For Private Circulation Only

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

PUNE
CHAPTER

Shreyas Apartment Condominium, CTS No. 1654+1655, Survey No 50, Gananjay Society
D. P. Road, Kothrud, Pune 411 038
tel 020-2539 3227, 25393229 **email** pune@icsi.edu **Website** www.icsi.edu

ICSI -WIRC Pune Chapter Newsletter

॥ संहिता ॥

॥ यः क्रियावान् स सचिवः ॥

A Capsule of Information for Corporate Professionals

May - 2022, Issue - 4, Pages - 30

Special Issue

Contents:

1. Chairman Communique
2. Article
   - PCS and Compliance Risk
   - Mega/Multidisciplinary Firm
3. Doctrine
4. Regulatory Updates
   - MCA
   - SEBI
   - FEMA
5. Landmark Judgement under IBC - 2016
6. Chapter Updates and Photographs

Chairman's Communique

Respected Seniors, Professional Colleagues and Dearest Students,

While I was about to start writing my communique for the May 2022 issue of Sanhita e-newsletter, we were about to enter in June 2022 and we celebrate this month as 'PCS Month'. Hence, it was decided to release this issue as a 'Special Edition' on the occasion of 34th PCS Day i.e. 15th June.

The day, 15th June 1988 was a historic day for the Company Secretaries and the Institute of Company Secretaries of India (the ICSI) in the journey so far. This was the day, when the Company Secretaries in Practice were accorded recognition for certifying the Annual Returns under the erstwhile Companies Act, 1956. It was the first milestone in the development of the profession of Company Secretaries the Practice side in India. Needless to mention, it was only due to the relentless and ardent efforts of the ICSI and the then Officials of the ICSI who got this done for our Profession. Since then, we have been celebrating 15th June as the 'PCS Day' every year to commemorate the first recognition and efforts of the ICSI for the CS Professionals in practice. The journey didn't stop there. Thereafter also our Profession has bagged many recognitions under various laws, to mention a few among them are under Company Law, SEBI, FEMA, Consumer Protection and many more.

It is very well said by Bryant McGill, a great author and Founder of Peace Price Foundation that "Empowerment comes from self-realisation and recognition of our internal gifts, which we already have".

We as Company Secretaries undertake multiple roles. We are legal experts, we have specialised, in depth, extensive knowledge and expertise in various corporate laws, economic laws, securities laws, foreign exchange laws, various labour laws, corporate governance, etc. We as Company Secretaries not only act as the Compliance Officers but also act as Chief advisor to the Board of Directors on best practices in corporate governance and also responsible for various regulatory compliances of the company. Besides, Company Secretaries also represent before various regulatory, quasi-judicial authorities under various laws at various forums. Inherently, we carry a large amount of knowledge of versatile subjects and that makes us entitled to get recognition and authorisation.

I firmly believe that if you work hard and do things in the right way, recognition will automatically come to you. It is a matter offact that to ensure transparency and accuracy in compliances, Government and other Regulators are reposing more trust and are imposing more responsibilities on us by giving recognition in Certifications and Attestations. With a wide range of recognition so far now gained by the Company Secretary profession, we are now self-reliant and over the period of 34 years, this itself speaks volume of our resilience and significance to the stakeholders.

The contributions of the Company Secretaries are much beyond compliance. For more than three decades, we have been helping to contribute to the growth prospectus of the economic transformation of India. There cannot be any transformation without challenges and hence with best corporate practices and maintaining highest ethical standards in the corporate governance, we as Company Secretaries are helping in the nation building.

As part of the celebration of PCS Month, we, at Pune Chapter for the entire month of June 2022, are planning various activities for the benefit of the members. To bring opportunities to members and with an objective of creating interest and inclination towards research among the members, Pune Chapter of WIRC of ICSI (the Pune Chapter) is organizing Research Paper Competition - 2022 for its members by inviting them to write an original research paper on various contemporary subjects. Further, in view of CS being considered to be an expert in interpretation of laws, with an objective of creating interest in opinion writing among the members, we are also organizing an opinion writing competition for the members. I appeal to all the members to participate in maximum numbers in these initiatives and competitions being organised by the Pune Chapter. To create awareness towards environment protection and in order to celebrate 5th June as World Environment Day and to promote the Company Secretaries in practice to adopt unique initiatives of office systems, SOPs, ERP, operational automation in their offices based on the system driven technologies and also to motivate them, we had also come out with a few key initiatives for the members wherein we are appreciating to the PCS Firms.

The ICSI is also organising 23rd National Conference of Practicing Company Secretaries on 18th & 19th June at Lonawala, Pune wherein we as Pune Chapter are playing key role. Registrations are open for the conference and I urge all the members to attend this conference in maximum number to experience rich knowledge, quality food & hospitality, beauty of nature & adventurous activities and networking with our fraternity friends.

In this month, we conducted various members and students activities. To focus on sharing complete knowledge of FEMA and enrich our members extensively on the subject i.e. right from key definitions and intricacies, FDI, ODI, ECB, LRS, Due Diligence, procedure, including exemplified role of professionals including regulator expectations, we organised Two Days Non-residential Conference on "FEMA मंथन". Also organised Study Circle Meeting on 'Law of RERA & Opportunities for CS', Pune Chapter rolled out Zone wise SCMs by organising joint program with District Industries Centre (DIC), Pune and all SCM Zones on 'Demystifying - MSME, Corporate Governance, Financials & Board Report'. On the front of Student activities, recently we have completed 3rd MSOP batch of the year.

In this special issue of Sanhita e-newsletter, we are, dedicatedly, focusing on emerging areas of Practicing Company Secretaries, dimensions of growth prospectus, changing role of PCS in view of the stakeholders expectations, Concept of Mega Firms / Multi-Disciplinary Partnership Firms (MDPs), scope, role of PCS in corporate world, etc. I am thankful to all the Authors for their continuous and wholeheartedly support and contribution by writing Articles on various subjects of interest of members for this special issue of Sanhita e-Newsletter.

I am also thankful to the 'Team Editorial Board' and 'Volunteers' for their special efforts for releasing this 'Special Edition' on the occasion of PCS Day i.e. 15th June.

Happy reading...!!!

Yours Sincerely,

CS Sanjay Patare

Chairman,

Pune Chapter of WIRC of ICSI

Editorial Board

Chairman : CS Sanjay Patare

Members : CS Shantanu Jagtap, CS Rohit Gokhale, CS Kanchan Limaye, CS Nawaj Sayyad, CS Sandeep Kulkarni

Articles Collection and Co-Ordination Group

CS Amit Atre, CS Kalyani Shirode, CS Neeraj Modi, CS Nikita Navindgikar, CS Rahul Patil, CS Sameer Siddheshwar

PCS and Compliance Risk

CS IP Sandeep Kulkarni
Email : ipsandeepkulkarni@gmail.com

There's no reward without work, no victory without effort, no battle won without risk.
— Nora Roberts

Introduction

Role of Company Secretaries is changing drastically, with the constant amendments in the laws and with the advancement of technology. Corporates are becoming more and more demanding as regards their legal compliance. Also,Government has set very high benchmarks of expectations for Professionals.

Ministry of Corporate Affairs (MCA) has gradually started shifting from V2 version of its system, to V3 version. V3 version for LLPs is live now and for Companies it will soon become operational.MCA V3 version ismicro-services architecture with high scalability and capabilities for advanced analytics. This new version will have additional modules for e-adjudication, e-consultation and Compliance Management System. Further it is designedto strengthen enforcement, promote ease of doing business, enhance user experience, facilitate seamless integration and data exchange among regulators.

Compliance Risk Management by PCS

On one hand, these changes in the laws and technology, are opening new doors of ample opportunities for Company Secretaries, on the other hand they are carrying high level of professional risks.15th June 2022 being PCS Day, Pune Chapteris celebrating June 2022 as PCS month and thusthis article tries to throw light on the key risk areas to which Practicing Company Secretaries are exposed and ways to overcome such risks.Now a days we often hear about notices being sent to professionals or disciplinary proceedings or criminal actions being initiated against professionals due to several reasons. Some of the reasons behind such notices or actions may be:

i. MCA'saction against Chinese Scammer Companies; or

ii. Action on account of wrong pre-certifications by professionals;

iii. Knowingly or unknowingly filing falseinformation or forged documents with MCA;

iv. Management Disputes in to the Companies, due to which complaint against professionals;

v. Contravention of provisions of applicable laws;

vi. Non-Compliance of professional code of conduct prescribed by ICSI;

Risk Areas and ways to overcome such risks.

