

# Straight from the heart...

**A tête-à-tête with CS No. 6**



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***Sir, you are the 6th member of our ICSI with CS Membership No. 6. Our readers would love to hear about your journey as a student of CS and other courses.***

Prior to 1969, I had passed the examination of Company Secretaryship ('CS') conducted by the Corporation of Secretaries, London (now ICSA) securing highest marks in the World for Accounts paper with International Prize in Accounts award. Post which I have completed **CS in India in the year 1969** with Inter & Final having three subjects each for me. At that time there was no provision of any tuition or classes or teachings and we had to study on our own with the recommended books by the examining Authorities.

After completing CS examination, I underwent in total 6 months training, out of which 5-1/2 months in Tata Group of companies and half a month in ROC, Maharashtra, Mumbai. Training curriculum, among other things, included handling the share dealings in Bombay Stock Exchange of the entire Tata Group of Companies.

In the meantime, I pursued Bachelor's degree in Commerce from the Karnataka University, Dharwad. In the year 1974, I also passed LL.B. examination from the Bombay University.

## ***How the ICSI has evolved over the years?***

The matters relating to CS was originally handled by the Department of Company Affairs in the Ministry of Law, Justice and Company Affairs. Even our examinations were conducted by it with examiners being staff of the ROC. Subsequently, CS was handled by the Company Law Board when it was formed. Thereafter, the Institute was formed as a Company under Sec. 25 of the Companies Act, 1956 as a non-profit making Company. Even in that Company (Institute) my Membership No. was 22 as I had become member of the Institute at very early stage.

In the year 1980, pursuant to an Act of the Parliament, i.e. the Company Secretaries Act, 1980, the ICSI was formed, thereby, the profession of Company Secretary got a statutory recognition.

## ***CS as a profession has been gaining momentum lately – Do you think there has been a metamorphosis?***

Till about 1960 there was no profession of Company Secretaries in India. Sometime in 1960 the Institute of the Corporation of Company Secretaries and the Chartered Institute of Company Secretaries, both of London, started holding their examinations in India. Subsequently, CS in India was also started and ICSI evolved over 20 years as mentioned earlier. During that time there was no much scope for practicing as a Company Secretary, as such.

With statutory recognition of CS in 1980, the profession of Company Secretaries developed and became a full-fledged Profession. With earlier amendment to the Companies Act, 1956 recognizing the profession of Company Secretaries had cemented the growth of profession of Secretaries. Significance of this profession has increased manifold in 21<sup>st</sup> century with amplified focus of corporates on Governance.

## ***Sir, we would like to hear about your Career Progression?***

When I qualified CS in 1969 which was a pre-industrial evolution era in India, there was very limited scope for practicing as Company Secretary. It was rather employment as Company Secretary in the Company, without any statutory recognition or requirement. Hence, I took ‘Sanaad’ for practicing as an Advocate in the year 1974 from the Bar Council of Maharashtra, after passing LL.B. from Bombay University.

Since then, continued advocacy and currently practicing as an Advocate in High Court of Mumbai and Notary, Greater Mumbai. I am privileged to represent the ICSI, New Delhi and the Mumbai Chapter as an Advocate before Mumbai High Court and other Courts in Mumbai.

## ***We would like you to say some ‘Words of Wisdom’ for the benefit of our younger readers***

Of course to start with students should concentrate in their studies, keeping the examination in mind. The answers should be supported with case laws, wherever possible. These days the Institute provides study materials, conducts classes or lectures and the students shall take benefit of the same, in addition to reading various articles in the Journal of the Institute and many more available in web sources.

During training and initial days of career, ponder more in understanding the practical facets and applying theoretical knowledge in resolving them. Theory and practice makes us perfect. CS with adequate concentration and hard work coupled with little bit of external support can develop the career and come up. Of course, there is no substitute for hard work.

## ***Have you had a role model and did you ever draw any inspiration from the role model?***

Unfortunately no one, it is not necessary to have one. If one has someone, it may help in concentrating and studying him/her, so that a few pitfalls may be avoided.

## ***Please explain ‘Success’ in your words and what do you attribute your success to!***

Success means achieving what one had aimed. I had limited resources when I started my career. I am fairly successful in the Profession with comfortable life for myself and my family. I am completely honest in the profession. Honesty is the secret of my success.





## Realm of International Corporate Governance Day



**CS Mahadev Tirunagari**  
Chairman, ICSI-Hyderabad Chapter



**CS Ahalada Rao V.**  
Central Council Member

### Synopsis

Now a days the corporate governance has become a mockery of some statutory requirement and gradually losing its charm and unable to achieve its objectives and hence there are so many scams and frauds happening everywhere in the world.

To emancipate from those restrictive hurdles, a day has to be observed as an International day for Corporate Governance. This article places emphasis on what can be achieved from International Corporate Governance Day – ICGD and what are the benefits for the entire corporate world in India and also the entire Globe.

### The restrictive approach of Corporate Governance being observed so far:

With very noble aspirations the rules and regulations relating to corporate governance were formulated. The main ingredients of Corporate Governance are Transparency, Sustainability, Accountability, Independence and various Disclosures. From the day the Cadbury committee first precluded about corporate governance in its report till the present day, several deliberations happened everywhere and various norms were prescribed. Few are in the mode of 'Comply or explain' and few are in the form of 'mandatory compliances' commanded by statutory authorities and few are pure voluntary actions.

After observing various scams and frauds happening not only in India but across the globe, a moot question arises whether the existing corporate governance norms are really meeting their objectives and are delivering the fruits which they are supposed to deliver. Certainly the evolution of corporate governance has reached a stage and certain level of basic principles are adhered to by and large, by the listed companies. But is that sufficient and can we say that, the corporate world is at its best and really aiding the society and environment in which it is operating? The answer may be a big NO.

## **Corporate Governance is an ethical attribute which should come from within:**

The basic tenet for bringing corporate governance into existence is to bring an ethical flavour among the corporates while performing their obligations. By and large the attribute of ethics should come from within, and one cannot demonstrate and impose upon the other to behave in an ethical manner.

Quite contrary to this basic tenet, all the existing corporate governance norms are in the form of imposing by way of statutory obligation on the companies and the kind of transformation expected out of this imposing is not at all comparable to the level of what an internal ethical attribute can bring.

Initially, to lay emphasis and make the corporate world tune to the requirements of this corporate governance the approach adopted so far is justifiable to certain extent and. Then only we can see the real transformation. The initial push in making governance a practice amongst the Corporates has been fairly achieved. Time has now come to make corporate governance the DNA of the corporate world.

## **Corporate Governance is required only for listed entities:**

This is another plot where again the corporate governance had its restrictive hurdle. Is ethical behavior applicable only for few and the rest can go scot free! Applying the corporate governance norms only to listed entities and leaving all the other business forms itself is a big mistake.

May be the initial approach for making the corporate governance norms applicable only to listed entities because of their size and operations level could be justifiable. But the recent scenario is witnessing rise in unscrupulous transactions in unlisted entities and other forms of businesses. Therefore the need of the hour demands to bring more ethical ways of dealing in the operations of even the unlisted and other form of businesses like Firms, societies, Trusts etc.,

## **Applicability of Corporate Governance – only to corporate vis-à-vis Common Man**

Everyone understands that the corporate governance is only a subject relating to companies. But it is to be understood that the actual beneficiary is the common man. And the common man is totally eluded from this kind of subject.

Let us see this scenario in an illustrative mode. A company is supposed to prepare its financial statements and disclose the relevant items like profit etc., after following all the corporate governance norms like approval from audit committee etc. Tax is to be paid on such disclosed profit to the Government. Government would then initiate all kinds of welfare activities for the benefit of common man out of the taxes collected from the companies apart from others. Can the common man then be far from the purview of corporate governance? If the answer to this question is not known, then an awareness is to be created about the positives of implementing the corporate governance.

## **International Corporate Governance Day**

To emphasize and cater to the above requirements there is a necessity to propose a day as International Corporate Governance Day- ICGD. The reason for having a day as ICGD is, it can provide an option to review the past activities done for evolution of corporate governance and lay a path for the future course of action. This day would also provide an option to share various scenarios being faced in different countries both positive and negative so that the positive things can be implemented in other parts of the world and if any negative things happened, then the entire world can try to find out a solution for such incidents.

