

# CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS



**THE INSTITUTE OF  
Company Secretaries of India**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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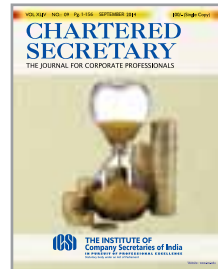


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- 01 >> Opening Plenary - On the dais from Left: CS Arun Khandelia, CS Ashok Pareek, CS Vikas.Y.Khare, C.R Chowdhury (Member of Parliament, Nagaur, Rajasthan), Prof. Saugata Roy (Member of Parliament, Dum Dum, Kolkata), CS R. Sridharan, R.K Dubey (CMD, Canara Bank), CS Anil Murarka and CS M.S.Sahoo.
- 03 >> Second Technical Session - On the dais from Left: Prashant Saran (Whole Time Member, SEBI), CS Umesh H Ved, Sandip Ghosh (Director NISM), G. V. Nageshwar Rao (MD & Chief Officer, National Securities Depository Limited) and CS Sanjay Kumar Gupta.
- 05 >> Fourth Technical Session - On the dais from Left: CS Vikas.Y.Khare, Somasekhar Sundaresan (Partner, J Sagar Associates, Advocates and Solicitors), CS U K Chaudhary and CS K. Sethuraman.

- 02 >> First Technical Session - On the dais from Left: CS Sanjay Grover, CS G S Gupta (Executive Director, Emami Biotech Ltd.), P.K. Malhotra (Secretary, Ministry of Law & Justice), CS Pavan Kumar Vijay (Managing Director, Corporate Professional Capital Private Ltd.) and CS Vinod Kothari.
- 04 >> Third Technical Session - On the dais from Left: CS Atul H Mehta, G. R. Bhatia (Partner & Head, Competition Law Practice of Luthra&Luthra Law Offices), Ashishkumar Chauhan (Managing Director and CEO of BSE Ltd.) and Deena A Mehta (Recipient of EWA Award 2014).
- 06 >> Fifth Technical Session - On the dais from Left: CS C Sudhir Babu, Radhakrishnan Nair (Member, (F&I), IRDA), Ramesh Lakshman (Practising Chartered Accountant) and Renu Amitabh (Addl.CIT(Delhi)).





07 >> 6th Technical Session – Sitting on the dais from Left: Dr. Rajdeep Manwani (Coordinator, Department of Commerce, Jain University, Bangalore), Prof. P Ishwara Bhat ( VC, W.B. National University of Juridical Sciences), Dr. Kunal Sarkar (Cardiac Surgeon, MEDICA Superspeciality Hospital, Kolkata) and CS Atul H Mehta.

09 >> Special Session – II -Dr. M. Veerappa Moily (Member of Parliament) releasing the ICSI publication with CS R. Sridharan and CS Vikas.Y.Khare.

11 >> A view of the Open House Session.

08 >> Special Session – I - Dr. Girish Ahuja (Tax Expert) addressing.

10 >> Special Session – III - Dr. Ajay Agarwal (Educationist) addressing.

12 >> Closing Plenary–Sitting on the dais from Left: CS Sutanu Sinha, CS Anil Murarka, H.M Bangur (CMD, Shree Cements), CS Vikas.Y.Khare, Justice Nadira Patherya of Kolkata High Court, Swami Suparnanada of the Ramakrishna Mission, Kolkata, Guest of Honour Dr.Udit Raj (MP North-West Delhi), CS R. Sridharan, CS Ashok Pareek and CS Arun Kumar Khandelia.



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- 13 >> 13th ICSI National Award for Excellence in Corporate Governance – Arun Jaitley (Hon'ble Union Minister for Finance, Defence and Corporate Affairs) addressing. Others sitting on the dais from Left: CS M S Sahoo, CS Vikas Y Khare, CS R Sridharan, CS Sanjay Grover and CS Anil Murarka.
- 15 >> NIRC – Faridabad Chapter – Laying of Foundation Stone of ICSI House at Faridabad –Krishan Pal (Hon'ble Minister of State, Road Transport, Highways and Shipping ) addressing. Others sitting on the dais from Left: CS Naresh Kumar Goel, CS Sanjay Grover, CS R Sridharan, CS Vikas Y Khare, CS M S Sahoo and CS Shyam Agarwal.
- 17 >> National Seminar on Governance, Administration & Management of Companies Act, 2013 – Sitting from Left: CS Sutanu Sinha, CS Vikas Y Khare, Dr. U D Choubey (Govt. Nominee to the Council of the Institute and DG, SCOPE) and CS Sanjay Grover.

- 14 >> 13th ICSI National Award for Excellence in Corporate Governance – Presentation of the ICSI Lifetime Achievement Award –Arun Jaitley (Hon'ble Union Minister for Finance, Defence and Corporate Affairs) presenting the Citation to Shiv Nadar (Chairman and Chief Strategy Officer, HCL Technologies Ltd.).
- 16 >> ICSI Programme on Capital Markets – The Growth Engine - Inaugural Session - U.K. Sinha (Chairman, SEBI) addressing. Others sitting from Left: CS Vikas Y. Khare, Ashishkumar Chauhan (MD & CEO, BSE Ltd.), CS R.Sridharan, CS Atul H. Mehta and CS M.S. Sahoo.
- 18 >> National Seminar on Governance, Administration & Management of Companies Act, 2013 – Sitting from Left: CS Sanjay Grover, Amardeep Singh Bhatia (JS, MCA) and CS Vikas Y Khare.







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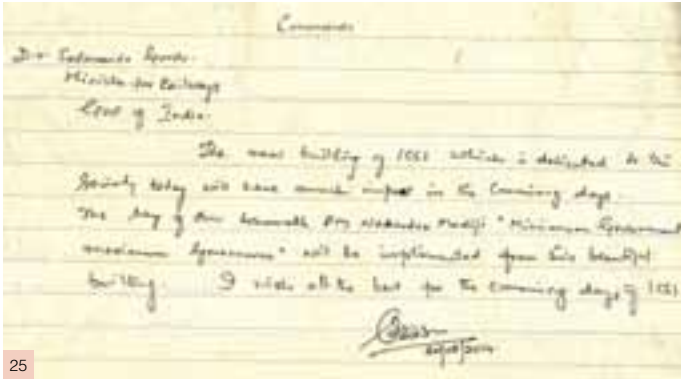
- 19 >> National Seminar on Investor Protection and Awareness held at Patna – standing from Left: CS Manjay Kumar, Lalan Kumar (State Vice-President RJD, Business Cell), Sumit Kumar Singh (Member, Legislative Assembly, Bihar), Rajendra Prasad ( Retired Justice, Patna High Court), CSSubir Kumar and CS Saurabh Kumar Sonu.
- 21 >> SIRC – 9th Southern India Regional Conference of Practising Company Secretaries on PCS – Embracing Excellence –On the dais from Left: CS S S Marthi, CS Gopalakrishna Hegde, A Dinakar Babu, IAS (MD, Agricultural Cooperation and Marketing Deptt., AP MARKFED, Hyderabad), CS R Sridharan, K Taraka Rama Rao (Hon'ble Minister for Panchayat Raj & IT, Telangana State), CS C Sudhir Babu and CS Vasudeva Rao Devaki.
- 23 >> NIRC Convocation – Standing from Left: CS Shyam Agarwal, CS Atul Mittal, CS R. Sredharan, Arjun Ram Meghwal (Member of Parliament), P. R. Ramesh, CS P. K. Mittal and CS Sutanu Sinha.

- 20 >> National Seminar on Investor Protection and Awareness held at Pune – On the dais from Left: CS Kuldeed Ruchandani, CS Vikas Khare, Nehal Vora (Chief Regulatory Officer, BSE Ltd.), Dr. Amol Shinde (ARoC, Pune), CS M S Sahoo and CS Shilpa Dixit.
- 22 >> Making Operational Independent Director Repository Portal – Standing from Left: CS Dr.Baiju Ramachandran, CMA Dr. A S Durga Prasad and CS R Sridharan.
- 24 >> ICSI-CCGRT – Directors' Roundtable Meet –Inauguration –Ashishkumar Chauhan (MD and CEO, BSE Ltd.), lighting the lamp.

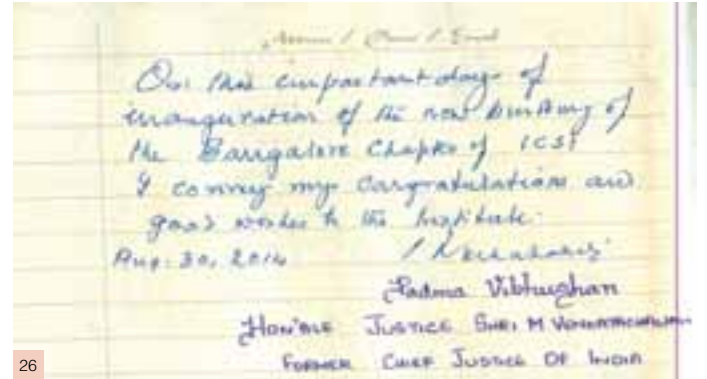




## INAUGURATION OF NEW BUILDING OF BANGALORE CHAPTER OF ICSI



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- 25 >> Message from D V Sadananda Gowda (Hon'ble Minister for Railways) for the new building of the Chapter.
- 27 >> D V Sadananda Gowda (Hon'ble Minister for Railways) and Hon'ble Justice M N Venkatachaliah (former Chief Justice of India) seen lighting the lamp to mark the inauguration of the building.
- 29 >> Hon'ble Minister seen unveiling the plaque of the new building of the Chapter.

- 26 >> Message from Hon'ble Justice M N Venkatachaliah (former Chief Justice of India) for the new building of the Chapter.
- 28 >> D V Sadananda Gowda (Hon'ble Minister for Railways) and Hon'ble Justice M N Venkatachaliah (former Chief Justice of India) cutting the ribbon to inaugurate the new building of the Chapter.
- 30 >> A view of the New Building of Bangalore Chapter of ICSI.







## Articles

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### E-commerce & Competition In Markets: New challenge before the Competition Commission of India .

P-15

#### G. R. Bhatia

In the recent past, the e-commerce industry is in the limelight. This industry is to further get impetus as present Government is drawing road map to implement one lakh crore 'Digital India Program' which seeks to transform India into digitally knowledge economy and also seeks to integrate technology in everyday life of the citizens for better service delivery. The twin compartments of e-commerce are (a) B2B and (b) B2C. In India, the B2B forms 90% of total e-commerce and the rest is B2C. The Competition Agencies across both sides of Atlantic do not tolerate any restriction imposed by manufacturer on distributors from using internet to sell their products including any discriminatory practice qua traditional brick and mortar distribution channel. The Competition Commission of India (CCI) will have to address competition issues sooner than later. It would be advisable to create awareness of competition concerns amongst all those who are engaged in e-commerce so that "innocent is not punished and violator is not spared".

### Recent Tax Controversy - Expense Disallowance for Default in TDS Compliance on Payments Made During the Year

P-19

#### Rama Gupta & Nisha Malpani

This article gives an insight on the provisions of Section 40(a) (ia) of the Income-tax Act, 1961 and the recent controversy arising thereat. Section 40(a)(ia) provides that in respect of certain expenses, where no deduction of tax is made or/and after deduction TDS is not deposited with the Government treasury, corresponding expense claim [to the extent of 30% as amended by the Finance (No. 2) Act, 2014] will not be allowed in the hands of the payee. However, such expense is allowed in the year in which TDS provisions are complied with. In the recent past, a tax controversy has arisen as to whether Section 40(a)(ia) would cover only the expenses which are payable as on 31st March of a previous year or the expenses which have been paid at any time during the year are also covered within the ambit of Section 40(a)(ia). Our judiciary is divided on this issue. Taking note of the conflicting interpretations by judicial authorities, CBDT, being the highest tax administration authority, has recently issued a circular clarifying that Section 40(a)(ia) would also cover within its ambit payments made during the year. After analyzing the issue and various judicial precedents, the authoresses have expressed an opinion in favour of the revenue and suggested the taxpayers to take a conscious call while taking a different tax position.

### Emergence of IFRS Towards Fair Value Accounting System and Its Adoptability in Indian Scenario

P-26

#### Prof. Debarshi Bhattacharya

International accounting bodies have given stronger emphasis to switch over the accounting system of the world from Historical Cost to Fair Value Accounting. Moreover, a worldwide essentiality has been agreed upon to switch over homogeneous system of accounting all over the world. As a result, the accounting systems of many countries are gradually converted into the system convergent with the IFRS. As all the international accounting bodies have prescribed to value assets and liabilities on the basis of 'fair value measurement', we have no other option than to switch over our financial reporting system into the fair value accounting

system. The adoptability of FV Concept in India is one of the essential elements for converging with IFRS. To ensure a fully converged set of Standards, in 2010, MCA prepared a roadmap in which it was decided that converged IFRS should be followed in India w.e.f. 01.04.2011. But the said adoption was put off in the wake of issues related with concept of fair value and relevant tax-related issues. A revised roadmap for implementation of Ind. AS has been finalized by the Council of the ICAI in 2014, which has been submitted to the MCA for approval. Hopefully, said recommended roadmap will be approved by the MCA after making necessary amendments, if any, and it will notify soon the revised road map for the implementation of converged Indian ASs in the line of IFRS w.e.f. 01.04.2016.

### M&A as Management Strategy

P-35

#### Dr. Anil Gor

In the modern times, Mergers and Acquisitions (M&As) have become a major force in the financial and economic environment all over the world. The company secretaries as corporate professionals have been directly or indirectly associated with this strategy. However, the focus of company secretaries has essentially been on compliance rather than strategy and therefore it is imperative that this balance between compliance and strategy be restored. This article tries to bring before our professional brothers, the strategic inputs required to actively participate in the main stream business of managing growth through strategic M&As. As a strategy the focus must be on enhancing long term value of the stakeholders for which Strategic Models suggested by BCG, Ansoff, Michel Porter as well as Minzberg etc. have been explained in the context of M&A.

### International Commercial Arbitration Outside India – Does Part I of the 1996 Act Apply?

P-41

#### T. Ramappa

The position regarding the jurisdiction of the courts in India to order interim measures under Part I of the Arbitration and Conciliation Act, 1996, in international commercial arbitrations held outside India, is to be finally settled by legislation. The decisions of the Supreme Court of India in Bhatia International v. Bulk Trading S. A. & Anr, Venture Global Engineering v. Satyam Computer Services Ltd. & Anr., Shreejee Traco (I) Pvt. Ltd. v. Paperline International Inc. and Bharat Aluminium are to be read in that order to understand where the parties stand today. In Bhatia International, the Supreme Court held that in cases of international commercial arbitrations held out of India the provisions of Part I would apply, unless the parties by agreement, express or implied, excluded all or any of its provisions. In Venture Global, the Supreme Court conformed to its ruling in Bhatia. In Shreejee Traco, the Supreme Court ruled that where the place of arbitration was not in India, Part I of the Act would not apply. In Bharat Aluminium the Supreme Court ruled that Part I of the Act was limited to arbitrations that take place in India. An amendment to the Act expressly providing that Part I of the Act, which includes section 9 providing for interim measures that may be ordered by courts in India, will apply only if the place of arbitration is in India, would bring about certainty.

### Shareholder Protection Laws, Corporate Governance and Shareholder Activism- An Analysis in Indian Context

P-45

#### Prof. J. P. Sharma & Pooja Sharma

Off late, a new concept, i.e. Shareholder Activism has emerged as an integral part of the corporate governance framework in order to provide a remedy to the mismanagement in the functioning of the corporate house.



# at a Glance

The underlying concept provides impetus in furthering the transparency and reliability of the corporate financial and corporate governance structure and enhancing the knowledge of shareholders and the public at large to take more proactive role in the business dealings. It has been construed that the failure of the major corporate giants like the Enron, WorldCom, led to the emergence of shareholder activism mainly in the western part of the world, like the U. S. and the U. K. The concept of activism finds its manifestation in the legal systems governing the corporate sector. A strong legal framework ensures better shareholder protection as well as ensures a platform where shareholders can voice their concerns and expect a speedy, effective and harmonious resolution and a legal remedy to their problems. This paper explores the linkages of shareholder protection laws with specific focus on Shareholder Activism and Corporate Governance. An insight is provided into the US and UK corporate governance framework, including acts, statutes and governing bodies, specifically focusing on the investor protection measures which strengthens the case for the shareowners. Thereafter a glimpse at Indian legal framework is attempted to understand the current situation in India. An analysis aiming to showcase the bottlenecks in Corporate Governance and Shareholder Activism in India is further undertaken. Further the paper tracks recent trends in activism instances worldwide along with its traces in India and the prospects of movement from an era of shareholder dormancy to shareholder democracy following the major overhaul of the Companies Act, 1956. The major parties engaging in activism, types of investors intervening and the issues catching the attention of the investors are also identified. In the end, a critique reflecting the ill effects of shareholder activism is explored citing its dark side which might prove to be detrimental to the larger interests of the shareowners.

Without Prejudice – A transparent veil

➤ P-55

### Mandar M Tambe

In today's commercial world, before or after initiating a formal legal process parties to a dispute routinely engage in 'without prejudice' negotiations to settle their differences out of court. In such negotiations, the simple understanding is: any information disclosed/ communicated to the other party, whether orally or in writing, should not be used by that other party in the subsequent legal proceedings as an admission by the disclosing party of any right, title or liability. In short, such disclosure should not have any 'evidentiary value'. However, a closer look at the recent court decisions and the latest judicial trend would reveal that the 'without prejudice' Rule may not offer the complete protection as one would have understood in the traditional sense. It would be better to understand the Without Prejudice Rule and exceptions thereto in the modern perspective.

Form No. MGT-14: Information Bank of Stakeholders

➤ P-59

### Sachin Sapra

Form No. MGT-14 has gained tremendous momentum amongst the Corporate Law Professionals now-a-days. An effort has been made to throw light on the Matters/Resolutions requiring filing of Form No. MGT-14 as per provisions of Companies Act, 2013 and the Rules made there-under.

Information Technology Governance: A Move towards New Governance Paradigm

➤ P-65

### Gunjan Khanna

Information Technology (IT) is a vital and inevitable component of business. IT developments lead to the increased speed of communication and the ability of people to read about, spread and react to global news quickly, forces everyone to become more aware of their global

responsibilities. Information can prove to be an asset or liability for any corporate entity so there is a need to manage, protect and govern it consciously. Presently IT governance can no longer be just the responsibility of IT department as the orientation of IT governance shifts from the differentiation of IT decision-making, towards the integration of IT decision-making in order to capitalise value from IT resources. To endorse globalised corporate structure and adhere to good corporate governance IT governance becomes the integral part of the responsibility of the top management. In this paper, an attempt has been made to discuss various aspects of IT governance.

## Legal World

P-70

- ▶ LW: 74:09:2014 When the documents pertain to the return of goods are alleged to have been forged, winding up petition cannot be admitted as the disputed issues have to be settled by civil/criminal courts.[Del]
- ▶ LW: 75:09:2014 A part time non-executive director cannot be held vicariously liable for the offence committed by the company.[Del]
- ▶ LW: 76:09:2014 CCI finds Maharashtra State Electricity discom to have indulged in abuse of dominance and orders investigation [CCI].
- ▶ LW: 77:09:2014 Only the court within whose jurisdiction the drawee bank is situated [the bank on which the cheque was drawn] has the territorial jurisdiction to try a cheque dishonour complaint. [SC]
- ▶ LW: 78:09:2014 The court in a place from where the demand notice was issued does not have territorial jurisdiction to try a case of dishonour of cheque.[SC]
- ▶ LW: 79:09:2014 Complaint is maintainable against dishonour of cheque due to stop payment instructions.[SC]
- ▶ LW: 80:09:2014 The appellant, therefore, cannot dispute that it has violated paragraph 19 of the DPCO 1995, inasmuch, as formulations in question have been sold by the appellant at a price higher than the specified price.[Del]
- ▶ LW: 81:09:2014 Blacklisting the contractor without giving him a notice thereto, is contrary to the principles of natural justice.[SC]
- ▶ LW: 82:09:2014 DTC's appeal against reinstatement of the bus conductor, who was dismissed for charging Rs.2 less from the passengers, dismissed by the Court.[Del]

## From the Government

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- ▶ Amendments in Schedule VII of the Companies Act, 2013
- ▶ The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014
- ▶ Company Law Settlement Scheme, 2014
- ▶ The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2014
- ▶ The Securities and Exchange Board of India {KYC (Know Your Client Registration Agency)} (Second Amendment) Regulations, 2014
- ▶ Core Settlement Guarantee Fund, Default Waterfall and Stress Test
- ▶ Formats for disclosure under Regulation 30 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Regulations)
- ▶ Expanding the Framework of Offer for Sale (OFS) of Shares through Stock Exchange Mechanism
- ▶ Monitoring of Compliance by Stock Exchanges
- ▶ Trade Marks (Amendment) Rules, 2014

## Other Highlights

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- ▶ Members Admitted / Restored
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- ▶ Company Secretaries Benevolent Fund
- ▶ Our Members





## Dear Professional Colleagues,

According to Srimad Bhagvad Gita, the education gives tēdvityamjanma, that is, second birth to a person. It brings up a different human being in the person. It does so through a teacher, who kindles a different outlook in him and transforms him to a different person. The teacher does it selflessly with a focus on greater social wellbeing. He kindles students' thoughts, inspires him to march ahead, and gives him the necessary confidence. The Greek writer and philosopher, Nikos Kazantzakis profoundly portrays virtues of ideal teachers: "Ideal teachers are those who use themselves as bridges over which they invite their students to cross, then having facilitated their crossing, joyfully collapse, encouraging them to create bridges on their own." Expressing his gratitude to his legendary teacher Aristotle, Alexander the Great, said: "I am indebted to my father for living, but to my teacher for living well". The philosopher, statesman and a former President of India, Dr. Sarvepalli Radhakrishnan has been a great teacher and has transformed many lives. His birth day is being celebrated as Teachers Day on 5th September that gives us an opportunity to express our indebtedness to our teachers. I pay homage and regards to my teachers and begin this communication.

The month of August, 2014 is studded with magnificent events, wonderful programmes as well as infrastructure development activities. The month began with the laying of the Foundation Stone of the ICSI-Faridabad Chapter building on 3rd August, 2014. Mr. Krishanpal Ji, Hon'ble Union Minister of State for Road Transport & Highways was the Chief Guest. I am happy to inform that we have received requisite approval for the land and for construction of the building at Faridabad. I appreciate and thank CS Sanjay Grover, Council Member and Chairman, Infrastructure Committee, Faridabad Chapter; and Chairman and other members of NIRC; and Chairman and Managing Committee Members of Faridabad Chapter for their dedicated efforts in acquisition of the land.

Yet another grand function was the inauguration of ICSI House at Bangalore on 30th August, 2014. Mr. D. V. Sadananda Gowda, Hon'ble Union Minister for Railways was the Chief Guest and Padma Vibhushan, Hon'ble Justice Mr. M. N. Venkatachaliah, Former Chief Justice of India was the Guest of Honour at this function. This new building is aesthetically designed and provides the best learning environment. In fact, it is the single biggest building of the

Institute in terms of built up area. This can be used for offering integrated course and PMQs. In view of this well-equipped premises and its potential, it has received an offer from HAL for establishing a HAL Chair Professor. I congratulate CS Gopalakrishna Hegde, Council Member and Chairman, Infrastructure Committee, Bangalore, and other members of the Infrastructure Committee for having worked relentlessly with indomitable spirit for putting up this iconic structure. I also place on record my appreciation for Chairperson and Managing Committee Members of Bangalore Chapter and Chairman and Members of SIRC for their help and support in the project.

With great fervour and enthusiasm, Institute celebrated Independence Day on 15th August 2014. I was blessed with the sacred duty of hoisting national flag at HQs and at NIRO on this day. I addressed the staff at HQs and members and students at NIRO. Some of the Regional Offices and Chapters across the country have celebrated this important day, which is day of dedication for the national development. I recall the historical speech of Pundit Jawaharlal Nehru on the night of August 15, 1947 at the constituent assembly, which signalled independent India's long march towards development: "The achievement we celebrate today is but a step, an opening of opportunity, to the greater triumphs and achievements that await us. Are we brave enough and wise enough to grasp this opportunity and accept the challenge of the future?"

I addressed the young members who have entered the portals of this great institution at an impressive gathering of Northern Convocation held on 16th August, 2014. Given the number of members, the Convocation was held in two sessions. Mr Arjun Ram Meghwal, Hon'ble Member of Parliament and Mr. P. R. Ramesh, Chairman, Deloitte, Touche, Tohamatsu India P Limited were the Guests in the first session and Mr. Justice M. N. Bhandari, Hon'ble Judge, High Court of Rajasthan was the Guest for the evening session. I deeply appreciate CS Atul Mittal, Council Member and Programme Director; and Chairman, and other members of NIRC; and employees of NIRO for their efforts for holding this convocation in an impeccable way.

Keeping the transitional phase of the profession and the enactment of the Companies Act, 2013, the 42nd National Convention of Company Secretaries held on August 21-23, 2014 at Science City, Kolkata, dwelled on the theme



# From the President

“CS-Change, Challenge, Opportunity”. I find it exciting to share with you that the theme of 15 previous national conventions related to the CS profession. The first National Convention held in 1971 scripted the role of Company Secretaries for the first time, which may be a sort of coincidence or otherwise, in that very year Lord Denning through his historical judgment in *Panorama Developments Ltd. Vs. Fidelis Furnishing Fabrics Ltd.*, identified to the world “whom we are”? From then on the profession of Company Secretaries made rapid strides and left its foot prints of excellence in corporate management.

The presence of around 1000 delegates from different parts of country and professionals from abroad as well as dignitaries and distinguished invitees made the convention a grand success. The inaugural session of the Convention was a curtain raiser to the technical sessions and the valedictory session provided a grand finale. Mr. Saugata Roy, Hon'ble Member of Parliament was the Chief Guest and Mr. C. R. Choudhary, Hon'ble Member of Parliament was the Guest of Honour and Mr. R. K. Dubey, Chairman and Managing Director, Canara Bank was the Key Note Speaker at the Opening Plenary. Dr. Udit Raj, Hon'ble Member of Parliament; Poojyashri Swami Suparnananda of R. K. Mission Institute of Culture; Mr. H. M. Bangur, Managing Director, Shree Cement Ltd.; and Justice Nadira Patherya, Justice of Kolkata High Court addressed the delegates at the Closing Plenary. Dr. M. Veerappa Moily, Hon'ble Former Union Minister and Member of Parliament addressed at the Special Session and observed that stagnant minds create immobile system which becomes roadblock to growth. Dr. Girish Ahuja, Tax Expert, in his delightful address, observed that the recent budget is the best budget on the Income Tax front. Mr. Ajay Agarwal, Director, Rapid Learning Systems Pvt. Ltd. shared his thoughts on enhancing personal and professional excellence.

The distinguished speakers at the convention included: Mr. P. K. Malhotra, Secretary, Ministry of Law & Justice; Mr. Prashant Saran, Whole Time Member, SEBI; Mr. R. K. Nair, Whole Time Member, IRDA; Mrs. Renu Amitabh, Additional Director, FIU-India; Mr. Ashishkumar Chauhan, MD & CEO, BSE Ltd.; Mr. Sandip Ghose, Director, NISM; Mr. G. V. Nageswara Rao, MD & CEO, NSDL; CS U K Chaudhary, Past President, ICSI and Senior Advocate; CS K. Sethuraman, Group Company Secretary and Chief Compliance Officer, Reliance Industries; Mr. Somasekhar Sundaresan, Partner, J. Sagar Associates, Advocates and Solicitors; Dr. P. Ishwara Bhat, Vice Chancellor, West Bengal National University of Juridical Sciences; Dr. Kunal Sarkar, Senior consultant cardiac surgeon, MEDICA Superspecialty Hospital, Kolkata; Dr. Rajdeep Manwani, Coordinator, Department of Commerce, Jain University, Bangalore; Mr. Ramesh Lakshman, Chartered Accountant; Mrs. Deena A. Mehta, MD, Asit C Mehta Investment Intermediates Ltd.; Mr. G R Bhatia, Partner, Luthra and Luthra Law Offices; CS Vinod Kothari, PCS, Kolkata; CS G. S. Gupta, Executive Director, Emami Biotech Ltd.; CS Pavan Kumar Vijay, MD, Corporate Professionals Capital Pvt. Ltd.; and CS Sanjay Kumar Gupta, Co-opted Member, EIRC. Discussions at the technical sessions, which were handled by some of the brilliant minds of the country, offered fantastic insights, highlighted different perspectives, enriched understanding, awakened social values as well as the need for us to consolidate the change on one hand and on the other to face the challenges with an equipoise mind set. The videos of the national convention are available on the Institute's web site. Those who could not attend the convention in person may like to see the videos.

At this convention, as many as 13 research publications were released, which I consider as a sort of milestone in the research activity of the Institute and I compliment Academics Directorate at HQ and CCGRT, Mumbai, who have played key role in bringing out these well researched publications on time. “Tell me and I forget. Teach me and I remember. Involve me and I learn” remarked Benjamin Franklin and true to this remarks, the training schemes of the Institute are structured, which are also evaluated on a continuous basis,

and revamped as and when necessary. At this convention we also released an updated version of “Training Guide”. The Convention Souvenir and the following publications of the Institute which were released at the Convention are available for sale:

1. Circulars, Notifications, Orders, Amendment Rules under Companies Act, 2013 – A Compendium
2. Legal & Professional Writing & Drafting in Plain Language
3. E-Voting (Ready Reckoner)
4. Companies Act, 2013 – A Ready Referencer (Revised Edition)
5. Board Committees – A Handbook
6. Independent Directors – A Handbook
7. Guidance Note on Annual Return
8. Corporate Social Responsibility – An Engine for Inclusive Growth
9. FAQs on Companies Act, 2013
10. Challenging Opportunities for Practicing Company Secretaries in Labour Laws
11. Compounding of Contraventions under FEMA
12. Settlement Orders under SEBI Act
13. Listing Agreement Referencer, and

I express my sincere thanks to CS Anil Murarka, Council Member and former President of ICSI and Chairman, Convention organizing sub-committee, who has given such a fantastic help and meticulous guidance in making this convention a memorable event. My thanks are also due to the members of Convention Organising Sub-Committee and Chairman and members of EIRC, who played significant role in making this convention a grand one. I also take this opportunity to record my thanks to officers of the Institute for their high degree of involvement in making this convention a grand success.

Closely following the Convention, the 13th ICSI National Awards for Excellence in Corporate Governance were presented on August 24, 2014 at Taj Bengal, Kolkata at the gracious hands of Mr. Arun Jaitley, Hon'ble Union Minister for Finance, Defence and Corporate Affairs. Our thanks are due to Chairman of Jury, Hon'ble Justice M. N. Venkatachaliah, Former Chief Justice of India and other eminent Jury members for their help in the selection process of the Award. Mr. Jaitley made a few pertinent observation on the occasion. He observed that in a society where mediocrity is the norm, one has to search for excellence and people have to strive to reach that position of excellence and those who have reached that position of the excellence, they become role models. He wondered that we could grow so well with very moderate levels of Governance. With a high level of Governance perhaps this Country could have reached much greater heights.

The National Awards for Excellence in Corporate Governance for two best governed companies, in alphabetical order, were presented to Rural Electrification Corporation Limited and The Tata Power Company Limited. The Company Secretaries of awardee companies, namely, CS J. S. Amitabh, Company Secretary, Rural Electrification Corporation Limited and CS H. M. Mistry, Company Secretary, The Tata Power Company Limited were honoured for their contribution in adhering to good corporate governance practices. Certificates of Recognition for Excellence in Corporate Governance were presented to other Top Five Companies, namely, CMC Limited, Hindustan Petroleum Corporation limited, ICICI Bank Limited, Oil and Natural Gas Corporation Limited and Persistent Systems Limited. The ICSI Lifetime Achievement Award was conferred on Mr. Shiv Nadar, Chairman and Chief Strategy Officer, HCL Technologies Limited for translating excellence in corporate governance into reality. Indeed, it was a grand evening! I am also





happy to inform that the nominations for the 14th ICSI National Awards for Excellence in Corporate Governance have already been invited from the corporates and an announcement to this effect has been published elsewhere in this issue.

Earlier on 4th August, 2014 at Mumbai, the Institute, jointly with BSE Ltd., organised a National Seminar on the theme "Capital Markets - The Growth Engine". Mr. U. K. Sinha, Chairman, SEBI was the Chief Guest and Mr. Ashishkumar Chauhan, MD & CEO, BSE Limited was the Guest of Honour. Underlining the importance of role of Company Secretaries, Mr. Sinha observed: "Governance should not be taken as a restriction on you; as something which you are being forced to do; this is something to your own benefit. Let me also remind you that while foreign investors are coming in, we have not been able to convince the trustees of provident funds in India even today that they should invest their money in the Indian stock markets. There is a directive from the Ministry of Finance; there is an investment guideline from the Ministry of Finance that 15% can be invested in the equity market. But even today the trustees are not yet convinced that everything is right in the Indian market and I would expect all of you, specially as members of the Company Secretary fraternity, to work hard towards the day when you will be able to convince the largest trustees of the pension funds in the country that they can invest in the Indian market and that things are well regulated and well governed in the Indian market. That should be one of our tasks." Other distinguished speakers included: Mr. Prashant Saran, Whole Time Member, SEBI; Mr. Rajiv Agarwal, Whole Time Member, SEBI; Mr. Gyan Bhusan, Executive Director, SEBI; Mr. Sandip Ghose, Director, NISM; Mr. Manoj Joshi, Joint Secretary, Ministry of Finance; Mr. Somsekhar Sundaresan, Partner, JSA; and Mr. Himanshu Kaji, Executive Director, Edelweiss.

I shared the observations of Mr. Sinha, in particular, the role to be played by the Company Secretaries in the governance sphere with our members at SIRC- PCS Conference, which was held on the theme PCS-Embracing Excellence on 9th August, 2014 at Hyderabad.

ICSI has long been in the forefront of spreading awareness about investor protection across the length and breadth of the country, in association with MCA, SEBI, Stock Exchanges and other agencies through its Regional Offices, Chapters and Resource Persons. As part of Ministry of Corporate Affairs' initiative to organize the big Investor Awareness Programmes within first 100 days of the new Government, the Institute organized two National Seminars on Investor Protection and Awareness at Patna on August 9, 2014 and at Pune on August 16, 2014. These Seminars were addressed by eminent speakers. Both Seminars were very well received by middle income group, house wives, businessmen, servicemen and other Individuals. I compliment the Patna Chapter and Pune Chapter for organising these seminars.

At the Pune Seminar, Mr. Nehal Vora, Chief Regulatory Officer of BSE Ltd. made two very important observations. The first is connected with the role of a Company Secretary in a company. Usually, he is the chief compliance officer and the key managerial personnel of a company. He is responsible for compliance with the listing agreement, including corporate governance. He is also responsible for all the services towards outside stakeholders, particularly shareholders. He receives all kinds of complaints from the shareholders and deals with them. It is necessary for him to understand the typical complaints of shareholders and the measures - preventive and remedial - to deal with them effectively. It is also necessary for him to deal with the regulatory authorities and guide and counsel the shareholders in respect of the complaints. Thus, he needs to have the capability and systems to deal with complaints effectively. He can do these better if there is a repository of the kinds of grievances, their genesis, alternative means of disposal, regulatory concerns, difficulties of investors, limitation of dealing with complaints, etc. We are considering to

develop a repository of complaints of shareholders and guidelines on how to deal with them based on examination of complaints lodged at four places, namely, CPGRAM of Government (MCA), SCORES of SEBI, Stock Exchanges and select companies.

The second related to social responsibility of a professional. A professional, including Company Secretary, has certain exclusive privileges. Only he can render certain services, which nobody else can. He is granted this privilege keeping in view his competence and his commitment to regulatory discipline and professional ethics. Nevertheless, the society hosts him. The Society provides a mechanism to enable him to acquire, develop and update competencies. It reserves a particular kind of activity for him and also provides him work opportunities. For example, the law requires that a company with a threshold of capital shall have a full time Company Secretary. It also requires that companies above a threshold shall have secretarial audit by a Company Secretary in practice. It also exercises regulatory oversight over him and his activities. Consequently the professional earns livelihood and enjoys social respectability. However, all of them are not equally successful. Those who are successful, let us say having an annual income above a threshold, whether in employment or practice, can give back in some form or other to the Society which gives him livelihood and respectability. In fact, many of them give back to the Society on their own way voluntarily out of their love or passion for a social cause. Many wish to give back but they do not find an opportunity to do so or they can afford a sizable amount. Probably, the Institute can structure a facility which enables its members who wish to give back voluntarily to do so. It may identify certain social causes, and encourages its members to contribute in cash or kind directly for the cause or through the Institute. For example, every member, who can afford to do so, may speak at six investor awareness programmes in a year. Or, he may teach a subject of the Company Secretary course (say 20 hours) to students in a small city. The Institute may pool small contributions from members and contribute the same for treatment of patients suffering from, say, cancer or for rehabilitation of victims of natural calamities. The Institute may form a "Professional Social Responsibility" Committee to guide development of a framework for this purpose. I would be happy to receive your feedback and guidance in this regard.

For ensuring robust governance architecture, the role of independent directors has become critical. The increased presence of independent directors in the board rooms has been hailed as harbingers to strike right balance in the interests of various stakeholders of a company. I am happy to inform you that on 11th August, 2014, the Independent Directors Repository Portal, a joint initiative of three statutory professional institutes, namely, ICSI, ICAI and ICAI was made operational under the active encouragement of Ministry of Corporate Affairs. Myself and CMA (Dr.) A. S. Durga Prasad, President of the Institute of Cost Accountants of India operationalised the portal from Chennai while CA K, Raghu, President, The Institute of Chartered Accountants of India did so from Bangalore. I urge upon all of you, who are willing to be appointed as Independent Directors, to register on <https://www.independentdirector.in>. In pursuit of this objective, ICSI-CCGRT convened Director's Round Table on 19th August, 2014 where I had participated. Mr. Ashishkumar Chauhan, MD & CEO, BSE Ltd. was the Guest of Honour. At the meet there were three panel discussion sessions and in between there were individual technical sessions. Topics discussed were quite absorbing and interesting. Dr. Abhijit Phadnis, Director, Giltedge Financial Counsel, Dr. A. K. Sengupta, President, HEF, Mr. N. L. Bhatia, President, IEWA, Mr. Ashok Chhabra, former Executive Director, Procter & Gamble India Limited, Ms. Neelam Bhardwaj, former General Manager, SEBI, Ms. Grace Koshie, Director, Federal Bank and Mr. Sandip Ghose, Director, NISM were the panelists. Individual technical sessions were handled by Ms. Radhika C. Pereira, Advocates and Solicitors, Dudhat, Pereira & Associates, Mr. Ramesh Lakshman, Ramesh Lakshman & Co., Chartered Accountants and Mr. P. R. Barpande, Ex-Partner, Deloitte Haskins and Sells.



# From the President

The delegates at this meet were mix of directors and professionals, who are aspiring to be independent directors.

Over the years the Institute underscores the need for capacity building. It has gained further impetus with the issue of new guidelines for setting up of study circles by our members in corporates. I inaugurated the Murugappa Group Study Circle of SIRC of the ICSI on 26th August 2014 at Chennai.

Once in every four years, the governing Council of the Institute and its Regional Councils are being constituted afresh, through elections. This is a democratic process which enables members of the Institute to participate and exercise their franchise. The four year duration of the 11th Council and Regional Councils shall expire on 18th January, 2015. Elections for the constitution of new Council and Regional Councils would be held on 12th December, 2014 at all places. In respect of Delhi and Mumbai, the elections will be held on 12th and 13th December, 2014. Detailed Notification for election to the Council and Regional Councils is being published in Gazette of India, Chartered Secretary and would also be posted on the website of the Institute specifying the dates of elections; total number of members to be elected for the Council and Regional Councils from each regional constituency; fee and security deposits payable by the contesting candidates; forms for nomination for election; and the application form for seeking permission to vote by post and other relevant details.

In order to maintain healthy and peaceful atmosphere conducive to the conduct of smooth elections and to provide level playing field for all the contesting candidates, the Council of the Institute has approved the Election Code of Conduct, which shall come into force from the date of issue of Notification for Election and shall remain in force till the entire processes of elections are completed and results declared. Election Code of Conduct applies to the candidates and their authorised representatives appointed under the election rules.

Process of elections gives an opportunity for the members to elect their representatives to conduct the affairs of the Institute in accordance with relevant Act, rules and regulations. Translating Institute's vision and mission into reality largely depends upon the professional acumen, integrity, commitment, sincerity and dedication of the persons elected to the Council, Regional Councils and Chapter Management Committees. I, therefore, appeal all of you to elect those candidates, who could provide desired direction to the profession and take the Institute's to greater heights. Last but not the least, please make sure to exercise your franchise.

As professionals we gained our identity and place in our society and we are proud of the acronym 'CS' as prefixed to our names. The profession has traversed more than 45 years and witnessed quirk mix of ecstatic as well as frustrating moments. Yet the profession marched ahead with its measured steps and held its head high. The Institute was formally constituted as a section 25 company on one fine Friday morning on 4th October 1968. It has been decided to celebrate 4th October as CS DAY, as the day of professional dedication for the well-being of the society, throughout India every year, beginning with this year. Through this column I request each one of you to participate in CS DAY celebrations.

I would like to inform that Ministry of Youth Affairs & Sports has formulated the National Youth Policy, 2014. The Policy expresses both the vision of the country for its youth and also the steps through which the vision is to be realized by the Government of India and the concerned Ministries. As professionals, we have great responsibility to express our views/suggestions/comments on the aforesaid policy and the details with regard to the same are appearing in the website of the Institute.

On behalf of the Council of the Institute and on my own personal behalf, I have pleasure in recording our sincere thanks to Ms. Renuka Kumar, formerly Joint Secretary, MCA and to Mr. P. Sesh Kumar, Director General [Commercial-II], Office of the Comptroller and Auditor General of India, who were Government Nominees in the Council for their immense contribution and wise counsel. I take this opportunity to welcome Mr. Amardeep Singh Bhatia, Joint Secretary, MCA and Mr. P. K. Misra, Director General [Commercial-II] Office of the Comptroller and Auditor General of India, who have been nominated as Government Nominees to the Council. I look forward to working with them.

Friends, beginning with the September and October, demands of the professional work will be quite heavy, especially certification of annual returns. One of the objectives of the Companies Act, 2013 is governance through self-regulation and the professionals like us have to play a significant role in ensuring the process of self-regulation in the desired manner. Also, having been recognised as KMP under the Act, it becomes a sacrosanct duty for us to uphold cherished values by adhering to prescribed standards and practices and exercising due care and diligence. During frequent interactions with MCA, it has been understood that quite a few members have not exercised full care and diligence in validation and attestation work carried out by them. Let's commit ourselves in all full measure for total compliances and in the process, distinguish ourselves.

You would recall that Rule 2 (e) of the U.P. Value Added Tax Rules, 2008 was amended on 27th June, 2014. This amended the expression 'accountant' to include 'company secretaries'. This enabled company secretaries to provide representational service before authorities under Rule 73. Soon thereafter, there was a challenge to the validity of Rule 73 of the U.P. Value Added Tax Rules, 2008 on the ground that they are ultra vires the provisions of the U.P. Value Added Tax Act, 2008 and the Advocates Act, 1961 insofar as it permits persons who are not Advocates 'to appear and represent' before the authorities established under the Act of 2008. The Lucknow Bench of the Hon'ble High Court of Judicature at Allahabad issued an interim order on 6th August, 2014 with a direction that no person, who is not a registered advocate, shall be permitted to appear before the Authority under the VAT Act. The Institute impleaded itself in the matter. I am pleased to inform that the Hon'ble High Court has vacated the interim order on 20th August, 2014. Now company secretaries are eligible to appear before the authorities under the UP VAT Act.

The members in practice were allowed to carry out non-attestation services through Limited Liability Partnership. There had been repeated requests to permit them to render attestation services also. I am pleased to inform that the Council in its recently held meeting at Kolkata allowed Limited Liability Partnerships having all Practising Company Secretaries as its partners to carry out Annual Return Certification and Secretarial Audit with effect from 1st September, 2014.

Underlining again that the ultimate objective of an ideal education is to build self of a person. Mastery of a discipline, of course, gives a professional a distinct advantage, but the intellect and reason play a major part and makes a professional as an integrated personality and I end this communication with a quote from James Allen "Man's mind may be likened to a garden, which may be intelligently cultivated or allowed to run wild."

Yours sincerely,

(CS R. SRIDHARAN)  
president@icsi.edu

Chennai  
31st August, 2014







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# E-commerce & Competition In Markets: New Challenge before the Competition Commission of India

- With the emergence of e-commerce and e-tailers in recent years, certain competition issues like predatory pricing are certain to arise sooner or later to be addressed by the Competition Commission. This article focusses attention on the likely issues.

## INTRODUCTION

E-commerce has been in focus in the recent past for a myriad of legal issues ranging from the complexities surrounding e-contracts to the delicate issues of privacy. Competition law also has had its share of involvement in the growth of e-commerce. The competition concerns, *albeit* obvious, are far from simple. While the sector has obviously led to increased competition in the erstwhile brick and mortar market, this 'desirable' competition has to struggle with acceptance. The unprecedented growth in this sector in India, though not completely surprising has led to mixed reactions. While the promoters and owners of e-commerce enterprises are basking in the glory of their well deserved success, the owners of brick and mortar stores, both distributors and retailers are pretty much up in arms against their e-commerce counterparts, often addressed by the popular media as e-tailers.

India's e-commerce sector is expected to have 7 per cent share of country's retail market amounting to USD 60 billion by 2023.



Recent media reports reflect the exceptional growth in this sector. The size of the industry was USD 1.5 billion in 2012 (exclusive of tickets) and grew to USD 2.5 to 2.8 billion in 2013. The number of online shoppers has more than doubled - 20 million shoppers in 2013 from 8 million in 2012.<sup>1</sup>

\*The views are personal. He is a former Additional Director General, Competition Commission of India/Monopolies and Restrictive Trade Practice Commission, Government of India. Member Expert Committee set up by the Government of India to suggest National Competition Policy and Amendments to Competition Act, 2002.

<sup>1</sup> E-commerce in India to touch \$60 billion by 2023, PTI, 28 February, 2014. Available at: [http://articles.economicstimes.indiatimes.com/2014-02-28/news/47740352\\_1\\_e-commerce-access-technopak](http://articles.economicstimes.indiatimes.com/2014-02-28/news/47740352_1_e-commerce-access-technopak)



# Article

E-COMMERCE & COMPETITION IN MARKETS: NEW CHALLENGE BEFORE THE COMPETITION COMMISSION OF INDIA

➤ The online websites, as per media reports are selling products at huge discounts and there are even suggestions that their pricing strategy is predatory. Predatory pricing, in competition law implies sale of the product at a price which is below the cost at which it is produced/obtained. Often the aim of such pricing is to eliminate competition by attracting customers through lower prices and when all competition has been successfully eliminated to acquire a near monopoly position, recoup the losses suffered as a result of low pricing by charging uninhibited high prices.

E-commerce in itself can be divided into two segments: B2B e-commerce and B2C e-commerce.

- B2B implies business-to-business e-commerce and is used to describe commerce transactions between businesses, such as between a manufacturer and a wholesaler, or between a wholesaler and a retailer, or between a supplier and a manufacturer. A platform i.e. B2B exchange, provides a platform for these business to meet and culminate their transactions.
- B2C e-commerce on the other hand implies business to consumer e-commerce and is used to denote online sale of goods and services directly to consumers.

Interestingly, DIPP's in its discussion paper on permitting FDI in B2C e-commerce, reflects that global B2B transactions comprise 90% of all e-commerce,<sup>2</sup> and B2C share is only 10% of the total e-commerce. However, both B2C and B2B are susceptible to competition issues and this has been recognized worldwide. While obviously enough growth of e-commerce is good news for a law which seeks to promote and establish competition, in as much as it increases competition; it is also posing complicated challenges to ensure that distortions in the market which are either created by e-commerce or effect e-commerce are addressed through the Competition Act, 2002 ('Act').

## THE LAW IN THE EUROPEAN UNION AND



## UNITED STATES

Interestingly, no case dealing with B2B e-commerce and collusion among the participants has come up before the European Commission. However, United States provides an excellent illustration of possibilities of collusion in B2B e-commerce. In the *United States Airline Tariff Publishing* case where possible price changes were revealed to rivals but not to consumers and the price notices were accompanied with "tags" hinting at the conditions under which the changes might be rescinded. Moreover, e-commerce could make it easier to detect cheating on anti-competitive agreements and to target retaliatory price changes thus lowering the costs of punishing cheaters.<sup>3</sup> The case reveals that highly sophisticated forms of communication may be adopted by the enterprises to enter into agreements to form a cartel. These are likely to pose a challenge to the competition authorities and they would need to develop capabilities to monitor sophisticated tools to deal with the ease of communication and detection that electronic communication creates.

The European Union has dealt with the issues of sales on and through the internet in the European Commission's Guidelines on Vertical Restraints.<sup>4</sup> ('Guidelines') In the Guidelines the Commission has clarified that it will not tolerate any restrictions imposed by manufacturers on distributors from using the internet to sell their products. The Guidelines in fact unambiguously highlight the importance of internet. The Guidelines at para 52 to 54 therein states,

"The internet is a powerful tool to reach more and different customers than will be reached when only more traditional sales methods are used and this is why certain restrictions on the use of the internet are dealt with as (re)sales restrictions. In principle, every distributor must be allowed to use the internet to sell products. A restriction on the use of the internet by distributors party to the

<sup>2</sup> Department of Industrial Promotion and Planning, Discussion paper on E-commerce. Available at: [http://dipp.nic.in/English/Discuss\\_paper/Discussion\\_paper\\_ecommerce\\_07012014.pdf](http://dipp.nic.in/English/Discuss_paper/Discussion_paper_ecommerce_07012014.pdf)

<sup>3</sup> Supra Note 5 at page 11

<sup>4</sup> Commission notice, Guidelines on Vertical Restraints, 2010 at para 52





agreement is compatible with the Block Exemption Regulation to the extent that promotion on the internet or use of the internet would lead to active selling into, for instance, other distributors' exclusive territories or customer groups....Notwithstanding what has been said before, under the block exemption the supplier may require quality standards for the use of the internet site to resell his goods, just as the supplier may require quality standards for a shop or for selling by catalogue or for advertising and promotion in general. This may be relevant in particular for selective distribution.”

Further at para 56, the Guidelines categorically prohibit any form of discrimination between online sales and brick and mortar stores. It states, “Therefore, the Commission regards as a hardcore restriction any obligations which dissuade appointed dealers from using the internet to reach more and different customers by imposing criteria for online sales which are not overall equivalent to the criteria imposed for the sales from the brick and mortar shop. This does not mean that the criteria imposed for online sales must be identical to those imposed for off-line sales, but rather that they should pursue the same objectives and achieve comparable results and that the difference between the criteria must be justified by the different nature of these two distribution modes.”

Hence any limitation on the proportion of online sales compared to total sales or termination of an online transaction if the credit card data reveals that they are from a territory in which a distributor is not authorized to sell, are not permitted. However, the Guidelines do emphasize that any distinction imposed on online sales which can be justified on the basis of the different nature of the two modes of distribution i.e., online retail and brick and mortar retail are permissible.

In light of the Guidelines, the Courts in the EU have found any blanket restriction on online selling as anti competitive. In *Pierre Fabre Dermo-Cosmetique*<sup>5</sup> the European Courts of Justice found that a general and absolute prohibition on online selling imposed on members of a selective distribution system would be anti competitive.

In *PO/Yamaha*<sup>6</sup> the Commission found that an obligation on the distributors to consult Yamaha before exporting via the Internet, to be restrictive and there was no reasonable justification for the same.

## HOW WILL COMPETITION ISSUES BE DEALT IN INDIA?

While it is obvious that there are concerns in the e-commerce sector, it remains to be seen how the Commission will deal with these issues:

- **Collusion in B2B exchanges**

Collusion in B2B exchanges will be analysed under Section 3(3) of the Act, as a horizontal agreement between enterprises that are same level in the production/supply chain. Such agreements

are presumed to have Appreciable Adverse Effect on Competition (AAEC) and are thereby per se void. The Commission has indicated in its orders that as long as the existence of the agreement is proved, no further proof of any harmful effect on competition will be required. It is likely that the Commission will adopt the same approach in cases of collusion in the B2B exchanges and as long as some form of agreement can be established, the conduct will be found to be anti competitive. It is relevant to point out that ‘agreement’ is interpreted widely in India not just formal agreements but also understandings or an action in concert. In view of the wide definition, collusion amongst in B2B marketplace is likely to be caught within Section 3(3) of the Act. The penalty for such cartelization may be upto 3 times of its profit for each year of continuance of such agreement or ten percent of its turnover for each year of the continuance of such agreement, whichever is higher. It will be noted that the CCI in the last 5 years of its enforcement regime, has invoked the penalty provision wherever it has found that the economic actors has acted in cartelized manner.

- **Issues of predatory or excessively low pricing in B2C**

The most controversial issue that has emerged in this sector relates to the alleged practice of low prices being charged by e-tailers, alongwith certain suggestions of the prices being predatory. It is relevant to note that predatory pricing is only a concern if the enterprise charging such prices is in a dominant position in the relevant market. Hence, any allegations of retailers about the prices being charged by their e-counterparts, being predatory will be actionable under the Act only if the e-tailers are found to be dominant in the market.

If and when the concept of collective dominance is incorporated within the scope of Section 4 of the Act, retailers might be able to argue that e-tailers are collectively dominant.<sup>7</sup> With the still limited reach of the internet, the mere insignificance of the number and volume of trade of e-tailers compared with the retailers, to what extent the Commission will adjudge e-tailers to be dominant or even collectively dominant, is an issue that probably only the Commission can decide. However, if dominance is not established there is little likelihood of the practice of the alleged predatory pricing or predatory discounts being caught within the Act.

- **Issue of discriminatory treatment in B2C e.g., denial of warranty**

An issue that has come to light in the recent past is the alleged discriminatory treatment towards products purchased through e-tailers. There is some hue and cry over advises being issued by certain companies to consumers requesting them to be cautious while purchasing products from e-tailers and check the warranty. Mere issuance of such advises to the customers can't be illegal under the Act even though they may adversely affect the business of the e-tailers. However, any form of discriminatory treatment towards e-tailers including, but limited to denial of warranty can

<sup>5</sup> Case C-439/09; [2011] ECR I-000.

<sup>6</sup> Commission decision of 16 July 2003.

<sup>7</sup> Competition (Amendment) Bill, 2012 provides that Section 4 shall be amended to state that, “No enterprise or group, jointly or singly shall abuse its dominant position.”



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be covered under Section 4(2)(a) of the Act which prohibits discriminatory treatment in purchase of goods as well as Section 4(2)(c) of the Act which prohibits denial of market access in any manner. It is obvious that discriminatory treatment, if in the nature of denial of warranty would effectively push the e-tailers out of the market, especially in electronic goods segment. However, as discussed before, such recourse is available only when the manufacturer imposing such restrictions is found to be dominant in the market. The issue may be also be examined as a vertical restraint under Section 3(4) of the Act and reference in this regard may be made by the Commission to the Guidelines

If manufacturers collectively decided to impose such restrictions, it would be a worthwhile option for the e-tailers to file an information suggesting collusion between the manufacturers which results in limiting supply and thereby contravenes Section 3(3) of the Act. Success before the Commission would depend on whether an agreement is found to exist. Given the wide connotation of agreements as indicated by the Commission in *Neeraj Malhotra v. Deutsche Post Bank Home Finance Ltd. & Ors.*<sup>8</sup> it is likely an action by all manufacturers discriminatory in a similar manner against the e-tailers would be caught within the ambit of Section 3(3) of the Act.

The allegations that however, seem to emerge at this stage, reflect the scenario where the retailers are inducing the manufacturers to impose such discriminatory terms on the e-tailers. There is no precedent as of now in the Indian law which deals with such an arrangement. However, in view of the order in *Mr. RamakantKini v. Dr. L.H. Hiranandani Hospital, Powai, Mumbai*,<sup>9</sup> it is possible that the Commission might treat Section 3(1) as a repository for all such unconventional agreements and find them void if they cause an appreciable adverse effect on competition.

Interestingly, in a recent order in *Mr. Ashish Ahuja v. Snapdeal.com through Mr. Kunal Bahl, CEO & Ors.*<sup>10</sup> which is the first order to be passed by the Commission in relation to e-commerce, it appears that the Commission may uphold certain reasonable measures that may be taken by the manufacturer to, “protect the sanctity of its distribution channel” may be permitted. The Commission further observes that, “in a quality-driven market, brand image and goodwill are important concerns and it appears a prudent business policy that sale of products emanating from unknown/unverified/unauthorised sources are not encouraged/allowed.” Hence not all forms of restrictions on e-commerce will fall foul of the Act. This is in line with the observations of the European Commission in both the Guidelines as well as in *Pierre Fabre Dermo-Cosmetique*. As expected since there was some alleged arrangement between the online portal, Snapdeal and the manufacturer, SanDisk, the Commission viewed the issue from the lens of Section 3

of the Act though the order does not make it clear whether the agreement was assessed under Section 3(3) or Section 3(4) of the Act. The Commission also reviewed it under Section 4 of the Act but found that both the opposite parties were not dominant in the relevant market. Though, the order has left many issues still unaddressed, it did provide an understanding of what the relevant market is likely to emerge as in as much as the Commission unequivocally stated that,

“both offline and online markets differ in terms of discounts and shopping experience and buyers weigh the options available in both markets and decides accordingly. If the price in the online market increases significantly, then the consumer is likely to shift towards the offline market and vice versa. Therefore, the Commission is of the view that these two markets are different channels of distribution of the same product and are not two different relevant markets.”

It is hence obvious that the Commission will treat the offline and online market as merely different channels which would imply that finding an e-tailer dominant in the relevant market will not be easy.

- **Issue of prohibition of sales on the internet.**

A major issue that bothers e-tailers is the danger of an absolute prohibition on sales on the internet. This however would be legally the easiest issue to deal with under the Act. An absolute prohibition on sale through the internet is likely to be achieved in two ways: (a) imposition of a restraint in the Dealership Agreement, prohibiting to sell through online channels directly or indirectly, and (b) refusing the deal with distributors who sell through the online channels. The former case would fall within the domain of Section 3(4) of the Act and be in contravention of the Act where it causes an appreciable adverse effect on competition. The latter will most likely present an issue if the manufacturer is dominant, as an action of refusing to deal with a distributor without reasonable justification would amount to an abuse under section 4(2)(c) of the Act by denying access to that distributor to the market. Finding of dominance will be essential to determination of abuse.

## TAKEAWAY

The present Government is drawing road map for implementing ‘Digital India Program’<sup>11</sup> which seeks to transform India into a digitally empowered knowledge economy and seeks to integrate technology in every day life of the citizens for better service delivery. This certainly is going to enhance e-commerce geometrically. While all this is laudable but it will also bring along with it complex competition concerns *qua* traditional channel of doing business. Competition Commission of India will have to address these intricate issues sooner or later. However, with the ever increasing share of e-commerce, the issues described above merely reflect the tip of the iceberg the Commission will soon face.

CS

8 C-06/2009 order dated 11.05.2011  
9 C-39/2011, order dated 05.02.2014  
10 C-17/2014, order dated 19.05.2014

11 Business Line of 25<sup>th</sup> August, 2014, a news item under the caption ‘ Digital India: Ravi Shankar Prasad to meet State IT Ministers tomorrow’.



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# Recent Tax Controversy - Expense Disallowance for Default in TDS Compliance on Payments Made During the Year

- Section 40(a)(ia) of the Income-tax Act, 1961 acts as a disincentive provision for those who commit default in complying with the TDS provisions contained in the Act. Non-deduction of tax or non-deposit of the TDS coming within the purview of Section 40(a)(ia) leads to disallowance of the entire expenditure [disallowance now reduced to 30% of the expenditure by Finance (No.2 ) Act, 2014 w.e.f. assessment year 2015-16] in the hands of the payer. This article gives an insight into the provisions of Section 40(a)(ia) and the recent controversy relating thereto.

## BACKGROUND

**S**ection 40(a)(ia) was introduced in the Income-tax Act by the Finance Act, 2004 w.e.f. 1.4.2005 with a view to augment the revenue through the mechanism of tax deduction at source. This earnest provision was brought in to the statute to disallow the claim of even genuine and admissible expenses of the taxpayer under the head 'Income from Business and Profession' in case the taxpayer does not comply with the TDS (withholding tax) provisions on such expenses. The default in withholding tax results in disallowance of the expenditure [disallowance now restricted to 30% of the expenditure by Finance (No.2 ) Act, 2014 w.e.f. Assessment Year 2015-16] on which such tax was liable to be withheld. Section 40(a)(ia) is applicable on domestic payments and contains provisions similar to Section 40(a)(i) which





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provides for similar disallowance for non deduction /or deduction but subsequent non deposit of withholding tax on taxable payments made to non-residents. Relevant portion of Section 40(a)(ia) as amended by Finance (No.2 ) Act, 2014 is reproduced below for ready reference:

**“40. Notwithstanding anything to the contrary in sections 30 to [38], the following amounts shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession”,—**

## (A) IN THE CASE OF ANY ASSESSEE

(ia) thirty per cent. of any sum payable to a resident on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, [has not been paid on or before the due date specified in sub-section (1) of section 139 :]

*Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent. of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid :*

*Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.”*

### A bare perusal of the above text shows that

- Section 40 starts with a ‘non-obstante’ clause w.r.t. the provisions contained in Section 30 to Section 38 of the Act meaning thereby that if anything contrary is provided under Section 30 to Section 38 of the Act, provisions of Section 40 will prevail.
- Where in respect of such expenses as covered by Section 40(a) (ia),
  - tax has not been deducted or
  - after deduction has not been paid on or before the due date of return filing mentioned under section 139(1) of the Act
  - such sum (as earlier disallowed) shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

The above can be explained by way of an illustration (assuming that return filing due date for the financial year 2013-14 for the purpose of this illustration is 30<sup>th</sup> September, 2014):

Sr. No.	Nature of expense	Date of payment	Date of credit	Date of deduction of tax	Date of deposit of tax	Financial year in which expense deduction is allowable
1.	Rent	Not yet paid	31.3.2014	31.3.2014	15.9.2014	2013-14
2.	Rent	Not yet paid	31.3.2014	31.7.2014	15.9.2014	2014-15
3.	Payment to contractor	1.1.2014	-	31.3.2014	30.9.2014	2013-14
4.	Audit fees	25.3.2014	-	25.3.2014	30.10.2014	2014-15

Thus, where no deduction of tax is made or/and after deduction such TDS is not deposited with the Government treasury, corresponding expense claim [disallowance now restricted to 30% of the expenditure by Finance (No.2 ) Act, 2014 w.e.f. Assessment Year 2015-16] will not be allowed in the hands of the payer.

The above provision had been eased out by way of an amendment brought by the Finance Act, 2013 whereby in case the payer furnishes a certificate from a Chartered Accountant in the prescribed form to the effect that the resident payee has furnished his return of income under section 139 in which corresponding income has been declared and offered to tax, no corresponding disallowance would be made in his hands.

## ISSUE IN HAND

In the recent past, a tax controversy has arisen as to whether Section 40(a)(ia) would cover only the expenses which are payable as on 31<sup>st</sup> March of a previous year or the expenses which have been paid at any time during the year are also covered within the ambit of Section 40(a)(ia). Many taxpayers take a stand that despite default in complying with the TDS provisions, no disallowance is warranted under Section 40(a)(ia) where payment has been made during the year and no amount is outstanding at the year end. Let’s take another illustration to understand this further. Suppose, rent payment for Rs. 500,000 has been made without deduction of tax in the financial year 2013-14 and the tax has neither been withheld nor paid till September 30, 2014, can the taxpayer claim the corresponding expense in the financial year 2013-14.

## DIVIDED JUDICIAL DICTUM

*Merilyn Shipping and Transport Ltd. vs. ACIT* [2012] 136 ITD 23 (SB) at Visakhapatnam:

The taxpayer incurred brokerage and commission expenses without deducting tax at source, out of which, only Rs. 1.78 lakhs was payable and the rest was paid. The assessing officer disallowed the entire expenditure under section 40(a)(ia). Before the CIT (A), it was argued that disallowance under section 40(a)(ia) could be made





only of the amount “payable” and not of that which had already been “paid”. The argument was rejected by the CIT (A). On appeal to the Tribunal, the matter was referred to the Special Bench of Income tax Appellate Tribunal (‘ITAT’)

### Ruling of the Special Bench (Majority view)

- When section 40(a)(ia) was proposed to be inserted by the Finance Bill 2004, it was intended to be applied to any “amount credited or paid”. However, when enacted by the Finance Act 2004, it applied only to “amount payable”. The words “credited/ paid” and “payable” have different connotations and the latter refers to an amount which is unpaid.
- The change in language between the Bill and the Act is conscious and with a purpose. **The legislative intent is clear that only the outstanding amount or the provision for expense (and not the amount already paid) is liable for disallowance if tax is not deducted.**
- Also, section 40(a)(ia) creates a legal fiction by virtue of which even genuine and admissible expenses can be disallowed for want of TDS. A legal fiction has to be limited to the area for which it is created. Consequently, section 40(a)(ia) can apply only to expenditure which is “payable” as of 31st March and does not apply to expenditure which has been already paid during the year.

Accordingly, the matter was decided in favour of the taxpayer.

### Observations of dissenting Member Sh. S. V. Mehrotra, AM:

- The object of section 40(a)(ia) is to ensure that the TDS provisions are scrupulously implemented without any default. If a narrow interpretation is assigned to the term ‘payable’, the object with which section 40(a)(ia) was inserted would be frustrated.
- The Legislature could have never intended that only amounts payable at the end of the year should be disallowed but not the amounts paid during the year. The reason the words “credited” or “paid” were dropped was because they came within the ambit of the term “payable” and would have been superfluous.
- As section 40(a) is applicable irrespective of the method of accounting followed by an assessee, the term ‘payable’ covered the entire accrued liability. Also section 40(a)(ia) is to be interpreted harmoniously with the TDS provisions as its operation depends solely on the provisions contained under Chapter XVII-B and it provides for one of the consequences of non-deduction of tax.
- In the backdrop of the TDS provisions, the term ‘payable’ means the amount ‘payable’ “on which tax was deductible at source under Chapter XVII-B”. Consequently, section 40(a)(ia) applies to all expenditure which is actually paid and which is payable as

at the end of the year.

## DECISIONS WHICH FOLLOWED THE VIEW OF SPECIAL BENCH

The majority view of the ITAT was successfully taken as a support by the taxpayer in many other cases before appellate judicial forums. The proposition laid down by the Special Bench was duly followed by Tribunals in other cases, some of which are as under:

- *Amartex Industries Ltd. v. Addl. CIT [2012] 155 TTJ 43 (Chandigarh, ITAT)*
- *DCIT v. Macro Marvel Projects Ltd. [2012] 154 TTJ 242 (Chennai, ITAT)*
- *ITO v. MGO Transport [2013] 23 ITR (Trib.) 391 (Calcutta, ITAT)*
- *ITO v. Vinod Datta [2012] 22 ITR (Trib.) 243 (Mumbai, ITAT)*
- *Ratan J. Batliboi v. ACIT [2012] 152 TTJ 164 (Mumbai, ITAT)*
- *Gurdas Mann and Manjit Mann v. DCIT [2013] 57 SOT 55 (Chandigarh, ITAT)*
- *Income-tax Officer v. M/s.Theekathir Press ITA No.2076(Mds)/2012 (Chennai, ITAT)*

In *CIT v. M/s Vector Shipping Services (P) Ltd.*[2013] 357 ITR 642 the Allahabad High Court also referred to the decision of the Special Bench of ITAT. It is important to note here that in *M/s Vector case (supra)* the facts were that the disallowance under Section 40(a)(ia) was made by the assessing officer in the hands of *Vector Shipping Services (P) Ltd.* for not deducting tax on payment made to *M/s Mercator Lines Ltd.* towards reimbursement of salary paid by it on behalf of *Vector Shipping Services (P) Ltd.* While agreeing with the view of the Special bench decision in the case of *MeriyIn Shipping and Transports (supra)*, the Court placed heavy reliance on the fact that ultimately the tax has been deducted on the payment on salary by *Mercator Lines Ltd.*, hence no loss to the revenue, therefore, no disallowance is warranted in the hands of *Vector Shipping Services (P) Ltd.*

### Courts which did not agree with the view of Special Bench

#### 1. *CIT v. Sikandarkhan N. Tunvar* [2013] 357 ITR 312 (Guj)

The terms “payable” and “paid” are not synonymous. Word “paid” has been defined in Section 43(2) of the Act to mean actually paid or incurred according to the method of accounting, upon the basis of which profits and gains are computed under the head “Profits and Gains of Business or Profession”. Such definition is applicable for the purpose of Sections 28 to 41 unless the context otherwise requires. In contrast, the term “payable” has not been defined. The word “payable” has been described in Webster’s Third New International Unabridged Dictionary as requiring to be paid: capable of being paid: specifying payment to a particular payee at a specified time or occasion or any specified manner. In the context of section 40(a)(ia), the word “payable” would not



➤ The key words used in Section 40(a) (ia), are “on which tax is deductible at source under Chapter XVII –B”. If the question is “which expenses are sought to be disallowed”, the answer is bound to be “those expenses on which tax is deductible at source under Chapter XVII –B. Once this is realized nothing turns on the basis of the fact that the legislature used the word ‘payable’ and not ‘paid or credited’. Unless any amount is payable, it can neither be paid nor credited. If an amount has neither been paid nor credited, there can be no occasion for claiming any deduction.

include "paid".

The term used is interest, commission, brokerage etc. is payable to a resident or amounts payable to a contractor or sub-contractor for carrying out any work. The language used is not that such amount must continue to remain payable till the end of the accounting year. Any such interpretation would require reading words which the legislature has not used. No such interpretation would even otherwise be justified because the legislature could not have intended to bring about any such distinction nor the language used in the section brings about any such meaning. If the interpretation as advanced by the assessee is accepted, it would lead to a situation where the assessee who though was required to deduct the tax at source but no such deduction was made or more flagrantly deduction though made the deducted amount was not paid to the Government, would escape the consequence only because the amount was already paid over before the end of the year in contrast to another assessee who would otherwise be in similar situation but in whose case the amount remained payable till the end of the year.

While interpreting a statutory provision the Courts have often applied Hyden's rule or the mischief rule and ascertained what was the position before the amendment, what the amendment sought to remedy and what was the effect of the changes.

Debates in the Parliament are ordinarily not considered as the aids for interpretation of the ultimate provision which may be brought into the statute. The debates at best indicate the opinion of the individual members and are ordinarily not relied upon for interpreting the provisions, particularly when the

provisions are plain. The reason why a certain language was used in a Bill and why the provision ultimately enacted carried a different expression cannot be gathered from mere comparison of the two sets of provisions. There may be variety of reasons why the ultimate provision may vary from the original draft. In the Parliamentary system, two Houses separately debate the legislations under consideration. It would all the more be unsafe to refer to or rely upon the drafts, amendments, debates etc for interpretation of a statutory provision when the language used is not capable of several meanings.