1. Formal Written Appointment / Engagement Letter while taking up assignment:

In case of appoint of Practicing Professionals on annual retainership basis, generally they enter into formal Service Agreement or Engagement Letter (EL) or Consulting Agreement with the Companies. Generally, MNCs or professionally managed Companies do not avail any services or make any payment to any party against goods or services, without a formal agreement. However sometimes the assignments come through reference of other professionals or the Companies are very small which does not follow such formal procedures. In such scope of work and professional fees, although mutually agreed, is not documented. In absence of such documentation professionals may face following difficulties:

I. As the scope of work is not defined and documented, clients may expect, more services

which are outside the scope, without payment of additional fees.

ii. Formal Engagement has evidential value which can be referred to in event of differences or disputes as regards payments or services. Oral agreement will lack such benefit.

iii. In almost every MCA form which is filed online, professionals are required to declare that they have been appointed and engaged to certify / submit the form with MCA. Without having such formal engagement, well documented, it will be difficult for a professional to prove such appointment before authorities, if required.

iv. Sometimes clients give assignments over call or during oral discussion on the basis of which professionals initiates the work. Later, after passage of time, may be due to change in circumstances, client may change the mind or modify the nature of assignment. By that time, professional or his team has already spent much time on such assignment which results into wastage of time and efforts. Having formal document defining scope of work, requires the client, think many times, before signing such agreement.

It may not always be possible, to enter into an agreement due to several reasons like urgency of work or location of parties, etc. In such case the professional may require the client to engage him or assign any work over an email.

Documenting mutual understanding gives clarity to both the parties about their expectations and commitments. Parties also get sufficient time to understand the roles, responsibilities, duties, liabilities and returns. Where any of the parties are not comfortable with the terms, they may straight away deny such understanding.

2. Use of Digital Signature Certificates and submission of MCA forms through own login:

In India, Information Technology Act (IT Act), passed in 2000, granted e-signatures the same legal status as handwritten signatures. Professionals while doing statutory filings with authorities, are required to generate and obtain Digital Signature Certificates and use those digital signatures on behalf of clients, on various Government portals. Risks associated to Digital Signatures include:

- Being portable in nature, Digital Signature Certificate can be lost or misplaced or damaged easily.
- Shifting of blame by clients on the professionals, if anything goes wrong, especially in management dispute Companies and allegations of misuse of DSC.
- Knowingly or unknowingly misuse of digital signature by staff or trainees at office.
- Risk of digitally signing the documents which are false or erroneous.

Above risks or such other risks associated to use of DSC of clients, can be mitigated and reduced by Professions by:

- By educating the Directors and providing training, they can be advised to use their own digital signature on their system. This may not be practical in all cases especially in case of Directors who are not techno savvy. But if at least 10% of Directors agree to digitally sign MCA forms at their end (either themselves or with the help of their staff), time, efforts and risk associated to DSC can be overcome.
- Where it is not possible to advise the Directors to use their own DSC, role of professionals become more difficult. They must use the DSC on behalf of Companies, strictly under the written consent stating proper purpose of such use. In event of urgency, such consent can be obtained through email.
- Keeping digital signatures in safe custody under lock and key. Passwords of digital signatures must be known only to the authorised persons and simple passwords my not be given to the tokens.
- Inward and outward signatures to be taken while movement of DSC from office to client

place or at any other consultant's office.

Myth about precertification of MCA e-Forms:

There is a myth in the minds of many professionals that submitting e-Forms with MCA, which do not require professional's pre-certification, and only use of his / her own login does not make him / her liable for any adverse consequences. It is true that with pre-certification of forms, the onus is undoubtedly there, on such professional. But mere use of login for filing any forms, also makes such person liable for adverse consequences.

3. Documentation in case of events-based MCA reporting:

In case of small and closely held family companies, meetings are not conducted as formally as big and professionally managed companies. Generally, in case of such companies, for giving effect to any event-based filing (like Change in Directors, Address Change, Name / Address change, etc) professionals generally prepare or take signatures only on those documents which are mandatorily required to be filed with MCA. Other documents are prepared and then signed at later stage.

This practice of preparing partial documentation of event-based compliance is highly risky. Therefore, it is advisable to prepare full set of documents i.e right from Notice of Board Meeting till preparing Certified Copies of Resolutions required for filing with MCA along with forms, without keeping anything pending.

4. Statutory Records, Registers, Common Seal and Share Certificate Records:

Companies are required to maintain Statutory Register, Records, Common Seal, if applicable and Share Certificates. Also, certain statutory declarations and disclosures are required to be made to the Companies like Form MBP 1, DIR 8. In case of small companies, this is most ignored compliance which is of high risk for professionals. Creating and updating records within prescribed time, provides peace of mind to the Directors and also protects a professional, especially in event of due diligence, statutory audits, etc.

5. Strictly abiding the Professional Code of Conduct prescribed by ICSI:

Members must strictly abide by the Professional code of Conduct of Company Secretaries, prescribed by ICSI. While taking up any assignment, whether it is mandatory or not, it is advisable to inform the previous incumbent about takeover of such assignment. Preferably a call may be made to such previous incumbent to understand the nature of client, background of management and its company, payment history and risks associated in the assignment.

6. Three layers maker checker system of forms / documents to avoid mistakes:

Through various seminars or while address professionals, MCA officers express their concern over quality of documentation and submissions made by professionals. There are number of clerical or sometimes serious mistakes committed in the documents / forms filed with MCA. Section 447 and 448 Companies Act 2013 hold the professionals liable for penal consequences.

In order to avoid such risk of getting notices from MCA, professionals must be extremely careful while doing their work. They may adopt a two- or three-layer maker checker system so that no such mistakes / errors take place. Further, Compliance management software my be used by Companies or professionals to avoid the professional risks. A proper and extensive compliance calendar may be prepared and shared with clients, so that due dates are not missed.

7. Strict compliance of Secretarial Standards (SS)

MCA has notified SS 1 (Board Meetings) and SS 2 (General Meetings) and pursuant of Section 118(10) compliance of Secretarial Standard is mandatory. If SS 1 and SS 2 are observed by the Company in true spirit of law, it will minimize the risk of management disputes. Professionals are also protected from the risk of non-compliance of any procedures. Secretarial Standards develop habit of discipline in Board and General Meeting procedures. They not only facilitate integration, harmonization and standardisation of diverse

secretarial practices, but they also help in building an effective corporate governance culture.

8. Obtaining Original Signed & sealed documents from management

Technology may sometimes be a boon and some times become a curse. Now a days, then few documents are sent to Directors for their signatures, instead of actually printing and signing the documents, they paste their signatures on those documents with the help of some software. Such system can sometime may be misused by any other person. Documents are tampered or fabricated through system and sent to us. This is done so efficiently that it is practically impossible to make out whether particular document is really scanned copy of original one or a tampered document. In order to avoid such risk, it is always advisable to ask for original documents for verification along with photocopies or scanned copies. Risk of submitting false or tampered documents with MCA can be mitigated in this manner.

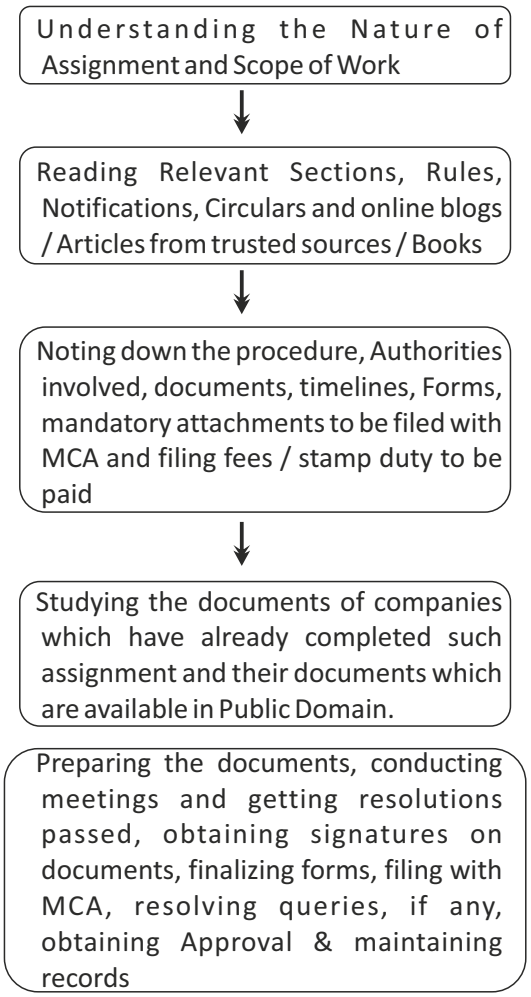
9. Witnessing of documents and identification of persons

Witnessing any document, whether digitally or physically, especially subscription pages of company formation documents must be carefully done. It has to be ensured that each and every subscriber signs the documents in front of us. Witnessing of documents and identification of persons shall be done only when the person is actually present before the professional. Sometimes documents are not signed in the presence of professionals. In case of incorporation of Companies, normally only one or two promoters are active and others just sign the documents without actually coming before the professional. Professionals are expected to actually ensure that documents are signed in his presence. Evidence of the same shall be created and preserved as a precaution. No compromise shall be made while doing this exercise. Keeping blind trust on other person and compromising on responsibility by any professional, may end up taking up permanent risk.

