



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

EASTERN
INDIA
REGIONAL
COUNCIL



APRIL 2018 ISSUE

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From the Desk of the Chairman



"The Secret of getting ahead is getting started"..... Mark Twain

Dear Professional Colleagues,

You will agree with the adage that you do not have to be great to start but you have to start to be great. Your actions lay the foundation stone of your success. One will never get what s/he

truly deserve if s/he remain attached to what s/he is supposed to let go. 'Move On' – six letters; two words; easy to say; hard to explain & harder to do – will only put you on the pedestal to touch new horizons.

With this concept of getting started and moving on, EIRC has built a Moot Court at EIRC House with a purpose to provide an opportunity to our members and students to get hands on experience of appearances before the quasi-judicial bodies / appellate tribunals. Shri K R Jinan, Hon'ble Member (Judicial), NCLT, Kolkata bench graced the inaugural ceremony of the Moot Court held on 7th April. On 14th April, Practical Training programme on Insolvency and Bankruptcy Code – a Full Day Programme was organized at the same moot court hall.

Workshop on "The Companies (Amendment) Act, 2017" and "Kotak Committee recommendations on Corporate Governance" was organised on 21st April, 2018, jointly with Merchant Chamber of Commerce & Industry. Further a Workshop on "Forensic Audit" and Indian Accounting Standards" was organised on 28th April.

This year EIRC has been given opportunity to host the National Convention of ICSI, planning for venue etc is going on, an appeal for your association / support in organising of this Mega

Annual Event of ICSI will be shared with you shortly.

In the forthcoming month programmes on pertinent issues are in pipeline.

I take this opportunity to inform you all that we are revamping the OTC (Oral Tuition Classes) for the Students as per the new syllabus introduced by the Institute and fresh batches will start soon. Further, we are also planning to start an exclusive "Placement Cell" at EIRC to help and support our members and students.

I once again acknowledge the constant support and guidance from my colleagues in Regional Council, Central Council Members and all my Predecessors at EIRC, in all my initiatives. I also acknowledge the efforts of EIRO officials under the leadership of Shri DVNS Sarma in giving their best to implement all initiatives.

Life is really about moving on from one stage to another but remember that your own resolution to succeed is more important than anything. So keep moving on and on and on.....

Please feel free to share your views and suggestions to me. My coordinates are given below.

With warm regards,

CS Ashok Purohit
Chairman, EIRC of ICSI

e-Mail: chairman.eirc@icsi.edu
ashokp@emamigroup.com

Kolkata
10th May, 2018

INAUGURATION OF MOOT COURT AT ICSI-EIRC HOUSE ON 7TH APRIL, 2018


As the first step paves way for further steps, the new infrastructure - Moot Court is now ready in the ICSI-EIRC House to provide a stimulating environment for the members and students of ICSI, who would like to appear or wish to get sensitised on the appearances before the Hon'ble Tribunal. The newly built Moot Court was inaugurated on 7th April, 2018 by the gracious hands of Shri K R Jinan, Hon'ble Member (Judicial), National Company Law Tribunal, Kolkata Bench. Shri Jinan in his address said that it is a welcome step for students and members to learn the nuances of advocacy before they appear for cases on their own. CS Mamta Binani, Past President, ICSI, Regional Council Members; Past Chairmen – EIRC; Past Presidents of ICSI (from Eastern Region) and members & students joined the Inaugural Ceremony. Members who have cleared the Examinations of IBC/qualified IPA Professionals were felicitated on this occasion.

FULL-DAY PRACTICAL TRAINING ON "INSOLVENCY & BANKRUPTCY CODE (IBC) HELD ON 14TH APRIL, 2018 AT ICSI-EIRC MOOT COURT


EIRC of ICSI organised a Full Day Practical Training Session on "Insolvency & Bankruptcy Code (IBC)" on Saturday, the 14th April, 2018 at ICSI EIRC Moot Court, Kolkata. The Moot Court Room Workshop was organised in order for the members and students to gain an experience in advocacy, to hone their oral advocacy skills in the legal field and to learn the nuances of advocacy before they appear for cases. CS Vinod Kothari, Past Chairman, EIRC of ICSI, took the 1st Training Session on "Resolution Proceedings" chaired by CS H.M. Choraria, Past President, ICSI and CS Mamta Binani, Past President, ICSI took the 2nd Training Session on "Liquidation Proceedings" chaired by CS Pankaj Dhanuka, Past Vice-Chairman. Around 60 members attended the training

