphone/mobile phone brands and e-commerce platform/select sellers selling exclusively on either of the platforms, as demonstrated in the information, coupled with the allegation of linkages between these preferred sellers and OPs alleged by the Informant merits an investigation. It needs to be investigated whether the alleged exclusive arrangements, deep-discounting and preferential listing by the OPs are being used as an exclusionary tactic to foreclose competition and are resulting in an appreciable adverse effect on competition contravening the provisions of Section 3 (1) read with Section 3(4) of the Act.

In view of the foregoing, the Commission is of the opinion that there exists a prima facie case which requires an investigation by the Director General ('DG'), to determine whether the conduct of the OPs have resulted in contravention of the provisions of Section 3(1) of the Act read with Section 3(4) thereof, as detailed in this order. Accordingly, the Commission directs the DG to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit the investigation report within a period of 60 days from the receipt of this order.

Further, the Commission also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made therein.

INTERIM STAY BY KARNATAKA HIGH COURT

Amazon filed a petition before the Karnataka High Court challenging the order of Competition Commission of India's (CCI's) investigation and argued that the investigation would cause irreparable loss or injuries. The Karnataka High Court has granted an interim stay on investigation.

CONCLUSION

The e-commerce sector is expected to keep growing in future. Better enforcement policy as well as Rules and Regulations pertaining to e-commerce sector will contribute significantly to growth of this sector in long run.

Source:

1. A Draft National e-Commerce policy
2. CCI: Market Study on E-Commerce In India, Key Findings and Observations
3. CCI Releases 'Market Study on E-commerce in India: Key Findings and Observations. Available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1598745>
4. <https://www.cci.gov.in/sites/default/files/40-of-2019.pdf>

GOODS AND SERVICES TAX ON LOTTERY IN INDIA – AN OVERVIEW*

INTRODUCTION

Everyone wants to win a lottery and live life happily ever after. But after the introduction of Goods and Services Tax in July, 2017 Lottery Business itself ran in to a crisis. The levy of GST was on the face value of lottery tickets, including the prize money awarded to winners. And, this has crippled the lottery industry by the rampant increase in illegal lottery. Additionally, it has also affected the tax collection of the Government. Taxation of Lottery was done under two tax brackets 12% and 28%.

Goods and Services Tax (GST) is a destination based tax. It is one indirect tax for the whole nation, which will make India one unified common market. It is based on the principle One Nation One Tax. GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer.

Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

The single GST subsumed several taxes and levies, which included central excise duty, services tax, additional customs duty, surcharges, state-level value added tax and Octroi. Other levies which were applicable on inter-state transportation of goods have also been done away with in GST regime.

GST on lottery sales has caught the attention of GST Council since the 31st GST Council Meeting held on 22nd December, 2018. Tax revenue from the sale of lottery tickets has been a major source of Exchequer for the Government. At present, **lotteries** run by state governments attract 12% **GST** while those authorised by them and sold outside the state are taxed at 28%.

The Lotteries (Regulation) Act, 1998 defines Lottery under Section 2(b)

(b) “lottery” means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets;

A lottery is a form of gambling that involves the drawing of numbers at random for a prize. Lotteries are outlawed by some governments, while others endorse it to the extent of organizing a national or state lottery. It is common to find some degree of regulation of lottery by governments; the most common regulation is prohibition of sale to minors, and vendors must be licensed to sell lottery tickets. The CBIC has clarified that HSN classification of the lottery shall be “Any Chapter” and tax would be paid at applicable rates (12% or 28%).

* CS Pankhuri Agrawal, Consultant, The ICSI.

Views expressed in the Article is the sole expression of the Author and it does not express the views of the Institute.

'Lottery tickets', is actionable claim and is classified as 'Goods', under GST. However, an actionable claim is specifically covered under the negative list-schedule III of the CGST Act, 2017 keeping it outside the scope of GST. But there are exceptions to schedule III. Sale of Lottery tickets is one of them

Hence, the sale of lottery tickets would be considered to be the **supply of taxable goods** and will attract GST on Lottery sales.

In case of supply of lottery tickets, the value for charging GST shall be **higher of the following**:

1. The Face value of ticket
2. Price notified by the organising state.

PAYMENT OF TAX UNDER REVERSE CHARGE

In the case of lottery run by State Government, the tickets are sold by the State Government to lottery distributor /selling agent. The selling agent is required to pay tax under **reverse charge**.

Subsequently, when the selling agent supplies such tickets to sub-agent, no tax is required to be paid. The local sub-agent is also not required to pay any tax. Thus, a tax is levied at single – point under reverse charge in case of lottery run by State Government.

However, in the case of lottery authorised by State Government, the tax is to be paid under the forward charge by the lottery selling agent (i.e.supplier). A tax must also be paid at each stage of supply.

Lottery run by State Government	<ol style="list-style-type: none"> 1. Tickets sold by State Government 2. Lottery distributor must pay tax on reverse charge at the time of procurement of tickets from the Government. 3. No tax required to be paid further when sold to sub-agent / customer, if a tax is paid by a distributor. 4. Sub-agents not required to register under GST
Lottery authorised by State Government	<ol style="list-style-type: none"> 1. Tax paid under the charge by the supplier of lottery tickets 2. The tax must be paid at each point of supply under normal charge. When selling agent sells tickets to sub-agent, he must pay GST. 3. Sub-agents must register under GST and pay tax.

INVOICING REQUIREMENTS

Supply of lottery tickets must be under the cover of tax invoice containing all particulars required in an invoice. The invoice is required to be issued with the sale of a lottery ticket. There is no relaxation in invoicing requirements for a supplier of lottery tickets.

TIME OF SUPPLY

The time of supply of lottery tickets shall be earlier of the following dates:

1. Date of issue of invoice or last date when the supplier is required to issue an invoice.

2. Date on which supplier receives the payment for supply.

When a person pays the amount to participate in a lottery or to buy the lottery ticket, the amount of money paid to participate is treated as payment for supply.

DETERMINATION OF PLACE OF SUPPLY

- Lottery run by State Government is always an intra-state supply. The place of supply will always be the State which runs the lottery game. This is because such a lottery scheme is always conducted within the State.
- Lottery authorised by the State Government but conducted by agencies can be an inter-state or intra-state supply. The place of supply will have to be determined as under:
 - **When supply involves the movement of goods:** The place of supply shall be the location of goods at the time at which movement of goods terminates for delivery to the recipient.
 - **When supply does not involve the movement of goods:** The place of supply shall be the location of goods at the time of delivery to the recipient.

CONCLUSION

All decisions in the previous 37 meetings of the GST Council, headed by the union finance minister with state ministers as its members, had been taken unanimously. But the Goods and Services Tax (GST) Council **38th meeting** held on 18th December, 2019 departed from its practice of consensus-based decision-making, opting the first time for a vote to settle differences among states over the taxation of lotteries.

The Goods and Services Tax (GST) Council led by our honourable Finance Minister has voted to increase the rate as well as implement a single rate for lotteries. Buyers would now have to shell out 28 per cent GST on lotteries.

Before the GST Council meeting on Friday, the lottery industry pitched for a single rate of 12 per cent and removal of tax on the prize money. Currently only lotteries run by the state and state-owned agencies levy 12 per cent GST. Industry players that are authorised by the state government and who sell outside the organising state and are conducted by private players attract 28 per cent tax.

Since there were wide differences among finance minister of various states, the issue of tax on lotteries was prompted to a panel of ministers that was set up in January, 2019. The eight-member group of ministers was constituted under the chairmanship of Maharashtra Finance Minister. The panel had recommended that the council would decide either on 18 per cent or 28 per cent GST for lotteries.

All lotteries are organised by states as per the provisions of Lottery Regulation Act 1998. Currently ten states in the country including Maharashtra, West Bengal, Punjab and Arunachal Pradesh allow lotteries.

After the meeting single rate of GST @ 28% on both State run and State authorized lottery was fixed which would be effective from 1st March, 2020.

References :

1. <https://cleartax.in/s/gst-impact-lottery-tickets>
2. <https://economictimes.indiatimes.com/gst>

Analysis

#Union Budget 2020



Budget Analysis

Union Budget 2020-21 energizes Indian economy to make India a five trillion-dollar economy. The Budget is based on three prominent themes such as Aspirational India, Economic Development and Caring Society. Aspirational India in which all sections of the society seek better standards of living, with access to health, education and better jobs. Economic development for all, entail reforms across swathes of the economy. Simultaneously, it would mean yielding more space for the private sector. Together, they would ensure higher productivity and greater efficiency. Ours shall be a Caring Society that is both humane and compassionate. Antyodaya is an article of faith. Budget seeks economic empowerment of citizens, economic reforms as well as policy-driven good governance, clean and sound financial sector.

Corporate Taxation

Abolition of Dividend Distribution Tax and Concessional Corporate Tax

- The move will encourage more distribution of profits by companies, thereby increasing the purchasing power of shareholders.
- Attract globally investors and more funds into the economy to set-up their operation in India.
- Deduction for the dividend received by holding company from its subsidiary to avoid cascading effect.

India stays globally competitive and a favoured destination for investment, a bold historic decision has been taken to reduce the corporate tax rate for new companies in the manufacturing sector to an unprecedented level of 15%. For existing companies, the rate has been brought down to 22%. As a result, corporate tax rates are now amongst the lowest in the world.

This initiative will create more employment and professional opportunities for the members of the profession in areas including FEMA (with respect to inbound investments), Companies Act (employment and practice opportunities through incorporation of new entities and other ancillary aspects relating to starting of business in India and its ongoing management in various areas such as Competition Act, IPR, sector specific regulatory requirements).

Governance Reforms

- The provisions of the Companies Act, 2013 will be amended to build into statutes, criminal liability for certain acts that are civil in nature.
- Cooperative Banks to be strengthened by amending Banking Regulation Act for increasing professionalism, Enabling access to capital, Improving governance and oversight for sound banking through the RBI.

* Prepared by Dte of Academics of ICSI team comprising of CS Kalpesh Kumar Mehta, Mahesh Airan, Chittaranjan Pal, CA Govind Agarwal, CA Sarika Verma, Assistant Directors and CS Pankhuri Agrawal, Consultant under the overall guidance of CS Alka Kapoor, Joint Secretary (SG).

- Seamless delivery of services through Digital Governance.
- A corruption-free, policy driven good governance and a clean & sound financial sector to ensure ease of living to all citizens
- Setting up of National Recruitment Agency (NRA), as an independent, professional, specialist organisation for conduct of a computer-based online Common Eligibility Test for recruitment to Non-Gazetted posts.
- To evolve a robust mechanism for appointment including direct recruitment to various Tribunals and specialised bodies to attract best talents and professional experts.
- Build Data Centre parks Policy Enable firms to skilfully incorporate data in every step of their value chains.

Above governance reforms would help in making market more competitive, transparent, bring professionalism and aimed at Minimum Government & Maximum Governance.

Financial Sector

- Deposit Insurance and Credit Guarantee Corporation (DICGC) has been permitted to increase Deposit Insurance Coverage for a depositor from Rs. 1 lakh to Rs. 5 lakh per depositor.
- Proposal to amend Pension Fund Regulatory Development Authority of India Act (PFRDAI) that will also facilitate separation of NPS trust for government employees from PFRDAI.

Financial Reforms would definitely boost investors' confidence and motivate citizens to build habit of saving and plan for their old age, thereby, ensuring a robust banking as well as insurance system.

Real Estate Sector

In order to boost the supply of affordable houses in the country and to encourage developers, a tax holiday is provided on the profits earned by developers of affordable housing project approved by 31st March, 2020 as well as concession to real estate transactions.

This move will lead to revive the real estate sector and accelerate the economic growth. Revival of real estate sector will positively impact on the profession of Company Secretary as Company Secretary in Practice is authorised to act as legal representative under Real Estate Regulation and Development Act, 2016.

Ease of Doing Business

The following steps are taken towards Ease of doing Business:

- Simplification of GST returns
- No audit requirement for MSMEs with up to Rs 5 Crore turnover
- Instant issuance of PAN by furnishing Aadhaar
- Pre-filing of Tax Returns

This will attract foreign companies to set up their business operations in India. Further, it is solid steps to increase foreign investment in India and to boost 'Make in India' to ensure employment generation and expansion of professional practice in India thereby increasing the scope of the profession of Company Secretaries.

Policies Measures

Few policies will be implemented towards good governance:

- National Policy on Official Statistics lay down a roadmap towards modernized data collection, integrated information portal and timely dissemination of information. Policy to enable private sector to build Data Centre parks throughout the country would enable firms to skill fully incorporate data in every step of their value chains. National Policy on official statistics to use latest technology to enable real time monitoring of increasingly complex economy.
- National Logistics Policy to create a single window e-logistics market and will focus on generation of employment, skills and making MSMEs competitive. A National Logistics Policy will be released soon and it will clarify the roles of the Union Government, State Governments and key regulators. It will create a single window e-logistics market and focus on generation of employment, skills and making MSMEs competitive.
- New Education Policy: Our education system needs greater inflow of finance to attract talented teachers, innovate and build better labs. Therefore, steps would be taken to enable sourcing External Commercial Borrowings and Foreign Direct Investment so as to able to deliver higher quality education.
- This in turn, will enhance research and innovation, attract better quality faculties by paying them better as well as attract high caliber professionals such as Company Secretary from the industry.
- National Skill Development Agency to give special thrust to infrastructure-focused skill development opportunities.

Small and Medium Sector Enterprises (MSMEs)

- A new scheme to provide subordinate debt to MSME entrepreneurs has been proposed to mitigate the issues of working capital credit. This subordinate debt, to be provided by banks, would count as quasi-equity.
- Extension of debt restructuring window for MSMEs till March 31, 2021.
- The above schemes will enhance economic and financial sustainability of MSMEs.
- In order to reduce the compliance burden on small retailers, traders and MSME sector, the auditing threshold from Rs 1 Crore in turnover to Rs 5 Crore. This would be applicable to only those MSMEs that transact less than 5% in cash.

Disinvestment

In order to provide greater access to financial markets, unlock its true value and induce market discipline, Government has proposed to sale a part of its holding in LIC by way of Initial Public Offer (IPO). This will provide an opportunity for retail investors to participate in the wealth so created.

It is proposed to sell the balance holding of Government of India at IDBI Bank to private, retail and institutional investors through the stock exchange.

Non-Banking Financial Companies

The limit for NBFCs to be eligible for debt recovery under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002 has also been relaxed. It is proposed to reduce the asset size limit from Rs 500 crore to Rs 100 crore or loan size from existing Rs 1 crore to Rs 50 lakh.

Start Ups

ESOPs have become instrumental in Indian corporate and startup ecosystem to woo high-value employees and retain talent. The start-ups Companies have already announced their ESOP plans and even the buybacks. Exemption of taxes on ESOPs will further encourage companies to introduce ESOPs in their companies at a large level, which in turn will allow them to attract world-class talent while keeping employee costs in check. It is proposed to ease the tax burden of ESOP on employees by deferring the tax payment by 5 years or till they leave the company or when they sell their shares, whichever is earliest.

The government has proposed to increase in the turnover limit for tax exemption for startups from Rs 25 crore to Rs 100 crore.

An eligible startup with a turnover of upto Rs 25 Crore is allowed a deduction of 100% of its profits for 3 consecutive assessment years out of 7 years. In order to extend this benefit to larger startups, it is proposed to increase the upper limit of revenue to Rs 100 Crore and tax benefit time period to 10 years is another big push for start-ups.

International Bullion Exchange

The government has proposed to set up an international bullion exchange at IFSC in GIFT City, Ahmedabad. This will lead to better price discovery of gold, create more jobs and enhance India's position in such market.

Corporatization of major Port and lists through IPO

To improve the efficiency of ports in the country, the government will set up a framework and look at corporatisation of at least one major port followed by subsequent listing on stock exchanges through IPO.

App-Based Invoicing Platform for MSMEs

It is proposed to launch App-based invoice financing platform for MSMEs.