10. Guidance / Advise of Seniors or Experts

There is a thin line between confidence and over confidence. While confidence is certainly needed and is helpful, over confidence can make things worse. If a professional is handling any assignment for the first time and nature of assignment is such that it requires specific level of skill, knowledge and experience, it is always advisable to work under guidance or advise of senior professional who has mastery in such assignments. In such cases, the assignment shall be executed under the guidance or advise of an expert. By following this, a professional will secure, both, himself as well as his client.

Flow Chart Of Activities For Completing Any Assignment



Conclusion

Under old Companies Act, due to lesser legal compliance, professionals used to target a higher number of clients to expand their practice. However, the situation has become exactly reverse now. Number of legal compliances have increased and professionals are compelled to have a focused approach towards selected clients. Lastly, there is no reward without work, no victory without effort, no battle won without risk.

MEGA/MULTIDISCIPLINARY FIRM

Student of CS : Gaurav Jain
Email: gaurv7552@gmail.com

Introduction

The essence of Mega and Multidisciplinary firm forms a nexus with partnership firms. A partnership firm operating with over 25 partners incumbent is known as a mega firm whereas a partnership firm operating in various aspects of fields other than the core object is known as a multidisciplinary firm. For eg, ABC firm provides services in corporate secretarial as well as other allied services like IPO's, labour laws, direct taxation, insurance etc.

Scope

Mega and Multidisciplinary firm will become a priority of upcoming professionals in the upcoming paradigm as it opens up various opportunities and layers. Various international projects fetches attention for collaborations and working under the same roof which lands formulation of firms to deliver the services. This concept allows diversified professions to come together and deliver the best possible services at the doorstep with an exchange of knowledge.

Relevance to CA/CS/CMA/Advocates

A practicing professional has an option to opt for formulation of Mega and Multidisciplinary firm which enables members of other professional bodies to work under the same roof and deliver their services. The act recognizes members of other professional bodies as

- The Institute of Company Secretaries of India;
- The Institute of Chartered Accountants of India;
- The Institute of Cost & Works Accountants of India;
- Bar Council of India;
- The Indian Institute of Architects; &
- The Institute of Actuaries of India.

Provided that a specific professional cannot attest or verify any document on behalf of their partners. For eg, A PCA cannot attest the secretarial audit report prepared by the PCS working under the same firm, vice versa

Pros & Cons

Pros

- Allows diversified professionals to work together
- Cost effective
- All solutions under the same roof
- Knowledge sharing & gaining in different fields
- Increase in connectivity

Cons

- Sharing of profits
- More cost on infrastructure and techonology
- Dominance of senior partner over younger partners
- Lack of faith & trust between partners

Company Secretaries Act, 1980

Heretofore Companies Secretaries Act, 1980 had stringent provisions where a practicing Company Secretary was deemed to be guilty of professional misconduct if he entered into partnership, in or outside India, with any person other than a Practicing Company Secretary or any person who is a member of any other professional body. However ICSI made a positive steps towards recent amendment Company Secretaries (Amendment) Regulations, 2020 and started framing guidelines for MEGA FIRMS. Regulation 165A of the act permits a PCS to make a multidisciplinary firm with member from other professional bodies as described under regulation 168A & 168B.

DOCTRINE OF ALTER EGO

CS Nawaj Sayyad
Email : csnawaj@gmail.com

Considering features of the Company, Company is an artificial corporate person having perpetual succession. Vicarious liability is also drawn on the Board of directors, being an eyes and ears of the Company, for their wrongdoings and mischief done while running the affairs of the company. After mismanaging the affairs of the company, directors cannot take a stand that Company is a legal entity and it can sue and can be sued in its name for mismanagement of the affairs. Vicarious liability of the Directors is a broad term. Shareholders, Directors and Officers who are acting with malafide, fraudulent and unjust intention, Doctrine of Alter Ego makes the officers, Directors and shareholders, case to case basis, responsible for their malafide, fraudulent and unjust acts. This doctrine makes them personally liable and fixes the responsibility on them.

Alter ego means a person's secondary or alternative personality. Shareholders/directors and Company can be construed as same side in case of their fraudulent, malafide and unjust acts. Actually this doctrine is an exemption to the normal practice of considering shareholders and directors different from the Company in exceptional cases.

Individuals who are running the affairs of the Company are the “alter ego” means the another personality of the Company and those are the persons who are the controlling the mind and brain of the company. Acts of the Companies can be attributed and charged to the individuals who are controlling the affairs of the Company through their brain, mind and intent. Before applying this doctrine, one must be sure that there are documentary records, circumstances and materials to prove that the controlling person used his influence of position and power while running the questionable affairs of the Company. The controlling person who is managing affairs of the company with gross negligence and breaches in his duties will be responsible for his acts, he cannot seek exemption for his malafide acts. This doctrine instigates the application of Doctrine of Lifting or Piercing the Corporate Veil and makes itself as part and parcel of the doctrine of lifting the corporate veil.

References:

1. ICSI-Company Law-Executive Programme-Module (Edition-July 2017)
2. ICSI-Ebook on Companies Act-https://e-book.icsi.edu/default.aspx
3. Tesco Supermarket Ltd (UKHL 1, AC 153) - https://www.casemine.com/judgement/uk/5a8ff8ca60d03e7f57ecd797-
4. Sunil Bharti Mittal vs Cbi- https://indiankanoon.org/doc/159121041/
5. Lennards Carying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1915] AC 705

MCA Regulatory updates
(From 21st April 2022 to 20th May 2022)

CS Shantanu Jagtap
Email : csshantanujagtap@gmail.com

Sr. No	Notification / Circular	Particulars
1	Notification dated 27th April 2022	**The Companies (Registration of Charges) Amendment Rules, 2022.** The MCA notifies Companies (Registration of Charges) Amendment Rules, 2022 and inserted sub-rule (5) in Rule 3, which is as follows:- (5) Nothing contained in this rule shall apply to any charge required to be created or modified by abanking company under section 77 in favour of the Reserve Bank of India when any loan or advance hasbeen made to it under sub-clause (d) of clause (4) of section 17 of the Reserve Bank of India Act, 1934."
2	Notification dated 04th May 2022	**The Companies (Share Capital andDebentures) Amendment Rules, 2022** The MCA has notified Companies (Share Capital and Debentures) Amendment Rules, 2022. The amendment pertains to insertion of a declaration, before the Enclosures, in Form SH-4with regards to whether transferee is required to obtain Government Approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares or not.
3	Notification dated 05th May 2022	**Special court notification for the State of Jharkhand** The Central Government, with the concurrence of the Chief Justice of the High Court of Jharkhand, hereby designates the Court of Additional Judicial Commissioner, Ranchi in the State of Jharkhand as Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more as per clause (a) of sub-section (2) of section 435 of the said Act.
4	General Circular No.02/2022 dated 05th May 2022	**Clarification of holding of AGM through VC or OAVM** MCA has allowed the Companies whose AGMs are due in the Year 2022, to conduct their AGMs on or before 31st December, 2022through Video Conference (VC) or Other Audio-Visual Means (OAVM) This Circular shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act, 2013 and the companies which have not adhered to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.
5	General Circular No.03/2022 dated 05th May 2022	**Clarification on passing of Ordinary & Special Resolutions by the companies under the Companies Act, 2013 read with rules made thereunder on account of COVID-19-Extension of timeline** MCA has allowed the Companies to conduct their EGMs through Video Conference (VC) or Other Audio-Visual Means (OAVM) or transact items through postal ballot up to 31st December, 2022. All other requirements provided in the said Circulars shall remain unchanged