HALF-DAY WORKSHOP ON “PRESENTATION ON THE COMPANIES (AMENDMENT) ACT, 2017” & “INSIGHT INTO THE KOTAK COMMITTEE RECOMMENDATIONS ACCEPTED BY SEBI ON CORPORATE GOVERNANCE” HELD ON 21ST APRIL, 2018



EIRC of ICSI organised a Half Day Workshop on “Companies (Amendment) Act 2017” and “Kotak Committee recommendations on Corporate Governance accepted by SEBI” on Saturday, 21st April, 2018 at the Conference Hall of Merchants Chamber of Commerce, Kolkata. CS Mamta Binani, Past President, ICSI & Chairperson, Standing Committee Corporate Law & Governance, MCCI graced the occasion and welcomed the delegates. CS Taposh Roy, Company Secretary, Vesuvius India Ltd deliberated on “Companies Amendment Act 2017”. CS Arundhuti Bose, Practising Company Secretary, in her deliberation discussed about the “Kotak Committee recommendations accepted by SEBI on Corporate Governance”. Around 100 delegates participated in this joint programme with MCCI.

EIRC WELCOMING SHRI M. B. GOSAVI AS THE MEMBER (JUDICIAL), NCLT, KOLKATA BENCH, ON 2ND APRIL, 2018



VIP & Jessore Study Circle organised a programme on “The Companies Act, Amendment and Restoration under NCLT of Strike off Companies u/s 252 of The Companies Act” on 15th April, 2018



NATIONAL PANCHAYATI RAJ DIWAS OBSERVED ON 24TH APRIL, 2018

On the occasion of the National Panchayati Raj Diwas observed on 24th April, 2018. Shri Tamal Kar, Assistant Director (Admin.) met Shri Subrata Mukherjee, Hon'ble Minister-in-Charge, Panchayat & Rural Development and Public Health Engineering, Govt. of West Bengal, at his office and presented the Book on "Model Governance Code for Meetings of Gram Panchayats" published by ICSI. The Hon'ble Minister was very happy to receive this Book published by the Institute.


HALF-DAY WORKSHOP ON "FORENSIC AUDIT" & "INDIAN ACCOUNTING STANDARDS (Ind AS)" HELD ON 28TH APRIL, 2018


EIRC of ICSI organised a Half-Day Workshop on 'Forensic Audit' and 'Indian Accounting Standards' on Saturday, 28th April, 2018 at ICSI-EIRC House, Kolkata. CA Kartikeya Nath, Associate Partner, Ernst & Young deliberated on "Nitty-gritty of Forensic Audit" whereas Dr. Debashis Mitra, (Central Council Member, ICAI), Practising Chartered Accountant, elucidated about Indian Accounting Standards.

CAREER AWARENESS PROGRAMME

Career Awareness Programmes (CAP) were conducted at Loreto Convent, Elliott Road; Mahadevi Birla Shishu Vihar; Mahadevi Birla Girls High School; Kendriya Vidyalaya, Ordinance Factory and South City International School. Shri S.Sreejesh, Assistant Director (Career Awareness), EIRO, apprised the students of Class XI and XII on "Career as a Company Secretary" with focus on Role of a CS, Admission procedure, Fees structure etc. Brochure containing details of the CS Course was provided to the students.



INAUGURATION OF ICSI HALDIA STUDY CENTRE ON 13TH APRIL, 2018



The ICSI Haldia Study Centre was inaugurated on 13th April 2018 at Haldia Law College (An institute of ICARE), Purba Medinipur, West Bengal. The Study Centre MOU was signed between ICSI and Haldia Law College by Shri DVNS Sarma, Regional Director (EIRO), ICSI and Shri Asish Lahiri, Secretary, ICARE (for Haldia Law College) in the presence of ICARE Chairman Shri Lakshman Seth and other staff members of ICSI and Haldia Law College.

MEGA PLACEMENT DRIVE-I, 2018

The Institute invites your esteemed organisation to participate in the ICSI Mega Placement Drive-I, 2018 for screening the candidates for the suitable vacancy in your organisation. The following schedule has been planned for members who have received their membership post 20th October 2017 till 31st May 2018.