Invoice financing is a way for businesses to borrow money against the amounts due from customers. Invoice financing helps businesses improve cash flow, pay employees and suppliers, and reinvest in operations and growth earlier than they could if they had to wait until their customers paid their balances in full. Startups like Lendingkart, Indiffi, Izito are already operational in this segment.

Intellectual Property Laws

A digital platform would be promoted that would facilitate seamless application and capture of Intellectual Property Rights (IPR).

New Age Technologies to push future growth

It is proposed that a policy to enable setting up of data centre parks across the country. It will skillfully incorporate data in every step of the data chain 100,000 gram panchayats will be linked with Fibre to the Home (FTTH) connections through Bharatnet. This will fulfill the vision of providing digital connectivity to all public institutions like Anaanwadis, health and wellness centres, government schools, etc. at Gram Panchayat level. A large part of this growth has been contributed by the use of Artificial Intelligence (AI), Machine Learning (ML) and data analytics.

The infusion of technology in processes like credit assessment, underwriting, collections, and other areas of reaching out to the consumer and offering a valuable experience is encouraging people to adopt the new age banking, investment and credit platforms, leaving the traditional middle man approach. Push for new technologies is certainly the need of the hour.

Entrepreneurship

Entrepreneurship has always been the strength of India. The government recognise knowledge skills and risk-taking capabilities of youth. They are not job seekers, but job creators.

The government proposed to create an Investment Clearance Cell, which will provide end-to-end support including facilitating clearances on centre and state level.

India is become start-up hub based on the number of start-ups. The introduction of Investment Clearance Cell, will certainly help start-ups which are part of the DPIIT list. But ways must be identified to make more start-ups DPIIT recognised.

Charitable Institutions

It is proposed to make the process of registration of charitable institutions completely electronic under which a Unique Registration Number (URN) shall be issued to all new and existing charity institutions. Further, to facilitate the registration of the new charity institution which is yet to start their charitable activities, it is proposed to allow them provisional registration for three years. It may create opportunities for the company secretaries.

Stimulus to Environment and Climate Change and Tourism

It is impressive to note that Union Budget 2020 has enhanced budgetary allocation for the environment ministry in comparison to last fiscal by approximately 5 percent. A noteworthy fact is that control of pollution has been conceptualised to offer financial succour to Pollution control Boards/ Committees and funding to National Clean Air Programme (NCAP). Further, a massive amount of INR 4,400 Crore (FY 2020-21) have been earmarked for parameters for the incentives that would be notified by the Ministry of Environment, Forests and Climate Change.

Similarly, to strengthen the tourism sector, a sunrise sector of Indian economy, an unique and innovative proposal of establishing an institute for heritage and tourism have been espoused in the budget to strengthen archaeology and history. In this regard, the proposal to identify 5 sites, i.e. Rakhigadi (Haryana), Hastinapur (Uttar Pradesh), Shiv Sagar (Assam), Dholaveera (Gujarat) and Adichanallur (Tamil Nadu) that would be developed as 'Iconic Sites' with in-site museums will definitely prove to be a cornerstone in development of tourism. Moreover, the proposal to set up a tribal museum at Ranchi, Jharkhand and Maritime museum at Lothal will definitely augment tourism in India.

Thus, the initiatives proposed under environment and climate change and tourism are progressive. With reference to environment it aims for a clean and green India, thereby mitigating the hazards of population and creating congenial ecosystem to live and be healthy.

Similarly, by promoting tourism through the above mentioned measures it will be enhance revenues for the government, especially through inflow foreign exchange.

Taxation - Direct Tax

- Change in Tax Rates** : The Finance Bill, 2020 has provided a new tax rates (optional) for Individual and HUF as follows:

Income	Current tax rate	Proposed tax rate
Upto Rs 2.5 lakh	Nil	Nil
Between Rs 2.5 lakh and Rs 5 lakh	5%	5%
Between Rs 5 lakh and Rs 7.5 lakh	20%	10%
Between Rs 7.5 lakh and Rs 10 lakh		15%
Between Rs 10 lakh and Rs 12.5 lakh	30%	20%
Between Rs 12.5 lakh and Rs 15 lakh		25%
Above Rs 15 lakh		30%

This options is available for the Individuals / HUF and can be availed subject to fulfilling certain conditions, such as if they do not claim certain exemptions or deductions. These include standard deductions, leave travel allowance, house rent allowance, interest payment on housing loan, and deductions under Chapter VI-A (investments in provident fund, insurance premium, donations to charities, etc.). More than 70 exemptions / deduction are removed under new scheme. Once the option is exercised, it will be applicable for all subsequent years.

The new tax rates scheme is beneficial for those taxpayer who basically does not claim the deduction of Chapter VI-A (PPF, LIC etc.), Housing Loan Deduction, and Medical Insurance etc.

2. **Determination of Residential Status in India for Indian Citizen / Person of Indian Origin** : The current provisions provide that an Indian citizen or a person of Indian origin shall be Indian resident if he is in India for 182 days instead of 60 days in that year. This provision provides relaxation to an Indian citizen or a person of Indian origin allowing them to visit India for longer duration without becoming resident of India. This has been reduced to 120 days. In addition, any Indian citizen who is not liable to tax in any other country or territory by reason of domicile or residence shall be deemed to be a resident of India and is required to pay tax on his global income.

This will curb the practices adopted by Individuals, who are actually carrying out substantial economic activities from India, manage their period of stay in India, so as to remain a non-resident in perpetuity and not be required to declare their global income in India.

3. **Housing incentives** : Currently, an exemption is provided on profits or gains arising out of building affordable houses if the project was approved by March 31, 2020. Further, an additional tax deduction of up to Rs. 1,50,000 is provided on interest paid on loans for self-occupied house owners if the loan was sanctioned by March 31, 2020. The deadline in both cases has been extended to March 31, 2021.

The extension of an additional deduction of Rs. 150000 till March, 2021 will encourage the tax payer to invest in affordable housing scheme and will support the government objectives i.e. Housing for All.

4. **Tax benefits for start-ups** : Start-ups are allowed to get a full tax waiver on profits for any three consecutive years out of their first seven years, if they are incorporated between April 1, 2016 and March 31, 2021, and their turnover does not exceed Rs 25 crore. The waiver has been extended to start-ups for any three years out of their first ten years. In addition, the turnover threshold has been increased from Rs 25 crore to Rs 100 crore.

Further, the tax on ESOPs (stock options) held by employees of start-ups will be payable only on the earliest of the following events: (i) expiry of 4 years from the end of the assessment year, (ii) sale of the options, or (iii) till the employee leaves the company.

In order to extend this benefit to larger start-ups, is another big push for start-ups and will boost the economy.

5. **Option for lower tax rates for Co-operative Societies** : The Income Tax Act was recently amended to give an option to domestic companies to avail of 22% tax rate if they did not claim certain deductions. The list has been expanded to include other deductions, such as those under Section 80G (donations to charities). Further, Cooperative society current tax at 30% plus surcharge and cess. The new option tax at 22% plus 10% surcharge plus 4% cess with no deductions has been extended to co-operatives also.

This will encourage the economic / social activities of the co-operative societies. This would be directly proportionate to trade and commerce activities even in the remotest part of the country.

- 6. Threshold Limit for Tax Audit** : MSMEs currently having business turnover above 1 crore need to get accounts audited. The turnover threshold is now increased to 5 cr. The increased limit shall apply only to those businesses which carry out less than 5% business transaction in cash either receipt or payment.

This will reduce the compliance burden for small retailers, traders and MSME sector, and will also support the government objective i.e. Ease of Doing Business.

- 7. Vivad se Vishwas Scheme** : Under this scheme, the taxpayers whose tax demands are locked in dispute in multiple forums can pay due taxes by March 31, 2020, and get complete waiver of interest and penalty. Further, if a taxpayer is not able to pay within the March 31, 2020, he gets a further time till June 30, 2020 but in that case he would have to pay 10 per cent more on the tax. Taxpayers in whose cases appeals are pending at any level can benefit from this scheme.

Impact : This will reduce the litigation and settle down the cases that are in dispute and pending at multiple forum.

- 8. E-Appeal Scheme** : In order to impart greater efficiency, transparency and accountability to the assessment process under the Act a new e-assessment scheme has already been introduced. With the advent of the e-assessment scheme, most of the functions/ processes under the Act, including of filing of return, processing of returns, issuance of refunds or demand notices and assessment, which used to require person-to-person contact between the taxpayer and the Income-tax Department, are now in the electronic mode. All these processes are now not only faceless but also taxpayer-friendly. Now a taxpayer can manage to comply with most of his obligations under the Act without any requirement for physical attendance in the offices of the Department. The filing of appeals before Commissioner (Appeals) has already been enabled in an electronic mode. However, the first appeal process under the Commissioner (Appeals), which is one of the major functions/ processes that is not yet in full electronic mode. A taxpayer can file appeal through his registered account on the e-filing portal. However, the process that follows after filing of appeal is neither electronic nor faceless. In order to ensure that the reforms initiated by the Department to eliminate human interface from the system reach the next level, it is imperative that an e-appeal scheme be launched on the lines of e-assessment scheme.

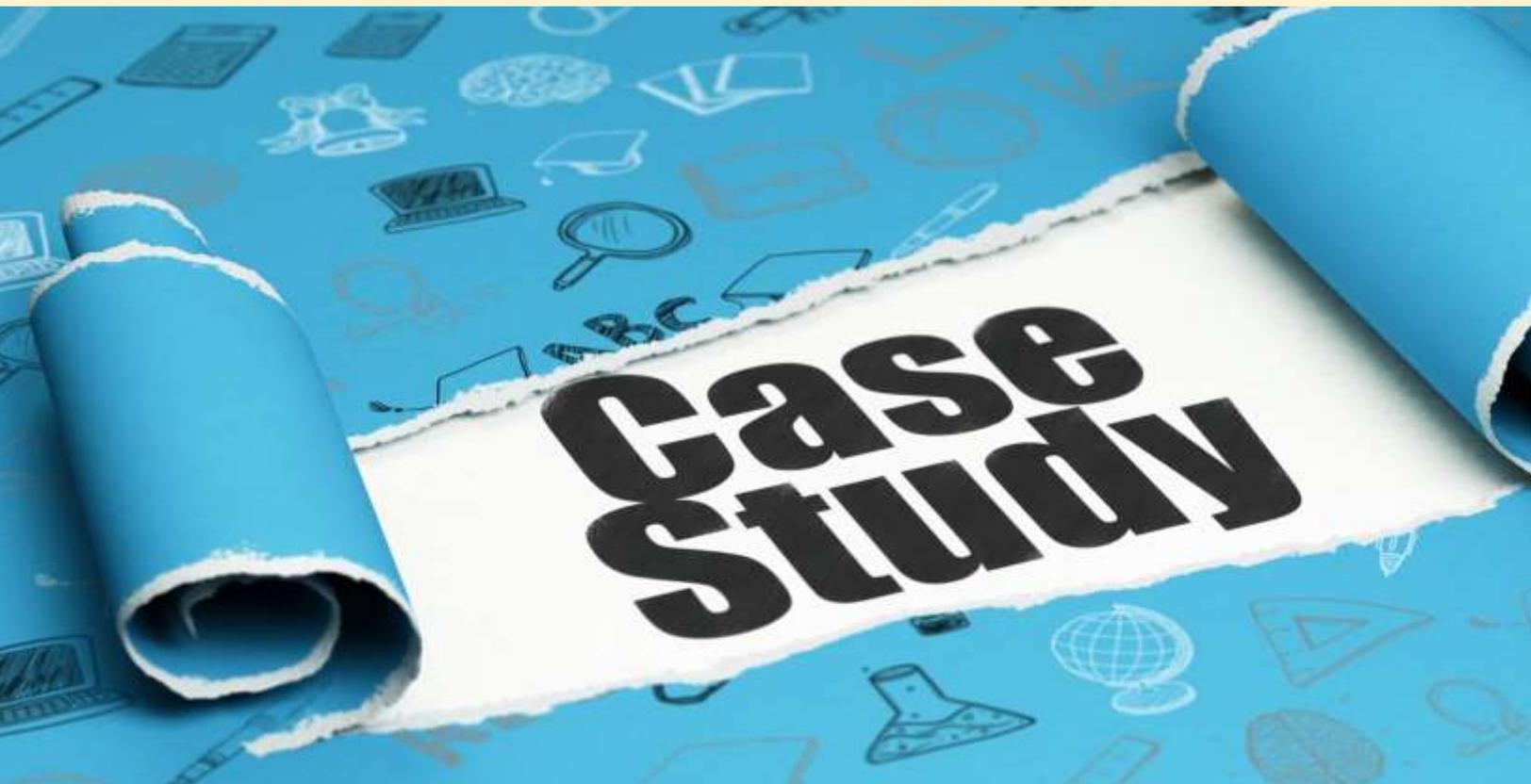
This will have greater efficiency, transparency and accountability to the appeals process under the Act.

Indirect Tax

- 1. Simplified GST Returns** : With features like SMS based filing for Nil Return, return pre-filing, improved input tax credit flow and overall simplification the GST returns would be simpler than before. Dynamic QR-code will further make the process transparent.
- 2. Refund Process** : Refund process has been simplified and has been made fully automated with no human interface.
- 3. Electronic Invoice** : Electronic invoice is another innovation wherein critical information shall be captured electronically in a centralized system. It will be implemented in a phased manner starting from February month itself on optional basis.

4. **Custom Duty increased on Footwear and Furniture** : Labour intensive sectors in MSME are critical for employment generation. Cheap and low-quality imports are an impediment to their growth.
5. **Nominal health cess** : To achieve the twin objectives of giving impetus to the domestic industry and also to generate resource for health services, it is proposed to impose a nominal health cess, by way of a duty of customs, on the imports of medical equipment.
6. **Reduction of custom duty on imports of news print and light-weight coated paper** : It is proposed to reduce basic customs duty on imports of newsprint and light-weight coated paper from 10 per cent to 5 per cent.
7. **Increased excise duty on Cigarettes and other tobacco products** : To promote better health of citizens of India excise duty is increased on Cigarettes and other Tobacco products.

Source : Budget Speech 2020-21



-
- **JAN 2020 SUPREME COURT RULING ON AGR IN TELECOM SECTOR – A CASE ANALYSIS**
 - **CYRUS INVESTMENTS PVT. LTD. & ANR. VS. TATA SONS LTD. & ORS – A CASE ANALYSIS**
 - **NSE - DARK FIBRE CO-LOCATION CASE - A SNAPSHOT**
-

JAN 2020 SUPREME COURT RULING ON AGR IN TELECOM SECTOR – A CASE ANALYSIS*

INTRODUCTION

Supreme court in its hearing on January 17, 2020, rejected pleas by Vodafone Idea, Bharti Airtel and Tata Teleservices to review the October 24, 2019 verdict that widened the definition of Adjusted Gross Revenue (AGR), leaving the three telcos collectively facing more than Rs 1.02 lakh crore in additional licence fees, spectrum usage charges (SUC), penalties and interest.

On October 24, 2019 the Supreme Court delivered a significant judgment in relation to the licensing agreement between telecom companies and the Department of Telecom (DoT). In its judgment, the Court accepted the interpretation given to Adjusted Gross Revenue by the DoT and ruled against the telecom companies.

The appeals in question were filed by both the DoT and the telecom companies against an order of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT). The case pertained to the definition of gross revenue in clause 19.1 of the licence agreement between the Government of India and the telecom service providers.

CONCEPT OF ADJUSTED GROSS REVENUE

The telecom sector was liberalized under the National Telecom Policy, 1994 and various licenses were issued to companies under Section 4 of the Indian Telegraph Act, 1885. However, as the fixed license fee was very high and the telecom service providers consistently defaulted in making the payments, the latter made a representation to the Government of India for relief against the steep license fee.

After considering this representation, the National Telecom Policy of 1999 was formulated. It gave an option to the licensees to migrate from a fixed licence fee to a revenue-sharing fee and was made applicable in the year 1999.