**Conclusion:** Let us applaud the efforts of organisations across the world in bringing it into its current form. However, we cannot rest on past laurels. More work needs to be done in this direction There is a need to overhaul the approach of corporate governance from a restrictive nature to more liberated norms covering the aspects of bringing self-regulation, applicability to all kinds of business entities, bringing awareness among the common public about importance of corporate governance in their lives.

This is possible by observing a day as an International Corporate Governance Day.

# Crossing the Milestones...

- An interaction with CS K. R. Radhakrishnan



**CS K.R. Radhakrishnan, B.Com (Hons), FCS**

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**Sir, could you please share with our readers your Career Progression?**

It's been a mixed but memorable journey. As soon as I got my membership, the Company with whom I was employed had embarked on a public issue of a convertible debt instrument. That's when I was moved to Secretarial function way back in 1988 to assist the Company Secretary. I moved from Kolkata to Mumbai. This Company was taken over by another Group in 1989. I was moved again from Mumbai to Delhi. This movement gave me the chance to function independently. While the company was not performing, there were opportunities in areas other than Secretarial which paved way for a toe hold in the activities of larger companies in the Group. In 2006, I got the opportunity to join GE in the commercial finance business vertical to manage the CS function for 4 legal entities out of which one was listed in the stock exchange. In 2009, I was moved to the corporate function to manage some of GE's industrial businesses where the CS support to various legal entities was provided through a Centre of Expertise, which blossomed into Centre of Excellence. At present this model is extended to GE businesses across and is christened as Legal Shared Services. From South Asia stand point we support a bouquet of about 80+ entities.

**GE stands for a world-class compliance culture. How is the Compliance team contributing to this motto for the listed, unlisted and private companies in GE India & South Asia?**

GE's compliance culture is one of the best in the world. Thanks to GE's continuous investment in training and reviews, compliance is etched in the core of every GE employee. Besides the periodical review by the board of directors of the various compliances, there are additional reviews by the Compliance Review Boards. Also every legal entity's regulatory excellence is a blend of compliance to regulatory fulfillment and GE's 'Spirit and Letter' compliances. So compliance comes naturally to all functions that aids in seamless fulfillment.

**Your thoughts on the Companies Act, 2013 and governance trends of 21st Century!**

In my view they are complementary. The CA 2013 has tried to address the regulatory need and balance it with the need for better governance. The CA 2013 is by and large a regulatory law and not a prohibitory one. Except probably one Section which prohibits, the rest deals with approvals at different levels and seeks openness and transparencies in action. There could be an argument that the deep level of openness is hindering some classes of companies, but then this is being addressed in tranches.

**In your view, how has the CS profession grown over the years?**

Certainly it has grown many folds over the years. I now observe that the appointment of company secretaries is more need based than compliance to law. With corporates operating in global environment, good governance practice is wily nily mandated. CS is one of the best placed professions that add value to good governance.

### **What the new entrants to the profession should concentrate more on to shape their career better?**

The new entrants need to expand their horizon and be upto date in terms of what's happening around and how they can blend book knowledge with practices.

### **What are your interests?**

I am an avid follower of Cricket and Football (Soccer). I still play competitive cricket and represent GE in local tournaments.

### **Who is your role model and what inspired you in him/her?**

My role model is a person who was the Director of Finance in one of my earlier employments. I imbibed from him 'clear thinking ability', 'patience' and 'to be a good human being'.

### **How would you define 'Success' and what would you attribute your success to?**

In my view Success is when you achieve what you wanted to achieve. Have a long term plan and break it into smaller milestones. So that every milestone crossed gives a sense of success and each success motivates to cross the next milestone.

## **Chapter Activities – July 2016**

# **Research Symposium on the Companies Act 2013**

The ICSI-Mysore Chapter in association with the ICSI-CCGRT organised a 2 days' research symposium on the Companies Act, on 8<sup>th</sup> and 9<sup>th</sup> July, 2016 under the theme- "Decoding the unsolved mysteries of the Indian Companies Act". The symposium was attended by around 65 delegates from many cities of Southern India.

The event was inaugurated on 8<sup>th</sup> July, 2016 by the Dr. Muthukumar N., President and Whole-time Director of Automotive Axles Limited and Chairman of CII, Mysore. He emphasised the need for research in this time of ever changing regulatory framework. He also called upon the Company Secretaries to concentrate on adding value to the organisations they serve, either as employee or consultant. CS Ramakrishna Gupta, Secretary of SIRC, ICSI and CS Amit Gupta, Management Committee member of NIRC and Member of Research Committee highlighted the need for the research and also briefed the structure of the programme. CS Bhansali M.C., Chairman of the ICSI-Mysore Chapter welcomed the gathering the CS Pracheta M., Secretary of the ICSI-Mysore Chapter proposed the vote of thanks.

The participants of the research symposium were divided into groups and each group was assigned with a Chapter under the Companies Act, 2013. The groups were expected to deliberate on the critical aspects and also improvise the Research material. The next part of the programme was inter-group deliberations where each group presented their views on the critical issues identified by them. This was a brain storming session and was able to open up the debate on such issues. Overall, this symposium helped the participants to develop their interpretational skills and provide a thorough insight into the Companies Act.

CS Amit Gupta, Lucknow; CS Anshul Jain, Mumbai; CS Chidambaram S., Hyderabad; CS Karthik V., Bengaluru; CS Ramakrishna Gupta, Hyderabad; CS Venkataramana S., Hyderabad; CS Thirupal Gorige, Bengaluru were the Mentors for the participants, who were successful in igniting the minds of the participants by their queries on the various chapters of the Companies Act.



On 9<sup>th</sup> July 2016, the symposium concluded with the Release of the 150<sup>th</sup> edition of the eMagazine, followed by the Valedictory session chaired by CS (Dr.) Shyam Agarwal. In his inspiring speech on the occasion, Dr. Shyam Agarwal, called upon the fellow professionals to imbibe integrity in all walks of life, which is a combination of Character, Courage and Consistency. He requested the members to continue their research activities. CS Bhansali M.C., Chairman of the ICSI-Mysore Chapter welcomed the gathering; CS Ajay Madiah B.B., introduced the guests and CS Pracheta M., Secretary of the ICSI-Mysore Chapter proposed the vote of thanks.

## Buying and selling smiles...

A man often bought oranges from an old lady.

After they were weighed, paid for and put in his bag, he would always pick one from his bag, peel it, put a segment in his mouth, complain it's sour and pass on the orange to the seller.

The old lady would put one segment in her mouth and retort, "why, it's sweet," but by then he was gone with his bag.

His wife, always with him, asked, "the oranges are always sweet, then why this drama every time?"

He smiled, "the old mother sells sweet oranges but never eats them herself. This way I get her to eat one, without losing her money. That's all."

The vegetable seller next to the old lady saw this every day. She chided, "every time this man fusses over your oranges, and I see that you always weigh a few extra for him. Why?"

The old lady smiled, "I know he does this to feed me an orange, only, he thinks I don't understand. I never weigh extra. His love tilts the scale slightly every time."

Life's joys are in these sweet little gestures of love and respect for our fellow beings. O God, Grant us always the ability to show such amazing kindness and Gestures

## Words worth Millions

"A gift is pure when it is given from the heart to the right person at the right time and at the right place, and when we expect nothing in return"

"Perform all work carefully, guided by compassion."

"We behold what we are, and we are what we behold."

- Bhagavadgeeta



# e-Tools for the Professionals



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## Power BI

PowerBI (BI stands for Business Intelligence) is an awesome tool to get insight into data which otherwise may not have been possible. Initially it was released as an add on to MS Excel, now available as a separate tool and also as a web application at <http://powerbi.com>



PowerBI transforms data into rich interconnected visualizations. Visualizations are interactive and lets user to slice and dice data making it easy to understand various patterns and trends. For example, if there is a stacked column chart representing sales per interval per category and another pie chart representing quarterly total sales and another line chart showing sales by region, clicking on a section of stacked column chart will reorganize all three charts to show the sales for the category per quarter per region. This would have taken some effort to do it on excel or some other tool, but powerbi makes it very easy. Creating rich dashboards which help derive meaningful conclusions quickly is one of the primary use-case of PowerBI. It also lets asking questions about the data such as "orders from <city> greater than <x amount> in last <days>" to quickly get answers.