Date Day of Interview	Chairman Regional Director	Address of EIRO (Eastern India Regional Office)	Placement Coordinator and contact person
19th June 2018 (Tuesday)	CS Ashok Purohit Chairman – EIRC Shri D.V.N.S. Sarma Regional Director (EIRO)	ICSI Eastern India Regional Office 3A, Ahiripukur 1st Lane Kolkata 700019	CS Sonu Nahata, Assistant Director Ph: 033-40234444/22832973/ 22901065/22902178/22830052; Fax : 033-22816542; Mobile : 9007115661; E-mail: eiro@icsi.edu/ sonu.nahata@icsi.edu

This is to inform to all that views and information expressed and provided in the Articles of this edition are the views and information of the respective authors. They have no connection with the organisation with which the authors are associated. ICSI-EIRC is not responsible for the authenticity or propriety of the contents of the Articles and ICSI-EIRC cannot be held responsible or liable for any claim or damage arising out any ation or belief on the basis of the contents of the aforesaid Articles. ICSI-EIRC is not in any way responsible for the result of any action taken on the basis of the advertisement published in ICSI-EIRC Newsletter.

DISCLAIMER

RIGHTS ISSUE UNDER THE COMPANIES ACT, 2013



BY CS Ankita Banerjee

*Deputy Manager – Corporate Finance
RP-Sanjiv Goenka Group*

A rights issue is a direct offer of shares to all the existing shareholders of the Company in proportion to their current holding. The company also sets a time limit for the shareholder to buy the shares. Companies pursue Rights Issue as an avenue to raise funds for various reasons, ranging from expansion or acquisitions to paying down debts. Section 62 of Companies Act,

2013 contains provisions on “further issue of capital”, and enacts the principle of pre-emptive rights of shareholders of a company to subscribe to new shares of the company. Provisions of Section 62 of Companies Act, 2013 are mandatory for all Private companies, public companies, and listed as well as unlisted companies.

RELEVANT PROVISIONS OF COMPANIES ACT-2013:

Sec 62 (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

- i. the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
- ii. unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person or apply for additional shares; and the notice referred to in clause (i) shall contain a statement of this right;
- iii. after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;

The Procedure for allotment of Shares issued on Rights Basis:

- i. Issue notice in writing to every Director at least seven days' before convening the Board meeting. [Sec 173 (3)]
- ii. Convene a Board Meeting
- iii. Pass a Board resolution for approving “Letter of offer”. The offer letter shall include right of renunciation also.
- iv. Dispatch Letter of offer to all existing shareholders through registered post or speed post or through electronic mode at least three days before the opening of the issue.
- v. Receive acceptance, renunciations, rejection of rights from shareholders.
- vi. Issue notice in writing to every Director at least seven days' before convening the Board meeting. [Sec 173 (3)]
- vii. Convene a Board Meeting

viii. Pass Board resolution for approving allotment and issue of shares.

ix. File E-form MGT 14 within 30 days of Issue of securities.

x. File with Registrar a return of allotment in E-Form PAS-3 within 15 days of allotment of shares.

In case of Rights Issue, there is no prescribed format for the “Letter of Offer” which is issued to the existing Shareholders. However the “Letter of Offer” shall specify the number of shares offered also specifying the time limit not being less than fifteen days and not exceeding thirty days for which the offer can remain open within which if the offer if not accepted, shall be deemed to have been declined.

In case of the Return to Allotment which is filed in Form PAS-3 the following attachments are required to be mandatorily attached with Form PAS-3 while filing:

- Board Resolution pertaining to Allotment of Securities
- Table A containing the details of Allotees. This Table shall contain the names, addresses, occupation, if any, of the shareholders and number of securities allotted to each of the allottees and the list shall be certified by the signatory of the Form PAS-3 being complete and accurate as per the records of the Company.

In case of Listed Companies, in addition to Section 62 of the Companies Act, 2013, SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 also need to be complied with.

SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 requirements:

- Record Date has to be fixed for the purpose of determining the shareholders who are eligible to apply for securities in the proposed Rights Issue. It is to be noted that the issuer shall not withdraw rights issue after announcement of the Record Date.
- If the issuer opts to withdraw the rights issue after announcement of the Record Date, then the issuer shall not be eligible to make an application for listing of any of its securities on any recognized stock exchange for a period of 12 months from the Record Date. However, listing of its equity shares is permitted if it is allotted pursuant to conversion or exchange of convertible securities issued prior to the announcement of the Record Date.
- Rights Issue is not permitted, if there are outstanding fully or partly convertible securities issued prior to the commencement of the Record Date. However, Rights Issue is permissible, if sufficient reservation of equity shares of the same class has been made in favour of holders of such outstanding convertible instruments in proportion to the convertible part thereof.
- Letter of Offer / Abridged Letter of Offer: Abridged Letter of Offer, along with application form, shall be dispatched through post or speed post to all the existing shareholders at least three days before the date of opening the issue. The Letter of Offer shall be given by the issuer or lead merchant banker to any existing shareholder who has made a request in this regard.
- Issue price: The issue price shall be decided before determining the record date which shall be determined in consultation with the designated stock exchange.

• Open for Subscription: Rights issue shall be open for subscription for a minimum period of 15 days and for a maximum period of 30 days. Payment option: of the following two options, only one payment option can be given - part payment on application with balance money to be paid on calls; or - full payment on application.

• Advertisement: Pre-issue advertisement for rights issue should be given disclosing the following;

- a. the date of completion of dispatch of abridged letter of offer and the application form
- b. the centres other than registered office of the issuer where the shareholders can obtain the duplicate copies of the application forms
- c. a statement that if the shareholders have neither received the original application form nor in a position to obtain the duplication forms, they may make application in writing on a plain paper to subscribe to the rights issue
- d. a statement that the applications can be directly sent by the shareholders entitled to apply against rights entitlements through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement

e. a statement to the effect that if the shareholder makes an application on plain paper and also on application form both his application shall be liable to be rejected at the option of the issuer.

Restrictions on Rights under SEBI (ICDR Regulations) 2009:

- Issuer cannot make Rights Issue if the promoter, Promoter group or Directors of the Company are debarred from accessing the Capital market by SEBI.
- Issuer cannot also not make Rights Issue in case any of the Promoters, Directors or persons in control of the issuer was or is also a promoter, Directors or person in control of any other Company which is debarred from accessing the Capital Market by the Board.
- Issuer cannot also not make Rights Issue in case all existing partly paid up equity shares of the issuer have either been fully paid up or forfeited.
- Issuer also cannot make Rights Issue unless firm arrangements of finance through verifiable means towards seventy five per cent. of the stated means of finance, excluding the amount to be raised through the rights issue or through existing identifiable internal accruals, have been made.

ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEES FOR 2018-19

The Annual Membership and Certificate of Practice fee for the year 2018-19 became due for payment w.e.f. 1st April, 2018 and last date for payment of the same will be 30th June, 2018. Members are requested to pay the fee along with applicable GST before the last date. The fee payable is as follows:-

Particulars	Associate(admitted till 31.03.2015)	Associate**(admitted on or after 01.04.2015)	Fellow
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Entrance fee*	Rs. 2360	Rs. 2360	Rs. 2360
Restoration fee*	Rs. 295	Rs. 295	Rs. 295
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360

* Fee inclusive of applicable GST@18%.

** Annual Membership Fee of Rs.1770/- and Certificate of Practice fee of Rs. 1770/- w.e.f. 01-04-2017 for associate members who were admitted on or after 01-04-2015 are valid for initial two years only including the admission year (irrespective of date of obtaining the Certificate of Practice in the year of admission) and the following year. The Annual membership and Certificate of Practice fee will be automatically revised to full thereafter.

NOT MERE APPOINTMENT BUT THE PERFORMANCE OF THE INSOLVENCY PROFESSIONAL IS OF UTMOST IMPORTANCE

BY CS Rohit Sharma



Introduction

The Insolvency and Bankruptcy Code, 2016 ('Code') since its inception in the year December 2016 has seen a sea of cases of filed under its provisions before the National Company Law Tribunal ('NCLT') and National Company Law Appellate Tribunal ('NCLAT'). However, the Code consisted of various interpretation voids so, numerous steps are being taken by the Central Government to fill in such gaps

by way of bringing in clarifications and amendments. Along with the cases filed before the NCLT under the provisions of the Code parallelly, the amendments and clarifications also kept published. One of the most important constituent of the Code is the role of the Resolution Professional ('RP') or the Interim Resolution Professional ('IRP'). As when an application is admitted by the NCLT, the reins of the management of a corporate debtor ('CD') lies with the IRP or RP, as the case may be. It is expected of them to perform their duties with utmost sincerity.