The Tribunal in case of *M/s. Marilyn Shipping and Transports (supra)* fell in a serious error in merely comparing the language used in the draft bill and final enactment to assign a particular meaning to the statutory provision.

Section 40(a) (ia) would cover not only to the amounts which are payable as on 31<sup>st</sup> March of a particular year but also which are payable at any time during the year of course, as long as the other requirements of the said provision exist

## 2. ***CIT v. Crescent Export Syndicate and Park International* [2013] 262 CTR 525 (Cal)**

The provisions of section 40(a)(ia) of the Income Tax Act, 1961, are applicable not only to the amount which is shown as payable on the date of balance-sheet, but it is applicable to such expenditure, which become payable at any time during the relevant previous year and was actually paid within the previous year. In the result the question is decided in favour of revenue and against the assessee.

Comparison between the pre-amendment and post amendment law is permissible for the purpose of ascertaining the mischief sought to be remedied or the object sought to be achieved by an amendment. This is precisely what was done by the Apex Court in the case of *CIT v. Kelvinator* (2010) 2 SCC 723. But the same comparison between the draft and the final law is not permissible. Nor can the draft or the Bill be used for the purpose of regulating the meaning and purport of the enacted law. It is the finally enacted law which is the will of the legislature.

What the Tribunal by majority did was to supply the *casus omissus* which was not permissible and could only have been done by the Supreme Court in an appropriate case.

The key words used in Section 40(a)(ia), are “on which tax is deductible at source under Chapter XVII –B”. If the question is “which expenses are sought to be disallowed”, the answer is bound to be “those expenses on which tax is deductible at source under Chapter XVII –B. Once this is realized nothing turns on the basis of the fact that the legislature used the word ‘payable’ and not ‘paid or credited’. Unless any amount is payable, it can neither be paid nor credited. If an amount has neither been paid nor credited, there can be no occasion for claiming any





deduction.

There can be no denial that the provision in question is harsh. But that is no ground to read the same in a manner which was not intended by the legislature. The majority view expressed in the case of Merilyn Shipping & Transports is not acceptable.

### 3. **ACIT v. Rishti Stock and Shares Pvt.Ltd. [2013] 112 ITA2012 (Mumbai, ITAT)**

In this case the Mumbai Bench of the ITAT noted that the issue has been decided in favour of revenue by the Calcutta and Gujarat High Court and against the revenue by Allahabad High Court. However, it concluded that the same was an '*obiter dicta*' while the decisions of the Gujarat and Calcutta High Court (supra) were '*ratio decidendi*'. The ITAT accordingly applied the view taken by the Gujarat and Calcutta High Court as '*ratio decidendi*' prevails over an '*obiter dicta*'. Relevant portion of the said decision reads as under:

"8. From the factual matrix of this case it can be noticed as an admitted position that M/s Mercator Lines Limited had deducted tax at source on salaries paid by it on behalf of assessee, in respect of which the disallowance was made by the AO under section 40(a)(ia). By answering the question as reproduced above, the High Court held that : 'In the present case tax was deducted as TDS from the salaries of the employees paid by M/s Mercator Lines Ltd., and the circumstances in which such salaries were paid by M/s Mercator Lines Ltd., for M/s Vector Shipping Services, the assessee were sufficiently explained.' Having answered the question raised before it in above terms, the High Court incidentally noticed that for disallowing expenses from business and profession on the ground that tax has not been deducted, the amount should be payable and not which has been paid by the end of the year. These passing remarks, which are only *obiter dicta*, seem to have been made because the tribunal in the impugned order before the High Court, apart from deleting the disallowance on the ground that 'M/s Mercator Lines Limited had deducted TDS on salaries paid by it on behalf of assessee. Under such circumstances assessee was not required to deduct TDS on reimbursement being made by it to M/s Mercator Lines Limited.', also referred to the special bench decision in the case of Merilyn Shipping (supra). As it is manifest from the solitary question of law reproduced above that there is no reference to the deletion of disallowance u/s 40(a)(ia) when the expenditure has been paid, such remarks of the High Court can be considered as *obiter dicta*. On the contrary, the Calcutta High Court in the aforementioned two judgments and the Gujarat High Court in the above referred case have dealt with this issue on merits arising out of the special bench order in Merilyn Shipping (supra) and specifically disproved it. Such decision constitutes the *ratio decidendi* of these cases. There is hardly any prize for guessing that it is the *ratio decidendi* of a judgment which prevails upon the contrary *obiter dicta* of another judgment. In view of

the foregoing discussion, we are of the considered opinion that there is no merit in the ground raised by the assessee in its cross objection."

### 4. **Metro and Metro v. Addl. CIT [2013, NOV.](Agra, ITAT)**

The taxpayer incurred brokerage and commission expenses without TDS, out of which, only Rs. 1.78 lakhs was payable and the rest was paid. The assessing officer disallowed the entire expenditure under section 40(a)(ia). Before the CIT (A), it was argued that disallowance under section 40(a)(ia) could be made only of the amount "payable" and not of that which had already been "paid" though it was rejected. On appeal to the Tribunal, the matter was referred to the Special Bench of ITAT.

**Ruling of the Tribunal:** The Special Bench decision<sup>1</sup> is in the context of section 40(a)(ia) which is of recent origin and the majority view therein heavily relied upon the wordings originally proposed in the enactment of section 40(a)(ia) which were in sharp contrast with the wordings actually used in the enactment of section 40(a)(ia), as also certain other issues which do not touch upon the scope of section 40(a)(i).

Section 40(a)(i) debars the deduction of "any interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable outside India, on which tax has not been paid or deducted under Chapter XVII-B" In contrast with these words, section 40(a)(ia) used the expression "payable to a resident".

Suffice to say that what is decided in the context of section 40(a)(ia) does not apply to section 40(a)(i) and the assessee thus does not derive any advantage from the decisions in the context of section 40(a)(i). The provisions of section 40(a)(i) cannot be interpreted in such a manner so as to restrict the scope of section to only amounts remaining payable at the end of the year, because, apart from the difference in wording of section 40(a)(i) *vis-a-vis* section 40(a)(ia) and other factors, such an interpretation will make the section redundant and it is one of the fundamental principles of interpretation is to interpret *is ut res magis valeat quam pereat*, i.e., in such a manner as to make it workable rather than redundant, and to understand the words with reference to the subject-matter, i.e., *verba accopenda sunt secundum* subsection matteriam

However, in the above case, the ITAT accepted the plea of the assessee's counsel on merits and held that the disallowance under section 40(a)(i) cannot be sustained on the facts of this case.

Circular no. 10/DV/2013 (Departmental View) issued by the Central Board of Direct Taxes (CBDT) dated 16<sup>th</sup> December, 2013.

<sup>1</sup> 'M/ s Merilyn Shipping and Transport Ltd.



# Article

RECENT TAX CONTROVERSY - EXPENSE DISALLOWANCE FOR DEFAULT IN TDS COMPLIANCE ON PAYMENTS MADE DURING THE YEAR

Taking note of the conflicting interpretations by judicial authorities regarding the applicability of the provisions of section 40(a)(ia) of the Act, CBDT, being the highest tax administration authority has recently issued a circular. It has clarified its view on applicability of section 40(a) (ia) of the Act on payments made during the year on which TDS has not been withheld. It has been stated that Section 40(a)(ia) would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year. Accordingly, an instruction has been issued to the officers to immediately bring to its notice those cases where jurisdictional high court takes a different stand on the issue so that a decision is taken whether SLP before the Supreme Court should be filed. Relevant text of the said circular is given below for ready reference:

*"4. After careful examination of the issue, the Board is of the considered view that the provision of section 40(a)(ia) of the Act would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year. The statutory provisions are amply clear and in the context of section 40(a)(ia) of the Act the term "payable" would include "amounts which are paid during the previous year".*

"5. Where any High Court decides an issue contrary to the 'Departmental View', the 'Departmental View' thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgement to the notice of the CTC. The CTC shall examine the said judgement on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for."

## OUR OBSERVATIONS

The term used under Section 40(a)(ia) before amendment by Finance (No.2) Act 2014 w.e.f. Assessment Year 2015-16 is 'interest, commission, brokerage etc. payable to a resident or amounts payable to a contractor or sub-contractor for carrying out any work'. Even after the amendment by Finance (No.2) Act 2014, the term used is 'any sum payable to a resident'. Nowhere there is any wording provided under the Section to suggest inference of an additional condition that the amount should be payable at the year end or a specific insertion that provisions of Section 40(a)(ia) is not applicable only on payments made during the year. In the absence of such wordings, any such inference would seem to defeat the purpose of enactment of Section 40(a)(ia) in the statute.

At this juncture, it is worthwhile to deliberate upon the canon of interpretation 'Casus Omissus' which is a corollary to the general rule of literal interpretation that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. The Apex Court in '*CIT v. National Taj Traders*' [1980] 121 ITR 535

(SC) has held that while interpreting a statute, no words to be supplied to it, unless it is absolutely necessary to do so. Relevant extract of the said decision is given below for ready reference:

"In other words, under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature."

According to memorandum to Finance (No. 2) Bill, 2004, Section 40(a)(ia) was proposed to be incorporated in the statute with a view to augment TDS compliance provisions on payments made to residents which hitherto were restricted to non-residents only under section 40(a)(i) of the Act. Relevant portion of the said memorandum is reproduced below for ready reference:

## ENFORCING COMPLIANCE OF PROVISIONS OF TDS

Under the existing provisions of sub-clause (i) of clause (a) of section 40, failure to make deduction at source from payment of interest, royalty, fees for technical services or any other sum which is payable outside India, or in India to a non-resident or to a foreign company or failure to make payment to the account of the Central Government, attracts disallowance of such payments in the hands of the payer. Deduction of such sum is, however, allowed in the computation of income if tax is deducted, or after deduction, paid in any subsequent year in computing the income of that year.

With a view to augment compliance of TDS provisions, it is proposed to extend the provisions of section 40a(i) to payments of interest, commission or brokerage, fees for professional services or fees for technical services to residents, and payments to a resident contractor or sub-contractor for carrying out any work (including supply of labour for carrying out any work), on which tax has not been deducted or after deduction, has not been paid before the expiry of the time prescribed under sub-section (1) of section 200 and in accordance with the other provisions of Chapter XVII-B. It is also proposed to provide that where in respect of payment of any sum, tax has been deducted under Chapter XVII-B or paid in any subsequent year, the sum of payment shall be allowed in computing the income of the previous year in which such tax has been paid.

*The proposed amendment will take effect from 1st day of April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [Clause 11]"*



Accordingly, it can be argued that the intention of the legislature behind insertion of Section 40(a)(ia) in the statute was never restricted to cover payments which are outstanding on year end only.

Recently, the Supreme Court vide order dated July 2, 2014 dismissed the Special Leave Petition (SLP) filed by the Revenue against the Allahabad High Court decision in Vector Shipping Services (P) Ltd (supra). However, the order passed by the Apex Court is not a speaking order and thus, raises a question whether the Apex Court has settled the subject controversy. The Court, after condoning the delay in filing the petition, has in the order simply stated "Special leave petition is dismissed".

The Apex Court in '*Supreme Court Employees Welfare Association etc. v. Union of India & Anr. Etc.*' 1990 AIR 334, 1989 SCR (3) 488 observed that when the order passed by the Court was not a speaking one, it is not correct to assume that the Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before the Court in the special leave petition. The court observed there: "It is now a well settled principle of law that when a Special Leave Petition is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by Article 141 of the Constitution, as contended by the learned Attorney General. In Indian Oil Corporation Ltd. v. State of Bihar, [1986] 4 SCC 146 it has been held by this Court that the dismissal of a Special Leave Petition in limine by a non-speaking order does not justify any inference that, by necessary implication, the contentions raised in the Special Leave Petition on the merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a Special Leave Petition without anything more indicating the

grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where Special Leave Petition should be granted. In *Union of India v. All India Services Pensioners Association*, AIR 1988 SC 50 1 this Court has given reasons for dismissing the Special Leave Petition. When such reasons are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. It, therefore, follows that when no reason is given, but a Special Leave Petition is dismissed simpliciter, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution".

Accordingly, the Apex Court's last word on the subject controversy is still awaited.

## CONCLUSION

In the light of the above discussion, we would like to go with the views expressed by the Calcutta and Gujarat High Courts in cases discussed above. While arriving at the taxable income, the taxpayer should also bear in mind the onerous fact that CBDT has expressed a view that provisions of Section 40(a)(ia) travels beyond the payments outstanding at the year end and covers payments made during the year. Though, it is a well settled legal position that the circular issued by CBDT is not binding on the taxpayer, however, any taxpayer taking a tax position contrary to the CBDT circular, is likely to face disallowance by the tax authorities and consequent ongoing tax litigation unless the law is amended explicitly clarifying to that effect or the Apex Court decides the issue on merits in favour of the taxpayer.

## CONVOCATION - 2014

Convocation to award the certificate of membership of the Institute to the newly admitted members during the period from 20<sup>th</sup> April 2013 to 31<sup>st</sup> March 2014, were held in Southern, Eastern, Western and Northern Regions as per the details given below:

Region	Date	Venue	Chief Guest/Guest of Honour	Certificate awarded at the function
Southern	3 <sup>rd</sup> May, 2014	Dwaraka Auditorium, Lions Edifice Hall, D. G. Vaishnav College, Chennai.	Dr Vanangumudi, Vice Chancellor, Tamil Nadu Dr. Ambedkar Law University, Chennai, Chief Guest.	108 members
Eastern	17 <sup>th</sup> May 2014	Kalamandir, Shakespeare Sarani, Kolkata.	Prof (Dr.) P Ishwara Bhatt, Vice Chancellor, West Bengal National University of Juridical Sciences, Kolkata, Chief Guest Shri G S Gupta, Executive Director, Emami Biotech Limited, Guest of Honour.	223 members
Western	24 <sup>th</sup> May 2014	International Convention Hall, The Bombay Stock Exchange Limited, Mumbai.	Dr A K Sengupta, Founder & Convener of High Education Forum and Mentor, SIES College of Management Studies, Navi Mumbai, Chief Guest.	263 members
Northern	16 <sup>th</sup> August 2014 (Two sessions)	Manekshaw Centre Auditorium, Parade Road, Delhi Cantonment (Near Air Force Auditorium), Subroto Park, New Delhi.	<b>1<sup>st</sup> Session</b> Shri Arjun Ram Meghwal, Member of Parliament, Chief Guest Shri P R Ramesh, Chairman, Deloitte Touche Tohmatsu India Pvt. Ltd., Guest of Honour. <b>2<sup>nd</sup> Session</b> Hon'ble Mr. Justice M.N. Bhandari, High Court of Rajasthan, Chief Guest.	1 <sup>st</sup> Session -368Members  2 <sup>nd</sup> Session -365 Members

Meritorious (National) students and winners of all India Competitions were also awarded in these functions.

Memento was given to CS Aditya Yadav for clearing Civil Services Examination, 2013 during the Convocation of Northern Region held on 16<sup>th</sup> August 2014.





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## Emergence of IFRS towards Fair Value Accounting System and Its Adoptability in Indian Scenario

- It is generally expected that worldwide adoption of IFRS will be beneficial to investors and other users of financial statements, by reducing the costs of comparing alternative investment opportunities and increasing the quality of information required. Companies are also expected to benefit as investors will be more willing to provide financing into the company as they can foresee much relevant financial position of the prospective companies. Presumably, lack of preparedness of Indian companies has led to the decision to defer the adoption of IFRS for the time being. This is unfortunate that India, which boasts for its IT and accounting skills, could not prepare itself for the transition to IFRS over last four years.

**N**owadays, international accounting bodies (e.g. IASB, FASB etc.) have given stronger emphasis to switch over the accounting system of the world from Historical Cost Accounting (HCA) to Fair Value Accounting (FVA). Moreover, a worldwide essentiality has been agreed upon to switch over homogeneous system of accounting all over the world. As a consequence, the accounting systems of many countries are gradually converted into the system as prescribed by the international accounting bodies. Even in India, Accounting Standards (ASs) as issued by The Institute of Chartered Accountants of India (ICAI) so far, are based either on International Accounting Standards (IAS) or on International Financial Reporting Standards (IFRS). As all the international accounting bodies have prescribed to





value assets and liabilities, especially financial assets, on the basis of 'fair value measurement', we have no other option than to switch over our financial reporting system into the fair value accounting system.

Fair value concept is found to be applied first in several International Accounting Standards (IASs), such as IAS – 36 on Impairment of Assets, IAS – 38 on Intangible Assets, IAS – 39 on Financial Instruments, IFRS – 3 on Business Combinations, etc. In India too, a number of Accounting Standards (ASs) have already been issued by the Institute of Chartered Accountants of India (ICAI) that require assets and liabilities to be measured at fair value. Some of the standards define fair value while in some others, it has been referenced.

Fair Value is generally defined in earlier IFRSs as issued by the International Accounting Standard Board (IASB) as, "*the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.*" This definition of fair value has two ends. As per this definition, fair value can either be 'entry price' (i.e. from the point of view of the buyer) or 'exit price' (i.e. from the point of view of the seller).

In September, 2006, The Financial Accounting Standards Board (FASB), USA, issued a full Financial Accounting Standard on the Fair Value Measurement, which defined fair value, established a framework for measuring fair value and required disclosures about fair value. The FASB, USA, issued the Statement of Financial Accounting Standards No. 157 (SFAS-157) on Fair Value Measurements in 2006 which was effective from the fiscal year 2008, where fair value is defined as "*the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.*" FVA, also called as 'Mark-to-market', is a way of accounting measurement to measure assets and liabilities that appear in the financial statements at their respective fair values, i.e. current market price, in an orderly transaction between market participants at the measurement date. SFAS–157 provides a hierarchy of three levels of input data for determining the fair value of an asset or liability, such as Input Levels 1, 2, and 3, where value other than market price is also allowed under some circumstances. This definition of fair value has one end only. As per this definition, fair value represents 'exit price' (i.e. from the point of view of the seller) only.

The definition in SFAS - 157 differs from the definition generally asserted in earlier IFRSs in three conceptual aspects, which are identified below :

- (a) The definition in SFAS - 157 is explicitly an exit (selling) price. The definition in IFRSs may be an exit (selling) price or an entry (buying) price.
- (b) The definition in SFAS - 157 explicitly refers to market participants. The definition in IFRSs refers to knowledgeable,

willing parties in an arm's length transaction.

- (c) For liabilities, the definition of fair value in SFAS - 157 rests on the notion that the liability is transferred (the liability to the counterparty continues; it is not settled with the counterparty). The definition in IFRSs refers to the amount at which a liability could be settled between knowledgeable, willing parties in an arm's length transaction.

In February, 2006 the IASB and the FASB published a Memorandum of Understanding reaffirming their commitment to the convergence of American Generally Accepted Accounting Principles (US GAAP) and International Financial Reporting Standards (IFRSs) and to their shared objective of developing high quality, common accounting standards for use in the world's capital markets. SFAS - 157 established a single definition of fair value together with a framework for measuring fair value for US GAAP. The IASB recognized the need for guidance on measuring fair value in IFRSs and for increased convergence with US GAAP. Consequently, the IASB decided to use the FASB's standard as the starting point for its deliberations.

As a consequence, the IASB finally issued International Financial Reporting Standard 13 on *Fair Value Measurement* (IFRS 13) on 1st January, 2012, that was effective for the annual periods beginning on or after 1st January 2013, which : (a) defines fair value; (b) sets out in a single IFRS framework for measuring fair value; and (c) requires disclosures about fair value measurements, IFRS 13.

The IASB defines 'fair value' in the context of IFRS 13 on Fair Value Measurement as "*the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.*"

Analyzing the definition of fair value as enumerated in IFRS 13, the following points can be extracted :

1. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.
2. '*The price that would be received to sell an asset or paid to transfer a liability*' represents the 'exit price only'.
3. '*Market participants*' are the prospective buyers and sellers who are knowledgeable, able to transact for the asset and liability, and willing to transact for the asset and liability.
4. '*Orderly transaction*' refers to the normal transaction between market participants. It is not a forced transaction, such as sale due to distress or liquidation.
5. '*An orderly transaction between market participants*' means a market in which transactions for the asset or liability takes



place with sufficient frequency and volume to provide pricing information on an ongoing basis.

6. The transaction to sell the asset or transfer the liability is a hypothetical transaction on the measurement date, assumed from the perspective of the market participant who holds the asset or owes the liability.
7. '*Principal market*' refers to the market with the greatest volume and level of activity for the asset or liability. '*Most advantageous market*' means the market that maximizes the amount that would be received to sell the asset or minimizes the amount that would be paid to transfer the liability, after taking into account transaction costs and transport costs.

To establish consistency and comparability in fair value measurement, IFRS 13 establishes a fair value hierarchy that consists of three levels of input to the valuation techniques to measure fair value as suggested by the standard; these are : **(1)** Level 1 Inputs, *i.e.* quoted prices in active markets for identical assets or liabilities; **(2)** Level 2 Inputs, *i.e.* observable market prices for the assets or liabilities other than quoted prices included under Level 1 Inputs; and **(3)** Level 3 Inputs, *i.e.* unobservable inputs for the assets or liabilities based on own assumption about market participants. The fair value hierarchy gives the highest priority to Level 1 Inputs and the lowest priority to Level 3 Inputs.

Nature of these three inputs levels are discussed below :

1. **Level 1 inputs** :Level 1 inputs are quoted prices in active markets for identical assets or liabilities that the entity can access at the measurement date [IFRS 13:76]. According to IFRS 13, a quoted market price in an active market provides the most reliable evidence of fair value and is used without adjustment to measure fair value whenever available, with limited exceptions.
2. **Level 2 inputs** : Level 2 inputs are inputs other than quoted market prices included within Level 1 that are observable for the asset or liability, either directly or indirectly [IFRS 13:81]. As per IFRS 13, Level 2 inputs include : (a) quoted prices for similar assets or liabilities in active markets; (b) quoted prices for identical or similar assets or liabilities in markets that are not active; (c) inputs other than quoted prices that are observable for the asset or liability, such as, interest rates and yield curves observable at commonly quoted intervals, implied volatilities, credit spreads; (d) inputs that are derived principally from or corroborated by observable market data by correlation or other means ('market-corroborated inputs').
3. **Level 3 inputs** : Level 3 inputs are unobservable inputs for the asset or liability [IFRS 13:86].

Unobservable inputs are used to measure fair value to the extent that relevant observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date. IFRS 13 interprets that an entity develops unobservable inputs using the best information available in the circumstances, which might include the entity's own data, taking into account all information about market participant assumptions that is reasonably available.

## MEASUREMENT OF FAIR VALUE

The objective of a fair value measurement is to estimate the price at which an orderly transaction to sell the asset or to transfer the liability would take place between market participants at the measurement date under current market conditions. As per IFRS 13 [IFRS 13:B2], fair value measurement requires an entity to determine all of the following :

- (a) The particular asset or liability being measured;
- (b) For a non-financial asset, the highest and best use of the asset and whether the asset is used in combination with other assets or on a stand-alone basis;
- (c) The market in which an orderly transaction would take place for the asset or liability; and
- (d) The appropriate valuation technique(s) used should maximize the use of relevant observable inputs and minimize unobservable inputs. Those inputs should be consistent with the inputs a market participant would use when pricing the asset or liability.

## GUIDANCE ON FAIR VALUE MEASUREMENT

IFRS 13 provides the guidance on the measurement of fair value, which are stated below :

- i. An entity takes into account the characteristics of the asset or liability being measured that a market participant would take into account when pricing the asset or liability at measurement date (e.g. the condition and location of the asset and any restrictions on the sale and use of the asset) [IFRS 13:11]
- ii. Fair value measurement assumes an orderly transaction between market participants at the measurement date under current market conditions [IFRS 13:15].
- iii. Fair value measurement assumes a transaction taking place in the principal market for the asset or liability, or in the absence of a principal market, the most advantageous market for the asset or liability [IFRS 13:24].





- iv. A fair value measurement of a non-financial asset takes into account its highest and best use [IFRS 13:27].
- v. A fair value measurement of a financial or non-financial liability or an entity's own equity instruments assumes it is transferred to a market participant at the measurement date, without settlement, extinguishment, or cancellation at the measurement date [IFRS 13:34].
- vi. The fair value of a liability reflects non-performance risk (i.e. the risk the entity will not fulfill an obligation), including an entity's own credit risk and assuming the same non-performance risk before and after the transfer of the liability [IFRS 13:42].
- vii. An optional exception applies for certain financial assets and financial liabilities with offsetting positions in market risks or counterparty credit risk, provided conditions are met (i.e. additional disclosure is required) [IFRS 13:48, IFRS 13:96].

## VALUATION TECHNIQUES

According to the IFRS [IFRS 13:61, IFRS 13:67], an entity should use valuation techniques that are appropriate in the circumstances and for which sufficient data are available to measure fair value, maximizing the use of relevant observable inputs and minimizing the use of unobservable inputs. The objective of using a valuation technique is to estimate the price at which an orderly transaction to sell the asset or to transfer the liability would take place between market participants and the measurement date under current market conditions.

As suggested by IFRS 13, three widely used valuation techniques are :

- (a) **Market Approach** : It refers to the market data of comparable assets and liabilities. Under this approach, prices and other relevant information generated by market transactions involving identical or comparable (i.e. similar) assets, liabilities, or a group of assets and liabilities (e.g. a business) are to be used for valuation of those assets and liabilities.
- (b) **Cost Approach** : It refers to the current replacement costs of assets. It reflects the amount that would be required currently to replace the service capacity of an asset (i.e. current replacement cost).
- (c) **Income Approach** : It refers to the present values of future incomes from assets. Under this approach, future amounts (i.e. cash flows or income and expenses) from an asset are to be converted to a single current (i.e. discounted) amount, reflecting current market expectations about those future amounts.

In some cases, a single valuation technique will be appropriate; whereas in others, multiple valuation techniques will be appropriate [IFRS 13:63].

## DISCLOSURE REQUIREMENTS AS PER IFRS 13

### • Disclosure Objective

IFRS 13 requires disclosure of the following information in the financial statements for better understanding of the users about fair value measurement [IFRS 13:91]: (a) for assets and liabilities that are measured at fair value on a recurring or non-recurring basis in the statement of financial position after initial recognition, the valuation techniques and inputs used to develop those measurements; (b) for recurring fair value measurements using significant unobservable inputs (i.e. Level 3 Inputs), the effect of measurements on profit or loss or other comprehensive income for the period.

### • Disclosure Exemptions

The disclosure requirements are not required for [IFRS 13:7]:

- a. plan assets measured at fair value in accordance with IAS 19 Employee Benefits;
- b. retirement benefit plan investments measured at fair value in accordance with IAS 26 Accounting and Reporting by Retirement Benefit Plans;
- c. assets for which recoverable amount is fair value less costs of disposal in accordance with IAS 36 Impairment of Assets.

## IMPACT OF FAIR VALUE MEASUREMENT IN INDIAN ACCOUNTING STANDARDS

The Institute of Chartered Accountants of India (ICAI) decided that the converged IFRS should be followed in India too for public interest entities from the accounting period starting on or after 1st April, 2011. In this context, the ICAI published concept paper on convergence with IFRS in India. This paper provides the roadmap to adopt the IFRS in India by 2011. Accordingly, a number of Accounting Standards (AS) has already been issued by the ICAI that require assets and liabilities to be measured at fair value. These accounting standards are : AS – 26 on Intangible Assets, AS – 28 on Impairment of Assets, AS – 30 on Financial Instruments : Recognition and Measurement, AS – 31 on Financial Instruments : Presentation and AS – 32 on Financial Instruments : Disclosures.

In AS – 28 on Impairment of Assets, the impairment losses on all assets, like fixed assets, intangible assets [but not applicable to Inventories covered by AS 2, Asset arising from Construction Contracts covered by AS 7, Financial Asset covered by AS 13 and Contractual Right to receive cash like debtors and Deferred Tax Asset covered by AS 22], are to be accounted for and accordingly, the asset is to be shown in the financial statements not at its written down value (WDV); rather, at its WDV less impairment loss, if any. As per AS 28, an asset is said to be impaired when the 'carrying amount' of the asset is more than its 'recoverable amount'. Carrying amount is the amount at which the asset is



- The underlying concept of fair value is the presumption that the entity is a going concern and does not have an intention or a need to liquidate instruments, or undertake a transaction or adverse term. Input to valuation techniques are : (a) Time value of money; (b) Credit risk; (c) Foreign currency exchange price; (d) Commodity price; (e) Equity price; (f) Volatility; (g) Prepayment and surrender risk; (h) Servicing cost for financial asset or financial liability.

shown in the Balance Sheet. Before insertion of this standard, the impairment losses are not accounted for in India. Hence, the *carrying amount* of an asset in India represents its *original cost less up to date accumulated depreciation (i.e. WDV)* on the asset. On the other hand, *recoverable amount* of an asset is *higher of its net selling price and its value in use*. Net selling price of the asset refers to the amount obtainable from the sale of that asset on the measurement date; while value in use of an asset is the present value of estimated future cash flow arising from use of asset. These net selling price and value in use are clear indication of valuation of asset towards its fair value measurement.

In AS – 30 on Financial Instruments : Recognition and Measurement, it is categorically enumerated that an entity should measure its financial assets and financial liabilities at their fair values through profit or loss.

In the context of ASs as issued by the ICAI, same definition of fair value is considered as is enumerated in earlier International Accounting Standards (IAS), particularly in IAS 39. Actually, AS – 30 is based on IAS – 39 on *Financial Instruments : Recognition and Measurement* and incorporates IFRIC – 9 on *Reassessment of Embedded Derivative* issued by the International Financial Reporting Interpretation Committee (IFRIC) of the IASB. Accordingly, in the context of ASs as issued by the ICAI, *“fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm’s length transaction”*.

According to AS, the best measure of fair value is the price in an active market. However, fair value hierarchy provides three tier of measurement techniques which are written below :

1. Level 1 – Active Market – Quoted Price.
2. Level 2 – No Active Market – Valuation techniques to be followed such as DCF, Option Pricing Model.

3. Level 3 – No Active Market – Equity Investments less Impairment Loss.

The underlying concept of fair value is the presumption that the entity is a going concern and does not have an intention or a need to liquidate instruments, or undertake a transaction or adverse term. Input to valuation techniques are : (a) Time value of money; (b) Credit risk; (c) Foreign currency exchange price; (d) Commodity price; (e) Equity price; (f) Volatility; (g) Prepayment and surrender risk; (h) Servicing cost for financial asset or financial liability.

## MEASUREMENT

### • Initial Measurement of Financial Assets and Financial Liabilities

When a financial asset or financial liability is recognized initially, an entity should measure it as follows :

- (a) A financial asset or financial liability at fair value through profit or loss should be measured at fair value on the date of acquisition or issue.
- (b) Short-term receivables and payables with no stated interest rate should be measured at original invoice amount if the effect of discounting is immaterial.
- (c) Other financial assets or financial liabilities should be measured at fair value plus/ minus transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability.

### • Subsequent Measurement of Financial Assets

For the purpose of measuring a financial asset after initial recognition, this Standard classifies financial assets into the following four Categories defined in paragraphs 8.2 to 8.5:

- (a) financial assets at fair value through profit or loss;
- (b) held-to-maturity investments;
- (c) loans and receivables; and
- (d) available-for-sale financial assets.

These categories apply to measurement and profit or loss recognition under this Standard. The entity may use other descriptors for these categories or other categorizations when presenting information on the face of the financial statements. The entity should disclose in the notes the information required by AS 32 on Financial Instruments: Disclosures 16.

## ADOPTABILITY OF FAIR VALUE CONCEPT IN GLOBAL AND INDIAN FINANCIAL REPORTING SYSTEM



➤ To ensure a fully converged set of Standards, in 2010, MCA prepared a roadmap in which it was decided that there will be two sets of Corporate Financial Reporting Standards under Section 211(3C) of the Companies Act, 1956 for achieving convergence with IFRS. These are : (i) which will be converged Indian Accounting Standards in the line of IFRS (Ind. AS) will be adopted by the specified class of companies in phased manner; and (ii) which are existing Indian Accounting Standards and would be applicable to other companies, including Small and Medium Companies (SMCs). MCA till date has notified 35 converged Indian Accounting Standards in line of IFRS, which are termed as Ind. AS.

Time has really come to examine the extent of adoptability of the concept of Fair Value (FV) in Indian Financial Reporting System as part of its overall convergence with the IFRSs. It is generally expected that worldwide adoption of IFRS will be beneficial to investors and other users of financial statements, by reducing the costs of comparing alternative investment opportunities and increasing the quality of information required. Companies are also expected to benefit as investors will be more willing to provide financing into the company as they can foresee much relevant financial position of the prospective companies. Companies that have high levels of international activities are among the group that would be benefited from a switch to IFRS. Still accounting standards of many countries, like India, are not fully convergent with the IAS / IFRS which were made mandatory for European Union members to follow since 2005 and subsequently adopted by a large number of countries across the globe. IFRSs are already used in many parts of the world, including the European Union, Russia, Australia, Hong Kong, Malaysia, Singapore, Pakistan, Chile, South Africa, Pakistan etc. India, though one among the fastest emerging economies, have different economic, financial and social conditions. The adoptability of FV Concept in India is one of the essential elements for converging with IFRS.

Presently, the companies registered in India prepare their Financial Statements (*i.e.* Income Statement and Balance Sheet) on the basis of the proforma as prescribed by the Ministry of Corporate Affairs (MCA), Govt. of India, and Financial Reporting Standards as issued by the Institute of Chartered Accountants of India (ICAI).

To ensure a fully converged set of Standards, in 2010, MCA prepared a roadmap in which it was decided that there will be two sets of Corporate Financial Reporting Standards under Section 211(3C) of the Companies Act, 1956 for achieving convergence with IFRS. These are : (i) which will be converged Indian Accounting Standards in the line of IFRS (Ind. AS) will be adopted by the specified class of companies in phased manner; and (ii) which are existing Indian Accounting Standards and would be applicable to other companies, including Small and Medium Companies (SMCs). MCA till date has notified 35 converged Indian Accounting Standards in line of IFRS, which are termed as Ind. AS.

In the said roadmap, it was decided that the first set of Accounting Standards (*i.e.* converged accounting standards) will be applied to specified class of companies in the following phases :

- (i) **Phase I** : The following categories of companies will convert their opening balance sheets as at 1st April, 2011, if the financial year commences on or after 1st April, 2011 in compliance with the notified accounting standards which are convergent with IFRS. These companies are :
  - a. Companies which are part of NSE – Nifty 50
  - b. Companies which are part of BSE - Sensex 30
  - c. Companies whose shares or other securities are listed on stock exchanges outside India
  - d. Companies, whether listed or not, which have a net worth in excess of Rs.1,000 crores (*i.e.* INR 10 billion).
- (ii) **Phase II** : The companies, whether listed or not, having a net worth exceeding Rs.500 crores but not exceeding Rs.1,000 crores will convert their opening balance sheet as at 1st April, 2013, if the financial year commences on or after 1st April, 2013 in compliance with the notified accounting standards which are convergent with IFRS.
- (iii) **Phase III** : Listed companies which have a net worth of Rs.500 crores or less will convert their opening balance sheet as at 1st April, 2014, if the financial year commences on or after 1st April, 2014, whichever is later, in compliance with the notified accounting standards which are convergent with IFRS.

In the same roadmap as released by the MCA, it was stated that companies which fall in the following categories will not be required to follow the notified accounting standards which are converged with the IFRS, though they may voluntarily opt to do so, but need to follow only the notified accounting standards which are not converged with the IFRS. These companies are:





# Article

EMERGENCE OF IFRS TOWARDS FAIR VALUE ACCOUNTING SYSTEM AND ITS ADOPTABILITY IN INDIAN SCENARIO

- (a) Non-listed companies which have a net worth of Rs. 500 crores or less and whose shares or other securities are not listed on Stock Exchanges outside India.
- (b) Small and Medium Companies (SMCs).

When the accounting year ends on a date other than 31st March, the conversion of the opening Balance Sheet will be made in relation to the first Balance Sheet which is made on a date after 31st March. According to the press note issued by the MCA, specified class of companies will convert their first balance sheet as at 1 April 2011, applying accounting standards convergent with IFRS if the accounting year ends on 31 March.

The Roadmap as initially fixed by the MCA for the companies to present their financial statements converged with the IFRS is as under :

**Roadmap for companies** (other than banking, insurance and non-banking financial companies)

Phase	Companies covered	Opening balance sheet	First financial statements
Phase I	<ul style="list-style-type: none"> <li>Companies that are part of NSE Nifty 50 Index</li> <li>Companies that are part of BSE Sensex 30 Index</li> <li>Companies that have shares or other securities listed in overseas stock exchanges; and</li> <li>Listed and Unlisted Companies with net worth in excess of Rs 1000 Crores</li> </ul>	1 April 2011	31 March 2012
Phase II	<ul style="list-style-type: none"> <li>Listed &amp; Unlisted Companies with net worth in excess of Rs 500 Crores but not exceeding Rs. 1000 Crores.</li> </ul>	1 April 2013	31 March 2014
Phase III	<ul style="list-style-type: none"> <li>Listed entities with net worth of Rs 500 Crores or less</li> </ul>	1 April 2014	31 March 2015

## ROADMAP FOR BANKING, INSURANCE AND NON-BANKING FINANCIAL COMPANIES

Class of Companies	Criteria for phased implementation	Opening balance sheet	First financial statements
Insurance Companies	<ul style="list-style-type: none"> <li>All Insurance companies</li> </ul>	1 April 2012	31 March 2013
Banking Companies	<ul style="list-style-type: none"> <li>All Scheduled Commercial Banks</li> </ul>	1 April 2013	31 March 2014
	<ul style="list-style-type: none"> <li>Urban Co-operative Banks with net worth in excess of Rs. 300 Crores</li> </ul>	1 April 2013	31 March 2014
	<ul style="list-style-type: none"> <li>Urban Co-operative Banks with net worth in excess of Rs. 200 Crores but not exceeding Rs. 300 Crores.</li> </ul>	1 April 2014	31 March 2015
Non-Banking Financial Companies (NBFCs)	<ul style="list-style-type: none"> <li>NBFCs that are part of NSE- Nifty 50 Index</li> <li>NBFCs that are part of BSE Sensex 30 Index</li> <li>Listed and Unlisted NBFCs with net worth in excess of Rs 1,000 Crores</li> </ul>	1 April 2013	31 March 2014
	<ul style="list-style-type: none"> <li>All Listed NBFCs that do not fall into the above categories</li> </ul>	1 April 2014	31 March 2015
	<ul style="list-style-type: none"> <li>Unlisted NBFCs that do not fall into the above categories and which have a net worth in excess of Rs 500 Crores</li> </ul>	1 April 2014	31 March 2015
	Urban Co-operative Banks with net worth less than Rs 200 Crores, Regional Rural Banks and Unlisted NBFCs with net worth less than Rs 500 Crores are exempt from following the Converged Indian Accounting Standards, though they may voluntarily opt to do so.		

But adoption was put off in the wake of issues related with concept of Fair Value and relevant tax-related issues. The Ministry had re-finalized the date of adoption for these Accounting Standards as April 1, 2013 after much postponement of the same, but that date too had been put off for the time being. Although there was a roadmap for adoption of converged Accounting Standards in



the line of IFRS, but Indian companies are still following old Indian GAAP. Till recent past, there was no clear new date fixed by the MCA or ICAI for adoption of IFRS in India.

From the above facts, it is clear that India has deferred transition to IFRS. The deferment of the transition may make companies happy, but it will undermine India's position in the context of the global scenario. Presumably, lack of preparedness of Indian companies has led to the decision to defer the adoption of IFRS for the time being. This is unfortunate that India, which boasts for its IT and accounting skills, could not prepare itself for the transition to IFRS over last four years.

But at the end of the tunnel, again a ray of light has been seen. A new endeavour has been initiated for early adoption of IFRS in India. A revised roadmap for implementation of Ind. AS has been finalized by the Council of the ICAI at its meeting held on March 20-22, 2014, which has been submitted to the MCA for approval. The proposed revised roadmap contains the following :

1. As stated in earlier roadmap issued in this behalf, there shall be two separate sets of Accounting Standards notified under the Companies Act, 1956.
  - (i) First set would comprise the Indian Accounting Standards converged with the IFRSs (i.e. Ind. AS), which shall be applicable for consolidated financial statements, as defined in the Companies Act, 2013, of the specified class of companies.
  - (ii) The second set would comprise the existing notified ASs and shall be applicable for preparation of individual financial statements of the companies preparing consolidated financial statements as per Ind. AS and for financial statements of other companies.
2. The first set of Converged AS (i.e. Ind. AS) shall be applied to the following specified class of companies for preparing their first consolidated financial statements as per Ind. AS for the accounting period beginning on or after April 1, 2016 with comparatives for the year ending March 31, 2016 or thereafter:
  - (a) Whose equity and/or debt securities are listed or are in the process of listing on any Stock Exchange in India or outside India; or
  - (b) Companies other than those covered in (a) above having net worth of Rs.500 crore or more;
  - (c) Holding, subsidiary, joint venture or associate companies of companies covered under (a) or (b) above.
3. Companies to which Ind. AS are applicable shall prepare their first set of consolidated financial statements in accordance with Ind. AS effective at the end of its first Ind. AS reporting period unless otherwise specified, i.e. companies preparing

consolidated financial statements for the accounting period beginning on or after April 1, 2016 shall be required to apply the Ind. AS effective for financial year ending on March 31, 2017.

#### 4. Calculation of Net Worth :

For the purpose of calculation of Qualifying Net Worth of companies, the following rules shall apply :

- (a) The net worth shall be calculated as per the stand-alone audited Balance Sheet of the company falling under any of the categories covered under (2) above as at 31st March, 2014 or the first Balance Sheet for accounting periods which end after that date.
- (b) The net worth shall be calculated as the Paid-up Share Capital *plus* Reserves & Surplus *less* Revaluation Reserve.
- (c) For companies which are not in existence on 31st March, 2014 or an existing company meets the criteria for the first time after 31st March, 2014, the net worth shall be calculated on the basis of the first Balance Sheet after that date.

#### 5. Voluntary Adoption :

- (a) Companies not mandatorily required to follow Ind. AS shall have the option to apply the Ind. AS voluntarily for their consolidated financial statements provided they prepare consolidated financial statements under the Ind. AS consistently thereafter.
- (b) The option to apply the Ind. AS voluntarily, once exercised, therefore, shall be irrecoverable. Such companies would not be required to prepare another consolidated financial statement in accordance with existing ASs.

#### 6. Discontinuing use of the first set of ASs (i.e. Ind. AS) :

Once a company starts following the first set of ASs (i.e. Ind. AS) for consolidated financial statements on the basis of eligibility criteria, it shall be required to follow such ASs for all the subsequent consolidated financial statements, even if any of the eligibility criteria does not subsequently apply to it.

7. The roadmap for Banks, Non-banking Financial Corporations (NBFCs) and Insurance Companies will be decided in consultation with Reserve Bank of India (RBI) and Insurance Regulatory Development Authority (IRDA).

Hopefully, above recommended roadmap of the Council of ICAI for early implementation of Indian Accounting Standards converged with the IFRSs (i.e. Ind. AS) into the Indian Financial Reporting System will be approved by the MCA after making necessary amendments, if any, and MCA will issue a finalized roadmap for the purpose very soon. The MCA is likely to notify




# Article

EMERGENCE OF IFRS TOWARDS FAIR VALUE ACCOUNTING SYSTEM AND ITS ADOPTABILITY IN INDIAN SCENARIO

very soon all sections and rules of the new Companies Act and start immediately thereafter the process of converging Indian Accounting Standards with the IFRS and is likely to notify soon the revised road map for the implementation of converged Indian Accounting Standards in the line of IFRS (Ind. AS) from April, 2016.

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# M&A as Management Strategy

- Mergers and acquisitions have emerged as the most effective management strategy for growth of business enterprises world over. Company secretaries being the principal compliance officers and key managerial personnel ought to be conversant with the technical aspects of M&A which this article seeks to outline.

## INTRODUCTION

In the modern times, Mergers and Acquisitions (M&As) have become a major force in the financial and economic environment all over the world. Essentially an American phenomenon till the 1970s, M&As have now become a global business theme and major tool of management strategy for growth and profitability. Company Secretaries as corporate professionals have been directly or indirectly associated with this strategy. However, the focus of company secretaries has essentially been on compliance rather than strategy and therefore it is imperative that this balance between compliance and strategy be restored. The strategic inputs required to actively participate in the main stream business of managing growth through strategic M&As are identified and presented in this article.



## VALUE CREATION AND STRATEGIC VALUE FRAME WORK<sup>1</sup>

It is a universally accepted undisputed corporate objective to create

long term shareholder value for which all companies strive and resort to various strategic measures. In most commonly understood term, the shareholder value will be enhanced if the value of market capitalization increases. In other words, when market price of listed shares increases, shareholders' value also increases. Some analysts have defined total shareholder value as increase in market price plus dividends declared by the company as the indicator of value creation. Basically, market price will increase because profitability, ie, Profit After Tax (PAT) has increased, giving better

<sup>1</sup> Tim Koller, Marc Goedhart and David Wessels (2005): Valuation : Measuring and Managing the value of companies, John Wiley & Sons.





Earning Per Share (EPS) which in turn, leads to better market price which is commonly observed by price multiples indicated by market price divided by Earning Per Share. Companies world over, attempt to increase market price of their listed securities, so as to create long term value for the shareholder.

## There are however, four phases or methods of value creation. These are as under:

- a) **Improving Margins:** Margins, in simple terms would mean difference between value of net sales and cost of goods sold. For this, either one may increase selling price or reduce cost. In a market economy selling price is determined by market competition, therefore, companies invariably try to reduce cost by improving their operations, through cost reduction, import substitutions etc. aimed at improving margins so as result in better PAT or EPS.
- b) **Improving Productivity:** Next phase would be to increase productivity or improve efficiency. In other words, input cost per unit of output must reduce. This is achieved by controlling expense ratios, improving turnover ratios, or operational improvement in processes so that the resources are optimally utilized.
- c) **Disposal of uneconomic units and investment in new opportunities: ( M&As):**

The next phase would be to examine and evaluate the lines of business on the basis of portfolio evaluation by trying to find division wise or business wise contribution to overall profitability of the company. Thereafter, take strategic decisions as regards disposal (demerger or divestment) of units not contributing or proving to be economic drag on the company without attaching any sentimental value for continuation of such units. The cash released by this disposal as well as surplus cash flow available or arranged through borrowing may be deployed in new but profitable ventures by acquiring new units or merger of target units into the company. This will result in faster growth and profitability increasing market capitalization of the company. Jach Welsch, Chairman of General Electric (GE) used to say "I would like to be in business wherein I am number one or two in the industry and would quit from the businesses, where I can not retain the first or second position." He aggressively used M&A strategy to propel the company to the fore front of globally profitable companies.

- d) **Financial Engineering:** After disposing of the units or acquiring new units, the company will have to address the issue of capital structuring keeping into account the optimum debt equity mix for the combined unit by suitable restructuring.

The above phases have to be pursued year after year to continuously enhance the value creation.

## THE M & A DRIVERS

While the overall objective is to increase long term shareholder value, there are 10 strategic drivers of M&A activities as under:

- i) **Growth:** Best way to achieve corporate growth is to grow by inorganic growth method of M&A. For example, merger of ICICI Bank & Bank of Rajasthan : With this transaction, in one stroke, ICICI could get the branch network, business, employees of Bank of Rajasthan as its own. Under normal expansion programme, it would have taken several years.
- ii) **Increasing Market Share/ Lessening competition:** Growth essentially means increase in sales revenue which in turn would depend on the market share of the products. Therefore, in a competitive environment, the short cut to beat the competition is to buy the competitor's company and increase the market share. For example, **Abbott Ltd** could increase its market share by 7% by simply acquiring generic drug manufacturing division of **Piramal Healthcare**.
- iii) **Access to New markets: New distribution channels:** In the quest for growth, the companies look for new markets, new areas even geographically to expand the sales revenue of their existing products in new markets/ new areas by simply acquiring companies in new markets. For example, **Bharati Airtel Acquired Zain**. Bharati Airtel was able to expand markets for its products/services in South Africa by acquiring a South African company.
- iv) **Obtaining new products/brands:** Very often growth could be achieved by developing and introducing new products. Globally, research and development departments of the companies hunt for new products to be developed and introduced. This could however, demand a lot of time as well as trials. But again, M&As offer a short cut by simply buying new products and brands just as **Tata** bought **Jaguar/ Landrover** brands from Ford.
- v) **Access to technology/ keeping pace with change:** The quest for improving products and thereby serving consumers better with a view to increase sales and profitability has also forced the companies to be up to date on technology and keep innovating or even introducing new features to their existing products. If it is not possible to develop this in house, one may certainly buy a company with a technologically superior product with latest technology or application. For example, **Face book acquiring whatsapp**.
- vi) **Family Settlements:** Businesses very often may have been set up by entrepreneurs of first generation and thereafter the management of the business came to be controlled by members of family and business may grow from generation to generation. While the first generation of entrepreneurs toils and sets up business, second generation may enjoy the



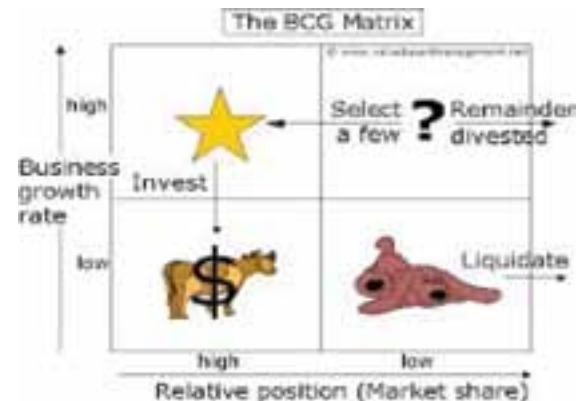
benefits but invariably in the third generation, the differences may develop between the members of family and either business may suffer or close down. However, if the members of the family are wise, they use demerger as a solution to the family dispute as it was done by Reliance group by demerging the whole business in to two groups, one controlled Mukesh Ambani and another by his brother Anil Ambani. Aggregate value created by both groups exceed the value of erstwhile company.

- vii) **Regulatory requirements:** Very often regulatory limitations may force units to take the route of demerger. For example, Foreign Direct Investment restricting the percentage of stakes that may be permitted to foreign investors may force such businesses to get separated. **Zee Ltd.** was forced to segregate its media and news business and split its different businesses into separate business units.
- (viii) **Diversification:** Various businesses may have different patterns of cash flow movements as well as cyclical or seasonality of operations. The best way to smoothen this cyclical is to diversify into various products and this can best be done by acquiring companies having diverse products. For example, ITC.
- (ix) **Synergy:** Complimentary strategic fit can be achieved by companies, one strong in marketing but weak in production and another strong in production but weak in marketing. If these two companies merge, the combined company will achieve valuation greater than the aggregate value of these two companies left alone. This benefit or release of surplus value is called synergy.
- (x) **Tax benefits / capital structure considerations:** Revival of sick units can be given taxation benefits under section 72A of Income Tax Act, 1961, if sick unit is merged into healthy unit subject to conditions specified. Further, if these conditions are not satisfied, the companies may still resort to merger by doing what is called reverse merger, meaning healthy unit merging into sick unit.

## STRATEGIC CONSIDERATIONS

Keeping the drivers of M&A as discussed above, the process of value creation has to be strategically pursued. A few strategic considerations are discussed hereunder:

- a) **BCG Matrix<sup>2</sup>:** The Boston Consulting Group has developed this model to explain which areas or lines of business the companies must pursue and which areas company must divest. The graphical presentation is as under :



On the X-axis, is relative position of market share and Y-axis shows business growth rate. Various businesses are divided into four quadrants on the basis of market share and growth rate to point out which activity company must invest into and which activity the company must divest from.

**Cash cows:** The bottom left the quadrant points out business where company has high market share though rate of growth may be low. Because of high market share, company is getting its cash flows. Hence, this segment is called cash cows. The companies may explore possibilities of increasing cash flows even by horizontal mergers and acquisitions by acquiring or merging competitors' units and increase the market share and increase cash flows for the company.

**Dogs:** On the bottom right, we have a quadrant where we have low market share and low business growth. In this business segment, obviously, there would be inadequate profits or even losses as business has no command over the market. These business are the candidates where business should decide to divest- kill the dog.

**Question mark:** There could still be areas where there is high growth rate, but lower market share. It is here that company will have evaluate all such areas and decide as to which segment it would like to remain or enter. Having decided the areas, selected the company must invest the cash flow released by divestment (killing of dogs) into these areas either by expansion or by M&As.

**Stars :** Investment in selected areas could be strengthened by acquiring more and more companies where product is seen to be having great market share. This could be developed into star product of the company. For example, **Face book** could perceive the market growth of **Whatsapp** and acquired it.

- b. **Ansoff Matrix<sup>3</sup>:** Another model developed by Ansoff used parameters of existing markets, new markets and existing products and new products and advocated strategies for growth.

2 BCG Matrix: Handerson B. (1969) : The Product Portfolio: BCG perspectives.

3 Anoff Matrix : Ansoff H.I. (1988) New Corporate Strategy , John Wiley & Sons





# Article

M&A AS MANAGEMENT STRATEGY

➤ For competitive advantages, companies have to continuously scan the competition in the market. If there is threat of new entrants or substitute products, best strategy would be to acquire them. Many new technology start ups get acquired by established companies. For example Sabir Bhatia's Hot mail was acquired by Microsoft in 1998. In fact, Cisco Systems' growth is on account of several such acquisitions of start up ventures.



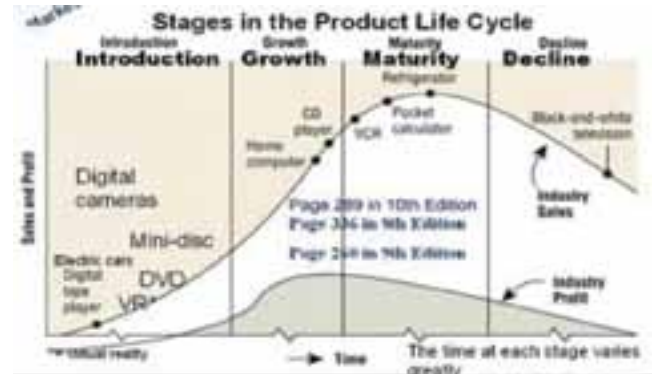
**Existing Products in Existing Markets:** would require market penetration strategy. This can be done by efficient operations or achieving scale of economies. These economies can be expeditiously achieved if companies pursue strategy of Horizontal acquisitions by acquiring competitors' units to achieve scale of operations faster.

**Existing Products in New market** would require strategy of Market development. This can be achieved faster if you acquire a company in new market and channelize your products through such company. All outbound acquisitions are done with a view to push existing products in new markets.

**New Products in Existing Market** would require the strategy of product development. Either the company must have in house capabilities to develop new products or alternatively target the company with new products and acquire that company to distribute those products in existing market.

**New Products in New Markets** would require diversification strategy. Here also M&A strategy could play an important role by out bound acquisitions by targeting companies with new products in different geographical regions.

### c. Product Life Cycle Model<sup>4</sup> :



The product life cycle model focusses on stages through which product passes through i.e., introduction, growth, maturity and decline. After introducing the product, one may achieve faster growth through acquisitions. At maturity, products may be enjoying highest market growth and as well as market share. The care must be taken to envisage when product enters declining stage. Single product companies with declining stage may enter what Prof. Sumantra Ghoshal calls the Valley of Death. The companies can escape this valley of death if they have identified companies with new products and use the cash flows available at maturity stage for acquiring these companies to prevent the evil effects of decline and ultimate closure.

### d. Michel Porter's Five forces Model<sup>5</sup>:



For competitive advantages, companies have to continuously scan the competition in the market. If there is threat of new entrants or substitute products, best strategy would be to acquire them. Many new technology start ups get acquired by established companies. For example Sabir Bhatia's Hot mail was acquired by Microsoft in 1998. In fact, Cisco Systems' growth is on account

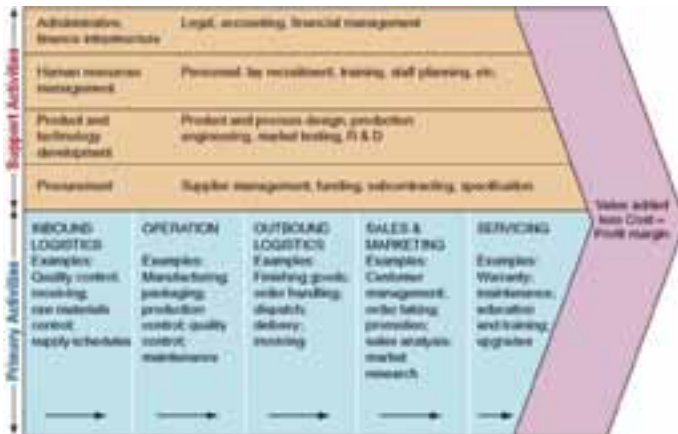
4 Product Life Cycle : Raymond Vernon( 1966) See Chester R.Wasson(1978) Dynamic Competitive Strategy and Product Life Cycles, Austin.  
5 Five Forces Analysis :Porter M.E.(1980) Competitive Strategy



of several such acquisitions of start up ventures.

If suppliers' power is a matter of constraint for growth, the best strategy would be to gobble up supplier's company, by backward integration. Similarly, if one feels bargaining power of buyers is restraining the growth, forward integration by acquiring customers can be the best growth strategy.

### e. Value Chain Analysis<sup>6</sup>:



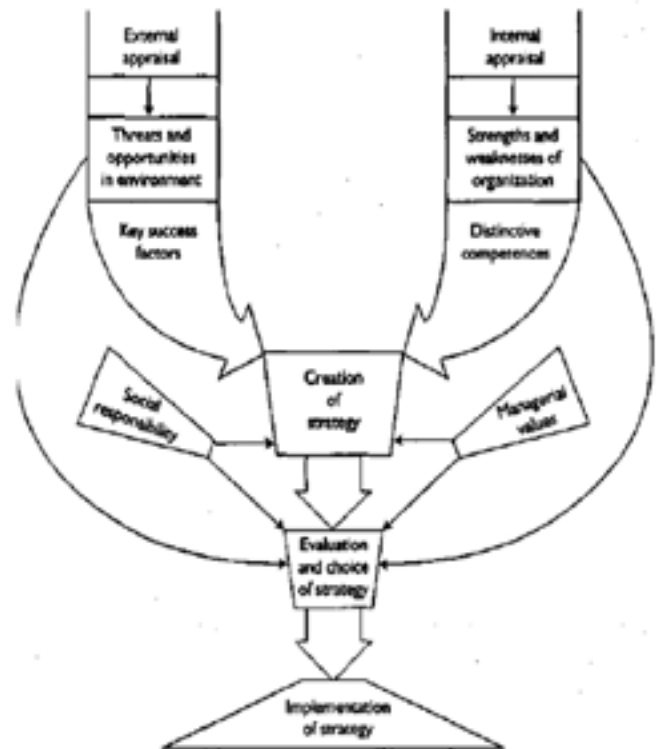
Michel Porter has sub divided various activities right from acquiring raw materials to after sales services as a value chain. It is possible that each of the activities may not be pursued by the companies themselves or some of the activities might be outsourced. Depending on the strength of company's internal efficiencies, companies may specialize into particular operations. However, if they want to pursue each of these activities and in the shortest possible time frame, the same can be achieved by acquiring companies in each of these activities and form a composite unit. For example, composite textile mill having all departments right from spinning yarn, weaving fabric, dyeing unit to apparel manufacturing unit. Reverse of this can also be pursued by concentrating on core competencies by de merging all units into separate businesses. Which strategy to pursue would depend on strategic intent of the company's assessment of its internal strengths and weaknesses and craft the strategy accordingly.

## STRATEGY FORMATION:

Having considered the various strategic considerations, the question arises as to how to formulate and design a strategy. This question was addressed by Henry Mintzberg in his celebrated book Strategy Safari<sup>7</sup> wherein he classified strategy into ten schools of strategy. Two most relevant ideas are described herein below:

6 Value Chain :Porter M.E.(1985) Competitive Advantage : Creating and Sustaining Superior Performance  
7 Design School of Strategy : Henry Mintzberg, Bruce Ahlstrand, Joseph Lampel : Strategy Safari (2006) Pearson

BASIC DESIGN SCHOOL MODEL



### The step by step methodology may be adopted as under:

#### Simultaneous assessment of :

- External business environment including Govt policies, socio-economic and political atmosphere, business rivalries, threats and opportunities available to the business.
- Key success factors required for successful operations of business activities under consideration.
- Assessment of Internal Strength and weakness of the organisation.
- Distinctive competencies of the organisation which need to be leveraged.
- Analysis obtained as above will have to be tapered by
  - Social responsibilities of the business as well as
  - Values followed and promoted by the management
- The resultant document should give various options from which to select and enact a business strategy
- And last but not the least, will be to faithfully, implement the adopted strategy for desired goals
- With periodic monitoring reviewing and corrective actions.



# Article

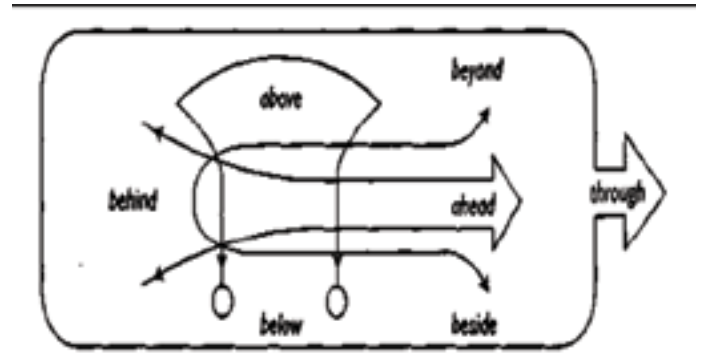
M&A AS MANAGEMENT STRATEGY

## ROLE OF ENTRAPRENEURIAL SKILL AND RISK TAKING ABILITIES

Modern professionals are required to engage in out of box thinking with entrapreneurial ability of decision making and risk taking. More so, while deciding on the target companies to be acquired. They have to

- Exhibit enough vision to look through what is the shape of things including innovations coming in next decade or so.
- Look behind as to what has been done in the past and learn from mistakes.
- Look above as to what the peers in the industry are doing.
- Look below as to what new entrants or technological innovations and start ups are doing.
- Look beyond as well as besides the local frontiers of operations so as to have global perspective of the business.

This has been graphically presented by Mintzberg's entrepreneurial school of strategy<sup>8</sup> as under:



To conclude, company secretaries as corporate executives not only will have to be satisfied with mere compliance role but play an effective role in crafting and executing strategies for corporate mergers and acquisitions for enhancing long term wealth of all the stakeholders' of business. CS

8 Entrepreneurial School of Strategy: Henry Mintzberg, Bruce Ahlstrand, Joseph Lampel Strategy

Safary ( 2006) Pearson

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# International Commercial Arbitration Outside India – Does Part I of the 1996 Act Apply?

- Whether courts in India have jurisdiction to order interim measures under Part I of the Arbitration and Conciliation Act, 1996 when an international commercial arbitration is held outside India as agreed to between the parties has been an important question which had come up before the Supreme Court on a number of occasions. This article reviews the most important decisions of the apex court.

## INTRODUCTION

Whether, in an international commercial arbitration, conducted outside India, pursuant to the agreement of parties, the courts in India, will have jurisdiction, to order interim measures under Part I of the Arbitration and Conciliation Act, 1996 [“the Act”] is an important question in the context of international arbitration. *Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc.* is the last decision of the Supreme Court of India on this issue. The history of the litigation on this issue may be understood in proper perspective if one reads the earlier cases decided by the Supreme Court rendered in *Bhatia International v. Bulk Trading S. A. & Anr.*<sup>1</sup> *Shreejee Traco (I) Pvt. Ltd. v. Paperline International Inc.*<sup>2</sup> *Venture Global Engineering v. Satyam Computer Services Ltd. & Anr.*<sup>3</sup>



## BHATIA INTERNATIONAL V. BULK TRADING S. A. & ANR

The facts were that the contract between the parties, Bhatia International [“Bhatia”] and Bulk Trading S. A. [“Bulk Trading”] provided for arbitration and the term was that the arbitration would be according to the Rules of the International Chambers of Commerce [“ICC”]. The place of arbitration was agreed to be Paris, France.

1 [2002] INSC 132 (13 March 2002)  
2 (2003) 9 Supreme Court Cases 79  
3 [2008] INSC 40 (10 January 2008)



# Article

INTERNATIONAL COMMERCIAL ARBITRATION OUTSIDE INDIA – DOES PART I OF THE 1996 ACT APPLY?

Bulk Trading filed an application before the Additional District Judge, Indore, M.P., against the respondents before the Supreme Court, for interim orders, including an order of injunction restraining them from alienating, transferring and/or creating third party right, disposing of, dealing with and/or selling their business assets and properties. Bhatia contended that Part I of the Act would not apply to arbitrations where the place of arbitration was not in India. Though the Additional District Judge held that the Court at Indore had jurisdiction and the application was maintainable, it dismissed the application. Bhatia filed a writ petition before the High Court of Madhya Pradesh and that petition was also dismissed. Bhatia pursued its case before the Supreme Court.

The simple ground of objection on behalf of Bhatia was that Part I of the Act would apply only to arbitrations where the place of arbitration was in India. Section 2(2) to (5) of the Act set out the scope of Part I of the Act. The text of section 2(2) of the Act was used in support of this argument. Section 2(2) is as follows: “This Part shall apply where the place of arbitration is in India.”

The major Chapters of Part I deal with general provisions, arbitration agreement, composition of the arbitral tribunal, conduct of arbitral proceedings, making the award, recourse against the arbitral award etc. Part II deals with enforcement of foreign awards and part III deals with conciliation.

The relevant section under which Bulk Trading applied for interim orders, including an order of interim injunction against Batia and others, was section 9 of the Act, providing for interim measures etc. by the court. Section 9 falls under Part I. The argument on behalf of Batia was that Part I would not apply if the place of arbitration was outside India. The effect would be that, where the arbitration was at a place outside India, the benefit of section 9 would not be available to a party to those arbitration proceedings.

The following was the reasoning of the arguments on behalf of Batia:

(i) the UNCITRAL Model Law on International Commercial Arbitration was adapted as considered appropriate by the legislature in India and the entire Model Law was not absorbed into the Act. According to Article 1(2) of the Model Law, excepting certain excluded articles, the provisions of the Model Law were to apply to arbitrations only if the arbitration took place in the territory of the enacting State. Article 9, an excluded Article provided that a party may request, before or during arbitral proceedings, from a court, an interim measure of protection and for a court to grant such measure. The argument was that the substance of Article 1(2) of the Model Law was not incorporated into the Act and therefore where the arbitration was outside India, the benefit of Article 9 will not be available for seeking interim measures from a court in India. In other words, section 9 of the Act, providing for interim measures etc. by the court, it was argued, did not state that the section 9 would apply arbitral proceedings which take place outside India.

- (ii) It was also argued that the reference to ‘every arbitration’ and ‘all arbitrations’ in sub-sections [4] and [5] of section 2 of the Act could not apply to arbitrations outside India as that would render section 2[2] redundant;
- (iii) Finally, it was represented that interim relief could be obtained under Article 23 of the ICC Rules of Arbitration.

Interpreting sub-section (2) of section 2 of the Act, the Supreme Court stated: “Sub-section (2) of Section (2) provides that Part I would apply where the place of arbitration is in India. To be immediately noted that it is not providing that Part I shall not apply where the place of arbitration is not in India. It is also not providing that Part I will “only” apply where the place of arbitration is in India (emphasis supplied). Thus the Legislature has not provided that Part I is not to apply to arbitrations which take place outside India.” It observed that the omission of the word “only” in Section 2(2) indicated that the sub-section was only an inclusive and clarificatory provision.

The Court stated in conclusion: “In cases of international commercial arbitrations held out of India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or rules will not apply.”

## VENTURE GLOBAL ENGINEERING V. SATYAM COMPUTER SERVICES LTD. & ANR.

The appeal before the Supreme Court was the culmination of the litigation relating to the disputes between the parties, Venture Global Engineering [“Venture Global”], a company registered in the USA, the appellant before the Supreme Court, and Satyam Computer Services Limited [“Satyam Computer”], the first respondent before the Supreme Court, and Satyam Venture Engineering Services Ltd., [“Satyam Venture”], the second respondent, a joint venture company promoted by Venture Global and Satyam Computer.

In addition to the joint venture agreement, which provided for the level of investment by the appellant and the first respondent in the joint venture company, Satyam Venture, the parties entered into a shareholders agreement which provided for resolution of disputes by arbitration. Satyam Computer alleged that Venture Global had committed defaults in its obligations under the shareholders agreement, resulting in insolvency of the joint venture companies and decided to exercise its option to acquire the shares held in Satyam Venture at book value and initiated arbitration.

The London Court of Arbitration passed an award directing the appellant Venture Global to transfer the shares to respondent No.1. In enforcement proceedings in the US, Venture Global contended that the transfer of shares ordered would be in violation of Indian Law, specifically the Foreign Exchange Management Act [“FEMA”].



Venture Global, filed a suit before the District Court in Secunderabad praying for setting aside the award and for a permanent injunction restraining the transfer of shares ordered by the award. The District Court passed an ad-interim ex parte order of injunction, *inter alia*, restraining respondent No. 1 from seeking or effecting the transfer of shares either under the terms of the Award or otherwise. Later, the District Court after hearing the first respondent rejected the plaint. On Venture Global's appeal to the High Court, it dismissed the appeal holding that the award cannot be challenged even if it is against the public policy and in contravention of statutory provisions.

## VENTURE GLOBAL APPEALED TO THE SUPREME COURT.

It is necessary to note at this stage that the major difference between this case and Bhatia is that the proceedings were initiated by Venture Global, after the award had been made and also the award was challenged in, what may now be called inappropriate proceedings.

The Supreme Court, agreeing with the reasoning of its earlier decision, in Bhatia, held that Part I of the Act was applicable to the award in question even though it was a foreign award.

## SHREEJEE TRACO (I) PVT. LTD. V. PAPERLINE INTERNATIONAL INC.

Shreejee Traco [I] Pvt. Ltd. ["Shreejee"], was a company incorporated in India and it placed an order for purchase of facial tissue paper on Paperline International Inc. ["Paperline"], a company incorporated in New York and having its place of business there. Paperline's invoice for the supply of the material contained a provision for arbitration, which was as follows: 'Any disputes or claims will be submitted to arbitration in New York.' Shreejee opened an l/c as demanded by Paperline and the goods were found on arrival at Bombay as not conforming to the sample of goods. Shreejee alleged that Paperline had committed a breach of contract and demanded damages and compensation along with refund of the amount of the l/c, with interest. It issued a legal notice calling upon Paperline to join in the constitution of an arbitral tribunal and nominated its arbitrator. Paperline did not respond to the notice, nor did it appoint an arbitrator. Shreejee filed a petition before the Supreme Court, under section 11(4) of the Act, seeking the appointment of an arbitrator, for and on behalf of Paperline, by the Chief Justice of India or a person designated by him. The petition was heard by judge of the Supreme Court, who was designated by the Chief Justice of India. A notice of the petition was issued to Paperline, but Paperline did not respond to the notice. The matter was decided *ex parte*.