Sr. No	Notification / Circular	Particulars
6	Notification dated 05th May 2022	**The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022.** The MCA has notified Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022. The amendment pertains to insertion of a new proviso after the fourth proviso in Rule 14 with regards to not giving an offer or invitation of any securities under Rule 14 to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letterand also insertion of check box in Form No. PAS-4with regards to whether applicant is required to obtain Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares or not. If such an approval is required to be obtained then it is mandatory to enclose the approval letter with form PAS-4.
7	Notification dated 20th May 2022	**The Nidhi (Amendment) Rules, 2022** The MCA has published the Nidhi (Amendment) Rules, 2022 to further amend the Nidhi Rules, 2014. In Rule 3A of the said rules, after the third proviso, the following fourth proviso shall be inserted, namely: If any Nidhi company has not complied or fails to comply with the requirements of this rule, shall not raise any deposit from its members or provide any loan to its members under the provisions of these rules from the date of such non-compliance. If any deposit raised by a company after the date of non-compliance, or the date of commencement of the above said rules, the same shall be treated as deposits, and the requirement of deposits rules under Chapter V of the Companies Act, 2013 shall apply. Provided also that nothing in this rule shall apply to companies incorporated as Nidhi on or after the commencement of the above said rules. After Rule 3A, Rule 3B has been inserted, which explains as follows: Public company incorporated as a Nidhi company shall within a period of 120 days of its incorporation in Form NDH-4, fulfils the following conditions, (I) it has not less than 200 members; and (II) it has Net Owned Funds of Rs.20,00,000/- or more. In Rule 4 (1) - Now Nidhi Company to have minimum capital of Rs. 10,00,000/-. Every existing Nidhi company to comply with this requirement within a period of 18 months from the date of such commencement. Rule 5(5) - The provisions of this rule shall not be applicable for the companies incorporated as Nidhi on or after the commencement of the Nidhi (Amendment) Rules, 2022. New Rule 8(4) – A member shall not transfer more than 50 % of his shareholding (as on the date of availing of loan or making of deposit) during the subsistence of such loan or deposit, as the case may be. Provided that the member shall retain the minimum number of shares required under Rule 7(3) at all times". In Rule 9 - Net Owned Funds to be maintained by Nidhi Company which was previously Rs. 10,00,000/- is now substituted by Rs. 25,00,000/-. Many changes in other rules too, such as, Rule 10 relating to formation of Branches by the Nidhi Companies, Rule 14 relating to Un-encumbered Term Deposits, Rule 15 relating to Loans where, in case of joint shareholders, the loan shall be provided to the member whose name appears first in the Register of members, Rule 18 relating to Dividend, where Nidhi Company shall not declare dividend exceeding 25 % in a FY and Rule 23A relating to Compliance with rule 3Aby certain Nidhis.

CS Sameer Siddheshwar
Email : cs.sameersiddheshwar@gmail.com

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
1	Apr 28, 2022	**Reduction of timelines for listing of units of Real Estate Investment Trust (REIT)** As a part of SEBI's continuing endeavour to streamline the process of public issue of units of Real Estate Investment Trust (REIT), it has been decided by SEBIto reduce the time taken for allotment and listing after the closure of issue to six working days as against the present requirement of within twelve working days.
2	Apr 28, 2022	**Reduction of time lines for listing of units of Infrastructure Investment Trust (InvIT)** As a part of the SEBI's continuing endeavour to streamline the process of public issue of units of Infrastructure Investment Trust (InvIT), it has been decided by SEBI to reduce the time taken for allotment and listing after the closure of issue to six working days as against the present requirement of within twelve working days.
3	Apr 29, 2022	Modification in the Operational Guidelines for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors - SEBI to generate FPI registration number and both the Depositories to host the CAF. In order to operationalize the Common Application Form amended vide Notification No. F. No. 4/15/2016-ECB, dated March 29, 2022, it has been decided by SEBI to modify the 'Operational Guidelines for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors', issued vide SEBI Circular No. IMD/FPI&C/CIR/P/2019/124 dated November 05, 2019 (hereinafter referred to as 'the Operational Guidelines'),as under: a. In Paragraph 6 of Part A of the Operational Guidelines, pertaining to the Certificate of Registration, shall be read as follows: "The designated depository participant shall grant the certificate of registration, bearing registration number generated by SEBI" b. In Paragraph 10(iii) of Part A of the Operational Guidelines, pertaining to Name change, shall be read as follows: "Upon receipt of the request for name change along with above mentioned documents, the DDP shall effect the change in name in the certificate. The DDP shall issue a letter and fresh registration certificate to such applicant acknowledging the change in name. Respective Depositories shall make necessary arrangements for DDPs to provide fresh registration certificate as an acknowledgement from its database including a statement that the name change has been granted without prejudice to any tax liability/ implication in India."

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
4	May 02, 2022	**System and Network Audit of Market Infrastructure Institutions (MIIs)** In order to keep pace with the technological advancements in the securities market, SEBI felt that there is a need to revise the Circular which mandated the stock exchanges, clearing corporations and depositories should conduct an Annual System Audit by a reputed independent auditor. Accordingly, based on discussions with Stock Exchanges, Clearing Corporations, Depositories (hereinafter referred as 'Market Infrastructure Institutions – MIIs), and recommendations of the Technical Advisory Committee (TAC) of SEBI, the existing System Audit Framework has been reviewed.
5	May 10, 2022	**Changes to the Framework to Enable Verification of Upfront Collection of Margins from Clients in Cash and Derivatives segments** In view of the representations received from market participants and based on deliberations with various stakeholders, SEBI has decided that the margin requirements to be considered for the intra-day snapshots, in derivatives segments (including commodity derivatives), shall be calculated based on the fixed Beginning of Day (BOD) margin parameters. The BOD margin parameters would include all SPAN margin parameters as well as ELM requirements. There shall be no change in methodology of determination and collection of End of Day (EOD)margin obligation of the client. Also, there shall be no change in the provisions relating to collection and reporting of margins in cash segment. Further, it is clarified that the above mentioned change is only for the purpose of verification of upfront collection of margins from clients. The margin parameters applicable for collection of margin obligation by Clearing Corporations shall continue to be updated intra-day, as per the extant provisions.
6	May 13, 2022	**Guidelines for seeking NOC by Stock Brokers / Clearing Members for setting up Wholly Owned Subsidiaries, Step Down Subsidiaries, Joint Ventures in GIFT IFSC** With an endeavour to rationalise and streamline the process of application, the following guidelines are being issued. a. The format of application along with list of supporting documents for seeking NOC for setting up Wholly Owned Subsidiaries, Step Down Subsidiaries or entering into Joint Ventures in GIFT IFSC is placed as Annexure-A. b. Stock Brokers and Clearing Members shall apply through a Stock Exchange where the applicant is a member, along with the required information, documents and NOC received from all Stock Exchanges/Clearing Corporations /Depositories in which the applicant is a member/ participant. c. Stock Exchanges/ Clearing Corporations(where the applicant is only clearing member)are directed to forward the complete application to SEBI, after verification along with its recommendation.

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
7	May 13, 2022	**Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015** 1. MCA vide Circular dated May 05, 2022 has extended the relaxations from dispatching of physical copies of financial statements for the year 2022(i.e. till December 31, 2022). In view of the same, SEBI has also been receiving multiple representations from listed companies, seeking dispensation from requirements of sending hard copy of annual reports to shareholders. 2. Considering the above, it has been decided to provide relaxation upto December 31, 2022, from Regulation 36 (1) (b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015("LODR Regulations")which requires sending hard copy of annual report containing salient features of all the documents prescribed in Section 136 of the Companies Act, 2013 to the shareholders who have not registered their email addresses. Further, the notice of Annual General Meeting published by advertisement in terms of Regulation 47 of LODR Regulations, shall contain a link to the annual report, so as to enable shareholders to have access to the full annual report. 3. It is however emphasized that in terms of Regulation 36 (1) (c) of LODR Regulations, listed entities are required to send hard copy of full annual report to those shareholders who request for the same. 4. Further, the requirement of sending proxy forms under Regulation 44 (4) of the LODR Regulations is dispensed with upto December 31, 2022,in case of general meetings held through electronic mode only.
8	May 13, 2022	**Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – for entities with listed non-convertible securities** 1. SEBI vide Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020 had, inter-alia, relaxed certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) related to dispatch of hard copy of Annual Report to debenture holders, pursuant to relaxations granted by the Ministry of Corporate Affairs (MCA).Thereafter, vide Circular no. SEBI/HO/DDHS/P/CIR/2022/613 dated January 15, 2021, the said relaxations were extended till December 31, 2021. 2. Subsequently, MCA vide Circular dated May 5, 2022,has extended the relaxations from dispatching of physical copies of financial statements for the year 2022 (i.e. till December 31, 2022). 3. Considering the above, it has been decided to provide relaxation upto December 31, 2022, from the requirements of Regulation 58 (1)(b) of the Listing Regulations which prescribes that an entity with listed non-convertible securities shall send a hard copy of statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of non-convertible securities who have not registered their email address(es) either with the listed entity or with any depository.