The 1999 Policy was so designed that the government becomes a partner or sharer of “gross revenue.” From out of money received under the head of “Adjusted Gross Revenue,” the Central Government took a conscious decision to spend money on remote and uncovered areas.

Fifteen percent AGR was fixed as the license fee under “revenue sharing,” which was first reduced to 13 per cent, and finally to 8 per cent in 2013.

Importantly, the Draft Licence Agreement provided clause 18.2, which pertains to an annual license fee payable as a percentage of Adjusted Gross Revenue (AGR).

Gross Revenue, defined under clause 19 of the Draft Licence Agreement, reads as under:

“19.1 Gross Revenue:

The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value-added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.

* Akansha Gupta, Executive (Academics), The ICSI.

Views expressed in the Article is the sole expression of the Author and it does not express the views of the Institute.

19.2 For the purpose of arriving at the “Adjusted Gross Revenue (AGR)”, the following shall be excluded from the Gross Revenue to arrive at the AGR:

- I. PSTN/PLMN related call charges (Access Charges) actually paid to other eligible/entitled telecommunication service providers within India;
- I. Roaming revenues actually passed on to other eligible/entitled telecommunication service providers and;
- II. Service Tax on the provision of service and Sales Tax actually paid to the Government if gross revenue had included as a component of Sales Tax and Service Tax.

19.3 Applicable AGR in respect of Spectrum usage charge shall be as given under Part VII of this agreement.”

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.

CHRONOLOGY OF THE CONTROVERSY

1994 : With the introduction of the National Telecom Policy, a number of companies were issued telecom licences, for which they were expected to pay a fixed fee every year.

1999

- The service providers failed to pay the licence fee and had to be given a bailout package via a letter dated July 22, 1999.
- According to this letter, service providers had to pay a certain portion of their adjusted gross revenue (AGR) as licence fee with effect from August 1, 1999. The government was to decide the proportion of AGR to be charged as licence fee after receiving the recommendations of the Telecom Regulatory Authority of India (TRAI).
- After the licence agreement was amended and an AGR-based mechanism was introduced, all service providers had to pay their license fees on the basis of the AGR definition prescribed by the government.

2003 : A few members of the Association of Unified Telecom Service Providers of India (Auspi) moved the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) questioning the validity of AGR’s definition in the licence agreement.

2006 : On July 7, TDSAT held that service providers needed to pay as licence fee a portion of their revenue from those activities that were related to the telecom licence, not other activities. With regard to this, it sought TRAI's recommendations on the definition of licensed and non-licensed activities. TRAI subsequently gave its recommendations defining the items to be included in the AGR for payment of licence fee.

2007

- The department of telecommunications (DoT) challenged in the Supreme Court TDSAT's jurisdiction over terms of the telecom licences that had previously been accepted unconditionally by licencees.
- In an order dated January 19, the apex court dismissed DoT's appeal, and directed it to raise its contentions before TDSAT.
- On August 30, TDSAT accepted most of TRAI's recommendations and passed an order that would be applicable to those Auspi members that had moved the TDSAT with effect from the date when they filed their petitions.
- Auspi and the Cellular Operators Association of India (COAI) filed a review petition urging that the TDSAT order be made applicable to all members of the two bodies from the date of filing of their petition.
- DoT again moved the Supreme Court against the August 30 TDSAT order.
- Even as the DoT appeal was pending before the apex court, some telcos filed petitions before TDSAT requesting to be included in the tribunal's August 30 order.

2011

- The Supreme Court on October 11 held that TDSAT's August 30, 2007, order should be set aside. It allowed licencees to challenge any demand before TDSAT, which would have to go into the merits of the claim and decide whether it was in accordance with the licence agreement and in consonance with the AGR definition.
- All telecom licencees moved TDSAT challenging the basis of DoT's licence fee demand.

2015

- On April 23, TDSAT allowed all operators' petitions and set aside DoT's demands. It also directed DoT to rework the licence fees.
- DoT moved the Supreme Court against the TDSAT order.

2019 : On October 24, the Supreme Court, having heard all arguments in the case, held that telecom operators could not be given any relief with respect to pending licence fee claims.

2020 : On January 17, the Supreme Court dismissed review petitions by various telecom companies challenging the Supreme Court judgement in the Adjusted Gross Revenue (AGR) case.

Implication on non- telecom firms holding licenses for internal communication and signaling

The Supreme Court judgment has predominantly impacted the telecom sector, it has imposed large liabilities on several other companies, including those owned by the government. The verdict has also made the non-telecom firms holding licenses for internal communications and signalling liable to pay licence fees on their entire revenue, even if they did not offer telecom services. DoT has sought Rs. 1.72 trillion from GAIL (India) Ltd, Rs. 48,000 crore from Oil India Ltd, Rs. 22,168 crore from Power Grid Corporation of India Ltd, Rs. 15,019 crore from Gujarat Narmada Valley

Fertilisers and Chemicals Ltd and Rs. 5,841 crore plus interest from Delhi Metro Rail Corp Ltd (DMRC), among others.

Recent Twists and turns- As reported*

On February 14, the Supreme Court had rejected the modification applications of Bharti and Vodafone Idea seeking relaxed payment scheme for the AGR dues. The court directed the companies to make payments immediately, prompting the DoT to issue letters to telcos last Friday that payments must be made by the same midnight. The Supreme Court made scathing observations on the conduct of the telecom companies as well as the DoT for ignoring its 24 October verdict that had directed the firm to pay DoT by January 23, over Rs.1 trillion in dues for under reporting their revenues.

Bharti Airtel and Vodafone Idea on February 17, paid Rs 10,000 crore and Rs 2,500 crore, respectively, to the Union government as a portion of their AGR dues. While Bharti has said it would make the remaining payment before March 17, Vodafone Idea has told the authorities it would pay a second tranche of Rs 1,000 crore by February 21. In all, Bharti owes the government Rs 35,500 crore and Vodafone Idea around Rs 54,000 crore in AGR dues. Tata Teleservices, which had sold its mobile business to Airtel, made a payment of Rs 2,197 crore to the government against estimated dues of around Rs 14,000 crore. However, sources close to the company said Tatas had made the full and final payment. Reliance Jio had already paid Rs 195 crore towards AGR dues.

With that, the government has so far got Rs 14,892 crore in AGR dues from telecom companies, making up for just 10 per cent of the total outstanding amount.

**As reported by Business Standard, dated February 18, 2020.*

References

1. <https://www.barandbench.com/columns/supreme-court-judgment-adjusted-gross-revenue-background>
2. <https://www.thehindubusinessline.com/opinion/columns/slate/all-you-wanted-to-know-about-agr/article30008124.ece>
3. https://www.business-standard.com/article/economy-policy/sc-refuses-to-change-agr-definition-how-the-story-has-unfolded-so-far-119102401030_1.html
4. <https://economictimes.indiatimes.com/industry/telecom/telecom-news/big-blow-for-telcos-as-supreme-court-backs-dot-definition-of-agr/articleshow/71749343.cms?from=mdr>

NCLAT ORDER ON CYRUS INVESTMENTS PVT. LTD. VS. TATA SONS LTD. & ORS – A CASE STUDY

BACKGROUND

Tata Group is an Indian multinational conglomerate founded in 1868 by Jamsetji Tata. The company gained international recognition after purchasing several global companies. One of India's largest conglomerates, Tata Group is owned by Tata Sons. The group operates in more than 100 countries across six continents, with a mission '**To improve the quality of life of the communities we serve globally, through long-term stakeholder value creation based on Leadership with Trust**'.

Tata Sons is the principal investment holding company and promoter of Tata companies. Approximately 66% of the equity share capital of Tata Sons is held by philanthropic trusts, which supports education, health, livelihood generation, art, culture etc. The next major chunk of approximately 18% is controlled by Shapoorji Pallonji Group, whose heir apparent* is Cyrus Mistry.

Mr. Cyrus Mistry was appointed as the Chairman of Tata Sons in the year December, 2012 who was the sixth chairman of Tata Sons.

TIMELINE OF EVENTS

Cyrus Mistry's Ouster

- 1) In the Board meeting of Tata Sons Limited held on **24th October, 2016**, Mr. Cyrus Mistry, was replaced from the post of Executive Chairman with immediate effect on ground of growing trust deficit and repeated departures from the culture and ethos of the Tata group and Mr. Ratan Tata was appointed as the interim Chairman of Tata Sons and a committee was formed to hunt for a new chairman in four months.
- 2) On **25th October, 2016**, Tata Sons filed caveats in Supreme Court, Bombay High Court and National Company Law Tribunal to prevent ousted Tata Sons Chairman Cyrus Mistry from getting an ex-parte order against his sacking. They don't want any court to pass *any ex-parte* orders without hearing their side of the story.

Legal Battle

- 3) In **December, 2016**, two investment firms backed by Mistry family in the names - 'Cyrus Investments Private Limited' and 'Sterling Investment Corporation Private Limited', the minority group of shareholders/ 'Shapoorji Pallonji Group' ("SP Group" for short) holding 18.37% of equity share capital "hereinafter referred to as Petitioner" has filed a suit in National Company Law Tribunal (NCLT) Mumbai bench under Sections 241-242 of the Companies Act, 2013 alleging prejudicial and oppressional acts of the majority shareholders. They also challenged Cyrus Mistry's removal.

* *Heir Apparent is an heir whose claim cannot be set aside by the birth of another heir.*

* Prepared by CS Kalpesh Mehta, Assistant Director, ICSI and CS Ajanta Sen, Consultant, ICSI

View expressed in the Article is the sole expression of the Authors and it does not express the views of the Institute, where the Authors Working for. Article is based on the order of National Company Law Tribunal, Mumbai, C.P. No.82(MB)/2016, Order dated 9th July,2018 and National Company Law Appellate Tribunal, New Delhi, Company Appeal (AT) Nos. 254 and 268 of 2018, Order dated 18th December, 2019 in the case of Cyrus Investments Pvt. Ltd. & Anr. Vs. Tata Sons Ltd. & Ors, and facts available in the print as well as electronic media.

- 4) In reply to this suit, Tata Sons alleged that Mistry family backed investment firms don't have the requisite eligibility conditions to file a suit against them. As the petitioners do not hold at least 10% of the "**issued share capital**" of Tata Sons or representing at least one-tenth of the total number of members, as required by the Companies Act, 2013. According to Tata Sons, though the petitioners hold 18.37% of equity share capital of the company, their holding fell to approximately 2.17% when both equity and preference shares were taken into account. With regard to the power of a tribunal to waive off such requirements if applied for by a petitioner, Tata Sons has contended that since, the petitioners had not sought such a waiver during the filing of the petition, such a request should not be accommodated at a later stage.
- 5) In the application filed by Mistry family firms stated that the Tata Sons' understanding of the legal provision is not correct. They hold 18.37% of equity shares in the Company and if preference shareholding is considered none of the groups would have the requisite 10% issued and paid up share capital and would lead to an absurdity as none of them would be able to maintain an application. Further, it requested the tribunal to waive off the 10% minimum shareholding norm requirement stating that there are enough 'facts, circumstances and sufficient reasons, which warrants the tribunal to exercise its powers so that the petition can be heard on its merits. If not done so "the grave issues raised in the petition would go entirely un-investigated".

PROVISION OF THE COMPANIES ACT, 2013

Under Section 244 of Companies Act, 2013, the following members of a Company shall have the right to file application under Section 241 of Companies Act, 2013 namely:

- (a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than **one-tenth of the issued share capital** of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
- (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) above so as to enable the members to apply under section 241 of Companies Act 2013, for prevention of oppression or mismanagement against minority shareholders.

- 6) Meanwhile during pendency of the case in NCLT, Tata Sons issued notice in month of January calling for Extraordinary General Meeting ('EGM') of the company on **6th February, 2017** with subject of business being removal of Mr. Cyrus Mistry as director of Tata Sons.
- 7) On **6th February, 2017**, shareholders of Tata Sons removed Mr. Cyrus Mistry as director of Tata Sons.
- 8) With effect from **21st February, 2017**, Mr. N Chandrasekaran took the charge as Executive Chairman of Tata Sons.
- 9) The National Company Law Tribunal (NCLT), Mumbai Bench, initially dismissed the petition under Sections 241-242 of the Companies Act, 2013 being non-maintainable, citing that no cause of action was established in any of the allegations raised by the Petitioners, as

they didn't meet the criteria of 10% ownership in a company for the filing of a case of alleged oppression of minority shareholders under the Companies Act, 2013 and also dismissed the petition for waiver.

- 10) Petitioner moved The National Company Law Appellate Tribunal (NCLAT), challenging NCLT order which rejected their petitions over maintainability. They also challenged rejection of their waiver plea.
- 11) NCLAT by its order dated **21st September, 2017** allowed the plea by the petitioners seeking waiver in filing case of oppression and mismanagement against Tata Sons taking into consideration the exceptional circumstances and directed the Mumbai bench of the NCLT to proceed in the matter.

ALLEGATIONS OF THE PETITIONER

- i) The Articles of Association of the Company ("Articles") are per se oppressive as they ensure that Sir Ratan Tata Trust and Sir Dorabji Tata Trust control the affairs of the Company.
- ii) Huge interference of Mr. Ratan N. Tata and Mr. N.A. Soonawala in every decision of the Company.
- iii) The Petitioners alleged that the powers vested under certain Articles were not exercised in a judicious manner and should be struck off in entirety. However, the Petitioners failed to disclose in their pleadings whether at the time of making amendments to the specific Articles, they did not attend the meeting, contested and voted against the resolution.
- iv) Overpriced Corus acquisition- Tata Steel Limited purchased Corus Group PLC (Corus) for a sum approximately in excess of USD 12 billion at a substantial premium, the value of which was more than 33% of its original offer price.
- v) Continuation of doomed business of Nano Car Project undertaken by Tata Motors upon insistence of Mr. Ratan Tata.
- vi) Use of Tata Sons shareholding in certain Tata Group Companies to requisition EGM for removal of Cyrus Mistry as Director from the Board of Tata Sons.
- vii) Illegal removal of Mr. Cyrus Mistry as the Chairman of the Company was in violation of law, principles of governance, fairness, transparency and probity.
- viii) Actions of Tata Sons undermined the position and status of independent Directors in listed Tata Group companies and taking steps to remove Nasli Wadia as he expressed support towards Mr. Cyrus Mistry.
- ix) Joint Venture between Air Asia Limited and Telstra Trade place Private Limited entering the aviation sector including possible fraudulent, hawala transactions as indicated in the Deloitte Forensic Report.
- x) Actions of Mr. Ratan Tata constitute breach of SEBI Regulations on prohibition of Insider Trading.
- xi) Close relationship of Ratan Tata with Shiva leading to leakage of Board meeting discussions.
- xii) Bestowing contracts upon Mr. Mehli Mistry and enriching him at the cost of Tata companies.