PowerBI supports various data sources, as simple as csv or spreadsheet to traditional database to big data. It works with static and real-time data alike to support ad-hoc report generation or a real-time dashboard displaying details on some time window. Get ideas on how PowerBI adds value to various business sectors: <https://powerbi.microsoft.com/en-us/departments/>

Download Desktop version from: <https://powerbi.microsoft.com/en-us/get-started/>

## WPS Office + PDF

### An Android/IOS application

Friends, happy to share with you this month a very useful application for our Smart Phones and Tabs, i.e., WPS Office + PDF, an Android/IOS based office suite application, which allows user to create, view, edit, modify office documents.



**Mr. Manjunath S. Bhat,**  
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This application is fully compatible with MS Office, Google docs and Adobe PDF. Major advantage of the application is that it supports Miracast and by this, user can do presentations using wireless supports like WIFI. The Encryption feature of the application keeps our data secured and safe while sharing the documents through wireless communication.



Specification: Price- Free | Required Android- 4.0 and up  
Latest version – 9.7.3

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# Web Yatra



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A fundamental investment concept is the trade-off between risk and return. This concept is based on two realities i.e., investments and performance of investment. For the purpose of reducing risk individuals or corporates need to assess risk first. Calculating the probability of occurrence of risk means ascertaining the likelihood of actual happening of the risk and its magnitude.

Dear Professional colleagues, while spending time on google, I was amazed to see a wonderful website relating to the risk assessment worldwide, i.e., <http://coface.com/>. Coface is an agency which offers adapted risk prevention, monitoring and protection services to companies of all sizes, nationalities and in all sectors.

Among other tabs available on the site, I specifically draw your attention to ‘News and Publications’ and ‘Economic Studies’. News informs us of interesting articles on contemporary economic developments and Publications helps to download periodical Panorama with analysis of country/sector risks. Economic Studies contains COUNTRY RISKS ASSESSMENT of 160 countries, and SECTOR RISKS ASSESSMENT includes assessment of 12 sectors, from six geographical regions, assessed every quarter. These assessments are based on expertise of Coface and financial data published by over 6,000 listed companies. Both the reports are available freely.

India is rated as ‘A4’ in Country risk assessment and ‘B’ in Business Climate. We can check rating of all other countries and equate which is safe for business. Criteria and rating can be evaluated as below:

- Country Risk Assessment: Drawn up on the basis of macroeconomic, financial and political data. This is an invaluable tool, giving an indication of a country’s potential influence on businesses’ financial commitments.
- Business Climate: Evaluating the business environment involves measuring the quality of a country’s private sector governance – in other words businesses’ financial transparency and the effectiveness of the courts in settling debts.
- Rating: Rating by Coface uses a seven-level ranking, in ascending order of risk, these are: A1, A2, A3, A4, B, C and D.

Most of the reports/information are available for free. If we need specific assessment for our business, we can subscribe to the particular service offered by Coface by paying the agreed charges. I found that Coface is the best site for analysing the risk before investing in any geography and sector. By logging on to <http://coface.com/>, we could save precious time and get expert risk evaluation report at the click of a button.

# Legal 'fiat' to “Sensitive Personal Data or Information” in India

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*Privacy and Data protection law in India is evolving off late, and has progressed meaningfully in 21<sup>st</sup> century. UK and US have explicit and well set laws exclusively for data protection and privacy of citizens since decades, one such comprehensive law is the need of the hour in India. This article scans the development of privacy and data protection law in India with specific emphasis on regulatory norms to handle Sensitive Personal Data or Information [‘SPDI’].*

The evolution of privacy and data protection law in India can be analyzed in three phases:

## **Phase I - Article 21: Right to Life includes Right to Privacy:**

Until the year 2000, in the absence of a separate law, judiciary has balanced and safeguarded the privacy rights in India under Article 21 of the Constitution i.e., ‘Right to Life and Personal Liberty.’ As early as in 1963, the Supreme Court of India in *Kharak Singh vs The State of U.P.*, has evaluated that though Constitution contained no explicit guarantee of a ‘right to privacy’, it read the right to personal liberty expansively to include a right to dignity. Justice Subba Rao, in a minority judgment in this case, held that the right to personal liberty is not only a right to be free from restrictions placed on movements, but also free from encroachments in private life. In the last resort, a person's house, where he lives with his family, is his 'castle' it is his rampart against encroachment on his personal liberty. Observations of Justice Subba Rao in *Kharak Singh case* was a firm foundation laid to cover right to privacy under Article 21 in subsequent cases.

Sprouting of right to privacy has confronted major setback when the Apex Court in *Govind vs. State of Madhya Pradesh* observed that “Too broad a definition of privacy will raise serious questions about the propriety of judicial reliance on a right that is not explicit in the Constitution. The right to privacy will, therefore, necessarily, have to go through a process of case by case development....It could not be that under these freedoms the Constitution-makers intended to protect mere personal sensitiveness.”

Since right to privacy is not specifically defined in the Constitution, elucidation in rulings found insufficient to provide satisfactory protection to the data and privacy. By the end of 20<sup>th</sup> century, with increased usage and storage of personal data in cyber domain, an effort was made in the Information Technology Act, 2000 [‘the IT Act’] to protect privacy rights for data in e Devices.

## Phase II - The IT Act:

The IT Act 2000 as amended by 2008 provided stringent penal consequences for theft or damage of data in a computer system/electronic devices. **Section 43A** of the IT Act provides that if a **body corporate** handling any SPDI in its computer resource is negligent in implementing reasonable security practices and procedures shall be liable to pay damages to the person affected. **Section 72A** of the IT Act provides **imprisonment** for a term which up to **three years** or fine up to rupees **five lakh** or **both** for disclosure of personal information in breach of lawful contract or without consent of the information provider. The IT Act by 2009 placed the right track to take privacy and data protection in India to the next level.

## Phase III - The IT (Reasonable security practices & procedures and SPDI) Rules, 2011 ['the Rules']:

Ministry of Communications and IT has notified the Rules on 13th April 2011 under Section 43A of the IT Act prescribing reasonable security practices & procedures and SPDI. Further, the Ministry has clarified that the Rules are not applicable to BPOs in India while receiving SPDI from entities within or outside India. The Rules broadly cover following vital features of privacy when received from natural persons:

### ❖ Meaning of SPDI [Rule 3]:

SPDI of a person means such personal information which consists of information relating to:

- a) password
- b) financial information like Bank A/c or credit card or debit card
- c) physical, physiological and mental health condition
- d) sexual orientation
- e) medical records and history
- f) Biometric information
- g) any of above info provided to *body corporate* for providing service
- h) any of above info received by *body corporate* for processing under lawful contract

### ❖ Obligations of body corporate or person collecting/handling SPDI:

- a. Publish in website a comprehensive '*Privacy Policy*' for handling personal information [Rule 4]
- b. Obtain *consent in writing* via letter/Fax/email from provider for the purpose of usage [Rule 5(1)]
- c. DO NOT collect SPDI unless it is for *lawful purpose* relating to activity of body corporate and is necessary for that purpose [Rule 5(2)]
- d. Apprise SPDI provider that: (i) information is being collected; (ii) Purpose of collection; (iii) intended recipients; (iv) Name & address of agency collecting as well as retaining SPDI [Rule 5(3)]
- e. DO NOT retain SPDI for longer than duration required for the purpose [Rule 5(4)]
- f. Permit SPDI provider to *review and correct info* provided earlier if found inaccurate [Rule 5(6)]
- g. Allow SPDI provider to *withdraw the consent* given earlier [Rule 5(7)]
- h. Keep SPDI *secure* at all times [Rule 5(8)]
- i. Publish name & contact of *Grievance Officer* who shall address the concern within *1 month* [Rule 5(9)]

### ❖ Key elements of Privacy Policy of body corporate [Rule 4]:

- a. Clear statements of its practices and policies
- b. Type of SPDI being collected as per Rule 3
- c. Purpose and Usage of SPDI
- d. Disclosure of SPDI to third party only if part of contract or necessary to comply with legal mandate
- e. Reasonable security practices and procedures adopted by the body corporate

### ❖ Reasonable Security Practices and Procedures by body corporate [Rule 8]:

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# A student forever...