The argument on behalf of Shreejee on the maintainability of the petition was that section 2(2) was not couched in a negative form, in the sense that it did not exclude the applicability of Part I, if the

place of arbitration was not India. It was contended that the place of performance was in India and that the breach of the contract had taken place in India.

The Court rejected the argument and declared that Section 11 was placed in Part I of the Act and that sub-section (2) of Section 2 provided: "This Part shall apply where the place of arbitration is in India." It held that on a plain reading of the provision it was clear that Parliament intended the provisions of Part I to be applicable when the place of arbitration is in India.

The Court ruled that where the place of arbitration was not in India, Part I of the Act would not apply and stated: "So far as the language employed by Parliament in drafting sub-section(2) of Section 2 of the Act is concerned, suffice it to say that the language is clear and unambiguous. Saying that this Part would apply where the place of arbitration is in India tantamounts to saying that it will not apply where the place of arbitration is not in India."<sup>4</sup> The petition under section 11(4) was dismissed.

## BHARAT ALUMINIUM CO. V. KAISER ALUMINIUM TECHNICAL SERVICE, INC.<sup>5</sup>

At the outset it should be stated that the issue in this case, one of international commercial arbitration, was the maintainability of a petition to set aside a foreign award, under section 34 of the Act, a section which fell under Part I of the Act. Part II of the Act provides for the enforcement of foreign awards.

This case was referred to the Constitution Bench of the Supreme Court as one of the judges, hearing the case had reservations about the correctness of the decisions in Bhatia International and Venture Global in view of the interpretation of sub-section (2) of section 2 of the Arbitration and Conciliation Act, 1996.

Bharat Aluminium, the appellant, and Kaiser Aluminium Technical Service, Inc., the respondent, had entered into an agreement under which the respondent was to supply and install a computer based system for Shelter Modernization at the appellant's Korba Shelter.

Article 17 of the agreement between the parties provided for arbitration. It provided: (i) arbitration would be pursuant to the English Arbitration Law and subsequent amendments thereto; (ii) the arbitration would be by two arbitrators, one to be appointed by the appellant and another by the respondent; (iii) the court of arbitration shall be held wholly in London and the proceedings would be conducted in English; (iv) the findings and the award would be final and binding upon the parties.

Article 22 of the agreement stated that the governing law would be the laws prevailing in India and in case of arbitration, English law shall apply.

<sup>4</sup> Paragraph 8  
<sup>5</sup> Civil Appeal No.7019 Of 2005, Supreme Court of India





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➤ The Supreme Court, discussed elaborately the background in which the 1996 Act was enacted and the purpose of the Model Law of Arbitration, being a model code for countries intending revising their law relating to international commercial arbitration to achieve harmony in legislation in all countries. It did not agree with the arguments on behalf of the appellant. It ruled that Part I of the Act was limited to arbitrations that take place in India. It also ruled that the omission of the word 'only' from section 2(2) did not permit the application of Part I of the Act to arbitrations that are held outside India.

As the disputes that arose between the parties could not be settled by negotiations, the respondent initiated arbitration by a notice to the appellant. The arbitration was held in London, as agreed, and the arbitral tribunal made two awards. The appellant filed two applications before the District Judge, Bilaspur, under section 34 of the Act, for setting aside the awards. The applications were dismissed by the District Judge who held that the applications for setting aside the foreign awards were not tenable. The appellant appealed to the High Court at Chattisgarh and the appeal was also dismissed.

The appellant made the present appeal to the Supreme Court.

Before the Supreme Court the basic question was whether an award which was a foreign award, within the meaning of section 44 of the Act, under Part II, dealing with 'Enforcement of Certain Foreign Awards' could be sought to be set aside under sections 34 of the Act, under Part I of the Act. A foreign award is one made in a country which is a signatory to the New York Convention Country, mentioned in the First Schedule of the Act.

The argument on behalf of the appellant before the Supreme Court was that the awards made in the present case fell under Part I of the Act. The grounds on which the arguments were advanced were: Part I of the Act would apply because the language of section 2(2) was: 'This Part shall apply where the place of arbitration is in India' and that it did not expressly state that Part I will not apply if the place of arbitration was outside India. It was the same argument as made in *Bhatia* and accepted by the Supreme Court in that case.

The Supreme Court, discussed elaborately the background in which the 1996 Act was enacted and the purpose of the Model Law of Arbitration, being a model code for countries intending revising their law relating to international commercial arbitration to achieve harmony in legislation in all countries. It did not agree with the arguments on behalf of the appellant. It ruled that Part I of the Act was limited to arbitrations that take place in India. It also ruled that the omission of the word 'only' from section 2(2) did not permit the application of Part I of the Act to arbitrations that are held outside India. The Court stated: "We are unable to accept the submission of the learned counsel for the appellants that the omission of the word "only" from Section 2(2) indicates that applicability of Part I of the Arbitration Act, 1996 is not limited to the arbitrations that take place in India. We are also unable to accept that Section 2(2) would make Part I applicable even to arbitrations which take place outside India. In our opinion, a plain reading of Section 2(2) makes it clear that Part I is limited in its application to arbitrations which take place in India."

The Court explained the reason for the use of the word 'only' in Article 1(2) of the Model Law. It was that Article 1(2) contained references to excepted articles which would have extra territorial effect, if so legislated by a State and the word 'only' was used to show that the other articles would be applicable on a strict territorial basis.

The Court stated: "Therefore, the word "only" would have been necessary in case the provisions with regard to interim relief etc. were to be retained in Section 2(2) which could have extraterritorial application. The Indian legislature, while adopting the Model Law, with some variations, did not include the exceptions mentioned in Article 1(2) in the corresponding provision Section 2(2). Therefore, the word "only" would have been superfluous as none of the exceptions were included in Section 2(2)."

The Court stated that it was unable to support the conclusion reached in *Bhatia International and Venture Global Engineering*, that Part I would also apply to arbitrations that do not take place in India. In conclusion, the Court ruled that Part I of the Arbitration Act, 1996 is applicable only to all the arbitrations which take place within the territory of India.

## SUMMING UP

One should consider that this decision of the Supreme Court in *Bharat Aluminium* would, as far as parties using arbitration as a means of settling international commercial arbitrations are concerned, end uncertainty in the legal position in India, on the issue discussed. However, the next set of amendments to the Act, which is long overdue, should extend to a review of the language of section 2(2) of the Act to give effect to the principle of the decision in *Bharat Aluminium*, mainly to reassure contracting parties overseas

CS

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# Shareholder Protection Laws, Corporate Governance and Shareholder Activism- An Analysis in Indian Context

- India is lurching towards Shareholders Activism and valiantly moving forward with a new set of corporate governance framework in order to streamline the existing deficiency in the governance structure and be in sync with the up gradation in corporate framework of the developed part of the world. Shareholder Activism is here to stay.

## INTRODUCTION

**S**hareholder Activism, also known as 'relationship investing' has emerged as an important ingredient in the contemporary corporate framework. It is one of the mechanisms in Corporate Governance. Shareholder Activism is primarily a process of dialogue between the company executives and the shareholders in order to influence the actions of the company. The process has served as a powerful mechanism to create the pressure on corporations and educate the public on often-ignored social, environmental, and labour issues and the ethical practices being followed by the corporation. Critics point out that sustainable business cannot be attained in the absence of shareholder activism. Anecdotal studies conducted in the area of shareholder activism also suggest that Corporate Governance is positively related to the concept of Shareholder Activism. In the contemporary corporate governance framework, the meaning of corporate governance is incomplete



without shareholder activism. Corporate Governance, has found its prominence and acceptance in most countries of the world as, "It includes making necessary disclosures and decisions, complying with the law of the land, commitment towards conducting the business in ethical manner and being responsible towards its stakeholders". In other words, Corporate Governance



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may be defined as a set of processes, mechanisms, and practices adopted by a corporate for its functioning. Corporate Governance, as defined in the Cadbury Report 1992<sup>1</sup>, is the system by which companies are managed and controlled. It means conducting the business in more just and fair manner aiming at bringing transparency and accountability into the functioning of the company.

## RELEVANCE OF THE STUDY

Corporations cannot exist in isolation. They are governed by the rules of the state. This implies that they should be governed in such a manner the law of the land prescribes. Therefore appropriate and effective law-making is most important tool to regulate a company's working. A strong legal framework ensures better shareholder protection as well as ensures a platform where shareholders can voice their concerns and expect a speedy, effective and harmonious resolution and a legal remedy to their problems. Weak and inadequate set of laws, on the other hand, would result in lack of interest of shareowners in confronting the managements who are not bound by proper laws rendering all the time, efforts and resources for making them accountable futile. Therefore, better shareholder protection laws are an essential for shareholder activism to sustain. The absence of adequate data on Shareholder Activism in India and the ignorance of the topic among the shareholders and corporations justify the need and relevance of the current study.

We will discuss the legal framework of the two pioneer countries in the field of corporate governance-US and UK, specifically focusing on the investor protection measures, strengthening the case for the shareowners. We will then examine the scenario in India and try to draw parallels as to where India stands as compared to these developed countries in the backdrop of the recent passing of Companies Act, 2013 and discussing the road ahead.

## THE CONCEPTUAL FRAMEWORK

Corporations are bound to abide by the rules and regulations framed by the state. The legal framework of the country determines the conduct of its residents and the business organizations. A business in order to do business must be aligned with the various legal frameworks that are within the jurisdiction of that relevant country. A corporate, being an artificial juristic person is governed by the laws set by the country's constitution where it is registered. Every nation has a set of rules and regulation which defines the functioning of the corporate sector and this is usually form of certain acts, statutes and governing bodies thereby formed to provide a ground for them to do their business. Corporate Governance

on similar lines is a specialised domain of the legal framework catering specifically the governance standards of incorporation. This is because the Laws of the land are the superstructure on which the edifice of corporate governance is built. In our study, we identified following regulations governing the conduct of a corporate in any country:

The statutory laws are passed by the Parliament by statutory order; the 'regulatory bodies' are setup under each of these laws supervising the adherence of the law including the committees appointed by the government for proper implementation and revision of the laws; and the codes are prescribed by the formal and informal bodies in the business communities. This is then imbibed in the corporate governance framework of a company. Following section identifies each of the aspect mentioned above, in the light of investor protection showcasing the scope of shareholder activism in USA, U.K. and India.

## CORPORATE GOVERNANCE FRAMEWORK OF USA, UK AND INDIA

### Corporate Governance Framework of USA

Experts in the field of Corporate Governance argue that U.S. model of Corporate Governance is basically on outsider model with some key characteristics including dispersed ownership, greater outsider participation in ownership rights and highly participative and transparent management of affairs.

The U. S. corporate governance system has gradually evolved in the last three decades. The first phase of evolvement was witnessed during 1980s to 2001. Prior to 1980s, the governance structure was highly insider dominated, with numerous instances of hostile takeovers affected the minority shareowner's interest.

But the unexpected Enron debacle (witnessed during October 2001) changed the corporate governance norms with increased frequency of no vote campaigns and shareholder proposals targeting some of the most fundamental norms of corporate governance such as CEO compensation issues and turnover, changes in governance structures among others.<sup>2</sup>



1 Cadbury Committee Report was setup in 1991 in response to the financial scandals of the UK Listed companies. Cadbury, A., Butler, J., Lipworth, S., Macdonald, N., Smith, A. H., Brown, S., ... & Item, A. (1992). Committee On The Financial Aspects Of Corporate Governance. Gee, London. Retrieved from <http://www.jbs.cam.ac.uk/cadbury/search/scans/CAD-02253.pdf>, September 2013

2 Prevost, A. K., Rao, R. P., & Williams, M. A. (2012). Labor unions as shareholder activists: Champions or detractors. *Financial Review*, 47(2), 327-349





The United States holds the distinction in having a number of regulatory bodies for the protection and prevention of financial irregularities and frauds. The laws governing all the legal aspect associated with financial irregularities and frauds are embedded in the various sections and articles of the Securities and Exchange Commission (SEC).

The Securities and Exchange Commission (SEC) is the prime authority for regulation of securities market in the U.S with an aim to protect the investors from any fraudulent transactions. It also monitors the takeovers taking place in the corporate arena. Rule 14a-8 of Securities and Exchange Commission Act<sup>3</sup>'s proxy rules makes a company obligatory to include shareholder resolutions in the proxy materials subject to the conditions provided are fulfilled. This gives the investors to gather support for a proxy fight or organise a campaign against the legitimate concerns of shareholders such as change in governance structure or replacing a board member. Another ruling under SEC requires any individual or a group of shareholders to file 13d form if the stake exceeds 5% of the voting stock in a company to ward off any takeover threats. This in turn is an effective measure to protect minority owner's rights.

### Sarbanes-Oxley Act, 2002

The immediate fallout of the Enron debacle spurred the unanimous passing of the Sarbanes Oxley Act (SOX) in 2002. The Act was primarily enacted in the wake of a series of high profile scandals.

The chief clauses of the Act are:

**Section 301-Public Company Audit committee:** This clause mandated the formation of the audit committee which would comprise of independent directors of the Board of Directors where the auditors of the company will be under the scrutiny of the committee and ensure integrity of the audit process.

**Section 404-** deliberates on the issue of the adequacy of internal control mechanisms of management over its financial reporting.

**Section 806** provides for the protection of the whistleblowers which can affect the position of the financial statement from any kind of harassment or unwarranted behaviour. It also requires full documentation of the whistleblowers account of the malpractice reported.

**Section 406** titles code of ethics for senior financial officers spells the ethical code of conduct to be adopted for the principal applicable to its principal financial officer and comptroller or principal accounting officer, or persons performing similar functions.

The U.S. has no single national, authoritative Corporate Governance Code<sup>4</sup>. This is attributable to the constitutional barriers to setting company law at the national level. The federal nature of

the state and centre relations has prevented creation of a binding code on governance for the industry. Various organisations, however, workings for the interest protection of shareholders do prescribe guidelines for better guidance and standardisation of investor protection, for example CalPERS (Calpers Global Corporate Governance Principles, 1996) Other legislations such as Sarbanes-Oxley, and the recent Dodd-Frank Wall Street Reform and Consumer Protection Act are a new addition to the investor protection framework. The commercial proxy advisory firms have also played an influential role in setting standards especially in the absence of a national code.

In addition to the law prescribed in the Calpers Global Corporate Governance Principles, the SEC, and the Sarbanes-Oxley Act, a new act, Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>5</sup> was introduced in July 2010, in response to the global financial crisis which led to confrontation with the realities of defective implementation of governance norms for their personal financial gains and belittling the sanctity of legal procedures. The Act safeguards and protects the investors by fixing fiduciary duty on the broker for ethical investment advice. The Act further entails the formation of the investor advisory committee for a better legal representation of investors which is worth noting. In addition to that, Business Round Table is an association of the Chief executive Officers of companies in the US representing a third of the total value of the US stock market. It comprises of companies with total revenues of \$16 trillion. This association has taken a leading role in better corporate governance norms amongst American business houses. It has played a pivotal role in underscoring and promoting the ethical conduct since 1978 by bringing forward noteworthy recommendations for desirable adoption at regular intervals. Its recent contribution is the initiative in showcasing the importance of Corporate Governance.

It has played a pivotal role in changing the ground rules for promoting ethical conduct since 1978 by publishing recommendations for desirable adoption at regular intervals. The recent trends/contributions in the initiatives are the principles of Corporate Governance. Amongst the nine commandments for promoting better governance it recognises the power of the large shareholders in incorporation and emphasizes that proper information dissemination and regular dialogue is key to better shareholder engagements. It recommends interaction with the shareowners on formal and informal platforms and educating them about conscious use of their voting power in annual general meetings. Involvement of directors and interaction with investor groups is also endorsed by the association.

### Corporate Governance Framework of U.K.

The developed part of the world, irrespective of the strict legal framework and governance structure has not been spared by the giant corporate debacles in the last few decades. The U.K. has had its share of corporate scandals which led to a number of

3 Securities and Exchange Act, 1934 retrieved from <http://www.sec.gov/about/laws/sea34.pdf>  
4 Haskovec, N. Codes of Corporate Governance-A Review (June 2012), Retrieved from [http://web.law.columbia.edu/sites/default/files/microsites/millstein-center/Codes%20of%20Corporate%20Governance\\_Yale\\_053112.pdf](http://web.law.columbia.edu/sites/default/files/microsites/millstein-center/Codes%20of%20Corporate%20Governance_Yale_053112.pdf)

5 The Dogg-Frank Reform And Consumer Protection Act, Retrieved from <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>



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➤ Shareholder Activism is largely driven by the shareholding pattern in the corporate structure of a company. The shareholdings in most of the Indian giants is characterised by block holders. These block holders are majorly of three categories namely Promoters, Financial institutions and Corporate. Most businesses are family driven dominated by founder, his family and associates.<sup>13</sup> Agency problem is identified as a major problem which is usually of the kind controlling vs. the non-controlling shareowners. Therefore it is generally observed that block holders are able to push their agenda hurting the interest of minority shareowners.

measures which were taken as a remedy to protect the interest of the shareholders. The most important step in this direction was formation of the Cadbury Committee in the year 1992<sup>6</sup>. Few noteworthy recommendations included curbing the powers of board of directors, importance of non-executive directors, establishment of remuneration committee and audit committee. Based on these codes, a listing agreement was introduced at the London Stock Exchange encouraging the compliance by listed companies.

Greenbery (1995) Committee was also formed and made major recommendations making specific observations on the compensation committees and executive pay. The UNCTAD Guidance on Good Practices in Corporate Governance Disclosure, UK (2008)<sup>7</sup> emphasised the importance of adequate financial disclosure and increased board- investor communication indicating that participation and voting rights are the most relevant corporate governance tools in the quest of investor protection.

Companies Act sets out the juridical pathway for shareholders can to claim their say into a company's functioning. Companies Act, 2006<sup>8</sup> incorporates various clauses advocating shareowner's say on contentious issues. Section 303 -305 and 314 to 315 enables requisitioning for a meeting and introducing resolution in a meeting by required number of shareholders or voting rights so

that contentious issues can be addressed by the board. Section 168 allows removal of a director by a simple majority in the shareholders meeting. Under various sections under the law proxies are allowed to vote by show of hands and in a poll. They can even demand poll. The law also provides for indirect investors known as 'who are not the registered shareholders but have an economic interest in the firm. They have informational rights such as to receive documents, circular, notices annual reports etc. Section 260 provides for the right of bringing a derivative claim against any of the director of the company for any misconduct including breach of trust and neglect of duty. This section particularly empowers shareowners as it neither necessitates holding of specific number of shares to bring the civil action against director nor the time limit for which the suitor should have held the share before bringing the action upon the board. Section 994 of the Companies Act lays down the guidelines for the purpose of preventing actions unfairly prejudicial to the interests of the shareholders. It provides the legal remedy for those who are at default at the managerial levels including majority shareholders.

The Financial Services Act, 2012<sup>9</sup> led to the formation of two regulatory authorities Financial Conduct Authority and Prudential Regulation Authority in UK. Financial Conduct Authority is statutory authority which is responsible for protection of shareholders for the securities traded on the London Stock Exchange<sup>10</sup>. The firms need to get permission for the purpose of investment and including stock broking companies, fund management companies and insurance companies. It also looks in to the shareholders complaints on mergers and takeovers affecting their interest negatively.<sup>11</sup>

It can be observed that UK has taken the leadership role as far as shareholder protection measures are concerned. US, due to the constitutional impediments, do not present a consolidated position to tackle the problem on shareholder's safeguard on corporate governance issues. A unified approach by the shareholders is one tool to delineate remote shareowners concerns. One interesting observation made by Black and Coffee<sup>12</sup> is that the reason shareholder coalition are less observed in American institutes as compared to UK because US as institutions cannot act jointly and quietly as preferred by British counterparts.

## Corporate Governance Framework of India

India cannot remain isolated for long in the current globalized world. In view of the current developments in corporate governance framework and the legal acceptance of terminology like the shareholder activism mostly in the western countries like the US and the UK, India too has opened up its door and reckoned the term shareholder activism in the recently amended Company's

6 Cadbury, A., Butler, J., Lipworth, S., Macdonald, N., Smith, A. H., Brown, S., ... & Item, A. (1992). Committee On The Financial Aspects Of Corporate Governance. Gee, London. Retrieved from <http://www.jbs.cam.ac.uk/cadbury/search/scans/CAD-02253.pdf>, September 2013

7 UNCTAD Guidance on Good Practices in Corporate Governance Disclosure, UK (2008), retrieved from [http://unctad.org/en/Docs/iteteb20063\\_en.pdf](http://unctad.org/en/Docs/iteteb20063_en.pdf)

8 Companies Act ,2006.[http://www.legislation.gov.uk/ukpga/2006/46/pdfs/ukpga\\_20060046\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/46/pdfs/ukpga_20060046_en.pdf)

9 The Financial Services Act 2012. Retrieved from <http://www.legislation.gov.uk/ukpga/2012/21/contents/enacted>

10 Official Website, London Stock Exchange, Rules and Regulations, Making a Complaint Retrieved from : <http://www.londonstockexchange.com/traders-and-brokers/rules-regulations/making-complaint/regulatory-framework.htm>

11 Haskovec, N. Codes of Corporate Governance-A Review (June 2012), Retrieved from [http://web.law.columbia.edu/sites/default/files/microsites/millstein-center/Codes%20of%20Corporate%20Governance\\_Yale\\_053112.pdf](http://web.law.columbia.edu/sites/default/files/microsites/millstein-center/Codes%20of%20Corporate%20Governance_Yale_053112.pdf)

12 Black, B. S., & Coffee, J. C. (1994). Hail Britannia?: institutional investor behavior under limited regulation. Michigan Law Review, 92(7), 1997-2087.



Act 2013. Indeed, India has always amazed the world in terms of creativity, productivity, or acceptance of the new technology or policy framework, thereby invigorating the enforcement of new policy framework at the earliest. Dr. APJ Abdul Kalam in his book, *Turning Point* writes, "what amazes the world perhaps is the sagacity and maturity of the Indian voters who have always tried to exercise their mandate conscientiously and have proved that as envisaged in our constitution, the people are sovereign and power flows from them". Underscoring the importance of the above sentence remarked by one of the greatest visionary of the contemporary India, the new concept of Shareholder Activism is contemplated to have a positive result among the Indian Corporations.

Shareholder Activism is largely driven by the shareholding pattern in the corporate structure of a company. The shareholdings in most of the Indian giants is characterised by block holders. These block holders are majorly of three categories namely Promoters, Financial institutions and Corporate. Most businesses are family driven dominated by founder, his family and associates.<sup>13</sup> Agency problem is identified as a major problem which is usually of the kind controlling vs. the non-controlling shareowners. Therefore it is generally observed that block holders are able to push their agenda hurting the interest of minority shareowners.

## LEGAL FRAMEWORK

The Companies Act lays down the boundaries for the functioning of corporate in India. It is a fundamental law which governs the behaviour of the firms. The Government in August 2013 passed the new Company's Bill in Rajya Sabha which has now replaced Companies Act 1956 as Companies Act, 2013. The Companies Act, 2013 includes the section 241 and 242 for Prevention of Oppression and Mismanagement which allows the investor to file a complaint against the company if the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of them). The provision of appointing a small shareholder director on the board also ensures adequate investors representation of interest (Section 151). The act also allows the members( holding one tenth of the voting rights or 100 members holding a paid-up capital of one lakh or more to file shareholder resolution, most aggressive weapon of shareholder activism(section 111). In regards to the voting methods, keeping in mind the scattered presence of minority shareholders, section 110 of Companies Act 2013<sup>14</sup>, the facility of Postal ballot was introduced to increase participation of the company. The shareholders could convey their voting preferences by simply writing a 'Yes' or 'No' to the resolutions to be put forward for voting in the forthcoming Annual General Meeting. However this step failed to create much of an impact. In 2012, another revolutionary measure which was

taken by SEBI was the introduction of Electronic Voting. It was ordered that the top 500 listed companies on BSE and NSE were required to introduce electronic voting facility<sup>15</sup>. It reduced the paperwork to the minimum and ensured larger participation due to greater access to internet access to most investor these days. Later in form of section 108, voting by electronic means formally became a part of Companies Act, 2013.

Some other key features in regards to strengthening Corporate Governance in Companies Act 2013, respect of promotion of Investor's protection and fair disclosure policy include the concept of class action suits (section 245) which enables investors to file complaint against the company or the management before the Tribunal and seek any damages or compensation or demand any other suitable action against who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. The key advantage of encouraging the class action suits which hitherto were filed as which had uncertain faith will now have an improved status under the act. This in turn will keep "Indian companies, its management, directors, auditors, on their toes and looking over their shoulders for potential legal action."<sup>16</sup> Furthermore, establishment of Serious Fraud Investigation Office (SFIO) under Section 211 of the act will have the powers to investigate frauds relating to companies including "arrest in respect of certain offences those proved as "fraud". The provision of appointment of Independent Director under Section 149(6) which has been introduced for the first time comprehensively stipulates the qualifications holds promise for the independent Director and act as watchdog over the affairs of the company in ensuring that nothing happens which can jeopardise the interest of the stakeholders of the company.

## SECURITIES EXCHANGE BOARD OF INDIA (SEBI)

The Securities and Exchange Board of India (SEBI) is the regulator for the securities market in India. It was officially established by the Government of India in the year 1988 and given statutory powers in 1992 with SEBI Act 1992 being passed by the Indian Parliament.

The main functions of the Board are regulating the business in stock exchanges and any other securities markets along with registering and regulating the working of stock brokers, promoting and regulating self-regulatory organisations, prohibiting fraudulent and unfair trade practices relating to securities markets and promoting investors' education and training of intermediaries of securities markets. The Preamble of the Securities and Exchange Board of India describes the basic functions of the SEBI as "... to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for

13 Sharma, J.P. Chapter 7, Conceptual Framework of Corporate Governance, Book: Corporate Governance, Business Ethics and CSR, 2011, pp224

14 Companies Act, 2013 Retrieved from <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>

15 Varottil, Umakanth, The Advent of Shareholder Activism in India (October 22, 2012). Available at SSRN: <http://ssrn.com/abstract=2165162>

16 Jain, V.K., How SEBI treats investor associations ,2nd January 2013, Moneylife, <http://www.moneylife.in/article/how-sebi-treats-investor-associations/30504.html>





matters connected therewith or incidental thereto". Thus, SEBI has a definite and positive role in protecting the interest of shareholders. Shareholder Associations, which have recognition under SEBI are organised groups representing shareholders concerns. These play an important part in keeping a check on the activities of the companies and voicing the concerns of the investors. There are 26 recognised Shareholder Associations in India<sup>17</sup>. Some of the prominent associations recognised by Consumer Education and Research Society, Gandhinagar; Federation of Consumer Associations, West Bengal ; Midas Touch Investors Association, Kanpurand, The Bombay Shareholders' Association, Mumbai. These accredited investor associations meet at regular intervals with SEBI officials to apprise about the issues and complaints which the investors are facing steps taken by SEBI to resolve them in an efficient manner.<sup>18</sup>

As far as codes on corporate governance are concerned, recommendations by the Kumar Manglam Birla committee have been the most prominent which led to its adoption in the listing agreement of companies. It includes certain mandatory and non-mandatory recommendations including to enhance the corporate governance standards across the corporate sector. Other recommendatory codes were Confederation of Indian Industries (CII) Code recommendations (1996) were the next in line which emphasized on good corporate governance measures to be adopted. Similar suggestions were made by Birla Committee (SEBI) recommendations (2000) and N. Narayan Murthy Committee (2003). The latest addition to the list is the Voluntary Guidelines 2009 by Ministry of Corporate Affairs, Government of India<sup>19</sup> in December 2009. Although it does not provide any concrete measures specifically for investor protection, but it underscore and exemplify the importance of corporate governance in general.



17 <http://investor.sebi.gov.in/investadd.pdf>

18 Jain, V.K., How SEBI treats investor associations ,2nd January 2013,Moneylife, <http://www.moneylife.in/article/how-sebi-treats-investor-associations/30504.html>

19 Guidelines issued under the supervision of the then Corporate Affairs Minister Shri. Salman Khurshid[http://www.mca.gov.in/Ministry/latestnews/CG\\_Voluntary\\_Guidelines\\_2009\\_24dec2009.pdf](http://www.mca.gov.in/Ministry/latestnews/CG_Voluntary_Guidelines_2009_24dec2009.pdf)

## Comparative Analysis of the investor protection policy framework in US, UK and India

Basis	USA	UK	India
Statutory Framework	Securities Exchange Act 1934, Sarbanes-Oxley Act, 2002	Companies Act, 2006 Financial Services Act, 2012	SEBI Act, 1992 Companies Act ,2013
Regulatory Authorities	Securities and Exchange Commission	Financial Conduct Authority(FCA)	Securities Exchange Board of India
Codes	Calpers Global Corporate Governance Principles,1996 Principles of Corporate Governance, Business Round Table, 2012	Cadbury Committee Codes in the year formally adopted in the Listing Agreement UK Stewardship code (Institutional investors by UK Financial Reporting Council)	Kumar Manglam Birla Committee Codes Formally adopted in Listing Agreement. Corporate Governance Voluntary Guidelines 2009

## LESSONS TO LEARN FOR INDIA

1. Unlike US (Sarbanes- Oxley Act, 2002) and UK (Financial Services Act, 2012) a separate act focusing specifically on strengthening the shareholders rights in the country is still lacking in India.
2. A lacuna of a response system to financial distress in the form of a regulatory authority is conspicuous. SEBI's inability to handle crisis is evident in its inability to prevent the National Spot Exchange Limited (NSEL) fiasco which shows that a separate authority catering to the specific needs for prevention of fraudulent practices against duping small shareholders is urgent need of the hour.
3. After the scandalous decade 1990s, clause 49 was a commendable step towards better governance measures. However, since then there lies a vacuum of releasing specific codes requiring mandatory adoption to prevent frauds. Satyam fiasco did lead to release of voluntary guidelines by the Ministry of Corporate Affairs, but they scarcely mention investor protection in its text.



## SHAREHOLDER ACTIVISM—WORLD-WIDE TRENDS

There were series of developments in America during the second half of the 20<sup>th</sup> Century, more importantly during 1950 when the number of proposals for general empowerment of shareholder through more participatory AGMs and transparent reporting were introduced by enlightened shareholders.<sup>20</sup> Rule 14a-8 of the Securities and Exchange Act of 1934, which lays out the process and rules related to shareholder proposals was also included around that time only. This further encouraged establishment of legitimate avenues for shareholders to voice their opinion which included networks and organisations which bought together the activist shareholders under one roof. These developments paved way for establishment of groups such as the Council on Economic Priorities, the Corporate Information Center, and the Interfaith Center on Corporate Responsibility (ICCR), which were important players in the beginning of an overall social movement. The recent years have witnessed emergence and shaping of shareholder activism from dormancy and are beginning to engage both shareholders and the corporate management. During the last 30 years Shareholder Activism has grown by leaps and bounds as a result of the convergence of several factors the most important among those was the increased ability of large shareholders to organise and communicate.

Since the first half of the first decade of 21<sup>st</sup> century, the developed countries like the U.S. and the U.K. witnessed the concept of Shareholder Activism in an unprecedented way. The period from 2004 to 2007 can be marked as the most active season for shareholder campaigns in USA.

A number of companies were targeted by activist for varied reasons by shareholders for changes corporate structure. The Trian Fund Management LP led by Nelson Peltz after acquiring more than five percent stake in H.J. Heinz company, entered into a proxy fight aiming to win 5 seats on Board of Directors. Peltz was successful in gaining two seats which later on helped him to adoption of a turnaround plan for the company aiming for cost cutting asset restructuring which later on turn out to be extremely beneficial for company.<sup>21</sup> In the same line the People for Ethical Treatment of Animals (PETA) has been active in protesting animal testing and have organised several shareholder campaigns against score of companies against the cruelty of companies against animals. The campaigns against Chevron- Texaco<sup>22</sup>, Du Pont and Pfizer<sup>23</sup> are few to mention. In all three cases the common aim was to promote

adoption of state-of-the-art and scientifically valid non-animal methods that were already in use in other countries.<sup>24</sup>

There are various issues which have gained attention of the stockholders to make companies more accountable towards corporate boards. Majority voting for election of director is one of them. For instance, a leading international law firm reported that in the year 2006 alone, more than 150 shareholder proposals demanding voting majority were filed. United Brotherhood of Carpenters Pension Fund, an institutional shareholder was one of the forerunners in demanding adoption of these guidelines.<sup>25</sup>

However, there are certain contentious issues which need thoughtful deliberations. Say on pay is another contentious issue on the activists minds. This is evident from the fact that in 2006 alone, seven companies faced shareholder protests by most eminent institutions were supporting such proposals including CalPERS, New York City Pension funds and Amalgamated Bank Longview Funds. Various mutual funds also showed their support in favour of the Say on Pay proposals including Fidelity Investments, Vanguard among others. Various companies such as Morgan Stanley and United Technologies faced protests in 2007 on the same lines.<sup>26</sup>

Similarly, Kirk Kerkorian acquired nearly 10 percent stake in General Motors in the year 2005 and became the third largest shareholder in the company. He then relentlessly pushed to carve out strategies to make GM a profitable concern, for providing more value to the shareholders including his attempt for alliance of GM with Nissan and Renault.<sup>27</sup> However, the deal did not materialise and he exited the company selling his shares. His exit



20 KatherinaGlac The Influence of Shareholders on Corporate Social Responsibility- History of Corporate Responsibility Project Working Paper No. 2, Center of Ethical Business Cultures  
 21 Weiss, M. (2013, Feb 15), Peltz Helped Spur Heinz Turnaround Setting Stage for Bid, Retrieved from <http://www.bloomberg.com/news/2013-02-14/peltz-helped-spur-heinz-turnaround-setting-stage-for-bid.html>  
 22 Official site of Peta, People for Ethical Treatment of Animals , Issues, Shareholder Campaigns, Retrieved from <http://www.peta.org/issues/animals-used-for-experimentation/shareholder-campaigns/chevron-texaco-shareholder-campaign/>  
 23 Official site of Peta, People for Ethical Treatment of Animals , Issues, Shareholder Campaigns, Retrieved from <http://www.peta.org/issues/animals-used-for-experimentation/shareholder-campaigns/pfizer-shareholder-campaign/>

24 Official site of Peta, People for Ethical Treatment of Animals , Issues, Shareholder Campaigns, Retrieved from <http://www.peta.org/issues/animals-used-for-experimentation/shareholder-campaigns/dupont-shareholder-campaign/>  
 25 Activism, Retrieved from <http://archive.manifest.co.uk/manifest-i/2007/0704April/0704activism/0704activismUS.htm>  
 26 Activism, Retrieved from <http://archive.manifest.co.uk/manifest-i/2007/0704April/0704activism/0704activismUS.htm>  
 27 Big GM investor urges Nissan- Renault alliance(2006,June30), Retrieved from <http://www.nbcnews.com/id/13630565/#.UrUq-PQW1BK>



# Article

SHAREHOLDER PROTECTION LAWS, CORPORATE GOVERNANCE AND SHAREHOLDER ACTIVISM- AN ANALYSIS IN INDIAN CONTEXT

➤ Having identified the potential of Institutional investors having the voice and weight to make an impact, SEBI directed the Mutual funds to reveal their voting patterns in Annual General meetings. Since then, a rise in institutional activism has been observed. Mutual funds vote on behalf of the unit holders. This is also called Proxy voting. Investors Funds such as Reliance Mutual Fund, DSP Blackrock, HDFC and UTI were involved in separate instances ranging from voting against various proposals and resolutions in AGMs of companies these MFs hold portfolios.

negatively affected the automotive operations of GM and company experienced a loss to its European and Japanese counterparts in the industry.<sup>28</sup>

## HEDGE FUND – A NEW TOOL OF ACTIVISM

Hedge funds are investment vehicles that explicitly pursue absolute returns on their underlying investments. The appellation "Absolute Return Fund" would be more accurate, not least as not all hedge funds maintain an explicit hedge on their portfolio of investments. During the recent years, Hedge Fund Activism has emerged strongly, particularly after the global financial crisis. One of the few notable examples is the acquisition of Alberta Investment Management Corporation (Aimco), a Canadian pension fund along with Jana Partners, a hedge fund, in TNT in the year 2009.<sup>29</sup> The European postal service giant had been experiencing fall in its operations due to liberalisation policy adopted by Netherlands which led to increased competition. Later on the Aimco and Jana were able to successfully demerge TNT into TNT Express and Dutch postal company Post NL by garnering shareholders support in an EGM in 2011.<sup>30</sup>

Jana Partners has played a role of a proactive investor in various other companies. In 2010 it acquired a 7 percent stake in Charles River Laboratories and registered its dissent against its acquisition

plan of of WuXI PharmaTech (Caymen) which the company ultimately cancelled. In 2011, Jana was successfully able to split production and exploration units of El Paso Corp after it acquired 4 percent stake in the company.<sup>31</sup>

Goldman analysts remarks that "activist funds have returned 40 % during the past two years vs. 23% for the typical equity hedge fund". They analysed 778 hedge funds with a combine \$1.8 trillion in gross equity positions (International Business Times, May 13, 2014). Another Activist hedge funds which was in news in 2009 was Relational Investors along with CalSTRS, California's state pension fund for teachers organised a shareholder campaign against Occidental Petroleum for the exorbitant executive remunerations pay packages of the executive and reappointment of Ray Irani's as CEO even after attainment of retirement age. They were successfully able to win the motion and implemented the Say on Pay policy with Steve Chasen chosen as the new CEO replacing Irani.<sup>32</sup>

In May 2012, U.K. witnessed the outrage of shareholders forced CEO of three companies namely publisher Trinity Mirror, insurer Aviva and pharmaceutical company Astra Zeneca to put their papers for drawing hefty salaries<sup>33</sup>. In U.S. Vikram Pandit faced sharp criticism on proposed \$15 million pay package which the shareholders vehemently rejected. This primarily happened after Dodd-Frank, bestowed shareholders with a "say on pay." which Securities and Exchange Commission later formally adopted<sup>34</sup>.

## THE ROAD AHEAD—INDIAN PROSPECTS

### Current Scenario

Off late a number of activism cases have been reported in media. The onset was in October 2011 with the Purchase of a Rs. 270 crore aircraft by Crompton Greaves which was resisted by its institutional investors forcing the company to eventually sell it off.<sup>35</sup> Soon after that, Children Investment Fund, A minority shareholder in Coal India Limited voiced its opinion against the PSU for not selling coal at competitive prices affecting the shareholders interest. Other instances were also around the same time when investors of the Akzo Nobel India opposed the amalgamation of three unlisted companies. Even though the amalgamation took place the royalty payment was reduced from 3% to 2% due to shareholders protests.<sup>36</sup>

28 Kerkorian said to bail out of GM, (2006, December 6), Retrieved from [http://money.cnn.com/2006/12/01/news/companies/kerkorian\\_gm/](http://money.cnn.com/2006/12/01/news/companies/kerkorian_gm/)

29 Steinglass, M., TNT Express feud with shareholders widens, (2012, February 6), Retrieved from <http://www.ft.com/intl/cms/s/0/5b76d7b0-e463-11de-a0ea-00144feab49a.html#axzz2o5kYJq52>

30 Press Release, TNT Shareholders approve demerger, (2011, May 25), Retrieved from <http://www.tnt.com/corporate/en/data/press/2011/05/tntshareholdersapprovedemerger.html>

31 Benoit, D., TNT Marks Another Success Story For Jana Partners. Retrieved from <http://blogs.wsj.com/deals/2012/02/17/tnt-marks-another-success-story-for-jana-partners/>

32 Holstein, William J. They're Backkkkk! (2011, January 10) <http://chiefexecutive.net/theyae%E2%84%A2re-backkkkk>

33 Gold, H., (2012, May 11) Shareholders put heat on imperial CEOs Commentary: 'Something important is evolving' on CEO pay Retrieved from <http://www.marketwatch.com/story/shareholders-put-heat-on-imperial-ceos-2012-05-11>

34 Kelley L Can We Curb Obscene Pay? 5 Examples of Shareholder Activism (2012 June 13), Retrieved from [http://www.alternet.org/print/story/155779/can\\_we\\_curb\\_obsene\\_pay\\_5\\_examples\\_of\\_shareholder\\_activism](http://www.alternet.org/print/story/155779/can_we_curb_obsene_pay_5_examples_of_shareholder_activism)

35 CA. H. Ghosh, (2012, October) Retrieved from [http://220.227.161.86/28022cajournal\\_oct2012-23.pdf](http://220.227.161.86/28022cajournal_oct2012-23.pdf)

36 CA. H. Ghosh, (2012, October) Retrieved from [http://220.227.161.86/28022cajournal\\_oct2012-23.pdf](http://220.227.161.86/28022cajournal_oct2012-23.pdf)





Having identified the potential of Institutional investors having the voice and weight to make an impact, SEBI directed the Mutual funds to reveal their voting patterns in Annual General meetings. Since then, a rise in institutional activism has been observed. Mutual funds vote on behalf of the unit holders. This is also called Proxy voting. Investors Funds such as Reliance Mutual Fund, DSP Blackrock, HDFC and UTI were involved in separate instances ranging from voting against various proposals and resolutions in AGMs of companies these MFs hold portfolios<sup>37</sup>. Lately SEBI advised Insurance companies to play a more active role as block holders for better vigilance.<sup>38</sup> It is indeed noteworthy to mention here that SEBI has been playing an instrumental role in protecting the shareholders and guiding them from coming out of the gallows of bleak horizons.

## NEW HORIZONS IN SHAREHOLDER ACTIVISM—PROXY ADVISORY FIRMS

Proxy Advisory Firms are common in countries like U.S. and U.K. the most famous being Glass, Lewis & Co. and Institutional Shareholder Services. This concept is slowly catching up in India as well. There are three proxy advisory firms in India at present namely Ingovern, Stakeholder Empowerment Services and Institutional Investor Advisory Services. These firms provide voting recommendations to their clients on various Corporate Governance issues. They also take the initiative of informing and making the common investors aware of the contentious issues and identifying the red flags in the deals undertaken by large corporate at the cost of the interest of the share owners. One example worth noting is that when N. R. Narayana Murthy joined as chairman of Infosys Ingovern advised shareholders to vote against the resolution to bring him as executive chairman on grounds of 'in violation of the spirit of corporate governance espoused by the company'.<sup>39</sup> Ingovern also comes out with an yearly report on Proxy season in India wherein it summaries the voting trends by institutional investors on the resolutions put forward in companies. This can be helpful in paving the path for the future road ahead for shareholder Activism in India.

Following the international trend it is quite evident that activism as phenomena of Corporate Governance is assuming importance and recognition in the corporate arena. No company management can disparage the importance of increased investor autonomy in major business deals where considerable interest of the shareholders is at stake. Holcim-Ambuja Cements restructuring deal represents a conspicuous example of this. The idea of shareholder activism has an undoubted potential in improving the Indian business scenario and thereby impacting the Indian Economy as a whole.

37 Vasudevan, N. ( 2013 26 July) Greenhoots of minority shareholder activism, Retrieved from [http://smartinvestor.business-standard.com/mf/mfNewsFeature-mfeature-189395-Greenhoots\\_of\\_minority\\_shareholder\\_activism.htm#\\_Urb6iPQW1Bk](http://smartinvestor.business-standard.com/mf/mfNewsFeature-mfeature-189395-Greenhoots_of_minority_shareholder_activism.htm#_Urb6iPQW1Bk)

38 Dey, Sudipto ,Economy & Policy FeaturesDouble standards or greed? ,Business Standard, (2012,December 13), Retrieved from [http://www.business-standard.com/article/economy-policy/double-standards-or-greed-112121300163\\_1.html](http://www.business-standard.com/article/economy-policy/double-standards-or-greed-112121300163_1.html)

39 Ingovern on Narayana Murthy's comeback in Deccan Herald, Retrieved from <http://www.ingovern.com/2013/06/ingovern-on-narayana-murthys-comeback-in-deccan-herald/>

The increased public recognition of this phenomenon along with statutory support will make India an enviable option for increased foreign investment destination for investment *vis-à-vis* other developing nations. However, a concentrated effort on part of the Institutional investors is inevitable necessity to show the solidarity toward higher cause of investor sovereignty.

## DARK SIDE OF SHAREHOLDER ACTIVISM

Hedge fund activism is a new branch in shareholder activism. Hedge funds as defined by International Monetary fund<sup>40</sup> as "Hedge funds are eclectic investment pools, typically organized as private partnerships and often located offshore for tax and regulatory reasons. Their managers - who are paid on a fee-for-performance basis - are free to use a variety of investment techniques, including short positions and leverage, to raise returns and cushion risk." Therefore, it can be construed that the managers have a vested personal interest to maximise their asset value. Engaging in activism helps them steer the company in the direction they want to, which not necessarily would be in the larger interest of the shareholders. Since hedge funds are investment vehicles meant for wealthy investors and are involved in short selling, derivative trading and leverage or arbitrage they are exempt from stringent laws<sup>41</sup>. This is due to the very nature of their investment strategy. Hence there is every possibility that the hedge fund activist may acquire a large stake in the company, force their decisions on the management and exit early after making profits hampering the future growth prospects of the firm. This short term policy for personal gain can also impact the market volatility with a potential of destabilising the economy. Few authors have term this phenomenon as short termism.<sup>42</sup>

Another possibility of shareholder activism going wrong is when it leads to a falling shareholder's value. This can be illustrated with the acquisition of Blockbuster Ltd shares by Carl C. Icahn in the year 2005.<sup>43</sup> Icahn is a successful shareholder activist and have been victorious in making loss making companies in to profitable entities by amassing stocks and pressurising management. The anticipation of increase in the DVD rentals business led Icahn to buy a stake worth 17 million shares in Blockbuster Ltd. He aimed at gaining seats at the board to implement strategies to boost business and curb hefty pay packages drawn by the executives. However, the business could not keep pace with changing

40 Eichengreen B. , Mathieson, D., September 1999 Hedge Funds: What Do We Really Know? International Monetary Fund, ISBN 1-55775-849-2 , Retrieved from <http://www.imf.org/external/pubs/ft/issues/issues19/>

41 Gregoriou, G. N., Karavas ,Vassilios N, and FabriceRouahHedge Funds: Strategies, Risk Assessment, and Returns , 2003, Published by Beard Books , Retrieved from <http://books.google.co.in/books?id=GmhvazZJCxYC&pg=PA115&dq=hedge+funds+definition&hl=en&sa=X&ei=15a1UpnsNlaLrQeOzYG4CQ&ved=0CDgQ6AEwAA#v=onepage&q=short%20selling&f=false>

42 Roe, Mark J., Corporate Short-Termism - In the Boardroom and in the Courtroom (August 2013). Business Lawyer; Vol 68, August 2013; ECGI - Law Working Paper No. 210; Harvard Public Law Working Paper No. 13-18. Available at SSRN: <http://ssrn.com/abstract=2239132> or <http://dx.doi.org/10.2139/ssrn.2239132> And Masouros, P., Corporate law and economic stagnation: how shareholder value and short-termism contribute to the decline of the Western economies. Eleven International Publishers, 2013

43 FabrikantG So Far, Icahn's Midas Touch No Help to Blockbuster2006January 16, Retrieved from [http://www.nytimes.com/2006/01/16/business/16blockbuster.html?\\_r=1&](http://www.nytimes.com/2006/01/16/business/16blockbuster.html?_r=1&)



# Article

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consumer preferences and slash in DVD prices which eventually led the company to file for bankruptcy in 2010.

Investor Activism can also hamper the interest of the minority stockholders if the Institutional Investors collude with the board. Such instances occur in emerging economies where shareholder protection laws are weak. It has been observed that in China after the split share structure reform was adopted, institutional investors were being lured by the other majority shareholders for ownership rights in exchange of insider information which can be beneficial in terms of abnormal stock returns.<sup>44</sup> Poorly conceived activism strategy can also lead to ousting of experienced and proficient CEOs. Few CEOs voluntarily exit due to large scale dissent. This

44 Zeng, Y., Yuan, Q., & Zhang, J. (2011). Dark Side of Institutional Shareholder Activism in Emerging Markets: Evidence from China's Split Share Structure Reform\*. *Asia Pacific Journal of Financial Studies*, 40(2), 240-260.

can impact long term value of the firm which could have benefitted from the expertise of visionary CEO. Activism not weighed against cost benefit analysis can prove counterproductive.<sup>45</sup>

## CONCLUSION

Conspicuously, India is lurching towards Shareholders Activism and valiantly moving forward with a new set of corporate governance framework in order to streamline the existing deficiency in the governance structure and be in sync with the up gradation in corporate framework of the developed part of the world. The gist of the above discussion may be concluded in a single sentence, Shareholder Activism is here to stay. CS

45 Bach, Laurent and Metzger, Daniel, The Dark Side of Shareholder Activism: Evidence from CEO Turnovers (April 8, 2013). Available at SSRN: <http://ssrn.com/abstract=2247084> or <http://dx.doi.org/10.2139/ssrn.2247084>

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## Without Prejudice – A Transparent Veil

- The 'without prejudice' Rule, which is a transparent veil, may not offer complete protection as one would have understood in the traditional sense. It would be better to understand the Rule and exceptions thereto in the modern perspective.

### INTRODUCTION

In the modern commercial world, parties to a dispute do engage in 'without prejudice' negotiations to settle their differences out of court before or after initiating a formal legal process. In such negotiations, the simple understanding is : any information disclosed/communicated to the other party, whether orally or in writing, should not be used by that other party as admission of any right, title or liability by the disclosing party in the subsequent legal proceedings. In short, such disclosure should not have any 'evidentiary value'. However, a closer look at the recent court decisions and the modern judicial trend would reveal that the 'without prejudice' Rule may not offer the complete protection as one would have understood in the traditional sense. It would be better to understand the Without Prejudice Rule and exceptions thereto in the modern perspective.

### THE WITHOUT PREJUDICE RULE

An initial attempt to define the Rule was made by Lindley L.J. in a strictly obiter passage of his judgement in *Walker v. Wilsher* [1889] 23 QBD 335, as : "*what is the meaning of the words 'without prejudice' ? I think they mean without prejudice to the position of*



*the writer of the letter if the terms he proposes are not accepted. If the terms proposed in the letter are accepted a complete contract is established, and the letter, although written without prejudice, operates to alter the old state of things and to establish a new one."*

Since then this definition has found an expressed approval in many judicial pronouncements especially in *Tomlin v. Standard Telephones & Cables Limited* [1969] 1 W. L. R. 1378 and *Cutts v. Heads* [1984] Ch 290.





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WITHOUT PREJUDICE – A TRANSPARENT VEIL

➤ The Without Prejudice Rule is a rule governing the admissibility of evidence and is founded upon the public policy of encouraging litigants to settle their differences rather than litigate to the end.

## PHILOSOPHY

The Rule refers to the protection for not admitting in evidence any ‘admissions’ made by any party against its own interest during without prejudice negotiations. The philosophy behind the Rule is to encourage out of court compromise. If parties in dispute speak freely and objectively without any fear of their respective statements being subsequently exposed to the vagaries of rules of evidence / admissions, they would be more likely to settle their dispute. It is *‘interest rei publicae ut sit finis litium’* i.e. it is in the interest of the State that there should be an end of litigation.

## JUSTIFICATION

The justification for the Rule, as stated in *Rush & Tompkins Ltd. v. Greater London Council* [1989]AC 1280, is : “The Without Prejudice Rule is a rule governing the admissibility of evidence and is founded upon the public policy of encouraging litigants to settle their differences rather than litigate to the end.”

In the said case, an attempt was made to distinguish between ‘admissibility of evidence’ and ‘discoverability of documents’. It was argued that (i) the privilege accorded to the without prejudice correspondence is determined once there is a concluded agreement between the parties; (ii) the privilege accorded to the without prejudice correspondence is not extended against a third party which satisfies the overriding test of relevance; (iii.) the privilege accorded to the without prejudice correspondence, does not extend to discoverability of such privileged documents.

However, Lord Griffith rejected the argument and observed that *“In my view the general public policy that applies to protect genuine negotiations from being admissible in evidence should also be extended to protect those negotiations from discoverable to third parties”*

The second justification as highlighted by Robert Walker L.J in the celebrated case of *Unilever plc v. The Proctor & Gamble Co.* [1999] 2 ALL E R 691 ( The Unilever case) observed that

*“..... the rule was recognised as being based at least in part, on public policy and its other basis of foundation is in the express or implied agreement of the parties themselves that communications in course of their negotiations should not be admissible in evidence if, despite their negotiations , a contested hearing ensues..”*

## SCOPE OF THE RULE AND EXCEPTIONS THERETO

Ever since the Rule is recognised, attempts are being made either to circumvent the Rule or to restrict its applicability as per the needs of the contesting parties. In the modern commercial world, new arguments are being developed and new challenges are thrown at, to restrict or expand the scope of the Rule. The courts too, are evolving new justifications and exceptions.

Robert Walker L.J. in the Unilever case (supra) has observed that *“many of the alleged exceptions to the rule will be found on analysis of the cases in which the relevance of the communication lies not in the truth of any fact which it asserts or admits, but simply in the fact that it was made.”*

The subtle analysis of this key observation would reveal that in without prejudice negotiations both the parties are making ‘offers’, ‘counter offers’ and ‘acceptances’ to arrive at a compromise. The court does not get into the verification of facts but would ascertain whether a statement to that effect was made in the without prejudice negotiations and if so, the court ensures that the parties must stick to their bargain. It is to ascertain whether a representation was made at the time of arriving at the settlement and not whether such representation is in the fact, true or false.

## PAROLE EVIDENCE

Admitting any evidence of the without prejudice negotiations, would contradict one of the basic rules of interpretation of contracts i.e ‘The parole evidence rule’. The parole evidence rule was stated by *P. O. Lawrence J. in Jacobs v. Batavia and General Plantations Limited* [1924]1 Ch. 287 is as follows: It is firmly established as a rule of law that parole evidence cannot be admitted to, add to, vary, or contradict a deed or other written instrument”.

The parole evidence rule as stated above, was approved by Tindal C.J. in the case of *Shore v Wilson* [1842] 9 Cl & F 355 with a view to provide certainty in interpretation of contract. He observed :“ no lawyer would be safe in advising upon the construction of a written instrument, .. .....if at some future period, parole evidence of the particular meaning which the party affixed to his words, or his secret intention in making the instrument, or ....., might be set up to contradict or vary the plain language of the instrument itself.”

## EXCEPTIONS

However, based on the ‘key’ observation as referred to by Robert Walker L.J. in the Unilever judgement, certain exceptions to the Rule (including Parol Evidence) are recognised. The exceptions are :

- When the issue is whether without prejudice negotiations have resulted in a concluded compromise agreement, the without



➤ in without prejudice negotiations both the parties are making 'offers', 'counter offers' and 'acceptances' to arrive at a compromise. The court does not get into the verification of facts but would ascertain whether a statement to that effect was made in the without prejudice negotiations and if so, the court ensures that the parties must stick to their bargain. It is to ascertain whether a representation was made at the time of arriving at the settlement and not whether such representation is in the fact, true or false.

prejudice communications are admissible. *Tomlin v Standard Telephones & Cables* [1969] 1 WLR 1378.

- When an agreement apparently concluded between the parties during the without prejudice negotiations should be set aside on the ground of misrepresentation, fraud or undue influence. *Underwood v. Cox* [1912] 4 DLR 66.
- A clear statement which is made by one party to negotiations and on which the other party is intended to act and does in fact act, may be admissible giving rise to right of estoppels. *Hodgkinson & Corby v. Wards Mobility Services* [1997] FSR 178.
- One party may be allowed to give evidence of what the other said or wrote in without prejudice negotiations if the exclusion of the evidence would act as cloak for perjury, blackmail or other unambiguous impropriety. *Foster v. Friedland* [1992] CAT 105;.
- Evidence of negotiations may be given in order to explain any delay or apparent acquiescence.
- Offer expressly made without prejudice except to cost.
- Matrimonial cases.

In the Unilever case, based on an alleged 'actionable threat' given by Procter & Gamble in without prejudice negotiations, Unilever wanted a declaration *inter-alia* from the Court in England regarding non infringement of a European patent. Such actionable threat, but for its without prejudice label, would have, as canvassed by the Unilever, entitled Unilever to ask for such declaration. Robert Walker L.J. observed that the negotiations between the parties were undoubtedly covered by the normal rule based on the public policy and the pleadings of the threat ( or claim of right) has

not been shown to come within any recognised exception. The Judge refused to expand the scope of the exceptions to include 'actionable threat.

However, in another interesting case of *Ofulue and another (FC) v. Bossert (FC)* [2009] UKHL 16, although the Rule has been upheld by majority, Lord Scott of Foscote in his dissenting judgment opined that if a statement made in the without prejudice correspondence is merely an 'acknowledgement' and not an 'admission' the protection of the Rule is not available to such acknowledgement.

## NEW EXCEPTION

In another recent case of *Oeanbulk Shipping & Trading SA V TMT Asia Limited and others* [2010] UKSC 44, an interesting issue came up for consideration. The issue was: whether it is permissible to refer to anything written or said in the course of the without prejudice negotiations as an aid to interpretation of the agreement. Lord Clarke ( with whom Lord Roger, Lord Walker, Lord Brown, Lord Mance and Sir John Dyson agreed) after referring extensively to a catena of cases on the subject held that :*"evidence of what was said or written in the course of without prejudice negotiations should in principle be admissible, both when the court is considering a plea of rectification based on an alleged common understanding during the negotiations and when the court is considering a submission that the factual matrix relevant to the true construction of a settlement agreement includes evidence of an objective fact communicated in the course of such negotiations."*

Lord Phillips has succinctly put it that :*"The principle to be derived from this appeal can be shortly stated. When construing a contract between two parties, evidence of facts within their common knowledge is admissible where those facts have a bearing on the meaning that should be given to the words of the contract. This is so even where the knowledge of those facts is conveyed by one party to the other in the course of negotiations that are conducted "without prejudice"*.

Lord Clarke based his views on a celebrated question which Lord Hoffmann's asked in *Charterbrook Ltd. v. Perssimon Homes Ltd* [2009] UKHL 38 :*" in every case in which interpretation of the language used in the contract is in issue, the question is what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. "*

The new exception to the Rule is being recognised, namely, 'as an aid to interpretation of the contract'. The test – '*what a reasonable person ..... would have understood*'- in the Ocean bulk judgement demonstrates that the judicial thinking is becoming more and more commercially oriented rather than sticking to the old rule of parole evidence as stated above.



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## THE RULE IN INDIAN CONTEXT

This Rule is recognised in section 23 of The Indian Evidence Act 1872 (The Act). Section 23 provides :

*“In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.*

*“Explanation - Nothing in this section shall be taken to exempt any barrister pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.”*

In the Indian context, it is necessary to note that the said Section 23 refers to “relevancy of admission as evidence” only in civil cases and not in criminal cases.

The word ‘Relevant’ is defined in section 3 of the Act as: *“Relevant - one fact is said to be relevant to another when one is connected with the other in any of the ways referred to in the provisions of this Act relating to relevancy of facts”*

The cardinal rule is - evidence must be directed and confined to the matters which are in dispute and / or which form the subject matter of investigation. In short, Relevant means ‘admissible in evidence’.

## SECTION 3 DEFINES THE WORD ‘EVIDENCE’ :

*“Evidence -Evidence means and includes (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry; such statements are called oral evidence; (2) all documents including electronic records produced for inspection of the Court; such documents are called documentary evidence.*

Section 5 which is in Chapter II – [of the Relevancy of Facts] of the Act provides *“ Evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.”*

A combined reading of Section 3 (Definitions of the words ‘Relevant’ ‘Evidence’) and of Section 5 (Relevancy of Facts) will show that the Court will admit only such oral or documentary evidence which is relevant to the facts in issue.

Section 23 stipulates a mandatory rule in two parts – (1) that if any admission is made by the parties upon express agreement that evidence of such admission is not to be given, then such admission is not ‘relevant’ under the Act; (2) that under certain circumstances the Court infers such agreement between the parties.

Legal sanctity of the Rule and the protection it gives to the parties in negotiation, is thus based on this very proposition of Section 23 that ‘such admission is not relevant as evidence’.

When the correspondence is labelled as “Without Prejudice” and other party acts on it , the requirement of ‘express condition’ is satisfied. Subsequently, the parties engage in series of letters and correspondence, though every time the same is not labelled as ‘without prejudice’ the Court would draw the necessary inference.

## SOME FOREIGN COURTS VIEWS

In order to enable the Court to draw such inference it would be advisable, if not necessary, that such correspondence is made in the course of negotiations in an attempt to settle a dispute between the parties. Some of the Canadian Courts have held that no party should be allowed to make dishonest use of the Rule and its protection by creating a façade to conceal facts or evidence from the Court thereby preventing the other party from disclosing any material relevant evidence. So there has to be a dispute between the parties and the admissions are made in the genuine negotiations to settle such dispute. In other words – no dispute, no settlement, no protection (of the Rule).


There is also a considerable controversy in the rulings of the courts of different countries as to the admissibility of whole or a certain relevant part of the whole, of the privileged correspondence. Some of the courts have held that only such portion of the correspondence which is a part of the dispute (subsequent settlement / negotiations) is protected under the Rule and not ‘whole ‘ of the correspondence.

## FUTURE DEVELOPMENTS

An indication of the future developments to the Rule could be found in obiter passage in the judgment of Robert Walker LJ in the *Unilever* case (supra) where he has observed that *“there seems to be no reason in principle why parties to without prejudice negotiations should not expressly or impliedly agree to vary the application of the public policy rule in other respects, either by extending or by limiting its reach.”*

In view thereof, parties can define by agreement, the applicability of the Rule, the exceptions and exclusions thereto and the rules of interpretation. This would give parties a reasonable control over the ‘after / side effects’ of the Rule.

## CAUTION

The Rule is being recognised for more than 150 years but its interesting journey is continuing. In the words of Mr Geoffrey Hobbs QC the Rule is like a veil. However, it’s a transparent veil. You can see what is there but you can’t show it except in certain circumstances which are called ‘exceptions’. Be careful, you do not know when and which exception would lift the veil. 





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## Form No. MGT-14: Information Bank of Stakeholders

- Form No. MGT-14 has gained the tremendous momentum amongst the Corporate Law Professionals now-a-days. An effort has been made to throw light on the Matters/ Resolutions requiring filing of Form No. MGT-14 as per provisions of Companies Act, 2013 and the Rules made thereunder.

**S**ection 117 of the Companies Act, 2013 provides that, a copy of every resolution or any agreement, in respect of matters specified in sub-Section (3) together with the explanatory statement under Section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner as may be prescribed.

Rule 24 of Companies (Management and Administration) Rules, 2014 specifies that such resolutions and agreement shall be filed with Registrar of Companies in Form No. MGT-14 along with fee.

Further sub-Section 3 of Section 117 provides for the following matters for which Form No. MGT-14 shall be filed by the Company with Registrar of Companies:-

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- (c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;
- (d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;
- (e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-Section (1) of Section 180;
- (f) resolutions requiring a company to be wound up voluntarily passed in pursuance of Section 304;
- (g) resolutions passed in pursuance of sub-Section (3) of Section 179; and
- (h) any other resolution or agreement as may be prescribed and placed in the public domain. As if now, no resolution or agreement is being prescribed and placed in the public domain

Analysis-Requirement of Filing Form No. MGT-14 On Passing



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of Special Resolution as per Companies Act, 2013

As mentioned above for every Special Resolution, Form No. MGT-14 shall be filed by the Company with Registrar of Companies. An effort has been made to chart out the matters for which Special Resolution is required to be passed under the provisions of Companies Act, 2013 and hence the Form No. MGT-14:

S. No.	Section	Particulars
1.	5 (4)	To insert entrenchment provisions in the articles of association of a public limited company.
2.	12(5)	To shift the registered office outside the local limits of any city, town or village where such office is situated.
3.	13 (1) & (8)	(1) To alter the provisions contained in Memorandum of the company. (8) To Change the objects for which the money has been raised from public through prospectus and still has any unutilized amount out of the money so raised.
4.	14(1)	To alter the articles including alterations having the effect of conversion of— (a) a private company into a public company; or (b) a public company into a private company.
5.	27 (1)	To vary the terms of contract referred to in the prospectus or objects for which the prospectus was issued.
6.	41	To issue depository receipts in any foreign country.
7.	48 (1)	To vary the rights attached to the shares of any class
8.	54	To issue sweat equity shares of a class of shares already issued.
9.	62(1)(b)	To increase subscribed capital by the issue of further shares to employees under a scheme of employees' stock option.
10.	62(1)(c)	To increase subscribed capital by the issue of further shares to any person if the price of such shares is determined by the valuation report of a registered valuer.
11.	62 (3) Proviso	To approve terms and conditions of issue of optionally convertible debentures or loan into shares.
12.	66	To reduce the share capital subject to the approval of the Tribunal.

13.	67(3)(b)	To approve any scheme for the purchase of fully paid up shares in the company or its holding company, if the purchase of the shares held by trustees for the benefit of the employees or such shares held by the employee of the company.
14.	68(2)	To authorise the company to purchase its own securities.
15.	71	To issue optionally convertible debentures with an option to convert whole or part of the debentures into Shares at the time of redemption.
16.	94	To keep and maintain the registers and the copies of annual return filed, at any other place than the registered office.
17.	140	To Remove the auditor before the expiry of his term after obtaining the previous approval of the Central Government.
18.	149 (1) Proviso	To approve the appointment of more than fifteen directors.
19.	149(10)	To re-appoint an independent director after expiry of a term of five consecutive years.
20.	165(2)	To specify any lesser number of companies in which director of the company may act as director.
21.	180	To exercise the powers mentioned under Section 180, by the Board of directors with the prior consent of company.
22.	185	To approve a scheme for loan to be given to a managing or whole -time director.
23.	186	To approve giving of loan or guarantee or providing any security or the acquisition of shares exceeding 60% of paid up capital, free reserves and securities premium or 100% of its free reserves and securities premium, whichever is more.
24.	188	To approve entering into related party contract or arrangement requiring special resolution
25.	196	To appoint a person as managing director, whole-time director or manager who has attained the age of 70 years.
26.	197(4)	To approve the remuneration payable to the directors of a company, including any managing or whole-time director or manager
27.	210	To resolve that the affairs of the company should be investigated.
28.	212	To resolve that the affairs of the company should be investigated by the Serious Fraud Investigation Office.



29.	248	To approve filing of application before the Registrar to strike off the name of company from the register of companies
30.	262	To approve the Scheme of amalgamation of the sick company with any other Company.
31.	271	To resolve the winding up of company by the Tribunal.
32.	304	To resolve the voluntarily winding up of company.
33.	319(1)	To confer general authority on the liquidator pursuant to Section 319
34.	321	To sanction any arrangement entered into between the creditors and company which is about to be, or is in the course of being wound up.
35.	343	To approve that certain powers shall be exercised by Company Liquidator.
36.	347	To direct the manner of disposing of company's books and papers when the affairs of a company have been completely wound up and it is about to be dissolved.
37.	371	To adopt Table F in Schedule I, if required.

3	Rule 5 (1) Companies (Management and Administration) Rules, 2014	<b>Maintenance of the Register of members etc. under section 88</b> , at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than one-tenth of the total members entered in the register of members reside.
4	<b>Rule 3</b> Companies (Miscellaneous) Rules, 2014	<b>Application for obtaining status of dormant company.</b>
5	<b>Rule 6 (d)</b> Nidhi Rules, 2014.	<b>General restrictions or prohibitions.-</b> No Nidhi shall acquire another company by purchase of securities or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi

## ANALYSIS-REQUIREMENT OF PASSING SPECIAL RESOLUTION AS PER RULES MADE UNDER COMPANIES ACT, 2013 (UPDATED UPTO 30.04.2014)

Followings are the matters for which Special Resolution is required to be passed as per the provisions of the Rules made under Companies Act, 2013 and hence the requirement of filing **Form No. MGT-14**:

S. No	Rule	Particulars
1.	Rule 14(2)(a) Companies (Prospectus and Allotment of Securities) Rules, 2014	<b>Offer or invitation for subscription of securities or Private Placement</b> The proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations
2.	<b>Rule 9(10(a))</b> Companies (Share Capital and Debentures) Rules, 2014	<b>Issue and redemption of preference shares</b> The issue of such shares has been authorized by passing a special resolution in the general meeting of the company

## FILING OF FORM No. MGT-14 EVEN FOR THE MATTERS TO BE APPROVED BY THE BOARD OF DIRECTORS:

As the origin of Form No. MGT-14 lies in Section 117 of the Companies Act, 2013, which mainly requires its filing on passing the Special Resolution by the company, at the same time, it is also pertinent to note that due to clause (g) of Section 117 (3), the statutory requirement of filing Form No. MGT.14 will also arise whenever the Board of Directors exercise following powers on behalf of the company by means of resolution passed at meetings of the Board, pursuant to Section 179(3) of the Act, namely:—

- to make calls on shareholders in respect of money unpaid on their shares;
- to authorize buy-back of securities under Section 68;
- to issue securities, including debentures, whether in or outside India;
- to borrow monies;
- to invest the funds of the company;
- to grant loans or give guarantee or provide security in respect of loans;
- to approve financial statement and the Board's report;
- to diversify the business of the company;
- to approve amalgamation, merger or reconstruction;





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- (j) to take over a company or acquire a controlling or substantial stake in another company;
- (k) any other matter which may be prescribed,

Apart from the matters mentioned in **Clause (a) to (j)** of the **Section 179(3)**, the abovementioned **Clause (k) of Section 179(3)** also specify that the Board of Directors is required to exercise such powers as may be prescribed by the Central Government by way of passing the resolution at its meeting

Further, for the purpose of **Section 179(3)(k)** of the Act, following matters has been prescribed by Central Government through **Companies (Meetings of Board and its Powers) Rules, 2014**. Therefore, even for the matters prescribed in the abovementioned Rules, **Form No. MGT-14** shall also be filed with Registrar of Companies:

- (1) to make political contributions;
- (2) to appoint or remove key managerial personnel (KMP);
- (3) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
- (4) to appoint internal auditors and secretarial auditor;
- (5) to take note of the disclosure of director's interest and shareholding;
- (6) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
- (7) to invite or accept or renew public deposits and related matters;
- (8) to review or change the terms and conditions of public deposit;
- (9) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

Therefore, the scope of filing Form No. MGT.14 has been widened by including all above mentioned matters.

## DETAILED ANALYSIS OF RULE NO. 8(5) OF COMPANIES (MEETINGS OF BOARD AND ITS POWERS) RULES, 2014 AND FILING OF FORM NO. MGT-14

Pursuant to Rule 8(5) of Companies (Meetings of Board and its Powers) Rules, 2014, the Company is required to file Form No. MGT.14 on taking note of the disclosure of director's interest and shareholding.

As per **Section 184** of the Companies Act, 2013, every director of

the Company shall disclose his concern or interest in any Company or Companies or Bodies Corporate (including shareholding interest), Firms or other Association of Individuals, by giving a notice in writing in **Form MBP 1 pursuant to Section 184 (1) and rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014**.