One of the reason for a CD to fall into the clutches of the IRP or RP is that the present management of the company is not been able to pull out enough financials to pay off the creditors. If the IRP or RP, who runs the business of the CD during the Corporate Insolvency Resolution Process ('CIRP'), also feels that the CD would not be able to pull off the cash and would only go into liquidation, then the whole motive of the Code shall stand as failed. In the matter of **Stewarts and Lloyds of India Limited (SLIL)**, NCLT Kolkata Bench, the RP appointed by the Hon'ble Bench was not appointed as the Liquidator due to failure on the part of the RP in taking appropriate steps for completing the resolution process. This post tries to analyse the duties of the RP and the reason for non-appointment of the RP as the liquidator

Factual Background

Stewarts and Lloyds of India Limited (SLIL) ('Corporate Debtor' or 'Company') made the application under section 10 of the Code read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 before the NCLT Kolkata Bench. The total current liabilities of the Company was shown around Rs. 82 crores that exceeded the assets of the Company. The Company was also making losses since 2015-16 and 2016-17 and the cash flows for both the years were negative. The Corporate Debtor recommended the name of Mr. Sandeep Kumar Gupta as the IRP.

The application was admitted on 1 May 2017 and moratorium had begun for the Company. The first meeting of the Committee of Creditors ('CoC') was held on 12 June 2017 and the IRP submitted his progress report with the NCLT on 15 July 2017 along with the minutes of the first meeting of the CoC. In the said meeting, the resolution was passed to appoint the IRP as the RP.

Further, the RP submitted a progress report on 20 October 2017 wherein it was mentioned that the RP had filed four progress reports until the said date and informed that he received no resolution plan until the said date. Section 12 of the Code states that the CIRP shall be completed within 180 days from the date of admission of the application. In the case at hand, 180 days shall end on 28 October 2017.

Duties of the Resolution Professional

Section 25 of the Code specifies the duties of a RP, which is as follows:

25. (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—

- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
- (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;
- (c) raise interim finances subject to the approval of the committee of creditors under section 28;
- (d) appoint accountants, legal or other professionals in the manner as specified by Board;
- (e) maintain an updated list of claims;
- (f) convene and attend all meetings of the committee of creditors;
- (g) prepare the information memorandum in accordance with section 29;
- (h) invite prospective lenders, investors, and any other persons to put forward resolution plans;
- (i) present all resolution plans at the meetings of the committee of creditors;
- (j) file application for avoidance of transactions in accordance with Chapter III, if any; and
- (k) such other actions as may be specified by the Board.

The Code specifically states that it is the duty of a RP to invite prospective lenders, investors, and any other persons to put forward resolution plans. However, in the case at hand the NCLT noticed that no advertisement for inviting bids for submission of resolution plan was made by the RP. Even though, the Code handovers the reins of a corporate debtor into the hands of the IRP/RP, but major decisions are to be taken by the IRP/RP only after receiving the approval from the CoC.

In the case at hand, it seems that no interim finance was also raised by the IRP/RP for the purpose of working capital of the company as because no meeting of the CoC took place after the appointment of the IRP as the RP. The Code states that interim finance is to be raised, subject to the approval of the CoC. The main motive of the Code, is to rejuvenate the weak company by way of inviting bids and thus formulate a resolution plan, however, in the present case, no advertisement was only made for inviting bids from the investors.

Further section 34 of the Code, states that the resolution professional shall be appointed as the liquidator if the NCLT passes an order subject to non-submission of resolution plan within 180 or 270 days, as the case maybe, of the CIRP or the NCLT rejects the resolution plan. However, the CoC also has the power to either continue with the existing RP as the liquidator in case the CD goes into liquidation or appoint any other liquidator. In the case of **Keshav Sponge & Energy Private Limited ('KSEPL')**, before NCLT Kolkata Bench, where the CoC decided to not to let the existing RP appointed as the liquidator and hence, the NCLT ordered for appointment of another Liquidator instead of the existing RP. Considering this situation, it is important for the existing RP to take approval from the CoC for being appointed as the liquidator of the CD. In the case at hand, the RP also did not take approval from the CoC for being appointed as the Liquidator.