Words of wisdom from CS K. Satyamurti



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## Sir, could you please share with our readers your Career Progression?

Let me chart out the journey - after passing ICWA inter (9 papers) in the first attempt, I got appointed as Cost Assistant in IDPL, (Indian Drugs & Pharmaceuticals 1967, Chennai. After passing ICWA Final in 1970, promotions happened consistently and I had the opportunity of working at Calcutta, Hyderabad and was controlling finance of marketing divisions of Chennai, Bangalore and Cochin. In 1984, I joined Andhra Pradesh Paper Mills, at Rajahmundry as Class I Officer, in-charge of Costing Department. In the year 1985, I became a Member of ICSI. In the year 1987 I joined Hindustan Paper Mills Ltd., Belagula, Mandya Distribution as Manager (Internal Audit) getting promoted as Sr. Manager (Finance). In 1990, I was transferred to Assam (Nawgang) Factory of HPC. I was appointed as the Company Secretary the same year, while continuing to be the Internal Auditor.

Post retirement, in the year 1997 went to Muscat (Oman) to join my son. During my stay there I qualified both in CIMA. (UK) & ACCA. (UK). But I have not opted to become Associate member of those two Institutes.

For about 6 years I taught Costing, Finance, Auditing, Statistics, and Management at NICE Institute, Muscat and addressed at seminars organized by the Institute for Corporate Managers. I Returned to India in the year 2014.

## 2. How CS profession has grown over the years?

The CS profession has grown tremendously with increased demand for Company Secretaries and with good pay and perks.

## 3. What do you think the new entrants to the profession concentrate more to shape their career better?

A bright future awaits the new entrants. The new entrants must be thorough with the subjects they learn. A mere pass alone will not suffice. The students must bear in mind that a Company Secretary occupies a senior position in an organisation. Of all the various officers in a company, the only recognised officer as per Law is the Company Secretary under most statutes. Moreover, as the Company Secretary has to work directly, under the M.D/CEO of the company, he should be well-versed with the Company Law, possess managerial qualities, boldness in conducting Board meetings, have polite behaviour, good manners etc.

#### 4. What are your thoughts on the Companies Act, 2013, governance and compliance trends of 21st Century?

According to me, the Indian Companies Act 2013 has provided much better Control towards governance and a clear direction towards compliance trends

#### 5. What are your interests?

My interests are in teaching deserving candidates, who have the passion to succeed in life as a professional. I continue to teach even now. One of my very notable students in Mysore is Ms. Sarina, FCS, ACMA. I am glad that she succeeded in CS and CMA courses under my mentorship.

#### 6. Who is your role model and what inspired you in him/her?

My role model was my mother who is no more now. She had tremendous will power to face the toughest life situations patiently and to succeed ultimately. Her strength of character has profoundly influenced me and has been a guiding force in my life.

#### 7. What is 'Success' and what is the secret of your success?

According to me 'success' means to overcome 'failure'. Not getting success is an indication of that there is some slackness or gap somewhere in one's efforts. Therefore one should overcome that Slackness / gap, if he/she wants to get success in his/ her goal. Secondly, though one can't completely overcome 'failure', it is necessary that one should not be afraid of failure(s), but there must be a proper planning and continuous review of the efforts taken so far till success is achieved.

## Legal 'fiat' to "Sensitive Personal Data or Information" in India

... Continued from page 35

### ❖ Reasonable Security Practices and Procedures by body corporate [Rule 8]:

- A body corporate is said to meet the 'Reasonable Security Practices and Procedures' if it has implemented security standards and has comprehensive documented information security programmes that commensurate with the sensitivity of the information being protected.
- The International Standard IS/ISO/IEC 27001 on IT-Security Techniques-IS Management System is one such standard which body corporates may implement to adhere to reasonable security practices.
- If members of any industry association are self-regulating by following its code of best practices, such code shall be approved by the Central Government.
- A body corporate is deemed to have complied with reasonable security practices if the standard or code is certified / audited on a regular basis through independent auditor approved by the Government. The audit shall be carried at least once in a year or when there is a significant upgradation.

Right to privacy is not an absolute right, has reasonable restrictions to it. Among powers under other laws, the Government can interfere with data under **Section 69** of the IT Act if satisfied that it is necessary and expedient in the interest of sovereignty of India, defense and security of the State, friendly relations with foreign countries, public order or for preventing agitation of any cognizable offence.

With raging controversy over snooping in India, it is high time that government promulgates much awaited **Personal Data Protection Bill**, a proposed explicit and exclusive legislation to protect right to privacy in India, unfortunately still in queue since 2006! Once specific law is enacted, it is 'implementation' and 'jurisprudence' of law which would extend material benefits to the society and would help moving forward on par with global benchmark.



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# Non-Compete Clause in Employment Contract Whether tenable in the eyes of law?

Very often we come across situations that at the time of separation from the services of the employment that an employee is asked by his employer to sign an undertaking not to join its competitors or not to disclose or divulge any technical information or information which may have substantive adverse impact on the Company by its disclosure to any third party. The first thing which comes to our mind is that:

- A. Whether an employer can ask an employee to sign such undertaking?
- B. If yes, under what circumstances such undertaking is valid?
- C. If no, what are the reasons for the same?
- D. What is the legal status of such clauses as on date under any of the applicable legislations?

This article is an attempt to throw some light by making critical observations of various provisions of applicable laws and its tenability in the court of law.

### Non-Compete Clauses:

Competition is the **“WORD”** which no Organization or Individual can dare to ignore in the present disruptive business world. An Organization or an Individual will be competitive only when it / he has edge over its competitors / peers. Such edge on the part of Organization could be in terms of having innovative technology / processes, product / services that distinguishes itself from its competitors which is precisely known as **“Intellectual Property Rights”** and in case of Individual, the expertise which makes him to stand class apart from his peers which in precise terms is known as **“Ability to Create Value to an Organization by whatever name called”**. In either of the cases, both Organization and an Individual have to protect itself / himself from being infringed of their respective competitiveness. Organizations tend to protect competitiveness by imposing **“Non-Compete Clauses”** on employees at the time of making offer of employment and same clause contained in Employment Contract, enforceable both during the subsistence of employment as well as after its cessation.

### What is a Non-Compete Clause in relation to an Employment Contract?

A Non-Compete clause in relation to an employment contract is one of the terms of employment contract in which an employee abstains from competing with his employer during the subsistence of employment or after its cessation.

Such abstinence may take the form of not to carry out any similar business which the employer is presently carrying on or disclose any material information about its business to any third party without its consent or not to join its competitors after cessation of services, etc.

## Are these Non-Compete Clauses tenable?

A contract of employment should be an agreement enforceable by law. It should meet the essential requirements of a valid contract specified under Section 10 of Indian Contract Act, 1872. As such, any covenant which restricts an individual from exercising his legal right for excelling in his individual capacity will be void to such extent. This means, an individual cannot be restrained from enjoying the freedom of trade and commerce. Every man should have an unfettered liberty to exercise his powers and capacities for the benefit of his own and the community.

## What does the provision of Indian Contract Act, 1872 provide for in relation to restraint on trade or employment?

**Section 27** of the Indian Contract Act states that every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void and unenforceable.

What section 27 provides is that the agreement is totally not void but only that part which imposes restraint on exercising a lawful profession, trade or business of any kind is void to that extent only.

Section 27 has not recognized any difference between total restraint and partial restraint of trade. Whether the restraint is general or partial, unqualified or qualified is not a matter, if the agreement is in the nature of restraint of trade, it is void to that extent.