Disclosure by every director under **sub-Section (1) of Section 184 of the Companies Act, 2013** is required to be given three times:

### 1) At the time of Appointment

Although the statutory provisions under **Section 184** nowhere mentions the requirement of disclosure at the time of appointment of the Director, However, **Form DIR-12** (Form for Intimation for the appointment and resignation etc. of directors) require the Director to disclose his concern or interest in any companies or bodies corporate, firms and number of such entities.

Therefore for the better Compliance, the company should take Disclosure pursuant to **section 184(1)** from the Director in **Form No. MBP-1** at the time of his appointment and file the same with ROC in **Form No. MGT-14** pursuant to the **Section 117(3)(g)** read with **Section 179(3)(k)** read with **Rule 8(5 of Companies (Meetings of Board and its Powers) Rules, 2014**.

### 2) Annually

**Sub-Section (1) of Section 184** specifically provides that "Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in **every financial** year disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding.

Therefore, Directors should give Disclosure pursuant to **section 184(1)** in **Form No. MBP-1** before the first Board Meeting in a financial year and Company should file the same with ROC in **Form No. MGT-14** pursuant to the **Section 117(3)(g)** read with **Section 179(3)(k)** read with **Rule 8(5 of Companies (Meetings of Board and its Powers) Rules, 2014**.

### 3) Whenever there is any change in the disclosures already made

**Sub-Section (1) of Section 184** specifically provides Every director shall whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding.

Therefore, the Directors should give Disclosure pursuant to



**section 184(1) in Form No. MBP-1** before the first Board Meeting held after the change in his concern or interest and Company shall file the same with ROC in **Form No. MGT-14** pursuant to the **Section 117(3)(g)** read with **Section 179(3) (k)** read with **Rule 8(5 of)** Companies (Meetings of Board and its Powers) Rules, 2014.

## ANALYSIS ON WHAT SHALL CONSTITUTE AS CHANGE IN DISCLOSURE OF CONCERN OR INTEREST OF DIRECTOR

The Director's concern or interest in any company or companies or bodies corporate, firms, or other association of individuals may be changed in various ways. Few examples of change in concern or interest of Director are as follows:

1. Change in concern or interest of Director in Company/Body Corporate
  - Change in Designation of Director e.g. from Director to Whole Time Director or Managing Director and Vice-Versa
  - Resignation from one of its Directorship in the existing Company
  - Appointment as Director in any Company
  - Change in shareholding of the Director in any Company or Companies or Bodies Corporate
  - Change in Name of the Company in which he is Director
2. Change in concern or interest of Director in Partnership Firm
  - Change in the profit sharing ratio among the partners
  - Admission/Resignation/Retirement of the Partner
  - Change in % share in the Partnership Firm
  - Change of Name of Partnership firm in which he is Director
3. Change in concern or interest of Director in Partnership Firm
  - Opening/Closure of Proprietary Concern
  - Change in Name of Proprietary Concern
4. Change in List of Relatives:

Any change in List of Relatives such as any new addition or deletion of name of any of relatives or change of name of any of them.

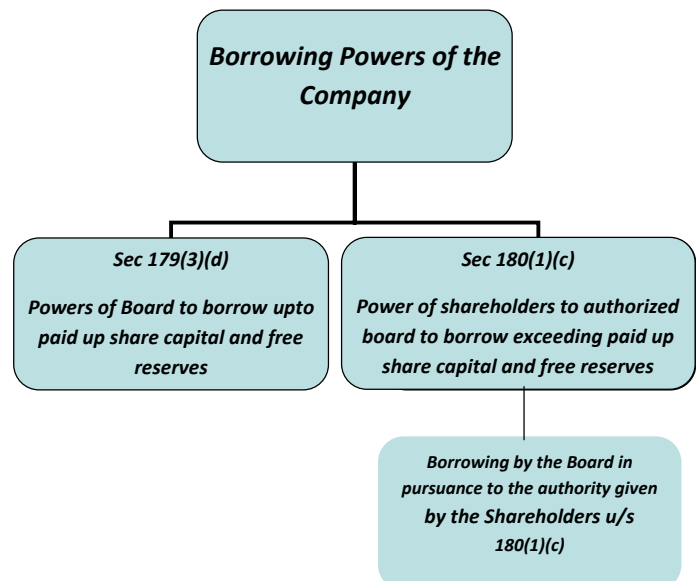
## ANALYSIS ON FILING OF FORM NO. MGT-14 ON BORROWING POWERS

**Section 179(3)(d) of the Companies Act, 2013** provides that the Board of Directors of a company shall exercise the power to borrow monies on behalf of the company by means of resolutions passed at meetings of the Board and further it is also relevant to note that the statutory requirement of filing **Form No. MGT.14** will

also arise every time the Board exercise its power to borrow money not exceeding the limit of aggregate of paid up share capital and free reserves.

If we refer to the **Section 180(1) (c) of the Companies Act, 2013**, approval of shareholders by way of **special resolution** is required to authorize Board to borrow money exceeding the limit of aggregate of paid up share capital and free reserves and for this **Special Resolution**, the company is also required to file **Form No. MGT.14**. Subsequently requirement of filing **Form No. MGT.14** will also arise **every time** the Board exercise its powers pursuant to the authority conferred by the Shareholders to borrow in excess of aggregate of paid up share capital and free reserves.

## FOLLOWING IS THE BORROWING POWER CHART OF A COMPANY:



For Borrowing the Money, the Board Resolution is required to be passed in following two cases:

- (i) Borrowing of Money less than or equal to Paid Up Share Capital and Free Reserves pursuant to Section 179(3)(d) of the Companies Act, 2013
- (ii) Borrowing of Money exceeding Paid Up Share Capital and Free Reserves with the Approval of Shareholders by way of Special Resolution pursuant to Section 180(1) (c) of the Companies Act, 2013

In (ii) case, the first step is to get the approval of Shareholders and thereafter the pass the Board Resolution. Further the second step of passing the Board Resolution to borrow the money may be exercised by the Board in so many tranches. Every time the board passes the Resolution it requires to file the **Form No. MGT-14** with



# Article

FORM NO. MGT-14: INFORMATION BANK OF STAKEHOLDERS

Registrar of Companies.

For the better understanding the following practical example may be able to throw some more light on the subject:

The Shareholders of **M/s ABC Limited** has passed the Special Resolution to authorize the Board to borrow the money of Rs. 100 crore over and above the Paid Up Share Capital and Free Reserves. In this case the Company shall file **Form No. MGT-14** within 30 days of passing such resolution. Thereafter, the Board may use the abovementioned authority and pass the resolution to borrow the money with following choices:

- (a) Board may pass a single resolution authorizing one of the Directors to borrow the money from Banks, Private Limited Companies, NBFC and Directors etc. or
- (b) Board may pass different resolutions authorizing one of the Directors to borrow the money from different persons/entity such as one resolution for bank another resolution for private limited companies and so on.

In case (a), the **Form No. MGT-14** shall be filed with Registrar of Companies **one time** the Board Passes a resolution within the overall limit already approved the shareholders under **section 180(1)(c)** of the Act


In case (b), the **Form No. MGT-14** shall be filed with Registrar

of Companies **every time** the Board Passes a resolution even within the overall limit already approved the shareholders under **section 180(1)(c)** of the Act.

Therefore, to sum up, the requirement of filing of **Form No. MGT-14** is attached with the Passing of Board Resolution relating to Borrowings. If all borrowing needs of the company is covered in a single board resolution, only one **Form No. MGT-14** shall be filed with Registrar of Companies. If all the borrowing needs of the company could not be covered in single Board Resolution, for every such board resolution, **Form No. MGT-14** shall be filed with Registrar of Companies.

## CONCLUSION:

The **Form No. MGT-14** is going to be a huge data bank of the Government and other stakeholders. The Provisions of the Companies, Act, 1956 did not require any company to submit any such form with Registrar of Companies relating to the major decisions of Directors and their disclosures.

Now, all Stakeholders shall have the online access to the information about the major decisions of the Shareholders, Directors and disclosure of Directors about their concern or interest in other entities through **Form No. MGT-14**. This will enable all the stakeholders to take more informed decisions while dealing with company. 

# ATTENTION MEMBERS

## 14<sup>th</sup> ICSI National Awards for Excellence in Corporate Governance

We are happy to inform you that the process of identifying the best governed corporates for the **14<sup>th</sup> ICSI National Awards for Excellence in Corporate Governance** for the year 2014 has begun.

The Questionnaires of the 14<sup>th</sup> ICSI National Awards for Excellence in Corporate Governance has been sent to companies listed on the Bombay Stock Exchange Limited and National Stock Exchange of India Limited. The Questionnaires have also been placed on the ICSI website - [www.icsi.edu](http://www.icsi.edu) and can be downloaded from the website in word format.

You are requested to send the nomination for participation of companies that you are associated with, in order to make this endeavour of the Institute a grand success.

The response to the Questionnaires should reach the Institute on or before **September 30, 2014** in hard copy and the soft copy at [cgawards@icsi.edu](mailto:cgawards@icsi.edu).



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# Information Technology Governance: A Move towards New Governance Paradigm

- Information Technology (IT) is a vital and inevitable component of business. IT developments lead to the increased speed of communication and the ability of people to read about, spread and react to global news quickly, forces everyone to become more aware of their global responsibilities. To endorse globalised corporate structure and adhere to good corporate governance IT governance becomes the integral part of the responsibility of the top management. In this paper, an attempt has been made to discuss various aspects of IT governance.

## INTRODUCTION

IT governance is one of the pillars for corporate governance. Satyam episode (2008) in India demonstrated not only a failure of corporate governance but also the failure of IT governance. It was carried out deliberately leaving loopholes in the accounting software packages of the company. There was poor password security as the passwords were seldom changed. Even though there has been a failure of corporate governance this crisis provides a great opportunity to rebuild our governance framework, regulatory controls and identify other areas of governance. IT Governance is an emerging concept, successful companies identify the benefits of IT governance. IT Governance is not just an IT issue or only of interest to the IT department. In its broadest sense it is a new paradigm of governance of an entity, with a specific focus on improving the management and control of Information Technology for the benefit of the stakeholders. Ultimately it is the responsibility of the top management to ensure that IT and other critical



activities are adequately governed and to manage the associated risks, such as increasing regulatory compliance and critical dependence of many business processes on IT. The principle of IT governance also lies on the same foundations of other governance principles but the only difference lies with practical implementation due to special nature of IT. IT Governance is pervasive and ongoing process which cannot be achieved by a mandate. It requires a commitment from the top management of the organisation to instil a better way





➤ IT Governance is the responsibility of the Board of Directors and executive management. It is an integral part of enterprise governance and consists of the leadership and organisational structures and processes that ensure that the organisation's IT sustains and extends the organisation's strategy and objectives.

of dealing with the management and control of IT. IT is central to organisational success especially when the IT is designed for business transformation. Business transformation offers many rewards, but it also has the potential for many risks, which may disrupt operations and have unintended consequences. So IT governance emerged as new concept to balance risk and reward in the organisation.

## CONCEPT OF IT GOVERNANCE

IT Governance is a combination of Information technology which inevitable component of business and governance which is a requisite for sustainable development of the organisation. Therefore IT governance is a move towards a new governance paradigm.

### According to IT Governance Institute

IT Governance is the responsibility of the Board of Directors and executive management. It is an integral part of enterprise governance and consists of the leadership and organisational structures and processes that ensure that the organisation's IT sustains and extends the organisation's strategy and objectives.

### According to Ryan R. Peterson

IT Governance is the system by which an organization's IT portfolio is directed and controlled. IT Governance describes (a) the distribution of IT decision-making rights and responsibilities among different stakeholders in the organization, and (b) the rules and procedures for making and monitoring decisions on strategic IT concerns.

## PURPOSE OF IT GOVERNANCE

To ensure that IT meets the following objectives:

- Alignment of IT with the goals and objectives of business.
- Meet the increasingly high demands from business for IT

- Compliance of all regulatory requirements.
- Reduce security and privacy risks.
- Maximisation of returns by recognising opportunities from the dynamic environment.
- Investments in IT generate business value and to mitigate the risks that are associated with IT
- Optimum utilisation of IT resources.
- Management and control of IT related risk.
- Enhancing efficiency and effectiveness of IT resources.
- Controlling the IT portfolio.

Therefore, IT Governance is related to transparency, accountability, fairness and the way organizations enable stakeholders with an interest in the IT services to influence them positively, constructively and responsibly.

## FOCUS AREAS OF IT GOVERNANCE

The IT Governance Institute identifies five focus areas making up IT Governance:

- Strategic alignment

Strategic Alignment focuses on aligning business and IT plans. According to this IT plans and strategies must be formulated by assessing dynamic environment and business objectives. Plans must be formulated by doing cost and benefit analysis for present and future.

- Value delivery

Value delivery is about executing the value proposition throughout the delivery cycle, ensuring that IT delivers the promised benefits against the strategy, concentrating on optimizing costs and proving the intrinsic value of IT. Top management is always reluctant to start major IT investments because of the size of investment and the uncertainty of the outcome. For effective IT value delivery to be achieved, both the actual costs and the return on investment need to be managed.

- Risk management

Risk management necessitate risk awareness by top management, a clear understanding of the enterprise's appetite for risk, understanding of compliance requirements, transparency about the significant risks to the enterprise, a brainstorming session on the high-level risk exposures of the enterprise and embedding of risk management responsibilities into the organization. This focuses all risk management effort and in an IT context, impacts future investments in technology, the extent to which IT assets are protected and the level of assurance required. Having defined risk appetite and identified risk exposure, strategies for managing risk can be set and responsibilities clarified. Dependent on the type of risk and its significance to the business, management and the board may choose to:



- Mitigate: Implement controls to mitigate the loss
- Transfer: Insurance coverage.
- Accept: Acknowledging that the risk exists and monitor it cautiously.

## RISK MANAGEMENT IS DONE TO SAFEGUARD OF IT ASSETS, DISASTER RECOVERY AND CONTINUITY OF OPERATIONS.

### Resource management

Resource management is related to the optimization of knowledge and infrastructure. Top management in many organisations fails to optimise the investment in IT and IT resources (applications, information, infrastructure and people) which leads to inefficiency and higher cost of IT assets. So rather than proving as an asset IT resources become the liability of the organisation. Top management need to ensure that IT resources are used wisely by ensuring that:

- Optimum combinations of IT resources are there in the organisation.
- The benefits must outweigh the cost.

### Performance measurement

Performance measurement is another major component of IT Governance. It ensures the achievement of IT objectives. Performance measurement monitors performance then compares it with set IT objectives and then provide direction for strategy implementation.

## HOW TO IMPLEMENT IT GOVERNANCE?

IT governance process provides favourable results when they are implemented properly the following steps are suggested for its effective implementation:

### Setting up of IT governance frame work in the organisation

IT governance is implemented by setting up of frame work with in which objectives, authority over the IT resources, responsibility and accountability is clearly defined in terms of scope and risk involved.

### Aligning IT plans with business objectives

Rationale behind introduction of any plan in the organisation is to achieve its objectives. So alignment of business objectives with IT plans is a requisite.

### Definition risk associated

It is the responsibility of the top management to define the risk related to the organisation on the basis of analysing the trend of performance, available IT resources, dynamism of environment in which organisation is operating and analysing the critical factors.

### Define target to be achieved

After identifying the risk and critical factors, targets which are to be achieved must be defined. For this COBIT process can be used as a guide supports IT Governance and provide good practices across a structured framework based on a consensus of worldwide experts. It provides a generic process model that focuses on what is required to achieve adequate management and control of IT.

### Analyse current capability and identify gaps

Identification of current capability IT resources available and identify the improvements required.

COBIT's management guidelines as a guide can be used for this.

### Develop improvement strategies

IT governance is a never ending process which helps to improve governance of critical areas. So after identifying the gaps there is a need to develop new strategies for further improvement.

### Measure results

Monitor the results of new strategies and control the same.

IT governance helps to prevent IT disasters in the organisation. So there is a need to build effective IT governance. According to A. T. Kearney there are 7 Habits of highly effective IT governance:

- It is viewed as a strategic business asset and managed as a portfolio.
- Technology ignorance is not accepted. IT participates in technology investment decisions.
- IT has a board of director level oversight and clear executive leadership.
- There is no "one-size-fits-all" IT governance model.
- IT is an essential part of corporate planning strategy.
- IT plays an active leadership role in transformation and innovation.
- IT's impact on the business is measured and monitored.

Therefore to build effective IT governance top management in organisations needs to formulate IT plan, which is long-term in nature. There needs to be an annual review of IT strategy or plans and policies taking into account changes to the organization's business plans and IT environment. So IT governance is a journey, not a destination in other words it's a never ending process

## ADVANTAGES OF IT GOVERNANCE

Effective IT governance of IT provides following advantages to



the organisation:

- **Risk Management**  
IT Governance frameworks provide boards with the tools to assess and question the risks and costs associated with IT investments.
- **Helps in achieving business objectives**  
IT governance ensures achievement of business objectives. The standard ISO/IEC 38500 recommends that decision making responsibility be given to “business managers who are also responsible for the organisation’s business objectives and performance, assisted by IT specialists who understand business values and processes.”
- **Mitigating loss**  
IT governance if implemented properly supports top management in anticipating threats so it mitigates loss.
- **Transparency, Fairness and accountability**  
IT governance articulates better decision making and procurement processes to aid transparency, fairness and accountability which is the ultimate goal of corporate governance.
- **Competitive Advantage**  
IT governance provides competitive advantage to organisation as it helps the organisation to understand and manage the associated risks, such as increasing regulatory compliance and critical dependence of many business processes on IT.

## IT GOVERNANCE FRAMEWORKS

Leading and most widely adopted frameworks are:

- **Control Objectives for Information and related Technology (COBIT)**  
COBIT was developed in 1996 by the Information Systems Audit and Control Association (ISACA) and is now issued and maintained by the IT Governance Institute (ITGI) as a framework for providing control mechanisms over the information technology domain. ISACA has started on a multiyear strategic initiative to develop the next generation of the COBIT Framework, COBIT 5, and supporting products. Building on more than fifteen years of practical use of COBIT by many IT professionals from the business, IT, risk management, security and assurance communities, the COBIT 5 deliverable will be designed to meet the current and future needs of stakeholders and align with the most up-to-date thinking in enterprise governance and IT management practices. ISACA recognizes that there is a need to provide transition materials and implementation guidance to assist IT.

- An international unifying framework that integrates all of the main global IT standards, including ITIL, CMMI and ISO 17799.
- A product of 15 years of research and cooperation among global IT and business experts.
- A tool for compliance with Sarbanes-Oxley and many other global standards.
- **Information Technology Infrastructure Library (ITIL)**  
Initially developed in the UK by the Office of Government Commerce (OGC), is gaining traction in the global IT community as a framework for IT governance. The library includes: “Software Asset Management,” “Service Support,” “Service Delivery,” “Security Management,” “Application Management,” “ICT Infrastructure Management,” “The Business Perspective,” and “Planning to Implement Service Management”. ITIL is focused on identifying best practices in regards to managing IT service levels and is particularly process-oriented. ITIL is pegged as the de facto standard for service management and delivery. It defines IT quality as the level of alignment between IT services and actual business needs. ITIL meshes relatively well with the COBIT framework. Broadly, COBIT articulates what has to be done, whereas ITIL provides the practical steps to answer how it should be done and who should perform each task.
- **ISO/IEC 17799: 2000**  
The International Organization for Standardization has developed the third major governance framework, ISO 17799, titled “Information Technology — Code of Practice for Information Security Management.” It was first released by the ISO in December 2000. However, it is based on British Standard 7799, which was finalized in 1999. The intent of the standard is to focus on security and aid an organization in the creation of an effective IT security plan. The standard has the following high-level groupings: security policy, organizational security, asset classification and control, personnel security, physical and environmental security, communications and operations management, access control, systems development and maintenance, business continuity management, and compliance. The standard is very thorough and covers a great deal of material in a concise manner. ISO 17799’s relatively narrow focus on security makes it unsuitable as the sole basis for an IT governance framework, but since risk management is a component of IT governance, there is relevance to ISO 17799, and parts of it can be adopted in building an overall IT governance framework.
- **Capability Maturity Model (CMM)**  
The US-based Software Engineering Institute (SEI) developed CMMs for software, people and software acquisition, and assisted in the development of CMMs for systems engineering and integrated product development. CMMs help organisations to improve long-term business performance. This model is used for judging the maturity of the software processes of an organisation and for identifying the key factors that are required

## SO COBIT IS



to increase the maturity of these processes.

- **BS15000**  
BS15000 is the first standard specifically aimed at IT service management. BS15000 is increasingly seen as the quality standard for IT service management and many companies are striving to adopt BS15000 not only for their own benefit, but also to help qualify and choose suppliers and partner organisations. It describes an integrated set of management processes for the effective delivery of services to the business and its customers.
- **Six Sigma**  
Six Sigma is a disciplined, data-driven approach and methodology for eliminating defects in any process, from manufacturing to transactional and from product to service. The statistical representation of Six Sigma describes quantitatively how a process is performing. To achieve Six Sigma, a process must not produce more than 3.4 defects per million opportunities. A Six Sigma defect is defined as anything outside of customer specifications.

## CONCLUSION

Emergence of IT Governance worldwide proved to be the blessing for organisations. In a turbulent environment it provide support on continuing basis and utilize the structures to perform better in IT project implementation so as to achieve organisational objectives. It provides diverse perspective to the governance in order to maximize value from technology investments, organizations must go beyond managing their IT assets i.e. they must also use IT governance as a way to create more value. By clearly defining and assigning responsibilities and authority, IT governance helps top management to achieve business objectives and avoid the IT disasters that result from a non alignment between IT strategies and business objectives. IT governance strengthens corporate governance by mitigating risk and enhancing regulatory compliance. In India IT governance is still at an emerging stage so there is a need to create the awareness among the top leaders about the advantages it accrues to the organisation and setting up an institution to work collaboratively to solve shared challenges in IT.

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## Corporate Laws

**LW: 74:09:2014**

**ASHOK AGGARWAL v. AMITEX POLYMERS PVT. LTD. [DEL]**

C.P. No. 53 of 2012

**Sanjeev Sachdeva, J. [Decided on 07/08/2014]**

Companies Act, 1956- winding up – creditors petition for winding up- company raised dispute that it had returned the goods- petitioner alleged forgery on the part of the company- whether the petition to be admitted- Held, No

### Brief facts:

The Petitioner has filed the present petition for winding up of the Respondent Company under Section 433 (e). The contention of the Petitioner is that the Respondent through its Director approached the Petitioner in February 2011 for supply of various chemicals/materials. As per the Petitioner, the Respondent was to make payment upon receiving necessary invoices from the Petitioner for the supply of chemicals/materials. As per the Petitioner, repeated requests were made to the Respondent to pay the balance amount. However, the same has not been paid.

On the failure of the Respondent to pay the amount demanded in the statutory notice, the Petitioner has filed the present petition. The Respondent contended that the goods were returned to the Petitioner and placed on record Rejection note, Debit note and Carrier's Receipt showing return of 246 bags. The Carrier's Receipt mentions the Rejection Note number, vehicle number and the name of driver through which the goods were sent. However, the Petitioner contended that the documents filed by the Respondent are forged and fabricated and even the stamp, which is stated to be the stamp of the Petitioner, is not a stamp that is being used by the Petitioner Company and is a forged stamp.

**Decision:** Petition dismissed.

### Reason:

The Jurisdiction of the Company Court is summary in nature. It is a settled proposition of law that where disputed questions of law are involved, the summary proceedings of winding up cannot be resorted to by the Petitioner. The winding up proceedings are not recovery proceedings and the Powers to be exercised by the Court under Section 434 being summary in nature are not to be exercised where disputed question of fact are involved requiring detailed evidence to be led by the parties.

In the present case, the Respondent has set up a defence that the goods have been returned to the Petitioner. The Respondent has produced Rejection Note, Debit note and Carrier's Receipt to contend that the goods have been rejected and returned to the Petitioner. The Rejection note and the Carrier's Receipt contain a signature and stamp of receipt which is claimed to be that of the Petitioner. Whether the documents are forged and fabricated or whether the seal and stamp of the Petitioner is also forged and fabricated is something that would require a trial and adjudication. No doubt, if the said documents are found to be forged and fabricated, the law would take its course but there is nothing on record to prima facie reject the same.

Since disputed questions of fact arise in the present petition which would require the parties to lead evidence on the issue of genuineness or otherwise of the Rejection note, Debit Note and the Carrier's Receipt, in my view, the present petition would not be maintainable and the parties would have to prove their respective case before a competent civil forum. The Petitioner has already filed a suit for recovery. These aspects would be considered by the Civil Court before whom the said suit has been filed.

**LW: 75:09:2014**

**UMESH K. MODI v. DEPUTY DIRECTOR OF ENFORCEMENT [DEL]**

Criminal Appeal No. 568 of 2008

**S. Muralidhar, J.[Decided on 31/07/2014]**

Foreign Exchange Regulation Act, 1973- section 68- offences by company- director's vicarious liability- non-executive director- non submission of proofs of imports – SCN issued to the company and its directors- no specific averments in the SCN- reply of the director not considered by AO– penalised- whether tenable- Held, No.

### Brief facts:

The Appellant, Umesh K. Modi, is one of the directors of Modi Xerox



Limited ("MXL"). The appellant along with other directors of MXL was found guilty of committing an offence, of non-submission of import evidence, under section 8 (3) read with Section 8 (4) and Section 68 of the Foreign Exchange Regulation Act, 1973 ("FERA") and a total penalty of Rs. 1 lakh each on certain directors of MXL including the Appellant and Rs. 5 lakh on MXL was imposed, which was confirmed by the Appellate Tribunal for Foreign Exchange. The Appellant states that he was a part time, non-executive director of MXL but neither in-charge of nor responsible for the conduct of its day-to-day affairs and that he had communicated this fact to the SCN issued to him who was not at all considered by the adjudicating authority as well as the Tribunal.

**Decision: Appeal allowed.**

## Reason:

The wording of Section 68 FERA is no different from Section 141 of the Negotiable Instruments Act, 1881 ("NI Act"). The legal requirement of the complaint filed under Section 138 NI Act having to make specific averments as to the role of the directors of a company, where such company is the accused, has been subject matter of several decisions of the Supreme Court.

In *SMS Pharmaceuticals Limited v. Neeta Bhalla (2005) 8 SCC 89* while interpreting Section 141 NI Act, the Supreme Court stated that "a clear case should be spelled out in the complaint against the person sought to be made liable." It was observed that it is necessary to specifically aver in a complaint that at the time the offence was committed, the person accused was in charge of, or responsible for the conduct of business of the company.

Later in *Saroj Kumar Poddar v. State (NCT of Delhi) (2007) 3 SCC 693* the Court emphasized that it was necessary to make "specific allegations" to show as to how and in what manner the director is liable.

In *National Small Industries Corporation Limited v. Harmeet Singh Paintal (2010) 3 SCC 330*, the Supreme Court discussed the entire case law and noted that the decision in *N. Rangachari v. Bharat Sanchar Nigam Limited* (supra) cannot be said to have overlooked the previous decisions of the Court and was distinguishable on facts. It was then observed in para 38: "38. But if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in charge of the business of the company" or by stating that "he was in charge of the day-to-day management of the company" or by stating that "he was in charge of, and was responsible of the company" or by stating that "he was in charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under Section 141 (1) of the Act. To put it clear that for making a person liable under Section 141 (2), the mechanical repetition of the requirements under Section 141 (1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance

or negligence and therefore, responsible under sub-Section (2) of Section 141 of the Act."

It is observed that in many of the SCNs issued by the ED, a standard cyclostyled paragraph is inserted to satisfy the requirement of the wording Section 68 (1) of FERA. This was noticed in the decision of this Court in *Kavita Dogra v. Director of Enforcement (2014) 182 Com Cas 376*. A mechanical repetition of the words of the statute may not be sufficient as explained by the Supreme Court in *National Small Industries Corporation Limited v. Harmeet Singh Paintal* (supra). This has also to be examined in the context of stand taken by the concerned director to whom notice had been issued.

In the present case the Appellant gave a separate reply to the SCN which has not been discussed in the AO. In other words the DD did not advert to specific defence of the Appellant that at the relevant time he was not a director in-charge of or responsible to the company for the conduct of its day- to-day affairs. The AT too does not appear to have noticed the above decisions of the Supreme Court and has mechanically concluded that since there was no restriction on the exercise of powers by the Appellant in relation to the transactions in question, he should be held liable. In light of the reply sent by the Appellant it was possible to discern the distinction between those directors who were in-charge of the day-to-day affairs of the company and those were not. The explanation offered by the Appellant is that the Company Secretary of XML placed before the Board of Directors of MXL compliance certificates at every meeting held during the relevant period, which led the directors, including the Appellant, to believe that there were no contravention of any of the statutory provisions, appears to be a plausible one. This explanation has not been considered either by the DD or the AT.

In the considered view of the Court, the Appellant on his part discharged the burden in terms of Section 68 (2) of the FERA and was entitled to the benefit of doubt.



**LW: 76:09:2014**

**VIDHARBHA INDUSTRIES ASSOCIATION v. MSEB HOLDING CO. LIMITED & ORS [CCI]**

Case No. 12 of 2014



Ashok Chawla, Anurag Goel, S. L. Bunker & Sudhir Mittal [Decided on 05/08/2014]

Competition Act, 2002– abuse of dominance- electricity distribution- higher charges- investigation ordered.

## Brief facts:

The present information has been filed by Vidharbha Industries Association ('the Informant') under section 19(1) (a) of the Competition Act, 2002 ('the Act') against MSEB Holding Company Limited ('OP 1'), Maharashtra State Power Generation Company ('OP 2'), Maharashtra State Transmission Company Limited ('OP 3') and Maharashtra State Electricity Distribution Company Limited ('OP 4') alleging contravention the provisions of section 4 of the Act.

The case is against the electricity companies and the manner in which they charge the consumers. The main grievance was against OP No.4 who is the electricity distribution company.

**Decision: Investigation ordered.**

## Reason:

In the instant case the allegations primarily pertain to the abusive conduct of OP 4 which is operating in the electricity distribution market. Accordingly, the market for distribution of electricity is considered as the relevant product market in the present case. No other products can be considered as substitute of the distribution of electricity. As OP 4 is given license to supply/distribute electricity in all areas of Maharashtra except Mumbai etc., the licensed area of OP 4 in the State of Maharashtra is considered as the relevant geographic market in this case. Accordingly, 'the market for distribution of electricity in the licensed area of OP 4 in the State of Maharashtra' is considered as the relevant market in the instant case. In the said relevant market OP 4 is the seller and the end consumers of electricity are the buyers.

The allegations of the Informant are also directed towards the abusive conduct of OP 2 which is operating in the electricity generation market. The allegations pertain to closure of power generation plants by OP 2 which caused inefficient production of electricity and higher prices. In this regard it is observed that shutting down of the plants, *prima facie*, looks like an operational decision and this does not seem to be in contravention of the provisions of section 4 of the Act.

On the issue of dominance it is observed that OP 4 is the only licensee distributor of electricity in the relevant geographic market. Hence, it is a monopoly distributor of electricity in the relevant market.

Essentially, the allegations against OP 4 are twofold; firstly, it continues to buy power from OP 2 which is cost inefficient in comparison to other available power generating companies and secondly, it is denying open access to consumers for availing electricity from other sources.

With respect to the allegation that OP 4 continues to buy power from

cost inefficient OP 2, it is observed that as per Merit Order Stack for financial year 2012-13 approved by MERC, OP 4 purchases electricity from OP 2 at rates which are comparatively higher than the rates offered by other electricity generating enterprises. This translates into higher tariff charged to the end consumer as that tariff is decided by MERC on the basis of purchase cost of OP 4. *Prima facie*, the said conduct of OP 4 amounts to indirect imposition of unfair price on the consumers which is in contravention of Section 4(2) (a) (ii) of the Competition Act.

In regards to denial of open access by OP 4, the Informant has cited an instance where OP 4 was requested by consumers to allow open access but the same was denied citing operational constraints. As envisaged in the Electricity Act, 2003, the concept of open access allows consumers consuming electricity above 1 MW to buy cheaper power from alternative power generator. The idea is that the consumers should get choice instead of being forced to buy from the existing electric utility monopoly. It is aimed at helping large consumers by ensuring regular supply of electricity at competitive rates.

It is observed that denial of open access shuts the door on competition in the distribution market. The consumers are left with no choice but to keep buying power at whatever rate the distribution company supplies. On the other hand, a generator, who can become a rival distributor through open access, cannot supply electricity to the consumers. Therefore, *prima facie*, the conduct of OP 4 amounts to denial of market access to other power generating companies for distribution of electricity in the relevant market which is in contravention of the provisions of Section 4 (2) (c) of the Act.

In view of the foregoing discussion, a *prima facie* case of contravention of the provisions of section 4 of the Act is made out against OP 4.



LW: 77:09:2014

DASHRATH RUPSINGH RATHOD v. STATE OF MAHARASHTRA & ANR [SC]

Criminal Appeal No. 2287 of 2009 [Bath of appeals]

T.S. Thakur, Vikramajit Sen & C. Nagappan, JJ. [Decided on 01/08/2014]



Negotiable Instruments Act, 1881- sections 138-141- dishonour of cheque- territorial jurisdiction of the court – Held court having jurisdiction over the drawee bank (bank on which the drawer had drawn the cheque), which dishonoured the cheque has the territorial jurisdiction

## Brief facts:

These Appeals raise a legal question of substantial public importance pertaining to Court's territorial jurisdiction concerning criminal complaints filed under Chapter XVII of the Negotiable Instruments Act, 1881 (for short, 'the NI Act').

In *K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510* wherein a two-Judge Bench has, *inter alia*, interpreted Section 138 of the NI Act to indicate that, the places on which any of the following done, has the jurisdiction to try the case of cheque dishonour i.e. drawing of the cheque, presentation of the cheque to the bank, returning the cheque unpaid by the drawee bank, giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, failure of the drawer to make payment within 15 days of the receipt of the notice.

Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done.

Bhaskaran's case held the field for 2 years and thereafter subsequent decisions of the Supreme Court, doubted this ratio as some benches followed Bhaskaran while other benches differed from it. The legal position as to the territorial jurisdiction of the court was always in doubt and debate. In this backdrop, the above batch of petitions were decided by a common order, which lays down the law as to the court having territorial jurisdiction to try the offence of dishonour of cheque.

## Decision & Reason:

The Supreme Court after considering catena of cases held that:

- (i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.
- (ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such

payee or holder under clause (c) of proviso to Section 138.

- (iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if
  - (a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.
  - (b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and
  - (c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.
- (iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.
- (v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.
- (vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.
- (vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.

However, keeping in perspective the hardship that this will continue to bear on alleged accused/respondents who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a Court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerable consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged Accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the Complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of Complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the Court ordinarily possessing territorial jurisdiction, as now clarified, to the Court where it is presently





pending. All other Complaints (obviously including those where the accused/respondent has not been properly served) shall be returned to the Complainant for filing in the proper Court, in consonance with our exposition of the law. If such Complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time barred.

## LW: 78:09:2014

**SHIVGIRI ASSOCIATES & ORS v. METSO MINERALS (INDIA) PVT. LTD. [SC]**

Criminal Appeal No. 1771 OF 2014 [Arising out of SLP (Crl.) No. 7653 of 2013]

**T.S. Thakur & Vikramajit Sen, JJ. [Decided on 20/08/2014]**

Negotiable Instruments Act, 1881- section 138- drawer issued cheque from Bengaluru bank- Notice sent from Gurgaon- whether Gurgaon court had jurisdiction to entertain the complaint - Held, No.

### Brief facts:

This Appeal assails the Order of the learned Single Judge of the High Court of Punjab & Haryana holding that since the notice as contemplated in Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), had been dispatched from Gurgaon, Haryana and additionally, a response thereto was dispatched to and received at Gurgaon, Courts at Gurgaon possessed jurisdiction to entertain and decide the Complaint.

**Decision: Appeal allowed**

### Reason:

It is no longer arguable that the issuance of the notice has relevance to the question of criminal territorial jurisdiction under Section 138 of the NI Act. In the case in hand, the dishonoured cheques were drawn on the Appellant's Bank, namely, Axis Bank, Bangalore. Subsequently, on presentation of the cheques for encashment by the Respondent through its Bankers, namely, Standard Chartered Bank, Bangalore, they were dishonoured. It is interesting to note, even though it may not be relevant for the present considerations, that the Respondent has filed a suit for recovery of money in New Delhi, repeatedly reiterating that the cause of action arose solely and squarely in New Delhi.

It appears that the learned Judicial Magistrate, First Class (Special Court), District Gurgaon, Haryana, on 14.6.2010 issued Summons to the Appellant. The Appellant thereupon approached the High Court

of Punjab & Haryana at Chandigarh, which passed the impugned order. On 23.9.2013, this Court issued notice and also ordered that proceedings before the Trial Court shall remain stayed. It is evident, therefore, that evidence, post- summoning, has not been recorded.

It is in these circumstances that we allow the Appeal, as Courts at Gurgaon do not possess territorial jurisdiction to entertain the present proceedings under Section 138 of the NI Act solely because, on the instructions of the Respondent, a legal notice of demand has emanated from that city. The Complaint be returned to the Complainant/Respondent for refiling in the appropriate Court at Bangalore, Karnataka. As mentioned in Dashrath Rupsingh, if the Complaint is re-filed in the appropriate Court in Bangalore within 30 days, it shall be deemed to have been filed within limitation. The interim orders stand recalled, accordingly. 5 The parties shall bear their respective costs.

## LW: 79:09:2014

**PULSIVE TECHNOLOGIES P. LTD. v. STATE OF GUJARAT & ORS [SC]**

Criminal Appeal No. 1808 of 2014 [Arising out of SLP (Crl) No. 9901 of 2011]

**Ranjana Prakash Desai & N.V. Ramana, JJ [Decided on 22/08/2014]**

Negotiable Instruments Act, 1881- section 138- stop payment of cheque- whether complaint maintainable- Held, Yes.

### Issue:

Facts are immaterial. The core issue decided in this appeal is whether a cheque dishonoured due to "stop payment instructions" is covered under the offence and a complaint could be made thereon?

**Decision: Appeal allowed.**

### Reason:

The High Court held that provisions of Section 138 of the NI Act are attracted where a cheque is returned by the bank on the ground that there is insufficient amount or that the amount of cheque exceeds the amount arranged to be paid from that account by an agreement made with the bank. The High Court further held that the cheque in question was returned on account of "stop payment" instructions given by the accused vide letter dated 13/07/2006 in view of the fact that the complainant had failed to discharge its obligations as per the agreement by not repairing/replacing the damaged UPS system. The High Court further observed that the complainant had not disclosed



complete facts as required under provisos (b) and (c) of Section 138 of the NI Act. The High Court concluded that the complaint did not disclose offence contemplated under Section 138 of the NI Act. The High Court, in the circumstances, quashed the complaint.

The High Court, in our opinion, fell into a grave error when it proceeded to quash the complaint. Even “stop payment” instructions issued to the bank are held to make a person liable for offence punishable under Section 138 of the NI Act in case cheque is dishonoured on that count. In *Modi Cements v. Kuchil Kumar Nandi*, (1998) 3 SCC 249 this Court made it clear that even if a cheque is dishonoured because of “stop payment” instructions given to the bank, Section 138 of the NI Act would get attracted. This Court further observed that once the cheque is issued by the drawer a presumption under Section 139 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment it will not preclude an action under Section 138 of the NI Act by the drawee or the holder of the cheques in due course. Again in *M.M.T.C. Ltd & Anr v. Medchl Chemicals and Pharma (P) Ltd & Anr* (2002) 1 SCC 234 this Court retreated the same view. What is more important is the fact that this Court declared that the complaint cannot be quashed on this ground.

We find that the High Court has relied on *M.M.T.C. Ltd. and Modi Cements* and yet drawn a wrong conclusion that inasmuch as cheque was dishonoured because of “stop payment” instructions, offence punishable under Section 138 of the NI Act is not made out. The High Court observed that “stop payment” instructions were given because the complainant had failed to discharge its obligations as per agreement by not repairing/replacing the damaged UPS system. Whether complainant had failed to discharge its obligations or not could not have been decided by the High Court conclusively at this stage. The High Court was dealing with a petition filed under Section 482 of the Code for quashing the complaint. On factual issue, as to whether the complainant had discharged its obligations or not, the High Court could not have given its final verdict at this stage. It is matter of evidence. This is exactly what this Court said in *M.M.T.C. Ltd.* Though the High Court referred to *M.M.T.C. Ltd.*, it failed to note the most vital caution sounded therein.

The High Court also erred in quashing the complaint on the ground that the contents of the reply sent by the accused were not disclosed in the complaint. Whether any money is paid by the accused to the complainant is a matter of evidence. The accused has ample opportunity to probalilise his defence. On that count, in the facts of this case, complaint cannot be quashed.

## LW: 80:09:2014

### RANBAXY LABORATORIES LTE v. UNION OF INDIA & ORS [DEL]

LPA No.1629 of 2005



**Badar Durrez Ahmed & Vibhu Bakhru, JJ [Decided on 06/08/2014]**

**Article 226 of the Constitution of India read with Essential Commodities Act, 1955- Drug price control order, 1995- overcharging of prices from consumers- whether the demand justified- Held, Yes.**

### Brief facts:

The present appeal has been filed by the appellant challenging an order dated 13.07.2005 passed by a learned Single Judge of this court in W.P.(C) No.10700/2005 (hereinafter referred to as the 'impugned order') whereby the learned Single Judge dismissed the said writ petition. The said writ petition was filed by the appellant under Article 226 of the Constitution of India inter alia challenging the demand notices dated 08.02.2005 and 13.06.2005 (hereinafter collectively referred to as 'the impugned notices' and separately referred to as 'the impugned notice') issued by the National Pharmaceutical Pricing Authority (respondent no.3). By the impugned notice dated 08.02.2005, respondent no.3 demanded a sum of Rs.2,15,62,077/- as the excess of the amount charged by the appellant for sale of the formulations under the brand name 'Roscilox' during the period April 1996 to July 2003. By the impugned notice dated 13.06.2005, respondent no. 3 also demanded a sum of Rs.2,49,46,256/- as interest under Section 7A of the Essential Commodities Act, 1955, in addition to the demand for the overcharged amount. The learned Single Judge dismissed the said petition *inter alia* on the ground that no case warranting the exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India was made out.

**Decision: Appel dismissed.**

### Reason:

The question that arises for our consideration in the present appeal is whether a demand could be raised by the Government on the appellant company for charging an amount higher than the price notified, for the formulations sold under the brand name Roscilox?

It is not in dispute that, in fact, sums higher than as specified had been charged by the appellant for sale of Cloxacillin formulations under the brand name Roscilox. The principal contention canvassed is that although higher prices had been charged, nonetheless, the Government could not recover the overcharged prices from the appellant company, as it was not a manufacturer or a distributor but merely a dealer who had purchased the formulations from the manufacturer.

It is apparent from a plain reading of paragraph 19 of the DPCO 1995 that a manufacturer, a distributor or a wholesaler is obliged to sell the formulations to a retailer at a price equal to the retail price as specified in the order minus sixteen percent being the retailer's margin of sixteen percent of the retail price. It cannot be disputed that



whether a person is a wholesaler or distributor or a manufacturer he cannot charge a price higher than the notified price for a scheduled drug. In the present case, the appellant has asserted that it has been purchasing the drugs from the manufacturers and selling the same to other dealers and consumers nationally. Thus, even according to the appellant, the appellant has acted as a wholesaler. The appellant, therefore, cannot dispute that it has violated paragraph 19 of the DPCO 1995, inasmuch, as formulations in question have been sold by the appellant at a price higher than the specified price.

The next issue, therefore, to be considered is whether the Government has the power to recover the overcharged amount from the appellant. A bare reading of paragraph no.13 of the DPCO 1995 indicates that the Government has the power to recover the overcharged price from the manufacturers, importers or the distributors. A plain reading of the definition of the expression 'distributor' indicates that it includes; (a) a person who is a distributor of drugs, (b) an agent of a distributor of drugs and (c) a stockist who is appointed by a manufacturer/importer for stocking of drugs for sale to a dealer.

Commonly understood, distribution is a process of making products available for consumption to a consumer. The products may be distributed directly by the manufacturer or indirectly through market intermediaries. The intermediaries may be independent merchants or traders who buy the product from the manufacturer and resell the same, or they may be agents or brokers who act on behalf of manufacturers without acquiring any title to the products. It is, thus, apparent that any person who is involved in distribution of products would fall within the definition of the word 'distributor'.

The respondent has found that the appellant has acted as a distributor. Even on its own showing, the appellant had purchased the formulations from Oscar Labs and had sold the same through various channels of its stockists and dealers nationally. As a matter of fact, the formulations have been distributed by the appellant nationally. The fact that there has been no arrangement or agreement which has been placed on record between the manufacturer and the appellant cannot by itself be determinative of whether the appellant has acted as a distributor of the formulations in question.

We are also unable to accept the appellant's contention that since it falls within the definition of a 'dealer' within the meaning of Clause (d) of paragraph 2 of the DPCO 1995, it could not be considered as a 'distributor' which is defined in Clause (e) of paragraph 2 of the DPCO 1995. The appellant had contended that since two expressions, namely, 'distributor' and 'dealer' had been used in the DPCO 1995, the same could not be ascribed one meaning. It is generally accepted that if a legislature uses two expressions, unless the context otherwise indicates, it must be presumed that the legislature intended to convey two different meanings. However, since it is nobody's case that the expressions 'distributor' and 'dealer' have identical meanings, the said principle would be of no assistance to the appellant in any manner. The fact, that a person acting as a distributor, does not necessarily mean that he is excluded from the definition of a dealer. Similarly, the fact that the person is acting as a dealer does not preclude him

from also acting as a distributor. In our view, the two expressions are not mutually exclusive. A person who is engaged in a business of purchase or sale of drugs either as a wholesaler or as a retailer would fall within the expression of a 'dealer' as defined by clause (d) of paragraph 2 of the DPCO 1995. A distributor of drugs would include a person who distributes drugs, in other words-acts as an intermediary for making the drugs available to the end user. Such a person would fall within the definition of a distributor. It is not necessary that a distributor purchases the drugs as he may act on behalf of the manufacturer either as an agent or a broker for ensuring that the goods reach the retailer and/or the consumers. In such cases, the person would be a 'distributor' but not a 'dealer'. In the present circumstances, where a person acts as an intermediary channel to ensure that the drugs manufactured by the manufacturers reach various retailers or consumers, and in the process the drugs are also purchased from the manufacturer, in such situations the person would be a 'distributor' within the definition of Clause (e) of paragraph 2 of the DPCO 1995 and also be a 'dealer' within the meaning of Clause (d) of paragraph 2 of the DPCO 1995.

The appellant's contention that since the appellant purchases the formulations from the manufacturer and there is no agreement for acting as a distributor it would be excluded from being considered as a distributor is in our view also without merit. The only question that has to be determined is whether the appellant acted as a distribution channel for distributing the drugs in India. In the present case, the bare facts which are available on record clearly indicate that the appellant acted as a distributor.

We find no infirmity with the above decision and find no reason to interfere with the judgment of the learned Single Judge. Accordingly, the present appeal is dismissed.

## LW: 81:09:2014

### GORKHA SECURITY SERVICES v. GOVT. OF NCT OF DELHI & ORS [SC]

Civil Appeal Nos. 7167-7168 OF 2014 [Arising out of Special Leave Petition (Civil) No. 38898-38899 of 2013]

J. Chelameswar & A.K. Sikri, JJ. [Decided on 04/08/2014]

General law- principles of natural justice- contractor black-listed without giving opportunity- whether correct- Held, No.

### Brief facts:

Present appeals raise an interesting question of law pertaining to the form and content of show cause notice, that is required to be served,



before deciding as to whether the notice is to be black-listed or not. We may point out at the outset that there is no quarrel between the parties on the proposition that it is a mandatory requirement to give such a show cause notice before black-listing. It is also undisputed that in the present case the show cause notice which was given for alleged failure on the part of the appellant herein to commence/ execute the work that was awarded to the appellant, did not specifically propose the action of black-listing the appellant firm. The question is as to whether it is a mandatory requirement that there has to be a stipulation contained in the show cause notice that action of black-listing is proposed? If yes, is it permissible to discern it from the reading of impugned show cause notice, even when not specifically mentioned, that the appellant understood that it was about the proposed action of black-listing that could be taken against him?

In pursuant to Notice Inviting Tender (NIT), the appellant was awarded the contract to provide security services in Shri Dada Dev Matri Avum Shishu Chikitsalaya, Dabri, New Delhi (hereinafter referred to as the 'hospital). This hospital is under the administration of Respondent No. 1 viz. Government of NCT of Delhi. The contract was for a period of 1 year i.e. from 2.9.2011 to 1.9.2012. The payment was required to be made contractually to the appellant on monthly basis. Though the contract was upto 1.9.2012, the appellant continued to provide services even thereafter. The case of the appellant is that it has not been given any payment after the expiry of the contract period though it worked till 31.7.2013.

It appears that considerable amount of correspondences and communications were exchanged between the petitioner and the respondent as to the performance of the services, payments etc., and that ultimately the respondent terminated the contract by black-listing the petitioner by exercising its power under clause 27 of the Notice Inviting Tender (NIT).

**Decision:** Appeal allowed.

## Reason:

It is in this backdrop, question which has arisen for our consideration in the present case is as to whether action of black-listing could be taken without specifically proposing/ contemplating such an action in the show cause notice? To put it otherwise, whether the power of black-listing contained in Clause 27 of the NIT, was sufficient for the appellant to be on his guards, and to presume that such an action could be taken even though not specifically spelled out in the show cause notice?

We are of the opinion that it was incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of black-listing, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfil this requirement. In the present case, however, reading

of the show cause notice does not suggest that notice could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.

In the instant case, no doubt show cause notice dated 6.2.2013 was served upon the appellant. This show cause notice is conspicuously silent about the black-listing action. On the contrary, after stating in detail the nature of alleged defaults and breaches of the agreement committed by the appellant the notice specifically mentions that because of the said defaults the appellant was "as such liable to be levied the cost accordingly". It further says "why the action as mentioned above may not be taken against the firm, besides other action as deemed fit by the competent authority". It follows from the above that main action which the respondents wanted to take was to levy the cost. No doubt, notice further mentions that competent authority could take other actions as deemed fit. However, that may not fulfil the requirement of putting the defaulter to the notice that action of black-listing was also in the mind of the competent authority. Mere existence of Clause 27 in the agreement entered into between the parties, would not suffice the aforesaid mandatory requirement by vaguely mentioning other "actions as deemed fit".

As already pointed out above in so far as penalty of black-listing and forfeiture of earnest money/ security deposit is concerned it can be imposed only, "if so warranted". Therefore, without any specific stipulation in this behalf, respondent could not have imposed the penalty of black-listing.

When it comes to the action of black-listing which is termed as 'Civil Death' it would be difficult to accept the proposition that without even putting the notice to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed black-listing such a person only on the premise that this is one of the actions so stated in the provisions of NIT.

For the aforesaid reasons, we are of the view that the impugned judgment of the High Court does not decide the issue in correct prospective. The impugned order dated 11.9.2013 passed by the respondents black-listing the appellant without giving the appellant notice thereto, is contrary to the principles of natural justice as it was not specifically proposed and, therefore, there was no show cause notice given to this effect before taking action of black-listing against the appellant. We, therefore, set aside and quash the impugned action of black-listing the appellant. The appeals are allowed to this extent.



## Industrial & Labour Laws





**LW: 82:09:2014**

**DELHI TRANSPORT CORPORATION v. OM PRAKASH [DEL]**

W.P.(C) No.596/2013

**Suresh Kait, J. [Decided on 20/08/2014]**

Industrial Disputes Act,1947- dismissal from services- bus conductor- allegation that he failed to issue tickets to the passengers- found to have Rs.2.50 shortage- whether dismissal justified- Held,No.

### Brief facts:

The respondent workman was working with the petitioner DTC since 1982. On 05.06.1992, he was on Bus No.9206 plying on route No.838. When the bus was checked by the checking team at Uttam Nagar at 10.53 AM, said team found that the respondent workman had accepted fare of Rs.2/-each from two passengers, who had boarded the Bus from Hari Nagar-Ghantaghar for Uttam Nagar, without issuing any ticket to the said passengers. When confronted, he accepted his fault and surrendered two un-punched tickets of Rs.2/- each to the checking staff. Thereafter, the checking team also checked the cash available with the respondent workman, which was found short by Rs.2.50. Accordingly, a challan was prepared by the checking team.

Thereafter, after following the procedure of issuing charge sheet and holding enquiry, the workman was dismissed. Against the dismissal the workman went to the labour court which reinstated him with back wages. The Petitioner DTC challenged the order of the labour court in the High Court.

**Decision:** Petition dismissed.

### Reason:

I have heard the earned counsel for the petitioner DTC and the respondent workman.

Keeping in view the facts and circumstances of the case in hand, if it is assumed that it is a case of the amount taken by the respondent workman without issuing the requisite tickets, then in such an eventuality, amount of Rs.4/- (Rs.2/- each) would have been more than the amount of tickets issued, whereas, in the present case, a sum of Rs.2.50 was short with the respondent workman. Thus, it is established that the two passengers in question did not pay proper fare and not bother to take the tickets. However, when they were caught by the checking team, just to avoid the penalty which was to be imposed upon them, they put the entire blame on the respondent workman.

So far as the statement of MW3 that the passengers told him that

they had paid the amount of fare to the respondent is concerned, the same is in the nature of hearsay, hence, is inadmissible in law.

As per the case of the petitioner DTC, cash with the respondent workman was found less by Rs.2.50. In case, as alleged by the petitioner DTC, respondent workman had been paid Rs.2/- each by the passengers in question, then the cash would have been Rs.4/- more and not less by Rs.2.50. Moreover, there is no finding of the Disciplinary Authority that the alleged amount was paid to the respondent workman.

In addition, there is no charge against the respondent workman that he allowed the passengers to travel without issuing tickets. In view of the facts recorded above and the legal position as relied upon by both the parties, I find no merit in the instant petition.

## Appointment

# REQUIRED

## COMPANY SECRETARY

for Svantra Microfin Private Limited, a Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI)

**The incumbent should be an ACS with 0-2 years of relevant working experience.**

apply with confidence within 21 days stating age, qualification, experience and details of salary drawn and expected to :-

The Director, Svantra Microfin Private Limited, 212, TV Industrial Estate, 52, S K Ahire Marg, Worli, Mumbai - 400 030



## 01 Amendments in Schedule VII of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide G.S.R. 568(E), dated 06.08.2014. Published in the Gazette of India, Extraordinary, Part II—Sec. 3(i), dated 07.08.2014]

In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendments in Schedule VII of the said Act, namely:-

- (1) In Schedule VII, after item (x), the following item and entry shall be inserted, namely: "(xi) slum area development.

Explanation:- For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force."

2. This notification shall come into force on the date of its publication in the Official Gazette.

Amardeep Singh Bhatia  
Joint Secretary

## 02 The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014

[Issued by the Ministry of Corporate Affairs vide F.No. 1/32/2013 CL-V-Part, dated 14.08.2014. To be published in the Gazette of India, Extraordinary, Part II, section-3, sub-section (i)]

In exercise of the powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014.
  - (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Meetings of Board and its Powers) Rules, 2014, -
  - (1) in rule 3, in sub-rule (6), the words and commas ", which shall be in India," shall be omitted.
  - (2) in rule 4, -
    - (a) in sub-rule (1), for the brackets, figure and word "(1) The", the word "The" shall be substituted;
    - (b) in clause (iv), for the words "consideration of accounts", the words "consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of section 134 of the Act" shall be substituted.
  - (3) in rule 15, for sub-rule (3), the following sub-rule shall be substituted, namely:-
    - (3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a special resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into, -
      - (a) as contracts or arrangements with respect to clauses (a) to (e) of subsection (1) of section 188, with criteria as mentioned below -
        - (i) sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten per cent, of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
        - (ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten per cent, of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
        - (iii) leasing of property of any kind exceeding ten per cent, of the net worth of the company or ten per cent, of turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;
        - (iv) availing or rendering of any services, directly or



through appointment of agent, exceeding ten per cent, of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

Explanation.- It is hereby clarified that the limits specified in sub-clauses (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

- (b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or
- (c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one per cent, of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

Explanation.-

- (1) The Turnover or Net Worth referred in the above sub-rules shall be computed on the basis of the Audited Financial Statement of the preceding Financial year.
- (2) In case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.
- (3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:-
  - (a) name of the related party ;
  - (b) name of the director or key managerial personnel who is related, if any;
  - (c) nature of relationship;
  - (d) nature, material terms, monetary value and particulars of the contract or arrangement;
  - (e) any other information relevant or important for the members to take a decision on the proposed resolution."

Amardeep Singh Bhatia  
Joint Secretary

## 03 Company Law Settlement Scheme, 2014

[Issued by the Ministry of Corporate Affairs vide General Circular No. 34/2014, F. No. 02/13/2014 CL-V, dated 12.08.2014.]

As you are aware, the Companies Act requires companies to file annual documents (Annual Return and financial Statements) on the MCA21 electronic registry within prescribed time limits. Sections 92, 137 and 403 of the Companies Act, 2013, which correspond to sections 159, 220 and 611 of the Companies Act, 1956 may be referred to in this regard. These annual documents are considered very important in context of an up-to-date Registry, it is observed that a large percentage of companies have not filed their statutory documents making them liable for penalties and prosecution for such non-compliance.

- 2. The Companies Act, 2013 lays down a stricter regime for the defaulting companies with higher additional fees. The quantum of punishment has been enhanced under the above mentioned provisions of the Act vis-a-vis the earlier Act i.e. Companies Act, 1956. A specific provision for enhanced fine in case of repeated default has also been included in the form of section 451 of the Act. Additionally, the provisions of section 164(2) of the Act, *inter alia*, providing for disqualification of directors in case a company has not filed financial statements or annual returns for any continuous period of three financial years has been extended to all companies.
- 3. The Ministry has received representations from various stakeholders requesting for grant of transitional period one-time opportunity to enable them to file their pending annual documents to avoid attraction of higher fees/fine and other penal action, especially disqualification of their Directors prescribed under the new provisions of the Act.
- 4. In order to give such an opportunity to the defaulting companies to enable them to make their default good by filing these belated documents, the Central Government in exercise of powers conferred under section 403 and 460 of the Companies Act, 2013 has decided to introduce a Scheme namely "Company Law Settlement Scheme 2014" [CLSS-2014] condoning the delay in filing the above mentioned documents with the Registrar, granting immunity for prosecution and charging a reduced additional fee of 25% of the actual additional fees payable as per section 403 read with Companies (Registration Offices and Fee) Rules, 2014 for filing those belated documents under the Companies Act, 1956/2013 and the Rules made thereunder.
- 5. In addition, the scheme gives an opportunity to inactive companies to get their companies declared as 'dormant company' under section 455 of the Act (Chapter XXIX) by filing a simple application at reduced fees. The said provision



enables inactive companies to remain on the Register of Companies with minimal compliance requirements.

6. The details of the Scheme are as under:-

- (i) The scheme shall come into force on the 15<sup>th</sup> August 2014 and shall remain in force up to 15<sup>th</sup> October, 2014.
- (ii) **Definitions** -In this Scheme, unless the context otherwise requires, -
  - (a) "Act" means the Companies Act, 2013 and Companies Act, 1956 (where ever applicable);
  - (b) "Company" means a company as defined in clause of 20 of section 2 of the Companies Act, 2013;
  - (c) "defaulting company" means a company defined under the Companies Act, 2013, and which has made a default in filing of annual statutory documents;
  - (d) "designated authority" means the Registrar of Companies having jurisdiction over the registered office of the company;
  - (e) "immunity certificate" means the certificate referred to in sub-paragraph (vi) of the Scheme;
  - (f) "inactive Company" means as defined in Explanation (i) to sub-section (1) of section 455(1) of Companies Act, 2013.
- (iii) **Applicability:** - Any "defaulting company" is permitted to file belated documents which were due for filing till 30<sup>th</sup> June 2014 in accordance with the provisions of this Scheme:
- (iv) **Manner of payment of fees and additional fee on filing belated document for seeking Immunity under the Scheme** - The defaulting company shall pay statutory filing fees as prescribed under the Companies (Registration Offices and fee) Rules, 2014 along with additional fees of 25% of the actual additional fee payable on the date of filing of each belated document.
- (v) **Withdrawal of appeal against prosecution launched for the offences:** If the defaulting company has filed any appeal against any notice issued or complaint filed before the competent court for violation of the provisions under the Companies Act, 1956 and/or Companies Act, 2013 in respect of which application is made under this scheme, the applicant shall before filing an application for issue of immunity certificate, withdraw the appeal and furnish proof of such withdrawal along with the application.
- (vi) **Application for Issue of immunity in respect of document(s) filed under the Scheme** -The application for seeking immunity in respect of belated documents filed under the Scheme may

be made electronically in the e-Form CLSS-2014 annexed, after the document(s) are taken on file, or on record or approved by the Registrar of Companies as the case may be. The e-Form for filing application to obtain such a certificate will be available on the MCA21 portal from 1<sup>st</sup> September, 2014 and may be filed thereafter but not later than three months from the date of closure of the Scheme. There shall not be any fee payable on this Form.

Provided that this immunity shall not be applicable in the matter of any appeal pending before the court of law and in case of management disputes of the company pending before the court of law or tribunal.

- (vii) **Order by designated authority granting immunity from penalty and prosecution** - The designated authority shall consider the application and upon being satisfied shall grant the immunity certificate in respect of documents filed under this Scheme,
- (viii) **Scheme not to apply in certain cases** - (a) This scheme shall not apply to the filing of belated documents other than the following:
  - a. **Form 20B** - Form for filing annual return by a company having share capital.
  - b. **Form 21A** - Particulars of Annual return for the company not having share capital.
  - c. **Form 23AC, 23ACA, 23AC X8RL and 23ACA-XBRL** - Forms for filing Balance Sheet and Profit & Loss account.
  - d. **Form 66** - Form for submission of Compliance Certificate with the Registrar.
  - e. **Form 23B** - Form for intimation for Appointment of Auditors.
- (ix) This Scheme shall not apply
  - a. to companies against which action for striking off the name under sub- section (5) of section 560 of Companies Act, 1956 has already been initiated by the Registrar of Companies or
  - b. where any application has already been filed by the companies for action of striking off name from the Register of Companies or
  - c. where applications have been filed for obtaining Dormant Status under section 455 of the Companies Act, 2013;
  - d. to vanishing companies
- (x) After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s);
- (xi) **Scheme for Inactive Companies:** The defaulting inactive





companies, while filing due documents under CLSS-2014 can, simultaneously, either:

- a. apply to get themselves declared as Dormant Company under section 455 of the Companies Act, 2013 by filing e-form MSC-1 at 25% of the fee for the said form; OR
- b. apply for striking off the name of the company by filing e- Form FTE at 25% of the fee payable on form FTE.

(xii) **Applicability of clause (a) sub-section (2) of Companies Act, 2013 in case of companies availing the Scheme:-** In case of defaulting companies which avail of this Scheme and file all belated documents, the provisions of clause (a) of subsection (2) of section 164 of the Companies Act, 2013 shall apply only for the prospective defaults, if any, by such companies.

7. At the conclusion of the Scheme, the Registrar shall take necessary action under the Companies Act, 1956/ 2013 against the companies who have not availed this Scheme and are in default in filing these documents in a timely manner.

KMS Narayanan  
Assistant Director

## 04 The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2014

[Issued by the Securities and Exchange Board of India vide No. LAD-NRO/GN/2014-15/06/1372, dated 25.08.2014. Published in The Gazette of India, Extraordinary, Part -(iii) - Section-4, dated 25.08.2014]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2014.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, -
  - (i) in regulation 26, sub-regulation (6), -
    - A. in clause (b) of second proviso, the symbol "." shall be substituted with symbol ";";

B. after clause (b) of second proviso, a new clause shall be inserted, namely:-

"(c) if the specified securities offered for sale were issued under a bonus issue on securities held for a period of at least one year prior to the filing of draft offer document with the Board and further subject to the following, -

- (i) such specified securities being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the Board ; and
- (ii) such specified securities not being issued by utilization of revaluation reserves or unrealized profits of the issuer. "

(ii) for regulation 41, the following shall be substituted, namely:-

### "Minimum net offer to public.

41. The minimum net offer to the public shall be subject to the provisions of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulations) Rules, 1957."

(iii) in regulation 43, in sub-regulation (3), the word "thirty" shall be substituted with the word "sixty".

(iv) after regulation 71, the following new regulation shall be inserted, namely:-"

### Frequently traded shares.

71 A. For the purpose of this Chapter, "frequently traded shares" means shares of an issuer, in which the traded turnover on any stock exchange during the twelve calendar months preceding the relevant date, is at least ten per cent of the total number of shares of such class of shares of the issuer:

Provided that where the share capital of a particular class of shares of the issuer is not identical throughout such period, the weighted average number of total shares of such class of the issuer shall represent the total number of shares. "

(v) in regulation 76, -

- A. in the title of the regulation, the words and symbol" - Frequently traded shares" shall be inserted after the words "Pricing of equity shares";
- B. the words "closing prices" wherever occurring, shall be substituted with the words "volume weighted average price".



(vi) after regulation 76, the following regulations shall be inserted, namely:-

### Pricing of equity shares - Infrequently traded shares.

76A. Where the shares are not frequently traded, the price determined by the issuer shall take into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies:

Provided that the issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent merchant banker or an independent chartered accountant in practice having a minimum experience of ten years, to the stock exchange where the equity shares of the issuer are listed.

### Adjustments in pricing - Frequently or Infrequently traded shares

76B. The price determined for preferential issue in accordance with regulation 76 or regulation 76A, shall be subject to appropriate adjustments, if the issuer :

- makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
- makes a rights issue of equity shares;
- consolidates its outstanding equity shares into a smaller number of shares;
- divides its outstanding equity shares including by way of stock split;
- re-classifies any of its equity shares into other securities of the issuer;
- is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

(vii) in Schedule XI -

- in Part A, in para (10), in sub-para (c), for the word "thirty" the word "sixty" shall be substituted;
- in part C, the illustration regarding allotment to qualified institutional buyers other than anchor investors, shall be substituted with the following, namely:-

### "ILLUSTRATION REGARDING ALLOTMENT TO QUALIFIED INSTITUTIONAL BUYERS OTHER THAN ANCHOR INVESTORS

#### (1) Issue Details

Sr. No.	Particulars	Issue details
1	Issue size	200 crore equity shares
2	Portion available to QIBs*	100 crore equity shares
3	Anchor Investor Portion	60 crore equity shares
	Of which	
a.	Reservation to MF (1/3rd)	20 crore equity shares
b.	Balance for all QIBs including MFs	40 crore equity shares
4	Portion available to QIBs* other than anchor investors [(2) - (3)] Of which	40 crore equity shares
a.	Reservation to MF (5%)	2 crore equity shares
b.	Balance for all QIBs including MFs	38 crore equity shares
5	No. of QIB applicants	10
6	No. of shares applied for	500 crore equity shares

\* Where 50% of the issue size is required to be allotted to QIBs.

#### (2) Details of QIB Bids

S. No.	Type of QIB bidders	No. of shares bid for (in crores)
1	A1	50
2	A2	20
3	A3	130
4	A4	50
5	A5	50
6	MF1	40
7	MF2	40
8	MF3	80
9	MF4	20
10	MF5	20
	TOTAL	500

A1-A5 (QIB bidders other than MFs)

MF 1-MF5 (QIB bidders which are MFs)

#### (3) Details of Allotment to QIB Bidders/Applicants (No. of equity shares in crores)

Type of QIB bidders	Equity shares bid for	Allocation of 2 crores equity shares to MFs proportionately (See Note 2)	Allocation of balance 38 crores equity shares to QIBs proportionately (See Note 4)	Aggregate allocation to MFs
A1	50	0	3.82	3.82
A2	20	0	1.53	1.53
A3	130	0	9.92	9.92
A4	50	0	3.82	3.82



A5	50	0	3.82	3.82
MF1	40	0.4	3.02	3.42
MF2	40	0.4	3.02	3.42
MF3	80	0.8	6.04	6.84
MF4	20	0.2	1.51	1.71
MF5	20	0.2	1.51	1.71
	500	2	38	40.00

## Notes:

- (1) The illustration presumes compliance with the provisions of regulation 50(1) pertaining to minimum allotment.
- (2) Out of 40 crore equity shares allocated to QIBs, 2 crore shares (i.e. 5%) will be allocated on proportionate basis among 5 mutual fund applicants who applied for 200 crore shares in QIB category.
- (3) The balance 38 crore equity shares [i.e. 40-2 (available for MFs)] will be allocated on proportionate basis among 10 QIB applicants who applied for 500 crore shares (including 5 MF applicants who applied for 200 crore shares).
- (4) The figures at Col. No. IV are arrived as under :
  - a. For QIBs other than mutual funds (A1 to A5) = No. of shares bid for (i.e Col II) X 38 / 498
  - b. For mutual funds (MF1 to MF5) = {(No of shares bid for (i.e Col. II) less No. of shares allotted (i.e., col. III)} X 38 / 498
  - c. The numerator and denominator for arriving at allocation of 38 crore shares to the 10 QIBs are reduced by 2 crore shares, which have already been allotted to mutual funds at Col. No. (III)."

U.K. Sinha  
Chairman

## 05 The Securities and Exchange Board of India {KYC (Know Your Client Registration Agency) (Second Amendment) Regulations, 2014

[Issued by the Securities and Exchange Board of India vide No. LAD-NRO/GN/2014-15/05/23483, dated 11.08.2014. Published in The Gazette of India, Extraordinary, Part - (iii) - Section-4, dated 11.08.2014]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India {KYC(Know Your Client) Registration Agency} Regulations, 2011, namely,-

These regulations may be called the Securities and Exchange Board of India {KYC (Know Your Client Registration Agency) (Second Amendment) Regulations, 2014.

They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India {KYC (Know Your Client) Registration Agency} Regulations, 2011, after regulation 16, the following regulation shall be inserted, namely,-

### "Sharing of KYC information in the financial sector:

16A. (1) The entities, regulated by other regulators in the financial sector specified by the Board from time to time, may access the system of KRA for undertaking KYC of their clients who engage them for financial services.

- (2) The provisions of these regulations shall, mutatis mutandis, apply to the entities regulated by other regulators specified in sub-regulation (1).
- (3) The system of KRA may be connected with any central KYC registry authorised by the Central Government for the purpose of collation and sharing of the KYC information in the financial sector."