NCLT's Decision in the matter

The NCLT observed that only one CoC meeting was held i.e., 12 June 2017 and after that, no meeting of the CoC took place. NCLT also noted that although Section 12 of the Code provides that a corporate debtor can request for one time extension of

upto 90 days but no such application was made by the RP even though the resolution plans were not submitted before the NCLT. So, upon the completion of the CIRP, the Corporate Debtor has to go under liquidation as per the provisions of Chapter III of the Code read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

The following were the observations of the NCLT where the RP failed to perform his duties:

1.No advertisement was made for inviting bids from investors.

2. No consent was taken from the CoC for appointment of the RP as the liquidator.

The NCLT also noted that the RP failed to take proper steps to invite bids and hence submit the resolution plan which is the whole purpose of keeping the CD under moratorium. Therefore, the NCLT held its view to not to appoint the existing RP as the liquidator in the present Case. A request was made to the Insolvency and Bankruptcy Board of India ('IBBI') to recommend any other name for being appointed as the liquidator in the present case

NCLAT's Take on the conflict

An appeal against the Order of the aforesaid order of the NCLT Kolkata Bench dated 26th October, 2017 was made by the existing RP. However, considering all the previously mentioned facts as observed by the NCLT, the NCLAT held that although the Code provides for removal of the RP under the circumstances as mentioned under section 34(4) of the Code.

Section 34(4) states as follows:

(4) *The Adjudicating Authority shall by order replace the resolution professional, if—*

(a) *the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*

(b) *the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.*

However, the NCLAT observed that although none of the aforesaid event triggered, in order to replace the existing RP, but the Hon'ble Bench held the view that the list of RPs which is made available by the IBBI to the NCLT and if any person is appointed from the list submitted by IBBI, then it should be treated that the said appointment is made by IBBI.

Hence, the NCLAT chose not to interfere in the matter and hence the decision of the NCLT to remove the existing RP stood in place

Conclusion

The main motive of the Code is to revitalise the ill companies and hence if they are capable of be financially healthy once then help them in the same or else the company shall go into liquidation. However, if during such period of moratorium where such ill company is said to be kept in 'intensive care unit' and the persons managing the business fails to do it sincerely then the whole point of keeping the company in such care goes in vain. It is therefore, very important from the perspective of the stakeholders to monitor the progress of the RP.

In the case at hand, the CoC seemed equally liable for the failure on part of the RP to perform its duties sincerely. It is to be appreciated that it is not possible for the NCLT to monitor the activities of the RP but should be the duty of the CoC as they have a major role in the CD's rejuvenation.

ATTENTION MEMBERS

I. COMPANY SECRETARIES BENEVOLENT FUND ICSI has established the Company Secretaries Benevolent Fund (CSBF) in the year 1976 which seeks to create big security umbrella to derive comfort and Security. The Fund provides assistance for education/medical or for any other similar purpose in deserving cases to the Members of the ICSI and dependents of the deceased members. The financial assistance upto Rs. 60,000 is provided to the members for medical expenses for self or dependents in deserving cases on receipt of request. Financial assistance for education at the rate of Rs. 40,000/- per child (subject to maximum of two children) in deserving cases is provided to minor children of the deceased members. As a member of the Fund upto the age of 60 years it covers the member's future through the Group Life Insurance Policy for a sum of Rs. 7,50,000/- to the dependents of the deceased member of the fund from the CSBF. The dependents of the deceased member above 60 years of age are provided financial assistance of Rs.3,00,000/- from the fund in deserving cases. The assistance is provided in minimum time possible.

Contribution to the Fund is a noble cause. Members of the ICSI after becoming the member of CSBF get the additional security shield for the life. Contribution to the Fund qualify for the deduction under section 80-G of the Income Tax Act, 1961. Members have just to fill up a form provided here to become a member of the Fund. Members have to pay a small amount of Rs.10,000/- as one time contribution for your life membership of the Fund. Members have to provide the names of the dependents. Members can deposit the form at the HQ or with any Regional Offices/Chapter Offices. Cheque / Demand draft should be drawn in favour of "Company Secretaries Benevolent Fund". The application has to be made to the Secretary of ICSI.