## Are there any exceptions to Agreement in Restraint of Trade?

There are certain exceptions to Section 27 which recognizes the restraint on trade. They are:

- A. Exception created by Statutes
  - i. Sale of Goodwill
  - ii. An agreement under Indian Partnership Act, 1932
- B. Exception created by judicial interpretations of Section 27
  - i. Trade Combinations
  - ii. Exclusive Dealing Agreements
  - iii. **Restraints upon Employees** - Trade secrets, names of customer, all such things are objective knowledge and these may not be given away by a servant. They are his master's properties. A servant may therefore be restrained from taking part in any business in direct competition with that of his employer.

## When the exceptions are tenable?

If the restraint can be enforced on an employee, then the question is when such restriction can be imposed upon?

Restraint on employee in the form of non-compete clause can be imposed **only during the subsistence of the contract of employment and not beyond that**. It means, when an employee is still in the service of the employer, the doctrine of restraint of trade prevails but not after his cessation from the services of the employer.

Negative covenant post the cessation of employment which is usually termed as **"Garden Leave"** wherein an employee is offered compensation from his employer for not joining its competitors and to remain idle for certain period is found to be hit by the provision of section 27 of the Indian Contract Act, 1872 and therefore not tenable in the eyes of law. In similar lines, any undertaking taken by the employer from his employee to be operative post the cessation of service in the form of ***non-disclosure agreement, non-solicitation agreement or non-compete agreement are not tenable in the eyes of law.***

## Some notable case laws related to Employee's Non-Compete Clauses:

1. The principle of agreement in restraint of trade and commerce unless affecting the interest of State is not confined to restraints of trade in the ordinary sense of the word "TRADE", but includes restraints on the right of being employed. (**Nirnjan Shankar Golikari Vs. Century Spg. And Mfg.Co.Ltd., AIR 1967 SC 1098**)

2. Negative terms of the contract i.e. preventing / restraining an employee from not working with the competitor during the continuance of employment is **not void** to such extent but would be considered **as void** post cessation of employment whether voluntarily by the employee or by dispensation of services by the employer. (*Superintendence Co. of India Pvt.Ltd Vs. Krishan Murgai*, AIR 1980 SC1717)
3. Whether restraint is general/specific or totally /partially qualified / unqualified, if it was extending beyond the term of services – it is void. (*Madub Chunder Vs. Rajcoomar Doss*, (1874) 14 Beng LR 76 at pp.85-86)
4. Employee covenants in agreement should be carefully scrutinized, because there is inequality of bargaining power between the parties; and, more often than not, no bargaining power, especially in cases where the employee was presented with a standard format form of contract that he had to either accept or reject. (*Superintendence Co. of India Pvt.Ltd Vs. Krishan Murgai*, AIR 1980 SC1717)
5. Former employer seeking to enforce an agreement to restrain the employee from adopting and using any of the processes invented by the former employer in a subsequent employment is void. Reason being an employee cannot be restrained from using knowledge which he gained during the course of his previous employment forever. (*M/s. Sociedade de Fomento Indl. Ltd Vs. Ravindranath Subraya Kamath*, AIR, 1995, Bom 158)
6. Negative stipulation contained in a Franchise Agreement restraining the franchisee from dealing with competing goods was to facilitate the distribution of goods of the franchiser and could not be regarded as restraint on right to trade. (*Gujrat Bottling Company Ltd. Vs. Coca Cola Company*, AIR 1995 SC 2372)
7. Unclear, obscure, unreasonable and uncertain confidential negative covenants are unenforceable. (*Polaris Software Lab Ltd., Vs. Suren Khiwadkar*, 2004 I LLJ 323 : 2003 (3) Mah.L.J. 557 (Mad. HC)
8. Negative covenant between Master and Servant is viewed strictly by the Courts. (*Niranjan Shankar Golikari Vs. Spinning & Manufacturing Co. Ltd.*, 1967 I LLJ 740 (S.C. 2J)

**From the above discussion and judicial pronouncements, it is quite evident that;**

1. An employer can impose a negative covenant i.e. non-compete clause but only during the subsistence of the employment and not beyond the term of employment.
2. A negative covenant beyond the terms of the contract of employment will be considered as void even if it is reasonable, as in India it is the statutory provision which is considered to decide whether such restriction is valid or void and not on the basis of its reasonableness as it is the case in England i.e., under English Law.
3. As on date, in India, the status of law on “Non-Compete Clauses” or “Negative Covenants” relating to employment contract cannot be enforced after the cessation of employment contract.
4. Reasoning as on date for not accommodating the negative covenant post-employment contract is by virtue of section 27 of the Indian Contract Act, 1872 which states every individual has right to freedom of trade and commerce guaranteed under Indian Constitution & legislature, and a mutual contract cannot take away individual’s fundamental freedom of trade and commerce.

In a nutshell, any agreement by an employer with his employee restraining exercise of such employees’ right to excel in his profession, trade or commerce post-employment contract is void to such extent. Such terms may only be an attempt on the part of the employer to create some sort of physiological impact in the minds of the employee but cannot withstand the test of law, as on date, in India. However, there are certain amendments proposed to accommodate such negative covenants provisions in the Indian Contract Act, 1872, but it is yet to be incorporated.

In the meanwhile, any compensation received by the employee for abstaining himself from any actions which may affect his former employer’s competitiveness, is treated as income from business and profession and accordingly taxable under the Income Tax Act, 1961. But this premise cannot justify the “Non-Compete Clause” imposed by the employer subsequent to cessation of employment.





## Learners' Corner

# Foreign Account Tax Compliance Act (FATCA)

## What is FATCA?

The Foreign Account Tax Compliance Act (FATCA) is a United States federal law passed in 2010. FATCA is a broad, complex set of rules designed to increase tax compliance by Americans with financial assets held **outside** the United States. The main intention of this law is to curb the evasion of tax by US tax payers who have unaccounted overseas Financial Accounts/Assets.

## Implementation – US law on FIs abroad:

FATCA requires all Foreign Financial Institutions (FFI) to submit reportable Financial Accounts details of US Persons. Enforcement of FATCA on FFI by requiring US financial institutions to **withhold 30%** of the payments made to FFIs who do not agree to identify and report information on US Persons. Seeing this implication, many FFI's across the world have registered with US Internal Revenue Service (IRS) under FATCA. On the other hand, countries have come forward and signed Inter Governmental Agreement (IGA) with the US to implement FATCA in exchange of information.

## FATCA & India:

Government of India (GoI) has signed IGA with the US on 9 July 2015, accordingly FI's in India are required to report tax information about US Persons to GoI which will, in turn, transmit that information to the US IRS. Most importantly, the US IRS will provide similar information about Indian citizens having any accounts or assets in the US to GoI. Due date of Reporting for calendar year 2014 was fixed as August 31, 2015 and for every subsequent calendar year by 31 May. While FATCA creates complicity on Banks & Financial Institutions in India, helps GOI and US to find tax evaders and save national interest!

## Common Reporting Standard (CRS):

CRS, developed in response to the G20 request and approved by the OECD Council on July 15, 2014, calls on signatories to obtain information from their FIs and automatically exchange that information with other jurisdictions on an annual basis. Idea of CRS is based on US FATCA and is called global version of FATCA.

GOI has, on June 3, 2015, joined the Multilateral Competent Authority Agreement (MCAA) with other G20 & OECD countries for implementation of CRS on Automatic Exchange of Information (AEOI) for exchanging information as required. The CRS requires Banks/FIs of the "source" jurisdiction to collect and report information to their tax authorities, information on account holders "resident" in other countries annually. India will start exchanging of information in 2017.