U.K. Sinha  
Chairman

## 06 Core Settlement Guarantee Fund, Default Waterfall and Stress Test

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/MRD/DRMNP/25/2014, dated 27.08.2014]

- 1) Vide circular no. SMD/POLICY/SGF CIR-13/97 dated June 09, 1997 SEBI prescribed the "Guidelines for Settlement Guarantee Fund (SGF) at Stock Exchanges", which, *inter-alia*, covered criteria for corpus of the fund, contribution to the fund, management of the fund, access to / usage of the fund and recoupment of the fund corpus.
- 2) After an extensive study on the structure of Indian securities market, which has undergone significant structural changes in the past decade, SEBI notified the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, (SECC) on June 20, 2012 to regulate recognition, ownership and governance in stock exchanges and clearing corporations. The SECC Regulations, *inter-alia*, state the following:

### 39 Fund to guarantee settlement of trades



- (1) Every recognised clearing corporation shall establish and maintain a Fund by whatever name called, for each segment, to guarantee the settlement of trades executed in respective segment of a recognised stock exchange (2) . . . (3) . . . (4) . . .
  - (5) In the event of a clearing member failing to honour his settlement obligations, the Fund shall be utilized to complete the settlement.
  - (6) The corpus of the Fund shall be adequate to meet the settlement obligations arising on account of failure of clearing member(s).
  - (7) The sufficiency of the corpus of the Fund shall be tested by way of periodic stress tests, in the manner specified by the Board.
- 3) In order to promote and sustain an efficient and robust global financial infrastructure, the Committee on Payments and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) updated the standards applicable for systemically important financial market infrastructures (central counter parties, payment systems, trade repositories and securities settlement systems) with the Principles for Financial Market Infrastructures (PFMIs).
- SEBI as a member of IOSCO is committed to the adoption and implementation of the new CPSS-IOSCO standards of PFMIs. As required under PFMIs, to provide greater legal basis for settlement finality, netting and rights of FMIs over collateral, Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2013 were notified on September 02, 2013. Vide circular dated September 04, 2013, SEBI required FMIs under its regulatory purview to comply with the PFMIs applicable to them. The FMI principles, *inter-alia*, include standards regarding participant default rules and procedures, minimum financial resources to cover credit and liquidity exposure of central counter parties and testing (stress testing, reverse stress testing, back testing).
- 4) Based on deliberations in the Risk Management Review Committee of SEBI and further discussions with clearing corporations, stock exchanges and market participants, it has been decided to issue granular norms related to core settlement guarantee fund, stress testing and default procedures which would bring greater clarity and uniformity as well as align the same with international best practices while enhancing the robustness of the present risk management system in the clearing corporations. These norms are aimed at achieving mainly the following objectives:
    - a) create a core fund (called core settlement guarantee fund), within the SGF, against which no exposure is given and which is readily and unconditionally available to meet settlement obligations of clearing corporation in case of clearing member(s) failing to honour settlement obligation,
    - b) align stress testing practices of clearing corporations with FMI principles (norms for stress testing for credit risk, stress testing for liquidity risk and reverse stress testing including frequency and scenarios),
    - c) capture in stress testing, the risk due to possible default in institutional trades,
    - d) harmonise default waterfalls across clearing corporations,
    - e) limit the liability of non-defaulting members in view of the Basel capital adequacy requirements for exposure towards Central Counterparties (CCPs),
    - f) ring-fence each segment of clearing corporation from defaults in other segments, and
    - g) bring in uniformity in the stress testing and the risk management practices of different clearing corporations especially with regard to the default of members.
- Core Settlement Guarantee Fund (Core SGF)**  
**Objective of Core SGF**
- 5) Clearing Corporation (CC) shall have a fund called Core SGF for each segment of each Recognised Stock Exchange (SE) to guarantee the settlement of trades executed in respective segment of the SE. In the event of a clearing member (member) failing to honour settlement commitments, the Core SGF shall be used to fulfill the obligations of that member and complete the settlement without affecting the normal settlement process.
- Corpus of Core SGF**
- 6) The corpus of the fund should be adequate to meet out all the contingencies arising on account of failure of any member(s). The risk or liability to the fund depends on various factors such as trade volume, delivery percentage, maximum settlement liability of the members, the history of defaults, capital adequacy of the members, the degree of safety measures employed by the CC/SE etc. A fixed formula, therefore, cannot be prescribed to estimate the risk or liability of the fund. However, in order to assess the fair quantum of the corpus of Core SGF, CC should consider the following factors:
    - Risk management system in force
    - Current and projected volume turnover to be cleared and settled by the CC on guaranteed basis
    - Track record of defaults of members (number of defaults, amount in default)
  - 7) However, Minimum Required Corpus of Core SGF (MRC) for each segment of each stock exchange shall be subject to the following:
    - i) The MRC shall be fixed for a month.





- ii) By 15th of every month, CC shall review and determine the MRC for next month based on the results of daily stress tests of the preceding month. (For example, by 15th February, CC shall determine MRC for March based on results of various stress tests conducted in January). CC shall also review and determine by 15th of every month, the adequacy of contributions made by various contributors and any further contributions to the Core SGF required to be made by various contributors (as per clause 8) for the next month.
- iii) For every day of the preceding month (i.e., January as per example in (ii) above), uncovered loss numbers shall be estimated by the various stress tests for credit risk conducted by the CC for the segment (as per clause 18) and highest of such numbers shall be taken as worst case loss number for the day.
- iv) Average of all the daily worst case loss numbers determined in (iii) above shall be calculated.
- v) The MRC for next month (i.e., March as per example in (ii) above) shall be higher of the average arrived in at step iv above and the segment MRC as per previous review (i.e., review done on 15th January for the month of February).

## Contribution to Core SGF

- 8) At any point of time, the contributions of various contributors to Core SGF of any segment shall be as follows:
  - a. **Clearing Corporation contribution:** CC contribution to Core SGF shall be at least 50% of the MRC. CC shall make this contribution from its own funds. CC contribution to core SGFs shall be considered as part of its net worth.
  - b. **Stock Exchange contribution:** Stock Exchange contribution to Core SGF shall be at least 25% of the MRC (can be adjusted against transfer of profit by Stock Exchange as per Regulation 33 of SECC Regulations, which may be reviewed in view of these guidelines).
  - c. **Clearing Member primary contribution:** If the CC wishes, it can seek risk based contribution from Clearing Members (CMs) of the segment (including custodial clearing members) to the Core SGF subject to the following conditions:
    - that total contribution from CMs shall not be more than 25% of the MRC,
    - that no exposure shall be available on Core SGF contribution of any CM (exposure-free collateral of CM available with CC can be considered towards Core SGF contribution of CM), and
    - that required contributions of individual CMs shall be *pro-rata* based on the risk they bring to the system.

CC shall have the flexibility to collect CM primary contribution either upfront or staggered over a period of time. In case of staggered contribution, the remaining balance shall be met by CC to ensure adequacy of total Core SGF corpus at all times. Such CC contribution shall be available to CC for withdrawal as and when further contributions from CMs are received.

The above prescribed limits of contribution by CC, SE and CMs may be reviewed by SEBI from time to time considering the prevailing market conditions.

- 9) Any penalties levied by CC (as per Regulation 34 of SECC Regulations) shall be credited to Core SGF corpus.
- 10) Interest on cash contribution to Core SGF shall also accrue to the Core SGF and *pro-rata* attributed to the contributors in proportion to their cash contribution.
- 11) CC shall ordinarily accept cash collateral for Core SGF contribution. However, CC may accept CM contribution in the form of bank FDs too. CC shall adhere to specific guidance which may be issued by SEBI from time to time in this regard.

## Management of Core SGF

- 12) The Defaulter's Committee/SGF utilization Committee of the Clearing Corporation shall manage the Core SGF.

The CCs shall follow prudential norms of Investment policy for Core SGF corpus and establish and implement policies and procedures to ensure that Core SGF corpus is invested in highly liquid financial instruments with minimal market and credit risk and is capable of being liquidated rapidly with minimal adverse price effect.

The instruments in which investments may broadly be made are Fixed Deposit with Banks (only those banks which have a net worth of more than INR 500 Crores and are rated A1 (or A1+) or equivalent,) Treasury Bills, Government Securities and money market/liquid mutual funds subject to suitable transaction/investment limits and monitoring of the same. The CCs shall further ensure that the financial instruments in which the Core SGF corpus is invested remain sufficiently diversified at all times.

SEBI may prescribe the investment norms in this regard from time to time.

## Access to Core SGF

- 13) CC may utilise the Core SGF in the event of a failure of member(s) to honour settlement commitment.

## Further contribution to / Recoupment of Core SGF

- 14) Requisite contributions to Core SGF by various contributors (as per clauses 7 and 8) for any month shall be made by the contributors before start of the month.

In the event of usage of Core SGF during a calendar month, contributors shall, as per usage of their individual contribution,



immediately replenish the Core SGF to MRC.

In case there is failure on part of some contributor(s) to replenish its (their) contribution, same shall be immediately met, on a temporary basis during the month, in the following order:

(i) By CC, (ii) By SE

#### Review of Core SGF

15) The monthly review results shall be communicated to the Risk Management Committee and the Governing Board of the Clearing Corporation. The exception reporting shall be made to SEBI detailing the outcome of the review by the CC Governing Board, including steps taken to enhance the Core SGF.

#### Default waterfall

16) The default waterfall of CC for any segment shall generally follow the following order -

- I. monies of defaulting member (including defaulting member's primary contribution to Core SGF(s) and excess monies of defaulter in other segments).
- II. Insurance, if any.
- III. CC resources (equal to 5% of the segment MRC).
- IV. Core SGF of the segment in the following order:
  - i. Penalties
  - ii. CC contribution to the extent of at least 25% of the segment MRC
  - iii. Remaining Core SGF: CC contribution, Stock Exchange contribution and non-defaulting members' primary contribution to Core SGF on *pro-rata basis*.
- V. Proportion of remaining CC resources (excluding CC contribution to core SGFs of other segments and INR 100 Crore) equal to ratio of segment MRC to sum of MRCs of all segments.\*
- VI. CC/SE contribution to Core SGFs of other segments (after meeting obligations of those segments) and remaining CC resources to that extent as approved by SEBI.
- VII. Capped additional contribution by non-defaulting members of the segment.\*\*
- VIII. Any remaining loss to be covered by way of pro-rata haircut to payouts.\*\*\*

\*INR 100 Crore to be excluded only when remaining CC resources (excluding CC contribution to core SGFs of other segments) are more than INR 100 Crore.

\*\*CC shall limit the liability of non-defaulting members towards additional contribution to a multiple of their required primary contribution to Core SGF and the framework regarding the same should be disclosed. In case of shortfall in recovery of assessed amounts from non-defaulting members, further loss can be allocated to layer 'VI' with approval of SEBI.

\*\*\*In case loss allocation is effected through haircut to payouts, any subsequent usage of funds shall be with prior SEBI approval. Further, any exit by CC post using this layer shall be as per the terms decided by SEBI in public interest.

#### Stress testing and back testing

17) CC shall effectively measure, monitor, and manage its credit exposures to its participants and those arising from its payment, clearing, and settlement processes.

18) **Stress test for credit risk:** CC shall carry out daily stress testing for credit risk using at least the standardized stress testing methodology prescribed for each segment viz. equity, equity derivatives and currency derivatives in the Annexure. Apart from the stress scenarios prescribed for cash market and derivatives market segments in the Annexure, CCs shall also develop own scenarios for a variety of 'extreme but plausible market conditions' (in terms of both defaulters' positions and possible price changes in liquidation periods, including the risk that liquidating such positions could have an impact on the market) and carry out stress testing using self-developed scenarios. Such scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions.

Also, for products for which specific stress testing methodology has not been prescribed in this circular, CCs shall develop extreme but plausible market scenarios (both hypothetical and historical) and carry out stress tests based on such scenarios and enhance the corpus of Core Settlement Guarantee Fund/ reserves, as required by the results of such stress tests.

19) **Liquidity stress test and adequacy of liquidity arrangements:** CC shall ensure that it maintains sufficient liquid resources to manage liquidity risks from members, settlement banks and those generated by its investment policy. CC shall daily test the adequacy of its liquidity arrangements in order to ensure that its liquid resources are adequate to meet simultaneous default of at least two clearing members and their associates that would generate the largest aggregate liquidity obligation for the CC in extreme but plausible market conditions and compare such obligation with the resources mentioned hereunder:

- a) Cash
- b) Committed lines of credit available to CC

20) **Reverse stress test:** CC shall periodically carry out reverse stress tests designed to identify under which market conditions and under what scenarios the combination of its margins, Core SGF and other financial resources prove insufficient to meet its obligations (e.g. simultaneous default of top N members or N% movement in price of top 2 scrips by turnover or 20% movement in price of top N scrips by turnover etc.).



- 21) **Back testing for adequacy of margins:** CC shall daily conduct back testing of the margins collected *vis-à-vis* the actual price changes for the contracts being cleared and settled in every segment to assess appropriateness of its margining models.
- 22) **Adequacy of financial resources:** CC shall ensure that it maintains sufficient financial resources to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their associates that would potentially cause the largest aggregate credit exposure to the CC in extreme but plausible market conditions. Thus, CC shall continuously monitor the adequacy of financial resources (as available in its default waterfall) against the uncovered loss estimated by the various stress tests conducted by the CC and take steps to beef up the same in case of shortfall.
- 23) On at least a monthly basis, CC shall perform a comprehensive and thorough analysis of stress testing scenarios, models, and underlying parameters and assumptions used to ensure they are appropriate for determining the CCP's required level of default protection in light of current and evolving market conditions. CC shall perform this analysis of stress testing more frequently when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by a CC's participants increases significantly. A full validation of CC's risk-management model shall be performed at least annually.
- 24) The results of tests carried out as per clauses 18, 19, 20, 21 and 22 above and review conducted as per clause 23 shall be monitored by the Risk Management Committee of the CC and the same should be communicated for discussion and review by the Board of the CC.
- 25) Clearing corporations and Stock Exchanges are directed to:
- take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;
  - bring the provisions of this circular to the notice of their members and also disseminate the same on its website;
  - make the following details available on its website:
    - Policy on composition and contributions to be made to the Core SGF;
    - Investment policy for Core SGF;
    - Default waterfall for each segment along with the quantum of resources available in each layer of default waterfall;
  - implement the provisions of this circular by December 1, 2014 and communicate to SEBI the status of implementation.
- 26) This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in

securities and to promote the development of, and to regulate, the securities market.

- 27) This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in), under the category "Circulars".

Shashi Kumar  
General Manager

## Annexure

### Standard Stress Test Scenarios

#### Day of Stress test - 'S' day

#### Cash Market Segment: Scenario 1: Default by 2 Brokers

- CC shall compute the 'Cumulative Funds pay-in', 'Cumulative Funds pay-out', 'Cumulative Securities pay-in' and 'Cumulative Securities pay-out' of all members as on the end of pay-in deadline on the 'S' day. For this purpose cumulative pay-in/payout of each member's trades (shall include non-institutional trades as well as 2X% by value of those institutional trades which have not yet been confirmed by the custodian) undertaken on 'S-2' day, 'S-1' day and on 'S' day till the pay-in deadline shall be considered. (X being the highest daily % by value of custodial rejects in the previous 12 months)
- Any early pay-in of funds/securities shall be ignored.
- It shall be assumed that each clearing member would default in meeting its 'cumulative funds pay-in' and 'cumulative securities pay-in' obligations.
- Loss:**
  - Securities pay-in failure of the member: It shall be assumed that the failure to bring in securities would result in financial close-out and the clearing corporation would suffer a loss of 20% (at the minimum) of the value of such securities pay-in obligation.
  - Funds pay-in obligation failure of the member: The assumed loss on liquidation of securities that would have been paid-out to the defaulting member shall be -
    - Group 1 securities - 20%
    - Group 2 & 3 securities - 20% scaled up by root of 3.
  - Gross loss due to member = (Funds pay-in) + (120% of securities pay-in) - (funds pay-out) - (liquidation value of securities pay-out)
- Coverage:**  
Clearing corporation shall calculate the gross loss (as per 4 above) for each clearing member and assess that against the defaulting clearing members' required margins (In case of early pay-in, those margins which would have been applicable had the early pay-in was not made, to be considered. Excess collateral,



if any, shall be ignored) and other mandatory deposits to find the credit exposure of CC towards each member. Equity scrips as collateral, if any, shall be valued with minimum 20% haircut.

6. Clearing Corporation shall calculate the total credit exposure due to simultaneous default of at least two clearing members (based on residual loss calculated in 5 above) and their associates causing highest credit exposure

### Scenario 2: Default by 1 Custodian

1. CC shall compute the 'Cumulative Funds pay-in', 'Cumulative Funds pay-out', 'Cumulative Securities pay-in' and 'Cumulative Securities pay-out' of all custodians as on the end of pay-in deadline on the 'S' day. For this purpose cumulative pay-in/payout of each custodian's trades (shall include those trades which have been confirmed by the custodian) undertaken on 'S-2' day, 'S-1' day and on 'S' day till the pay-in deadline shall be considered.
2. Any early pay-in of funds/securities shall be ignored.
3. It shall be assumed that each custodian would default in meeting its 'cumulative funds pay-in' and 'cumulative securities pay-in' obligation.
4. **Loss:**
  - I Securities pay-in failure of the member: It shall be assumed that the failure to bring in securities would result in financial close-out and the clearing corporation would suffer a loss of 20% (at the minimum) of the value of such securities pay-in obligation.
  - II. Funds pay-in obligation failure of the member: The assumed loss on liquidation of securities that would have been paid-out to the defaulting member shall be -
    - a. Group 1 securities - 20%
    - b. Group 2 & 3 securities - 20% scaled up by root of 3.
  - III. Gross loss due to member = (Funds pay-in) + (120% of securities pay-in) - (funds pay-out) - (liquidation value of securities pay-out)
5. **Coverage:**

Clearing corporation shall calculate the gross loss (as per 4 above) for each custodian and assess that against the defaulting custodians' required margins (In case of early pay-in, those margins which would have been applicable had the early pay-in was not made, to be considered. Excess collateral, if any, shall be ignored) and other mandatory deposits to find the credit exposure of CC towards each custodian. Equity scrips as collateral, if any, shall be valued with minimum 20% haircut.
6. Clearing Corporation shall calculate the total credit exposure due to default of the custodian (based on residual loss calculated in 5 above) causing highest credit exposure.

### Equity Derivatives and Currency Derivatives segments:

The loss on closing out of client/proprietary positions shall be as

per the following scenarios:

### Hypothetical

Price movement in respect of each underlying to the extent of 1.5 times the normal price scan range (PSR) and 1.5 times the normal volatility scan range shall be considered.

**Scenario 1:** Underlying price increasing by 1.5 PSR, volatility increasing by 1.5 VSR.

**Scenario 2:** Underlying price decreasing by 1.5 PSR, volatility increasing by 1.5 VSR.

### Historical:

Price movement in respect of each underlying over the last 10 years to be considered.

The maximum percentage price movement shall be applied to the price on the day for which the stress test is being done:

**Scenario 3:** Maximum percentage rise over a period of 1 day

**Scenario 4:** Maximum percentage fall over a period of 1 day

All open positions shall be assumed to be squared up at the theoretical price corresponding to the revised prices of the underlying in each of the scenarios 1, 2, 3 and 4. The net profit/loss in squaring off the portfolio is to be calculated under each of the scenarios 1,2,3 and 4.

For each clearing member, the credit exposure to CC shall be calculated as follows:

- a) The time of stress test shall be the time of pay-in deadline.
- b) It shall be assumed that clearing member will default at the time of pay-in.
- c) Loss shall be calculated at client portfolio level.
- d) For each client, residual loss shall be equal to -> (loss due to close-out of client positions - margin supporting client positions)
- e) All residual losses (residual profits to be ignored) for all clients shall be grossed to compute total residual losses due to client positions.
- f) Loss due to close-out of proprietary positions shall be considered.
- g) Loss at (e) and loss at (f) and the net pay-in/pay-out requirement of the clearing member (pay-in and pay-out pertaining to requirements of both S-1 and S (till pay-in time) day to be reckoned) shall be assessed against required margins (excluding margin supporting client positions and excess collateral, if any) and other mandatory deposits of defaulting member to calculate credit exposure of CC to the member. Equity scrips as collateral, if any, shall be valued with minimum 20% haircut.

For each of the scenarios 1,2,3 and 4, Clearing Corporation shall calculate the total credit exposure due to simultaneous default of at least 2 clearing members (and their associates) causing highest credit exposure.





## 07 Formats for Disclosure Under Regulation 30 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Regulations).

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/CFD/POLICYCELL/5/2014, dated 25.08.2014]

1. The format for the reports/disclosures to be filed under Regulation 30 of the Regulations has been prescribed by SEBI vide circular No. SEBI/CFD/DCR/SAST/1/2011/09/23 dated September 23, 2011.
2. The format for continual disclosures under regulation 30(1) and 30(2) of the Regulations has been revised and is placed as Annexure-1.
3. A copy of this circular and the above stated formats are available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) in under the categories "Legal Framework" and "Takeovers".
4. This Circular shall come into force with immediate effect.

Amit Tandon  
Deputy General Manager

### Annexure-1

#### Format for Disclosures under Regulation 30(1) and 30(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

##### Part-A- Details of Shareholding

1. Name of the Target Company (TC)	
2. Name(s) of the stock exchange(s) where the shares of the TC are listed	
3. Particulars of the shareholder(s): a. Name of person(s) together with Persons Acting in Concert (PAC) whose total holding (including that in the form of shares, warrants, convertible securities and any other instrument that would entitle the holder to receive shares in the TC) is more than 25% of the voting rights of the TC. or b. Name(s) of promoter(s), member of the promoter group and PAC with him.	

4. Particulars of the shareholding of person(s) mentioned at (3) above	Number of shares	% w.r.t. total share /voting capital wherever applicable	% of total diluted share/voting capital of TC(*)
As of March 31st of the year, holding of: a) Shares b) Voting Rights (otherwise than by shares) c) Warrants d) Convertible Securities e) Any other instrument that would entitle the holder to receive shares in the TC.			
Total			

##### Part-B\*\*

##### Name of the Target Company:

Name(s) of the person and Persons Acting in Concert (PAC) with the person	Whether the person belongs to Promoter/ Promoter group	PAN of the person and PACs

Signature of the Authorised Signatory

Place:

Date:

Note:

1. In case of promoter(s) making disclosure under regulation 30(2), no additional disclosure under regulation 30(1) is required.

(\*) Diluted share/voting capital means the total number of shares in the TC assuming full conversion of the outstanding convertible securities/warrants into equity shares of the TC.

(\*\*) Part-B shall be disclosed to the Stock Exchanges but shall not be disseminated.

## 08 Expanding the Framework of Offer for Sale (OFS) of Shares through Stock Exchange Mechanism

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/MRD/DP/ 24 /2014, dated 08.08.2014.]



1. Comprehensive guidelines on sale of shares through Offer for Sale mechanism were issued vide circular No CIR MRD/DP/18/2012 dated July 18, 2012. These guidelines have been modified vide circulars dated CIR/MRD/DP/04/2013 dated January 25, 2013 and CIR/MRD/DP/17/2013 dated May 30, 2013.
2. While the OFS mechanism has been successfully used to divest promoter stake, market feedback indicated that there is a need to take measures to encourage retail participation in OFS, enable other large shareholders to use the OFS mechanism and expand the universe of companies to use this framework.
3. Accordingly, the OFS framework shall be modified as under.
  - 3.1 The OFS mechanism shall be available to top 200 companies by market capitalization in any of the last four completed quarters.
  - 3.2 Any non-promoter shareholder of eligible companies holding at least 10% of share capital may also offer shares through the OFS mechanism.
  - 3.3 In case a non-promoter shareholder offers shares through the OFS mechanism, promoters/promoter group entities of such companies may participate in the OFS to purchase shares subject to compliance with applicable provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
  - 3.4. Minimum 10% of the offer size shall be reserved for retail investors. For this purpose, retail investor shall mean an individual investor who places bids for shares of total value of not more than Rs.2 lakhs aggregated across the exchanges. If the cumulative bid value across exchanges exceeds Rs.2 lakhs in the retail category, such bids shall be rejected.
  - 3.5 Individual retail investors shall have the option to bid in the retail category and the general category. However, if the cumulative bid value of such investors exceeds Rs.2 lakhs, the bids in the retail category shall become ineligible.
  - 3.6 The cut off price i.e. the lowest price at which the entire offer gets sold, shall be determined based on all valid bids. The cut off price shall be determined separately for bids received in the retail category and for bids received in the non-retail category.
  - 3.7 Upon determining the cut-off price, the offer size reserved for retail investors shall be allocated to eligible bids of retail investors. Any unutilized portion shall be offered to non-retail category of investors. In case of excess demand in retail category at the cut-off price, allocation shall be on proportionate basis.
  - 3.8 Indicative price for retail and non-retail portion shall be displayed separately.
  - 3.9 Seller shall announce intention of sale of shares latest by 5 pm on T-2 day (T day being the day of the OFS) to the stock exchange. Stock exchanges shall inform the market immediately upon receipt of notice.
  - 3.10 In case of disclosure of the floor price, seller shall disclose the floor price latest by 5 pm on T-1 day to the stock exchange. Stock exchanges shall ensure that the same is informed to the market immediately.
  - 3.11 Seller may offer discount to retail investors. The details of discount and percentage of reservation for retail investors shall be disclosed upfront in the notice of OFS to the exchange.
  - 3.12 Discount to retail investors may be offered as follows:
 

Multiple Clearing price OFS-

    - 3.12.1 Retail investors may be allocated shares at a discount to the cut-off price determined in the retail category, irrespective of the bid price entered by them. Or
    - 3.12.2 Retail investors may be allocated shares at a discount to the bid price entered by them.

Single clearing price OFS-

    - 3.12.3. Retail investors shall be allocated shares at a discount to cut off price determined in the retail category.
  - 3.13. In case of both of the above methodologies, the discounted price which shall be the final allocation price to the retail investors may be below the floor price.
4. Para 1, 2, 5 and para 7 of OFS circular dated July 18, 2012 stand accordingly modified. All other conditions for sale of shares through OFS framework contained in the circulars CIR/MRD DP/18/2012 dated July 18, 2012, CIR/MRD/DP/04/2013 dated January 25, 2013 and CIR/MRD/DP/17/2013 dated May 30, 2013 remain unchanged.
5. Stock Exchanges are advised to:
  - 5.1 take necessary steps and put in place necessary systems for implementation of above within three weeks from the date of this circular.
  - 5.2 take steps to implement para 3.9 and 3.10 above with immediate effect.
  - 5.3 make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
  - 5.4 bring the provisions of this circular to the notice of the member brokers of the stock exchange to also to disseminate the same on their website.
6. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Maninder Cheema  
Deputy General Manager



## 09 Monitoring of Compliance by Stock Exchanges

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/CFD/DIL/4/2014, dated 01.08.2014.]

1. SEBI, vide Circular No. CIR / MRD DSA / 31 /2013 dated September 30, 2013 and Circular No. CIR / CFD / POLICYCELL / 13 / 2013 dated November 18, 2013 advised stock exchanges to, *inter-alia*, put in place a system to monitor and review the compliance of listing conditions by listed companies. Clause 5.2 of the Circular dated November 18, 2013 also advised stock exchanges to devise framework to detect any non- compliance / violation of the applicable laws.
2. SEBI vide circular dated April 17, 2014 has also made certain amendments to the Clause 49 of the Listing Agreement. The amended Clause 49, *inter- alia*, provides for Principles of Corporate Governance to be mandatorily complied with by listed companies.
3. The Principles of Corporate Governance, *inter-alia*, provide that shareholders should have opportunity to participate effectively and vote in general shareholder meetings. These principles also require companies to facilitate effective shareholder participation and exercise of ownership rights and require that company procedures shall not make it unduly difficult or expensive to cast votes.
4. In this regard, it is observed that some listed companies belonging to a common group have held their AGMs, with a time gap of 15 minutes between two AGMs. It is also observed that these companies were formed out of demergers and had 80% common shareholding thereby leaving only 15 minutes each for the common shareholders to attend the AGM of these companies.
5. It is observed that allocation of 15 minutes for conducting AGM of a public listed company having more than one lakh shareholders does not appear to be adequate enough to facilitate a constructive discussion on various matters transacted at the AGM. Such a practice affects the rights of investors to seek clarifications/hold discussions and *prima-facie* appears to be prejudicial to the interest of the investors.
6. In view of the above, Clause 5.2 of the Circular dated November 18, 2013 and the provisions of the revised Clause 49 which are scheduled to take effect from October 01, 2014, all recognised stock exchanges are advised to step up and equip their monitoring framework to identify and monitor such practices and to ensure that requirements laid down by Principles of Corporate Governance in the revised Clause 49 of the Listing Agreement are followed in letter and spirit.
7. This circular is issued in exercise of the powers conferred

under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.

8. Stock Exchanges are advised to ensure compliance with this circular.
9. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Issues and Listing".

Anindya Kumar Das  
Deputy General Manager



## 10 Trade Marks (Amendment) Rules, 2014

[Issued by the Ministry of Commerce and Industry vide F. No. 8/26/2013-IPR-IV, dated 01.08.2014. To be Published in The Gazette of India, Extraordinary, Part ii, Section 3, Sub-Section (ii)]

Whereas certain draft rules further to amend the Trade Marks Rules, 2002, were published, as required under sub-section (1) of section 157 of the Trade Marks Act, 1999 (47 of 1999), vide notification of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) number G.S.R. 523 (E), dated the 1st August, 2013, in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(i), dated the 1st August, 2013, inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of forty - five days from the date on which copies of the Gazette containing notification were made available to the public;

And whereas, the copies of the said notification were made available to the public on the 26th August, 2013;

And whereas, no objections and suggestions were received from the public;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (2) of the section 157 of the Trade Marks Act, 1999 (47 of 1999), the Central Government hereby makes the following rules further to amend the Trade Marks Rules, 2002, namely:-



1. (1) These rules may be called the Trade Marks (Amendment) Rules, 2014.  
 (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Trade Marks Rules, 2002 (hereinafter referred to as the said rules), in the First Schedule, in column (3),-
  - a. against serial numbers 1,3,4,5,6 and 7, for the entries "3500.00", the entry "4000" shall respectively be substituted;
  - b. against serial number 71, for the entry "12,500.00", the entry "20000" shall be substituted.
3. In the said rules, (a) in the Second Schedule, in Form TM-1, Form TM-51 and Form -TM 52, for the entries "3500", the entry "4000" shall respectively be substituted.  
 (b) in Form TM-63, for the entry "12500", the entry "20000" shall be substituted.

D.V. Prasad  
Joint Secretary



## Congratulations

**Sh. U.C. Nahta**, Chairman-Quality Review Board of the ICSI on joining the Competition Commission of India as a Member on 12.08.2014 for a period of 5 years.

The Institute instils pride to share that Sh. Nahta has been the first ever ICLS officer to become the member of the prestigious CCI and to accomplish the level of Secretary to the Government of India.

Sh. U.C. Nahta, a stalwart with brilliant academic record has served the Ministry of Corporate Affairs for a period of more than 3 decades and was heading the Inspection & Investigation decision of the Ministry before joining CCI.

Sh. Nahta holds to his credit a successful career and has held various prestigious positions like Registrar of Companies, Regional Director, etc. across the Nation.



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# News From the Institute



## Members Admitted

S. No.	Name	Membership No.	Region
<b>FELLOWS*</b>			
1	SH. ASHOK KUMAR PATRA	FCS - 7659	NIRC
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3	SH. PANKAJ KUMAR SAHU	FCS - 7661	NIRC
4	SH. KASHYAPBHAI A SHAH	FCS - 7662	WIRC
5	MS. RIMJHIM GUPTA	FCS - 7663	SIRC
6	MRS. SASMITA PANDA	FCS - 7664	EIRC
7	MS. RUCHIKA JAIN	FCS - 7665	NIRC
8	MS SHIKHA GUPTA	FCS - 7666	EIRC
9	SH. VIVEKA HEGDE	FCS - 7667	SIRC
10	SH. DEODATTA B PANDIT	FCS - 7668	WIRC
11	MS. IQNEET KAUR	FCS - 7669	NIRC
12	SH. ANAND KUMAR SAHU	FCS - 7670	WIRC
13	SH. SANDEEP KUMAR LAKHOTIA	FCS - 7671	EIRC
14	SH. MUKESH KUMAR SUKHIJA	FCS - 7672	EIRC
15	MS. POOJA BHATIA	FCS - 7673	NIRC
16	SH. RAKESH AGARWALLA	FCS - 7674	EIRC
17	MS. CHARU VINAYAK	FCS - 7675	NIRC
18	SH. GOPAL	FCS - 7676	SIRC
19	MRS. RASHMI GANGWAL	FCS - 7677	WIRC
20	MR. V RAMESH	FCS - 7678	SIRC
21	SH. RAJEEV KUMAR JAIN	FCS - 7679	NIRC
22	SH. V RAGHAVENDRAN	FCS - 7680	SIRC
23	SH. MD JAMSHED ALAM	FCS - 7681	EIRC
24	SH. GAURAV HARIRAM BHUTADA	FCS - 7682	WIRC
25	MRS. PREETI KHANNA	FCS - 7683	WIRC
26	SH. NAGA KISHORE MITTAPALLI	FCS - 7684	SIRC
27	MS. PREETI AGGARWAL	FCS - 7685	NIRC
28	SH. V J JOSEPH	FCS - 7686	SIRC
29	MS. BHARTI ROHILLA	FCS - 7687	NIRC
30	SH. KUMAR BASANT BHAGIRATHI	FCS - 7688	NIRC
31	SH RAJESH SEN	FCS - 7689	WIRC

### ASSOCIATES\*

1	MS. RACHNA KOTHARI	ACS - 36532	EIRC
2	MR. ANKIT AGARWAL	ACS - 36533	EIRC
3	MS. SRADHA GUPTA	ACS - 36534	EIRC
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8	MS. AMRITA MEHDIRATTA	ACS - 36539	EIRC
9	MS. AASTHA MUNDHRA	ACS - 36540	EIRC
10	MS. SURABHI BHANDARI	ACS - 36541	NIRC
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12	MR. JEETU AHUJA	ACS - 36543	NIRC
13	MR. ADIT ARORA	ACS - 36544	NIRC
14	MS. NEHA SHARMA	ACS - 36545	NIRC
15	MS. SWEETY CHAUDHARY	ACS - 36546	NIRC
16	MS. NANKI BAWEJA	ACS - 36547	NIRC
17	MS. VANDANA KUMAWAT	ACS - 36548	NIRC
18	MR. AMIT DEEDWANIA	ACS - 36549	NIRC
19	MR. PARITOSH KOTHARI	ACS - 36550	NIRC
20	MR. GOVIND CHHABRA	ACS - 36551	NIRC
21	MR. DANISH PUTHIYA PURAYIL	ACS - 36552	SIRC
22	MR. SHREYAS SUDHIR JOSHI	ACS - 36553	WIRC
23	MR. MAYURESH SUNIL KOLHE	ACS - 36554	WIRC
24	MR. SANKET KANUBHAI RATHOD	ACS - 36555	WIRC
25	MS. NAMRATA ANIL GAGLANI	ACS - 36556	WIRC
26	MS. KHUSHBOO HASMUKH SIKOTRA	ACS - 36557	WIRC
27	MR. PUROHIT SUBHASH JHAVARILAL	ACS - 36558	WIRC
28	MR. RAJAN KUMAR	ACS - 36559	WIRC
29	MR. SUHAS GOPAL PAWAR	ACS - 36560	WIRC
30	MS. MANSI HEMANT MEHTA	ACS - 36561	WIRC
31	MR. SANJAY CHATURVEDI	ACS - 36562	WIRC
32	MR. N NALLAMA REDDY	ACS - 36563	SIRC
33	MR. SANJAY KUMAR	ACS - 36564	NIRC
34	MR. P SEKAR	ACS - 36565	SIRC
35	MR. ANAND SRIVASTAVA	ACS - 36566	NIRC
36	MS. MANORANJANI DAMIREDDY	ACS - 36567	SIRC
37	MR. VIKRAM KUMAR MISHRA	ACS - 36568	EIRC
38	MR. NEERAJ MISHRA	ACS - 36569	EIRC
39	MR. NIRAJ KUMAR JAIDEOKA	ACS - 36570	EIRC
40	MS. SRISHTI BHAWSINGHKA	ACS - 36571	EIRC
41	MS. CHAITEE BARAL	ACS - 36572	EIRC
42	MS. SHRADDHA	ACS - 36573	EIRC
43	MRS. KARABI SARKAR SHOME	ACS - 36574	EIRC
44	MS. SHILPA GUPTA	ACS - 36575	NIRC
45	MS. ANKITA PARMAR	ACS - 36576	NIRC
46	MR. PRASHANT MAURYA	ACS - 36577	NIRC
47	MS. SHRUTI AGARWAL	ACS - 36578	NIRC
48	MS. GUNJAN GUPTA	ACS - 36579	NIRC
49	MS. APARNA SINGH	ACS - 36580	NIRC
50	MR. GOURAV KUMAR GUPTA	ACS - 36581	NIRC
51	MS. SHRUTI CHHAPARWAL	ACS - 36582	NIRC

\*Admitted during the period from 16.07.2014 to 19.08.2014



52	MR. LAKHAN GUPTA	ACS - 36583	NIRC	104	MS. SHIVALI MEHTA	ACS - 36635	NIRC
53	MR. VIKRANT SADANA	ACS - 36584	NIRC	105	MS. PRIYANKA GOYAL	ACS - 36636	NIRC
54	MS. DIVYA CHOUDHARY	ACS - 36585	NIRC	106	MS. SHABHA PARVEEN	ACS - 36637	NIRC
55	MS. NIKITA AGGARWAL	ACS - 36586	NIRC	107	MR. UDHHAV PRATAP SINGH	ACS - 36638	NIRC
56	MS. RADHIKA GARG	ACS - 36587	NIRC	108	MS. ANURADHA GUPTA	ACS - 36639	NIRC
57	MR. AMIT TIWARI	ACS - 36588	NIRC	109	MS. SUJANI VASIREDDI	ACS - 36640	SIRC
58	MS. RITIKA SHAW	ACS - 36589	NIRC	110	MR. KAPIL JAIN	ACS - 36641	NIRC
59	MR. SAHIL	ACS - 36590	NIRC	111	MS. KHUSHBOO KEDIA	ACS - 36642	EIRC
60	MS. PRACHI AGARWAL	ACS - 36591	NIRC	112	MR. JAY NARAYAN YADAV	ACS - 36643	EIRC
61	MS. ANSHIKA JAIN	ACS - 36592	NIRC	113	MS. SARIKA KUMARI KEDIA	ACS - 36644	EIRC
62	MS. RUCHI BHATIA	ACS - 36593	NIRC	114	MRS. ANITA BOTHRA	ACS - 36645	EIRC
63	MR. VAIBHAV AGNIHOTRI	ACS - 36594	NIRC	115	MS. PALLAVI GUPTA	ACS - 36646	NIRC
64	MR. SOUMIK SPANDAN TRIPATHY	ACS - 36595	NIRC	116	MR. VISHAL MITTAL	ACS - 36647	NIRC
65	MR. RHYDHAM KAPOOR	ACS - 36596	NIRC	117	MS. MADHU GARG	ACS - 36648	NIRC
66	MR. RAUNAK SINGH	ACS - 36597	NIRC	118	MS. NIDHI SHARMA	ACS - 36649	NIRC
67	MR. DEEPAK JAGWANI	ACS - 36598	NIRC	119	MS. KRITIKA GARG	ACS - 36650	NIRC
68	MS. SABIYA JAHAN	ACS - 36599	NIRC	120	MS. ISHANI NAYYAR	ACS - 36651	NIRC
69	MR. GAURAV SAINANI	ACS - 36600	NIRC	121	MR. VIVEK RAVINDRA TYAGI	ACS - 36652	NIRC
70	MS. MADHAVI MAHABALESHWARA HEGDE	ACS - 36601	SIRC	122	MS. TEJINDER KAUR	ACS - 36653	NIRC
71	MS. DIVYA AGARWAL	ACS - 36602	WIRC	123	MS. ATREYEE DAS	ACS - 36654	NIRC
72	MR. OM PRAKASH OJHA	ACS - 36603	EIRC	124	MS. MANSI AWANA	ACS - 36655	NIRC
73	MS. JIGNA JINANDRA	ACS - 36604	WIRC	125	MS. TANVI RASTOGI	ACS - 36656	NIRC
74	MR. SOURAV KUNDAGRAMI	ACS - 36605	EIRC	126	MR. SIDDHARTH GAUTAM	ACS - 36657	NIRC
75	MS. SHALINI PANDEY	ACS - 36606	NIRC	127	MS. PRIYANKA	ACS - 36658	NIRC
76	MS. JYOTI SHARMA	ACS - 36607	NIRC	128	MS. RAVEENA JOLLY	ACS - 36659	NIRC
77	MS. PRIYANKA JOSHI	ACS - 36608	NIRC	129	MS. HINA GARG	ACS - 36660	NIRC
78	MR. DHRUV SHARMA	ACS - 36609	NIRC	130	MR. CHIRAG BHAGAT	ACS - 36661	NIRC
79	MR. LOHIT CHHABRA	ACS - 36610	NIRC	131	MR. AKASH BOTHRA	ACS - 36662	NIRC
80	MR. SUMIT BHOJWANI	ACS - 36611	NIRC	132	MS. IQBAL KAUR	ACS - 36663	NIRC
81	MR. SRINIVASAN VS	ACS - 36612	SIRC	133	MS. SWATI SINGH	ACS - 36664	NIRC
82	MS. SURILEEN SARAF	ACS - 36613	WIRC	134	MS. PRABHJOT KAUR GANDHI	ACS - 36665	NIRC
83	MS. MANJIRI SONYABAPU PATIL	ACS - 36614	WIRC	135	MR. GHANSHYAM SHARMA	ACS - 36666	NIRC
84	MS. BHUMIKABEN KAILASHCHANDRA JAGETIYA	ACS - 36615	WIRC	136	MS. PRERNA BAJAJ	ACS - 36667	NIRC
85	MS. RADHIKA GAJENDRA JHAROLLA	ACS - 36616	WIRC	137	MR. NAVEEN RANKA	ACS - 36668	WIRC
86	MS. DHARA PRAFUL GANGAR	ACS - 36617	WIRC	138	MS. SONAM MALKOTIA	ACS - 36669	NIRC
87	MR. RAHUL RATNAKAR KANDHARKAR	ACS - 36618	WIRC	139	MR. ANUJ DUBEY	ACS - 36670	NIRC
88	MS. MANORAMA ASHOK YADAV	ACS - 36619	WIRC	140	MS. KANIKA ARORA	ACS - 36671	NIRC
89	MS. REENA KAUSHIK SHAH	ACS - 36620	WIRC	141	MR. MD SOHEB ALAM	ACS - 36672	NIRC
90	MS. RITU DWARKAPRASAD SHARMA	ACS - 36621	WIRC	142	MR. KAPIL S CHAAND	ACS - 36673	NIRC
91	MS. MUDRA SAURABH BENGALI	ACS - 36622	WIRC	143	MS. DIVYANI	ACS - 36674	NIRC
92	MR. BRIJESHBHAI G UPADHYAY	ACS - 36623	WIRC	144	MS. KAVITA JAIN	ACS - 36675	NIRC
93	MS. PREETI ANALKUMAR MISHRA	ACS - 36624	WIRC	145	MS. SONAM GABA	ACS - 36676	NIRC
94	MR. NISHANT KAMNANI	ACS - 36625	NIRC	146	MR. ABHISHEK	ACS - 36677	NIRC
95	MS. SUMAN	ACS - 36626	NIRC	147	MS. BABITA KANOJIA	ACS - 36678	NIRC
96	MS. DARVESH GAUTAMI	ACS - 36627	NIRC	148	MS. KHUSHBOO VERMA	ACS - 36679	NIRC
97	MS. FIRDOUS SHAKIL QURESHI	ACS - 36628	WIRC	149	MS. RACHNA KUMARI	ACS - 36680	NIRC
98	MS. DISHA JAYESH JATANIA	ACS - 36629	WIRC	150	MS. SHIVANGI TANDON	ACS - 36681	NIRC
99	MS. NIYATI GADIT	ACS - 36630	EIRC	151	MRS. MAMTA BAJAJ	ACS - 36682	WIRC
100	MS. PUSHPA RANI	ACS - 36631	EIRC	152	MR. D SELVAKUMAR	ACS - 36683	SIRC
101	MR. RUCHI CHOWDHURY	ACS - 36632	EIRC	153	MR. BOGHAM RAVIKUMAR VENKATARAMULOO	ACS - 36684	WIRC
102	MR. PRASHANT AGARWAL	ACS - 36633	NIRC	154	MS. NEHA BAKUL PAREKH	ACS - 36685	WIRC
103	MS. KAVITA GUPTA	ACS - 36634	NIRC	155	MR. SHAH SHREYANS PIYUSH	ACS - 36686	WIRC



# News From the Institute

156	MS. T G S YAMINI	ACS - 36687	WIRC	208	MS. ADITI SUREKA	ACS - 36739	EIRC
157	MS. KINJAL DINESH SHETH	ACS - 36688	WIRC	209	MS. ISHA KAPOOR	ACS - 36740	NIRC
158	MS. AVNEET KAUR BHANGHU	ACS - 36689	NIRC	210	MS. MEGHA BANSAL	ACS - 36741	NIRC
159	MS. KIRAN AGARWAL	ACS - 36690	NIRC	211	MS. NISHA KHATTER	ACS - 36742	NIRC
160	MR. VAIBHAV PRADEEPKUMAR ALAMWAR	ACS - 36691	WIRC	212	MR. SIDHARTH JAIN	ACS - 36743	NIRC
161	MR. PRADEEPKUMAR SOHANLAL KUMHAR	ACS - 36692	WIRC	213	MS. MONISHA CHAUDHARY	ACS - 36744	NIRC
162	MR. PRAMOD TUKARAM JADHAV	ACS - 36693	WIRC	214	MS. RADHIKA SHRINIWAS RATHI	ACS - 36745	WIRC
163	MS. KARUNA N IYER	ACS - 36694	WIRC	215	MS. ABHA SHARMA	ACS - 36746	NIRC
164	MR. HARSHAL ARUN LAHAMGE	ACS - 36695	WIRC	216	MS. KAMLESH RANOTE	ACS - 36747	NIRC
165	MS. JANKI KISHINCHAND JETHWANI	ACS - 36696	WIRC	217	MR. SHRINIKET SHRIKANT KABRA	ACS - 36748	WIRC
166	MS. ISHA MOHANLAL JAIN	ACS - 36697	WIRC	218	MS. NIRMAL RANI	ACS - 36749	NIRC
167	MS. RUCHITA SUNIL SURYAVANSHI	ACS - 36698	WIRC	219	MR. PRADHYUMAN SINGH YADAV	ACS - 36750	NIRC
168	MR. ABHISHEK JAIN	ACS - 36699	WIRC	220	MS. NEHA ARORA	ACS - 36751	NIRC
169	MS. PALAK DUTTA	ACS - 36700	NIRC	221	MR. ADIL MUNEER ANDRABI	ACS - 36752	NIRC
170	MS. SONAM MANOHARLAL JAIN	ACS - 36701	WIRC	222	MS. RICHA PRASHAR	ACS - 36753	NIRC
171	MS. RATHOD JANKIBEN BALWANT SINH	ACS - 36702	WIRC	223	MS. AYUSHI GARG	ACS - 36754	NIRC
172	MR. ASIR DEEPAK DESAI	ACS - 36703	WIRC	224	MS. SWETA VERMA	ACS - 36755	NIRC
173	MS. ARCHANA ASHOK KUMAR TODI	ACS - 36704	WIRC	225	MS. PRACHI JAIN	ACS - 36756	NIRC
174	MR. VIKRAM JAYESH SONI	ACS - 36705	WIRC	226	MS. MUKTA RAMNANI	ACS - 36757	NIRC
175	MR. VEDANG UPENDRA SHEVADE	ACS - 36706	WIRC	227	MS. ANJALI	ACS - 36758	NIRC
176	MS. SHRUTI JAYANT DESHMUKH	ACS - 36707	WIRC	228	MS. PRIYANKA SENGHER	ACS - 36759	NIRC
177	MR. CHETAN ISHWARLAL NARWANI	ACS - 36708	WIRC	229	MR. ARJUN ARORA	ACS - 36760	NIRC
178	MS. URVASHI KOTHARI	ACS - 36709	WIRC	230	MS. RUCHI SINGH	ACS - 36761	NIRC
179	MS. MEETA RAJENDRA AGARWAL	ACS - 36710	WIRC	231	MS. MEGHA GUPTA	ACS - 36762	NIRC
180	MR. MOHIT KUMAR JHA	ACS - 36711	WIRC	232	MS. PREETI SARAWAGI	ACS - 36763	NIRC
181	MR. MANOJ KUMAR PANDEY	ACS - 36712	EIRC	233	MS. YASHIMA SALUJA	ACS - 36764	NIRC
182	MR. NITIN CHANDRAKANT KULKARNI	ACS - 36713	WIRC	234	MS. VARSHA	ACS - 36765	NIRC
183	MS. SUMMI	ACS - 36714	NIRC	235	MS. AKANSHA JAIN	ACS - 36766	NIRC
184	MS. MANJU SEBASTIAN	ACS - 36715	SIRC	236	MRS. PRAJAKTA DINKAR GOKHALE	ACS - 36767	WIRC
185	MR. RAJESH SHAH	ACS - 36716	EIRC	237	MS. CHANDANI HARESH THAKKAR	ACS - 36768	WIRC
186	MS. AMRITPREET KAUR	ACS - 36717	NIRC	238	MR. NITIN ATMARAM SARFARE	ACS - 36769	WIRC
187	MS. HEMANSHU YADAV	ACS - 36718	NIRC	239	MS. KAJAL MAHENDRA JAIN	ACS - 36770	WIRC
188	MR. AJIT MANKESHWAR PANDEY	ACS - 36719	WIRC	240	MR. SOORAJ SONI	ACS - 36771	WIRC
189	MR. ARUN BATRA	ACS - 36720	NIRC	241	MS. SONALI ATMARAM GAMNE	ACS - 36772	WIRC
190	MR. JASWANT SINGH KAMBOJ	ACS - 36721	WIRC	242	MR. HARSHIT SINGH	ACS - 36773	WIRC
191	MS. KUNJAL MANSINGH THAKUR	ACS - 36722	WIRC	243	MR. PHADTARE NISHANT DHANAJI	ACS - 36774	WIRC
192	MS. DHARA VIPIN DALAL	ACS - 36723	WIRC	244	MS. SHUBHANGI SONI	ACS - 36775	WIRC
193	MS. NIDHI TEWARI	ACS - 36724	NIRC	245	MR. ABHISHEK SHARMA	ACS - 36776	NIRC
194	MR. GAURAV AGARWAL	ACS - 36725	EIRC	246	MS. DIVYA KISHORE BHANUSHALI	ACS - 36777	WIRC
195	MS. MADHU AGRAWAL	ACS - 36726	EIRC	247	MS. PREETI YOGESH PANDE	ACS - 36778	WIRC
196	MS. DIPIKA CHAMPALAL CHORDIA	ACS - 36727	WIRC	248	MS. JANHAVI MILIND CHIPLUNKAR	ACS - 36779	WIRC
197	MS. ROOPALI MALPANI	ACS - 36728	NIRC	249	MR. HEMANTH KUMAR B	ACS - 36780	SIRC
198	MR. AMIT SEN	ACS - 36729	NIRC	250	MS. SATYAVARDHINI K	ACS - 36781	NIRC
199	MS. KHUSBOO PAILAJRAI GURBUXANI	ACS - 36730	WIRC	251	MR. M S SAMUEL	ACS - 36782	SIRC
200	MR. YOGESH HARILAL SONEJI	ACS - 36731	WIRC	252	MS. NEHA MEHTA	ACS - 36783	NIRC
201	MS. NEHA KEDIA	ACS - 36732	EIRC	253	MS. SWATI KAMRA	ACS - 36784	NIRC
202	MR. PRATIK KUMAR PATODIA	ACS - 36733	EIRC	254	MS. NEHALI SATISHKUMAR JARIWALA	ACS - 36785	WIRC
203	MS. JYOTI PRIYA	ACS - 36734	EIRC	255	MS. GITIKA RAJENDRA MISHRA	ACS - 36786	WIRC
204	MR. MOHIT SHAW	ACS - 36735	EIRC	256	MS. SOMA MANIMOHAN DAS	ACS - 36787	WIRC
205	MS. PUJA AGARWAL	ACS - 36736	EIRC	257	MS. NIRALI NIKUNJBHAI CHOKSHI	ACS - 36788	WIRC
206	MS. ANANNA SARKAR	ACS - 36737	EIRC	258	MS. NIDHI VAID	ACS - 36789	NIRC
207	MS. SABANA SYED	ACS - 36738	EIRC	259	MR. AMIT KUMAR SINGH	ACS - 36790	EIRC



260	MR. NADEEM DUPLEY	ACS - 36791	EIRC
261	MS. SNIGDHA DAS	ACS - 36792	EIRC
262	MR. GAURAV KHATTAR	ACS - 36793	NIRC
263	MR. KAPIL PUROHIT	ACS - 36794	NIRC
264	MS. VISHAKHA SHEKHAWAT	ACS - 36795	NIRC
265	MS. PRIYANKA TIWARI	ACS - 36796	NIRC
266	MS. MONIKA CHOPRA	ACS - 36797	NIRC
267	MS. KALPANA SHARMA	ACS - 36798	NIRC
268	MS. PRIYANKA GUPTA	ACS - 36799	NIRC
269	MS. ANKEETA SHARMA	ACS - 36800	NIRC
270	MS. PRIYANKA	ACS - 36801	NIRC
271	MR. VIVEK VIJAYAN POTTAKANAYAM	ACS - 36802	SIRC
272	MR. PRAVEEN LAXMAN NAYAK	ACS - 36803	SIRC
273	MS. PARIDHI KOTHARI	ACS - 36804	WIRC
274	MR. ADARSH SUBHASH PANDEY	ACS - 36805	WIRC
275	MS. SHRUTI SANDIP SHAH	ACS - 36806	WIRC
276	MR. PARAS KAMLESH MEHTA	ACS - 36807	WIRC
277	MS. DHARA DEEPAK KARIA	ACS - 36808	WIRC
278	MS. RAJLAXMI RAJEEV KALE	ACS - 36809	WIRC
279	MS. SAIRA SAYED SHAIKH	ACS - 36810	WIRC

29	MS PREETI CHOUDHARY	ACS-21658	NIRC
30	MS SHALINI MEHTA	ACS-16859	WIRC
31	SH PANKAJ GUPTA	ACS-17528	NIRC
32	MS SIMPY GUPTA	FCS-5395	WIRC
33	SH KRISHNA H MANKAD	ACS-3236	WIRC
34	SH D B JALAN	ACS-3671	WIRC
35	SH VIKAS GOYAL	ACS-12897	NIRC
36	SH SANJAY KR GARG	ACS-11667	NIRC
37	MS ANITA SHRIRANG DHANE	ACS-19244	WIRC
38	MS AARTI JAGDISH JUMANI	ACS-22868	WIRC
39	SH SANDEEP KR AGRAWAL	ACS-13003	EIRC
40	MS UMA ESWARAN	ACS-9257	SIRC
41	SH PANKAJKUMAR BHARAT KR TANK	ACS-21339	NIRC
42	SH S RENGASWAMY	FCS-3871	SIRC
43	MS PRAJAKTA MANDAR DESHPANDE	ACS-17343	WIRC
44	SH R JEYABASKARAN	FCS-3439	SIRC
45	SH VINOD KR KHETAN	ACS-17252	EIRC
46	SH G S BAGLA	ACS-3647	NIRC
47	SH DAYA NARAIN	FCS-666	NIRC
48	MS SONAL VINAY BILALA	ACS-27682	WIRC
49	SH MAHENDRA M SHAH	ACS-3306	WIRC
50	MS LATIKA PRADHAN	ACS-6356	WIRC
51	SH GURUBACHAN SINGH CHATHRATH	ACS-9625	NIRC

## MEMBERS RESTORED\*

Sl.No.	Name	ACS/FCS No.	Region
1	SH DEEPAK GOENKA	ACS-12544	EIRC
2	SH GOPAL KR AGRAWAL	ACS-13007	WIRC
3	SH ANDLEEB HAMID ZUBERI	FCS-3577	NIRC
4	SH MANOJ KR JAIN	ACS-10880	NIRC
5	MS NIPA HASMUKH SAVLA	ACS-21422	WIRC
6	SH A P KHANDELWAL	ACS-9632	NIRC
7	SH ANAND PRAKASH SHARMA	FCS-2836	NIRC
8	SH SHYAMA PRASAD BANDHOPADHYAY	ACS-7779	EIRC
9	SH JAYDIP DHAR	ACS-11367	EIRC
10	SH CHANDRASHEKHARA SHASTRY SISTLA	ACS-25240	SIRC
11	SH VIVEK GAMBHIR	ACS-10066	NIRC
12	SH LAXMAN KUMAR	FCS-1718	NIRC
13	MS SHARMILA NASARPURI	ACS-4367	NIRC
14	SH ARUN KUMAR	FCS-4688	NIRC
15	SH VIVEK VASUDEV NAYAK	ACS-14833	SIRC
16	SH R RAVINDRAN	ACS-19562	SIRC
17	MS SHRADDHA JAIN	ACS-27455	WIRC
18	SH SADAN KUMAR	ACS-25639	EIRC
19	SH GIRISH CHANDRA AGARWAL	ACS-1149	NIRC
20	SH T GEORGE AUSTIN	ACS-12748	SIRC
21	SH VADLAMANI SRINIVASU	FCS-3465	SIRC
22	SH SHARAD JHINGAN	FCS-4535	NIRC
23	SH ASHISH JINDAL	ACS-15574	SIRC
24	SH HIMANSHU AGGARWAL	ACS-19727	NIRC
25	SH M S SREEDHAR	ACS-7870	SIRC
26	SH RAJESH BHURA	FCS-6676	NIRC
27	MS JYOTSNA KANUNGO	FCS-2684	NIRC
28	SH DARSHAN V MEHTA	ACS-2939	WIRC

\* Restored from 21/07/2014 to 20/08/2014

## Certificate of Practice

SL. No.	NAME	MEMB NO	COP NO.	REGION
<b>ISSUED**</b>				
1	SH. AYYASWAMY RENGARAJAN	FCS - 6725	13437	SIRC
2	MR. PRASHANT GANGADHAR TAYSHETE	ACS - 35869	13438	WIRC
3	MR. TEJAS BHARAT SHAH	ACS - 35759	13439	WIRC
4	MR. DIVESH GOYAL	ACS - 35817	13440	NIRC
5	MS. BHARGAVI MILAN BHIDE	ACS - 32987	13441	WIRC
6	MR. SURAJ	ACS - 36240	13442	NIRC
7	MR. NITESH RAMANI	ACS - 35762	13443	WIRC
8	MS. ANKITA AGARWAL	ACS - 33873	13444	NIRC
9	MS. MANIK ROUT	ACS - 34309	13445	NIRC
10	MR. NAVEEN YADAV GONTI	ACS - 34783	13446	SIRC
11	MR. ALOK KUMAR TRIPATHI	ACS - 27448	13447	NIRC
12	MS. PALLAVI AGARWAL	ACS - 22780	13448	NIRC
13	MR. PRITESH BADOLA	ACS - 36317	13449	NIRC
14	MR. UDAY MISAL	ACS - 36142	13450	WIRC
15	MR. SATYAM OMER	ACS - 36362	13451	NIRC
16	SH. BAJRANG LAL MUNDHRA	FCS - 3176	13452	EIRC
17	MR. SREEKUMAR M	ACS - 36173	13453	SIRC
18	SH. RAMESH KUMAR VIRMANI	ACS - 1802	13454	NIRC
19	MS. RITU JAIN	ACS - 30316	13455	NIRC
20	MS. MANASA RAO	ACS - 36134	13456	SIRC
21	SH. K V RAVI SHANKAR	ACS - 25571	13457	SIRC
22	MS. PARUL JAIN	ACS - 36017	13458	NIRC

\*\*During the month of July, 2014.







# News From the Institute

23	MR. PANKAJ SHANTARAM PATIL	ACS - 29823	13459	WIRC	75	MS. NIKITA ASHWIN TIMBADIA	ACS - 30461	13512	WIRC
24	SH. NITIN PRAFULLA CHOUDHARI	ACS - 20837	13460	WIRC	76	SH. ABDUL LATIF	ACS - 17009	13513	WIRC
25	MR. GAURAV JAIN	ACS - 35706	13461	SIRC	77	MS. BHAVNEET TOOR	ACS - 36249	13514	NIRC
26	MS. SHRADDHA SARAF GUPTA	ACS - 27248	13462	EIRC	78	MRS. APARAJITA JOHARI	ACS - 24692	13515	NIRC
27	MS. MANALI SITOKE	ACS - 36391	13463	WIRC	79	MR. SATYANANDA NAYAK	ACS - 21997	13516	NIRC
28	MS. PRITEE AGARWAL	ACS - 35040	13464	EIRC	80	MS. JYOTI MAHENDRA SHARMA	ACS - 36431	13517	WIRC
29	SH. S PARTHASARATHY	ACS - 5527	13465	SIRC	81	MR. SUMEET KUMAR	ACS - 35071	13518	EIRC
30	MS. SHUMAILA SERNOBAT	ACS - 28552	13466	WIRC	82	MR. SUMAN JEE	ACS - 34282	13519	EIRC
31	SH. DEODATTA B PANDIT	FCS - 7668	13467	WIRC	83	MR. LALIT TANEJA	ACS - 35662	13520	NIRC
32	SH. S DHANDAPANI	FCS - 1784	13468	SIRC	84	MR. KATTAMANCHI NAGARJUNA	ACS - 35995	13521	SIRC
33	MR. BINU THOMAS	ACS - 28261	13469	SIRC	85	MS. PRIYANKA JAIN	ACS - 35712	13522	WIRC
34	MRS. ANKITA SACHDEVA	ACS - 28728	13470	NIRC	86	MRS. SHIVANGI DEVANG MODI	ACS - 24260	13523	WIRC
35	MS. NIKITA PRATIK SHAH	ACS - 35877	13471	WIRC	87	MS. NEHAL BHARAT RATHOD	ACS - 35982	13524	WIRC
36	MR. SUBRAHMANYA HEGDE	ACS - 21631	13472	SIRC	88	SH. VIPUL KUMAR BHEDA	ACS - 10327	13525	WIRC
37	MR. SUMANTRA SARATHI MAHATA	ACS - 27384	13473	EIRC	89	MR. ROHIT NATANI	ACS - 35659	13526	NIRC
38	SH. SANDEEP AGGARWAL	ACS - 18302	13474	NIRC	90	MRS. SHITAL PRITAM BAGMAR	ACS - 36464	13527	WIRC
39	MS. DIVYA JAIN	ACS - 33740	13475	NIRC	91	MS. GAYATHRI RAGHAVAN	ACS - 35658	13528	SIRC
40	MS. USHA RAMAKRISHNAN	ACS - 9899	13476	WIRC	92	MR. MADHVENDRA PRAKASH	ACS - 33190	13529	NIRC
41	MR. RAKESH KUMAR GUPTA	ACS - 32018	13477	EIRC	93	MS. BHUMI HASMUKH SHAH	ACS - 36529	13530	WIRC
42	MS. NEETU SHARMA	ACS - 23794	13479	NIRC	94	SH. MAHAVIR CHAND BHANSALI	FCS - 2837	13531	SIRC
43	MS. NAMRATA AGRAWAL	ACS - 35958	13480	WIRC	95	MR. KARAN GULATI	ACS - 31781	13532	NIRC
44	MS. TANUSHREE PUROHIT	ACS - 32306	13481	NIRC	96	MR. RAVI KUMAR TL	ACS - 36476	13533	SIRC
45	MS. DIPTI RAJAN THAKKER	ACS - 36319	13482	WIRC	97	SH. P RAMANATHAN	FCS - 5801	13534	WIRC
46	SH. KISHORE K BHAVSAR	ACS - 11034	13483	WIRC	98	SH. ANIRUDH KUMAR TANVAR	ACS - 23145	13535	WIRC
47	MR. RONAK MAHESHKUMAR SHAH	ACS - 35001	13484	WIRC	99	MR. BHAVESH MADANGOPAL KHANDELWAL	ACS - 35795	13536	WIRC
48	MS. RAJNI MALHOTRA	ACS - 34362	13485	NIRC	100	MR. MAHENDRA DILIP SHINDE	ACS - 33011	13537	WIRC
49	MR. PADAMSINH BALASAHEB PATIL	ACS - 34885	13486	WIRC	101	MR. PREM KANT JHA	ACS - 36450	13538	NIRC
50	MRS. SHWETA KARAN MAHAJAN	ACS - 29512	13487	WIRC	102	MS. SHIPRA CHATTREE	ACS - 9590	13539	NIRC
51	MS. FORAM HEMANT SHAH	ACS - 36205	13488	WIRC	103	MR. VIVARTH DOSAR	ACS - 33120	13540	NIRC
52	MS. BEAUTY SINGH	ACS - 34632	13489	EIRC	104	MR. AMIT KUMAR	ACS - 31692	13541	EIRC
53	SH. RANJIT SINGH TANEJA	FCS - 5263	13490	NIRC	105	SH. DINESH KUMAR	FCS - 4726	13542	NIRC
54	MS. MADHULIKA BASHISTHA TIWARI	ACS - 35794	13491	WIRC	106	MS. PUNITA SAHAL	ACS - 36258	13543	NIRC
55	MR. SURENDER BEZINI	ACS - 36472	13492	SIRC	107	MRS. PRIYANKA AGARWAL	ACS - 36371	13544	EIRC
56	SH AJAY KUMAR AGARWAL	FCS - 7604	13493	EIRC	108	MS. SAMITA ARORA	ACS - 18564	13545	WIRC
57	MR. AJIT CHANDRASHEKHAR KALE	ACS - 35973	13494	WIRC	109	MR. MEHUL LALIT CHHAJED	ACS - 36517	13546	WIRC
58	MR. VIKASH BANSAL	ACS - 30969	13495	NIRC	110	MS. MAHIMA SHARMA	ACS - 20558	13547	NIRC
59	SH. DILLIP CHANDRA MAHARATHI	ACS - 24955	13496	NIRC	111	MR. HARSHIT JAISWAL	ACS - 36255	13548	NIRC
60	MR. SANDEEP YADAV	ACS - 36449	13497	NIRC	112	MR. BIJAY AGARWAL	ACS - 36489	13549	EIRC
61	MRS. SUJATA CHATTOPADHYAY	ACS - 24072	13498	WIRC	113	MR. AKSHAY SHRIKRISHNA PATHAK	ACS - 32997	13550	WIRC
62	MS. PRIYA GOEL	ACS - 22866	13499	SIRC	114	MS. SURBHI BATHLA	ACS - 33485	13551	NIRC
63	MS. APURVA JAIN	ACS - 28299	13500	NIRC	115	MS. BHARTEE SRIVASTAVA	ACS - 29656	13552	NIRC
64	MR. ASHISH AGGARWAL	ACS - 34807	13501	NIRC	116	MS. PREETI AGGARWAL	FCS - 7685	13553	NIRC
65	MRS. YAMINI KURRA	ACS - 35465	13502	SIRC	117	MS. PRIYANKA AGARWAL	ACS - 36480	13554	NIRC
66	MR. ANKIT JAIN	ACS - 36420	13503	NIRC	118	MR. DATTANAND MADHUKAR RAIKAR	ACS - 36461	13555	SIRC
67	MS. ALPANA KUMARI AGARWAL	ACS - 36445	13504	EIRC	119	MRS. YUKTI KAPOOR	ACS - 25868	13556	NIRC
68	MS. SHYAMA VIJAYARAGHAVAN	ACS - 35868	13505	SIRC	120	MS. SHIPRA DHANDHANIA	ACS - 33117	13557	EIRC
69	MS. DEEPTHI T	ACS - 36093	13506	SIRC	121	SH. PANKAJ KUMAR SAHU	FCS - 7661	13558	NIRC
70	MS. NIKITA KOTHARI	ACS - 35597	13507	WIRC	122	MR. MOHIT RAMESH SARAOGI	ACS - 33564	13559	WIRC
71	MR. DILIP RONDLA REDDY	ACS - 33146	13508	SIRC	123	MR. SANJAY KUMAR	ACS - 36564	13560	NIRC
72	MRS. NEHA KUMAR SUNIT	ACS - 28210	13509	NIRC	124	MS. YAMINA ALMAS	ACS - 36331	13561	NIRC
73	MR. AKASH SINGH	ACS - 34328	13510	NIRC	125	MS. SINDHU M	ACS - 19316	13562	SIRC
74	SH. PANKAJ H DOSHI	FCS - 3165	13511	WIRC	126	MRS. KIRTI PACHISIA	ACS - 27586	13563	EIRC



127	MR. PRIYA RANJAN CHAKRABORTY	ACS - 33456	13564	EIRC	6	MS. KHUSHBOO AGARWAL	ACS 20406	10336	EIRC
128	MRS. SAPNA RADHESHAM RATHI	ACS - 36347	13565	SIRC	7	MR. K VENKITASUBRAMONIA IYER	FCS 36	3846	SIRC
129	MR. SAURABH KUMAR AGRAWAL	ACS - 34384	13566	NIRC	8	MS. NEHA GUPTA	ACS 25906	11385	NIRC
130	MR. KAILASH PURUSHOTTAM PUROHIT	ACS - 36404	13567	WIRC	9	MR. MILAN MALIK	ACS 32559	12328	NIRC
131	MR. ANUJ SARASWAT	ACS - 36409	13568	EIRC	10	MR. VISHWASKUMAR ASHOKKUMAR SHARMA	ACS 33017	12331	WIRC
132	MRS. RICHA GARG	ACS - 36500	13569	NIRC	11	MR. LOVE KUMAR	ACS 29471	11024	NIRC
133	MS. MANISHA CHOUDHARY	ACS - 36531	13570	NIRC	12	MR. KALPESH DEDHIYA	ACS 22945	8342	WIRC
134	MS. SWETA MISHRA	ACS - 34970	13571	EIRC	13	MS. ARCHISHMA NARESHBHAJ AMIN	ACS 30200	10971	WIRC
135	SH. AJAY KUMAR MITTAL	ACS - 19557	13572	NIRC	14	MR. KUNAL JAIN	ACS 31942	12053	NIRC
136	MS. TANVEE	ACS - 34974	13573	EIRC	15	MS. URVASHI AGGARWAL	ACS 34872	13259	NIRC
137	MR. SANDEEP CHHAJER	ACS - 34569	13574	EIRC	16	MR. ARUN KUMAR SINGHAL	ACS 22039	10892	NIRC
138	SH. SHYAM SUNDAR L.V.	ACS - 18529	13575	SIRC	17	MRS. SHIKHA KAPADIA	ACS 20733	12048	WIRC
139	MS. DOLLY JHABAK	ACS - 32260	13576	EIRC	18	MS. PAYAL MANOJ CHAUHAN	ACS 29888	12151	WIRC
140	MS. RIDDHI NITIN GHELANI	ACS - 23968	13577	WIRC	19	MR. SHOVA KANT GIRI	ACS 13598	10214	NIRC
141	SH. RAHUL PADMAKAR SAHASRABUDDHE	FCS - 6254	13578	WIRC	20	MR. DEEPAK RAMACHANDRA SURYAVANSH	ACS 27641	12421	WIRC
142	MS. SHRISTI AGARWAL	ACS - 36493	13579	EIRC	21	MR. M J MAHADEV PRAKASH	ACS 16350	12111	SIRC
143	MS. MONALISA DATTA	ACS - 30368	13580	EIRC	22	MR. SWAROOP SINGH BHATI	ACS 31397	11578	NIRC
144	SH. GOURI SHANKER MISHRA	FCS - 6906	13581	WIRC	23	MR. R SUNDARESAN	FCS 7003	8307	SIRC
145	MS. ANU SRIVASTAV	ACS - 35625	13582	NIRC	24	MR. PANKAJ KUMAR NAMDHARANI	FCS 6609	10405	WIRC
146	MS. SRADHA GUPTA	ACS - 36534	13583	EIRC	25	MR. OM DAGA	ACS 32884	12197	EIRC
147	MS. SONAL SHEKARAN	ACS - 36388	13584	WIRC	26	MS. ANJANA DAHYABHAI PRAJAPATI	ACS 34318	12926	WIRC
148	MS. DIMPLE KHANDELWAL	ACS - 19016	13585	WIRC	27	MS. SUCHI AGRAWAL	ACS 22632	1062	EIRC
149	MS. SONU AGRAWAL	ACS - 36522	13586	WIRC	28	MR. SURYA PRAKASH M	ACS 31877	12911	SIRC
150	MR. DATTARAJ SUBHASH TILVE	ACS - 36426	13587	WIRC	29	MR. PUSHKAR WADEKAR	ACS 24687	11774	WIRC
151	MR. AMIT DEEDWANIA	ACS - 36549	13588	NIRC	30	MR. AMIT KUMAR MANGLA	ACS 32638	12438	NIRC
152	MS. SWETA DARUKA	ACS - 36441	13589	EIRC	31	MR. SHINTO STANLY	ACS 30860	12829	SIRC
153	MS. ARCHANA RAVINDRA SHAH	ACS - 17642	13590	WIRC	32	MR. MADHURA KIRAN UBALE	ACS 29734	10911	WIRC
154	SH. ABHITAP KUMAR JAIN	ACS - 15575	13591	WIRC	33	MR. UMESH KUMAR ARVIND BHAI VYAS	ACS 32603	12563	WIRC
155	SH. SUDHIR R. SINGH	FCS - 4880	13592	WIRC	34	MS HONEY SATPAL	ACS 27401	10684	NIRC
156	MR. RAJEEV RAWAT	ACS - 35305	13593	NIRC	35	MR. MOHD SADIQU L MEHDI	ACS 36125	13337	NIRC
157	SH. AMIT BHARGAVA	ACS - 16546	13594	NIRC	36	MR. ABHAY KUMAR GAIKAR	ACS 33494	13478	WIRC
158	MS. VAISHALI RAMADAS NAIK	ACS - 36363	13595	WIRC	37	MR. MOHIT ARORA	ACS 32319	12042	NIRC
159	MS. SHUKTI OJHA	ACS - 36120	13596	NIRC	38	MS. RAKHI RANI	ACS 31715	12596	NIRC
160	SH. NAGA KISHORE MITTAPALLI	FCS - 7684	13597	SIRC	39	MR. R SRIRAM	ACS 27591	10126	SIRC
161	MS. ANKITA UNIYAL	ACS - 32515	13598	NIRC	40	MR. CHANDAN NAVALKISHOR KSHIRSAGAR	ACS 29761	12700	WIRC
162	MR. RAJAN SINGH	ACS - 34691	13599	EIRC	41	MS. NITU KUMARI	ACS 32719	12764	NIRC
163	MRS. POOJA PRASAD GODSE	ACS - 25928	13600	WIRC					
164	MRS. RIMA DHAVAL SHIRODARIYA	ACS - 31009	13601	WIRC					
165	MRS. BINITA RUTVIJ SHAH	ACS - 21456	13602	WIRC					
166	MRS. MILAN BHATIA	ACS - 34850	13603	EIRC					
167	MR. NITESH SRIVASTAVA	ACS - 36488	13604	EIRC					
168	SH. BALAKRISHNA RAJU SHETTY	ACS - 27338	13605	WIRC					

## CANCELLED\*\*

SL. No.	NAME	MEMB NO	COP NO.	REGION
1	MS. RITU GARG	FCS 7464	8054	NIRC
2	MS. YASHARSHREE PARANJAPE	ACS 26830	11411	WIRC
3	MR. HEMANT NARANBHAI PAWAR	ACS 33423	12378	WIRC
4	MR. SONU SHAW	ACS 31940	12492	EIRC
5	MR. MOHAMED JAVED SHERIF	ACS 31741	12065	SIRC

\*\*Cancelled during the month of July, 2014.