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
10	May 19, 2022	**Streamlining the Process of Rights Issue** 1. SEBI vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/13 dated January 22, 2020, had stipulated procedures streamlining the Rights Issue process ('the circular'). 2. In respect of the aforesaid circular, para 1.4.1 and at Annexure I para C (e) of the Circular, deal with the requirement regarding minimum time period between closure of trading in Right Entitlements on stock exchange platform and closure of the rights issue, which requires trading in REs on the secondary market platform of stock exchanges commence along with the opening of the rights issue and has to be closed at least four days prior to the closure of the rights issue. 3. SEBI received market representation that in case there are trading holidays between last date of REs trading date and issue closure, provision of minimum gap of four days may not always ensure that there are adequate days for settlement, as minimum 2 working days are required for settlement of REs traded on last day of REs trading window (REs traded on exchange platform have T+2 rolling settlement). It was further represented that there should be a minimum gap of three working days considering two days for settlement and one additional day for investor to make application in Rights Issue. 4. Therefore, in view of above it has been decided that para 1.4.1 and at Annexure I para C (e) of the Circular paragraphs are amended as under: The words 'at least four days' are replaced with 'at least three working day
		SEBI REGULATIONS
18	Apr 25, 2022	Securities and Exchange Board of India (Custodian) (Amendment) Regulations, 2022
19	Apr 25, 2022	Securities and Exchange Board of India (Custodian) Regulations, 1996 [Last amendment on April 25, 2022] https://www.sebi.gov.in/legal/regulations/apr-2022/securities-and-exchange-board-of-india-custodian-regulations-1996-last-amendment-on-april-25-2022-_58620.html
20	Apr 27, 2022	Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2022 https://www.sebi.gov.in/legal/regulations/apr-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2022_58496.html
21	May 04, 2022	Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 [Last amended on May 4, 2022] https://www.sebi.gov.in/legal/regulations/may-2022/securities-and-exchange-board-of-india-infrastructure-investment-trusts-regulations-2014-last-amended-on-may-4-2022-_58818.html

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
22	May 10, 2022	Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) Regulations, 2022 https://www.sebi.gov.in/legal/regulations/may-2022/securities-and-exchange-board-of-india-infrastructure-investment-trusts-amendment-regulations-2022_58820.html
MASTER CIRCULARS		
24	Apr 26, 2022	Master Circular for Infrastructure Investment Trusts (InvITs) https://www.sebi.gov.in/legal/master-circulars/apr-2022/master-circular-for-infrastructure-investment-trusts-invits-_58394.html
25	Apr 26, 2022	Master Circular for Real Estate Investment Trusts (REITs) https://www.sebi.gov.in/legal/master-circulars/apr-2022/master-circular-for-real-estate-investment-trusts-reits-_58396.html

FEMA UPDATES

(From 21st April 2022 to 20th May 2022)

CS Sameer Siddheshwar
Email : cs.sameersiddheshwar@gmail.com

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
1	Apr 21, 2022	**Creation of Honorary Designations at Board level in Urban Co-operative Banks** It has been observed by the RBI during the course of supervisory reviews that, some of the Urban Co-operative Banks (UCBs) have adopted the practice of creating honorary designations (remunerated or otherwise)/conferring titles at Board level, such as Chairman Emeritus, Group Chairman, etc., which are not recognised in applicable statutes or regulations. While such positions/titles may be indicative of certain privileges/rights for the incumbent to access all board materials and participate in board/committee meetings, enforcing liability or obligations on such person may be difficult. Such positions may be seen as creating conflicts of interest as well as creation of a parallel or shadow authority impeding effective and independent functioning of the legally constituted board in the best interest of all its stakeholders. As such, UCBs are directed not to create any honorary positions/titles at Board level or confer such titles that are non-statutory in nature and to eliminate any such existing position/titles within one year from date of this circular.
2.	Apr 28, 2022	**Modified Interest Subvention Scheme for Short Term Loans for Agriculture and Allied Activities availed through Kisan Credit Card (KCC) during the financial year 2021-22** With reference to the RBI's letter FIDD.CO.FSD.No.342/05.02.001/2020-21 dated October 16, 2020 conveying the decision of the Government of India for continuation of the Interest Subvention Scheme (modified) for short term loans for agriculture and allied activities for the year 2020-21 on interim basis. In this regard, it is advised that Government of India has approved the continuation of the Interest Subvention Scheme (ISS) with modifications for the financial year 2021-22. Modified ISS is available at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12302&Mode=0

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
3	Apr 29, 2022	**Guidelines on Compensation of Key Managerial Personnel (KMP) and Senior Management in NBFCs** In order to address issues arising out of excessive risk taking caused by misaligned compensation packages, NBFCs are required to put in place a Board approved compensation policy. The policy shall at the minimum include, (a) constitution of a Remuneration Committee, (b) principles for fixed/ variable pay structures, and (c) malus/ clawback provisions. The Board of NBFCs should delineate the role of various committees, including Nomination and Remuneration Committee (NRC). It was envisaged that detailed circulars will be issued in due course by the Reserve Bank. Accordingly, these guidelines have now been framed. The guidelines are intended only for providing broad guidance to NBFCs and their NRCs in formulating their compensation policy. While formulating the compensation policy, it has to be ensured that all statutory mandates and the rules and directions issued under them are fully complied with. These guidelines will be applicable for fixing the compensation policy of Key Managerial Personnel1 and members of senior management of all Non-Banking Financial Companies under SBR framework, except those categorised under 'Base Layer' and Government owned NBFCs.
4	May 02, 2022	**Review of Minimum Investment Grade Credit Ratings for Deposits of NBFCs** As per Master Direction – Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 the names of approved credit rating agencies and their respective minimum investment grade credit rating for the purpose of accepting public deposits by NBFCs have been listed. On a review by RBI, it has been decided that the minimum investment grade credit rating for deposits of NBFCs shall be 'BBB–' from any of the SEBI-registered Credit Rating Agencies.
5	May 04, 2022	**Liquidity Adjustment Facility- Change in rates** As announced in the Monetary Policy Statement, 2022-23, on 4th May 2022, it has been decided by the Monetary Policy Committee (MPC) to increase the policy Repo rate under the Liquidity Adjustment Facility (LAF) by 40 basis points from 4.00 per cent to 4.40 per cent with immediate effect. Consequently, the standing deposit facility (SDF) rate and marginal standing facility (MSF) rate stand adjusted from 3.75 per cent to 4.15 per cent and from 4.25 per cent to 4.65 per cent respectively, with immediate effect.