REPLY TO THE PETITION ON BEHALF OF TATA SONS:

- i) The company says that this petition is primarily filed to advocate the cause of Mr. Cyrus Mistry's removal as illegal and prejudicial to the petitioners so that to raise the issues of alleged oppression against the petitioners and alleged mismanagement in the company, but in reality, it is nothing but a strategy by Mr. Cyrus Mistry to publicly express his displeasure at the loss of his office as executive chairman of the company and also to tarnish the reputation of the company.
- ii) Mr. Ratan Tata was appointed as chairman of the company in the year 1991 and continued for about 21 years until his retirement in the year 2012 upon attaining the retirement age of 75 years, and that in his leadership, Tata group witnessed best significant growth and the valuation of the company increased more than 500 times.
- iii) In December 2012, the board of the company decided to re-designate Mr. Cyrus Mistry as executive chairman of the company, in the same board meeting. The board decided that Mr. Ratan Tata should, as a special and a permanent invitee to the board meetings, continue to receive notices, agenda papers and the minutes of the board meetings, so that Mr. Ratan Tata could attend at his choice, any meeting which he would feel appropriate but whereas Mr. Ratan Tata clarified that he would no longer be on the board, he would always be available if the directors needed his guidance.
- iv) As to the allegations regarding arbitrary articles of the Company are concerned, shareholders of the company passed an unanimous resolution introducing a right to Tata Trusts to jointly nominate "one-third of the prevailing number of directors on the Board" so long as the Trusts own and hold in aggregate at least 40% of the paid-up ordinary share capital of the company and that all "matters before any meeting of the board which are required to be decided by a majority of the directors shall require the affirmative vote of all the directors appointed pursuant to article 104B at the meeting". This article was subsequently amended by the shareholders of the company pursuant to which, the affirmative vote could be exercised by "majority of directors appointed pursuant to Article 104B present at the meeting". Tata Sons states that it is pertinent to note that Mr. Pallonji Shapoorji Mistry was present at the General Meeting and voted in favour of the adoption of the new version of the Articles of Association which the petitioners now want to struck off in entirety.
- v) During the tenure of Mr. Cyrus Mistry, several disturbing facts emerged in relation to his leadership in respect to capital allocation decisions, slow execution on problems that were identified, which are called as "hot spots", strategic plan and business plan lacked specificity and no meaningful steps to enter new growth of businesses, reluctant to embrace the articles of association and alike, led to growing trust deficit between the Board of Directors and Mr. Cyrus Mistry.
- vi) Mr. Cyrus Mistry in a systematic manner reduced the representation of the company on the Boards of other major Tata Companies. Over a period of time, several directors of the company on the Board of Tata group Companies retired. Exercising the executive power, Mr. Cyrus Mistry did not appoint any directors of the company on the Boards of other Tata Companies, as was practice in the past. This systemic dilution weakened the bind through which Tata values, ethos, governance principles, group strategies were to be implemented across the Tata Group Companies. In most of the cases, Mr. Cyrus Mistry ensured that he was the only director who was common to the company and Tata group companies, effectively making himself the only channel between the company and Tata Group Companies.

- vii) Mr. Cyrus Mistry acted unwisely in acquiring Welspun Renewables Energy Ltd. by Tata Power Renewable Energy Ltd., a subsidiary of Tata Power company, to which purchase consideration for the transaction was estimated to be approximately in excess of USD 1 billion, because Tata power was in already 40,000 crores debt apart from non-resolution of tariff issue of its Mundra Project. In addition to this problem, Mr. Cyrus Mistry, without placing it before the Directors of the company, agreed for such an execution.
- viii) The Articles of Association against which these Petitioners making hue and cry were unanimously approved either by the father of Mr. Cyrus Mistry or by Mr. Cyrus Mistry himself, though amendments have come to these Articles long before, they did never become a problem to these Petitioners until before Mr. Cyrus Mistry's removal, now all those past acts have all of sudden become oppressive against the Petitioners from the day he was removed as Chairman.
- ix) As to historical business decision and investment by the Tata Group, the company says, Tata Steel acquisition of Corus Group is the largest overseas acquisition by Indian corporate, making Tata Steel the world's sixth largest steel producer. The launch of Nano Car by Tata Motors, is a revolutionary aimed at changing the landscape of Indian Passenger car market. Siva group is a Consultant to TTSL as an equity investor. The company re-entered into an aviation business through joint ventures with two of Asia's leading airline carriers in the low cost segment and premium full service business. As to Mr. Mehli is concerned, it has nowhere been mentioned in the Petition that Mr. Cyrus Mistry was the director on the board of Tata Power from the year 2002 approving many of the transactions, Tata Power entered into with Mr. Mehli. The company submits that all the above issues raked up by the petitioners were all hit by delay and laches for many of them or almost all of them were issues in between 1993 and 2008, therefore those issues cannot be issues before this Bench solely because Mr. Cyrus Mistry was removed as Chairman.
- x) The company submits that this petition is sponsored by Mr. Cyrus Mistry to pursue personal vendetta against Mr. Ratan Tata and Mr. Soonawala to adopt a "scorched earth policy" so as to tarnish the reputation of the company on being removed as Chairman of the board of directors of the company
- xi) The company submits that the allegations in the petition do not constitute the affairs of the company, which in fact is a petition sought to impugn the affairs of public charitable trusts which is not permissible under law, of course, the allegation of violation of Insider Trading Regulation and FEMA Regulations is not triable by this Bench.
- xii) The Company submits that it is weird to hear that Tata Trusts acting detrimental to the interest of the company, if such is the case, Trusts are the first persons to suffer because such action would directly hurt the investments held by the Trusts in the company.
- xiii) The company submits that the petitioners have cherry picked certain business decisions predicating Mr. Ratan Tata has taken certain decisions during his tenure which the petitioners consider imprudent and non-judicious which have allegedly caused loss to the company. When they say Corus and Nano are instances of bad business deal, why they have not referred Tetley acquisition and immensely successful Jaguar Land Rover acquisition and phenomenal rise and success of TCS.
- xiv) As to the allegation of interference by Mr. Soonawala, it has been said that he has held various positions on financial side in the company including that of Finance Director from 1988-89 to 2000, thereafter for 11 years as Vice Chairman and Finance Advisor of the company, therefore it was unanimously resolved that Mr. Soonawala would be available as

an advisor to the company as such Mr. Cyrus himself and other persons from the company approached Mr. Soonawala on various occasions seeking his guidance and advice.

- xv) It is denied that the removal of Mr. Cyrus Mistry as chairman of the company is wholly illegal, ultra-vires and constitutes suppression of the petitioners and it is against the interest of the company. It is submitted that the removal process does not suffer from any impropriety and it is in complete conformity with the provisions of the Act
- 12) On **September 21, 2017**, Tata Sons' shareholders approved conversion of Tata Sons from Public Limited Company to a Private Limited Company.
- 13) In **November, 2017**: Cyrus Mistry's camp moves petition to the NCLT, Mumbai, against Tata Sons going private.
- 14) On **July 9, 2018**: NCLT Mumbai dismissed pleas of Mr. Mistry challenging his removal as Tata Sons chairman and also the allegations of rampant misconduct on part of Mr. Ratan Tata and the company's Board. NCLT said it found no merit in his allegations of mismanagement in the Company. The two-judges bench also cleared the deck for Tata Sons going Private.
- 15) Accordingly, NCLT highlighted the past and products of the 'Tata Sons Limited' and observed that "The petitioners have petitioned to this Tribunal asking to seasoning of Tata Sons functioning, which keeps seasoning our daily food with Tata Salt. Irony is salt also at times needs salt to be seasoned....." and passed stricture observations against the Petitioners and dismissed the petition.
- 16) The Petitioners approached the NCLAT against the order of the NCLT of dismissal of plea of Mr. Mistry challenging his removal as chairman of the company. The NCLAT admitted petition filed by the petitioners and also admitted Mr. Cyrus Mistry's petition in his personal capacity and decided to hear along with the main petitions filed by the two investment firms.
- 17) On **August 6, 2018**: Tata Sons got nod from Registrar of Companies for conversion from Public to Private Company.
- 18) On **May 23, 2019**: NCLAT reserves its order after completing the hearing in the matter.
- 19) On **December 18, 2019**, the NCLAT gave its judgement in favour of petitioner and set aside the order of NCLT. The NCLAT reinstated Mr. Mistry as the Executive Chairperson for Tata Sons for his remaining term, and declared that the appointment of Natarajan Chandrasekaran as executive chairman of Tata Sons was illegal, but suspended its implementation for four weeks in order to provide time for Tatas to appeal. The NCLAT order had also set aside Tata Sons' decision to convert itself into a private company. The NCLAT enquired the Registrar of Companies (RoC) to explain the rationale behind allowing Tata Sons to convert into a private company and also sought details of the process for the permission.
- 20) In **January 2020**, Tata Sons appealed to the Supreme Court against National Company Law Appellate Tribunal (NCLAT) decision to re-instate Mr.Cyrus Mistry as its Chairman as this decision is a blow to corporate democracy and rights of the Board of Directors.

GROUND OF APPEAL

- i) Restoration of Cyrus Mistry "undermines corporate democracy". He was replaced after a majority in the Board voted against him.
- ii) Mr. Mistry never sought re-instatement after his tenure ended.

- iii) NCLAT's conclusions are based on an error that Tata Sons continues to be a Public Company.
 - iv) NCLAT imposed an unsolicited consultative process by asking the Tatas to consult minority shareholders Shapoorji-Pallonji group before appointing the executive chairman.
 - v) Restraint imposed by NCLAT on Mr. Ratan Tata and the nominee of the 'Tata Trusts' "from taking any decision in advance which requires majority decision of the Board of Directors or in the Annual General Meeting". According to Tata Sons such a direction was "wholly nebulous and seeks to stifle the exercise of rights of the shareholders and board members, resulting in their disenfranchisement which cripples corporate democracy".
- 21) Supreme Court on **10th January, 2020** stayed NCLAT order reinstating Mr. Cyrus Mistry as the executive chairman of Tata Sons and restoring his directorships in the holding company, with a preliminary observation that the first impression of the order was "not good" and that the tribunal 'could not have given consequential relief that had not been sought in the first place'.
- 22) On **24th January, 2020** The Supreme Court put stay on the NCLAT order of dismissing the Registrar of Companies (RoC) plea seeking modification of its verdict in the Tata-Cyrus Mistry matter.

NSE - DARK FIBRE CO-LOCATION CASE- A SNAPSHOT*

CO-LOCATION : CASE IN BRIEF

Co-location allows brokers to operate closer to their servers upon payment of additional fees. It helps brokers secure advantage over others due to proximity to exchange servers as data transmission takes less time. Orders reach exchange servers faster than those who have not availed of the facility.

Under the NSE co-location facility, trading members can place their servers in the exchange's data centre, where they get faster access to the price feed, helping in swift execution of trades. The NSE's co-location facility provides access to brokers for a cost to execute trades faster.

*A **dark fibre or unlit fibre**, with respect to network connectivity, refers to an already laid but unused/ passive optical fibre, which is not connected to any active electronics/equipment's and does not have other data flowing through it and is available for use in fibre-optic communication.*

During 2015, the Securities and Exchange Board of India (SEBI) received a complaint from a whistleblower alleging various irregularities in respect of Co-location facility provided by National Stock Exchange (NSE). It was alleged that some brokers in collusion with a few top NSE officials had abused the co-location facility. A select set of brokers in collusion with NSE officials got the first access to the NSE's servers giving them a head start. NSE was then using tick-by-tick (TBT) server protocol to relay data to members; means the user who gets the access to the system first would receive data earlier than the rest. It was also alleged that Directors/KMPs for discharging various functions at NSE, failed to ensure fairness, openness, transparency and to provide fair, equal, unrestricted and transparent access to its co-location facilities and trade data etc., to all market participants in conformity with the SEBI (Stock Exchanges and Clearing Corporations) Regulations, 2012. (hereinafter referred to as **SECC Regulations**).

Various irregularities were noticed during preliminary investigation by SEBI and a common show cause notices was issued in the year 2017 to a number of entities including Noticees (herein referred to the group of individuals to whom notice were issued by SEBI). Investigation so conducted by SEBI revealed various irregularities in addition to the preliminary findings and accordingly, another show cause notice was issued during 2018. During April, 2019, SEBI directed NSE to deposit a sum of Rs 62.58 crore plus interest in co-location case that allowed the usage of Dark Fibre. SEBI further, directed NSE not to introduce any new derivative product for the next six months.

ALLEGATIONS

1. NSE allowed Sampark Infotainment Private Limited to provide lease lines in NSEs colocation facility despite not being on authorized service provider of NSE
2. The Noticees have also allegedly acted in violation of NSE circular in which, NSE had authorized only four (04) specific Telecom Service Providers from whom its brokers could avail the P2P connectivity.
3. 'Sampark' did not possess the necessary license from the Department of Telecommunications

to provide the required Point to Point (P2P) connectivity to the brokers of NSE.

4. Directors/KMPs have failed to ensure fairness, openness, transparency and to provide fair, equal, unrestricted and transparent access to its co-location facilities and trade data etc., to all market participants in conformity with the SECC Regulations

ISSUANCE OF SHOW CAUSE NOTICE(S)

Show Cause Notice -1 (2017 SCN)

On the basis of preliminary findings, the Show Cause Notice was issued on May 22, 2017 to the number of entities including the Noticees cover the following allegations:

- a) NSE's system architecture allowed the Tick -by- Tick (TBT) price information to be disseminated sequentially in the order in which the stock brokers were connected/logged-into the server. However, multiple TBT servers at NSE have experienced varied load and have started at different points of time. Further, the back-up servers were allowed to be accessed by certain stock brokers(s) as load on such servers was low.
- b) The above set-up enabled 'first-to- connect' stock brokers to receive data ahead of others and thus, they were able to react to the information earlier than the rest of the stock brokers.
- c) Differential access in the form of 'dark fibre' was given to a certain brokering firms/ members at NSE, especially to connect across NSE and BSE colocation facilities at least 4-5 months ahead of other members.

Subsequent to the issuance of the 2017 SCN, a detail investigation into the complaint was carried out by SEBI to find out possible violation of provisions of **SEBI Act**", Securities Contracts (Regulation) Act, 1956 and/or the Rules and the Regulations made there-under such as **SECC Regulations** and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (**PFUTP Regulations**).

Show Cause Notice -2 (2018 SCN)

Investigation so conducted by SEBI revealed various irregularities in addition to the preliminary findings and accordingly another Show Cause Notice dated July 03, 2018 was issued to different entities/ persons for violations of different provisions of SEBI Act, SECC Regulations and PFUTP Regulations by them as alleged in the 2018 SCN.

It was observed that the allegations made in the 2017 SCN were repeated *qua* some of the entities in the 2018 SCN, who are common Noticees in both the SCNs and the proceedings arose out of 2018 SCN were disposed of by SEBI vide orders dated April 30, 2019.

However, while disposing of the allegations made in the 2017 and 2018 SCN, it was noticed that some of the allegations made against few other Noticees in the 2017 SCN remained outstanding for disposal. Therefore, said allegations which had not dealt with or disposed of in any of the orders passed by SEBI are mentioned below:

- (i) NSE allowed Sampark infotainment Private Limited to lay down a line from NSE's COLO building to BSE's Rotunda Building.
- (ii) NSE Circular Ref. no. NSE/MEM/12985 dated August 31, 2009 On "Co location Services at NSE premises' also requires to take one or more leased line to the colocation facility from any of the following four service providers for the purpose of setting up or modifying parameters, trading related activities and hardware, software, network related access, software download / upload and monitoring and data downloads:
 - A. MTNL
 - B. TATA

- C. Bharti or
- D. Reliance
- (iii) It is observed that NSE allowed Sampark Infotainment Private Limited to provide lease lines in NSEs co-location facility despite not being an authorized service provider of NSE.
- (iv) By allowing an unauthorized service provider to lay dark fibre/ lease line NSE has acted in contradiction to its own policy

Further, it has been alleged that the Noticees covered in the proceedings who were Directors/KMPs for discharging various functions at NSE, failed to act in a manner to ensure fairness, openness, transparency and to provide fair, equal, unrestricted and transparent access to its co-location facilities and trade data etc., to all market participants in conformity with the SECC Regulations.

SUBMISSION BY NOTICEES

1. Dark fibre team was not reporting to them at any point of time during their tenure as employees or consultants of NSE. Therefore, the Noticees did not have any role in relation to either allowing the 'Sampark' to lay down the dark fibre line.
2. No specific or independent evidence available on record pointing out the liability of the Noticees. Show cause notices were issued based on the complaints received and some preliminary observation thereon by SEBI.
3. Functional reporting of the Co-location team was with the business development team and none of the Noticees was part of the business development team at the relevant point of time.

SEBI OBSERVATIONS

1. The SEBI observed that the allegations pertaining to the involvement of the Noticees have been made only because of their association in some capacities with NSE during the relevant period of time. Since, it is the liability of a Director and/or KMP for breaches, if any, ought to be determined by taking into consideration, the specific functions entrusted to such Directors or KMPs by virtue of their position or designation in the organisation.