## LICENTIATE ICSI\*

NAME	NUMBER	REGION
MR. AKSHAY KABRA	6664	NIRC
MR. KUNAL VIJAY KATARIYA	6665	WIRC
MS BHAVYA SHANTILAL MOTTA	6666	SIRC
MR AMIT GOYAL	6667	NIRC
MR. JAYENDRA SAHU	6668	WIRC
MS SWATHI G	6669	SIRC
MR ADAPA JASWANTH	6670	SIRC
MS SNEHA AGAL	6671	NIRC
MS PREETIKA MATHUR	6672	NIRC
MS IYER SEETHALAKSHMI BALAKRISHNAN	6673	WIRC
MR PRASANNA VITTHAL RAMDAS	6674	WIRC
MR AMIT GOYAL	6675	NIRC

\*Admitted during the month of July, 2014





# Company Secretaries Benevolent Fund



**MEMBERS ENROLLED  
REGIONWISE AS LIFE  
MEMBERS OF THE  
COMPANY SECRETARIES  
BENEVOLENT FUND\***

Region	LM No.	Name	Member Number	City
<b>EIRC</b>				
	1	10468 MR. ANAND SRIVASTAVA	ACS - 36566	NEW DELHI
	2	10475 SH. ASHOK KUMAR JAIN	FCS - 3786	FARIDABAD
	3	10479 SH. DEEP SINGH	ACS - 23689	
	4	10482 MS. PAYAL	ACS - 33278	DELHI
	5	10483 MR. SANJEEV GUPTA	ACS - 33022	DELHI
	6	10484 MR. SUNNY MALHOTRA	ACS - 26533	DELHI
	7	10485 MR. RAGHAV AGARWAL	ACS - 26609	GHAZIABAD
	8	10486 MS. RICHA VERMA	ACS - 32554	NOIDA
	9	10487 MS. PURNIMA CHOPRA	ACS - 32151	DELHI
	10	10488 SH. MAHAVIR PARSAD GARG	FCS - 3490	GURGAON
	11	10489 MS. ARSHIYA DOSAJH	ACS - 34497	NEW DELHI
	12	10490 SH. RANVEER SINGH CHANDEL	FCS - 7280	THE-GHUMARWIN
<b>SIRC</b>				
	13	10470 SH. RANGASWAMI KESAWAN	FCS - 182	CHENNAI
	14	10471 SH. SUDHINDRA PRAKASH GHALI	FCS - 7037	BELGAUM

Region	LM No.	Name	Member Number	City
	15	10473 SH. S RAJIREDDY	ACS - 13102	HYDERABAD
	16	10477 SH. RADHAKRISHNAN VIJAYAKRISHNAN	ACS - 17740	CHENNAI
	17	10478 MS. SUMANA RAO	FCS - 5548	BANGALORE
	18	10481 MR. M S SAMUEL	ACS - 36782	ERNAKULAM
	19	10492 SH. KOVILOOR VIJAYARAGHAVACHARI SAMPATHKUMAR	ACS - 106	CHENNAI
<b>WIRC</b>				
	20	10469 MR. SUNIL PAVANKUMAR MURARKA	ACS - 36521	MUMBAI
	21	10472 MR. CHANDRA PRAKASH BANSAL	ACS - 23435	MUMBAI
	22	10474 SH. UDAYKUMAR GIRISHBHAI DAVE	FCS - 6545	AHMEDABAD
	23	10476 MS. VINEETA SHRIWANI	ACS - 21814	JABALPUR
	24	10480 MS. DEEPTI SHIRISH DOLE	ACS - 22016	PUNE
	25	10491 MR. NISHIT KUMAR CHINUBHAI SANDHANI	ACS - 35490	GANDHINAGAR
	26	10493 MS. VIBHUTI HARSH PURSHOTTAM	ACS - 29106	MUMBAI

\*Enrolled during the period from 21.07.2014 to 20.08.2014.



## List of Companies/ organizations Registered During July, 2014 For Providing Training to The Students of ICSI

Name Of The Company	Training Period	Stipend
Pahal Financial Services Private Limited 610, Srishti Plaza, Saki Vihar Road Powai, Mumbai-400072	15/03 Months	Suitable
United Credit Limited 27-B, Camac Street (8 <sup>th</sup> Floor) Kolkata-700016	15/03 Months	Suitable
Brahmani Developers Private Limited Kkkk-9, Civil Township Rourkela-769004	15 Months	Suitable
Airwil Business Park Private Limited 1110, Main Bazar, Paharganj New Delhi-110055	15 Months	Suitable
DHL Supply Chain India Pvt Ltd 702,7 <sup>th</sup> Floor, Tower B, 247 Park, Lbs Marg, Vikhroli (W) Mumbai-400083	15 Months	Suitable
SPRL Foods Limited Chandarpur (Basmahua) Sahson, Allahabad-221507 Uttar Pradesh	15 Months	Suitable
Seva Advisory LLP 17A/56 (Top Floor) Triveni Plaza, WEA Karol Bagh New Delhi-110005	15 Months	Suitable
ABS Consultant Pvt Ltd Stephen House, Room No.99 6 <sup>th</sup> Floor, 4, B B D Bag (East) Kolkata-700001	15/03 Months	Suitable
Alliance Mall Developers Co Pvt Ltd Stephen House, Room No.99 6 <sup>th</sup> Floor, 4, B B D Bag (East) Kolkata-700001	15/03 Months	Suitable
LGW Limited Narayanpur-24Pgs (N) P O Rajarhat-Gopalar Kolkata-700136	15 Months	Suitable
Jatalia Global Ventures Limited A-48/40, Dlf Phase-1 Gurgaon-122002 Haryana	15 Months	Suitable
Aggarwal & Aggarwal C-36, Mahendru Enclave, Street No.4, Opposite Model Town-iii, New Delhi-110009	15/03 Months	Suitable
Ruchi Infrastructure Limited 615, Tulsiani Chambers 212 Nariman Point Mumbai-400021 Maharashtra	15 Months	Suitable
Dishman Pharmaceuticals and Chemicals Ltd Bhadra-Raj Chambers Swastik Cross Roads, Navrangpura, Ahmedabad-380009	15/03 Months	Suitable
Ramco Systems Limited 64, Sardar Patel Road Taramani, Chennai-600113	15 Months	Suitable
TCG Lifesciences Limited Block BN, Plot-7 Sector-7 Salt Lake Electronics Complex, Kolkata-700091	15/03 Months	Suitable
Archon Engicon Limited A-1, Shivam Sundaram Complex Opp Hareesh Dudhiya, Gurukul Road, Memnagar Ahmedabad-380052	15/03 Months	Suitable
Jain Sons Finlease Limited 8-2-682/1, 4 <sup>th</sup> Floor Road#2, Banjara Hills Hyderabad-500034	15Months	Suitable
Info Edge (India) Ltd Ground Floor, 12A 9A, Meghdoot, Nehru Place New Delhi-110019	15/03 Months	Suitable
Divyanshi Infra Projects Limited 7, G.C. Avenue, 5 <sup>th</sup> Floor, Kolkata-700013	15/03 Months	Suitable
Hind Aluminium Industries Ltd 8-1, Tulsi Vihar, Dr A B Road Worli Naka, Mumbai-400018	15 Months	Suitable
R.K. Associates (Law Firm) Shop No.35, Raj Hospital Wali Market Mission Road, Opposite Tikaram Girls College, Sonapat	15 Months	Suitable
Sharma & Co F-131, Dhanshree Tower-I Central Spine, Vidhayadhar Nagar Jaipur-302039	15 Months	Suitable
Hind Securities & Credits Limited D-13/25, Sector-8 Rohini-110085	15 Months	Suitable





# News From the Institute

The Sandesh Limited Sandesh Bhavan, Lad Society Road, B/H Vastrapur Gam, P O Bodakev, Ahmedabad-380054, Gujarat	15/03 Months	Suitable	Nath Bio- Genes (I) Ltd. Nath House, Nath Road P B No. 318, Auranagabad-431005	15/03 Months	Suitable
Gujarat Metal Cast Industries Ltd Jarod- Samlaya Road, Garadhiya, Dist Vadodara-391520 Gujarat	15/03 Months	Suitable	D&H Secheron Electrodes Pvt Ltd 213-215, D Wing Vishnu Shopping Centre, Plot No.37, Sector-15, CBD Belapur, Navi Mumbai-400614	15 Months	Suitable
Tirupati Fibres & Industries Limited Tirupati Nagar, Abu Road-307026 Dist Sirohi, Rajasthan,	15/03 Months	Suitable	Jinbhuvish Powertech Pvt Ltd. 101, East High Court Road New Ramdaspath Nagpur-440010	15/03 Months	Suitable
Aastha Alloy Industry Private Limited 1116, Raheja Chambers, Nariman Point, Mumbai-400021	15 Months	Suitable	20 Microns Limited 9-10, GIDC Ind. Estate Waghodua-391760 Dist Vadodara Gujarat	15/03 Months	Suitable
Victoria Tool Engineers Private Limited Plot No. 46, Sector-25, Ballabgarh Faridabad-121004	15 Months	Suitable	Anshuj Dhingra Law Offices 1204, Nirmal Tower, 26, Barakhamba Road, Connaught Place, New Delhi- 1100014	15 Months	Suitable
M.S. Khurana Engineering Limited 2 <sup>nd</sup> Floor, MSK, Passport Office To Panjraploe Road, Ambawadi Ahmedabad-380015	15 Months	Suitable	Paharpur Cooling Towers Limited Paharpur House 8/1/B Diamond Harbour Road Kolkata-700027 (Between Majherhat Flyover & Mouminpur Crossing)	15 Months	Suitable
Eastern Silk Industries Limited 19, R N Mukherjee Road, Kolkata-700001	15/03 Months	Suitable	VLCC Health Care Limited M-14, GK-ii Commercial Complex New Delhi-110004	15/03 Months	Suitable
National Jute Manufactures Corporation Limited Chartered Bank Building (2 <sup>nd</sup> Floor) 4, Netaji Subhas Road, Kolkata-700001	15 Months	Suitable	Medi- Caps Limited Mhow- Neemuch Road, Sector-1, Pithampur-454775 Distt. Dhar, MP	15/03 Months	Suitable
Fujifilm India Private Limited C-1/114, Ground Floor, Janak Puri New Delhi-110058	15/03 Months	Suitable	North Eastern Development Finance Corporation Ltd NEDFI House, G S Road Dispur, Guwahati-781006	15 Months 15 Days	Suitable
M C Securities Limited "City Heart", 5, Gorky Terrace, 3 <sup>rd</sup> Floor, Kolkata-700017	15/03 Months	Suitable	Poonam Processoers Pvt. Ltd. 99, Reshamwala Market, Ring Road Surat-395002	15/03 Months	Suitable
Dans Energy Pvt Ltd. 207, Chiranjeev Tower, 43 Nehru Place, New Delhi-110019	15/03 Months	Suitable	Knowlarity Communications Private Limited Amsoft Business Centre, Unitech Trade Centre Sector-43, Gurgaon Haryana-122002	15 Months	Suitable
C.K. Infrastructures Limited Lu-75, Dda Shopping Complex Pitampura-110034	15/03 Months	Suitable	Tops Security Limited 5, Royal Palms Estate Aarey Milk Colony Goregaon (E), Mumbai-400065	15 Months	Suitable
Jubilant Life Sciences Ltd. Bhartiagram., Gajrola Dist. Amroha-244223 Uttar Pradesh	15 Months	Suitable			
Raman Roadways Pvt Ltd. 805, Samedh Complex, Near Associate Petrol Pump C G Road, Ahmedabad-380009	15/03 Months	Suitable			





## News From the Institute

CS Amol Bhalchandra Godbole Company Secretary In Practice 3/37, Ahmed Sailors Bldg. J.P. Road, Dadar (E) Mumbai – 400 014	PCSA- 4071	Company Secretary In Practice 1/25 , Swadeshi Manzil 2Nd Sankli Street Mumbai- 400 008	
CS Bidhan Chandra Debata Company Secretary In Practice Plot No. 183/523, Gajapati Nagar Near Press Chhaka, P O Sainik School Bhubaneswar – 751 005	PCSA- 4072	CS Narendra Purohit Company Secretary In Practice P-7, Kalakar Street Kolkata – 700 007	PCSA- 4082
CS Keyur Pravinbhai Ghelani Company Secretary In Practice 426, Star Chambers Harihar Chowk Rajkot – 360 001	PCSA- 4073	CS Devdutta Dilip Khirre Company Secretary In Practice 218, Somwar Peth Karad Satara – 415 110	PCSA- 4083
CS Udayan Chakrabarti Company Secretary In Practice 96 A, Raja S C Mullick Road Kolkata – 700 047	PCSA- 4074	CS Varsha Rani Agarwal Company Secretary In Practice C/O Ved Prakash Tayal Shree Ram Colony Tayal Niwas, Opp.To New Singhaltrading Co. Siliguri – 734 001	PCSA- 4084
CS M. Vijaya Bhaskara Rao Company Secretary In Practice Flat No. 106, Elite Fort Apartment Near Secretariat Colony Puppalaguda, Manikonda Hyderabad – 500 089	PCSA- 4075	CS Ashwini Rao Company Secretary In Practice Flat No - 3, Mandar Residency Navi Peth Pune – 411 030	PCSA- 4085
CS S C Sharada Company Secretary In Practice 405, 7Th Cross 1V Block, Koramangala Bangalore - 560 034	PCSA- 4076	CS R.Vadivelu Company Secretary In Practice 423, IInd Main Road Vi South Cross Street Sri Kapaleeswarar Nagar, Neelangarai Chennai – 600 041	PCSA- 4086
CS Gagandeep Singh Vig Company Secretary In Practice A-30, East Of Kailash New Delhi – 110 065	PCSA- 4077	CS Swati Bansal Company Secretary In Practice 6-Ka-17 Jawahar Nagar Jaipur – 302 004	PCSA- 4087
CS R Muthukrishnan Company Secretary In Practice New No.33 (Old No.17) School View Road R.K. Nagar Chennai – 600 028	PCSA- 4078	CS Poonam Chawla Company Secretary In Practice F-2106, Rajaji Puram Lucknow -226 017	PCSA- 4088
CS Manoj Kumar Yadav Company Secretary In Practice 24 Ka-1 Jyoti Nagar Jaipur – 302 004	PCSA- 4079	CS Mukesh Kumar Heda Company Secretary In Practice 23 Ka-4, Jyoti Nagar Jaipur – 302 005	PCSA- 4089
CS Megha Jain Company Secretary In Practice 163, Guru Govind Singh Ward Sagar	PCSA- 4080	CS Bindhu Kilari Company Secretary In Practice Flat No.502, Vipanchi Resd, Lane Beside Paradise Takeaway Masab Tank Hyderabad – 500 028	PCSA- 4090
CS Khatri Tehseen Fatima	PCSA- 4081	CS Bijay Kumar Jha	PCSA- 4091



Company Secretary In Practice A -53, 3 <sup>rd</sup> Floor Pandav Nagar Main Road Opposite Mother Dairy New Delhi -110 092		Company Secretary In Practice 389-G , Pocket - 2 Mayur Vihar Phase -1 Delhi – 110 091	
CS Varsha Verma Company Secretary In Practice 813 B/2 Krishna Kunj Nagar Baghambari Road, Allapur Allahabad – 211 006	PCSA- 4092	CS Rakesh Sharma Company Secretary In Practice 2, Anand Colony –B Murlipura Jaipur – 302 039	PCSA- 4101
CS Khushal Bhathiya Company Secretary In Practice A/5, Haridwar Mathuradas Road Kandivli (West) Mumbai – 400 067	PCSA- 4093	CS Mitesh Jitendra Shah Company Secretary In Practice 3, Laxmi Niwas Pannalal Ghosh Road Malad (W) Mumbai – 400 064	PCSA- 4102
CS Rohit Jain Company Secretary In Practice Flat No.-2 R-2 Laxminagar Nagpur – 440 022	PCSA- 4094	CS Mrinal Shankar Company Secretary In Practice Ii C, 2nd Floor Shambhunath Plaza New Dak Banglow Road Patna – 800 001	PCSA- 4103
CS Ajay Anil Thorat Company Secretary In Practice C-209, 2Nd Fl, Tower No. 1 lip Vashi Navi Mumbai – 400 705	PCSA- 4095	CS Vanita Arora Company Secretary In Practice H.No. 178/10, Street No.- 7 Mohalla. Sant Pura Kapurthala – 144 601 Punjab	PCSA- 4104
CS Naveen Garg Company Secretary In Practice A2/73, New Kondly Mayur Vihar Phase –Ii Delhi – 110 096	PCSA- 4096	CS Ankita Drupad Patel Company Secretary In Practice A/1 , 302, Swadeshi Mill Compound Chunabhatti, Sion Mumbai- 400 022	PCSA- 4105
CS Pradeep Jyotindra Oza Company Secretary In Practice 302, Swapna Siddhi Building Near Station, Akurli Road Kandivli-(East) Mumbai – 400 101	PCSA- 4097	CS Surender Kumar Harsh Company Secretary In Practice Outside Nathuwar Gate Near Lali Bai Bagechie Bikaner – 334 001	PCSA- 4106
CS Sumit Dhawan Company Secretary In Practice 8/2, Ground Floor, West Patel Nagar New Delhi – 110 008	PCSA- 4098	CS Kundan Kumar Mishra Company Secretary In Practice C-22/B, 3Rd Floor Gururam Dass Nagar Laxmi Nagar Delhi – 110 092	PCSA- 4107
CS Anshita Jain Company Secretary In Practice 4840, Golecha Bhawan K.. G B. Karasta Johri Bazar Jaipur- 302 005	PCSA- 4099	CS Meenakshi Company Secretary In Practice Wz-12, Asalat Pur, Janak Puri New Delhi- 110 058	PCSA- 4108
CS Ganesh Datt	PCSA- 4100	CS Tapasvilal Deora	PCSA- 4109





# News From the Institute

Company Secretary In Practice  
Flat No. 1A, Laxmi Castle  
West Marredpally  
Secunderabad – 500 026

CS Dhwanni N. Kothhari  
Company Secretary In Practice  
103, C Wing Nemi Krishna Chs,  
Jethwa Nagar, V.L.Road  
Kandivali (West)  
Mumbai – 400 067

CS Bijoy Krishna Paul  
Company Secretary In Practice  
C/O Shyama Pada House No. 63  
Sreenagar Path, Lalganesh  
Lakhra Road  
Guwahati – 781 034

CS Praveen Agarwal  
Company Secretary In Practice  
Pushp Vatika, Sasanka Palli  
Sagar Bhanga  
Durgapur – 713 211

CS Hemant P. Nandaniya  
Company Secretary In Practice  
301-B, Helix Complex  
Opp. Hotel Surya, Beside. Kansar Hotel  
Sayajiganj  
Vadodara – 390 005

CS Karan Vir Bindra  
Company Secretary In Practice  
House No. 1173  
Sector 34 –C  
Chandigarh – 160 034

CS Preyansh Bharatkumar Shah  
Company Secretary In Practice  
13, Paris Plaza, Cinema Road  
Near Torrent Power House  
Surat – 395 003

CS Manish Baldeva  
Company Secretary In Practice  
7, Ram Bhavan, Station Road  
Bhayandar (West)  
Thane – 401 101

CS Srinivasan K  
Company Secretary In Practice  
C2 , Malnad Castle, Next To Sbi  
Kaggadasapura Main Road  
C V Raman Nagar Po  
Bangalore – 560 093

CS B. Prabhakar

PCSA- 4110

PCSA- 4111

PCSA- 4112

PCSA- 4113

PCSA- 4114

PCSA- 4115

PCSA- 4116

PCSA- 4117

PCSA- 4118

Company Secretary In Practice  
Plot No: 173, V.G.P. Nagar  
Mogappeir  
Chennai – 600 037

CS Kajal M Saiya  
Company Secretary In Practice  
No. 9, Punarpoorsam Apts  
# 14, Thirumurthy Street  
T. Nagar  
Chennai – 600 017

CS Ankita Sachdeva  
Company Secretary In Practice  
1/5867, Street No -1  
East Rohtash Nagar  
Shahdara

CS Khushboo Maheshwari  
Company Secretary In Practice  
34, Shankar Vihar –A  
Near Kedia Palace  
Chauraha, Murlipura  
Jaipur – 302 039

CS Yogesh Agarwal  
Company Secretary In Practice  
8/125, Housing Board  
Chopasni  
Jodhpur – 342 008

CS Awanish K. Dwivedi  
Company Secretary In Practice  
574, 2Nd Floor, Main Road  
Chirag Delhi  
New Delhi - 110017

CS Ankita Goenka  
Company Secretary In Practice  
23B, N.S. Road, Security House  
Room-M3, 2nd Floor, Opp. Coal Bhavan  
Ltd. Kolkata - 700 001

CS Mahesh Goverdhan Bagla  
Company Secretary In Practice  
Office No. 304, Gera Junction  
Lulla Nagar Singhal, Kondhwa Road  
Above Union Bank Of India  
Pune – 411 040

CS Puja Biyani  
Company Secretary In Practice  
35, Lawrence Street  
Verma Flats, C-3/J  
Uttarpara  
Hooghly – 712 258

CS Sunita Khandelwal

PCSA- 4119

PCSA- 4120

PCSA- 4121

PCSA- 4122

PCSA- 4123

PCSA- 4124

PCSA- 4125

PCSA- 4126

PCSA- 4127



Company Secretary In Practice B-126, Rear Side Basement Malviya Nagar New Delhi - 110 017		Company Secretary In Practice 'Diamond Chambers', 4, Chawringhee Lane Block -4, 7 <sup>th</sup> Floor , Room No. 7A Kolkata -700 016	
CS Rasika Satish Govekar Company Secretary In Practice 951, Bootee Street Camp Pune – 411 001	PCSA- 4128	CS Ritu Bajaj Company Secretary In Practice 'Diamond Chambers', 4, Chawringhee Lane Block -4, 7 <sup>th</sup> Floor , Room No. 7A Kolkata -700 016	PCSA- 4137
CS Harshavardhan R Boratti Company Secretary in Practice HRB & Co. No:17/43, 1St Floor Dr. Rajkumar Road Rajaji Nagar, 4th Floor, N Block Bangalore – 560 010	PCSA- 4129	CS Shashank Poddar Company Secretary In Practice Tarkeshwar Path, Boring Road Patna – 800 001	PCSA- 4138
CS Krishna Kumar S Rathi Company Secretary In Practice 302, Cliff Tower, 3Rd Cross Lane Opp. High Point Hotel, Swami Samarth Nagar, Lokhandwala, Andheri (W) Mumbai – 400 053	PCSA- 4130	CS N. K. Chandok Company Secretary In Practice Db-107A, G-8 Area Hari Nagar New Delhi – 110 064	PCSA- 4139
CS Poonam Makkar Company Secretary In Practice 58- R, New Colony Gurgaon – 122 001	PCSA- 4131	CS Subrahmanya Hegde Company Secretary In Practice No. 77/2, 1 <sup>st</sup> Floor, Next To Syndicate Bank D.V.G Road, Gandhi Bazar Basavanagudi Bangalore – 560 004	PCSA- 4140
CS Shital Pritam Bagmar Company Secretary In Practice 7, Dinkamal Apartment Gadekar Mala, Nashik Road Nashik- 422 101	PCSA- 4132	CS Sunil Kumar Sharma Company Secretary In Practice 104, Royal Enclave Wardhaman Nagar Square Nagpur -440 009	PCSA- 4141
CS Sanjay Kumar Company Secretary In Practice 4/64, 3Rd Floor Shalimar Park, Shahdara Delhi – 110 032	PCSA- 4133	CS Anuja Bansal Company Secretary In Practice 692, Shanti Nagar Road No. 3, Durgapura Jaipur – 302 018	PCSA- 4142
CS Tripti Bhardwaj Company Secretary In Practice 94, Tilk Vihar Indra Gandhi Nagar Sector 1St , Jagatpura Jaipur	PCSA- 4134	CS Pramod Kumar Jain Company Secretary In Practice 38, Jaora Compound 1St Floor, Jethwa Chambers Opp. M Y Hospital Indore -452 001	PCSA- 4143
CS Pritesh Badola Company Secretary In Practice Near Kanchan Ice Factory Bajrang Colony, Bijainagar Ajmer – 305 624	PCSA- 4135	CS Parveen Kumar Goyal Company Secretary In Practice Shop No. 6, Ground Floor F Block Market, Near Sohna Road South City -2 Gurgaon- 122 018	PCSA- 4144
CS Preeti Agarwal	PCSA- 4136		



## News From the Regions

### EASTERN INDIA REGIONAL COUNCIL

#### **SYNERGY Howrah 2014 Programme**

The EIRC of The ICSI actively participated in “SYNERGY Howrah -2014” organised by Ministry of Micro, Small and Medium Enterprises and Textile, Govt. of West Bengal on 1<sup>st</sup> and 2<sup>nd</sup> August, 2014 at Sarat Sadan, Howrah. SYNERGY Howrah – 2014 was the apt platform to address the various challenges and needs of MSME sector. It facilitated in trouble shooting and providing hand holding support for the new and existing industries, in and around Howrah. As per the reports published in newspaper, loans worth Rs. 1000 crore were sanctioned and investment proposals close to Rs. 5000 crore were received during these two days, in the Synergy at Howrah. ICSI participated in this mega event and conducted two sessions on “Corporate Governance” and a session on “Investor Awareness” during these two days of the programme. On Day 1, CS Ravi Varma, Asst. Manager (Compliance), Adventz Group was the guest speaker at the Investor Awareness Programme and Corporate Governance Session. People from different sections of the society had a healthy interaction with Varma regarding Corporate Governance and safe investment. Varma deliberated on what homework should an investor do before investment and how can we safeguard our investment against various frauds.

On day 2, CS Nidhi Bajaj, Company Secretary of Gold Flake Corporation Limited was the guest speaker at the Corporate Governance session. This session was attended by investors and some small and medium entrepreneurs apart from the representatives of Howrah Chamber of Commerce and Industry. Bajaj focused on the theme of how good governance can help to run the enterprise smoothly. She also focused on the necessary compliances that the companies should do to ensure safety and transparency in the long run.

A Clinic-cum-Helpdesk was there at the premises of Sarat Sadan, on both the days at “SYNERGY Howrah – 2014”, to help answer the queries of the visitors. Visitor asked different queries regarding Company Secretary Course and how the course can help entrepreneurs.

## **BHUBANESWAR CHAPTER Career Awareness Programmes**

On 16.07.2014, the Chapter conducted four career awareness programmes under the Career Awareness Week at Angul district of Odisha. The Chapter with active support and larger participation of the students, faculties and Principals of the Schools/Colleges conducted four programmes in the district. The 1<sup>st</sup> such programme was held at DPS, Nalco Nagar, Angul for Sr. Secondary students. The 2<sup>nd</sup> programme was held at Saraswati Vidya Mandir for Science and Commerce students of Sr. Secondary. The 3<sup>rd</sup> programme was held at Government Autonomous College, Angul and the 4<sup>th</sup> one was held at Angul Mahila Mahavidyalaya, Angul, Odisha. V.K. Arora, Principal, DPS, Nalco Nagar, Dr. S S Bahinipati, Principal, Saraswati Vidya Mandir, Nalco Nagar, Dr. S.D. Das, Principal, Govt. Autonomous College, Angul and G.K. Singh, Principal, Angul Mahila Mahavidyalaya, Angul contributed a lot for success of the above programmes. The dignitaries also addressed at their respective Institutions. Career Brochures, leaflets, posters were displayed and distributed amongst the participating students and faculties of the Institutions. Career prospects of the CS course, course contents, fee structure, examination pattern, library, oral coaching facilities, training and placement opportunities were also highlighted at each of the programmes. Queries raised by the students and also the faculties were replied by the speakers. ICSI Teacher kits were presented at the respective Institutions. CS Saroj Kumar Sahoo, PCS, Cuttack and U.C. Mishra, In-charge of the Chapter Office also attended and addressed at the above schools/colleges.

## **Series of Workshops on Companies Act**

On 27.07.2014 and on 19.08.2014, the Chapter organized two workshops on New Companies Act at its premises. While CS L V V Iyer, Corporate Lawyer, Hyderabad and CS Mamta Binani, PCS, Kolkata addressed on 27.07.2014, CS A. Acharya, Chairman, Bhubaneswar Chapter addressed on 19.08.2014. In the workshop held on 27.07.2014 topics such as “Duties, Liabilities, accountability of Directors and inclusive model of Corporate Governance, Incorporation of Companies: Formation of one person company, company with charitable objects and others, Memorandum and Articles of association: alteration; entrenchment provisions, Registered office of company, its verification; commencement of business, General Meetings: procedure, wider disclosures, Annual Return, report on AGM, Electronic maintenance of registers and records; Secretarial Standards, e-voting and Postal Ballot” were discussed and also lively presentations were made by the speakers.

In the workshop held on 19.08.2014, topic such as “Qualification and appointment of Director – Chapter XI” was discussed. Around 90 delegates attended the workshop held on 27.07.2014 and about 50 delegates attended the one held on 19.08.2014. The Chapter also organized a question hour session after the end of the each



technical session of the workshop wherein several queries on the new Act raised by the participants were nicely replied by the speakers of the session.

## Independence Day Celebration

On 15.08.2014, Bhubaneswar Chapter joined the Nation in celebrating the 68<sup>th</sup> Independence Day at its premises amidst the presence of the Office Bearers of the Managing Committee, Members of the Chapter, Faculty of Oral tuition classes, students, others and staff members. CS A. Acharya, Chapter Chairman unfurled the tri-colour followed by rendition of the National Song and National Anthem. Members, faculties, students present on the occasion addressed during the programme. In addition the Chapter also hosted the ICSI flag along with the National flag at its premises.

## HOOGHLY CHAPTER Career Awareness Programmes

The Chapter organised a number of Career Awareness Programmes as under: On 19.07.2014 the career awareness programme was held at Agrasain Balika Shikha Sadan & Ratnakar North Point School. Gautam Dugar explained the career prospects and registration formalities of Company Secretaryship Course. Around 80 students in each school were present on the occasion. On 21.07.2014 the programme was held at Khamarpura Jagriti Hindi Vidya Mandir, Ankit Shaw & Pradeep Dave conducted the programme and shared the course content, career prospects, registration formalities about the CS course. Around 90 students attended the session. On 24.07.2014 the programme was held at Rishra Vidyapith Unit-2 (Boys), Mohit Sharma and Pradeep Dave explained about the CS course. Around 60 students were present on the occasion. On 25.07.2014 at Khamarpura Jagriti Hindi Vidya Mandir. Ankit Shaw & Pradeep Dave explained various opportunities available to the profession of CS. Around 135 students were present on the occasion. On 28.07.2014 the Career Awareness Programme was held at St. Denis School & Rishra Vidyapith unit-2 (Girls). Mohit Sharma, Riyanka Banerjee, Alka Khetawat, Pradeep Dave explained the CS course contents, career opportunities and registration formalities. Approximately 50 & 100 students respectively attended the programme. On 29.07.2014 at Rishra Swatantra Hindi Vidyalaya. Ankit Shaw & Pradeep Dave explained the CS course contents, career opportunities and registration formalities. Approximately 85 students attended the programme. On 30.07.2014 at Rishra Vidyapith Unit-2 (Boys), Rishra Vidyapith Unit-2 (Girls), Khamarpura Jagriti Hindi Vidya Mandir. Deepak Gupta, Pradeep Dave & Mohit Sharma, Ankit Shaw explained the CS course content, career opportunities and registration formalities. Approximately 85 students attended the programme. On 31.07.2014 at St. Pauls School. Gautam Dugar explained the CS course contents, career opportunities and registration formalities. On 01.08.2014 at Rishra Swatantra Hindi Vidyalaya, Sohanlal Deoralia Balika Vidyalaya. Mohit Sharma, Pradeep Dave & Gautam Dugar explained the CS course contents, career opportunities

and registration formalities. Approximately 85 students attended the programme. On 04.08.2014 at St. Denis School, St Johns High School, Sohanlal Deoralia Balika Vidyalaya. Ankit Shaw, Alka Khetawat, Pradeep Dave & Gautam Dugar explained the CS course contents, career opportunities and registration formalities. On 05.08.2014 at Ramkrishna Ashram Vidyalaya, Rishra Vidyapith (Main), Rishra Swatantra Hindi Vidyalaya, Bantra M.S.P.C High School. Mohit Sharma, Ankit Shaw, Pradeep Dave explained the CS course contents, career opportunities and registration formalities. On 06.08.2014 at St. Helens School. Gautam Dugar explained the CS course contents, career opportunities and registration formalities. On 07.08.14 at Anjuman High School. Mohit Sharma and Pradeep Dave explained the CS course contents, career opportunities and registration formalities. On 09.08.14 at Chapdani Arya Vidyapeth. Ankit Shaw, explained the CS course contents, career opportunities and registration formalities. On 13.08.14, at Rishra Swatantra Hindi Vidyalaya, Howrah Hat High School, Khamarpura Jagriti Hindi Vidya Mandir. Ankit Shaw, Pradeep Dave, Gautam Dugar, explained the CS course content, career opportunities and registration formalities. In each session of the programmes the queries raised by the students were also replied by the speakers.

## Independence Day Celebration

The 68th Independence Day was celebrated with full enthusiasm at the Hooghly Chapter of The ICSI. CS Jamshed Alam, Chairman, Hooghly Chapter hoisted the National Flag at the Chapter Office, Rishra. On this occasion a Patriotic Quiz was organized, by the Chapter & Quiz Master CS Ravi Varma conducted the session. A good no. of students participated in the Quiz Session. An interactive session on Analysis of Stock Market was conducted by Ashok Gangwal. This was followed by various patriotic presentations by CS students.

## Full Day Workshop on the Companies Act, 2013

A Full Day Workshop (Manthan) was organized by Hooghly Chapter of ICSI on 20.7.2014 at Howrah on various Chapters of the Companies Act, 2013. Guest speaker CS Siddhartha Murarka, Company Secretary and Advocate deliberated on Chapters I, II and III of the Companies Act, 2013 in a very interactive and lucid manner which was enjoyed by the participants.

Dr. Debasish Mitra, Practising Chartered Accountant, Past Chairman (ICAI) gave his presentation on Chapter IV, V, and IX along with sections 185 & 186 of the Companies Act, 2013.

CA Mohit Bhuteria, Practising Chartered Accountant gave his presentation on Chapter VII, XI, XII and XIII of the Companies Act, 2013.

The participants took the benefit of the innovative "Open House Session" and raised several queries to the moderator of the session CS Narendra Singh, CS Mohan Ram Goenka, CA Mohit Bhuteria





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and CS Siddhartha Murarka.

Around 160 participants were present on the occasion. Earlier CS Jamshed Alam, Chairman, Hooghly Chapter in his welcome address said that the topics of the workshop were very relevant in the current scenario. CS Sonesh Jain, Secretary of Hooghly Chapter of EIRC-ICSI coordinated the programme.

## Campus Placement

The Hooghly Chapter of EIRC of the ICSI organised its 1<sup>st</sup> Campus Placement for the Students Seeking Management Training on 27.7.2014 at Rishra Sevak Sangh, Rishra.

CS Jamshed Alam, Chapter Chairman in his welcome address explained the importance of organising Management Training Campus Placement for CS students. He informed that more than 140 CVs were received from various parts of the Country and more than 15 Companies/PCS Firms were taking part in this Campus Placement for selecting the candidates for their organisation. He further added that the Chapter always believes in taking new initiatives for the benefit of Students and Members in the region.

He further shared that Managing Committee of the Chapter is committed to provide best services to the Students of ICSI and in this process would start certain new activities very shortly.

## Investor Awareness Programme

Investor Awareness Programme was organized by Hooghly Chapter of EIRC-ICSI on 25.07.2014 at Sri Shankar Vidyalaya, Hindmotor, Hooghly. The Speaker was CS Rajiv Gupta. Another Investor Awareness Programme was organized on 27.07.2014 at Rishra Sevak Sangh, Rishra. The speaker was CS Hansraj Jaria. On the same day another programme was held at Joy Narayan Santra Lane, Howrah Maidan, Howrah. CS Gautam Dugar was the speaker of the programme.

## NORTH EASTERN CHAPTER

### Full day Workshop and Professional Development Programme

On 9.8.2014 the North Eastern Chapter (Guwahati) of EIRC of The ICSI In association with Tax Bar Association, Guwahati organised a programme on the Companies Act, 2013 at Guwahati. The speakers were CS Siddharth Murarka, Company Secretary from Kolkata. Chief Guest was Mukhtar Singh, Registrar of Companies, MCA, Shillong. The Guest of Honour was Sri Kishore Pariyar. DGM, Dept. of DNBS, Reserve Bank of India.

Around hundred participants including CS and CA Members, students and Members from Tax Bar Association.

Mukhtar Singh, Registrar of Companies, MCA, Shillong & Chief

Guest on the occasion spoke on various rules for registration of Companies under the Companies Act 2013.

1<sup>ST</sup> TECHNICAL SESSION: Kishore Pariyar, DGM, Dept. of DNBS, Reserve Bank of India delivered a detailed speech with power-point presentation on Non-Banking Financial Institution.

2<sup>ND</sup> TECHNICAL SESSION: CS Siddharth Murarka delivered a detailed speech with power-point presentation on Section 42 of the Companies Act, 2013 (Private Placement).

3<sup>RD</sup> TECHNICAL SESSION: CS Siddharth Murarka delivered a detailed speech with power-point presentation on Section 184 to 189 (Loan to Directors, Loan and Investment by Company and Related party Transaction).

4<sup>TH</sup> TECHNICAL SESSION: CS Siddharth Murarka delivered a detailed speech with power-point presentation on Section 462 with special stress on Private Limited Company.

During the question hour session various queries were satisfactorily replied by speaker as well as the Chief Guest.

## RANCHI CHAPTER Career Awareness Programmes

Career Awareness Programmes were conducted by Ranchi Chapter of EIRC of the ICSI at Jawahar Vidya Mandir, Shyamali and at Lala Lajpat Rai Sr. Sec. School, Pundag on 24.7.2014. The programme was held at DAV Alok Public School, Pundag and at DAV Pundag on 04.8.2014. The Career Awareness Programme was conducted at Kendriya Vidyalaya, Dipatoli on 08.8.14 and at Oxford Public School, Pragati Path, Ranchi on 16.8.14 by S.Sreejesh, Administrator, S.B.Prasad and Sumanta Dutta. The students of Class XI and XII of the schools were informed about "Career as a Company Secretary" and the officials replied the queries of the students about the course, subjects, prospects of the profession, etc. The efforts of ICSI for creating awareness among the students on CS course and profession were highly appreciated by the Principal and other teachers of the schools.

## Investor Awareness Programme

Ranchi Chapter of EIRC of the ICSI organised an Investor Awareness Programme under the aegis of Investor Education and Protection Fund, Ministry of Corporate Affairs, Govt. of India at Jawahar Vidya Mandir, Shyamali, Doranda, Ranchi on 13.8.2014. A.K.Singh, Principal, Jawahar Vidya Mandir, Shyamli, Ranchi in his opening remarks focussed on the importance and benefits of investment in proper channels and avenues. He also advised the participants to keep distance from various fraudulent investment policies and organisations. On the later half of the programme Prateek Kumar, Relationship Manager, SBI Mutual Fund gave an overall idea about several beneficial and safer investment policies and methods like Fixed deposits (mostly in Nationalised banks),



Government Insurance Policies and Schemes, Demat Account, Investment in shares etc. He emphasised the necessity of different investments in the retired life of an individual. He also advised the participants to keep away from fraud investment schemes and to check with appropriate regulatory authorities websites before making any investment. Kumar also informed the participants about Rajiv Gandhi Equity Savings Scheme for new investors.

## **NORTHERN INDIA REGIONAL COUNCIL**

### **Inauguration of 195<sup>th</sup> MSOP**

On 01.07.2014 the 195<sup>th</sup> MSOP conducted by the Regional Council was inaugurated. CS Pankaj Sethu, Eros Group was Chief Guest.

### **Programme on Union Budget 2014-15**

On 11.07.2014 a Programme on Union Budget 2014-15 was conducted by the Regional Council. CS Bimal Jain and S. Murlidharan were the Chief Guest and Guest of Honour.

### **Valedictory Session of 194<sup>th</sup> & 195<sup>th</sup> MSOP**

On 15.07.2014 the Valedictory Session of 194<sup>th</sup> & 195<sup>th</sup> MSOP was conducted by the Regional Council. The Chief Guests were CS Vineet Jain & CS Manuj Bhargav.

### **Two days Regional Conference on Emergence of Company Secretary Profession - Companies Act, 2013**

On 19 & 20.07.2014 a two-days Regional Conference on "Emergence of Company Secretary Profession - Companies Act, 2013" was held at Dehradun, Uttarakhand. The Chief Guest and speakers were Dr. M. C. Joshi, Secretary, Finance, Govt. of Uttarakhand, CS Nesar Ahmad, Past President, ICSI, CS N. K. Jain, Past Secretary & CEO, ICSI and Suvira Agarwal, Sr. Manager M&A Tax, KPMG.

### **Half Day Workshop on Companies Act- 2013**

On 21.07.2014 a half-day Workshop on Companies Act - 2013 was conducted by NIRC. CS G. P. Madaan, Past Chairman, NIRC-ICSI, CS (Dr.) S. Chandrasekaran, Sr. Partner, Chandrasekaran Associates, Depali Mendiratta & Abhishek Bansal were present as Chief Guest and speakers.

### **Inauguration of Foundation Day Celebration**

On 25.07.2014 Foundation Day Celebration of the Regional Council

was organised. On the occasion Plantation of Sapling & Blood Donation & Health Check-up Camp/MSOP were also conducted by NIRC. The programme was inaugurated by the Chief Guest CS R. Sridharan, President, ICSI.

### **One Day Seminar on Secretarial Audit – Preparedness & Challenges & Annual General Meeting of NIRC**

On 30.07.2014 a one day Seminar on Secretarial Audit – Preparedness & Challenges & Annual General Meeting of NIRC was conducted by the Regional Council. CS Pavan Kumar Vijay, Past President, ICSI, CS (Dr.) S. Chandrasekaran, Senior Partner, Chandrasekaran Associates, CS Hitender Mehta, Past Chairman, NIRC-ICSI, CS G. B. Mathur, Executive VP & Company Secretary, Escorts Ltd. were present as Chief Guest, Guest of Honour and speakers.

### **Valedictory Session of 196<sup>th</sup> MSOP**

On 12.08.2014 the Valedictory Session of 196<sup>th</sup> MSOP was conducted by NIRC. Chief Guest on the occasion was CS A. K. Rustgi, Group Company Secretary, Mesco Group. The Guest of Honour was CS Vinay Gupta, CS & Head of Finance, ICRA Management Consulting Services Ltd. (IMaCS).

### **68<sup>th</sup> Independence Day Celebration**

On 15<sup>th</sup> August 2014 the Regional Council celebrated the 68<sup>th</sup> Independence Day by Hoisting the national tri-colour. The Chief Guest on the occasion was CS R Sridharan, President, ICSI.

### **3<sup>rd</sup> Convocation of Northern Region**

On 16.08.2014 NIRC conducted 3<sup>rd</sup> Convocation of Northern Region which was Held in Two Sessions. In **1<sup>st</sup> SESSION** Chief Guest was Arjun Ram Meghwal, Member of Parliament & Guest of Honour were P.R. Ramesh, Chairman, Deloitte Touche Tohmatsu India Pvt. Ltd., CS R. Sridharan, president, ICSI, CS Atul Mittal, Convocation Programme Director, Northern Region & Council Member, ICSI, P.K. Mittal, Council Member, ICSI, CS Sutanu Sinha, Chief Executive, ICSI and CS Shyam Agarwal, Convocation Programme Coordinator, Northern Region & Chairman, NIRC of the ICSI.

In **2<sup>nd</sup> SESSION** Chief Guest was Hon'ble Justice M. N. Bhandari of High Court of Rajasthan. The Guests of Honour were CS R. Sridharan, President, ICSI, CS Atul Mittal, Convocation Programme Director, Northern Region & Council Member, ICSI and CS Shyam Agarwal, Convocation Programme Coordinator, Northern Region & Chairman, NIRC of the ICSI.

### **GURGAON CHAPTER 20<sup>th</sup> MSOP Valedictory Function**

Gurgaon Chapter organized the valedictory function of the 20<sup>th</sup> MSOP at Gurgaon Chapter on 06.08.14. Dignitaries present on the occasion were CS Atul Aggarwal, Chief Guest, CS Dhananjay



# News From the Institute & Regions

Shukla, Treasurer, NIRC and CS K.K. Singh, Co-opted Member, Gurgaon Chapter. The Dignitaries welcomed the MSOP participants in the prestigious profession and wished them best of luck. CS Dhananjay Shukla addressed the students and informed them about their role in the corporate world. Certificates to all the participants were distributed.

## Full Day Seminar on Secretarial Audit and Annual Filing under Companies Act 2013

On 8.8.2014 the Chapter organized a Full Day Seminar on Secretarial Audit and Annual Filing under the Companies Act-2013. The first technical session was taken by Dr. S. Chandrasekaran, Senior Partner, Chandrasekaran Associates and his topic was Background and Current Status of Secretarial Audit and overview of the same in current perspective. The next session was taken by CS Sunil K. Jain, Proprietor, S. K. Jain & Associates and his topic was Practical Aspect of Secretarial Audit including drafting of Secretarial Auditor Report. The last session before lunch was taken by CS K K Singh, Managing Partner, K K Singh and Associates and his topic was Legal and Adjudication part in Secretarial Audit.

The first part of the second technical session was taken by CS Ajay Garg, Senior Partner, M/s ABP and Partners and his topic was CS in Employment and Secretarial Audit – Employment perspective. The next session was taken by CS Suman Kumar, Executive Vice-President – Corporate Affairs & Company Secretary – SMC Group and his topic was Legality and Consequence of Wrong Certification of Forms and Secretarial Audit. The last session was taken by CS Jitesh Gupta, Proprietor, J. K. Gupta & Associates and his topic was Annual Filing and Certification thereof. The Seminar was attended by 80 members including students.

## JAIPUR CHAPTER Full Day Seminar on Budget & Companies Act, 2013

A full day seminar on Companies Act, 2013 & Annual Budget was organized on 26-07-2014 at Jaipur Chapter. At the outset Dr. Girish Goyal, Chapter Chairman in his address elaborated the series of programmes organized by Jaipur Chapter. The President, ICSI R. Sridharan, in his address as keynote speaker elaborated the role of Company Secretaries in the new era after notification of Companies Act, 2013. He said that Company Secretaries are not only KMP but should focus for AMP (as may be prescribed), which in around 400 places in the Companies Act, 2013 and Companies Rules, 2014, the reference is given. Therefore it is more challenging for CS to not only refer the Act & Rules wherever required but also interpretation in consonance with spirit of the Act should be made with harmony.

CS C Sudhir Babu, Central Council Member, the ICSI in his address expresses responsibility under the Companies Act, 2013 and spoke on the recognition of CS as KMP along with Chief Executive Officer,

MD, Whole time Director and Chief Financial Officer under new Companies Act, 2013.

The second session was taken by CA Yashaswi Sharma, Advocate who highlighted key changes and provisions of the Rajasthan State Budget 2014.

The third session was addressed by Jai Singh Kothari, Managing Director, Nafa Nuksan Newspaper. Kothari highlighted various new provisions and key changes under the Union Budget, 2014.

CS Vimal Gupta, Vice Chairman concluded the programme.

## Press Meet

The Chapter organized a press meet at its premises. R Sridharan, President, The ICSI while interacting with media representatives, discussed the new initiatives of ICSI specially providing soft copy of study material to students, new training structure, e-books on mobile.

President also gave full details about the CS course, role of CS, duties, Challenges and opportunities for Company Secretaries. He also discussed the new Companies Act 2013.

While giving short interviews to local media, President said that the Institute has made availability of its study material to students freely through electronic mode. He also stresses on Online Process of ICSI and latest initiative taken by the Institute.

CS Sutanu Sinha also addressed and dealt with various queries raised by the media people about the CS Course.

## ICSI President's Interaction with Members & Students

On 26.7.2014 at the interactive session with the members and students, President R Sridharan focused first on the expectation from the students keeping in view the revised examination system (open book & OMR) and also revised training structure. He advised the students that without concerning about the number of attempts to qualify the CS examination, the learning & knowledge is more important for the students and continuous updation would allow students for getting success.

Next while addressing the members he apprised them about the opportunities available for Company Secretaries under the new Companies Act, 2013. He further added that the Council is continuously in touch with the Corporate Affairs Ministry on all issues related to new Companies Act. President also invited queries and suggestion from the members and students on Companies Act, 2013 and other related issues. The queries raised by the participants were replied satisfactorily by the President. He was also concerned about the issues being faced by the members with regard to the Companies Act 2013 and other related issues.

## Independence Day Celebration

On 15.08.2014 the Chapter celebrated the 68<sup>th</sup> Independence



Day of the Nation by hosting National Tricolour at the Chapter premises. Chapter Chairman Girish Goyal hosted the National Flag. Sunil Goyal, Past President, ICAI, who was the Chief Guest of the function touched upon the economic scenario of the country and role of professionals in the present era.

In his welcome address, Vimal Gupta, Vice Chairman, Jaipur Chapter briefed the need of updation in terms of changing regulatory ambience and understanding the contemporary development and honing professional, personal, social, technical and academic skills which is important to keep us miles ahead in all situations particularly when India is entering into the 68th year of Independence.

A large number of members and students participated in the programme.

## VARANASI CHAPTER Career Awareness Programmes

On 2.8.2014 at the Career Awareness Programme conducted by the Varanasi Chapter, CS Aparna detailed the students regarding qualification, duration, structures, employment, importance, prospects of the CS Course and role of Company Secretaries. After his detailed explanation about career as a Company Secretary, Sushil Kumar Kandoi, Chapter Chairman also delivered a brief lecture about value and role of Company Secretaries in India. Indu Gulati, Principal, Little Flower House also addressed on role of Company Secretaries in India.

Ashish Kumar Tiwari, Chapter In-Charge explained about Online Registration of CS Course, activities of the Institute and Chapters and clarified the queries raised by the students during the interaction session.

## SOUTHERN INDIA REGIONAL COUNCIL

### Campus Placement Programme

On 5.7.2014, the ICSI – SIRC organized a Campus Placement Programme at ICSI – SIRC House, Chennai for members and students for undergoing 15 months training. All the companies/firms of practising Company Secretaries participated in the programme, shortlisted their candidates after conducting personal interviews at the ICSI – SIRC premises. CS Dr. B Ravi, Former Chairman and Member, ICSI – SIRC inaugurated the programme and addressed the members and students. He gave valuable tips for attending the interview.

### Study Circle Meeting on Ring fencing the risk of directors

On 8.7.2014, the ICSI – SIRC organized a study circle meeting on

'Ring fencing the risk of Directors'. P Umesh, Senior Vice President, Liability Insurance, Aon Global Insurance Brokers Private Limited, Hyderabad in his address observed that the roles of directors and officers have become more challenging in view of the increasing demanding responsibilities, litigation pressures and regulatory requirements. He explained that a director's policy covers the personal liability of a director/officer in the event of a claim or law suit alleging their wrongdoing in connection with the company's business. He also threw light on the policy structure, source of directors' claims, and impact of the Companies Act 2013 on various businesses and the prohibition of sexual harassment at the work place. The members actively interacted with the speakers.

### Post Budget Analysis 2014

On 11.7.2014, the ICSI-SIRC and FICCI (Tamilnadu State Council) in association with Ernst & Young organized Post Budget Analysis 2014 at Chennai. T. Jayasankar, CCIT-I (CCA) & Director General of Income Tax (Investigation), Chennai said that as far as direct tax proposals go, marginal relief has been granted to individual taxpayers by increasing the basic exemption limit and incentivising savings by increasing the deduction limits under section 80c from Rs.1 lakh to Rs.1.5 lakh, ideally, these steps should be inflation-adjusted rather than announced in Budgets. He said the enhancement of income tax exemption limit to Rs.2.50 lakh from Rs.2 lakh was a small relief but a good beginning.

R. Manga Babu, IRS, Commissioner of Central Excise & Customs, Chennai said that the Budget provides reliefs to individual tax payers, provides measures to revive the economy, by promoting investments, rationalize tax provisions to reduce litigation, and boosting domestic production. To facilitate trade, "Indian customs Single Window Project" is a welcome move. CS C Ramasubramaniam, Secretary, ICSI - Southern India Regional Council said that the Budget proposals are conducive for the growth of India Inc. and it restates the Government's commitment to the sustainable and inclusive development of the Nation. It will go a long way in providing desired impetus to the areas like Power, Banking, Agriculture, Defence, Infrastructure, Manufacturing and Tourism by creating a growth oriented framework. There has been a mix of both short term and long term measures towards promoting overall development of the economy by focusing on all the key constituents like Administrative reforms, promoting FDI, Corporate Governance, & Sustainable development of agriculture. Rajan Ekambaram, Partner-Advisory, EY said that the Budget has recognized the current realities, understood the steps to be taken to boost investment and growth and signalled a clear intention for action. In this context, the Budget comprehensively articulates the Government's approach in a range of areas and seeks to meet the expectations of stakeholders in the Indian Economy.

### Post Union Budget 2014 Workshop

On 12.7.2014, the ICSI – SIRC in association with the Madras Chamber of Commerce and Industry [MCCI], Chennai organized the Post Union Budget Workshop at Hotel GRT Grand, Chennai.





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Sriram Seshadri, Partner, BMR Legal spoke on the Direct Taxes. He explained that Personal Income-tax exemption limit raised by Rs. 50,000/- that is, from Rs. 2 lakh to Rs. 2.5 lakh in the case of individual taxpayers, below the age of 60 years. Personal Income Tax exemption limit raised from Rs 2.5 lakh to Rs 3 lakh in the case of senior citizens. He also threw light on the various provisions made on the direct taxes.

K Vaitheeswaran, Advocate and Tax Consultant addressed on Indirect Taxes. He opined that to broaden the tax base in Service Tax, sale of space or time for advertisements in broadcast media, extended to cover such sales on other segments like online and mobile advertising, sale of space for advertisements in print media however would remain excluded from service tax and Service provided by radio-taxis brought under service tax. The delegates actively interacted with the speakers.

## 39th Southern India Regional Conference of Company Secretaries

On 18 and 19.7.2014, the SIRC of the ICSI organized the 39th Regional Conference of Company Secretaries at Camelot Convention Centre, Alleppy, Kerala. The theme of the conference was 'Versatility meets the Paradigm Change – CS & The Act'.

*Day 1: 19.7.2014/Inaugural Session:* At the inaugural session B K Bansal, Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai was the Chief Guest.

In his presidential address, CS Sridharan R, President, The ICSI congratulated SIRC for organizing the Regional Conference in a grand manner at Kerala. He urged the members to take the Companies Act and the Rules positively, explore the various opportunities under it and take the profession to new height. Gopalkrishnan Iyer, Senior General Manager, Bombay Stock Exchange, Mumbai delivered the Key Note Address. Iyer narrated the role that can be played by the CS in the capital market arena. He observed that the CS has more potential when compared to other professionals to play a key role in the capital markets.

In his inaugural address, B K Bansal, Regional Director, Southern Region, MCA, Chennai indicated the measures taken by the Ministry to sort out the issues that have arisen after the implementation of the Companies Act, 2013. Prizes and medals were distributed to the meritorious students on various categories. A souvenir marking the 39th Regional Conference was also released by the Chief Guest. Immediate Past Chairman, SIRC CS C Dwarakanath was honoured on the session.

*First Technical Session: Governance – Not a Tick Box:* The First Technical Session was on 'Governance – Not a Tick Box', addressed by Praveen Trivedi, OSD [CD & Law], Department of Economic Affairs, Ministry of Finance, New Delhi and Suresh B Menon, General Manager & Regional Head, Southern Region, Securities Exchange Board of India, Chennai. CS Sahoo M S, Secretary, The ICSI was the moderator for the session. The

speakers observed that there is lot to be observed and followed in the Companies Act 2013 as it brings in more changes in the way the corporates are governed in India. The Companies Act 2013 enhances significantly the role and responsibilities of the Board of directors by making them more accountable for their actions while protecting shareholder interest. The Act, by mandating a woman director on the board, the intent of the 2013 Act is to improve gender diversity and increase transparency. They observed that The Companies Act 2013 sets an example in corporate governance for other economies to emulate us.

*Second Technical Session: Related "as if they are unrelated" Transactions:* CS Ramaswamy G, Chartered Accountant, Coimbatore, Past President, The ICAI & Former Member, SIRC of the ICSI and CS M R Thiagarajan, Company Secretary in Practice, Coimbatore were the speakers for the second technical session on 'Related "as if they are unrelated" Transactions'. Ramaswamy observed that The Companies Act 2013 prescribes that a corporate should get the approval of the audit committee on all related party transactions and subsequent modifications thereto and this is irrespective of whether they are in the ordinary course of business and consummated at arm's length price or they are below prescribed thresholds. M R Thiagarajan explained the term related party as the parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions. He explained the related part transaction as a transfer of resources or obligations between related parties, regardless of whether or not a price is charged.

*Sight Seeing – Sun Set Cruise at Back Waters:* After the technical sessions of the first day, delegates were taken for Sunset Cruise at Vembanad Lake, Alleppy, the largest backwater stretch in Kerala. The green shore throbbing with vigour and pure beauty was the prime attraction during the boat ride. The cruise started from a place 'Finishing point', then entered through R-block via Marthandam Thuruth and reached back to Finishing point. It was a leisurely cruise through the canals, which were fringed by palm groves and paddy fields. Major attractions that caught the eyes of the delegates were the backwater life, coir making, natural fishing, and different types of house boats, dockyard, paddy fields, and varieties of birds flying across the lake, boat racing trials, temples and Orthodox Churches. The sunset view visible from the breezy backwaters was fascinating to all. The reassuring touch of serene sunlight through the refreshing greenery captivated everybody on board. After the sunset memorable and panoramic ride came to an end.

*Cultural Programmes – Magic Show & Classical Dance:* The cultural evening started with some stunning magic shows performed by Raja Moorthy, eminent Magician, interactive illusionist and Hand Shadowgrapher. Turning papers into currency note all in a glimpse was a fascinating event that kept everyone in a spot. The untying of knots performed by Raja Moorthy kept everyone assuming. He used some tricks that turned currency notes into blank papers. The psychological melodrama performed by Raja Moorthy reading minds



of some selected delegates was an auspicious thriller. The Hand Shadowgraphy that made Raja Moorthy popular among the mass was the last of his performances. He generated hand shadowgraphy of animals and birds which enthralled everybody. He taught some simple magic to the delegates too. Next was a solo Bharatanatyam performance by one of our members CS Jyothi Savithri. She started with Madhurashtakam by Vallabhacharya in Ragamalikai and Adhi Thalam in which she praised the sweetness of all things like Krishna's flute, Vrindhavan, the Gopi and the whole world. The other one she performed was an Abhang in Raga Bimbhblas and Adithala written by Bhanudasa. Here the danseu tried to depict the emotion of all creatures like cow, the tiger, Gowardhana mountain etc. when hearing the resonance of Krishna's flute.

*Day 2: 19th July 2014/ President's interaction with members:* CS Sridharan R, President, The ICSI interacted with the members on The Companies Act 2013 and the initiatives taken by the Council on the professional developments. The members were very interactive and complimented the President and the Council for their efforts in getting back the recognition on KMP. The President briefly described on the expectations of MCA and other regulatory bodies from the CS and urged all the members to maintain the dignity and ethical standards of the profession.

*Third Technical Session: 'New thinking, new possibilities...':* Dr. Vinod Surana, Chief Executive Officer, Surana & Surana International Attorneys, Chennai was the moderator for the session. Nitin Ambure, Vice President, National Securities Depository Limited, Mumbai, CS U K Chaudhary, Senior Advocate, New Delhi & Past President, The ICSI and CS Pavan Kumar Vijay, Managing Director, Corporate Professionals Capital Private Limited, New Delhi & Past President, The ICSI were the speakers for the 3<sup>rd</sup> Technical session on "New thinking, new possibilities...." Nitin Ambure explained in detail the role that can be played by CS both in employment and in practice in the arena of capital markets. He made a wonderful presentation on e-voting. CS U K Chaudhary elucidated the delegates on various areas to be looked into in the Companies Act 2013, where the CS can exhibit their wide knowledge and succeed. He observed that a positive view on the Act will surely be challenging to the professionals.

CS Pavan Kumar Vijay opined that Company Secretaries should act as Corporate Planner & Strategic Manager. Now he has been given much larger role by Companies Act, 2013 - be it in practice or in service. Company Secretaries are given the role of Key Managerial Persons (KMPs) and have greater say in the Management. CS has to see that Secretarial Standards are being mandatorily complied with by the board. Secretarial audit report to be annexed with board reports has to be signed by a Company Secretary. Besides these, compliances of other provisions have to be monitored and verified by Company Secretaries. He added that 2013 Act is a contemporary and modern law and has permitted all feasibly possible use of IT in every related process. With opportunities come responsibilities – responsibility to perform duties smartly and efficiently. As the Act has legally permitted online documentations and payments, a

bigger part of manual work has shifted to IT. Thus we can achieve 100% goal with 20% manual efforts and our efficiency can increase many-folds.

*Fourth Technical Session: 'Also - ran to podium finish':* Sajeew Nair, Entrepreneur, Author, Life Coach & Motivational Speaker and Director of Bramma Learning Solutions Private Limited was the speaker for the fourth technical session on 'Also ran to podium finish'. Sajeew Nair insisted the members to take time away from the busy schedule of profession, to take of their physical and mental health. He emphasised to maintain a work life balance and provided easy tips to follow that.

*Valedictory Session:* George I Mathew, Chairman and Chief Executive Officer, Duroflex Group of Companies, Alleppy delivered the valedictory address. Mathew opined that, in the prevailing scenario, the CS can truly be termed as the back bone of any company, as they are corporate governance professionals who take care of all the legal matters pertaining to a company. He also invited the CS professionals to be entrepreneurs and explore the plethora of new avenues to exhibit their professionalism.

The 39th Regional Conference concluded with the summing of the two day sessions by CS Dr. Baiju Ramachandran, Chairman, ICSI-SIRC.

## Meet the Regulator Programme

On 23.7.2014, the ICSI – SIRC organized a 'Meet the Regulator Programme' where J V Patil, ITS, Joint Director General of Foreign Trade, Chennai addressed and interacted with the members. Patil gave an overview of Foreign Trade Policy of India and the trade relationship with foreign countries. Patil also updated the members with the activities and procedures involved in the foreign trade. The various points raised by the members were also clarified by him in an assiduous manner.

## UGC Sponsored Conference on National Paradigm for Corporate Sustenance – Planet, People and Profit Management

On 25 and 26.7.2014 The ICSI-SIRC collaborated with Bharathidassan Government College for Women (Autonomous), Puducherry to organise the a two-day UGC Sponsored National Conference on the theme 'National Paradigm for Corporate Sustenance – Planet, People and Profit Management' at Puducherry. The inaugural address on 25<sup>th</sup> was given by Dr. Baiju Ramachandran, Chairman, ICSI-SIRC, Thematic presentation was given by Dr.R.Srinivasan, Associate Professor and Organizing Secretary. Key-note address was delivered by S. Diraviam, Vice-President – Legal cum Secretary, Indo wind energy Ltd., Chennai.

The 1st Technical Session 'Environmental audit' was handled by CA S.Swaminathan, Partner, Ganesan and Company, Chartered Accountant, Puducherry.



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In the 2nd Technical Session, CS. S. Diraviam, Vice President, Legal cum Secretary, Indo wind energy limited, Chennai discussed “the Impact of Companies Act 2013”, followed by paper presentation by the scholars and faculty members from various colleges and universities in South India. The Chairpersons for the paper presentation session were Dr.S. Senthil Srinivasan, Assistant Professor and CS. Kulothungan, Company Secretary, Pondicherry Distilleries Ltd.

On 26.7.2014 the programme began with a report presentation on the previous day proceedings.

The first technical session of the 2nd Day of Conference was on “CSR – A Boon for Social Development – Overview under the Companies Act 2013”. Presented by CS Srinivasa Saravanan, Company Secretary, Malabar Cements Ltd, the session was highly interactive.

The Second Technical Session was handled by Dr. P. Sridharan, Head of the Department, School of International Business, Pondicherry University on “Employable Skills”.

In the Third Technical Session Dr. Vijayachandran Pillai, Professor in Department of Commerce, Calicut University, presented a paper on “Social Entrepreneurship”.

Dr.V.Manickavasagam, Registrar, Alagappa University, Karaikudi, at the Valedictory session insisted on the responsibility of the companies and also the student communities toward the society. The participant’s feedback was constructive and proved the success of the conference.

## Half Day Seminar on Record, Authenticate, Audit and Adopt the Financials and Reports – CA with CS working towards ultimate transparency

On 25.7.2014, the ICSI – SIRC in association with the SIRC of The ICAI, organized a Half Day Joint Programme on ‘Record, Authenticate, Audit and Adopt the Financials and Reports – CA with CS working towards ultimate transparency’ at ICAI Bhawan, Chennai.

CA Jomon K George, Partner, JVR Associates, Kochi and CS Dr. K S Ravichandran, Partner, KSR & Co., Company Secretaries, Coimbatore were the speakers for the programme. In the first technical session, CA Jomon briefly explained the overview of the Companies Act 2013 and discussed in detail Chapter IX of the Act in respect of Accounts, Financial Statements, Boards Report, Corporate Social Responsibility and Internal Audit. His section wise analysis was appreciated by all the participants.

In the second technical session, CS Dr. Ravichandran, in his presentation highlighted the need for an integrated approach

between professionals (especially CAs & CSs) so as to do their respective roles in the best interests of the stakeholders without prejudice to the objective of the law. He gave a lot of illustrations to explain the areas requiring such integrated approach.

Both the speakers kept the session lively that the delegates interacted with them with zeal. In the interactive session, the speakers beautifully clarified the queries raised by the participants. CA P V Rajarajeswaran, Chairman, SIRC of ICAI summed up the proceedings of the joint programme.

## Joint Seminar on the Companies Act, 2013

On 26.07.2013, SIRC of the ICSI and Salem Chapter jointly organised a half day Seminar on The Companies Act 2013 at Salem. CS Dr. Baiju Ramachandran inaugurated the seminar and in his address, emphasized the role of Company Secretaries in advising the corporates under the provisions of the New Companies Act 2013 and advised the students assembled in the seminar hall to concentrate on their studies with confidence, trust and faith. Later he distributed prizes to the student members of Salem Chapter who have stood first in Foundation, Executive and Professional Programmes during the Year 2013.

CA Sreeraman, Chartered Accountant, Salem while delivering the key-note address stressed on the importance of being professionals and that one gets his importance not by acquiring marks but by exhibiting skills in interpreting and executing the provisions of the Companies Act 2013 and in this respect they have to inculcate good practices and repose faith in themselves in adopting ethical practices and procedures. CA RM Veerappan, Chartered Accountant, Salem presented a paper on “Incorporation of Companies under the Companies Act 2013” and CS S Solaiyappan, Chairman of the Salem Chapter presented a paper on “Key Issues & e – Returns” under the Companies Act 2013. The programme was attended by more than 70 delegates.