SR NO.	NOTIFICATION DATE	PARTICULARS/CONTENT
6	May 04, 2022	**Standing Liquidity Facility for Primary Dealers** Monetary Policy Statement 2022-23, dated May 4, 2022, the policy repo rate under the Liquidity Adjustment Facility (LAF) has been increased by 40 basis points to 4.40 per cent from 4.00 per cent with immediate effect. Accordingly, the Standing Liquidity Facility provided to Primary Dealers (PDs) (collateralised liquidity support) from the Reserve Bank would be available at the revised repo rate of 4.40 per cent with effect from May 4, 2022.
7	May 04, 2022	**Change in Bank Rate** As announced in the Monetary Policy Statement 2022-23 dated May 04, 2022, the Bank Rate is revised upwards by 40 basis points from 4.25 per cent to 4.65 per cent with immediate effect. All penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate, also stand revised
8	May 04, 2022	**Maintenance of Cash Reserve Ratio (CRR)** As announced in the Governor's Statement dated May 04, 2022, RBI has decided to increase the Cash Reserve Ratio (CRR) of all banks by 50 basis points from 4.00 percent to 4.50 percent of their Net Demand and Time Liabilities (NDTL), effective from the reporting fortnight beginning May 21, 2022.
9	May 19, 2022	**New Definition of Micro, Small and Medium Enterprises – Clarification** 1. Government of India, vide Gazette Notification S.O. 2134(E) dated May 06, 2022, has notified amendments in sub paragraph (3) paragraph (7) of the notification of Government of India, Ministry of Micro, Small and Medium Enterprises number S.O. 2119 (E), dated June 26, 2020, published in the Gazette of India. 2. In view of the above amendment, it is clarified that: - the existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAM) of the MSMEs obtained till June 30, 2020 shall remain valid till June 30, 2022 for classification as MSMEs; and - the validity of documents obtained in terms of O.M. No.12(4)/ 2017-SME dated March 8, 2017 (RBI Circular FIDD.MSME & NFS.BC.No.10 /06.02.31/2017-18 dated July 13, 2017), for classification of MSMEs upto June 30, 2020, has been extended upto June 30, 2022.
10	May 19, 2022	**Government of India guaranteed term loan extended by SBI to the Government of Sri Lanka-Settlement in INR** 1. In view of the difficulties being experienced by exporters in receipt of export proceeds from Sri Lanka and State Bank of India's credit facility agreement dated March 17, 2022 with the Government of Sri Lanka for sanction of Government of India guaranteed USD 1000 million term loan to the latter for financing purchase of essential goods by Sri Lanka from India, it has been decided that such trade transactions with Sri Lanka, falling under the said arrangement, may be settled in INR outside the ACU mechanism. 2. Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by SBI under this agreement. 3. The above instructions shall come into force with immediate effect.

CS IP Sandeep Kulkarni
Email : ipsandeepkulkarni@gmail.com

Order Passed by: **Supreme Court of India**
Case No. **Civil Appeal No. 8400 of 2017**
Order – Order passed by J. A.K. Sikri & J. Ashok Bhushan, New Delhi on September 19, 2017
Parties: **M/s. Surendra Trading Company ....Appellant**

Versus

M/s. Juggilal Kamlapat Jute Mills Company Limited & Ors ....Respondent

Brief Facts of the Case:

1) In this Civil Appeal, the precise question of law which was framed by the NCLAT for its decision is to the following effect:

"Whether the time limit prescribed in Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as Code 2016) for admitting or rejecting a petition or initiation of insolvency resolution process is mandatory?"

2) Though this case has a past history as well, in the instant appeal, Supreme Court was concerned with the correctness of the order dated May 01, 2017 passed by the National Company Law Appellate Tribunal (hereinafter referred to as, the 'NCLAT') whereby it is held that the time of seven days prescribed in proviso to sub-section (5) of Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short, the 'Code') is mandatory in nature and if the defects contained in the application filed by the 'operational creditor' for initiating corporate insolvency resolution against a corporate debtor are not removed within seven days of the receipt of notice given by the adjudicating authority for removal of such objections, then such an application filed under Section 9 of the Code is liable to be rejected.

3) Chapter II of Part II of the Insolvency and Bankruptcy Code 2016 ("Code") deals with corporate insolvency resolution process. Section 8 deals with insolvency resolution by operational creditor. If 'default' has occurred in payment of the said debt within the meaning of Section 2(12) such an operational creditor may send a demand notice to the corporate debtor demanding payment of the amount involved in the default, in the prescribed manner, giving ten days' notice in this behalf. Corporate debtor is given ten days' time to bring to the notice of the operational creditor about the existence of a dispute, if any, however, send requisite proof for repayment of unpaid operational debt, failing which, operational creditor can file an application under Section 9 for initiation of corporate insolvency resolution process. Section 9 reflects the time limits for taking actions by either Operation Creditor or Adjudicating Authority.

4) One of the conditions, with which Supreme Court was concerned, is that application under Section 9(2) has to be complete in all respects. In other words, the adjudicating authority has to satisfy that it is not defective. In case the adjudicating authority, after the scrutiny of the application, finds that there are certain defects therein and it is not complete as per the provisions of sub-section (2), in that eventuality, the proviso to sub-section (5) mandates that before rejecting the application, the adjudicating authority has to give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice.

5) Sub-section (5) of Section 9, thus, stipulates two time periods. Insofar as the adjudicating authority is concerned, it has to take a decision to either admit or reject the application with the period of fourteen days. Insofar as defects in the application are concerned, the adjudicating authority has to give a notice to the applicant to rectify the defects before rejecting the application on that ground and seven days period is given to the applicant to remove the defects.

6) The question before the NCLAT was as to whether time of fourteen days given to the adjudicating authority for ascertaining the existence of default and admitting or rejecting the application is mandatory or directory. Further question (with which this Court is concerned) was as to whether the period of seven days for rectifying the defects is mandatory or directory.

7) The NCLAT held that period of fourteen days prescribed for the adjudicating authority to pass such an order is directory in nature, whereas period of seven days given to the applicant/ operational creditor for rectifying the defects is mandatory in nature. On the basis of this finding, the NCLAT directed rejection of the application filed by the operational creditor.

8) Honourable Supreme Court before pronouncing, as to whether the aforesaid rendition by the NCLAT is justified or not, thought that, it would be apposite to take stock of certain essential facts.

9) While considering the matter, Supreme Court stated that before the enactment of the Code, the relevant legislation dealing with such subject matters was the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'SICA').

10) Respondent No.1 herein, namely, Juggilal Kamlapat Jute Mills Company Limited, became a sick industrial company in the year 1994 and because of this reason it filed its reference under Section 15(1) of SICA. It was declared as a sick industrial company by the BIFR on December 16, 1994 as a result whereof Civil Appeal No. 8400 of 2017 & Anr. Page 10 of 32 it came under the protective umbrella of Section 22(1) of SICA. According to the appellant (who is the operational creditor in this case), which is a jute trader, it had supplied raw jute to respondent No.1 (the corporate debtor) in the years 2001, 2002 and 2003 in respect of which the corporate debtor owned a sum of Rs.17,06,766.95 p. Further, according to the operational creditor, the corporate debtor had issued Certificate dated October 24, 2004 acknowledging the aforesaid debt. However, it was not in a position to recover this debt because of the pendency of proceedings which resulted in stay of proceedings in view of Section 22(1) of SICA.

11) In the year 2007, one Kolkata based company, known as Rainey Park Suppliers Private Limited (hereinafter referred to as 'Rainey Park'), invested in corporate debtor and took over its management from its erstwhile promoters, i.e., J.K. Singhania Group. The operational creditor had sent notices to Rainey Park to pay the aforesaid amount. However, it was not paid. Legal notices were also sent and applications were also filed before the BIFR in this behalf. Fact remains that the aforesaid debt was not honoured or liquidated by the corporate debtor or Rainey Park.

12) We may point out at the outset that the learned senior counsel appearing for the appellant had submitted that in the instant case the defects which were pointed out were not of the nature mentioned in the Code but were in terms of the Companies Act, 2013. For this purpose, he had referred to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as 'Rules 2016') and on that basis it was argued that Section 9(5) of the Code did not apply in the instant case inasmuch as there has to be difference between 'defective' application and 'incomplete' application. He also submitted that the respondent had been violating interim orders passed by BIFR in the proceedings pending before it under SICA.

13) Deem it proper to reproduce the discussion of the NCLAT itself in this behalf:

"In P.T. Rajan Vs. T.P.M. Sahir and Ors. (2003) 8 SCC 498, the Hon'ble Supreme Court observed that where Adjudicating Authority has to perform a statutory function like admitting or rejecting an application within a time period prescribed, the time period would have to held to be directory and not mandatory. In the said case, Hon'ble Apex Court observed:

"It is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See Shiveshwar Prasad Sinha v. The District Magistrate of Monghur & Anr. AIR (1966) Patna 144, Nomita Chowdhury v. The State of West Bengal & Ors. (1999) CLJ 21 and Garbari Union Co-operative Agricultural Credit Society Limited & Anr. V. Swapan Kumar Jana & Ors. (1997) 1 CHN 189).

Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused." That the Hon'ble Apex Court has on numerous occasions interpreted the word 'shall' to mean 'may'.

Hon'ble Supreme Court in the matter of Smt. Rani Kusum vs Smt. Kanchan Devi (2005) 6 SCC 705, concurring with the ratio laid down in Kailash Versus Nanhku (supra) held that:

"All the rules of procedure are the handmaid of

justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. (See Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774] .)

No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode.