Directors/KMPs are entrusted fairness, openness, transparency and to provide fair, equal, unrestricted and transparent access to its co-location facilities and trade data etc., to all market participants in conformity with the SECC Regulations. Directors or KMPs are also abide by the Regulation 26(1) and 26(2) of SECC Regulations.

2. It was further observed that none of the Noticees was occupying the position of a Director or KMP in NSE, when 'Sampark' was allowed to lay down dark fibre lines to establish P2P connectivity between the two stock exchanges for a few selected stock brokers during the relevant period i.e. April – July 2015.
3. None of the Noticees was working /employed with NSE either in the capacity of a Director or as a KMP. Thus, SEBI did not find any evidence or any material that establishes or even remotely indicates any role played by any of the Noticees as far as establishment of P2P connectivity by 'Sampark' is concerned.
4. It is further observed that, no records are available that shows the role played by the Noticees in permitting "Sampark" to either lay down the dark fibre optical lines or to continue with the services despite the fact that "Sampark" did not possess the desired eligibility to provide such services.

CONCLUSION

Considering the facts and circumstances arose out from the replies and personal hearing, SEBI exonerated the Noticees (nine current and former officials of NSE) as they could not be held responsible for any misconduct or non compliance in dark fibre issue and hence, disposed off proceedings initiated against the Noticees.

REFERENCES

Order no. WTM/SM/EFD1/EFD1_DRA3/6433/2019-20 dated January 16, 2020 in the matter of NSE- Dark Fibre. Detailed order is available at

https://www.sebi.gov.in/enforcement/orders/jan-2020/order-dated-january-16-2020-in-the-matter-of-nse-dark-fibre_45694.html

REGULATORY UPDATE



(During the month of January & February, 2020)

COMPANY LAW

1. Nidhi (Amendment) Rules, 2020

In exercise of the powers conferred by Section 406(1) read with Section 469(1) & Section 469(2) of the Companies Act, 2013 the Ministry of Corporate Affairs vide Nidhi (Amendment) Rules, 2020 amended the Nidhi Rules, 2014

According to the amendment, in place of Form NDH-I, NDH-2 & NDH-3 the following forms shall be substituted namely:-

- FORM NO. NDH-I-Return of Statutory Compliances
- FORM NO. NDH-2-Application for extension of time
- FORM NO. NDH-3-Return of Nidhi Company for the half year ended.

For Details: http://www.mca.gov.in/Ministry/pdf/Rules2_04022020.pdf

2. The Companies (Account) Amendment Rules, 2020

Ministry of Corporate Affairs vide its notification dated January 30, 2020 has notified the Companies (Accounts) Amendment Rules, 2020 by amending the Companies (Accounts) Rules, 2014. Vide this amendment sub-rule (1A) has been inserted in the existing Rules 12.

As per the amended sub-rule (1A) read as under:

“(1A) Every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (Ind AS).”

For Details: http://www.mca.gov.in/Ministry/pdf/Rules_31012020.p

3. Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

Ministry of Corporate Affairs vide its Notification G.S.R.13 (E) dated January 3, 2020 has amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

According to the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 the existing Rule 8A has been substituted as under:

“8A. every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time Company Secretary.”

Further Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 which require the class of companies required to take Secretarial Audit Report has also been amended by inserting the Clause (c) which is as under:

“(c) Every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.”

The following Explanation has also been inserted below Rule 9:

“Explanation: - For the purposes of this sub-rule, it is hereby clarified that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.”

The above said amended provisions shall be applicable in respect of financial year commencing on or after April 1, 2020.

For Details: http://www.mca.gov.in/Ministry/pdf/AmdtRules_06012020.pdf

4. Companies (Winding Up) Rules, 2020

Ministry of Corporate Affairs vide Notification No. G.S.R. 46(E) dated 24th January, 2020 notified Companies (Winding-Up) Rules, 2020. These rules will come into force from 1st April, 2020.

The Rules are applicable to companies going into winding-up for the circumstances mentioned under section 271 as well as summary procedure for liquidation under section 361 of the Companies Act, 2013. The Rules have been divided into 6 parts comprising of 191 rules and 95 forms.

‘Winding-up Rules’ among other things provide for summary procedure for winding-up of companies having specified thresholds. The winding-up of companies falling within the specified thresholds will henceforth require the approval of the Central Government instead of the National Company Law Tribunal (NCLT).

Notification of these rules is expected to reduce the burden at the level of NCLT as summary procedure for liquidation can now be filed with the Central Government.

For Details: http://www.mca.gov.in/Ministry/pdf/Rules_28012020.pdf

5. ‘SPICE+’

Ministry of Corporate Affairs in a Message states that as part of Government of India’s Ease of Doing Business (EODB) initiatives, the Ministry of Corporate Affairs would be shortly notifying & deploying a new Web Form christened ‘**SPICE+**’ (pronounced ‘SPICE Plus’) replacing the existing SPICE form.

SPICE+ would be an integrated Web form offering multiple services viz. name reservation, incorporation, DIN allotment, mandatory issue of PAN, TAN, EPFO, ESIC, Profession Tax (Maharashtra) and Opening of Bank Account. It will also facilitate allotment of GSTIN wherever so applied for by the Stakeholders. After deployment of **SPICE+** web form, RUN shall be applicable only for change of name of existing companies.

Upon notification & deployment, all new name reservations for new companies as well as new incorporations shall be applied through **SPICE+** only.

However, incorporation of companies for names reserved through the existing RUN service shall continue to be filed in the existing SPICE eform along with related linked forms as applicable and if marked under resubmission shall be resubmitted in SPICE eform.

Resubmission of SPICE forms submitted prior to date of deployment of **SPICE+** web form shall also be filed in the existing SPICE eform and related linked forms as applicable.

6. Consultation Paper on Audit Independence and Accountability

Ministry of Corporate Affairs on 6th February, 2020 has issued a consultation paper to examine the existing provisions of law and make suitable amendments therein to enhance

audit independence and accountability and invited suggestions/comments on the above consultation paper.

The consultation paper, *inter-alia*, covers Objective, Background and rationale for review, Current regulatory Provisions, Suggestions to overcome the aforesaid situations which worsened the independence of the Auditors.

Apart from the above, the Ministry has observed the following further points which require the thorough examination and proper inclusion in the existing law i.e. either in Companies Act, 2013 and its Rules or in standard of auditing (SAs):-

- Economic Concentration of audit [Big 4] – beneficent and maleficent effect on economy.
- Non-audit services not to be taken by auditors
- Joint Audit – should it be made mandatory for bigger companies?
- Mandatory comment of Holding Company’s auditor on account of subsidiary companies.
- Methodology for creation and maintenance of proposed panel of auditors – CAG/RBI/NFRA.
- Audit Engagement letter – where mandated and assessment of its utility and misuse.
- Utilisation of Borrowed funds – Concurrent Audit.
- Restriction on number of audit firms a group [Big 4] can have in whole of India.
- Disclosure / requirement on Probability of default? – On the lines of Credit Rating Agencies.
- Unlisted company whose parent company is a listed company will also require submitting quarterly returns to SEBI.
- Development of a ‘Composite Audit Quality Index’ to improve accountability of auditors and audit firms.
- Strengthening Deterrence of conducting improper audits by inspection of audit engagements
- Resignation of auditors.

For Details: http://www.mca.gov.in/Ministry/pdf/Comments_08022020.pdf.

SECURITIES LAWS

1. Report of the Working Group on Related Party Transactions

SEBI constituted a Working Group in November 2019 to review the policy space pertaining to related party transactions under the Chairmanship Mr. Ramesh Srinivasan, Managing Director & CEO, Kotak Mahindra Capital Company Limited with the following term of reference:

1. Review the policy space relating to related party transactions, including the following:
 - (a) Definition of “related party” and “related party transactions”;
 - (b) Thresholds for classification of “related party transactions” as material; and
 - (c) Process followed by Audit Committee for approval of related party transactions.

2. Review the provisions relating to related party transactions in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 vis-à-vis the Indian Accounting Standards and the Companies Act, 2013.
3. Specify a format for periodic disclosure of related party transactions by listed entities.
4. Recommendations for strengthening the monitoring and enforcement of regulatory norms related to related party transactions.
5. Any other matter, as the Working Group deems fit pertaining to related party transactions.

Download the Report by clicking on the <https://tinyurl.com/uoq9l4s>

2. Streamlining the Process of Right Issue (22nd January, 2020)

The Securities and Exchange Board of India (SEBI) has simplified the rights issue process to make it more efficient and effective by amending the ICDR Regulations and LODR Regulations. SEBI has made changes to the Rights Issue process by reducing the period for advance notice to stock exchange, Issuance of newspaper advertisement disclosing date of completion of dispatch and intimation of same to the stock exchanges for dissemination on their websites, Introduction of dematerialized Rights Entitlements (REs), Trading of dematerialized REs on stock exchange platform.

For more details, please visit <https://tinyurl.com/t8bavlx>

3. Non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of specified securities. (22nd January, 2020)

SEBI has issued circular specifying the uniform structure for imposing fines as a first resort for non-compliance with certain provisions of the Listing Regulations, freezing of entire shareholding of the promoter and promoter group and the standard operating procedure for suspension of trading in case the non-compliance is continuing and/or repetitive. The stock exchange shall with having regard to the interests of investors and the securities market take action in case of non-compliance with the listing regulations and follow the standard operating procedure for suspension and revocation of suspension of trading of specified securities.

For more details please visit <https://tinyurl.com/vjajsy2>

4. Guidelines for rights issue of units by a listed Infrastructure Investment Trust (InvIT) (17th January, 2020)

SEBI has issued circular on the guidelines in respect of a rights issue of units by a listed InvIT. Regulation 2(1)(zw) of SEBI (Infrastructure Investment Trusts) Regulations, 2014, defines a rights issue as an offer of units by a listed InvIT to the unitholders of the InvIT as on the record date fixed for the said purpose.

For more details please visit <https://tinyurl.com/v26jwtn>

5. Guidelines for rights issue of units by a listed Real Estate Investment Trust (REIT) (17th January, 2020)

SEBI has issued circular details the guidelines in respect of a rights issue of units by a listed REIT. Regulation 2(1)(zq) of SEBI (Real Estate Investment Trusts) Regulations, 2014, defines

a rights issue as an offer of units by a listed REIT to the unit holders of the REIT as on the record date fixed for the said purpose.

For more details please visit <https://tinyurl.com/s77rtyb>

6. Format for Statement indicating Deviation or Variation in the use of proceeds of issue of listed non-convertible debt securities or listed nonconvertible redeemable preference shares (NCRPs) (17th January, 2020)

As per Regulations 52(7) of the SEBI LODR Regulations, a listed entity is required to submit to the stock exchange, a statement indicating deviation or variation, if any, in the use of proceeds of issue of non-convertible debt securities or non-convertible redeemable preference shares (NCRPs), from the objects stated in the offer document/Information memorandum.

For more details please visit <https://tinyurl.com/vu8e97b>

7. Operating Guidelines for Investment Advisers in International Financial Services Centre (IFSC). (9th January, 2020)

SEBI had issued SEBI (International Financial Services Centres) Guidelines, 2015 for facilitating and regulating financial services relating to securities market in an IFSC. As per Clause 2 (1) (g) of the IFSC Guidelines, the IFSC Guidelines provide for a broad framework for operating of various intermediaries (including Investment Advisers). SEBI has put in place guidelines for Investment Advisers in IFSC.

For more details, please visit: <https://tinyurl.com/twznp5a>

8. Annual System Audit of Market Infrastructure Institutions. (7th January, 2020)

Taking into account the rapid technological developments in the securities market and the entailing risks that these developments pose to the efficiency and integrity of markets, SEBI had mandated that stock exchanges, clearing corporations and depositories should conduct an Annual System Audit by a reputed independent auditor. SEBI has revised the existing System Audit Framework based on discussions with Stock Exchanges, Clearing Corporations, Depositories (hereinafter referred as 'Market Infrastructure Institutions' – MIIs), and recommendations of Technical Advisory Committee (TAC) of SEBI.

For more details please visit: <https://tinyurl.com/rkg6znx>

9. Strengthening of the rating process in respect of Issuer not cooperating (INC) ratings (3rd January, 2020)

In order to further strengthen the rating process of the Credit Rating Agencies with regard to 'Issuer not cooperating' (INC) ratings, the directions are being issued. If an issuer has all the outstanding ratings as non-cooperative for more than 6 months, then the CRA shall downgrade the rating assigned to the instrument of such issuer to non-investment grade with INC status. If non-cooperation by the issuer continues for further six months from the date of downgrade to non-investment grade, no CRA shall assign any new ratings to such issuer until the issuer resumes cooperation or the rating is withdrawn.

For more details please visit: <https://tinyurl.com/v6g57uf>

DIRECT TAX LAWS

1. **Relaxation of time-Compounding of Offences under Direct Tax Laws-One-time measure-Extension of Timeline [Circular No. 1/2020 Dated 3rd January, 2020]**

With a view to give a final opportunity to such taxpayers, and to reduce the pendency of existing prosecution cases before the courts, the CBDT issues this Circular, modifying the Circular No. 25/2019 dated 09.09.2019 as under: "Such application shall be filed before the Competent Authority i.e. the Pro CCIT/CCIT/Pr. DGIT/DGIT concerned, on or before 31.01.2020."

https://www.incometaxindia.gov.in/communications/circular/circular_1_2020.pdf

2. **Income-tax Deduction from salaries during the Financial Year 2019-20 under section 192 of the Income-tax Act, 1961 [Circular No. 4/2020 Dated 16th January, 2020]**

The Circular contains the rates of deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2019-20 and explains certain related provisions of the Act and Income-tax Rules, 1962.

https://www.incometaxindia.gov.in/communications/circular/circular_no_4_2020.pdf

3. **CBDT notifies ITR-1 and ITR-4 for Assessment year 2020-21 [Notification No. 1/2020 Dated 3rd January, 2020]**

The Central Board of Direct Taxes hereby makes the Income-tax (1st Amendment) Rules, 2020 further to amend the Income-tax Rules, 1962, and notifies ITR-1 and ITR-4 for Assessment year 2020-21

https://www.incometaxindia.gov.in/communications/notification/notification_01_2020.pdf

4. **Amendment of rule 10DA and rule 10DB regarding furnishing of information and maintenance of documents by Constituent Entity of an international group [Notification No. 3/2020 Dated 6th January, 2020]**

The Central Board of Direct Taxes hereby makes the Income-tax (2nd Amendment) Rules, 2020 further to amend the Income-tax Rules, 1962, and made the Amendment of rule 10DA and rule 10DB regarding furnishing of information and maintenance of documents by Constituent Entity of an international group.

https://www.incometaxindia.gov.in/communications/notification/notification_3_2020.pdf

GOODS & SERVICES TAX LAWS

1. Certain Provisions of the Finance (No. 2) Act, 2019 to amend the CGST Act, 2017 [Notification No. 01/2020 – Central Tax, dated 1st January, 2020]

In exercise of the powers conferred by sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 1st day of January, 2020, as the date on which the provisions of sections 92 to 112, except section 92, section 97, section 100 and sections 103 to 110 of the Finance (No. 2) Act, 2019 (23 of 2019), will come into force.

For more details please visit <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-01-central-tax-english-2020.pdf>

2. Central Goods and Services Tax (Amendment) Rules, 2020 [Notification No. 02/2020 – Central Tax, dated 1st January, 2020]

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government has made the Central Goods and Services Tax (Amendment) Rules, 2020 to amend the Central Goods and Services Tax Rules, 2017.

For more details please visit <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-02-central-tax-english-2020.pdf>

3. Transition Plans for the Union Territories of Jammu & Kashmir and Ladakh [Notification No. 03/2020 – Central Tax, dated 1st January, 2020]

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council has amended the Notification of Ministry of Finance, Department of Revenue No. 62/2019–Central Tax, dated the 26th November, 2019.