## Annual General Meeting of ICSI - SIRC

On 31.7.2014, the Annual General Meeting of the ICSI-SIRC was held at ICSI-SIRC House. CS Dr. Baiju Ramachandran, Chairman, ICSI-SIRC chaired the meeting. CS Ramasubramaniam C, Secretary, ICSI-SIRC, CS Dr. B Ravi, Member, ICSI-SIRC and CS K Ramasamy, Member, ICSI-SIRC were also present at the AGM. The members actively participated and raised queries, which were aptly replied by the Council Members.

## Foundation Day Lecture

On 31.7.2014, the ICSI-SIRC organized the ‘Foundation Day Lecture’ at ICSI-SIRC House, Chennai. Dr. Rajdeep Manwani, Motivational Speaker & Coordinator, Department of Commerce, Jain University, Bangalore delivered the foundation day lecture. CS Sridharan R, President, The ICSI delivered the presidential address. Earlier CS Dr. Baiju Ramachandran, Chairman, ICSI-SIRC in his welcome address narrated the history of SIRC and the



achievements made so far.

In his presidential address, CS Sridharan R, President, The ICSI remembered the notable contributions made by the previous Chairmen of SIRC and the Presidents from SIRC. The President, ICSI pointed out various opportunities available to the CS under the Companies Act 2013 and requested the members to cope up with the changes happening. The President also advised that members should follow the code of conduct and ethics in the professionals.

In the Foundation Day Lecture, Dr. Rajdeep Manwani, enthralled the members with his speech. He showed no sign of himself being a visually challenged person and told, 'nature has taken away the spark from my eyes, not from my heart'. Dr. Rajdeep emphasized that, as professionals, CS should always be continuous learners and be updated with latest happenings in their profession related laws. He also stressed on the members to explore the new areas in the profession and excel. While explaining the above, he quoted that in the womb of challenges only, greater opportunities are born. Dr. Rajdeep also observed that every challenge has imaginary finishing line and if one crosses that, he will find glorious light ahead and bounties waiting. The members present at the lecture gave a standing ovation to Dr. Rajdeep Manwani.

## Investor Awareness Programmes

The ICSI-SIRC organized 4 Investor Awareness Programmes in the following colleges during the month of July 2014: On 22.7.2014 at Rajah Serfoji Government Arts College [Autonomous], Thanjavur and at Bharath College of Science & Management, Thanjavur. S Venkatesan, Treasurer, Tamilnadu Investors' Association, Chennai was the speaker. On 23.7.2014 at P K R College of Arts & Science for Women Gobichettipalayam and at Gobi Arts & Science College, Gobichettipalayam. Ravi G, Vice President & Head – Sales Ambalal Shares & Stocks Pvt. Ltd., Vellore was the speaker.

## Career Awareness Programmes

The Regional Council organised a series of Career Awareness Programme at the following institutions addressed by Dr. V. Balaji, Assistant Education Officer, ICSI-SIRO. On 3.07.2014 the Career Awareness Programme was held at Aggarwal Vidhyalaya Matriculation Higher Secondary School, Vepery, Chennai, on 4.7.2014 the programme was held at Jaigopal Garodia Matriculation Higher Secondary School, SRP Colony, Chennai, on 7.7.2014 at ShriKrishnaswamy Matriculation Higher Secondary School, Anna Nagar, Chennai, on 8.7.2014 at National Institute of Management Studies, Karapakkam, Chennai, and at Lady Andal Venkata Subba Rao Matriculation Higher Secondary School, Chetpet, Chennai, on 9.7.2014 at Anita Methodist Matriculation Higher Secondary School, Vepery, Chennai and at Saraswathi Vidhyalaya Matriculation Higher Secondary School, Vadapalani, Chennai, on 10.7.2014 at Christian Matriculation Higher Secondary School, Ekkatuthangal, Chennai, on 11.7.2014 at R V Government Arts & Science College Chengalpattu, Kanchipuram District and at AnnaiTerasa College of Arts & Science, Thirukazhukundram, Kanchipuram District,

on 14.7.2014 at Hindustan College of Arts & Science, Padur, Kanchipuram District, on 15.7.2014 at Department of BBA, Dr. MGR Janaki College of Arts & Science for Women, R A Puram, Chennai, on 17.7.2014 at Department of Commerce [General] Day College [1<sup>st</sup> Year B.Com.] Sir Theyagaraya College, Old Washermenpet, Chennai and at Department of Commerce [CS] Evening College [1<sup>st</sup> & 2<sup>nd</sup> Year B.Com.] Sir Theyagaraya College, Old Washermenpet, Chennai, on 22.7.2014 at Department of Commerce Bharath College of Science & Management, Thanjavur, and at Department of PG Studies in Commerce Raja Serfoji Government College [Autonomous], Thanjavur, on 23.7.2014 at PKR School of Management Gobichettipalayam and at Gobi Arts & Science College Gobichettipalayam.

## BANGALORE CHAPTER Master Class-3 on Ca2013

The Bangalore Chapter of the ICSI organized the 3<sup>rd</sup> Master Class on "Companies Act, 2014 and Rules & Forms" on 5.7.2014 at Goldfinch Hotel.

*First Technical Session:* CA Amithraj A.N speaker for the 1<sup>st</sup> Technical Session on "Raising of Capital & Related Issues", during his presentation explained different types of shares issues, starting from "Rights Issue to Public Issue" covering allotment of equity and preferential shares applicable to public and private companies. He explained "Preferential Issue" covering allotment of Equity Shares, Convertible Preference Shares and Convertible Debentures. He also explained the participants on modes of allotment of shares to new shareholders and covered Bonus Shares. He took his session forward by explaining the participants on "Sweat Equity Shares" which covers "Permanent Employees working from past 1 year, Director, including WTD, Employee or director of subsidiary or holding company, in India or outside India. He further explained that the Cap on Sweat Equity Shares is 5% of Equity Capital per year or INR 5 crore (per year) and 25% of Equity Capital in aggregate at any point in time. He then went through a detailed presentation on ESOPs, Issue of Debentures, Deposits, and Loans to related parties wherein he highlighted the key points applicable to private company as well, absolute prohibition on non-qualifying loans, Loan to subsidiary company restricted – Guarantee permitted and Central Government approval.

He further explained on Dividends, Buy-back of Securities, Capital reduction, Utilization of securities premium, Registered Valuer before concluding the session.

*Second Technical Session:* Topic for the Second Technical Session was "Share Holder Rights" by Arjun K. Perikal, Partner, J.Sagar Associates - Advocates & Solicitors, Bangalore.

He started his presentation with Forward Contracts by explaining Section 194 that precedes Section 195 of the Companies Act which deals with insider trading. He then explained the participants on





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“Rights to Share Holders” on voting rights, Quorum, Right to elect directors, Interim Dividends, Transfer of Reserves, Oppression and Mismanagement – Section 245 - where he explained the said clause empowers the shareholders or depositors or any class of them to file an application before NCLT if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors and mentioned that the clause also provides the number of such members or depositors required to file such suit.

He also explained on enforcement of shareholders agreements, transferability of shares, Issue of Shares to investors, Buy back of shares, Resignation of Directors, Private Placement, Nominee Director before concluding the 2nd technical session.

*Third Technical Session:* S. Vijay Gopal, Vice President & S. Giridhar, Systems Manager, Integrated Enterprises (India) Ltd, Bangalore deliberated on the Third Technical Session on “Dematerialization of Shares of Unlisted Companies and Allied Activities”.

In the presentation the speakers started by sharing “Common Issues with Entrepreneurs/ Start-ups/Small and Mid-size Corporates” highlighting that the most common issues pertain to Knowledge on the Various Statutes, Technocrats not aware of any implications, Non-availability of adequate skills and resources, High cost of maintaining a complete Accounting & Secretarial team, Coordination with multiple service providers and explained that the basic requirement a small corporate entity needs is to Maintain Register of Members (shareholders) (wherein they explained that non-maintenance of registers would attract a penalty of Rs 50,000/- where every officer is liable to be punished), promoters and other shareholders, Filing of Annual Returns & Accounts, Filing of eTDS return.

They also explained on registry services in private and public companies before explaining the simplified process of filing ISIN activation forms. They also explained the participants on the fee structures for depositors and other charges applicable for activation of ISIN forms.

*Fourth Technical Session:* CS C.P. Sounderarajan, Chief Secretarial Officer, GMR Group, Bangalore took the session on “General Meetings, SSs, VC Board Meetings”. He started his session by presenting “Authority to Convene Meeting” wherein he explained that the board has the authority to call for meeting on its own, The Board shall call an extra-ordinary general meeting on receipt of requisition from not less than one-tenth of the members carrying voting rights and also explained that AGM and EGM can be called by the Tribunal. He then explained the participants on the frequency of meetings. He then explained that AGM shall be called during business hours, i.e., between 9 A.M. to 6 P.M. on any day, but not a National Holiday. He informed that an extraordinary general meeting can be conducted on business of urgent nature before transacting the next Annual General Meeting. He then explained

on the quorum, chairman for the meeting, voting and proxies before concluding his session. He shared the checklists for VC meetings, his own experience and insights into conducting VC meetings, what precautions to take particularly by a Company Secretary.

*Fifth Technical Session:* Dr. K.S. Ravichandran, Managing Partner, KSR & Co, Company Secretaries LLP, Coimbatore, was the speaker for this technical session on “Related Party transactions”. In his presentation the speaker informed that no company shall enter into any contract or agreement with related party with respect to sale, purchase, selling, leasing, appointment of agent, underwriting provided that no contract or agreement, in case of a company having paid-up share capital of not less than such amount or transactions not exceeding such sums as prescribed, shall be entered except with the prior approval of the company by special resolution. He further explained that every contract entered in subsection (1) shall be referred in boards report to shareholders.

## Debate on Union Budget 2014

The Bangalore Chapter of the ICSI in association with Accolet Advisors Pvt. Ltd., Bangalore organised a Debate on Union Budget 2014 on 11.7. 2014 at Bangalore. CS Gopalakrishna Hedge in his key note address told the participants that the budget plays a very important role in the life of common man, honest tax payers feel it important as they look for substantial relief. Terming it a directional budget he said that there are many new initiatives announced by the Government. He compared the growth rates of the previous years and said that the target is to achieve 5.4 to 5.9 the average 5.6 per cent during the current financial year, which is an ambitious target by the government. He referred to the proposal for development of 100 smart cities in the country, initiatives in the departments of healthcare, sanitation, education, infrastructure, etc.

Dr. Subramanya, IAS (Retd.) Former Finance Secretary, Govt of Karnataka, deliberated on Government's performance, by its members and said that many foreign investors are looking to invest in the country. He said that the constraints before the Government are the fiscal deficit, inflation, increase in oil prices, growing international terrorism, adverse geo-critical economy.

P.V.Srinivasan, Sr.Vice President, Corporate Tax, Wipro Limited took the session on “Proposals on Corporate Tax”. He informed that the expenditure incurred by an assessee on CSR activities referred to in the Companies Act 2013 shall be deemed to not have been incurred for the purpose of business and hence will not be allowed deduction under section 37 of the IT Act. He said that however CSR expenditure of the nature described in sections 30-36 of the Act shall be allowed as a deduction under those sections subject to fulfillment of conditions specified.

Chiradeep Acharya, Practice Incharge, Direct tax, Accolet Advisors Pvt Ltd took the session on “Proposals on personal income tax”. He said that there is an increase in the basic income tax exemption limit by Rs 50,000 for general category of individuals below 60 years and senior citizens below 80 years. He said that any money



received as advances in the course of negotiations for transfer of capital asset is chargeable to tax as 'income from other sources'. He also explained the audience on various other proposals of personal income tax before concluding his session.

Deepak Kumar Jain B, Founder Director, Accolet Advisors Pvt Ltd, took the session on "Proposals on Indirect Tax". He said that there is no change in ordinary excise duty rates. He said that retrospective exemption has been provided on the supply of LPG, non-domestic exempted category customers such as hospitals, government etc. to bring them on par with domestic customers.

Raghavendra T, Head Finance and accounts and taxation Novell Software Development Pvt. Ltd, spoke on "Impact in Service Industry" and Swapnesh Maru, General Manager – Accounting Division Toyota Kirloskar, Motor Limited spoke on "Impact on Manufacturing Industry".

The Panel Discussion was moderated by P.V.Srinivasan, and addressed by Deepak Kumar Jain, Raghavendra T, Swapnesh Maru, Chiradeep Acharya and Dr. S.Subramanya IAS (Retd).

## Master Class - 4 on CA2013

On 12.7.2014, Bangalore Chapter of the ICSI organized its 4<sup>th</sup> Master Class on "Companies Act, 2014 and Rules & Forms" CS S.C. Sharada, Chairman, Bangalore Chapter welcomed all present and introduced the speaker for the 1<sup>st</sup> Technical Session Ravi Raman, COO, InfraHedge Ltd, Bangalore.

*First Technical Session:* Ravi Raman, COO, InfraHedge Ltd, Bangalore and the Speaker of the 1<sup>st</sup> Technical Session on "Corporate Governance – Board Diversity and Vigil Mechanism", during his presentation explained the role of Directors informing that the directors should act in the interest of members and as per the AOA and MOA. He also explained the Directors and Officers liability stating that they are responsible to take action against misconduct, financial compensations, establishing integrity. He explained the participants on the compliance programme showing the compliance frame work - Communication, Self-Assessment, Internal Audit and External Assessment, Reporting.

He further explained the participants that women on corporate boards will increase profitability and sustainability. He also emphasized on professional ethics, morality by highlighting the Stake Holder Interest, Professionalism, Independence, Compliance, Conduct before concluding his session.

*Second Technical Session:* The topic of the Second Technical Session was "Accounts and Audit" by CA Mahendra Jain, Partner, SR Batliboi & Associates LLP, Bangalore. He started his presentation with an over view of key developments passed by the Lok Sabha on 18.12.2012, passed by the Rajya Sabha on 8.8.2013, MCA released draft Rules etc. He stated that majority of the Rules in the Companies Act 2013 are applicable from 1.4. 2014. He informed that Companies need to follow uniform financial year,

i.e., 1 April to 31 March – Sec 2(41), Limited exemption, Holding/subsidiary of company incorporated outside India. He also informed the key impacts of re-opening and revision of accounts, along with depreciation, board's report, Internal Audit (Section 138). He explained the participants on the appointment of Internal Auditors (Section 139), stating that the Auditor's should be appointed for a term of 5 years and ratification is required at every AGM. He also explained that rotation of auditors is required after the stipulated period. He further explained the participants on the eligibilities and qualification of auditors, removal and disqualification of auditors, penalty on auditors before concluding his session. His presentation on Depreciation was very informative.

*Third Technical Session:* CS A. Sekar, Practicing Company Secretary from Mumbai deliberated on "Secretarial Audit" during the Third Technical Session. In the presentation the speaker started by sharing "Annual return" the forms for filing annual return. He then explained about Secretarial Audit and its purpose and process stating that appointment of secretarial auditor should be in a Board Meeting and a communication should be sent to previous incumbent. He focused on Finalisation of Audit Plan, Checklist & Briefing the Staff etc. before submission of Secretarial Audit Report. He then explained the provisions in Companies Act 2013 along with the powers and duties of auditors and restrictions. He further took the participants on the Director's Report (section 134 with Rule 8 and 9 of Companies (Accounts) Rules, 2014 before concluding his session.

*Fourth Technical Session:* CS A. Sehar Ponraj, Dy Registrar of Companies, Karnataka deliberated on "Punishment & adjudication of penalties under CA 2013". He started his presenting with adjudication of penalties under section 454, stating the Central Government may appoint adjudicating officers not below the rank of ROC by notification specifying their jurisdiction. He stated that Penalty can be imposed by the adjudicating officer or the Regional Director and should be paid within 90 days from the date of receipt of order failing which the company shall be punishable with fine not less than Rs.25, 000 which may extend to Rs.5 lakhs. The officer shall be penalized with imprisonment up to 6 months or with fine not less than Rs.25, 000 which may extend to Rs.5 lakhs or with both.

He then informed the participants the different sections and the penalties imposed thereunder. Taking his session further the speaker explained Rule3: Adjudication of penalties wherein he covered appointment, issue of notices, hearing, order with date. He also explained the powers of adjudicating officer, quantum of penalty, appeal against the order of adjudicating officer. He also explained Rule No 5, registration of appeal in RD offices, disposal of appeal and order before concluding his session.

## Investor Awareness Programme

Bangalore Chapter of the ICSI organised an Investor Awareness Programme under the Investor Education and Protection Fund, Ministry of Corporate Affairs on 19.7.2014 at Mukambika R S Shetty Auditorium, Dr. D G Shetty Educational Society, Jnana



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Degula, Dharwad. Nearly 60 persons attended the programme. Dr. D G Shetty, President of Dr. D G Shetty Educational Society in his welcome address opined that the programme will go a long way to educate young minds on the necessity of savings and good investment. He requested S Kannan, Past Chairman & Member of Managing Committee of the Bangalore Chapter to conduct the meeting. S Kannan, representing the Bangalore Chapter of the ICSI welcomed the gathering and briefly explained about the Investor Awareness Programme, the purpose of organizing such programmes which is largely in the interest of small investors and to educate them about the various investment options available and the precautions to be taken while investing in stock market.

Guest Speaker Krupal, Author, Broker, Columnist for the programme while talking on the topic "Investment Risks and Rewards" explained about the stock market, various types of investment options available, how to choose a good investment, the basic features of a good investor. He also explained when one should invest in the stock market and when exit from it. His talk was filled with updated statistics on the stock market and full of information to the audience. His speech was well received by the audience which was also evident from the various queries and doubts raised by the audience.

The other Guest Speaker Sehar A Ponraj, Deputy Registrar of Companies, Karnataka spoke on various steps taken by the Ministry of Corporate Affairs and the Office of the Registrar of Companies, Karnataka to help, assist the small and retail investors in making their investment safe. He advised the people to visit the websites of Ministry of Corporate Affairs, Investors Education and Protection Fund for information about the companies, promoters and others involved in the stock market activities. He said that if there is any complaint against any company, the investor can visit the MCA website and upload his complaint without any fees or charges which will be taken up by the respective Registrar of Companies for proper and appropriate disposal. Thereafter, both the speakers replied several queries asked by the 60 persons present at the programme.

## Indoor and Outdoor Games

The Chapter, to commemorate its Annual Day Celebrations organised various programmes for the Members and the Students. In this regard, on 27.7.2014, the Chapter organised various indoor games like Chess & Carom, Table Tennis & Shuttle at the Chapter premises and at Karnataka Badminton Association Hall. Around 30 members and students participated in the competitions. Again on 29.7.2014, the Chapter organised Cricket match at Railways Grounds, Bangalore for members and students. Around 75 members and students were present for the match.

## COIMBATORE CHAPTER Professional Development Programme

On 04.07.2014, Coimbatore Chapter of SIRC of the ICSI organized a Professional Development Programme on Chapter IV (Share Capital and Debentures), Chapter VII (Management and

Administration) of Companies Act, 2013, implementation thereof, and analysis of the clarifications issued by MCA at Coimbatore. CS. B. Narasimhan, Central Council Member, ICSI, New Delhi, was the speaker of the programme and during his presentation explained the topics in detail. The queries raised by the participants were replied satisfactorily by the speaker. The programme was attended by 65 participants. A video on Company Secretaries Benevolent Fund [CSBF] was screened at the end of the programme. CSBF banner and standee were also displayed at the venue of the programme.

## Joint Programme on Union Budget 2014

On 11.07.2014, a Joint Programme "Union Budget 2014" organised by Coimbatore Chapter of SIRC of ICSI, Coimbatore Chapter of the Institute of Cost Accountants of India, and The Auditor's Associations of Southern India was held at Coimbatore.

The First Session on Union Budget 2014 was handled by K. Ravi, Chief Financial Officer of Roots Group of Companies and Director in Roots Multiclean Ltd. K Ravi highlighted the points on how budget is affected on Indian Economy, Indian GDP annual growth, Sectoral Share in GDP, FDI, Indian Foreign Exchange Trade, Administrative Reforms, Sector Impact, Banking & Financial Service, etc. The Second Session on Union Budget 2014 was handled by K. Badri Narayanan, Practicing Chartered Accountant, Coimbatore. He elaborated the Financial Bill 2014 - Provisions relating Direct Taxes.

The Third Session on Union Budget 2014 was handled by A R Vishwanathan, Practising Advocate, Coimbatore. He explained Proposals on Indirect Taxes on Union Budget 2014-15 and also explained Central Excise, Service Tax and Customs on Budget proposals.

The programme was very interactive and the queries raised by the participants were duly addressed by all the speakers in their respective sessions, and the programme was actively attended by 93 participants which included 31 CS members.

## Career Awareness Programmes

On 15.07.2014 Coimbatore Chapter conducted a Career Awareness Programme at Sankara College of Science and Commerce. CS G Balasubramaniam, Past Chairman, ICSI-Coimbatore Chapter & Company Secretary, Roots Multi Clean Ltd, Coimbatore was the chief guest and speaker who explained the CS course in detail and also highlighted the importance of CS course in the new economic scenario. The students were apprised about the mode of registration, syllabus, structure of the course and also the avenues available after completion of the Company Secretaryship course both in employment and in practice. The speaker also explained prospects of the profession, placement services, course contents, fee structure and oral coaching facilities being provided to the students. He then highlighted the opportunities available to those who complete the Company Secretaryship Course. Further he enumerated the emerging areas of practice and the changing



role of Company Secretary. Nearly 200 students from Dept. of Commerce attended the Career Awareness Programme. The programme concluded after a question-answer session.

Again on 23.07.2014, the Chapter conducted a Career Awareness Programme at Kaamadenu College of Arts and Science College, Sathyamangalam, Erode, Tamilnadu. CS R Dhanasekaran, Chairman, ICSI-Coimbatore Chapter was the chief guest and speaker who in his address explained the CS course in detail and also elaborated the mode of registration, syllabus, structure of the course and the opportunities available after completion of the Company Secretaryship Course both in employment and in practice. He highlighted the OMR mode of examination pattern and further informed the importance of CS course in the new economic scenario.

The speaker also explained prospects of the profession, placement services, course contents, fee structure and oral coaching facilities being provided to the students. Nearly 400 students from Dept. of Commerce attended the Career Awareness Programme. The queries raised by the students were aptly replied by the speaker.

Yet again on 21.08.2014, Coimbatore Chapter conducted a Career Awareness Programme at Government Arts College, Race Course Road, Gopalapuram, Coimbatore. Sreejith.P, Executive Officer, ICSI-Coimbatore Chapter was the speaker who in his address elaborated the CS profession and its wide opportunities in various sectors. He highlighted the compulsory appointment of company secretary and Key managerial personnel as per new Companies Act 2013. Further he explained the CS course in detail and also elaborated the mode of registration, syllabus, structure of the course and the opportunities available after completion of the Company Secretaryship Course both in employment and in practice. He also highlighted the OMR mode of examination pattern and further informed the importance of CS course in the new economic scenario. The speaker also explained prospects of the profession, placement services, course contents, fee structure and oral coaching facilities being provided to the students.

Nearly 80 students from M.Com [Dept. of Commerce] attended the Career Awareness Programme. The queries raised by the students were aptly replied by the speaker.

Another career awareness programme was held on 21.08.2014 by the Chapter at Bishop Ambrose College, Sungam Bye-Pass, Ramanathapuram, Coimbatore. Sreejith.P, Executive Officer, ICSI-Coimbatore chapter was the speaker.

The speaker explained the course in detail and also highlighted the importance of CS course in the new economic scenario. The students were appraised about the mode of registration, syllabus and structure of the course and also the avenues available after completion of the Company Secretaryship Course both in employment and in practice. The speaker also explained prospects of the profession, placement services, course contents, fee structure

and oral coaching facilities being provided to the students. He then highlighted the opportunities available to those who complete the Company Secretaryship Course. Further he enumerated the emerging areas of practice and the changing role of Company Secretary. Nearly 200 students from Dept. of Commerce and Dept. of Corporate Secretaryship attended the Career Awareness Programme. The programme concluded after a question-answer session.

## Independence Day Celebration

Coimbatore Chapter celebrated 68<sup>th</sup> Independence Day on 15.08.2014 at its premises.

## Professional Development Programme – Lecture on RTI Act

20.08.2014, Coimbatore Chapter of SIRC of ICSI organized a Professional Development Programme, “Lecture on RTI Act” at its premises. M Ravi Sundar, Advisor- Media and Process, explained the need for use of Right to Information Act. He also explained the procedures for seeking information under the Act, such as forms to be used, the authority to whom the application to be submitted, time limit for getting the information, appeal procedures etc. The session was very informative and appreciated by the gathering at large. The queries raised by the participants were well addressed by the Speaker. The programme was well attended by 32 participants.

## HYDERABAD CHAPTER Investor Awareness Programme

The Chapter conducted Investor Awareness Programme under the aegis of Ministry of Corporate Affairs, Govt of India on 25.6.2014 for District Police Officers of Khammam, Telangana State. CS Vasudeva Rao Devaki, Chairman, Hyderabad Chapter of ICSI spoke on the various problems of the investors, timing of investments, investment strategy, conditions in the securities market and the cautions to be taken by the investors. He also highlighted the capital markets and its nature. In his speech, he gave suggestions to the investors not to approach any unauthorized brokers for making stock broking transactions.

Ranganarh Superintendent of Police was the Chief Guest of the programme and appreciated the purpose and object of the programme and emphasized that the hard earned money should be deployed with utmost care and should be invested in such a way that the benefits are made available timely for human needs such as education, marriage, housing, etc.

## 40<sup>th</sup> Foundation Day Celebrations

The Chapter celebrated its 40<sup>th</sup> Foundation Day on 10.8.2014. To commemorate the occasion a series of programmes were conducted between 4.8.2014 and 10.8.2014.

04.8.2014 - A Blood Donation Camp was organised at the Chapter





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premises with the help of NIMS, Hyderabad.

05.8.2014 - An Interactive Session on "Latest Developments - SEBI, RBI, Mutual Funds & Company Secretary" was organized by CS Rakesh Santhalia, Chief Finance Officer & Company Secretary, Karvy Computershare Pvt. Ltd. at the Chapter premises

06.8.2014 - An Interactive Session with HR Professionals – "Understanding emerging role of Company Secretary in the Corporate World" was held at the Chapter premises

In line with the objective to create a Branding for Profession, an Interactive session with HR professionals "Understanding emerging role of Company Secretary in Corporate world was organized by the Chapter office. It was well attended by many HR professionals. From the Institute's side CS A V Rao, Treasurer SIRC gave a broad perspective of Company Secretary Ship *vis-a-vis* the Industry and the role that is being played by a Company secretary, either as a Practitioner or as an employee. Shujath Bin Ali gave the presentation on exposure and detailed information about Company Secretary who can be placed at various levels of an organisation beyond the size of company and gave description about various skills of the key profession.

Tanuja Abburi, Senior Director, NTT Data, Guest of Honour spoke on HR professionals and highlighted the general experience from the Industry. Finally Chief Guest Ch. Mohan Rao, Head (HR), ECIL, spoke at length about the synergy behind Company Secretary and HR. He also recalled his valuable experience about the placements as well as profession of Company Secretary.

## 07.8.2014 - Career Awareness Programmes

ICSI-Hyderabad chapter organised 52 Career Awareness Programmes in a single day i.e. 07.8.2014 during the 40<sup>th</sup> Foundation Day Celebrations in various colleges & schools located in Hyderabad and surrounding areas. Chairman, many of the Managing Committee members and other members addressed in these programmes. The students were apprised about the mode of registration in the CS course, syllabus, structure of the course and also avenues available after completion of the Company Secretaryship Course both in employment and in practice.

## 08.8.2014 - Professional Development Programme on Understanding Right to Information Act, 2005

Srinivas Madhav, Judicial Officer, AP Information Commission addressed the participants. He spoke on the various aspects of Right to Information Act, 2005 in a detailed way. He informed that Article 19 of the Universal Declaration of Human Rights a United Nationals General Assembly Resolutions 217 (III) of 1948 recognizes freedom of expression including Freedom of Information and Free Press a fundamental human right. He further informed freedom of expression includes the right to seek, receive and impart

information and right to access information held by public authorities.

## 10.8.2014 - Foundation Day Celebrations

ICSI – Hyderabad Chapter organized its 40<sup>th</sup> Foundation Day Celebrations at Hotel Lemon Tree, Hyderabad. Etela Rajender, Hon'ble Minister for Finance, Government of Telangana was the Chief Guest who inaugurated the programme. Pradeep Chandra, IAS, Special Chief Secretary to Government of Telangana was the Guest of Honour. The programme was inaugurated by the Chief Guest.

CS Vasudeva Rao Devaki, Chapter Chairman while delivering his welcome address informed the minister about the establishment of the Chapter, its members & students. He also spoke of the valuable contributions and untiring efforts made by his predecessors in bringing the chapter to this stature. He briefed about the various programmes organized during the Foundation Day Week. He further informed that the proposed Centre for Excellence at Uppal will commence its construction this month. Also ICSI Hyderabad Chapter will have its new building at Anandnagar Colony in the city. The construction of the same will also commence very soon he said. The Hyderabad Chapter is the most vibrant Chapter among the Chapters of ICSI situated across India, he said. Further, he added that the Chapter has been the best Chapter for the past 12 years. Two of its members went on to become President of this prestigious Institution ICSI, which is a matter of great pride, he informed.

Central Council Member of the ICSI Sudhir Babu C and AV Rao, Treasurer of the Hyderabad Chapter in their address urged the Minister to seek services of Company Secretaries for the State owned Corporations. The New Companies Act 2013 which was enacted this year also suggests this. Karnataka State Government seeks services of the Company Secretaries. Most of these bodies are profit making, they informed. Guest of Honour, Pradeep Chandra, Special Chief Secretary to Government also graced the occasion. He in his address said that more women must get into corporate and trade bodies. He assured that women will be given more roles in the New Industrial Policy of Telangana State being drafted currently, he said.

Etela Rajender, Hon'ble Minister for Finance while speaking about the theme "Role of Company Secretaries in Corporate Growth and Economic Development of the State" stated that it was apt and extremely topical. The timing was apt and just right with the new enactment of Companies Act 2013 and more so the formation of new state. Company Secretaries are key managerial personnel as per the new Companies Act 2013 and an emerging leader in the corporate world, he added. He strongly felt that Company Secretaries can play a significant role of garnering investments being a vital link to stakeholders i.e. promoters, venture capital firms, private equity firms, Angel Investors, Government Agencies and can add value to the development and growth of industry and economy of the state and country. The Minister said that company secretaries



as corporate professionals are having continued interface with various Regulators and stakeholders who expect performance from the corporate sector. Company Secretaries are governance professionals, he said. He also said that Company Secretaries are the guardians of the interests of various stakeholders. Speaking further he said business without ethics is not a business. Ethics are most important in business. Similarly we must have tension free working life, he said. That is the best environment Telangana Government is looking forward to offer to the state, Hon'ble Minister added. He also gave away awards to the meritorious students and mementoes to past Chairmen, Secretaries of the ICSI-Hyderabad Chapter. One hundred and fifty Company Secretaries participated in the two day programme.

## KOCHI CHAPTER Professional Development Programme on Union Budget 2014

The Chapter in association with the ICoAI, Cochin Chapter conducted a professional development programme on Union Budget, 2014 on 31.7.2014 at CMA Bhavan, Judges Avenue, Kaloor. CA V. Sreeraman addressed the gathering. He revealed an unexplored angle of viewing the Budget. He explained the pedagogy of 'budget', that it arose from Germany. A brief session was on BIS (Bank of International Settlement). It was highly enlightening to know how the reforms brought about in the year 1991 to promote Indian Capital Market only paved way to Universal Banking solutions in the year 2000. He also spoke on Intergenerational Equity, Reinsurance Companies, CAT bonds etc. It was informative to learn about Economic Survey Report by RBI, on Union Budget, where they clearly showed the slowed down economic growth rate.

## Independence Day Celebrations

The Chapter celebrated Independence Day on 15.8.2014, at the Chapter premises. The function was well attended by members and students. Gracy Joseph, Councillor, Kochi corporation unfurled the tri-colour. The celebrations started with rendition of *vandhematharam* followed by welcome address by Abhijith, Students' Representative. After this, pledge was taken by everyone who took part in the celebration. CS Jayan K immediate past Chairman, gave the Independence Day message. Members and students actively participated in the function and many of the members were invited to share their thoughts on Independence Day. The Celebrations ended with rendition of National Anthem.

## Investor Awareness Programme

THE Kochi Chapter of SIRC of ICSI Jointly with ICAI Cochin Chapter organized an Investor Awareness Programme on "STOCK MARKET – MYTH & REALITY" at Kaloor. The programme was held on 16.8.2014. Sponsored by the Ministry of Corporate Affairs, Govt. of India under the aegis of Investor Education and Protection Fund, the programme was inaugurated by VE Josekutty, Dy.RoC, Kerala. K. Manojkumar, Manager DBFS led the session. The

students of both ICSI and ICAI attended the programme.

## MADURAI CHAPTER One day Seminar on Indirect Taxes & Union Budget 2014 Analysis

On 12.7.2014 Madurai chapter of ICSI conducted a One day seminar on Indirect Taxes and Union Budget 2014 at Tamilnadu Chamber of commerce Mepco Mini Hall. H.Raja, while giving his address touched upon various points, and the intricacies of Budget provisions. He also expressed that despite tough current account and tight fiscal conditions the Finance Minister Arun Jaitley presented a commendable Budget with a fiscal deficit of 4.1 % GDP (PROJECTED 2014-15) as against fiscal deficit 4.6 % presented in the last Budget also in very short period of time. The new Government presented a Budget which caters to the needs of all the sections mainly infrastructure development and future growth of the country. CA G. Saravanakumar, a Practicing CA, at Madurai, and CA and CS J. Balasubramanian of BSNL handled the technical sessions on Service tax and practical issues in Reverse charge mechanisms ( Service tax).

## Investor Awareness Programmes

An Investor awareness programme was held on 19.7.2014 at Mepco Mini Hall of TN Chamber of Commerce, which was organised by Madurai Chapter of ICSI. The programme was inaugurated by R. Bharaghwaj, a CA who spoke about the nuances of capital market, and also briefly explained about the dos and don'ts in the capital market. He also dealt with the strategies that the investors in the stock market to adopt in order to make wealth besides risk mitigating strategies. The second session was handled by M.Jeyapraksh a Financial advisor from Knowledge management service, Chennai. He spoke about techniques to be adopted for by the Fresh Investors and by the seasoned investors. He also spoke about the associated risks and opportunities in capital market, and explained about the advantages of other capital market products for the benefit of investor community as a whole. It was attended by around 100 persons including a mix of student community and members.

Again on 9.8.2014 another investor awareness programme was held at Sivakasi Chartered Accountant Association hall. The programme was inaugurated by J.Rajkumar, Branch Manager, Canara Bank, Sivakasi. M.Jeyapraksh a Financial advisor from Knowledge management service, Chennai, spoke about techniques to be adopted for by the Fresh Investors and by the seasoned investors. He also spoke about the associated risks and opportunities in capital market and explained the advantages of other capital market products for the benefit of investor community as a whole. The programme was attended by around 100 persons including a mix of student community and members.

## Career Awareness Programmes

On 4.07.2014 Madurai chapter organized Career Awareness



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Programmes at Madurai Sivakasi Nadars Pioneer Meenakshi Women's College, Poovanthi. S.Kumararajan, Programme Committee - Chairman Madurai Chapter explained about the CS course, structure, fees, and employment opportunities, avenues in practice, etc. T.Raja, Chapter office in charge distributed the course brochures to the participants and clarified the student queries. On 11.7.2014 the programme was held at Maduraie Lady Doak College. Special Address was given by S.Paramasivan, Chairman, Madurai Chapter of ICSI and Kumararajan, Former Chief Manager, Indian Bank. In their address they threw light on the importance of CS Programme, Role of Company Secretaries and Career Opportunities in the same field. Around 1000 commerce students from the same college actively participated in the programme, and benefitted. On 22.7.2014 Madurai Chapter organised the career awareness programme at Sivakasi SriKaliswari College. Special Address was given by Kumararajan, Former Chief Manager, Indian Bank). In their speech the CS course new syllabus, pattern of examination and new training structure for the CS course and employment opportunities for the students were highlighted. T.Raja, Chapter office in charge, explained the Course structure and facilities available in the chapter office, on- line admission procedures, etc. Around 300 students participated from B.Com, B.B.A, B.Sc courses. Again on 23.7.2014 the programme was held at Madurai Lady Doak College for First year B.Com (Regular), B.Com (Banking & Insurance) course students. T.Raja, Chapter office in charge Explained the CS course structure, fees, Syllabus, Online admission procedures, coaching class structure, Online examination procedure for foundation programme. Around 140 students participated in the programme. On 24.7.2014 the programme was held at Madurai Lady Doak College for First year B.Com (CS), B.A (Economics) Regular course students. CS Vinita Lecturer in Commerce Department welcomed the gathering. T.Raja, Chapter office in charge Explained the CS course structure, fees, Syllabus, Online admission procedures, coaching class structure, Online examination procedure for foundation programme. Around 100 students participated in the programme. On 30.7.2014 at Madurai Sourashtra College for First year B.Com (CS), B.B.A Regular course students. T.Raja, Chapter office in charge Explained about the CS course structure, fees, Syllabus, Online admission procedures, coaching class structure, Online examination procedure for the foundation programme. Around 100 students participated in the programme. The course pamphlets were distributed to the students. On 31.7.2014 at Madurai Sourashtra College for First year & Second year B.Com Regular Students. T.Raja, Chapter office in charge in his address explained the CS course structure, fees, Syllabus, Online admission procedures, coaching class structure also explained the online examination procedure for the foundation programme Around 120 students participated in the programme. On 07.08.2014 at V.V.V College for Women, Virudunagar. Special Address was given by Kumararajan, Former Chief Manager, Indian Bank on the CS course new syllabus, pattern of examination and new training structure for the CS course and employment opportunities for the students. T.Raja, Chapter office in charge, explained the Course structure and facilities available

in the chapter office, on- line admission procedures. Around 300 students participated from B.com, B.B.A courses.

## MYSORE CHAPTER Career Awareness Programmes

On 25.07.2014 Mysore Chapter of the ICSI organised a Career Awareness Programme at JSS College for Women, Saraswathipuram, Mysore. Around 100 students from various streams attended the programme. CS Ajay Madaiah B B, Chairman of the Mysore Chapter explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. Brochures containing brief details of the Company Secretaryship Course were distributed to the participants.

Again on 28.07.2014 the Career Awareness Programme was held at Vijaya Vitthala PU College, Mysore. Around 120 students from various streams attended the programme. CS Sabareeshan C K, Member of the Mysore Chapter explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. He also highlighted the importance of making the right career choice so as to be successful in life. He then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Brochures containing brief details of the Company Secretaryship Course were distributed to the participants. CS Sabareeshan C K also clarified various doubts and issues that were raised by the participants.

On 18.08.2014 another Career awareness Programme was held at Mallamma Marimallappa Science & Business Management College, Mysore. Around 75 students from various streams attended the programme. CS Sabareeshan C K, Past Chairman of the Mysore Chapter explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training, etc. He also highlighted the importance of making the right career choice so as to be successful in life. He then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Institute's video on the CS course and opportunities was played during the session. Brochures containing brief details of the Company Secretaryship Course were distributed to the participants. CS Sabareeshan C K also clarified various doubts and issues that were raised by the participants.

Yet again on 19.08.2014 the Career Counselling Programme was held at Vidya Vardhaka First Grade College, Mysore. Around 150 students from various streams attended the programme. N. Dhanabal, Incharge, Mysore Chapter explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. He also highlighted the importance of making the right career choice so as to be successful in life. Brochures containing brief details of the Company Secretaryship Course were distributed to the participants.





## Investor Awareness Programme

On 29.07.2014, Mysore Chapter of ICSI in association with Mysore Chamber of Commerce & Industry organized Investor Awareness Programme on “Financial Planning – a Perspective” at Mysore. Keerthi Thej, Asst. Registrar of Companies, Bangalore was the Guest of Honour, Sudhakar Shetty, Chairman, Dist. Co-ordination Committee, FKCCI, Bangalore was the Chief Guest & Venkitesh Iyer, Former Regional Manager - UTI was the resource person of the Programme. CS Ajay Madaiah B B, Chairman, Mysore Chapter of ICSI presided over the function. A large number of public, students & members participated in the event. The programme was very interactive and the queries raised by the participants were addressed by the speakers.

## Independence Day Celebration

On 15.08.2014 Mysore Chapter of ICSI celebrated 68<sup>th</sup> Independence Day at the Chapter premises. CS Ajay Madaiah B B, Chairman, Mysore Chapter of ICSI hoisted the National Flag and delivered the Independence Day speech to the students.

## SALEM CHAPTER Study Circle Meeting on the Companies Act, 2013

On 18.7.2014, the Chapter organized a study circle meet on Appointment & Qualification of Directors and Declaration & Payment of Dividend under the Companies Act, 2013. During the meet members shared their views and brief discussion was held about the Minimum & Maximum number of Directors in a company, Number of Directorship, Women Director, Appointment of Director, Punishments, General provisions regarding DIN, Surrender & Cancellation of DIN, Dividend under the Companies Act, 2013, Procedure & Declaration of the Dividend, Interim Dividend and unclaimed Dividend which was useful to all the participants.

## Career Awareness Programmes

On 21.7.2014, the Chapter organised a Career Awareness programme at AVS Arts & Science College, Attur Main Road, Ramalingapuram, Salem for III B. Com (General) Students.

CS Solaiyappan S, Chapter Chairman gave a presentation about the CS Course, duration, eligibility, fees structure, employment opportunities, scope of Company Secretary in Practice and the Campus Interviews conducted by the Regional Offices and the Head Quarters.

CS Course informative pamphlets were issued to 150 students present and the queries raised were also clarified. On 31.7.2014, the Career Awareness programme was held at Sri Vidya Mandir Senior Secondary School, Ramalingapuram, Salem for Higher Secondary Students. CS Santhanam N, Secretary of the Chapter gave a brief presentation about structure of the Course, enrolment criteria, scope of the Company Secretary in employment & practice and

also the other allied issues of the Profession. Around 60 students participated and their queries were clarified. Earlier, Dr. Ramesh, Principal of the School advised the students to be professional by choosing professional courses like CS instead of being only graduates. On 8.8.2014, the Career Awareness programme was held at Vivekanandha College of Arts and Sciences for Women for 1<sup>st</sup> B.Com & B.Com (CA) Students. CS Solaiyappan S, Chairman of the Chapter gave a brief Introduction of the Institute, Regional Offices and Chapter and its functioning. He also explained about the structure of Course, enrolment criteria, scope of the Company Secretary in employment & practice. Sundar Swamy S, Chapter In-charge in all the institutions explained various online processes like registration, exam enrolments, facilities available at the Chapter and the e – mode facilities available at the Institute’s website. Around 415 students and 10 faculty members participated and their queries were clarified.

## Visit of Chairman, SIRC to Salem

SAIL – Salem Steel Plant on the Companies Act, 2013 - On 26.7.2014 CS Dr. Baiju Ramachandran addressed the Finance Executives of SAIL, Salem Steel Plant and apprised them about the Institute and highlighted the salient features of the Companies Act, 2013 and stressed on their role as professional in filing various forms, maintenance of registers, advising the management, etc. About 35 finance executives and staff participated in the programme. Salem Chapter coordinated the programme arrangements.

**SIRC Chairman’s visit to Salem Chapter:** On 26.7.2014 CS Dr. Baiju Ramachandran visited the Salem Chapter and interacted with members and students on various aspects.

**Joint Seminar on the Companies Act, 2013:** On 26.7.2014 CS Dr. Baiju Ramachandran participated in Half Day Seminar on The Companies Act 2013 jointly organized by the SIRC and the Salem Chapter and also inaugurated the programme. In his address, Dr Baiju Ramachandran emphasized the role of student members in advising the corporates under the provisions of the New Companies Act 2013 and advised them to concentrate on their studies with confidence, trust and faith. Later he distributed prizes to the student members of Salem Chapter who stood first in Foundation, Executive and Professional Programmes during the Year 2013. CA Sreeraman, Chartered Accountant, Salem in his key-note address stressed the importance of being professional and that one gets his importance not by acquiring marks but by exhibiting skills in interpreting and executing the provisions of the Companies Act 2013 and in this respect they have to inculcate good practices and repose faith in themselves in adopting ethical practices and procedures. CA RM Veerappan, Chartered Accountant, Salem presented a paper on “Incorporation of Companies under the Companies Act 2013” and CS S Solaiyappan, Chairman of the Salem Chapter presented a paper on “Key Issues & e – Returns” under the Companies Act 2013. The programme was attended by more than 70 delegates.

## Investor Awareness Programme





# News From the Institute & Regions

## on Recent Developments in Capital Markets

On 8.8.2014, an Investor Awareness Programme on Recent Developments in Capital Markets was organized by the Salem Chapter of the ICSI at Tiruchengode. About 460 persons participated in the programme.

V.P. Sivadasan, Registrar of Companies (I/C), Coimbatore participated as Guest of Honour and S. Sivaraman, Assistant Manager, National Stock Exchange of India Limited, Chennai gave the key note address.

In his inaugural address, Sivadasan explained the purpose of awareness programmes organized for the Investors by the Ministry. He listed the scams taken place and explained the right investment options by deep analysis of the company before investing. In his key note address, Sivaraman explained the role and functions of the National Stock Exchange of India Limited. He also highlighted the NSE CPSE Index, derivatives trading, Currency trading, ETF, Gold ETF, Mutual Fund, Balancing Fund, etc. to the gathering. The capital market instruments, the type of security and returns they offer, the online trading introduced first time in India and how the NSE played a key role in the securities market in enhancing the speed and accurate delivery of instruments and cash and how helped the buyers and sellers of instruments through the stock exchange portal. He also explained the role of SEBI in the present market. The presentation was more informative to the participants. There was a good and lively interaction from the participants and their doubts were clarified.

## VISAKHAPATNAM CHAPTER

### Half Day Seminar on Incorporation of Companies and Matters Incidental Thereto

The Visakhapatnam Chapter of the ICSI organized a half day Seminar on "Incorporation of Companies and Matters Incidental Thereto" on 26.7.2014 at the Chapter Premises. CS Vithal Kumar P Practising Company Secretary, Visakhapatnam was the Speaker who started his presentation with Promoters, formation of company, one person company and briefly discussed the Procedural Aspects with regard to Incorporation and ended with Conversion of Companies already registered. The session was lively, interactive and well received by the members present.

### Annual General Meeting

The Visakhapatnam Chapter of the ICSI conducted Annual General Meeting on 26.7.2014 at the Chapter premises. The meeting commenced with a welcome address by CS D.V.Subbarao, Chairman of the Chapter, who also highlighted the activities of the Chapter for the year and encouraged members for participation in

programmes for achieving success. CS D.V.Subbarao, Chapter Chairman read out the Notice and the Auditor's Report. Thereafter, Chairman presented the Managing Committee Report and Audited Accounts to the members and invited their comments and suggestions on the accounts and there were no comments and suggestions on it.

## 68<sup>th</sup> Independence Day Celebration

The 68<sup>th</sup> Independence day & 2<sup>nd</sup> CSBF Awareness Week was organized and a half-day seminar on "Be Proud to be Indian, Best Career steps, Love at work was also held on 15.8.2014 at the Chapter premises. P.Suresh, IRAS, Senior Divisional Finance Manager, Eco Railways, Waltair Division, Visakhapatnam was the Chief Guest cum Speaker. The Speaker started with 67 years back what is the governance and compared with present governance and explained present education system how to develop a career and how to choose a career. What is an interpersonal skill? Knowledge management system, activation of mind ended with growth is life concepts. The session was lively, interactive and well received by the members present. CS C. Suman, Secretary, Visakhapatnam Chapter of the ICSI explained CSBF registration and online payment and also encouraged members to become the members of CSBF.

## Career Awareness Programme

The Chapter conducted career awareness programmes as under: on 6.8.2014 at Visakha Govt Degree College [W]; on 11.8.2014 at Visakha Govt. Junior College (W); on 19.8.2014 at Rydah College; on 20.8.2014 at Department of Management Studies, Dr.L.Bullayya PG College. The speaker of all the sessions was PRV. Sivaramakrishna, Chapter In-Charge, Visakhapatnam & PVG Rao.

## WESTERN INDIA REGIONAL COUNCIL

### AHMEDABAD CHAPTER Study Circle Meeting

The Ahmedabad Chapter of WIRC of ICSI organised a Study Circle Meeting on "Draft Secretarial Standards with respect to General and Board Meetings for Public Comments & Draft Notification for Public Comments issued by MCA on 24.6.2014 to exempt Private Limited Companies from applicability of few sections of Companies Act, 2013" on 28.6.2014 at Chapter premises with PCH=1. CS Chetan Patel, Chairman, TEFC Committee, Ahmedabad Chapter of WIRC of ICSI, CS Rutul Shukla, Secretary & Chairman, PDC Committee, Ahmedabad Chapter of WIRC of ICSI and CS Jaymeen Trivedi, Chairman, PCS Committee, Ahmedabad Chapter of WIRC of ICSI were the faculties of the programme. The meeting was appreciated by gathering at large. The Programme was attended by 64 CS Members comprising Past Chairmen, Senior CS Members,



Committee Members. The workshop was successful with the support and guidance of CS Jaymeen Trivedi, Chairman PCS Committee, Ahmedabad Chapter of WIRC of ICSI.

## Study Circle Meeting at Gandhinagar

Gandhinagar Study Circle of Ahmedabad Chapter organised Study Circle Meeting on “Related Party Transactions, Loans and Advances and Open House Discussion on Companies Act, 2013” on 05.7.2014 at Conference Room of Gujarat Info Petro Limited, Gandhinagar with PCH = 1 & PDP= 2 covering following topics:-1) Related Party Transactions, Loans and Advances by CS Nilesh Patel 2) Open House Discussion on critical issues, circulars and notifications issued by MCA under the Companies Act, 2013. A total of 26 members and 20 students attended the programme. Participants discussed various provisions of the new Act, its implications and challenges faced in implementing the Act.

## Half Day Seminar on Inspection & Investigation - Regulator's Perspective

The Ahmedabad Chapter of WIRC of ICSI organized Half Day Seminar on “Inspection & Investigation- Regulator's Perspective and Voting through Electronic Means with Live Demo” on 12.7.2014 at Ahmedabad Textile Mills' Association (ATMA Hall), Ahmedabad with PCH=02. The Seminar was inaugurated by CS Umesh Ved, Council Member, ICSI, CS Ashish Doshi, Vice Chairman, WIRC, CS Rajesh Tarpara, Chairman, Ahmedabad Chapter of WIRC of ICSI & CS Rutul Shukla, Secretary & Chairman, PDP Committee, Ahmedabad Chapter of WIRC of ICSI. The speakers of the workshop were CS Utpal Shah, Head-Gujarat Region, Central Depository Services (India) Ltd., S. N. Misra, ROC, Gujarat & S. K. Agarwal, RD, North Western Region. The Seminar was organized to deal with Inspection & Investigation - Regulator's Perspective and Voting through Electronic Means with Live Demo. The Seminar was immensely beneficial as the dignitaries addressed the queries posed by the CS members. The Seminar was attended by 107 CS Members, comprising Senior CS Members, Past Chairmen and Committee Members of Ahmedabad Chapter of WIRC of ICSI.

## AURANGABAD CHAPTER Seminar on Companies Act, 2013

On 20.07.2014 Aurangabad Chapter organised a Seminar on Companies Act 2013 – Practical Analysis and Compliances at Aurangabad. Ramaswami Kalidas, VP & Company Secretary, Reliance Power Ltd., Mumbai and Vivek Sadhale and Vikas Agarwal, co-founder Legalogic Consulting, Pune were the speakers. Ramaswami Kalidas was the speaker for the first, second and third sessions on Anomalies and Drafting Errors in the Companies Act, 2013, New Law Relating to Directors and Action to be taken by Board. During the Question-Answer session various queries and difficulties were raised, discussed and replied on Companies Act, 2013 and Rules made thereunder.

Thereafter Vivek Sadhale and Vikas Agarwal, Co-Founder Legalogic Consulting, Pune joined the programme. The fourth session on Inter-Corporate Loans & Corporate Guarantee, Dividend, Auditors and Accounts were taken by Vivek Sadhale and the fifth session on MOA/AOA, Related Party, Deposits, Private Placement was taken by Vikas Agarwal.

## Seminar on Union Budget 2014-15

On 12.07.2014 the Aurangabad Chapter organised a Seminar on Union Budget 2014-15 at Aurangabad on Direct, Indirect Taxes and Transfer Pricing. On Direct Tax CA Dinesh Khator, PWC was the speaker. On Indirect Taxes CA and CS Nitin Vijaivergia, PWC was the speaker. The speaker on Transfer Pricing was CA Rahul Mehta, PWC.

CA Dinesh Khator discussed the topic Implication of Budget 2014-15 on Direct Tax. CA Rahul Mehta addressed on Transfer Pricing. After tea break the last session was addressed by CS and CA Nitin Vijaivergia on Indirect Taxes. A very good number of participants from CS community and industry were present at the seminar. During the sessions various queries were raised which were suitably replied by the faculties.

## BHAYANDER CHAPTER Maharashtra State Conference of WIRC of ICSI

Bhayander Chapter organised Maharashtra State Conference of WIRC of ICSI on 18.07.2014 and 19.07.2014 at Bhayander (W). On the 1st day CS Ragini Choksi, Chairperson WIRC, N K Jain Former Vice Chairman, JSW Energy were present as chief guests. CS Umesh Vaid, Central Council Member, CS Mahavir Lunawat, Past Chairman, WIRC, CS K Sethuraman, Group CS, Reliance Group of Industries were presented as speakers. On 2nd day the speakers were CS Manoj Banthia, Past Chairman EIRC, ICSI, CS Savithri Parekh of Pidilite Industries. The seminar was inaugurated by CS Sunil Agarwal, Chairman Bhayander Chapter of ICSI.

Day- 1: Technical Session-1 The topic was Board Process, Governance and Related Party (Chapter XI & XII). CS K. Sethuraman (Group CS, Reliance Group) was the speaker.

Technical Session-2 the speaker was CS Mahavir Lunawat (Ex Chairman, WIRC of ICSI). The Topic was Loans, Investments, Issue of shares and Secretarial Audit.

Technical Session 3: Speaker was CS Umesh Ved, Central Council Member, ICSI and the topic was Practical aspects for CS in Employment v. CS in practice.

Day- 2: Technical Session 1: CS Manoj Banthia, EX Chairman EIRC of ICSI was the speaker. The topic was Private Placement of Securities, further issue of Shares, Deposits & DPT-4, registration of Charges, Matters requiring shareholders' approval and E Voting.



# News From the Institute & Regions

Technical Session 2: CS Savithri Parekh, company secretary, Pidilite Industries was the speaker. The Topic was KMP - Appointment & Remuneration (Chapter XIII and Schedule V).

## INDORE CHAPTER Half Day Seminar on Budget Analysis – 2014, Cost Audit Rules and E-Voting

On 19.7.2014 the Chapter conducted a half-day seminar on the above topic at Indore. The faculties were CS Vineet Chopra, CA S.K. Porwal, Dr. Kamlesh Bhandari, CS Pratik Tripathi

CS Vineet Chopra explained various provisions of the Companies (Cost Records and Audit) Rules, 2014 relating to New Law for cost records and audit under section 148 of the Companies Act, 2013, The Companies (Cost Records & Audit) Rules 2014, Application of cost records & cost audit, Maintenance of records, Procedures: appointment of cost auditor, Audit Report and Penalties.

In the 2<sup>nd</sup> Session CA S.K. Porwal explained various aspects of Union Budget 2014. He also resolved the queries raised by the members present.

In the 3<sup>rd</sup> Session Dr. Kamlesh Bhandari continued explaining various aspects of Union Budget 2014. He also resolved the queries raised by the members present at the Seminar.

In the 4<sup>th</sup> Session CS Pratik Tripathi explained various aspects of Voting Rights, who have right to vote, Restriction on Voting Rights, Manner of Voting, Demand of Poll, Postal Ballot, E-Voting, Applicability of Provision of E-voting to the Company, Highlights of Clause 35B, Procedure to be Followed by the Company, Duration of E-voting Period, Appointment as a Scrutinizer, Steps to be taken by the Shareholders for E-voting and E-Voting for Custodians & Institutions.

## PUNE CHAPTER Master Classes on Company Law

Continuing with the sessions of Master Class series, next session of the class was organized on 26.7.2014 on Related Party Transactions in which CS Makarand Lele was the speaker. The Programme was organized at MCCIA, Pune which was attended by 106 delegates. Two (2) PCH were awarded to members who attended the session.

Next session of the class was organized on 2.8.2014 in which topics viz. General Meetings, Secretarial Standards, E-Voting & Postal Ballot, Minutes, Maintenance of Records & Register electronically

were covered. CS Bhuvanesh Sharma was the speaker for the session. The Programme was organized at MCCIA, Pune which was attended by 71 delegates. Two (2) PCH were awarded to members who attended the session.

Another session of Master Class was organized on 9.8.2014 on Role, Responsibilities & Powers of Director. CS C S Kelkar was the speaker for the session. The Programme was organized at Kelkar Hall, IMA, Pune which was attended by 76 delegates. Two (2) PCH were awarded to members who attended the session.

Yet again 16.8.2014 the master class was held on "Disclosures" for which CS R J Joshi was the speaker. The Programme was organized at MCCIA, Pune which was attended by 63 delegates. Two (2) PCH were awarded to members who attended the session.

## National Seminar on Investor Protection and Awareness Organised by MCA Jointly with Pune Chapter of ICSI

Pune Chapter of ICSI under the aegis of Investor Education and Protection Fund, MCA organised National Seminar on Investor Protection & Awareness on 16.8.2014 at Pune. Nehal Vora, Chief Regulatory Officer, CRO, Bombay Stock Exchange was invited as Chief Guest for the seminar. After the inaugural session, Dr. Amol Shinde, Asst. RoC, Pune explained the objective of the seminar and the need for creating awareness amongst investors. Thereafter, CS Vikas Khare Vice President, ICSI gave opening remarks & briefed investors about the programme schedule & its scope. The inaugural session concluded with closing remarks by CS M S Sahoo, Secretary ICSI.

The 1<sup>st</sup> Technical Session was scheduled on "Companies Act 2013 & Investor Protection" for which CS Vinayak Khanvalkar, Past President, ICSI was the speaker. He informed investors about their rights & related changes which were brought by the Companies Act, 2013. CA Bharat Pathak was speaker for the second session on Asset Allocation & how investment decisions should be made by investors.

For the 3<sup>rd</sup> Technical Session, Umesh Kudalkar was the speaker on "Gaining Financial Independence".

The last session was on Investor Protection Measures by SEBI & Security Law Bill for which CS M S Sahoo, Secretary, ICSI was the speaker. He emphasized on collective responsibility of various regulators/agencies & their role in investor protection. The Seminar was a grand success & received a good response from the Investors.



## ICSI-CCGRT Programme on Critical Issues in Companies Act, 2013 (in the form of Q&A)

ICSI-CCGRT conducted a full day programme on “Critical Issues in Companies Act, 2013” in the form of question and answer at its premises at CBD Belapur on 14.6.2014. Dr. K R Chandratre, Practicing Company Secretary, Pune & Past President, ICSI handled and replied different queries covering critical issues on the provisions of the Companies Act, 2013. There was considerable interaction by the participants.

## 3 Days Intensive Course on Structuring and Managing Companies under the Companies Act, 2013 - A High Level Value Adding Course Companies Act, 2013 - Deciphered

ICSI-CCGRT organised a 3 days Intensive Training and High Level Value adding Course from 18.7.2014 to 20.7.2014 at Pune. Amidst the confusion surrounding the Companies Act 2013 and its related Rules, Notifications and Circulars, professionals were waiting for long with their wagons of queries to be replied and doubts clarified. In such a time a programme organised by CCGRT in Pune turned out to be a panacea of an event. When more than 17 doyens of the Profession gathered to make presentations in the programme it was hardly surprising that over 200 professionals and students flocked from every different parts of the country to attend the programme. Spread over three days and studded with several experts of the field, President, Vice President and Past Presidents of the Institute, the programme turned out to be a great success.

### Key Highlights of Three Days

**DAY 1** - The programme commenced with a brief address by Vice President, CS Vikas Khare and Past Presidents of the Institute of Company Secretaries of India. Starting the first session, Dr. K. R. Chandratre took up the critical issue of interpretation in relation to Companies Act 2013. He gave an insight into the rules of interpretation and their enhanced significance in deciphering the Sections, Rules and Circulars under the new Companies Act. He went on to talk about the critical sections with doubtful interpretations for e.g. section 197, 4(7), 188, 185 etc.

Next session of Dr. Chandratre dealt with one of the most complicated provisions of the new Act, relating to Appointment and Remuneration of Managerial Personnel and KMP. Participants had several queries relating to the section and its applicability to private companies which were aptly replied by the speaker.

What followed the appetizing lunch was equally interesting as crucial. CS Shashikala Rao covered the provisions of related party transactions under Companies Act 2013. She gave an in-depth presentation on the practical problems involved in related party

transactions and manner of dealing with them, highlighting the provisions with respect to listed companies. In the next session, CS Shailashri Bhaskar gave a lucid presentation on Public offer, Rights Issue and Private Placement. Participants found it very efficient way to break down the complex processes by way of flow charts.

Immediately after that CS Keyur Bakshi thrilled the participants with his presentation on deposits. There were so many questions related to the provisions that even a day would have been insufficient to cover them. However Bakshi replied them to clear up the lurking doubts. After a very small tea break, Past President CS Mahesh Athavale took the dais to engage the participants into a presentation on Scope for CS under new Act and Secretarial Audit. He provided an incisive insight into the enhanced scope of practice and employment for CS under Companies Act 2013. Having helped in the preparation of ICSI's book on Secretarial Audit, CS Mahesh Athavale had several tips for professionals to be kept in mind while doing secretarial audit. He emphasized on starting from the scratch using the basic documents of the Company.

**DAY 2:** The day began with an eye-opening presentation by Adv. Sharad Abhyankar. He covered the topic of drafting of MOA and AOA under new Act. Participants were made aware of the several misconceptions which are considered true in general. He suggested on reading the text of provisions and then forming an opinion. A very extensive analysis of special resolutions and shareholders agreement was made by Adv. Abhyankar in his presentation.

Immediately followed the presentation of Satyan Israni on offences, adjudication and penalties under Companies Act 2013. He classified the defaults under new Act as statutory and procedural defaults to give a clear understanding of their nature and consequences. He replied the queries of participants on proceedings in different courts in India. The day got more interesting with the presentation of CS Robert Pawrey on aspects on Incorporation under new Act. He covered the provisions and benefits of One Person Company and also talked about the glitches of administration on a lighter vein.

In the session following lunch, CS S. H. Rajadhyaksha spoke about the arduous provisions of Loan to Directors and Inter-corporate Loans and Investments. He made an analysis of how the new provisions are going to impact loans which were earlier provided with lower interest rates. Rajadhyaksha very well decoded the complications, relating to provisions of loans and investments, for the participant.

Post evening tea break CS Prakash Pandya enlightened the audience about the benefits of forming a Limited Liability Partnerships. He suggested on keeping the needs of client in mind before suggesting on form of organisation to be chosen. In a very unique session next, CS Sunil Nanal gave a presentation on provision relating to companies incorporated outside India. He explained the requirements under both Companies Act 2013 and FEMA in a very lucid manner to the participants. He also touched upon the topic of Corporate Social Responsibility and requirements under FCRA.





E-voting provisions and related circulars had left professionals baffled since last few months. Attempting to clear all the fog relating to these provisions, J Sridhar, Past President, ICSI took the dais to explain the practical aspects of conducting E-voting with reference to his experience at Bajaj Auto Ltd. He spoke contradictions under Company Law and Listing Agreement and also about the manner in which e-voting was successfully conducted in Bajaj group of Companies.

**DAY 3** - President of the Institute CS R. Sridharan lightened up the Sunday morning with his Interactive session. He encouraged the professionals with his words and enthusiasm. Discussions were made about integrated course, interpretation of statutes, Direct tax code - definition of accountant etc. President delighted the participants by replying their queries on all aspects related to the Profession.

The next session by CS Savithri Parekh left all the participants enchanted with her grasp of the subject and her in depth knowledge. She covered the topic of Management & Administration replying all the queries of the participants providing meticulous details of provisions, rules and circulars. She made sure that not even a tiny doubt relating to meetings, e-voting, proxy, Registers etc. was left in the minds of the participants.

CS Sanjay Grover, Member Central Council thereafter took over to give his presentation on Disclosure under Companies Act 2013. He left a lasting impact by explaining the disclosure requirements and its importance under new Act, in a very simple manner.

In the last session of the programme CS Atul Mehta, Member Central Council and Co-Chairman CCGRT Management Committee used a very creative presentation filled with charts, pictures and clips to explain the provisions relating to Annual return under Companies Act 2013. He spoke about the additional disclosure requirements and the difficulties one might face in the coming time.

Stimulating intellect and knowledge, the programme swayed towards the concluding point with the address of Vice President CS Vikas Khare. He tickled the funny bones of audience with his hilarious yet thought provoking presentation. With the joint efforts of CCGRT, Vice President, Participants and Volunteers, the programme culminated.

## FDP – Faculty Development Programme - Teaching Pedagogy

On 9.8.2014, a Faculty Development Programme was conducted at CCGRT for our faculty team with an objective to provide an altar to share views and innovative ideas on designing an optimum academic model, which will serve the twin objectives of developing the professional competencies of students and shaping a uniform Teaching Pedagogy. Prof. (Emeritus) Dr. A K Sengupta, President, Higher Education Forum, took the session. Dr. A K Sengupta's talk encompassed the key elements, such as, Addition to become a teacher; Migration from a Qualified Teacher to a Passionate Teacher; Comprehending the psychic and mental characteristics of students; Bringing uniformity in lesson plan; Ascertain the academic background of students etc. that paves the way for becoming a Good and Great Teacher. He also laid due stress on relevance of

the knowledge being imparted, i.e. whatever is taught to the students should have application. To explain this point, he referred the concept of Michael Porter's Five Forces Model, which was designed around 30 years ago and no more being taught in top Business Schools and Management Institutions of the developed countries, where it took birth, is still part of Indian B-Schools syllabus. Moreover, he emphasised on case study pedagogy, as it assists a student to conceptualize a problem that is being witnessed by a managerial personnel in corporate.

To summarize, Dr. Sengupta, through his mesmerizing talk, enlightened the august gathering on the importance of analyzing the academic level of students, so that equilibrium can be attained between the delivery of academic inputs and its absorption. In other words, he appositely stressed upon gauging the understanding level of students, so that it should not happen that a faculty member begins from a level which puts a student in an uncomfortable position. On the contrary, it might be the case that a faculty member starts from the basics but students are already equipped with advanced knowledge then their interest towards the subject dissipates. Overall, it was a learning oriented and interactive session, which has definitely given food for thought to the participants.

Earlier, the programme commenced with interaction between three categories of subject experts, i.e. Practitioners, Academicians and Tutors on their respective courses. After concluding the mentioned interactive session, the session of Dr. A K Sengupta commenced and it lasted up to lunch. The session on Teaching Pedagogy received good response from renowned practitioners, academicians and tutors.

## Directors' Roundtable Meet

ICSI-CCGRT organised Directors' Roundtable Meet on 19.8.2014 at Mumbai.

The Directors' round table meet for Independent Directors, Women Directors, Nominee Directors and Aspiring Directors was conducted on 19.8.2014 at Mumbai. Due to provisions of the Companies Act 2013 and the revised clause 49 of the listing agreement, there have been a number of changes that a director should be aware of. The programme sought to address practicing and aspiring independent directors on what the responsibilities that the position entailed. Under the guidance of the MCA the ICSI-CCGRT arranged the seminar to educate the participants on role, responsibility and liabilities of directors. The seminar also sought to address the competency required, director's remuneration and the challenges for directors in the future. The concept of independence was stressed by CS Atul Mehta, Council Member, ICSI in his welcome address. Independence is a state of mind and the quantification and legislation of such independence has been done by Companies Act 2013. This change has been made in order to regulate independent directors as they take up greater responsibility and to reduce the number of scams that take place. Independent directors must constitute 2/3<sup>rd</sup> of the audit committee, one-half of nomination and remuneration committee, CSR and stakeholder committee. Independent directors are responsible for framing whistle blower mechanism, CSR policy and framing rules



pertaining to related party transactions. The provisions of Companies Act 2013 specify that Independent directors are liable for the integrity, scrutiny, monitoring of the company's operations and to ensure that the company is built on a robust and defensible financial system. The question is whether the independent directors who meet for just a few days in a year can address the issues of corporate governance?

The President of ICSI, CS R Sridharan mentioned in his address that this is the first programme in the series, to be conducted under the direction of the Ministry of Corporate Affairs. Over 100 days of workshops have been planned across the country. He also announced that ICSI along with the other institutes (ICAI and ICoAI) has launched a portal for the registration of Independent Directors a week ago which is now open to the public for registration. The new Act which had new notifications that came into effect on 1st April 2014 made it mandatory that all companies under section 149 including listed companies and companies going for listing of debentures mandatorily require independent directors. The responsibility of an independent director encompasses the following: - accounting standards, policy making, safeguarding assets, financial assessment and law. It is also the first time in Companies Act that the duties and limitations of the director have been clearly laid out. The independent director can serve for two 5 year terms and can be brought back after a term of 3 years have passed since he was associated with the company. The act also ensures that independent directors (ID) can meet together without other directors for independent performance reviews. And a new ceiling of Rs. 1, 00,000 plus any other profit related commission has been established for director remuneration. Independent directors are required to assess whether a company is law abiding with good governance norms. Therefore it has become essential to educate a director. ICSI being religiously devoted to corporate governance is committed to leave no stone unturned in creating awareness among the directors. The Companies Act of 2013 has made provision for hefty penalties because the entire board is held responsible including the independent directors.

The Independent Directors (IDs), must be financially literate and also be familiar with the accounting standards during the due diligence audit. Every day, changes are taking place with over 55 clarifications coming out in the last 3 months alone. This will be the trend for the next 2-3 years till the law settles down. This session is a brief orientation but there are plans to conduct 2-3 days workshops for CS members aspiring to be IDs. There is currently over 1500 CS functioning at director levels and over 36000 registered on the portal. On speaking about IDs, the guest of honour Ashishkumar Chauhan, MD & CEO, BSE Ltd said that IDs or outside directors as they are sometimes called are those directors with no material or pecuniary relationships with the firm. The need for such directors can be seen since the origin of the Companies Act which can be traced back to 1830s. The concept of the company as an unnatural individual entity created out of social contract has done great good by accelerating the growth of industry and also proved to be a curse, as seen with the British East India Company. Twenty years ago the management followed a philosophy of insiders' v. outsiders (who were traditionally shareholders). But today it's insiders v. stakeholders due to the impact

of the company on society. In order to ensure that the society at large was not harmed by the company, independent directors were needed. Now the million dollar question is, what is independence for an ID? Is it antagonizing the management? No. It is the ability to ensure that the company is run properly without being influenced by the key officials or executives. Sometimes the IDs have too many vague and anonymous responsibilities which can cause them to overlook management and owner mistakes. Once they start to become aware of the duties and responsibilities, many become reluctant to become IDs. Before IDs were like a social service, now there are expectations from both law and company. An entirely compliant company that is performing very poorly is futile. It is also important for directors to make sure that no information is hidden. CS Atul Mehta closed the inauguration by reminding the audience how active SEBI has been with many rules coming out and obtaining new powers. There is also a new listing agreement with new rules proposed which was mentioned in the BSE programme. All of this has led to much difficulty in finding qualified people to become directors.