(See Blyth v. Blyth [(1966) 1 All ER 524 : 1966 AC 643 : (1966) 2 WLR 634 (HL)] .) A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See Shreenath v. Rajesh [(1998) 4 SCC 543 : AIR 1998 SC 1827]) 14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

The object behind the time period prescribed under sub-section (5) of section 7, sub-section (5) of section 9 and sub-section (4) of section 10, like Order VIII, Rule 1 of CPC is to prevent the delay in hearing the disposal of the cases. The Adjudicating Authority cannot ignore the provisions. But in appropriate cases, for the reasons to be recorded in writing, it can admit or reject the petition after the period prescribed under section 7 or section 9 or section 10.

Thus, in view of the aforementioned unambiguous position of law laid down by the Hon'ble Apex Court and discussion as made above, we hold that the mandate of sub-section (5) of section 7 or sub-section (5) of section 9 or sub-section (4) of section 10 is procedural in nature, a tool of aid in expeditious dispensation of justice and is directory.

14) After analysing the provision of fourteen days time within which the adjudicating authority is to pass the order, the NCLAT immediately jumped to another conclusion, viz. the period of seven days mentioned in proviso to sub-section (5) of Section 9 for removing the defect is mandatory, with the following discussion: "44. However, the 7 days' period for the rectification of defects as stipulated under proviso to the relevant provisions as noticed above is required to be complied with by the corporate debtor whose application, otherwise, being incomplete is fit to be rejected. In this background we hold that the proviso to sub-section (5) of section 7 or proviso to sub-section (5) of section 9 or proviso to sub-section (4) of section 10 to remove the defect within 7 days are mandatory, and on failure applications are fit to be rejected."

15) There is no further discussion on this aspect. We are not able to decipher any valid reason given while coming to the conclusion that the period mentioned in proviso is mandatory.

16) The moot question would be as to whether such a rejection would be treated as rejecting the application on merits thereby debarring the application from filing fresh application or it is to be treated as an administrative order since the rejection was because of the reason that defects were not removed and application was not examined on merits. In the former case it would be travesty of justice that even if the case of the applicant on merits is very strong, the applicant is shown the door without adjudication of his application on merits. If the latter alternative is accepted, then rejection of the application in the first instance is not going to serve any purpose as the applicant would be permitted to file fresh application, complete in all aspects, which would have to be entertained. Thus, in either case, no

purpose is served by treating the aforesaid provision as mandatory.

17) Further, Supreme Court was of the view that the judgments cited by the NCLAT and the principle contained therein applied while deciding that period of fourteen days within which the adjudicating authority has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to sub-section (5) of Section 7, Section 9 or sub-section (4) of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible.

18) We are also conscious of the fact that sometimes applicants or their counsel may show laxity by not removing the objections within the time given and make take it for granted that they would be given unlimited time for such a purpose. There may also be cases where such applications are frivolous in nature which would be filed for some oblique motives and the applicants may want those applications to remain pending and, therefore, would not remove the defects. In order to take care of such cases, a balanced approach is needed. Thus, while interpreting the provisions to be directory in nature, at the same time, it can be laid down that if the objections are not removed within seven days, the applicant while refilling the application after removing the objections, file an application in writing showing sufficient case as to why the applicant could not remove the objections within seven days. When such an application comes up for admission/order before the adjudicating authority, it would be for the adjudicating authority to decide as to whether sufficient cause is shown in not removing the defects beyond the period of seven days.

Conclusion:

In fine, these appeals were allowed and that part of the impugned judgment of NCLAT which holds proviso to sub-section (5) of Section 7 or proviso to sub-section (5) of Section 9 or proviso to sub-section (4) of Section 10 to remove the defects within seven days as mandatory and on failure applications to be rejected, is set aside. No Costs.

Report-Pune Chapter of WIRC of ICSI

From 01st May 2022 to 31st May 2022

By CS Vishal Patil, Secretary, Pune Chapter of WIRC of ICSI
(Email ID: secretary.pune@icsi.edu)

STUDENTS' TRAINING ACTIVITIES

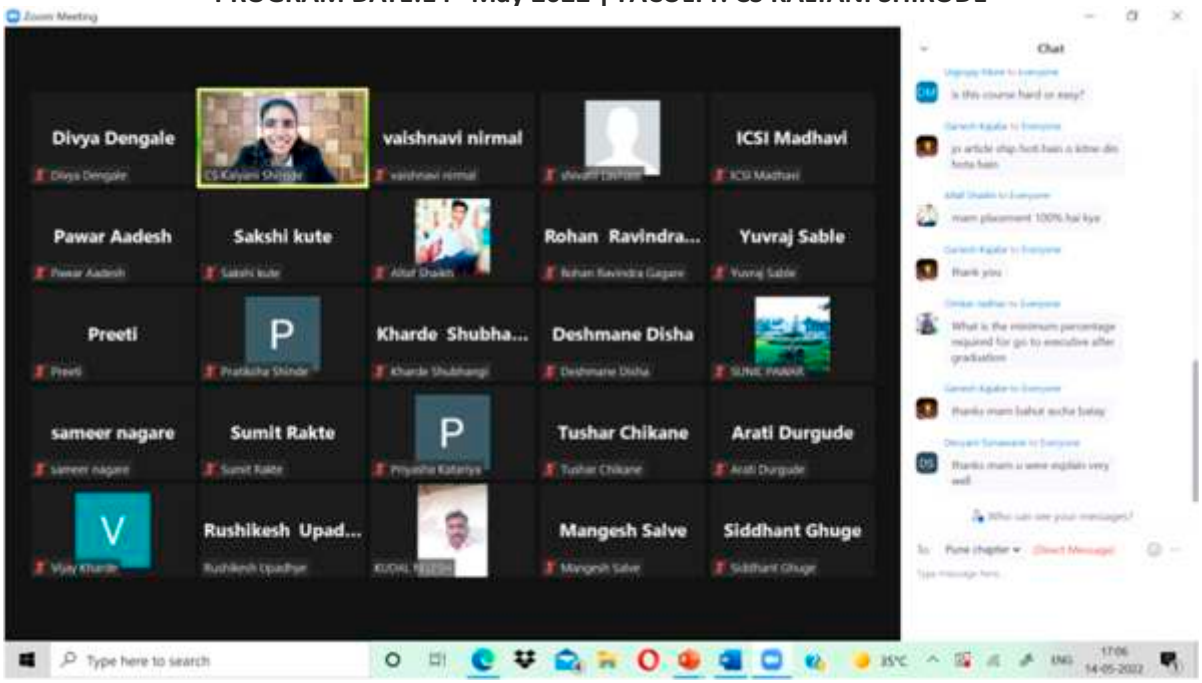
Sr. No.	Activities conducted	Remarks
1	67th Batch of One Day Orientation programme for Executive Students (06th May 2022)	Pune Chapter of WIRC of ICSI organized 67th Batch of One Day Orientation programme for Executive Students in online mode on 06th May 2022 which was attended by 12 students. CS Kalyani Shirode was the eminent faculty for the session.
2	41st Batch of MSOP for Professional Students (07th May 2022 to 27th May 2022)	Pune Chapter of WIRC of ICSI organized 41st Batch of MSOP programme for Professional Students at Pune Chapter from 07th May 2022 to 27th May 2022 which was attended by 50 students.
3	08th Batch of 5 days Entrepreneurship Development Programme for Executive Students (23rd May 2022 to 27th May 2022)	Pune Chapter of WIRC of ICSI organized 08th Batch of 5 days Entrepreneurship Development Programme at Pune Chapter from 23rd May 2022 to 27th May 2022 which was attended by 06 students.
4	Webinar on "Digital India" (14th May 2022)	Pune Chapter of WIRC of ICSI jointly with PVP College, Pravaranagar, Loni-Ahmednagar arranged a Webinar on "Digital India" on 14th May 2022 as a part of Azadi ka Amrit Mahotsav celebrations by Government of India. Webinar was attended by 169 students. CS Kalyani Shirode was the eminent faculty for the session. Session on Career as Company Secretary was also taken in this webinar.
5	Webinar on "Challenges and Opportunities for Indian Youth @75" (14th May 2022)	Pune Chapter of WIRC of ICSI organized several Career Awareness Sessions for Students at Padmashri Vikhe Patil College of Arts, Science and Commerce, Pravaranagar, Loni on 09th April 2022. This was followed by Registration Drive wherein students were guided for registering in CS Entrance Test and also live registrations were done on the same day. CS Sanjay Patare, Chairman Pune Chapter, CS Harshal Joshi, CS Sameer Siddheshwar, CS Kalyani Shirode, CS Vishal Salunke, CS Kalyani Shirode, CS Sohal Thakur and CS Vishwanath Kote were the eminent faculties for these CAP sessions.