For more details please visit <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-03-central-tax-english-2020.pdf;jsessionid=FB75F06F776D1225BADEA61837ED1DD0>

4. Extension of one-time amnesty scheme to file Form GSTR – 1 [Notification No. 04/2020 – Central Tax, dated 10th January, 2020]

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council has amended the previous notification for extension of time till 17th January, 2020.

For more details please visit <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-04-central-tax-english-2020.pdf;jsessionid=885321BB64AEDA3F4AF3B5D574885E35>

5. Appointment of Revisional Authority under CGST Act, 2017 [Notification No. 05/2020 – Central Tax, dated 13th January, 2020]

CBIC has authorised the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax as the Revisional Authority under section 108 of the CGST Act.

For more details please visit <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-04-central-tax-english-2020.pdf;jsessionid=885321BB64AEDA3F4AF3B5D574885E35>

6. Amendment of Integrated Goods and Services Tax Act, 2017 [Notification No. 01/2020 – Integrated Tax, dated 1st January, 2020]

In exercise of the powers conferred by sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 1st day of January, 2020, as the date on which the provisions of section 114 of the Finance (No. 2) Act, 2019 (23 of 2019) will come into force.

For more details please visit <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-1-2020-igst-english.pdf;jsessionid=8D9A0751E1DE7AEEFBFB8078A0889C71A>

GENERAL LAWS

1. Amendment to Arbitration and Conciliation Act, 1996

To make India a hub of institutional arbitration for both domestic and international arbitration, the Arbitration and conciliation (Amendment) Act, 2019 passed by the Parliament.

The salient features of the Arbitration and Conciliation (Amendment) Act, 2019, *inter-alia*, are as follows:—

- (i) Amended section 11 of the Act relating to "Appointment of Arbitrators" so as to change the present system of appointment of arbitrators by the Supreme Court or High Court, to a system where the arbitrators shall be appointed by the "arbitral institutions" designated by the Supreme Court or High Court;
- (ii) Amended section 23 of the Act relating to "Statement of claim and defence" so as to provide that the statement of claim and defence shall be completed within a period of six months from the date the arbitrator receives the notice of appointment;
- (iii) The arbitrator, the arbitral institutions and the parties shall maintain confidentiality of information relating to arbitral proceedings and also protect the arbitrator or arbitrators from any suit or other legal proceedings for any action or omission done in good faith in the course of arbitration proceedings.
- (iv) Inserted a new Part 1A to the Act for the establishment and incorporation of an independent body namely, the Arbitration Council of India for the purpose of grading of arbitral institutions and accreditation of arbitrators, etc.;
- (v) In case where no graded arbitral institutions are available, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institutions.

Detail amendment available on:

<http://egazette.nic.in/WriteReadData/2019/210414.pdf>

2. Amendment to Right to Information Act, 2005

In order to rationalize the term of office of, and the salaries, allowances and other terms and conditions of service of, the Chief Information Commissioner and Information

Commissioners and the State Chief Information Commissioner and the State Information Commissioners, Right to Information (Amendment) Act, 2019 passed by the Parliament.

Detail amendment available on:

<http://egazette.nic.in/writereaddata/2019/209696.pdf>

BANKING LAWS

1. RBI has issued the Amendments to Master Direction (MD) on KYC vide RBI circular no. RBI/2019-20/138 DOR. AML. BC.No.27/14.01.001/2019-20 dated 09.01.2020.
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11783&Mode=0>
2. The RBI has revised the Framework for imposing monetary penalty on authorised payment system operators / banks under the Payment and Settlement Systems Act, 2007 vide circular no. RBI/2019-20/140 DPSS.CO.OD.No.1328/06.08.005/2019-20 dated 10.01.2020.
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11785&Mode=0>
3. The Primary (Urban) Co-operative Banks (UCBs) having total assets of Rs. 500 crore and above as on 31st March of the previous financial year shall report credit information, including classification of an account as Special Mention Account (SMA), on all borrowers having aggregate exposures of Rs. 5 crore and above with them to Central Repository of Information on Large Credits (CRILC) maintained by the Reserve Bank. (Vide RBI Circular No. RBI/ 2019-20/ 144 DoS.OSMOS.No.4633 / 33.05.018/2019-20 dated 16.01.2020.
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11790&Mode=0>
4. RBI has allowed the banks for offering the facility of cash withdrawal at PoS terminals deployed by them after taking one time permission from the Reserve Bank of India (RBI).
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11802&Mode=0>
5. The RBI has introduce the Rupee derivatives at International Financial Services Centres (IFSC) vide RBI Circular No. RBI/2019-20/145 A.P. (DIR Series) Circular No.17 dated 20.01.2020.
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11791&Mode=0>
6. The Merchanting Trade Transactions (MTT) guidelines has been revised vide RBI circular no. RBI/2019-20/152 A.P. (DIR Series) Cir. No.20 dated 23.01.2020.
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11799&Mode=0>

Appointment of an Additional Director

CHECK-LIST

Items to be verified before Appointment

1. Check whether the Articles of the company confer rights on the Board of Directors, the power to appoint additional Director. If not, alter the Articles, to confer such power [Section 161(1)].
2. Ensure that the person proposed to be appointed as an additional director is not appointed as alternate director to any other director of the company in which he is proposed to be appointed as an additional director. [Proviso to Section 161(2)].
3. The Person proposed to be appointed as additional director shall not be a person who failed to get appointed as a director in the general meeting of the company.
4. The person should not be disqualified to become director of the company under section 164 of the Companies Act, 2013.
5. Check whether the person proposed to be appointed does not hold directorship in maximum permissible number of companies. (Section 165)
6. Check whether the appointment is within the maximum number of Directors provided in the Article of Association of Company.
7. Recommendation of appointment of the Director by the Nomination and Remuneration Committee, if constituted in the company.

Points to be verified with proposed Director

- Director Identification Number (If Already Obtained)
- Check whether the director has given consent to act as director in DIR-2.
- Declaration that he is not disqualified to act as director in DIR-8,
- Disclosure of interest in other entities in form MBP-1.
- Declaration on Independence (In case of Additional Director -Independent)

At the Board meeting

- Ensure that the proposed director shall hold office of the Director upto the date of the next annual General meeting or the last date on which AGM should have been held.
- Authorisation to Director, Company Secretary or CFO of Company for filing of requisite form and return with ROC.
- Take note of Disclosure of Interest of the Director.
- Authority to Issue Letter of Appointment if Any.
- Authority to Any director or CS to Apply DIN of the proposed director in case he is not having DIN.

After the Board meeting

- Check whether the company has filed DIR -12 with the Registrar within 30 days of date of Appointment.

- Check whether an intimation has been made to the stock exchanges where the securities of the company are listed, within 24 hours of appointment.(Regulation 30 of SEBI(LODR) Regulations, 2015)
- Check whether the same has been posted on the website of the company (if any) within 2 working days (Regulation 46(3) of SEBI (LODR) Regulations 2015.
- Check whether necessary entries have been made in the Register of Directors and Key Managerial personnel/Register of contracts in which directors are interested.
- Whether the director Certifying the DIR-12 has been authorised by the Board by passing a resolution to sign the forms DIR-12.

Method of calculation Number of Directorship:

- i. Total number of Directorship including alternate directorship does not exceed 20 at the same time. (directorship in dormant company is not included)
- ii. Maximum number of directorship in public companies or private companies which is a subsidiary of public companies does not exceed 10.
- iii. Maximum number of Directorship in listed companies is not more than 8 with effect from April 01, 2019 and not more than seven with effect from April 01, 2020. (Rule 17A of LODR)



Case Snippets

ECONOMIC LAWS

1. The Supreme Court on January 28, 2020 held that the closing of departure gates by Airlines due to the failure of passengers to show up on time shall not be regarded as "*Deficiency of Service*" in terms of the Consumer Protection Act, 1986. Referring the *Contract of Carriage* applicable to flight passengers, the Supreme Court observed in its judgment that "*No doubt, it is said that the consumer is the king and the legislation is intended to safeguard and protect the rights and interests of the consumer, but that does not mean that he is extricated from the obligations under the contract in question much less to observe prudence and due care.*"
2. Amalgamation could not be rejected on the sole ground that investigation is pending with respect to a group company, held by NCLAT.

GENERAL LAWS

1. Revenue Authorities Have No Jurisdiction to Decide 'Title Dispute' Between Parties In Respect Of Immovable Properties, held by Full Bench of Karnataka High Court.

DIRECT TAX LAWS

1. Section 68/69 Bogus Purchases: Disallowance cannot be made solely on third party information without subjecting it to further scrutiny. [CIT vs. Odeon Builders Pvt. Ltd (Supreme Court)]
2. Section 143(2): Mere mentioning of new address in the return of income is not enough. If change of address is not specifically intimated to the AO, he is justified in sending the notice at the address mentioned in PAN database. If the notice is sent within the period prescribed in s. 143(2), actual service of the notice upon the assessee is immaterial. [PCIT vs. Iven Interactive Limited (Supreme Court)]

GOODS AND SERVICES TAX LAWS

1. No provisional Attachment under CGST Act when there is no pendency of any specific Proceedings. Held by High Court of Bombay in Kaish Impex Pvt Ltd Vs. Union of India. W.P. No. 3145(2019)
2. No tax is leviable under IGST Act on the ocean freight for the services provided by a person located in non taxable territory by way of transportation of goods by a vessel from a pale outside India upto customs station of clearance in India and the levy and collection of tax of such ocean freight under the impugned notifications is not permissible in law. Held by Gujarat High Court in Mohit minerals pvt. Ltd. Vs. Union of India.

BANKING LAWS

1. A civil suit will not be maintainable if proceedings under SARFAESI Act have been commenced. Held, Supreme Court of India in the matter of Shree Anandhakumar Mills v/s Indian Overseas Bank.
2. Appellate Tribunal under SARFAESI Act, 2002 has the authority to condone delay under Section 18(1) if sufficient cause is shown for the delay. Held, Supreme Court of India in the matter of Baleshwar Dayal Jaiswal v/s Bank of India & Others.
3. The writ jurisdiction of High Courts or the Supreme Court is of extraordinary nature and should be exercised only if no other effective remedy is available with the parties.

Held, Supreme Court of India in the matter of Agarwal Tracom Pvt. Ltd. v/s Punjab National Bank.

4. The Supreme Court in *Dharani Sugars and Chemicals Limited vs. Union of India & Others* (Dharani Sugars) has struck down the circular dated February 12, 2018, containing the revised framework for resolution of stressed assets (RBI Circular) issued by the Reserve Bank of India (RBI) on the ground of it being *ultra vires* Section 35AA of the Banking Regulation Act, 1949 (Banking Regulation Act).

SECURITIES LAWS

1. In exercise of the powers conferred in Section 9 of the Securities Contracts (Regulation) Act, 1956, the Stock Exchanges have power to frame rules and seek documents from the members. Held, Securities Appellate Tribunal in the matter of *Karvy Stock Broking Limited vs. National Stock Exchange of India*
2. Trading members holding client assets in their fiduciary capacity has to ensure that all obligations imposed upon them under the Act and the Regulations are complied with. Held, Securities Appellate Tribunal in the matter of *4A Securities Limited and National Stock Exchange of India Limited*.
3. The expression 'Sufficient cause' implies the presence of legal and adequate reasons. Held by Supreme Court, in *Balwant Singh (Dead) vs Jagdish Singh & Ors.*
4. The expression 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. [Held by Supreme Court in the matter of *Ram Nath Sao alias Ram Nath Sahu and Others vs. Gobardhan Sao*.

Legal Maxims

LEGAL TERM	MEANING	USAGE
<i>Ab initio</i>	From the beginning	An agreement not enforceable by law is void <i>ab initio</i>
<i>Actus reus</i>	Wrongful act	<i>mens rea</i> is the state of mind which accompanies and directs the conduct resulting in the <i>actus reus</i> .
<i>Ad valorem</i>	According to value	<i>Ad valorem</i> tax is based on the value of a transaction or of property.
<i>Ad hoc</i>	For the particular end or case at hand.	Ad hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them
<i>Audi alteram partem</i>	Hear the other side	The principle of natural justice is <i>audi alteram partem</i> i.e. no one should be condemned unheard.



Facts of the Case

On 4th September 2018, a Trust in the name of ‘ABC Software Employee Welfare Trust’ (“the Trust”) was instituted with the objective of providing assistance to the company’s employees in form of medical facilities, scholarships, housing and to reward performance besides attracting talent.

The said Trust acquired 11,48,640 equity shares of ABC Software (India) Ltd (“the company”) comprising of 4.47% of the total shareholding of the company during the period from October 2018 to January 2019.

Regulation 3(12) of the SEBI (Share Based Employee Benefit) Regulations, 2014 [SEBI (SBEB) Regulations], inter alia, requires the share inventory held by a company in Trust for providing benefits to its employees to be sold on the recognized stock exchange(s) where shares of the company are listed, within a period of five years from the date of Notification (28th October 2014) of the SEBI (SBEB) Regulations subject to certain conditions.

The Promoters/promoters Group, the Executive Director and Independent Directors of the Company are desirous of acquiring the shares held by the Company’s Employee Benefit Trust through Stock Market offering from the Trust to enable the company and the Trust to be in compliance with the provision of SEBI (SBEB) Regulations.

The current shareholding pattern of the Promoters, Directors and Independent Directors are as under:

Name	Designation	% of total issued equity shares held
Mr. R	Promoter, ED, CMD	39.04%
Mrs. S	Promoter, Non-Executive Director	1.43%
Mr. P	Non- Executive & Independent Director	0.27%
Mr. Q	Non- Executive & , Independent Director	0.19%

Questions

1. Whether shares held by the Trust in full or part if purchased by the Promoter and Promoter Group (including Executive Director) or Independent Director of the Company will be within the lawful limits and not in contravention of the above Relevant Regulations.
2. Whether these shares can be purchased by the Promoter & Promoter Group or Independent Directors by way of Block Deal through the stock Exchange in compliance with the relevant Regulations as these are being acquired on grounds of regulatory requirements.
3. Whether there are any restrictions to the aforesaid transaction or specific compliance that the purchasers or the Company need to comply with.
4. Whether Regulation 5 of the Prohibition of Insider Trading Regulations puts any restraint on this transaction as these are shares not acquired for trading purposes but to meet regulatory requirements.

Note :

*Kindly send your answers at **academics@icsi.edu** .
The selected answer along with the name of the winner will be published in the forthcoming issue of Student Company Secretary e-journal.*



18th February, 2020

Attention Students

Applicability of the Finance Act, 2019 for June, 2020 Examinations

Students may note that the Finance Act, 2019 i.e. Assessment Year 2020-21 / Previous Year 2019-20 is applicable in June, 2020 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 is applicable for **Executive Programme (New Syllabus)**
- iii.** Goods and Services Tax 'GST' & Customs Law is 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 six months prior to the date of the June, 2020 Examination.

**Joint Secretary (SG)
Dte. of Academics**



LEGAL WORLD

CORPORATE LAWS

Landmark Judgement

DOVE INVESTMENTS PVT. LTD. & ORS v. GUJARAT INDUSTRIAL INV. CORPORATION LTD & ORS
[SC]

Civil Appeal No. 942 of 2006 [@ S.L.P. (C) No.5172 of 2005] with connected Civil Appeal No. 943 of 2006 [[@ S.L.P. (C) No.5260 of 2005]

S.B. Sinha & P.K. Balasubramanyan, JJ. [Decided on 02/02/2006]

Equivalent Judgements: [2006] 129 Comp Cas 929(SC); (2006) 71 CLA.

Companies Act,1956- section 108 - share transfer - belated lodgement of share transfer form by lender - company refused to register the shares - Whether correct-Held, No.

Brief facts : The core issue raised in this appeal is whether shares could be transferred to the transferee when the share transfer form is lodged beyond the prescribed lodgement period. Appellant company took loan from Respondent No.1 and Respondents 2-4 pledged their shares in the appellant company to Respondent No.1 as security. Upon delay in payment of loan, Respondent No.1 lodged the share transfer form with the Appellant which was refused on the ground of belated lodgement. The CLB and the Madras High Court upheld the transfer in favour of Respondent No.1, which has been challenged in this appeal.