## Exception from Reporting under FATCA & CRS

The Accounts as mentioned in the below table are not required to report:

**... Please see the table in Page 43**

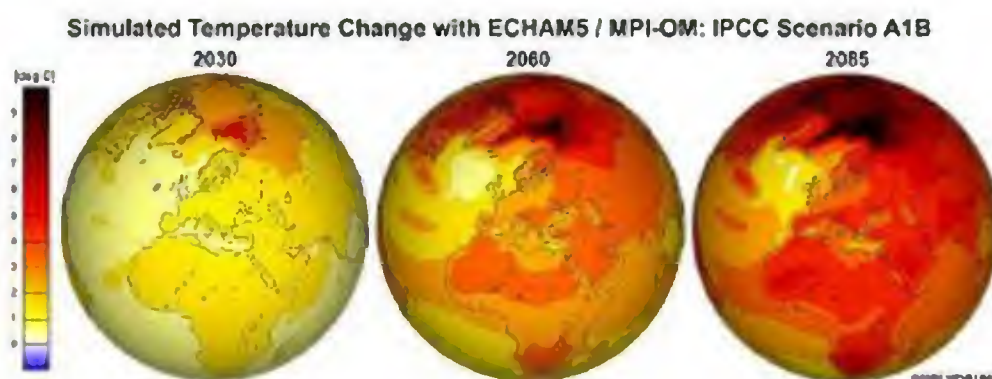


## Climate change: Act before it's too late

Changes in climatic conditions are natural and unavoidable, but the current changes in climate cannot be considered as ordinary and acceptable because of its range of degree of change are enormous in nature. Hence, this article mainly focuses on how climate is getting changed and its impact on survival of mankind. Firstly, let us try to know what climate change actually means. "Climate change" may be defined as a vital and long-lasting change in weather conditions over the periods ranging from decades to millions of years.

### Why should we be worried about climatic changes?

Our food system, our economies, our cities and our communities and a host of other things are influenced by climatic changes. Surprisingly, the average temperature on Earth has increased by more than half a degree



Celsius over the past 100 years, which cumulatively resulted as huge degree of change in climatic conditions.

The 1980s and 1990s were the warmest decades on record, the average global temperature is expected to rise by 1.4°C to 6.4°C and if that is the case, the mankind

survival may become impossible in many parts of the world.

### CAUSES OF CLIMATE CHANGES

Climate changes are mainly caused by different types of gases and materials in our atmosphere; including huge amounts of carbon dioxide and methane, resulted by human activities such as extracting and burning fossil fuels and clearing forests etc. These gases release heat to the atmosphere and finally increase the temperature of the climate.

Deforestation amounts to increase in greenhouse gases in the atmosphere and increased speed and severity of global warming. The quickest solution to deforestation would be to simply stop cutting down trees for any of the purpose.

### Adverse Affects Of Climate Changes

Increase in the overall temperature of the earth affects the climate of many parts of the world in different ways. Rise in temperature and changes in climate will cause - Increase in Droughts and floods, Scarcity of food items, Increase in Heat waves, Wildlife will be at risk, Melting ice caps, Increased sea levels, Severe storms etc.

Apart from above, Climate changes will also impact adversely on Agriculture, Wildlife and Economy as a whole which may finally make the survival of mankind very difficult.

## What we can do?

Around the world, many of the communities were already struggling to handle the impacts of climate change. Moreover, everyone will be affected by changes in climate in one or the other way. Hence, everyone's actions and voluntary support can only make a difference.

Many Scientists have estimated that by 2050, we all must reduce worldwide emissions to at least half of their 1990 levels in order to keep away from the harmful impacts of climate change and it's a vital challenge and it requires an equally urgent response. To control the adverse impacts of climate change, we mainly need to reduce the amount of greenhouse gases we put into the atmosphere and in particular, we need to reduce the amount of carbon. Further, following are the other remedies to control of the adverse impact of climate change:

1. Increasing less polluting energy generation industries.
2. Adopting new agricultural methods
3. Control of deforestation
4. Carbon sequestration, etc.

**“Changes in climate are restructuring human development and progress. How we all responsibly respond to climate change will determine the future of mankind”**



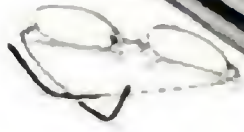
# Foreign Account Tax Compliance Act (FATCA)

*... Continued from Page 41*

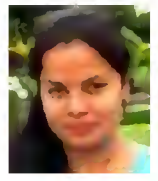
The Accounts as mentioned in the below table are not required to report:

Classification	FATCA	CRS
Pre existing Individual accounts	- Account Bal (30th June 2014) < \$ 50,000 - Account is cash value insurance contract and account bal (30th June, 2014) < \$ 250,000	- cash value insurance/ annuity contract, prevented from sale to an Indian resident
Pre existing Entity accounts	- Account Bal (30th June 2014 or subsequent calendar year) < \$ 250,000	- Account Bal (31st Dec 2015 or subsequent calendar year) < \$ 250,000
New Individual Accounts	- a depository account with account balance < \$50,000 at the end of any calendar - a cash value insurance contract with account balance < \$50,000 at the end of any calendar	- No Threshold limit available. All new accounts should be reported
New Entity Accounts	- No Threshold limit available. All new accounts should be reported	- No Threshold limit available. All new accounts should be reported

# News Room



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## News express...

- ✚ In the wake of slapped duties of up to 450 percent on the steel products from China, threatens WTO case over US
- ✚ Ukraine to raise issue in WTO of Limited Goods Transit by Russia
- ✚ US-FDA has approved the medicine 'Absorb', the first fully absorbable stent, to treat coronary artery disease. 'Absorb' has been available in India over the last three-and-a-half years.
- ✚ India set to take up the Bilateral Investment Treaty as a negotiating tool to get the US to sign the long awaited Totalisation Agreement and Visa issue
- ✚ US-based NGO, Compassion International working for child rights, put on GOI watch list
- ✚ CREDAI alleges cement price cartelisation again, plans to move to CCI
- ✚ Government is investigating dumping of non-woven fabric from 5 nations to protect domestic industry from cheap imports
- ✚ SEBI set to allow e-commerce firms to sell mutual funds
- ✚ Labour Ministry to bring amendment to Maternity Benefits Act by increasing duration of maternity leave from 12 weeks to 26 weeks

## Model Shops and Establishment Act for India

Cabinet clears Model Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2016. This model law allows cinema halls, restaurants, shops, banks and other such workplaces to be open 24X7. The Bill will now be sent to States/UTs to enable them to modify their individual Acts, if they so desire either by adopting the said Bill as it is or after modifying its provisions as per their requirements. You will find key highlights and synopsis of the Bill at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=146627>

## WTO's assessment of China's trade policies and practices

WTO held its sixth review of China's trade policies and practices in Geneva from June 20 to 22. The world trade monitoring body's conclusive message was that "the basic national conditions of China as a big developing country have not changed and will not be fundamentally changed despite its economic development achievements".

## Competition Commission rejects complaint against Wiley India

CCI has rejected allegations that Wiley India abused its dominant position by imposing unfair terms and conditions with regard to the subscription services on its agents.

## Cygni Energy Is First Firm To Benefit From Start-Up India

Hyderabad-based Cygni Energy has won the distinction of being the first company to avail of the benefits offered by the government under Start-up India Action Plan. The renewable energy company founded a year ago will now file for patent under the fast-track mode meant for startups.

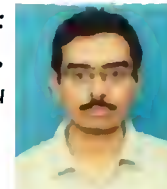
## Farmers to get short-term loan at 7% interest rate in FY17

Under the interest subvention scheme approved by the Cabinet on Tuesday, farmers will get loans of up to Rs 3 lakh for a period of one year at an interest rate of 7 per cent. The Cabinet also approved an additional subvention of 3 per cent for those farmers who pay loans on time.