Program / Meetings & Events
From 01st May 2022 to 31st May 2022

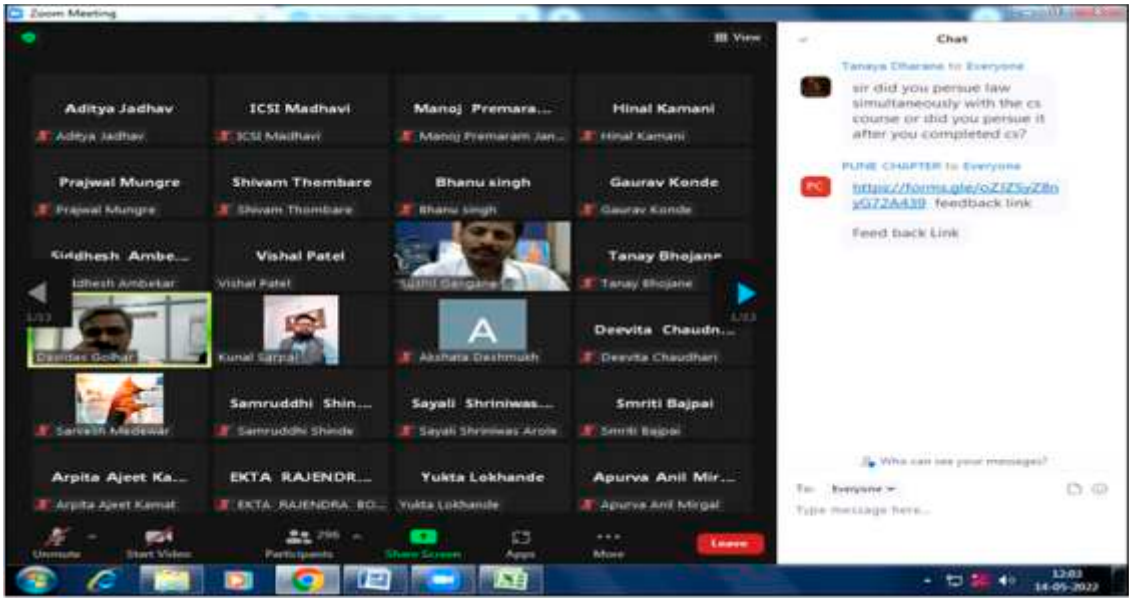
Sr. No.	Activities conducted	Remarks
1	Two-Days Non-Residential Conference on FEMA-मंथन (06th& 07th May 2022)	Pune Chapter of WIRC of ICSI organized Two-Days Non-Residential Conference on FEMA-मंथन on Friday & Saturday, 6th& 7th May 2022. Mr. Sonal Sinha, Chief Guest, Country Head, Structured Solution, IDFC First Bank, Dr. Prashant Shinde – IDFC First Bank - Regional Head – Branch Banking, Rest of Maharashtra and Goa, CS Kuldeep Ruchandani, Partner, KPRC & Associates, CS Sunil Nanal, Partner, KANJ & Co., Pune, CS Sudha G. Bhushan, Taxpert Professionals, Mumbai, CA Hinesh Doshi, Managing Partner, Hinesh R Doshi & Co LLP, Chartered Accountants, CS Vikas Agarwal, Co-Founder, LegaLogic Consulting, Pune, CA Ashish Daweshar, KPNB & Associates, Pune, Adv Raja Valechha, Dr. Sharad Khandelwal (IDFC) were the eminent faculties for this Conference. The Conference was attended by 115 delegates.08 CPE (Structured) were awarded to the members who had attended this Conference.
2	Study Circle Meeting on "Law of RERA & Opportunities for CS " (21stMay 2022)	Pune Chapter of WIRC of ICSI organized a Study Circle Meeting on "Law of RERA & Opportunities for CS" on 21st May 2022. CS Surabhi Mehta, Practicing Company Secretary was the eminent faculty for this Study Circle Meeting. This study circle meeting was attended by 40 delegates.01 CPE (Structured) was awarded to the members who had attended this study circle meeting.
3	Full Day Program on "Demystifying - MSME, Corporate Governance, Financials & Board Report" (28thMay 2022)	Pune Chapter of WIRC of ICSI organized a Full Day Program organised by all SCM Zones of Pune Chapter of WIRC of ICSI Jointly with District Industries Centre (DIC), Pune on Demystifying - MSME, Corporate Governance, Financials & Board Report on 28th May 2022. CS Devendra Deshpande - President, The ICSI, Guest of Honour, CS Pawan G Chandak – IPC, WIRC & SCM Co-ordinator, Pune, CS Hrishikesh Wagh, Treasurer, WIRC were present for the program along with members of the Pune Managing Committee. CS Kalidas Ramaswami, Partner, BNP & Associates, Mumbai, Mr. Sadashiv Suravase, Joint Director, District Industries Centre (DIC), Pune and CS Amita Desai, Practicing Company Secretary, Mumbai were the eminent faculties for this Program. This Program was attended by 147 delegates. 04 CPE (Structured) were awarded to the members who had attended this study circle meeting.

PROGRAM: 41st BATCH OF MSOP FOR PROFESSIONAL STUDENTS
MSOP DATE: 07th May 2022 to 27th May 2022

PROGRAM: PUNE CHAPTER OF WIRC OF ICSI JOINTLY WITH PVP COLLEGE, PRAVARANAGAR, LONI- AHMEDNAGAR ARRANGED A WEBINAR ON "DIGITAL INDIA"
PROGRAM DATE:14th May 2022 | FACULTY: CS KALYANI SHIRODE



PROGRAM: PUNE CHAPTER OF WIRC OF ICSI JOINTLY WITH SAVITRIBAI PHULE PUNE UNIVERSITY (SPPU) IN ASSOCIATION WITH MMCC COLLEGE, PUNE ARRANGED A WEBINAR ON "CHALLENGES AND OPPORTUNITIES FOR INDIAN YOUTH @75"
PROGRAM DATE: 14th MAY 2022 |FACULTY: CS KUNAL SARPAL



PROGRAM: TWO-DAYS NON-RESIDENTIAL CONFERENCE ON FEMA-मंथन

PROGRAM DATE: FRIDAY & SATURDAY, 6TH& 7TH MAY 2022

FACULTIES: Mr. Sonal Sinha, CS Kuldeep Ruchandani, CS Sunil Nanal, CS Sudha G. Bhushan, A Hinesh Doshi, CS Vikas Agarwal, CS Ashish Daweshar, Adv. Raja Valecha, Dr. Sharad Khandelwal

PROGRAM:A STUDY CIRCLE MEETING ON "LAW OF RERA & OPPORTUNITIES FOR CS" ON
PROGRAM DATE:21st MAY 2022 | FACULTY: CS SURABHI MEHTA

Memory Refreshing

PROGRAM:ALL SCM ZONES OF PUNE CHAPTER OF WIRC OF ICSI JOINTLY WITH DISTRICT INDUSTRIES CENTRE (DIC), PUNE ORGANIZED A FULL DAY PROGRAM ON "DEMYSTIFYING - MSME, CORPORATE GOVERNANCE, FINANCIALS & BOARD REPORT" PROGRAM DATE: 28th MAY 2022 | FACULTY: CS KALIDAS RAMASWAMI, MR. SADASHIV SURAVASE & CS AMITA DESAI

Published and edited by CS Vikas Agarwal on behalf of Pune Chapter of WIRC of the Institute of Company Secretaries of India Published from Shreyas Apartments, Condominium C.T.S. No. 1654/1655, Sr. No. 50, Hissa No. 5 & 6, Near Gananjay Society, D.P. Road, Kothrud, Pune-411038 and Designed by Mandar Printers, Shop No. 2, 756 Kasba Peth, Pune 411011.

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

PUNE CHAPTER

Shreyas Apartment Condominium, CTS No. 1654+1655, Survey No 50, Gananjay Society
D. P. Road, Kothrud, Pune 411 038
tel 020-2539 3227, 25393229 **email** pune@icsi.edu **Website** www.icsi.edu

All opinions / views expressed in "Sanhita" are those of the authors only. The opinions expressed herein should not be construed as legal or professional advice. The Chapter/ICSI does not take any responsibility for the information published in "Sanhita" inculding intellectual property rights of third parties. For Private Circulation only.