Decision: Appeals dismissed.

Reason : Section 108 (1) prohibits registration of transfer of shares except on production of the instrument of transfer and unless the conditions precedent therefor are complied with. Section 108 (1A) provides that every instrument of transfer of shares shall be in such form as may be prescribed, and shall, before it is signed by or on behalf of the transferor, be presented to the prescribed authority for the purpose of stamping or otherwise endorsing thereon the date on which it is so presented and after it is executed by or on behalf of the transferor and the transferee and completed in all other respects be delivered to the company within two months from the date of such presentation. Section 108 (1C) provides for a non obstante clause stating, inter alia, that any share deposited by any person, inter alia, with a financial institution by way of security for the repayment of any loan or advance to, or for the performance of any obligation undertaken by such person, if, inter alia, the financial institution stamps or otherwise endorses on the form of transfer of such shares, if it intends to get such share registered in its own name, the date on which the instrument of transfer relating to such share is executed by it and the instrument of transfer of such form duly completed in all respects is delivered to the company within two months from the date so stamped or endorsed. Section 108 (1D) again provides for a non obstante clause whereby the Central Government has been conferred with the power to extend the period mentioned in those sub-sections by further time as it may deem fit, if it is of the opinion that it is necessary so to do to avoid hardship in any case. Section 111 empowers the Company to refuse registration upon assigning reasons therefor. Sub-section (3) of Section 111 provides for an appeal to the Company Law Board against such an order.

A company may refuse to register shares for various reasons. In this case, however, the shares being freely transferable refusal for transfer can be made only on limited grounds. Some such

grounds may be that the transfer is mala fide or transferee is not a bona fide investor or transfer is not permissible in terms of one or the other provisions of the Articles of Association or the same is otherwise prohibited in law e.g. sub-section (3) of Section 22A of the Securities Contract (Regulation) Act, 1956. However, before the company can be asked to perform its duties in terms of the said provisions, the procedural requirements contained in Section 108 are required to be complied with. Section 108 requires the applicant desiring to obtain the registration of transfer of shares in its favour to comply with the provisions contained therein. It is, therefore, ordinarily for the applicant to comply with all formalities. If it does not do so it cannot make the company bound to effect the transfer, unless sufficient and cogent reasons are assigned. The time is specified in the aforementioned provisions for filing of such an application in the prescribed form and upon complying with the requirements prescribed therein.

The Appellants do not state as to how they would be prejudiced by the act of Respondent No.1 in not filing the application for registration of transfer of shares within the aforementioned period. The Appellants have, indisputably, filed suits. In para 10 of the plaint filed by Appellant No.1, in O.S. No.3742 of 2003, it was categorically stated:

".....Even though the plaintiff cannot have an objection on the transfer, the plaintiff is concerned about the value at which the second defendant is attempting to transfer the equity shares in its favour...."

On their own saying, thus, they were not prejudiced. In fact, they had no objection in registering the shares. The only objection was with regard to the value thereof. It is also not in dispute that they, in fact, registered 2, and 99,800 pledged shares, although they were also presented after a period of two months without any demur whatsoever. The Appellants, therefore, must be held to have waived their right. The pledge of shares is not in dispute.

The fact that the Appellant had taken a loan of Rs.4.5 cores is also not in dispute. Furthermore, we are of the opinion that by reason of the impugned judgment no injustice as such has been done to the Appellants and in that view of the matter this Court in exercise of its jurisdiction under Article 136 of the Constitution of India may not interfere with the impugned order, even if it may be lawful to do so.

In *Taherakhaton (D) By LRs. v. Salambin Mohammad* [(1999) 2 SCC 635], this Court observed:

"20. In view of the above decisions, even though we are now dealing with the appeal after grant of special leave, we are not bound to go into merits and even if we do so and declare the law or point out the error still we may not interfere if the justice of the case on facts does not require interference or if we feel that the relief could be moulded in a different fashion...."

In *Chandra Singh & Ors v. State of Rajasthan & Anr* [(2003) 6 SCC 545], it was held:

"....Furthermore, this Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason thereof substantial justice is being done. [See *S.D.S. Shipping (P) Ltd. v. Jay Container Services Co. (P) Ltd.* 17] Such a relief can be denied, inter alia, when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal one...."

The said principle was reiterated in *Inder Parkash Gupta v. State of J & K & Ors* [(2004) 6 SCC 786] in the following terms:

"In ordinary course we would have allowed the appeal but we cannot lose sight of the fact that the selections had been made in the year 1994. A valuable period of 10 years has elapsed. The

private respondents have been working in their posts for the last 10 years. It is trite that with a view to do complete justice between the parties, this Court in a given case may not exercise its jurisdiction under Article 136 of the Constitution of India”

Following the aforementioned decisions, we are of the opinion that with a view to do complete justice to the parties, no inference with the High Court's judgment is called for.

FLIPKART LOGISTICS PVT. LTD & ORSv. REGIONAL DIRECTOR, SOUTH EAST REGION & ORS
[NCLAT]

Company Appeal (AT) No. 124 of 2019

A.I.S. Cheema & V. P. Singh. [Decided on 13/12/2019]

Companies Act, 2013- sections 230-232- amalgamation- investigation pending with respect to a group company - whether amalgamation could be rejected on this ground alone-Held, No.

Brief facts : The present appeal has been filed by the Appellants challenging the order date 16th January, 2019 passed by the National Company Law Tribunal (NCLT), Bengaluru Bench in C.P. (CAA) No. 07/BB/2018.

The Appellants Jointly filed petition for amalgamation before the NCLT, wherein Appellants 1&2 were the transferor companies and appellant No.3 was the transferee company. The first motion was allowed and the second motion was rejected on the sole ground that there was an enquiry pending against group company “Flipkart Internet Private Limited”. Hence the present appeal.

Decision: Appeal allowed.

Reason: Having heard learned counsel for both the sides, it appears to us that the reason recorded in paragraph Nos. 12 and 13 of the impugned order by the Ld. 'National Company Law Tribunal' cannot be maintained. The enquiry was not against any of the Transferor of Transferee Companies. It was against Flipkart Internet Private Limited. The said Company is not subject matter of the scheme. Apart from this, the Appellants have given undertaking as mentioned above.

The other objection of the Ld. NCLT that information regarding one more Company Flipkart Digital Private Limited merging with the Transferee Company was not disclosed, is not such a big issue to non-suit the Appellants.

Both the sides agree that other than above two reasons recorded by the Ld. NCLT in decline the second motion, there was no other reason. The learned counsel for the appellant has pointed out the application by way of second motion which was filed before the NCLT at Annexure- A 12 in which the relevant prayer was in para 29 of D & E which reads as under:-

“D. That Scheme as annexed herewith and marked as Annexure-1, may kindly be sanctioned by this Hon'ble Tribunal, with or without modification(s), so as to be binding on said Petitioner Companies and their respective shareholders and creditors of Petitioner Companies and all concerned;

E. That Petitioner Company No. 1 and Petitioner Company No. 2 shall stand dissolved without following the process of winding up / liquidation on filing a certified copy of the order of this Hon'ble Tribunal with the ROC;”

In the present appeal the prayer is to set aside part of the impugned Judgment rejecting the Scheme of Amalgamation of the Appellants and allow the scheme of amalgamation of the Appellants. Going through the records and the considering the submissions made, we set aside the impugned order and allow the prayer of the Company Appeal. We sanction the Scheme

proposed, as far as it relates to the Appellants with modification that the Appellants Nos. 1 to 3 shall be bound by the undertaking as given vide Diary No. 13289 relevant part of which is reproduced in para 15 Supra.

We make it clear that the Appellant Nos. 1, 2 and 3, their Promoters and Directors and Shareholders shall remain responsible for any liability, if any, getting attracted against them due to the enquiry against "Flipkart Internet Pvt. Ltd."

The Scheme as regards the Appellants will be treated as approved to the extent of the Amalgamation of the Appellant Nos. 1, 2 and 3. We remit the matter back to the Ld. NCLT and request to issue further formal order(s) required to be issued, within a month of receipt of copy of this Judgment and order. The appeal is disposed of accordingly. No costs.

INDUSTRIAL & LABOUR LAWS

E.R.SUGUMARAN V. M.D, TAMIL NADU CIVIL SUPPLY CORPORATION [MAD]

W.P (MD) No.12667 of 2011

J.Nisha Banu, J. [Decided on 12/12/2019]

Employee admitting the loss of records before the court - employer lost the case - employer stopped increments for six months - whether tenable - Held, No.

Brief facts : The petitioner retired as Assistant Engineer in the respondent corporation. He was allowed to retire on reaching the age of superannuation without prejudice to the pending departmental proceedings against him. When he was working as Assistant Engineer in Modern Rice Mill, Coimbatore, he had to appear as a witness for the Corporation in a civil suit filed by the Corporation against one M/s. Rajalakshmi Paper Mills Ltd., to recover a sum of Rs.4,34,062.90/- towards damages for the loss sustained by the corporation due to contractual violation of the said paper mill. During the course of cross examination, the petitioner had to admit the loss of records in the office of the corporation, and due to this the corporation lost the case. No appeal was filed. Instead, disciplinary proceedings were initiated against the petitioner for losing the case and his increments were stopped for six months.

Decision : Petition allowed.

Reason: It is unfortunate that the authorities have initiated the disciplinary proceedings against the petitioner for stating the truth before the court that the records had been destroyed. Admittedly, the records have been destroyed and the person in whose period the records were destroyed also retired from service. It is also admitted that during the period of delinquency, the petitioner was not working in the concerned department and the persons who had been working in the concerned department namely, Jeyapal and Amarnath were left scot-free and the disciplinary proceedings had been initiated only against the petitioner for the reason that he has deposed before the court the truth that the records have been destroyed which is unknown to law and the corporation had not filed any appeal against the dismissal of the suit. Without producing the relevant documents before the court, the corporation cannot blame the petitioner for giving evidence before the court that the document was not available and consequently cannot hold him liable for the dismissal of the case. Therefore, I am inclined to interfere with the impugned order. Accordingly, the order passed by the respondent is quashed and the writ petition is allowed.

GENERAL LAWS

STANDARD CHARTERED BANK v. HEAVY ENGINEERING CORPORATION LTD & ANR [SC]

Civil Appeal No.9288 OF 2019 (@ SLP(C) No. 23430 of 2019)

L.Nageshwar Rao & Ajay Rastogi, JJ. [Decided on 18/12/2019]

Law of guarantee- bank guarantee- invocation of – whether bank can refuse to honour the guarantee when beneficiary invokes it - Held, No.

Brief facts : Facts are immaterial. The crux of the issue is whether the bank can refuse to honour the guarantee issued by it to the beneficiary and if so on what circumstances.

Decision : Appeal dismissed.

Reason : The law relating to invocation of bank guarantees with the consistent line of precedents of this Court is well settled. The settled position in law that emerges from the precedents of this Court is that the bank guarantee is an independent contract between bank and the beneficiary and the bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable one. The dispute between the beneficiary and the party at whose instance the bank has given the guarantee is immaterial and is of no consequence. There are, however, exceptions to this Rule when there is a clear case of fraud, irretrievable injustice or special equities. The Court ordinarily should not interfere with the invocation or encashment of the bank guarantee so long as the invocation is in terms of the bank guarantee.

The guarantees in the instant case were unconditional, specific in nature and limited in amount. The terms of the guarantee categorically covered money which the 1st respondent had advanced against supply of the plant and equipment by SCIL. The said guarantees covered any loss and damage caused to or suffered by the 1st respondent plaintiff in due performance of the contract for supply of plant and equipment. The guarantee documents as a whole and clause 2 of the guarantee document in particular cover the advance which had been paid by the 1st respondent plaintiff by reason of any breach or failure by SCIL in due performance of the aforesaid contracts i.e. against the contract for supply of plant and equipment.

In our considered view, once the demand was made in due compliance of bank guarantees, it was not open for the appellant Bank to determine as to whether the invocation of the bank guarantee was justified so long as the invocation was in terms of the bank guarantee. The demand once made would oblige the bank to pay under the terms of the bank guarantee and it is not the case of the appellant Bank that its defence falls in any of the exception to the rule of case of fraud, irretrievable injustice and special equities. In absence thereof, it is not even open for the Court to interfere with the invocation and encashment of the bank guarantee so long as the invocation was in terms of the bank guarantee and this what has been observed by the Division Bench of the High Court in the impugned judgment and that reflected the correct legal position. We do not find any merit in the appeal which is hereby dismissed. No costs.



Examination

1. DECLARATION OF DECEMBER, 2019 EXAMINATION RESULTS

The result of Professional Programme and Executive Programme (Old/New Syllabus) examination held in December, 2019 was declared on 25th February, 2020 at 11.00 A.M. and 02.00 P.M. The result alongwith individual candidate's subject-wise breakup of marks was made available on the Institute's website: www.icsi.edu on 25th February, 2020 after the declaration of result.

2. ISSUING OF MARKS-SHEETS OF DECEMBER, 2019 EXAMINATION

According to 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 December, 2019 has been uploaded on the website of Institute: www.icsi.edu for downloading by the students for their reference, use and records. However, the Result-cum-Marks-Statement for Professional Programme Examination would be issued in physical form.

3. VERIFICATION OF MARKS OF COMPANY SECRETARIES EXAMINATIONS

In terms of Regulation 42 (2) of the Company Secretaries (Amendment) Regulations, 2020 as in force, 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 results. 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:

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

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. 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

(As amended by the Council in its 263rd meeting held on 23rd September, 2019)

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, 2019 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 45 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 subjects 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 whichever is earlier.
4. Fee of Rs. 500 per subject/answer books is payable for supply of certified copy(ies) of answer book(s) and Rs. 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 46(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

1.	Name of Student				
2.	Student Regn. No.				
3.	Complete Correspondence Address				
		PIN CODE :			
		MOBILE :			
4.	E-mail id				
5.	Specify your request for : (by ticking (✓) the appropriate box)	Providing inspection of my answer book(s)	Supply of certified copy(ies) of my answer book(s)		
6.	Details about appearance in the subjects of examination for which copy(ies) of answer books is/are requested	Stage & Session of Exam.	Roll No.	Name of the Subject(s)	Marks Obtained
7.	Details of fee remitted: Rs. 500 per subject/ answer book for supply of certified copy(ies); and 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 45 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).

It has been observed that many a times, 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:

<i>S.No.</i>	<i>Inspection of answer books</i>	<i>Supply of certified copies of answer books</i>
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 <i>pdf</i> 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 Rs. 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 <i>"The Institute of Company Secretaries of India", payable at New Delhi</i> .	The prescribed fee for supplying certified copies of answer books is Rs. 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 <i>"The Institute of Company Secretaries of India", payable at New Delhi</i> .
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 <i>pdf</i> 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.