# Regulatory Updates

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## CUSTOMS & FTP

### Notifications/Circulars/News

The Central Government has specified the requirement for obtaining security in the form of Bank Guarantee from importers for the purpose of transit of goods within the bonded area as well as storage of sensitive and non-sensitive goods in the bonded warehouse on the basis of period of storage. - [No. 21/2016-Customs, dated 31 May, 2016](#)

The Central Government has introduced the procedure for filing of ex-bond Bill of Entry (BoE) through Indian Custom EDI System post that the bond officer shall verify, and permit the clearance of goods from the warehouse for home consumption. - [No. 22/2016-Customs, dated 31 May, 2016](#)

The Central Government has clarified that the importer shall be required to pay interest for storage of goods beyond the specified period at the time of ex-bonding of goods from the warehouse. - [No. 23/2016-Customs, dated 1 June, 2016](#)

The Central Government has clarified that the importer will be required to furnish a solvency certificate from a scheduled bank with value equivalent to the duty involved on the goods proposed to be stored in private bonded warehouse. However, EOUs/ EHTP/ STPI units, Central Government, State Government or a Union territory administration or their undertakings are not required to file such certificate. [No. 24/2016-Customs, dated 2 June, 2016](#)

The Central Government has extended the levy of anti-dumping duty on imports of Polytetrafluoroethylene, falling under CTH 3904 61 00 of Chapter 39 of CTA, originating in or exported from Russia, for a period of five years from 6 June, 2016. - [No. 23/2016-Customs \(ADD\), dated 6 June, 2016](#)

The Central Government has extended the levy of anti-dumping duty on import of Pentaerythritol, falling under Chapter 29 of CTA, originating in or exported from the People's Republic of China, up to 13 June, 2017. [No. 26/2016-Customs \(ADD\), dated 13 June, 2016](#)

### Case Law

The Calcutta High Court held that Hollow Fiber Dialyzer and Blood Tubing Line were classifiable under Customs Tariff Heading (CTH) 9018 90 31 pertaining to "renal dialysis equipment" (artificial kidney, kidney machine and dialyzer) instead of CTH 8421 29 00 pertaining to filtering or purifying machinery and apparatus for gases. It held that when a specific entry was available for classification, goods could not be classified under a general entry. [Sanwar Agarwal v. CC \(2016 \(336\) ELT 42\)](#)

The Supreme Court held that spectacle lenses were classifiable as "finished spectacle lenses" under CTH 9001 40 90 and 9001 50 00 and not as "semi-finished spectacle lenses" under CTH 9001 90 90 merely because the spectacle lenses were finished post customisation as per the customer's prescription. - [Essilor India Pvt Ltd v. CC \(2016-TIOL-87-SC-CUS\)](#)

The Chennai Tribunal held that if Maximum Retail Price (MRP) declared in one BoE was accepted, then MRP of same goods imported in another BoE at the same time could not be rejected, unless there was cogent evidence of undervaluation. [Simla Trading Corporation v. CC \(2016 \(335\) ELT 481\)](#)

The Kolkata Tribunal held that, for determination of export duty, it was not permissible to consider the Free on Board price of export goods as cum-duty price.

[CC v. Sesa Goa Ltd \(2016 \(335\) ELT 745\)](#)

The Mumbai Tribunal held that royalty for transfer of technical information and know-how for production of goods could not be included in the value of imported raw material if there was no restriction in the import agreement to purchase raw material necessarily from a related overseas supplier.

[Scheneclady Herdillia Ltd v. CC \(2016 \(335\) ELT 525\)](#)

The Mumbai Tribunal held that if the benefit under any notification had not been passed to an importer due to malfunctioning of the EDI system, then refund of such excess duty paid by the importer could not be denied merely for the reason that the assessment of BoE was not challenged by the importer. - [Steel Authority of India v. CC \(2016 \(336\) ELT 95\)](#)

The Supreme Court held that no customs duty was payable in case the importer received the goods in a completely unsuitable or damaged form, which could not be put to any further use. - [CC v. Bakelite Hylam Ltd \(2016 \(335\) ELT 673\)](#)

The Chennai Tribunal held that the departmental authority could not raise a new ground before the Tribunal that had not been placed before adjudicating authorities or lower appellate authorities.

[CC v. Kwang Sung Brake India Pvt Ltd \(2016 \(335\) ELT 520\)](#)

The Delhi High Court held that the authorities could not continue to retain seized goods without issuing a SCN within the statutory time-limit, particularly when the importer had already deposited the custom duty leviable thereon.

[Sai Incorporation v. PR Commissioner of Customs \(Import\) \(2016-TIOL-1118-HC-DEL-CUS\)](#)

The Mumbai Tribunal held that the duty paid on import of goods that were re-exported after being found unsuitable for use should be refunded by re-crediting the duty in Duty Entitlement Pass Book (DEPB) Scheme, even if import and export were from different ports.

[J K Industries v. CC \(2016-TIOL-1360-MUM\)](#)

The Mumbai Tribunal held that in case the importer was a 100% EOU, there was no need to interfere with the Special Valuation Branch Order accepting value of imported goods even when there was a payment of technical assistance fee, since there was no impact on customs duty payment due to increase in valuation.

[CC v. ASB International Pvt. Ltd. \(2016-TIOL-1392-MUM\)](#)

The Chennai Tribunal held that conversion of free shipping bills into drawback shipping bills was allowed, even after three months from the date of export, subject to verification of documentary evidence, since there was no time prescribed for amendment under Section 149 of Customs Act.

[Global Calcium Pvt Ltd v. CC \(2016-TIOL-1290-MUM\)](#)

The Ahmedabad Tribunal held that if the excise duty had been discharged on the finished product on clearances made by an EOU to Domestic Tariff Area in excess of the permissible limit,

the customs duty could not be levied on the imported raw material used in the manufacture by EOU.

*CCE v. Cupro Recyline Pvt Ltd. (2016 (335) ELT 753)*

The Supreme Court of India held that the benefits of DEPB scheme were available from the date of notification and not from the date of Circular issued by Central Board of Excise & Customs since the latter was only administrative in nature.

*Shell Exports (Kandla) v. Uol (2016 (336) ELT 10 (S.C.))*

## Ministry of Corporate Affairs

### Notifications/Circulars/News

**MCA issues Companies (Acceptance of Deposits) Amendment Rules, 2016:** On 29<sup>th</sup> June 2016 MCA has amended and expanded the list of exempted Deposits under the Companies (Acceptance of Deposit) Rules, 2014, gist of key changes are as below:

#### ✚ Amendment in the existing Rule 2(1)(c):

- Under existing sub-clause (ix), compulsory convertible bonds or debentures convertible within a period of five years are included in 'exempt Deposits'. Now, compulsorily convertible bonds or debentures convertible within a period of ten years are included in 'exempt Deposits'.
- Under sub-clause (xi), any non-interest bearing amount received or held in trust. The word 'or' has been replaced with 'and' to clarify that any non-interest bearing amount held in trust is exempt from the ambit of 'Deposit'.

#### ✚ Amendment in the existing Rule 3 - specifying limits for acceptance of deposits from members:

- In sub rule (3), limits for accepting or renewing any deposit from members of a public company has been increased from '25%' of the aggregate of the paid-up share capital and free reserves of the company to '35%'.
- For private companies, a separate limit has been prescribed for acceptance of deposits from its members. Private companies may accept from its members, deposits not exceeding 100% of the aggregate of the paid up share capital, free reserves and securities premium account. For public companies, securities premium account is not available in calculating such limits.
- Further, the company has to file details of monies so accepted from members to the Registrar in the manner as may be prescribed.

#### ✚ Amendment in the existing Rule 4:

- Advertisement inviting deposits has to be posted on the website of the company.
- Advertisement in Form DTP-1 now contains a Disclaimer paragraph.

#### ✚ Amendment in the existing Rule 5

- An exemption has been granted from obtaining deposit insurance till March 31, 2017, or till the availability of a deposit insurance product, whichever is earlier.

#### ✚ New Rule 16A Disclosure in Notes to the Financial Statement

- In case of private companies - money received from the Directors and their relatives.
- In case of other companies - money received from the Director.

*Companies (Acceptance of Deposits) Amendment Rules, 2016  
No. 1/8/2013-CL-V dated 29th June 2016*

## Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016 Amended

On 30<sup>th</sup> June 2016, MCA has issued captioned amendment largely containing following two changes:

- ✚ eform MR 1 is **not** required to be filed for appointment of CEO, CS & CFO.
- ✚ Limit on disclosure requirements in Board's report relating to employees remuneration is revised as follows:
  - Disclosures in Board's report by a Listed Company relating to comparison of remuneration of Directors and KMP to company's performance have been substantially reduced;
  - Board Report to state the name of top 10 employees in terms of remuneration drawn; and
  - Board Report to provide details of employees whose salary is Rs 1 Crore 02 lakh p.a. / Rs 8.5 lacs p.m. (instead of employees whose salary is Rs 60 lakhs p.a. / Rs 5 lakhs p.m.).