The first resource person, Dr. A K Sengupta, President, HEF discussed about the evaluation of business strategy. He aptly stated that 'Directors' play a very important role in the life of a company especially since business has become a complex concept. The IDs are often not associated long enough with the company to get a complete idea of its business matters, thereby, making it difficult to evaluate its strategy. He mentioned about three ways to look at a business - Firstly, the current form where the current standards and situations such as market share and policy are used to make strategies. The second is the future form where the company is future oriented and it's particularly important as 90% of today's corporations make a lot of mistakes in visualizing their future. The third form is the strategic form which addresses all the business issues at all the levels. This form depends on what strategic option the director is looking at that point of time and whether the director is in a position to effectively evaluate the business. In lieu of these perspectives, Dr. Sengupta suggested the use of the dashboard concept to strategize effectively. This concept acknowledges that a director cannot look into everything and should instead look into the important performance parameters. First, determine the characteristics of the business in order to arrive at performance parameters from both financial and nonfinancial properties. These parameters should be compared to the global standards and benchmarks to determine how the business stands vis a vis with them. He spoke about four quadrant model - financial approach, customer centric approach, internal business processing, and future view to elaborate on this approach. It is important to note that purely financial parameters may mislead you and one has to go beyond and also look at non-financial parameters. However it's often seen that business strategy is given the least priority in board meetings.

Dr. Abhijit Phadnis, Director, Giltedge Financial Counsel discussed on how to create a sustainable organisation. The facets of corporate that a business has to look into, covers everything from reputation problems to environmental issues to risk management and other key factors. Innovation is also important and it becomes evident from



Apple surpassing its Asian competitors such as Samsung and Sony. On the other hand aggressive and unwarranted capacity expansion and egos of top management causing unwarranted acquisition are some of the reasons for failure. Due to such issues there has been much discussion about “completely outsourcing the duties of the board.” The vision for the future must be based on pull based growth like that of Facebook where the demand pull by the consumers shows that the company is doing the right thing. Regarding the value proposition, it is important to show how different your products by creating emotion and attachment to the company’s brand. This is seen clearly by the amount of revenue hero Motorcorp and Bajaj have to use for advertisement. Capacity management goes hand in hand with risk management and working capital management goes hand in hand with capital management. It is important that the business give value creation to both the internal and external parties to create a sustainable organization. Initially the management used to follow the policy of taking care of employees, while the vendors were exploited. However today both parties are equally important and it is necessary to create win win situation. It is also necessary to reward outsiders so that they themselves will be able to focus on their business, help generate faster response in the market place and provide good service to the company.

The second panel was initiated by a dialogue on board evaluation by N L Bhatia who remarked that the office of the director is no longer a decorative office as it was in the past where there was much prestige but very little obligations. The 2013 Act changed this by laying out a code of conduct for the directors. It is important that in determining the independence of the director, the individual must be both financially independent and without any blood ties to the promoters of the company. This selection is done by the promoters and the existing members of the board where both parties will have to certify the ID is suitable. In evaluating companies the efficiency with which directors discharge their duty is always considered. There have been situations where poor administration has caused companies to take on undue leverage and situation where the board consist of unqualified individuals. Director evaluation has to be done at a meeting without him where all other directors can give unbiased inputs regarding the former. The review of performance of normal directors has to be done on a quantitative and qualitative basis over a period of time. The flow of information between the companies management the ability to effectively and reasonable perform the duties, the ability to get the appropriate information in time to make effective decisions must also be considered. The procedure for evaluation has two important facets which are data collection and confidentiality. The information should be collected without prejudice with greatest amount of discretion and care. However there is currently no system in place to conduct an effective board evaluation. One option to conduct a board evaluation would be to outsource it where an independent authority could be hired to give an objective review of the board. In India board evaluation is a rare event. It is almost never practiced and when it’s, no records are kept which results in difficulty in determining the effectiveness of the evaluation. Review can be on both subjective and objective factors, the company secretary is responsible for providing objective factors such as attendance, sitting fees, etc. The subjective factors

which include preparation for the board meeting, conduct, time spent working on company matters will be determined by the board. This entire process must be done according to the code of conduct that has been laid out.

Ashok Chhabra, Former Executive Director, Procter and Gamble India Ltd concluded the second panel discussion by giving a sermon on peer review. In the past, evaluation happened only for employees but now it has become a necessity for the boards too. In countries like the US, this need is addressed by outside agencies that conduct individual interviews with every director, evaluate and then present it to the board as a whole. Such evaluation mechanisms are needed as a part of the internal review process of the company to make the board of directors effective. This is clearly seen by the PWC survey conducted recently that showed 25% of the directors felt that there were a great number of useless directors on the board. Schedule 4 clearly states the role of the IDs which has greatly helped in simplifying the director review process. Ethical standing, objectivity in making decisions, constructive nature of their input, contribution with regards to strategic issues, discharge of duty in a professional manner, ability to withstand outside influence, understanding the company’s business and confidentiality all have to be considered during the review process.

There have been numerous references to the role and liabilities of the director throughout the day. However Radhika C Pereira, Advocates and Solicitors, Dudhat, Pereira & Associates, Mumbai shared some valuable practical insights with the audience. IDs have vast criteria to meet regarding their role and liability which is extremely difficult from the practical standpoint. As an ID use various reports such as audit reports, board reports, reports specific to projects or products, etc. to take decisions. The fundamental thing here is the framework available in which the information is gathered and presented to the director in a comprehensive manner. With this the ID is expected to know how the company is run and how to assess the information within a limited period of time. IDs can’t deny their liability for a decision made by the board if their consent was given. The ID is also at risk from regulators, shareholders and third parties. Regulators will intervene in matters on non-compliance and shareholders and stakeholders may file a class action suit against the ID. Therefore it’s important to understand how a decision is made, preserve the records and what information was used to arrive at the decision in order to limit the IDs liability. The IDs prospective liabilities are very high and it’s essential that an ID must be knowledgeable and qualified with full understanding of how the business works. From the IDs point of view the board meetings are going to get longer and there must be vigilant participation by the ID in the decision making process.

Financial Statement Analysis (FSA), discussed by Ramesh Lakshman, Chartered Accountants, Ramesh Lakshman & Co, is imperative for IDs and financial literacy is needed due to the Company Act 2013, continuous revisions in law, format and disclosure requirements, global factors, competition etc. FSA focuses on the development of the ability to read financial statements – cash flow, profit and loss statement, and balance sheet – compute ratios and compare it historically with marked deviations and with peer and competitors. It’s important to remember in FSA that “what you see is not what you get”.





There are always situations where companies try to doctor figures so it's important to match expectations with reality and see if there is any data missing in a directors reports, management reports, audit reports, etc. To judge efficiency the concept of scaled balance sheet can be used to figure out what amount of assets used to generate Rs. 1 of sales. In the case of adjustments, return on equity which is profit after tax divided by equity can be used. This helps in comparing profit margins and volumes and profit movement to cash flow. There are 5 prominent practices in fudging the accounts: 1. Big bath restructuring charges, 2. Creative acquisition accounting 3. Cookie jar reserves 4. Immaterial misappropriation and 5. Premature recognition of revenue which account for 50-60 % of the frauds committed. The dupont analysis is also good tool to determine primary levels of profitability reflected by the EBITDA and EBT. It is important to note ratios are tools to analyse FS and it is necessary to understand how the figure was arrived at without any preconceived notions that can lead you the wrong way.

P R Barpande, Ex- Partner, Deloitte Haskins and Sells explained that the primary role of the audit committee is to give comfort to the board by assuring that accounts are true and can be adopted. Therefore the members of the audit committee must be financially literate. The role of the audit committee has been clearly set by the Companies Act 2013 and the board of directors must separately convey their needs and expectations in writing to the audit committee. The audit committee then must act on these terms of reference and bring together all the accounts of the various operations and subsidiaries, and analyze and certify it for the board. Another major change is the change in accounting depreciation since the new act. The old method used percentages to calculate depreciations while the new standards require it to be made on the useful life of the product. This is based on the standards set by IFRS which India is moving towards. There is also the concept of component accounting where a single object has different depreciation rates for its various components. This transition to the IFRS is expected to take place in 2016 and is going to be a big challenge to both the audit committee and the company. The audit committee is part of the internal financial control mechanism. It regulates significant transactions such as that with related parties and assists in foreign exchange fluctuations and risk management. Other priorities include ethics, policy making, risk assessment, assessing effectiveness processes etc.

The third panel was hosted by Suresh Thakur Desai and it discussed the new corporate governance norms, the challenges for directors and the competency required for directors. Neelam Bharadwaj started the session explaining the nobility in the role of IDs are as they are in the business of looking after the interest of others. MCA and SEBI work to build confidence in the market by bringing rules and guidelines to the industry particularly through the corporate governance norms in clause 49 of the listing agreement. Originating from OECD principles, clause 49 clearly states the rights of shareholders and their treatment, disclosure and transparency, responsibilities of the board as trustees and ensures director training. In the revised provisions of clause 49 there are mandatory and non-mandatory provisions. These mandatory provisions include the need for an independent board, gender diversity

within the board, limiting the number of companies in which an ID can serve in to 7, evaluation of the board separately conducted by IDs, etc. Clause 49 also states that there are no stock options for ID's, all directors should conform to the code of conduct, ensure that RPT transactions are fully disclosed and that the involved director is not voting in the matter. There are also specific provisions relating to certification where financial statement must be certified by either the CEO or CFO.

Grace Koshie, Director, Federal Bank further elaborated on this point by further elaborating on the challenges to directors. This is truly a new regime moving to exclusive corporate governance and unqualified financial statements where IDs are there to ensure performance for the stakeholders. Essentially information must come through the appropriate channels in an accurate and timely manner to make effective decisions and it is necessary that such a system is in place through the use of IT and technology. The ID must also have domain knowledge of the business in which the company is operating in and have financial and IT literacy. Only then will they be able to contribute to the business. A simple academic perspective is not enough. The ID must also order his personal life and separate it from business and ensure that one does not affect the other. IDs must also develop communication skills, humility and the willingness to listen to one another.

Sandip Ghose, Director, NISM concluded the session by addressing the characteristics of a prospective director. Competency required by directors comes from previous experiences, challenges and regulations that come up from time to time. All the laws were present in the various acts in spirit before but now many has been revised and written down clearly so that there is no grey area. An ID must have certain essential characteristics. First there is integrity where one must be aware of what is ethically right and wrong. The ID must have a good personality with the ability to be open and interface with other directors of the board. The ID must also possess leadership qualities – as the director's job is to lead other leaders. The ID must be of sound character to ensure that he engages his duties with sincerity and excellence. There have been many situations such as the Satyam case where the directors were highly qualified but lacking in moral fibre. The ID must be a good human with good comprehension. The ID of today is not directly responsible for looking at transactions. He is responsible for setting the short, medium and long terms goals of the company. His duty is to strategize and govern its implementation not run the company. To do this he must also possess good communication skills, and understand the importance of technology and keep updating and learning. The ID of the 21<sup>st</sup> century keeps learning, unlearning and relearning.

The Independent Director should be like Krishna in Mahabharata – a leader of leaders. If a leader leads other leader then there will a multiplying effect, as compared to that achieved if a leader leads blind followers. The employees of a company must act in cohesion and with absolute devotion to the goals of the head of the company as it were his own. If this is practiced continuously and without compromise, almost anything can be achieved.





# THE INSTITUTE OF Company Secretaries of India

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

## CAREER OPPORTUNITY

The Institute of Company Secretaries of India (ICSI) is a statutory body enacted by the Parliament under the Company Secretaries Act, 1980 to regulate and develop the profession of Company Secretaries in India. The ICSI has on its roll over 35000 members and over 4 Lakh students. The ICSI is governed by the Council, responsible for the management of the affairs of the Institute and for discharging the functions under the Company Secretaries Act, 1980. The ICSI has its Headquarters at New Delhi, four Regional offices in Chennai, Kolkata, Mumbai and New Delhi and Chapter offices in 68 cities across the country. It has 182 Examination centers across the country including an overseas centre at Dubai.

ICSI is on the lookout for an accomplished person to fill the position of:

### SECRETARY

**Qualification and Experience:** Should be a Member of the ICSI, preferably with legal background and experience of minimum 15 years in a senior position in administration, finance, secretarial and legal, in government, autonomous, statutory body, large public / private sector company and educational institution.

**Job contents:** The incumbent as 'Secretary' will be required to perform the functions of the Secretary of the Institute and will assist the Council in advising and framing the policies and shall discharge such duties as given in the Company Secretaries Act, 1980 and the Company Secretaries Regulations, 1982 ( as available on website of ICSI) as also those assigned to him from time to time by the Council. The person selected should be able to take the profession to a higher level. The candidate should have requisite experience and ability to communicate effectively to interact with the Government, Regulatory bodies, Industry, Trade Associations/Chambers of Commerce, Professional bodies, etc.

The incumbent should be adaptive in nature, having impeccable personal and professional ethics, integrity and professional competence, strong ability of reaching out to people across the globe for the cause of the profession of the Company Secretaries

and the ICSI. The incumbent is expected to exhibit exemplary leadership qualities, administrative acumen, objectivity in analysis and good interpersonal relationships. The incumbent should be strong in building good working relationships and trust with others; strong presentation skills and the ability to envision and innovative thinking. It is also expected that the incumbent will stay abreast of all relevant changes in the environment so as to enhance the quality of advice to the Council and performance of the ICSI.

**Age:** Should be between 40 and 55 years as on **1<sup>st</sup> September, 2014.**

**Compensation:** Basic pay of Rs.80,000/- / Rs. 90,000/- per month (Fixed) as per Central Government pattern plus HRA, DA, Performance Incentive, Insurance, medical, staff car etc. (CTC Rs. 33 Lakhs / 37 Lakhs approx. per annum respectively). However, the compensation will not be a constraint for a deserving candidate.

**How to Apply :** Interested candidates must apply only through electronic application form (On-line). Last date for submission of application (On-line) is **22.09.2014**. The "ICSI" reserves the right to not fill up the above post as per its requirement or even cancel the whole process of recruitment without assigning any reason.

The applicant employed in ICSI (internal candidate) may also be considered subject to fulfillment of the service conditions. However, the Selection Committee has the right to relax any of the service conditions for the deserving candidate. The Selection Committee constituted for the purpose reserves the right to reject the name of any candidate at any stage without assigning any reason whatsoever.

For further details viz. qualification, experience, procedure for submission of application, etc., please visit our website [www.icsi.edu/career](http://www.icsi.edu/career)

(P K Grover)  
Joint Secretary (SG) - HR



**COMPANY SECRETARIES EXAMINATIONS, DECEMBER, 2014**

**TIME-TABLE & PROGRAMME**

**EXAMINATION TIMING : 2.00 P.M. TO 5.00 P.M.**

<b>Date and Day</b>	<b>Executive Programme (Old Syllabus)</b>	<b>Professional Programme (Old Syllabus)</b>	<b>Executive Programme (New Syllabus)</b>	<b>Professional Programme (New Syllabus)</b>
22.12.2014 Monday	General and Commercial Laws (Module-I)	Company Secretarial Practice (Module - I)	<b>Cost and Management Accounting (Module-I)* (OMR Based Exam)</b>	Advanced Company Law and Practice (Module - I)
23.12.2014 Tuesday	Company Accounts, Cost and Management Accounting (Module-I)	Drafting, Appearances and Pleadings (Module-I)	<b>Tax Laws and Practice (Module-I)* (OMR Based Exam)</b>	Secretarial Audit, Compliance Management and Due Diligence (Module - I)
24.12.2014 Wednesday	Tax Laws (Module-I)	Financial, Treasury and Forex Management (Module-II)	<b>Industrial, Labour and General Laws (Module-II)* (OMR Based Exam)</b>	Corporate Restructuring, Valuation and Insolvency (Module - I)
25.12.2014 Thursday	<b>NO EXAMINATION</b>	<b>NO EXAMINATION</b>	<b>NO EXAMINATION</b>	<b>NO EXAMINATION</b>
26.12.2014 Friday	Company Law (Module-II)	Corporate Restructuring and Insolvency (Module-II)	Company Law (Module-I)	Information Technology and System Audit (Module - II)
27.12.2014 Saturday	Economic and Labour Laws (Module-II)	Strategic Management, Alliances and International Trade (Module-III)	Economic and Commercial Laws (Module-I)	Financial, Treasury and Forex Management (Module - II)
28.12.2014 Sunday	<b>NO EXAMINATION</b>	<b>NO EXAMINATION</b>	<b>NO EXAMINATION</b>	Ethics, Governance and Sustainability (Module - II)
29.12.2014 Monday	Securities Laws and Compliances (Module-II)	Advanced Tax Laws and Practice (Module-III)	Company Accounts and Auditing Practices (Module-II)	Advanced Tax Laws and Practice (Module - III)
30.12.2014 Tuesday	<b>NO EXAMINATION</b>	Due Diligence and Corporate Compliance Management (Module-IV)	Capital Markets and Securities Laws (Module-II)	Drafting, Appearances and Pleadings (Module - III)
31.12.2014 Wednesday	<b>NO EXAMINATION</b>	Governance, Business Ethics and Sustainability (Module-IV)	<b>NO EXAMINATION</b>	<b>Elective 1 out of below 5 subjects (Module - III)</b>
				(i) Banking Law and Practice
				(ii) Capital, Commodity and Money Market
				(iii) Insurance Law and Practice
				(iv) Intellectual Property Rights - Law and Practice
(v) International Business-Laws and Practices				

**NOTE** \*The three papers, i.e., (i) Cost and Management Accounting; (ii) Tax Laws and Practice; and (iii) Industrial, Labour and General Laws to be held in OMR Mode on 22nd, 23rd and 24th December, 2014 respectively.

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# THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE  
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## NOTIFICATION\*

No. 1 of 2014

New Delhi, Dated 9<sup>th</sup> September, 2014

### Elections to the Council and the Regional Councils, 2014

Whereas the duration of the 11<sup>th</sup> Council and the Regional Councils shall expire on 18<sup>th</sup> January, 2015, the elections for constitution of a new Council and Regional Councils shall be held as notified hereunder:

1. In pursuance of Section 9(2) (a) of the Company Secretaries Act, 1980 (hereinafter 'the Act') read with Rules 3 and 4 and other applicable Rules of the Company Secretaries (Election to the Council) Rules, 2006 (hereinafter 'the Rules') and the relevant provisions of the Company Secretaries Regulations, 1982 (hereinafter 'the Regulations'), the timelines for various activities for the conduct of elections to the Council and Regional Councils in the year 2014 shall be as under:

Sl. No.	Activity	Time, Day and Date	Place / Venue
1	Issue of notification for purposes of Rule 4 of the Rules.	Tuesday, the 9 <sup>th</sup> September, 2014	Gazette of India
2	Filing of nominations [Rules 4 (2) (a) and 9]	Not later than 6.00 PM on Monday, the 6 <sup>th</sup> October, 2014	Office of the Returning Officer
3	Scrutiny of nominations [Rule 4 (2) (b)]	Saturday, the 18 <sup>th</sup> October, 2014 at 11.00 AM	ICSI House, 22 Institutional Area, Lodi Road, New Delhi - 110003
4	Withdrawal of nominations [Rules 4(2) (c) and 14]	Not later than 6.00 PM on Tuesday, the 28 <sup>th</sup> October, 2014	Office of the Returning Officer
5	Polling [Rule 4 (2) (d)]	<b>Delhi and Mumbai:</b> Friday and Saturday, the 12 <sup>th</sup> and 13 <sup>th</sup> December, 2014 from 8.00 AM to 8.00 PM <b>Other Places:</b> Friday, the 12 <sup>th</sup> December, 2014 from 8.00 AM to 8.00 PM	Assigned election booths
6	Receipt of applications for permission to vote by post [Rules 4(2) (e) and 28]	Monday, the 13 <sup>th</sup> October, 2014 upto 6.00 PM	Office of the Returning Officer
7	Receipt by post of ballot papers back from voters [Rule 4 (2) (f) ]	Friday, the 12 <sup>th</sup> December, 2014 upto 4.00 PM	Post Box
8	Commencement of counting of votes [Rules 4(2) (g) and 32]	Monday, the 22 <sup>nd</sup> December, 2014 at 10.00 AM	ICSI-NIRC, 4, Prasad Nagar Institutional Area, New Delhi-110005
9	Declaration of results [Rules 4(2)(h), 35 and 36]	Thursday, the 25 <sup>th</sup> December, 2014 or after counting is over, whichever is later.	Gazette of India

\*Indicative Notification for information of Members. Members should, however, refer to the Notification to be published in the Gazette of India on 9<sup>th</sup> September, 2014.





2. In pursuance of sub-rule (1) of Rule 9 of the Rules, the number of persons to be elected to the Council from different constituencies shall be as under:

Sl. No.	Persons to be elected	No. of Persons to be elected
1	Persons to be elected to the Council under Section 9(2) (a) of the Act	15 (Fifteen)
2	Persons to be elected to the Council under Schedule 3 read with Rule 8 and Schedule 1 read with Rule 3 from: Eastern India Regional Constituency Northern India Regional Constituency Southern India Regional Constituency Western India Regional Constituency	2 (Two) 5 (Five) 3 (Three) 5 (Five)

3. In pursuance of sub-regulation (1) of regulation 115 read with sub-regulation (1) of regulation 114 of the Regulations, the number of persons to be elected to different Regional Councils and reservation of seats for various States and Union Territories shall be as under:

Sl. No.	Regional Council	No. of Persons to be elected	Reservation
1	Eastern India Regional Council - Comprising the States of Arunachal Pradesh, Assam, Bihar, Jharkhand, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Sikkim, Tripura and West Bengal.	6 (Six)	One seat each reserved for the States of West Bengal and Odisha
2	Northern India Regional Council - Comprising the States of Delhi, Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, Uttar Pradesh and Uttarakhand and the Union Territory of Chandigarh.	12 (Twelve)	One seat each reserved for the States of Delhi, Haryana, Punjab, Rajasthan, Uttar Pradesh and Union Territory of Chandigarh
3	Southern India Regional Council - Comprising the States of Andhra Pradesh, Karnataka, Kerala, and Tamil Nadu and the Union Territories of Andaman and Nicobar Islands, Puducherry and Lakshadweep.	7 (Seven)	One seat each reserved for the States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu
4	Western India Regional Council - Comprising the States of Chattisgarh, Gujarat, Madhya Pradesh, Maharashtra and Goa and the Union Territories of Dadra and Nagar Haveli and Daman & Diu.	11 (Eleven)	One seat each reserved for the States of Gujarat, Madhya Pradesh and Maharashtra

4. In pursuance of Rules 9, 10 and 11 of the rules, a member who is eligible and desirous to stand for election to the Council or a Regional Council of the Institute shall file nomination(s) in the form, as at **Annexure I** or **Annexure II**, as the case may be, so as to reach the **Returning Officer, 'ICSI House' 22, Institutional Area, Lodi Road, New Delhi-110 003**, not later than 6.00 PM on Monday, the 6<sup>th</sup> October, 2014 along with the statement in **Annexure III**, three passport size photographs and the demand drafts drawn in favour of the Institute of Company Secretaries of India towards the fees and deposits as under:

Sl. No.	Fees / Deposits payable along with nomination	Amount (Rs.)	
		For Council	For Regional Council
1	Fees (Rule 10)	25,000 (Twenty Five thousand only)	20,000 (Twenty thousand only)
2	Security Deposit (Rule 11)	20,000 (Twenty thousand only)	20,000 (Twenty thousand only)

Clarification: A member may file any number of nominations not exceeding ten for the Council and irrespective of the number of nomination(s) he has to pay a sum of Rs.25,000/- along with the nomination. A member may file any number of nominations not exceeding ten for the Regional Council and irrespective of the number of nomination (s) he has to pay a sum of Rs.20,000/- along with the nomination.

5. In pursuance of sub-rule (4) of Rule 9 read with Schedule 4 of the Rules, the following qualifications are specified for the purpose of sub-clause (a) of Para (2) of Schedule 4:

All degrees awarded by the universities recognised by Government; Associate/Fellow Member of Certified Associate of Indian Institute of Banking & Finance, the Institute of Chartered Accountants of India, the Institute of Cost Accountants of India and the Institute of Chartered Secretaries and Administrators, London.

6. In pursuance of Rule 12(1) of the Rules, the Panel for scrutiny of nominations shall comprise as under:
  - a. Mr. Amardeep Singh Bhatia, Government Nominee on Council,
  - b. Mr. P. Sesh Kumar, Government Nominee on Council, (Or any incumbent in place of Mr. P. Sesh Kumar being nominated by the Central Government )
  - c. CS Sutanu Sinha, Chief Executive & Officiating Secretary and Returning Officer, The Institute of Company Secretaries of India.
7. In pursuance of sub-rule (3) of Rule 6 of the Rules, the list of members eligible to vote (list of voters) from the various constituencies for elections to the 12<sup>th</sup> Council and the four Regional Councils of the Institute of Company Secretaries of India shall be available for sale from ICSI House, 22 Institutional Area, Lodi Road, New Delhi 110003 and also from respective Regional offices at Chennai, Delhi, Kolkata and Mumbai and the Chapter offices from 9<sup>th</sup> September, 2014 on payment of the prices as under:

Sl. No.	List of Voters of	Price (Rs.)
1	Eastern Region	150
2	Northern Region	300
3	Southern Region	200
4	Western Region	300

8. In pursuance of sub-rules (1) and (2) of Rule 41 of the Rules, a candidate, whose name has been included in the final list of nominations under Rule 15, shall not incur an expense in excess of the amount as specified hereunder and shall file an account of expenses incurred for the election in the format (**Annexure IV**) within fifteen days of the notification issued under Rule 36:

Election	Ceiling on Expenditure (Rs.)
Council	5,00,000
Regional Council	3,00,000

9. In pursuance of sub-rule (3) of Rule 41 or sub-rule (1) of Rule 42 of the Rules, a member shall be deemed to have brought disrepute to the Council under item (2) of Part IV of the First Schedule of the Act if, in connection with an election to the Council or Regional Council of the Institute, he is found to have contravened the provisions of sub-rules (1) or (2) of Rule 41 or sub-rules (2), (3) or (4) of Rule 42.
10. In pursuance of sub-rules (2) and (3) of Rule 42 of the Rules, a candidate shall issue only one manifesto or circular in relation to the election in the manner specified therein.
11. In pursuance of sub-rule(2) of Rule 16 of the Rules, the Election Code of Conduct for candidates that has been published on the web-site of the Institute, shall come into force from the date of issue of this notification and this Code shall be deemed to be a guideline of the Council under item (1) of Part II of the Second Schedule of the Act and it is obligatory for each candidate and his authorised representative to comply with this Election Code of Conduct.
12. In pursuance of Rule 4(2) (e) and 4(2)(f) of the Rules, a voter eligible and desirous to cast vote by post may send an application to the Returning Officer in form as at **Annexure V** seeking permission to do so by 13<sup>th</sup> October, 2014 and must return the ballot papers in the specified envelope so as to reach the Returning Officer by 12<sup>th</sup> December, 2014.
13. In pursuance of Rules 5, 21 and 28 read with Schedule 2 of the Rules, polling booths have been assigned to each voter. A voter may cast his vote at the polling booth assigned to him. A member whose name is not shown under any polling booth shall be permitted to vote by post. A list of polling booths has been published on the website of institute.

14. The relevant provisions of the Company Secretaries Act, 1980, the Company Secretaries (Election to the Council) Rules, 2006 and the Company Secretaries Regulations, 1982 and other applicable laws, though not specified herein, shall apply to these elections.

**By order of the Council of the Institute of Company Secretaries of India**

(CS Sutanu Sinha)

Returning Officer and Chief Executive & Officiating Secretary of the ICSI

# ANNEXURE I

## FORM OF NOMINATION FOR ELECTION TO THE COUNCIL

(See Rules 5, 9, 10 and 11)

### NOMINATION

We, the undersigned members of the Institute of Company Secretaries of India, not being in arrears this day in respect of our respective annual membership fee for the current year and being eligible to vote under Rule 5 of the Company Secretaries (Election to the Council) Rules, 2006 in the election of members to the Council of the Institute notified to be held during the calendar year 2014 do hereby nominate ....., who is a Fellow Member of the Institute belonging to ..... India Regional Constituency, as a candidate for election to one of the seats to be filled up from ..... India Regional Constituency in accordance with the provisions contained in the Company Secretaries (Election to the Council) Rules, 2006.

1. Signature of Proposer:.....

Name : .....

Membership No. : .....

Address: : .....

Date: : .....

2. Signature of Seconder: :.....

Name: : .....

Membership No.: : .....

Address: : .....

Date: : .....

### CONSENT

I, ....., being a Fellow Member of the Institute belonging to the ..... India Regional Constituency, not being in arrears this day in respect of my annual membership fee for the current year, and being eligible to stand for election agree to stand as a candidate for election to one of the seats to be filled up from the said constituency in the election notified to be held during the calendar year 2014.

I enclose herewith a demand draft No..... dated ..... for Rs.25,000 (Rupees Twenty Five Thousand only)

drawn on .....Bank in favour of The 'Institute of Company Secretaries of India', payable at New Delhi towards nomination fee.

I enclose herewith a demand draft No..... dated ..... for Rs.20,000 (Rupees Twenty thousand only) drawn on .....Bank in favour of The 'Institute of Company Secretaries of India', payable at New Delhi towards security deposit.

I agree to abide by the provisions of the Company Secretaries Act, 1980, and the Company Secretaries (Election to the Council) Rules, 2006, and forward herewith the statement pursuant to schedule 4 of The Company Secretaries (Election to the Council) Rules, 2006 as annexed to this nomination form along with three passport size photographs.

Signature of candidate

Name in full:.....

Membership No.:.....

Address:.....

Mobile No.:.....

E-mail ID:.....

Dated ..... day of ..... 2014

## ANNEXURE II

### FORM OF NOMINATION FOR ELECTION TO THE \_\_\_\_\_ INDIA REGIONAL COUNCIL

(See Regulations 114 and 115 read with Rules 5, 9, 10 and 11)

### NOMINATION

We, the undersigned members of the Institute of Company Secretaries of India, not being in arrears this day in respect of our respective annual membership fee for the current year and being eligible to vote under Rule 5 of the Company Secretaries (Election to the Council) Rules, 2006 read with Regulation 114 (1) of the Company Secretaries Regulations, 1982 in the election of members to the .....India Regional Council of the Institute to be held during the calendar year 2014 do hereby nominate ....., who is a Fellow Member of the Institute belonging to ..... India Regional Constituency, as a candidate for election to one of the seats to be filled up for ..... India Regional Council in accordance with the provisions contained in the Company Secretaries (Election to the Council) Rules, 2006 and the Company Secretaries Regulations, 1982.

1. Signature of Proposer: .....

Name:.....

Membership No.: .....

Address:.....

Date:.....





2. Signature of Seconder :.....  
Name:.....  
Membership No.:.....  
Address:.....  
Date:.....

## CONSENT

I, ....., being a Fellow Member of the Institute belonging to the ..... India Regional Constituency, not being in arrears this day in respect of my annual membership fee for the current year, and being eligible to stand for election agree to stand as a candidate for election to one of the seats to be filled up for the said Regional Council in the election notified to be held during the calendar year 2014.

I enclose herewith a demand draft No..... dated ..... for Rs.20,000 (Rupees Twenty thousand only) drawn on .....Bank in favour of the 'Institute of Company Secretaries of India', payable at New Delhi towards nomination fee.

I enclose herewith a demand draft No..... dated ..... for Rs.20,000 (Rupees Twenty thousand only) drawn on ..... Bank in favour of the 'Institute of Company Secretaries of India', payable at New Delhi towards security deposit.

I agree to abide by the provisions of the Company Secretaries Act, 1980, the Company Secretaries (Election to Council) Rules, 2006 and the Company Secretaries Regulations, 1982, and forward herewith the statement pursuant to Schedule 4 of the Company Secretaries (Election to the Council) Rules, 2006 as annexed to this nomination form along with three passport size photographs.

Signature of candidate

Name in full:.....

Membership No.:.....

Address: .....

Mobile No:.....

E-mail ID: .....

Dated ..... day of ..... 2014

## ANNEXURE III

### STATEMENT PURSUANT TO SUB-RULE (4) OF RULE 9 READ WITH SCHEDULE 4

(To be annexed to the Nomination Form for Election to the Council / Regional Council of the Institute of Company Secretaries of India).

a. Name, Membership No., Professional Address and voter's serial number as published in the List of Voters	:	
b. Date of birth	:	
c. Whether Fellow and the date on which became Fellow	:	
d. Date of Enrolment as an Associate member	:	
e. Whether citizen of India	:	
f. Whether found guilty of any professional or other misconduct and consequently whether he has been reprimanded or the name has been removed from the Register or has been awarded penalty of fine as on the date of nomination;	:	
g. If the answer to (f) above is in affirmative, please provide the following details, wherever applicable (separately for each misconduct for which found guilty):	:	
the offence for which found guilty	:	
the date of reprimand	:	
the date from which the name was removed on account of above disqualification from the Register	:	
the total period of removal	:	
the date on which the period of removal expires	:	
whether the removal was on account of misconduct falling under the First Schedule or Second Schedule	:	
the date on which the penalty of fine was awarded	:	
amount of penalty of fine	:	
the date on which the payment was made for penalty of fine awarded;	:	
h. Whether appointed as the auditor of the Institute and, if so, whether a period of three years had already expired after he has ceased to be the auditor of the Institute, along with dates of appointment and cessation as auditor;	:	
i. If the period under (h) has not yet expired, the date on which it shall expire	:	
j. Details of past and present membership of the Council including the Office of the President and/or Vice-President of the Institute	:	
k. Whether holding a post under the Central or State Government as per Section 9(3) of The Company Secretaries Act, 1980	:	
l. The candidate may provide at his option the information concerning the candidate in respect of the following:	:	

a. Academic qualifications (diplomas including post qualification diploma(s) and degrees recognised by Government/Council and membership of professional bodies recognized by the Council);	:
b. Merit awards (limited upto first three positions) in the examinations of recognised universities and the examinations conducted by the Institute;	:
c. Particulars of occupation:-	:
(i) Employment (designation with name of present employer)	:
(ii) Practice (sole proprietor or in partnership including the name of the firm)	:
(iii) Particulars of other occupation/ engagement, if not covered by (i) and (ii) above;	:
d. Past and present membership of Regional Councils and Managing Committees of chapters of Regional Councils and office of Chairman, Vice-Chairman, Secretary and/or Treasurer in the case of Regional Councils and/or chapters of Regional Councils.	:

Signature

## VERIFICATION

I,..... FCS ..... do hereby verify that the information provided in the foregoing statement are true and correct to the best of my knowledge and belief and nothing relevant has been concealed thereof.

Verified on this..... day of ..... 2014.

Signature

## ANNEXURE IV

### FORMAT FOR PROVIDING THE EXPENSES INCURRED BY THE CANDIDATE FOR ELECTION TO THE COUNCIL/REGIONAL COUNCIL

[To be submitted within fifteen days of issue of notification under Rule 36]

The Returning Officer  
The Institute of Company Secretaries of India  
ICSI House  
22, Institutional Area, Lodi Road, New Delhi - 110 003  
Dear Sir,

#### **Re: Filing of account of expenses incurred for election to the Council/Regional Council.**

In accordance with the provisions of Rule 41 of the Company Secretaries (Election to the Council) Rules, 2006, I, ..... a candidate for election to the Council/Regional Council from .....India Regional Constituency, hereby file an account of expenses incurred by me in connection with the election to the Council/ Regional Council of the Institute held in December, 2014.

Sl. No	Item of Expenditure	Amount (Rs.)
1	Total Cost of Stationery including paper purchased for printing circular/manifesto, Visiting Cards/ Pamphlets/ Hand-out/Letters and the like.	
2	Total Printing cost (excluding stationery cost as above).	
3	Total cost of vehicle used (excluding cost of travel by air, train, bus and the like).	
4	Total Travel cost	
5	Total cost of stay, food etc.	
6	Total cost of Postage.	
7	Total cost of Telephone, Mobile, SMS, Fax, E-mail and the like.	
8	Total cost of any other items not covered by the above. (Please specify the names of items also)	
9	Other expenses ( Please specify)	
10	Total (1 to 9)	

I have noted that the ceiling fixed by the Council under Rule 41 of the Company Secretaries (Election to the Council) Rules, 2006 on election expenses (in aggregate under all possible heads) \_\_\_\_\_. Further, I have not incurred any expenditure as a candidate for the election other than those stated in the statement above.

I declare that the aforesaid statement of expenses is true to the best of my knowledge and belief.

Yours faithfully,

(Signature of the Candidate)

Place : .....

Date : .....

Name : .....

Membership No:.....

Address : .....

.....

## ANNEXURE V

### FORM H-1

#### FORM OF APPLICATION SEEKING PERMISSION TO VOTE BY POST

Returning Officer  
The Institute of Company Secretaries of India  
New Delhi 110 003

Dear Sir,

Subject: ICSI Elections 2014

I hereby apply for permission to vote by post under Rule 28 of the Company Secretaries (Election to the Council) Rules, 2006 and give below the necessary particulars:

1. Full name:.....





2. Membership No.:.....
3. Serial No. in the list of voters, if known .....
4. Serial No. and address of the polling booth allotted .....
5. Reason for seeking permission to vote by post .....

(a) there has been a permanent change in my professional address\* from the address published in the list of voters to another place beyond a radius of 30 kilometres from the polling booth allotted to me as given below:

.....  
 .....  
 .....

(b) I am suffering from a permanent infirmity \*\*, particulars of which are given below on account of which I shall not be able to exercise my vote on the date of election at the polling booth allotted to me.

Particulars of permanent infirmity.  
 .....  
 .....

6. Address to which the voting papers should be sent:  
 .....
- Date : .....Place : .....

Signature of the Member

## VERIFICATION

I declare that the particulars given above are correct to the best of my knowledge and belief.

Date:.....

Place:.....

Signature of the Member

\*duly certified by an authorized person of the organization where the member is employed.

\*\*The application in this case must be supported by a certificate from a medical practitioner, not below the rank of a surgeon in any Government Hospital, confirming such permanent infirmity.

# ELECTIONS TO THE COUNCIL & REGIONAL COUNCILS, 2014

Dated 9<sup>th</sup> September 2014

## **ELECTION CODE OF CONDUCT FOR OBSERVANCE BY THE CANDIDATES AND THEIR AUTHORISED REPRESENTATIVES DURING THE ELECTIONS**

With a view to maintain a healthy and peaceful atmosphere during the election process and for ensuring a free and fair election, the following Election Code of Conduct for candidates and their authorised representatives has been approved by the Council and has been issued by the Returning officer and also published on the website of the Institute.

The Election Code of Conduct shall be followed by candidates and their authorized representatives during the entire election process including at the polling booths and counting centres.

The Election Code of Conduct shall be in addition to the Code of Conduct prescribed by the Company Secretaries Act, 1980 and the Company Secretaries (Election to Council) Rules, 2006 ( the Rules) and shall come into force from the date of issue of notification under sub-rule (2) of rule 4 of the Rules.

The Election Code of Conduct is deemed to be guidelines of the Council under clause (1) of Part II of Second Schedule of the Act and is obligatory for each candidate to comply with the Election Code of Conduct.

### **Election Code of Conduct**

The contesting candidates and/or their authorized representatives shall not use any infrastructure, forum including programmes, by whatever name called, manpower, machinery, facilities or communication medium – electronic or otherwise of the Institute, its Regional Councils and Chapters in any manner whatsoever. While there is no bar for participation in an event/programme organized by the Institute and/or its Regional Councils/ Chapters, as an ordinary participant, however, the event/programme shall not be used for publicity/electioneering in any form whatsoever. This restriction is equally applicable to any Study Circle meeting by whatever name called.

No programme announcement shall include name(s) of the contesting candidates.

Proceedings of the programmes already conducted by the Regional Councils / Chapters shall be published only after proper editing so that the name(s) of any contesting candidate(s) is/are not mentioned in the proceedings.

No photograph of a contesting candidate including as part of a group shall be published at any place in the newsletter/journal. In case it is not possible to segregate the contesting candidate from

the group photograph by way of his position in the photograph, the photograph shall be dropped.

The names of contesting candidates shall not be published by way of congratulations for any achievement or by way of elevation, on the move, or in any other capacity.

No publicity of programme(s) and their coverage by the Regional Councils/Chapters, in a manner covering contesting candidates, will be given in any of the journals, news letters or its equivalents or otherwise.

No article, write-up, report, column and the like by any contesting candidate will be allowed for publication/ inclusion in the journal, news letter or its equivalents/ website of any of the Regional Council /Chapters.

No brochure/any other material covering contesting candidates including written communication(s) of programme(s) organized by the Regional Councils and Chapters shall contain the name or reference of any contesting candidate in any manner whatsoever. This prohibition is not however applicable for the brochure/other material as aforesaid already printed for sending to the intended readership or audience, or name required to be given under any specific legal requirement.

No brochure/publicity material including written communications printed in respect of any programme held before or after issue of notification shall contain the photograph/ reference to any of the contesting candidates in any manner whatsoever.

The name of the Editor/Chief Editor should only appear at the back cover of the newsletter in font size not greater than 6 points.

Contesting candidate(s) shall not preside over or share dais, stage, platform and/or participate in:-

- Student Induction Programme (SIP)/Executive Development Programme (EDP)/Professional Development Programme (PDP)/ Management Skill Orientation Programme (MSOP) organised by the Regional Councils and Chapters.
- Study Groups/Study Circle Meetings organised by the Regional Councils/Chapters.
- Act as faculty for Oral Tuition Classes conducted by Regional Councils & Chapters.

Contesting candidate(s) shall not raise any question at any programme organised by Regional Council and Chapters so as to attract the attention of the audience to gain visibility/ publicity.

No interview other than given in a non-professional capacity to newspaper(s), electronic media and the like by contesting



candidate(s) in any manner whatsoever is permissible.

In the event of any invitation being received by a candidate from any other outside agencies such as Industry Associations like CII, FICCI, ASSOCHAM, Chambers of Commerce etc., and Voluntary Bodies like Rotaries, Non Government Organizations etc. for participation in any of their events/programmes etc., in any capacity – professional or otherwise, while there is no bar for participation in such an event/programme, as an ordinary participant, however, the said event/programme shall not be used for the purpose of publicity/electioneering in any manner whatsoever. The restrictions shall be applicable not only for any event/programme held within a candidate's own constituency but outside his constituency including overseas events/ programmes as well. The contesting candidate shall not preside over or share dais, stage, platform likely to have members of the Institute as part of audience.

The contesting candidate shall not preside over or share dais, stage, platform and/or participate in the programmes and activities organised by the Institute, Regional Councils and Chapters and such other programmes as may be specified by the Returning Officer from time to time as speaker, paper setter, faculty member, presenter of bouquets, flowers, garlands, mementoes, gifts or in such other capacity as the Returning Officer might decide from time to time to ensure free and fair elections.

A candidate shall avoid scrupulously all activities, which are corrupt practices, such as providing incentive to voters, intimidation of voters, giving presentations to voters etc.

There shall be a ban on erection of stall, distribution/supply of any gift, refreshment to voters, display of banners, distribution of pamphlets/visiting cards/letters/circulars or any other publicity material including free distribution of books/calendars/diaries/handouts and the like during the election days i.e. 12<sup>th</sup> and 13<sup>th</sup> December, 2014 inside the zero tolerance zone.

There shall be no supply at the polling venue, of refreshment(s) to the supporters or volunteers of candidates.

Organization of parties or participation in any party or providing any form of entertainment, e.g., musical nights and the like, with the direct and/or indirect involvement of the candidate in any form/manner whatsoever is prohibited.

The contesting candidate(s)/authorized representative(s) shall refrain from serving or distributing liquor to the members after coming into force the Election Code of Conduct.

Only one manifesto or circular shall be issued in accordance with rule 42 of the Rules by a candidate in relation to the election

in the period commencing from the date of issue of final list of nominations to the candidates and only the same may be repeated by the candidate in any form including SMS without changing the contents thereof in any manner. Any other communication in relation to the election issued by the candidate in electronic form or otherwise shall be deemed to be second circular and will be in contravention of the aforesaid rule.

The contesting candidate(s) shall not maintain a separate website as a part of electioneering or for the purpose of election. The website maintained by a Firm/member in practice, in accordance with the relevant Council Guidelines is outside the purview of this Code.

The newsletters published in any form including electronic mode shall not use the column "Chairman Page/Writes"; and in replacement thereof, the nomenclature "Committee Writes", "Regional Council Writes" / "Managing Committee Writes" as the case may be, shall be used. Alternatively, it may be a column in the name of "Editorial Board". The name(s) of the editor/publisher of the newsletters etc. can however be printed, wherever the same is legally required to be mentioned.

No candidate(s) or authorized representative(s) shall use any loud speaker near the polling booth for the purpose of transmitting information connected with the election.

Excepting the voters, no one without a valid pass from the Returning Officer shall enter the polling booths. The contesting candidate(s) shall:

- cooperate with the officers on election duty in complying with the restrictions to be imposed on the plying of vehicles on the polling day;
- supply to their authorized representative(s) suitable badges or identity cards to be used in polling booths and counting centres;

After the notification for the election is issued, the contesting candidate(s) shall not announce any financial grant in any form or make promises therefor or announce any projects or schemes of any kind, which may be aimed at influencing the voters.

Notwithstanding anything contained herein above, the Council may cause investigations into the conduct of any candidate or authorized representative in any other circumstances.

**CS Sutanu Sinha**

**Returning Officer and Chief Executive & Officiating Secretary of The ICSI**

# GIST OF PROCEEDINGS OF THE 42<sup>ND</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES HELD ON AUGUST 21-23, 2014 AT SCIENCE CITY, KOLKATA

The 42<sup>nd</sup> National Convention of Company Secretaries was successfully organized on August 21-23, 2014 at Science City, Kolkata on the theme “**CS- Change. Challenge. Opportunity**”. The presence of around 1000 delegates from different parts of country and professionals from abroad as well as dignitaries and distinguished invitees made the convention a grand success.

## OPENING PLENARY

Mr. Saugata Roy, Hon'ble Member of Parliament, Dumdum was the Chief Guest and Mr. C R Choudhary, Hon'ble Member of Parliament, Nagaur was the Guest of Honour and Mr. R K Dubey, Chairman and Managing Director, Canara Bank was the Key Note Speaker at the Opening Plenary. CS Anil Murarka, Past President & Council Member, ICSI and Chairman, Convention Organizing Sub-committee delivered the welcome address, CS Ashok Pareek, Council Member ICSI and CS Arun Kumar Khandelia, Chairman, EIRC of ICSI, introduced the Guests. CS R. Sridharan, President, ICSI delivered the Presidential Address, CS Vikas Y Khare, Vice President, ICSI introduced the theme of the Convention “**CS- Change. Challenge. Opportunity.**” and, CS M. S. Sahoo, Secretary made concluding remarks and proposed a Vote of Thanks.

The Chief Guest Mr. Saugata Roy, Hon'ble Member of Parliament, delivered a very inspiring and forward looking inaugural address, wherein he emphasized the role of Company Secretaries in governance, capital market and compliance. He highlighted the increasing growth of service sector and the challenges and opportunity therein for professionals. He said that the role of Company Secretaries is crucial in case of Chit Funds. He added that Company Secretaries are to adopt change and advise change for development of business. The Companies Act, 2013 imposes direct responsibility as Key Managerial Personnel on Company Secretaries, he added.

The Guest of Honour Mr. C R Choudhary, Hon'ble Member of Parliament complimented the Institute for organizing such a huge convention and appreciated the theme of the Convention. He said that Change is inevitable and one should always go with change. Company Secretaries as compliance officers have a big role to play. He emphasized on skill development for professionals. Challenges provide opportunities for survival, he opined.

Mr. R. K. Dubey, CMD, Canara Bank in his key note address appreciated the role of Company Secretaries in the banking sector. He opined that the Company Secretary is responsible for implementation of all relevant laws applicable to the Companies, more so in certification of Annual Return, Secretarial Audit, Restructuring,

Liquidation, Valuation. Section 203 of the Companies Act, 2013 has accorded an important position to Company Secretaries and provides for compulsory appointment of whole-time Key Managerial Personnel (KMP). Irrespective of their nature of corporate entities such as commercial banks, Regional Rural Banks, Non-Banking Finance Companies, Development Finance Institutions will be better placed where professionally qualified Company Secretaries are employed in view of their diversified knowledge in legal and related fields. The role, functions and responsibilities of the Company Secretary as a key functionary in the corporate hierarchy has become more significant with the process of liberalization and globalization which has ushered in a large inflow of foreign capital compounded by the unprecedented economic growth and consistently improving performance of the corporate sector. With most of the public sector banks going public, the banks in addition to the various statutes and guidelines applicable to the Banks, are also required to abide by the SEBI Regulations and the Listing Agreements of the Stock Exchanges, he added.

CS R. Sridharan, President, ICSI in his Presidential address said that Global economies are witnessing a sea change in the economic, political and technological environment. Governance is needed everywhere, wherever you are using the resources of others, wherever there is an agent and the principal there is a need for governance. The Company Secretaries are the guardians of not only huge funds invested in the corporate but also of the stakeholder trust, and they need to ensure that such trust is not breached. The Companies Act, 2013 substantially enhanced and elevated the role of Company Secretary as it includes him as a “Key Managerial Personnel” in a company. The position of Company Secretary has been equated to the position of Chief Executive Officer, whole time director and Chief Financial Officer. A Company Secretary is instrumental in establishing good corporate governance practices and robust systems, necessary for sustainability and a prosperous economy. The Company Secretaries need to be prepared to shoulder the responsibilities, he added.

CS Vikas Y Khare, Vice President, ICSI while introducing the theme for the Convention highlighted “Change is challenge and opportunity, and not threat”. None of can change past but one can change future. Long time back who sacrificed sleep, family, and laughter were saints now they are Company Secretaries. While referring to the crux of the book, “Who Moved My Cheese?” by Spencer Johnson he said that the Companies Act, 2013 has no less than thirty two major shifts from the earlier Act of 1956 which are like thirty two pieces of cheese what have been moved vis-à-vis the profession of Company Secretaries.

CS Anil Murarka, Past President and Council Member, ICSI and Chairman, Convention Organizing Sub-committee in his welcome





address spoke on “challenges to be converted into opportunity”. He quoted Guru Rabindranath Tagore and his famous sayings, “Ekla Chalo Re”.

CS M. S. Sahoo, Secretary ICSI while proposing the Vote of Thanks expressed his sincere thanks and gratitude to the other dignitaries on the dais for their enthusiastic, energetic and inspiring addresses.

## TECHNICAL SESSIONS

### First Technical Session- Business Environment & Regulatory Changes

The First Technical Session on “Business Environment & Regulatory Changes” was chaired by Mr. P. K. Malhotra, Secretary, Ministry of Law & Justice, Government of India. CS Vinod Kothari, PCS, Kolkata, CS G. S. Gupta, Executive Director, Emami Biotech Ltd., and CS Pavan Kumar Vijay, MD, Corporate Professionals Capital Pvt. Ltd. were the Guest Speakers.

Mr. P. K. Malhotra in his deliberations suggested that there must be a mix of bureaucrats and persons from industry in regulatory authority. Reasons for accepting and rejecting proposals must be given by authority. He opined that different levels of windows must be established from lower to higher level for effective compliance of various laws.

CS Vinod Kothari while giving an overview of the changes in the regulatory environment emphasized on changes with respect to corporate laws, accounting standards, financial sector regulations, stamp law etc. He spoke of control on companies with special reference to loans to directors, independent director, woman director, auditor rotation. He also talked about technological innovations in corporate governance like E-Voting, E-Maintenance of records etc.

CS G S Gupta being quite critical of the recent regulatory prescriptions and amendments in various laws spoke about changes in Land Acquisition Act, changes in Tax Laws, establishing commission with stakeholders for private sector, Issue of licences, corruption etc. and opined that the Government needs to adopt a consultative approach so as not to stifle the corporate sector in the country.

CS Pavan Kumar Vijay while appreciating the adoption of technology by the Government through the e-governance project, apprised the participants about the challenges emanating from the recent technological advancements on the governance landscape and provided practical tips for gearing up to meet the challenges. He briefly threw light on the nuances of E-stamp, E-governance, E-voting, Social media and various mobile Apps. He also emphasized on valuation of companies providing services in the cyber world. He also made a brief presentation on secretarial standards made mandatory under the Companies Act, 2013, and concluded by stating that nothing is permanent in technology except change, and advised use of technology to beat the challenges.

### Second Technical Session – Governance Challenges

The Second Technical Session on the “Governance Challenges” was chaired by Mr. Prashant Saran, Whole Time Member, SEBI. Mr. Sandip Ghose, Director, NISM, Mr. G. V. Nageswara Rao, MD & CEO, NSDL and CS Sanjay Kumar Gupta, Member, EIRC of ICSI were the Guest Speakers.

Mr. Prashant Saran in his opening remarks spoke about the role of CS in changing environment in relation to SEBI and the professional avenues for Company Secretaries in the capital markets. He advised the professionals to keep pace with the dynamic regulatory and business environment and the regulations issued by the financial markets regulator from time to time. He called upon the professionals to work closely with the stock exchanges, in order to ensure better compliance and transparency.

Mr. Sandip Ghose in his inspiring address quoted anecdotes from Mahabharata, and opined that governance is in place ever since the era of the Kaurvas and Pandavas. He opined that essentially the governance is the same and is still important only the mode of governance has changed. In his closing remarks he added that, “If a Chartered Accountant allows me to do business, a Company Secretary allows me to do good business by adopting good governance.”

Mr. G. V. Nageswara Rao during his address opined that it is very difficult to prevent, govern and detect governance malpractices prevalent today amongst the corporate. He observed that the role of Company Secretary is paramount in ensuring good governance practices in the interests of the stakeholders.

CS Sanjay Kumar Gupta during his presentation quoted verses from the Bhagavad Gita relating to human actions, he profusely reinforced his deliberations with the help of quotes from famous personalities emphasized on good governance, and opined that it requires Accountability, Transparency, Compliance and Integrity. He said that ‘Independence is state of mind’. He quoted Chanakya, “let regulator to follow rules before making rules”.

### Third Technical Session – Market Challenges

The Third Technical Session on “Market Challenges” was chaired by Mr. Ashishkumar Chauhan, MD & CEO, BSE. Mrs. Deena A. Mehta, MD, Asit C Mehta Investment Intermediates Ltd. and Mr. G R Bhatia, Partner, Luthra and Luthra Law Offices were the Guest speakers at the session.

Mr. Ashishkumar Chauhan in his opening remarks explained how to convert challenges into opportunities with respect to Companies Act, SCRA, SEBI etc. He observed that the regulatory framework changes over a period of time, multiplicity of regulators is the key challenge.

Mr. G R Bhatia made a presentation on the role of professionals in the dynamic business environment. Treading through the nature of the markets, role of regulators and the present regulatory regime, he

opined that there is a key role for professionals in today's dynamic business environment. Listening is very important. Changes take place from letters to SMS; hence professionals must react according to changes. While concluding, he added that the Competition Commission of India provides a platform to regulate dominance of firms and advised professionals to exploit and further nurture the professional opportunities in the field of competition law.

Mrs. Deena A Mehta in her address commented briefly on the role of WTO in the Indian economy. She observed that there was a need to bridge the gap between household savings and investments. She opined that the biggest challenge today is to bring retail investors into the stock market. She emphasized on the need for simplification of laws and procedures in the interest of the stakeholders.

#### **Fourth Technical Session - Corporate Laws**

The Fourth Technical Session on "Corporate Laws" was chaired by CS U K Chaudhary, Past President, ICSI and Senior Advocate. CS K. Sethuraman, Group Company Secretary and Chief Compliance Officer, Reliance Industries Ltd. and Mr. Somasekhar Sundaresan, Partner, J. Sagar Associates, Advocates and Solicitors were the Guest Speakers.

CS U K Chaudhary in his brief opening remarks emphasized that Company Secretary is to play a key role in changing legal environment especially with change of the Companies Act. He cited landmark judgements on company law to highlight the role of professionals in various aspects of corporate governance.

CS K Sethuraman during his presentation observed that the Regulatory pendulum has swung to far end hence the Company Secretary as an important link between companies and regulators must bridge the gap. He opined that the biggest challenge for Company Secretaries is to keep track on amendments, circulars and notification. He spoke of the challenges and opportunities for Company Secretaries under the Companies Act, 2013 with special focus on Annual Return Certification and Secretarial Audit.

Mr. Somasekhar Sundaresan in his thought provoking address advised that Company Secretaries have the responsibility to see that the compliance is within the consciousness of the statute. Company Secretaries have to be careful and vigilant, and follow the practice of let's move forward and not backward. He observed that law comes into force as reaction to the actions of the society.

#### **Fifth Technical Session – Economic Laws**

The Fifth Technical Session on Economic Laws was chaired by Mr. R. K. Nair, Whole Time Member, IRDA. Mrs. Renu Amitabh, Additional Director, FIU-India and Mr. Ramesh Lakshman, Chartered Accountant were the Guest Speakers.

Mr. R. K. Nair in his opening remarks observed that the Companies Act, 2013 has cast onerous responsibility on Company Secretaries. With the enhanced role and responsibilities under the new law, Company

Secretaries are called upon to play a crucial role as Key Managerial Personnel in governance of companies.

Mrs. Renu Amitabh in her address gave a bird's eye view of the role and functions of Financial Intelligence Unit (FIU), emerging challenges and role of Company Secretaries in assisting the FIU in carrying out its duties. She observed that it is the duty of Company Secretaries to comply with the prevention of money laundering rules.

Mr. Ramesh Lakshman made a very interesting presentation by keeping everybody amused by small video clippings to illustrate what he said. He spoke on corporate valuation with respect to ESOP, Assets, and Business. He emphasized that quality is never an accident but a result of intelligent effort. Gather as much information as you can before conclusion, he added and observed that change, challenge and opportunity can be tricky till end hence apply your intelligence to enjoy fruits, he added.

#### **Sixth Technical Session -Society and Economy**

The Sixth Technical Session on Society and Economy was chaired by Dr. P. Ishwara Bhat, Vice Chancellor, West Bengal National University of Juridical Sciences. Dr. Kunal Sarkar, Senior consultant cardiac surgeon, MEDICA Superspecialty Hospital, Kolkata and Dr. Rajdeep Manwani, Coordinator, Department of Commerce, Jain University, Bangalore were the Guest Speakers at the session.

Dr. P. Ishwara Bhat briefly commented that change is always for betterment. Society is not static but changes due to various factors. He said that economy and society are closely related and economy takes various inputs from society for the wellbeing of all its constituents.

Dr. Kunal Sarkar engrossed the audience with his concept of heart economics, and explained the same by illustrating that the threat to economy is demand and supply of blood. He observed that there was almost 20% loss in the GDP due to loss of human life each year. He said that deficiency of blood in a body leads to lesser energy to heart, ultimately leading to loss of precious human life. He concluded that "a Healthy Nation leads to a Robust Economy".

Dr. Rajdeep Manwani in his heart touching address explained why communication between two human beings fails. He emphasized that, listening to others is important. One can make a difference by contributing to society, he added. He said "If you Live for Society you will Never Be Forgotten, And If you Live for yourself No One will Remember you". He concluded by saying that we need to move from "I" to "We".

## **SPECIAL SESSIONS**

### **Special Session I: Budget and Direct Tax Laws**

Dr. Girish Ahuja, Tax Expert in his delightful Special Address on Budget and Direct Tax Laws observed that the current budget is the best budget on the Income Tax front. He clarified on the various provisions in the budget and the challenges and opportunities it holds

for professionals. He in his very enchanting manner answered to the numerous queries of the participants.

## Special Session II: Governance in Government and In Companies

Dr. M. Veerappa Moily, Hon'ble Member of Parliament while delivering the Special Address on Governance in Government and in Companies, spoke about governance and observed that stagnant minds create immobile system which becomes roadblock to growth, India demands creative thinking in governance. Corporate governance is the system by which business corporations are directed and controlled. There exist important role of independent director hence separate meeting of Independent directors must be held at least once in a year to evaluate effectiveness of board. Role of Company Secretary as Key Managerial Personnel increases, responsibility as friend, guide and philosopher. Companies vanish, making default in filling annual return, huge NPA's in public sector banks, for this good corporate governance is required. He concluded by saying that, "India needs new players and entrepreneurs".

## Special Session III: Seven Steps to Enhance Personal and Professional Excellence

Mr. Ajay Agarwal, Director, Rapid Learning Systems Pvt. Ltd., in his Special Address spoke about the steps and methods by which personal and professional excellence can be enhanced. He kept the audience in awe by presenting various concepts such as 'circle of concern and circle of influence', 'JSK – *Jaano, Samjho aur phir Karo*' and the like. He demonstrated that how each one of us can bring about a change in the society for the good.

## CLOSING PLENARY

Dr. Udit Raj, Hon'ble Member of Parliament, Shri H M Bangur, Managing Director, Shree Cement Ltd., Swami Suparnananda, R K Mission Institute of Culture and Hon'ble Justice Nadira Patherya, Kolkata High Court were the guests at the Closing Plenary.

CS Anil Murarka, Past President and Council Member, ICSI and Chairman, Convention Organizing Sub-committee delivered the welcome address. CS Ashok Pareek, Council Member, ICSI and by CS Arun Kumar Khandelia, Chairman, EIRC of ICSI introduced the guests at the Closing Plenary. CS R. Sridharan, President, ICSI and CS Vikas Y Khare, Vice President, ICSI addressed the session. CS Sutanu Sinha, Chief Executive, ICSI proposed a vote of thanks.

Dr. Udit Raj, Hon'ble Member of Parliament in his inspirational address, discussed the impact of the Companies Act, 2013 on Company Secretaries, and emphasized on the increasing role of Company Secretaries. The country lacks professionalism hence now it's Company Secretaries' turn to rule the lobby, he added.

Shri H M Bangur in his address opined that we are moving from developing to developed economy hence Indian companies are now

able to face and survive the world of challenges. He observed that there was need for lesser compliances and more trust on the corporates.

Swami Suparnananda, in his address said that the goal of human life is self reliance. He also advocated cleanliness, non violence, and truthfulness for humans. He advised the participants to 'Listen to your mind' and 'teach your mind'.

Hon'ble Justice Ms. Nadira Pathreya in her address emphasized that change is part of life and if there is no change life becomes stagnant, she also said imprint your work on life of others. She advised the professionals to play the role of mediator and conciliator to reduce the burden on courts.

CS Sutanu Sinha, Chief Executive, ICSI while proposing a vote of thanks, expressed sincere thanks and gratitude to the dignitaries on the dais for their inspirational addresses.

## INTERACTIVE SESSION

As in the past, an Interaction Session was convened for the members with a view to invite their suggestions for further development and growth of the profession. Several issues of importance to the profession figured during discussion and President clarified them appropriately.

## RELEASE OF PUBLICATIONS

The Convention Souvenir and the following publications of the Institute were released at the Convention:

1. Circulars, Notifications, Orders, Amendment Rules under Companies Act, 2013 – A Compendium
2. Legal & Professional Writing & Drafting in Plain Language
3. E-Voting (Ready Reckoner)
4. Companies Act, 2013 – A Ready Referencer (Revised Edition)
5. Board Committees – A Handbook
6. Independent Directors – A Handbook
7. Guidance Note on Annual Return
8. Corporate Social Responsibility – An Engine for Inclusive Growth
9. FAQs on Companies Act, 2013
10. Challenging Opportunities for Practicing Company Secretaries in Labour Laws
11. Compounding of Contraventions under FEMA
12. Settlement Orders under SEBI Act
13. Listing Agreement Referencer
14. Training Guide

## CULTURAL PROGRAMME

An enthralling magic show by Mr. P C Sorkar (young and porush) at Science City, Kolkata was organised on 21 August, 2014 and lively musical evening with performance by Mr. Amitabh Narayan of Indian Idol fame and Ms. Suswati Mallick, Singer were organized on 22nd August, 2014 at P C Chandra's Green Project, Kolkata.

# COMMENTS FOR SECRETARIAL STANDARDS AND GUIDANCE NOTES

As you are aware, Section 118(10) of the Companies Act, 2013 provides that “every company shall observe Secretarial Standards with respect to General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved, as such by the Central Government”. In the light of this, the Secretarial Standards Board (SSB) of ICSI has revised as per the applicable laws the existing Secretarial Standards with respect to General and Board Meetings issued by the Council of the Institute and sent to the Central Government for their consideration and subsequent notification u/s 118(10).

Now, SSB is in the process of reformulating other Secretarial Standards as well as Guidance Notes based on the Companies Act, 2013 and Rules framed thereunder.

The topics for Secretarial Standards and/or Guidance Notes for reformulation are as follows (priority-wise):

## Existing

1. Related Party Transactions
2. Board’s Report
3. Board Processes
4. Preferential Issue of Shares
5. Register and Records
6. Dividend
7. Affixing of Common Seal
8. Corporate Governance Certificate (Clause 49 of Listing Agreement)
9. Buy Back of Shares
10. Transmission
11. Forfeiture of Shares

## New

1. Structured Agenda, MIS & ATR
2. Corporate Social Responsibility (under Companies Act, 2013)
3. Independent Directors.
4. Registration, Modification and Satisfaction of Charges

Based on the experience gathered and the comments received from various quarters, it has been observed that the corporates follow divergent practices in respect of some of the above and also that they are facing several issues in the implementation of the Act and/or Rules or have identified certain grey areas in the Act and/or Rules in respect of these aspects, which needs to be addressed.

SSB is endeavouring to address these issues while reformulating respective Secretarial Standards &/or Guidance Notes and therefore solicits your comments on such issues, which in your opinion, needs to be addressed in the respective Secretarial Standard or Guidance Note.

Please post your comments on-line at [www.icsi.edu/ssb](http://www.icsi.edu/ssb) under the option “comments for secretarial standards and guidance notes” in respect of the above topics under the below mentioned categories:-

### 1. Law is silent

Under this, we are concerned with situations where neither the Act nor the rules make provision to cover a given situation or the rules have not provided to make an exception where it is otherwise warranted. Under this, you can also list any critical issues or special circumstances encountered by you, which you consider are not addressed in the law and which could be added.

### 2. Law needs clarity

Under this, you may point out any aspect of law which leads to confusion or ambiguity and hence needs to be clarified in the respective Standard/Guidance Note.

### 3. Multiple or diverse Interpretations of any part of the law

If you find any part of the law, which is capable of multiple or diverse interpretations, kindly point out in this section so as to enable us to clarify the interpretation through the Standard/Guidance Note.

### 4. Best Secretarial Practices

Under this, you can share any good practices being followed by your company or other corporates, in respect of any of the above topics, which removes the barriers that might have been hindering corporates from complying with any of the provisions of the Act or Rules and/or facilitates better corporate governance.

For eg.: if you find any law w.r.t. dividend which is capable of multiple interpretation, you may raise and post the same under the topic “Dividend” under the category “Multiple or diverse Interpretations of any part of the law”.

The relevant provisions of the laws applicable, if any to the respective topics and Instruction kits are available on the above link for ready reference.

The last date for posting your comments is Friday, 10th October 2014.

Based on your comments, the Drafts of the Secretarial Standards & / or Guidance Notes would be finalised by the SSB.

Thanks in advance for your valuable time and contribution.

**Pavan Kumar Vijay**  
Chairman, Secretarial Standards Board







## Our Members

### CONGRATULATIONS

**Ms. KAMALJEET KAUR SIDDHU, FCS**, on her being awarded the Degree of Doctor of Philosophy (Ph.D.) in Commerce by Savitribai Phule Pune University for her thesis titled Study of Marketing Strategies of Real Estate Developers in Pune during 2005-2010.

**M. GOVINDARAJAN, ACS**, on his being awarded the Degree of Doctor of Philosophy (Ph.D) in Corporate Secretaryship from Alagappa University, or his thesis titled Telecom Industry Development in India.

**Sh. SIDDHARTHA SWARUP SARKAR, ACS**, on his being joined to act as the Member, Public Service Commission, West Bengal, a Constitutional post, under the order of the Governor, West Bengal w.e.f. 1.08.2014.

### ELEVATION

**Sh. D. K. Sharma, FCS**, Vice-Chairman of Indore Chapter of ICSI on being elevated from Assistant Vice President - Corporate Affairs & Company Secretary to Executive Director & Company Secretary in Flexituff International Limited.

### SPECIAL ISSUES OF CHARTERED SECRETARY

It is proposed to bring out special issues of Chartered Secretary on the following topics during the remaining period of 2014.

- Secretarial Standards and Secretarial Audit (October, 2014) and
- Direct Taxes Code, 2013 (November, 2014).

Members and others having expertise on the aforesaid subjects are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issues. For October special issue on Secretarial Standards and Secretarial Audit kindly send your articles latest by **20th September 2014**.

The articles may kindly be forwarded to :

The Joint Director (Publications), The ICSI, 22, Institutional Area, Lodhi Road, New Delhi 110003.

E.Mail: [ak.sil@icsi.edu](mailto:ak.sil@icsi.edu)

### OBITUARIES

“Chartered Secretary” deeply regrets to record the sad demise of the following members:

**Shri V P KAPOOR** (15.10.1931 – 10.08.2014), a Fellow Member of the Institute from New Delhi.

**Shri ADINATH BANERJEE**, (01.11.1947 – 01.08.2014), a Fellow Member of the Institute from Kolkata

**Shri N R SANYASI RAO**, (18.02.1944 – 07.08.2014), a Fellow Member of the Institute from Visakhapatnam.

**Shri N S NARASIMHAN**, (13.07.1938 – 03.06.2014), an Associate Member of the Institute from Mumbai.

**Shri V SRINIVASAN**, (28.11.1939 – 13.02.2014), an Associate Member of the Institute from Bangalore.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.

### Appointment

## WANTED

### A COMPANY SECRETARY

BEMCO Hydraulics Limited a public listed company engaged in manufacture of hydraulic machines has a vacancy for Company Secretary's post. Salary and allowance commensurate with experience and qualifications.

Members of the ICSI may send their resume to Mr. R. B. Patil, General Manager - Finance and Compliance Officer, BEMCO Hydraulics Limited, Khanapur Road, Industrial Estate, Udyambag, Belgaum 590008.



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Over one million companies in the country are custodians of huge resources of the society and public. They drive the growth of the economy. It is, therefore, imperative that their operations should be so carried out that they exist forever to contribute to prosperity of the society and the economy even as they balance the interests of various stakeholders. This requires care for and adherence to law and justice, ethics, compliance, governance, risk management, conflict resolution etc. A Company Secretary, who is a regulated professional, ensures just that.

**I am a member of ICSI.  
Only I do what I do.**



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