6. CONDUCT OF JUNE, 2020 EXAMINATIONS

The next examination for Executive Programme (Old/New Syllabus) and Professional Programme (Old/New Syllabus) scheduled in June, 2020 will be held from 1st June, 2020 to 10th June, 2020 as per the Examination Time-Table (published elsewhere in this bulletin) at 131 examination centres, viz., 1. Agra, 2. Ahmedabad, 3. Ahmednagar, 4. Ajmer, 5. Akola, 6. Aligarh, 7. Allahabad, 8. Alwar, 9. Ambala, 10. Amravati, 11. Amritsar, 12. Aurangabad, 13. Ballary, 14. Bangalore, 15. Bareilly, 16. Beawar, 17. Belgaum, 18. Bhayander, 19. Bhilai, 20. Bhilwara, 21. Bhopal, 22. Bhubaneswar, 23. Bikaner, 24. Bilaspur, 25. Calicut, 26. Chandigarh, 27. Chennai, 28. Chittorgarh, 29. Coimbatore, 30. Dehradun, 31. Delhi (East), 32. Delhi (North), 33. Delhi (South), 34. Delhi (West), 35. Dhanbad, 36. Ernakulam, 37. Faridabad, 38. Gandhidham, 39. Gandhinagar, 40. Ghaziabad, 41. Gorakhpur, 42. Guntur-Amaravati, 43. Gurgaon, 44. Guwahati, 45. Gwalior, 46. Hisar, 47. Hooghly, 48. Howrah, 49. Hubli-Dharwad, 50. Hyderabad, 51. Imphal, 52. Indore, 53. Jabalpur, 54. Jalgaon, 55. Jamnagar, 56. Jaipur, 57. Jalandhar, 58. Jammu, 59. Jamshedpur, 60. Jhansi, 61. Jhunjhunu, 62. Jodhpur, 63. Kanpur, 64. Kolhapur, 65. Kolkata (North), 66. Kolkata (South), 67. Kota, 68. Kottayam, 69. Lucknow, 70. Ludhiana, 71. Madurai, 72. Mangalore, 73. Mathura, 74. Meerut, 75. Moradabad, 76. Mumbai Zone-I, 77. Mumbai Zone-II, 78. Mumbai Zone-III, 79. Mumbai Zone-IV, 80. Mumbai Zone-V, 81. Mumbai Zone-VI, 82. Muzaffarnagar, 83. Mysore, 84. Nagpur, 85. Nashik, 86. Navi Mumbai, 87. Noida, 88. Palakkad, 89. Pali, 90. Panaji, 91. Panipat, 92. Patiala, 93. Patna, 94. Pimpri-Chinchwad, 95. Puducherry, 96. Pune Zone-I, 97. Pune Zone-II, 98. Pune Zone-III, 99. Pune Zone-IV, 100. Raipur, 101. Rajkot, 102. Ranchi, 103. Rewari, 104. Rourkela, 105. Sagar, 106. Salem, 107. Sambalpur, 108. Satara, 109. Shimla, 110. Sikar, 111. Siliguri, 112. Solapur, 113. Sonapat, 114. Srinagar, 115. Surat,

116. Thane Zone-I 117. Thane Zone-II, 118. Thane Zone-III, 119. Thiruvananthapuram, 120. Thrissur, 121. Tiruchirapalli, 122. Tirunelveli 123. Udaipur, 124. Ujjain, 125. Vadodara, 126. Vapi, 127. Varanasi, 128. Vijayawada, 129. Visakhapatnam, 130. Yamuna Nagar and 131. Overseas Centre — Dubai.

- NOTES:**
1. **Ballary (Karnataka), Mathura (Uttar Pradesh) and Tirunelveli (Tamil Nadu) are on Experimental Basis.**
 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 JUNE, 2020 EXAMINATIONS

 THE INSTITUTE OF Company Secretaries of India भारतीय कम्पनी सचिव संस्थान <small>IN PURSUIT OF PROFESSIONAL EXCELLENCE</small> <small>Statutory body under an Act of Parliament</small> <small>(Under the jurisdiction of Ministry of Corporate Affairs)</small>				
COMPANY SECRETARIES EXAMINATIONS, JUNE, 2020				
TIME-TABLE				
EXAMINATION TIMING : 9:00 A.M. TO 12:00 NOON				
Day	Executive Programme (Old Syllabus)	Executive Programme (New Syllabus)	Professional Programme (Old Syllabus)	Professional Programme (New Syllabus)
1.06.2020 Monday	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)
2.06.2020 Tuesday	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)
3.06.2020 Wednesday	Tax Laws and Practice (Module-I) (OMR Based)	Company Law (Module-I)	Advanced Tax Laws and Practice (Module - III)	Corporate Funding and Listing in Stock Exchanges (Module - III)
4.06.2020 Thursday	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)
5.06.2020 Friday	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)
6.06.2020 Saturday	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.]
7.06.2020 Sunday	NO EXAMINATION	NO EXAMINATION	NO EXAMINATION	NO EXAMINATION
8.06.2020 Monday	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)
9.06.2020 Tuesday	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)
10.06.2020 Wednesday	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

8. ALL INDIA MERIT LIST- JUNE, 2019 EXAMINATIONS

https://www.icsi.edu/media/webmodules/June19_ExeOldProgExam.pdf

https://www.icsi.edu/media/webmodules/June19_ExeNewProgExam.pdf

https://www.icsi.edu/media/webmodules/June19_PrfoOldProgExam.pdf

https://www.icsi.edu/media/webmodules/June19_PrfoNewProgExam.pdf

9. NEW EXAMINATION CENTRES**ATTENTION STUDENTS!****NEW EXAMINATION CENTRES FOR COMPANY SECRETARIES EXAMINATION**

The Institute is pleased to announce opening of new Examination Centres at the following cities for Company Secretaries examination w.e.f. June, 2020 session:

<i>S.No.</i>	<i>City & State</i>	<i>Examination Centre Code</i>
1.	Ballary (Karnataka)	325
2.	Mathura (Uttar Pradesh)	248
3.	Tirunelveli (Tamil Nadu)	326

Accordingly, candidates can opt for new examination centre in addition to the existing examination centres while enrolling for Company Secretaries June, 2020 Examination

JOINT SECRETARY
DIRECTORATE OF EXAMINATIONS



Attention Students !!

CORPORATE COMPLIANCE EXECUTIVE CERTIFICATE FOR STUDENTS

The Institute launched the 'Corporate Compliance Executive Certificate' in terms of Chapter IVA (Regulation 28A & 28B) of the Company Secretaries Regulations, 1982 on 4th October, 2013.

ELIGIBILITY FOR AWARD OF CORPORATE COMPLIANCE EXECUTIVE CERTIFICATE

A person who –

- is currently registered as a student of the Company Secretaryship course of the Institute;
- has completed at least one group of the Intermediate/Executive Programme Examination of the Company Secretaryship Course, and
- has completed a training of Six months under Regulation 28A of the Company Secretaries Regulations, 1982, which may include skill oriented practical/class room training for two weeks.

PROCEDURE

An eligible student may apply for award of Corporate Compliance Executive Certificate by submitting an application in specified format (available on the website of the Institute www.icsi.edu), after making payment of a fee of Rs. 2000 (two thousand only), either in cash (at counters of the Institute across the county) or by way of Demand Draft in favour of 'The Institute of Company Secretaries of India' payable at New Delhi.

STATUS OF HOLDER OF CORPORATE COMPLIANCE EXECUTIVE CERTIFICATE

- The student who is awarded **Corporate Compliance Executive Certificate** of the Institute shall be entitled to use the descriptive letters "Corporate Compliance Executive".
- The grant of Certificate of **Corporate Compliance Executive Certificate** shall not confer on the Corporate Compliance Executive the rights of a member, nor entitle him to claim membership of the Institute.

VALIDITY OF CERTIFICATE

- The Corporate Compliance Executive certificate is valid for a period of three years (financial years) and is renewable on completion of four Programme Credit Hours (PCH) and payment of requisite fee as the Council may determine from time to time.

OTHER DETAILS

- The student shall have to complete the course of Corporate Compliance Executive Certificate including the training requirements within the registration period.
- The student having awarded the Corporate Compliance Executive Certificate may continue to pursue the regular Company Secretaryship course if he so desires.
- Except to the extent provided in this Chapter IVA (Regulations 28A & 28B) of the Company Secretaries Regulations, 1982 or as decided by the Council from time to time, regulations in Chapter IV and VI relating to 'Registered Students' and 'Examinations' shall mutatis-mutandis apply to the 'Corporate Compliance Executive Certificate Course'.
- A student after having awarded the Corporate Compliance Executive Certificate shall secure four Programme Credit Hours (PCH) for renewal of Corporate Compliance Executive Certificate.
- There shall be no exemption from training.

Brochure and application form are available at CCEC section on website of the Institute www.icsi.edu. For queries please write at ccec@icsi.edu or contact on phone number 0120-4082135.

Attention Students !!

LICENTIATE - ICSI

Regulation 29 & 30 under Chapter-V of the Company Secretaries Regulations, 1982 provides for Licentiate ICSI.

ELIGIBILITY FOR AWARD OF LICENTIATE ICSI

A person who –

- has completed the Final examination or Professional Programme examination conducted by 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 enrollment as a licentiate
- the Council, however, may condone the delay in applying for licentiateship by any person for reasons to be recoded in writing.

PROCEDURE

An eligible student may apply for enrollment as Licentiate ICSI by submitting an application in prescribed form ST-8 alongwith annual subscription of Rs. 1000/- in cash (at counters of the Institute across the country) or by way of Demand Draft in favour of 'The Institute of Company Secretaries of India' payable at New Delhi along with copies of date of birth, professional programme pass certificate and graduation certificate/foundation pass certificate duly attested by any member of the Council/Regional Council/Satellite Chapter of the Institute or any Officer of the Institute.

STATUS OF LICENTIATES

- The person enrolled as a Licentiate of the Institute shall be entitled to use the descriptive letters "Licentiate ICSI" to indicate that he has qualified in the Final examination or Professional Programme examination of the Institute.
- The grant of licentiateship shall not confer on such licentiate any rights of a member nor entitle him to claim any form of membership of the Institute or its Regional Council or Chapter, as the case may be.
- The licentiate may be permitted to borrow books from the library of the Institute, Regional Council or Chapter or 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.

VALIDITY OF CERTIFICATE

- A licentiate shall not ordinarily be eligible to renew his enrolment for more than five years after passing the Final Examination or Professional Programme examination.

OTHER DETAILS

- The Licentiate will be provided Chartered Secretary Journal of the Institute free of cost.
- The student enrolled as a Licentiate ICSI may apply for ACS Membership on attaining the eligibility for ACS by surrendering his Licentiateship.
- A Licentiate may apply in the prescribed form for exemption from training requirements (except MSOP) along with the requisite documents of work experience. eMSOP can be undergone through online mode by the eligible candidates for acquiring ACS Membership.
- The annual licentiate subscription becomes due and payable on the first date of April every year and 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.

For queries, please write at licentiate@icsi.edu or contact on phone number 0120-4082136.

News from Region

SIRC



**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)

SOUTHERN
INDIA
REGIONAL
COUNCIL



Renowned
Scholars

**Oral Coaching Classes for
Professional Programme**
(New Syllabus)



Inspiring
Teachers

**MODULE: I & II - WEEK-END CLASSES FOR
June 2020 EXAMINATION**

Exemption from Pre-Examination Test (Online)
for the Oral Coaching Students. Such students have
to appear and pass the Offline test to be
conducted by the Institute in the class room.

Date of Commencement: 15.02.2020

MODULE	DAYS	TIMING	FEE
Module-I	Saturdays	01.30 p.m. to 03.30 p.m.	Rs.6600/-
	Sundays	07.00 a.m. to 09.00 a.m.	
	Tuesdays	06.00 p.m. to 08.00 p.m.	
Module-II	Saturdays	03.45 p.m. to 05.45 p.m.	Rs.6600/-
	Sundays	09.15 a.m. to 11.15 a.m.	
	Thursdays	06.00 p.m. to 08.00 p.m.	

**For further details please contact: ICSI-SIRC House, No.9, Wheat Crofts Road, Nungambakkam
Chennai -600034. Phone No: 044-28279898/28268685 - eMail: sirc@icsi.edu**

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  <https://www.facebook.com/ICSI>  https://twitter.com/ICSI_CS  <https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-65896102/>

EIRC

SCHOLARSHIP SCHEME

ICSI-EIRC is pleased to announce Scholarship Scheme for pursuing Company Secretary Course with the support of few Private Charitable Foundation / Trust. The Students who are in need of financial help to pursue CS course may contact Regional Director at the following address for information in detail.

DR. Tapas Kumar Roy
Regional Director
ICSI-EIRC House,
3A, Ahiripukur 1st Lane,
Kolkata – 700 019
Ph: 033- 22832973
Mail: eiro@icsi.edu

Attention Students

Refund of fees received from students who have not attended SIP/EDP

1. Those students who have registered with EIRC but not attended SIP/EDP are requested to submit an application for the refund of SIP/EDP fee along with original SIP/ EDP acknowledgement receipt at ICSI-EIRC, House, 3A, Ahiripukur, 1st Lane, Kolkata-700019.
2. Outstation students who are unable to come personally to collect the refund, may opt for electronic transfer to their bank account after sending the duly filled-up undertaking form duly signed by them.

For further details contact

Ms. Rukmani Nag, Executive Assistant, ICSI-EIRO
ICSI-EIRC House, 3A, Ahiripukur 1st Lane, Kolkata – 700 019, Visit : <https://www.icsi.edu/eiro/Home.aspx>
Ph: 033- 2283 2973 / 2290 2178 / 2290 2179 or Email: rukmani.nag@icsi.edu



**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)

EASTERN
INDIA
REGIONAL
COUNCIL

ICSI-EIRC LIBRARY

E-Library
Facility
Available

Dear Students & Members,

Keeping in view for the benefit of Students & Members the EIRC of ICSI is promoting the revamped Library at ICSI-EIRC, House. The EIRC library is equipped with English and Hindi News Papers, Latest Books, Reference Materials & Subscriptions of Leading Journals. You all are requested to please come forward with the suggestions for new inclusions.

Books Available

● ICSI Publications ● ICSI Study Materials ● Books on Case Laws ● Bare Acts ● Taxation ● Scanners ● Reference Books ● Guideline Answers ● Chartered Secretary

Library facilities is open from 10:30am to 6:30pm on working days

Particulars	Securities Deposit	Annual Subscription	Documents
Students	Rs.500/-	Rs.200/-	Student's / Member's ID Card & 2 Passport size photograph
Member	Rs.2500/-	Rs.200/-	
OTC Students	Rs.500/-	Exempted	

Terms & Conditions:-

- Two books from the general section will be issued at a time for two weeks.
 - If the issued book is not returned by the due date, the library member may be required to pay a fine of Rs.5/- for each day of default.
 - Where a book is lost or damaged current publisher's price and a surcharge of not exceeding 25% of the price to meet the cost of acquisition shall be charged.
- The security deposit shall be refundable on cessation of membership of library provided there is no book standing in the name of the person and there are no outstanding dues.
- The annual library subscription once paid shall not be refunded under any circumstances.
- The library membership shall be valid for the financial year and may be renewed on the 1st of April each year by paying annual fee.
- Each member of the Library shall observe necessary and due care while handling books and other material.
- Members or readers shall maintain strict discipline inside and around the Library and conduct themselves in a manner conducive to congenial atmosphere for study.
- Every member of the library shall intimate in writing, changes if any, in his/her professional or residential address and contact number or status i.e. a registered student becoming a licentiate or member or a licentiate becoming a member of the Institute within 14 days

For further details and registration, please contact:-

Ms. Rukmani Nag, ICSI-EIRC Library

Phone: 033-2290 1065 / 2290 2178 or mail at rukmani.nag@icsi.edu



**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)

EASTERN
INDIA
REGIONAL
COUNCIL

REGISTRATION FORM



Name.....
.....

Registration No / Membership No.....

E-Mail.....

Mobile No.....

Correspondence Address.....
.....
.....

Permanent Address.....
.....
.....

Security Ammount: Rs. Annual Fee:

.....
Signature

Place:

Date:

For office use only

Security Ammount: Rs. Annual Fee.....

Invoice No.: Date:

.....
Dealing Officer

© ***The Institute of Company Secretaries of India.***

All rights reserved. No part of this e-journal may be translated or copied in any form or by any means without the prior written permission of The Institute of Company Secretaries of India.

Editorial Team

Alka Kapoor, Joint Secretary (SG)

Lakshmi Arun, Joint Director

Akansha Gupta, Executive (Academics)

Directorate of Academics

Disclaimer :

Although due care and diligence have been taken in preparation and uploading this e-journal, the Institute shall not be responsible for any loss or damage, resulting from any action taken on the basis of the contents of this e-journal. Anyone wishing to act on the basis of the material contained herein should do so after cross checking with the original source.