*No. 1/5/2013 CL-V dated 30th June 2016*

### Appointment of Auditors

In the Companies Act, 2013, in section 139, in sub-section (2), for the third proviso, the following proviso shall be substituted, namely:-

"Provided also that every company, existing on or before the commencement of this Act which is required to comply with the provisions of this sub-section, shall comply with requirements of this sub-section within a period which shall not be later than the date of the first annual general meeting of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act."

*Appointment of auditors - Companies (Removal of Difficulties) Third Order, 2016 No. 1/33/2013-CL-V dated 30th June 2016*

### CENVAT Case Law

The Mumbai Tribunal held that the process of cutting/ slitting of cold rolled or hot rolled coils/ plates of various lengths, widths and thicknesses into coils of specific widths and cutting them into sheets after de-coiling amounted to manufacture.

*Jindal StainlessSteelway Ltd. v.CCE (2016 (335) ELT 57)*

The Ahmedabad Tribunal held that Dew Drop Process undertaken for enhancing the attributes and attractiveness of fabric did not amount to manufacture.

*Shivam Textiles v.CCE (2016 (335) ELT 66)*

The Delhi Tribunal held that CENVAT credit was admissible on a reconstructed bill of entry attested by Customs authority when the original copy was lost.

*Balkrishna Industries Ltd v.CCE (2016 (335) ELT 559)*

The Delhi/ Mumbai Tribunal held that a demand of 5% of the sale price was not applicable in cases where the exempted product emerged as an unavoidable waste or by-product during the course of manufacture of the dutiable product.

*N.S. Ispat Pvt. Ltd. v.CCE (2016 (335) ELT 540) & A R Sulphonates Pvt Ltd vCCE (2016-TIOL-835-CESTAT-MUM)*

The Ahmedabad Tribunal held that Rule 16 of the Central Excise Rules did not require maintenance of any separate records for availing credit on returned goods, and that credit could not be denied when the assessee had recorded the receipt of returned goods in RG-1 register.

*CCE&ST v.V.V.F Ltd (2016 (335) ELT 485)*

The Delhi Tribunal held that loss of a certain quantity of coal due to removal of ash content, mud and fines during the coal washing process would be considered as arising during the course of manufacture of final product and that CENVAT credit was admissible on such process loss.

*Real Ispat and Power Ltd v. CCE (2016-TIOL-805-CESTAT-DEL)*

The Kolkata Tribunal held that CENVAT credit was admissible on items, namely, rails, sleepers, joints, crossings, etc. used inside the factory in the railway network for transportation of raw materials, semi-finished, finished goods and also in the overhead cranes.

*Tata Steel Ltd v.CCE (2016-TIOL-881-CESTAT-KOL)*

The Allahabad Tribunal held that CENVAT credit was admissible on services received at retail outlets from where the excisable goods were sold after clearance from the factory. - *Sports and Leisure Apparel Ltd v.CCCE&ST (2016-TIOL-887-CESTAT-ALL)*

“Electrical energy was neither an excisable goods nor an exempted goods, hence demand for amount of 10% of the sale price of electricity was not sustainable in law.- *Bajaj Hindustan Ltd v.CCE (2016-TIOL-902-CESTAT-ALL)*

“Supplementary invoice was issued only for the value and duty difference in respect of the goods that had already been supplied to the appellant. Therefore, it was not correct to say that no goods were supplied under the supplementary invoice, and credit was admissible on such supplementary invoice.

*Bunty Foods India v.CCE (2016-TIOL-915-CESTAT-MUM)*

The Supreme Court held that extended period of limitation could not be invoked when the assessee entertained a bona fide belief of non-excisability of products and there were contrary judgements of the Tribunal on said products.

*CCE v.Kolety Gum Industries (2016 (335) ELT 581)*

The Delhi Tribunal held that provision of unjust enrichment was not attracted when the discount amount had been passed to the customer through credit note duly certified by a Chartered Accountant, and the refund arising from the finalisation of assessment was shown as “claim receivable” under the head “Loans & Advance” in the books of account.

*Saint GobainGyproc India Ltd v.CCE (2016 (335) ELT 120)*

In the revision petition filed before the Department of Revenue the Government of India held that non preparation of ARE-1 could not be treated as minor or technical procedural lapse for the purpose of availing the benefit of duty free clearance of export goods.-*N.V.R. Forgings (2016(335)ELT794)*

## **GST (VAT, Sales Tax and Entry Tax)**

### **Case Laws**

The Maharashtra Sales Tax Tribunal held that Transferable Development Rights received towards construction of buildings and tenements were liable to VAT. The Tribunal observed that under the Maharashtra VAT Act, a sale covered not just the sale of goods for cash or deferred payment, but also for “other valuable consideration.” Therefore, the assessing authority should compute the value of goods involved in the execution of works contract for levy of VAT.

*M/s. Sumer Corporation v.the State of Maharashtra [TS-244-Tribunal-2016-VAT]*

## **Service Tax**

### **Notifications/Circulars**

Services provided by a senior advocate by way of legal services to a person other than a business entity and to a

business entity with a turnover up to INR 1,000,000 in the preceding financial year have been exempted.

*No. 32/2016-Service Tax dated 6 June, 2016*

Representational services provided by a senior advocate before any court, tribunal or authority have been brought under reverse charge mechanism.

*No. 33-34/2016-Service Tax dated 6 June, 2016*

KKC has been exempted in cases where the invoice for the service was issued on or before 31 May, 2016, if the provision of service was completed on or before 31 May, 2016.

*No. 35/2016-Service Tax dated 23 June, 2016*

Service tax on transport of goods by vessel from outside India up to a customs station in India has been exempted where invoice was issued on or before 31 May, 2016, if import manifest or import report required to be delivered under Customs Act has been delivered on or before 31 May, 2016, and service provider or recipient produces Customs-certified copy of such import manifest or import report.

*No. 36/2016-Service Tax dated 23 June, 2016*

CBEC has issued clarifications on scheme of partial payment of refund claims of accumulated CENVAT credit by service providers as follows:

- “Statutory auditor” for issue of certificate refers to an auditor who prepares the financial statements under the Companies Act, 2013, and it cannot be issued by a Cost and Management Accountant or a Company Secretary.
- The certificate of the statutory auditor/ Chartered Accountant has to be provided in the format prescribed. General disclaimers will result in rejection of the certificate. As long as the four points to be certified as per circular no. 187 are present, the certificate should not be rejected on grounds of disclaimers that have to be provided owing to the guidance notes issued by the Institute of Chartered Accountants of India.

*No. 195/05/2016-Service Tax dated 15 June, 2016*

### **Case Laws**

The Delhi High Court held that no service tax could be levied on sale of under-construction property in the absence of any provision under the law or under any rules to determine the value of taxable services in composite contracts involving sale of land. The Court held that grant of abatement by notification could not overcome the lack of statutory provisions to ascertain the value of taxable services.

*Suresh Kumar Bansal v.Union of India and ors. (TS-231-HC-2016(DEL)-ST)*

The Delhi High Court held that rule 5A(2) of the service tax rules, which authorised the service tax authorities to seek production of documents, was ultra vires the Finance Act, 1994 (that governs levy of service tax) and struck it down. The Court also held that verification as mentioned in Finance Act, 1994 could not be construed as audit of accounts of assessee.

*Mega Cabs Pvt. Ltd. v.Union of India and Ors. (2016-TIOL-1061-HC-DEL-ST)*

The Hyderabad Tribunal held that there was no requirement to reverse common CENVAT credits, when services were provided in the State of Jammu and Kashmir as well as in rest of the country.- *Ramboll IMIsoft Pvt. Ltd. v.CC, CE&ST (2016-TIOL-1536-CESTAT-HYD)*

The Mumbai Tribunal held that once the authorities had audited the records of the assessee and no objection was taken in the audit, the demand raised by invoking the extended period was unsustainable. - *Sanjay Automobile Engineering Pvt. Ltd. v.CCEX (2016-TIOL-1314-CESTAT-MUM)*