II. To update records viz. Membership No.; Communication Address; Mobile No.; E-Mail IDs; Telephone Nos., members are requested to furnish the details (if there is any change) to: eiro@icsi.edu

III. To publish the ICSI-EIRC Newsletter more informative, members are requested to contribute the Article on current topics / Check-Lists / Corporate and Legal Updates etc to: tamal.kar@icsi.edu

IV. To make the Newsletter self-sustainable, members are also requested to use their good offices to get advertisement / sponsorship support for the same. The Advertisement Tariff is given in the Newsletter(Page No.12)

LEGAL UPDATES OF THE MONTH – APRIL 2018
BY CS Ravi Varma
Company Secretary & Compliance Officer, Texmaco Rail & Engineering Limited

The Ministry of Corporate Affairs amended the Companies (Share Capital and Debenture) rules, 2014 : dated 10th April 2018
The key highlights of the amendments are as follows:

Every certificate shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed company secretary:

Provided that in case the company has a common seal it shall be affixed in the presence of persons required to sign the certificate.

Explanation. - For the purposes of this sub-rule, it is hereby clarified that,-

(a) in case of an One Person Company, it shall be sufficient if the certificate is signed by a director and the company secretary or any other person authorised by the Board for the purpose.

(b) a director shall be deemed to have signed the share certificate if his signature is printed thereon as facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography or digitally signed, but not by means of rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose.

Therefore, the Certificate can be signed as follows:

1. By two Directors;
2. By a Director and Company Secretary
3. By a Director and Company Secretary/ any other person authorised in case of OPC.

The amendment may be accessed on the following link:

http://www.mca.gov.in/Ministry/pdf/SharecapitalRule2018_11042018.pdf

The Ministry of Corporate Affairs vide its circular dated 27th April 2018 has made a relaxation of additional fees and ex-
tended the last date of filing of AOC – 4 XBRL E- Forms using Ind AS under the Companies Act, 2013:

The last date now extended till 31st May, 2018. Earlier the MCA has extended the same upto 30th April, 2018 vide its circular dated 28th March, 2018.

The circular may be accessed on the following link:

http://www.mca.gov.in/Ministry/pdf/Circular042704_27042018.pdf

The Ministry of Corporate Affairs vide its circular dated 27th April 2018 has given a one day extension of the Condonation of Delay Scheme upto 01.05.2018.

On the subject of Condonation of Delay Scheme, 2018 and to state that the closing date of the scheme viz. 30.04.2018 is falling under gazette holiday on account of 'Budh Purnima', therefore, the Ministry has decided to give one day extension of the said scheme i.e. upto 01.05.2018.

The circular may be accessed on the following link:

http://www.mca.gov.in/Ministry/pdf/CondonationCircular03_27042018.pdf

SEBI circular on monitoring of foreign investment limits in Indian companies

The Securities and Exchange Board of India (SEBI) vide its circular dated April 5, 2018 in respect to monitoring of foreign investment limits in Indian companies to generate a centralized FPI Registration and FPI Certificate with the commencement of Foreign Portfolio Investor (FPI) Regime in 2014.

It is mentioned in the aforesaid SEBI circular that, the depositories shall put in place the necessary infrastructure and IT systems for operationalizing the monitoring mechanism in respect of Monitoring of Foreign Investment limits in listed Indian companies. The Foreign Investment limits monitoring will be carried out by a Designated Depository which shall be appointed by Listed Indian company.

The circular may be accessed on the following link:

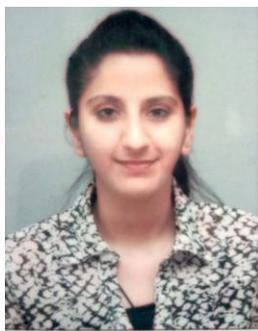
https://www.sebi.gov.in/legal/circulars/apr-2018/monitoring-of-foreign-investment-limits-in-listed-indian-companies_38575.html

NOTIFICATION
Revised Eligibility criteria for attending e-MSOP by working professionals getting full exemption from practical training

In exercising its power under Section 15 of CS Act 1980, the Council of the Institute has approved the following eligibility criteria for attending e-MSOP by the working professionals getting full exemption from practical training:

- 1) The candidates granted full exemption in practical training based on their working experience can register in e MSOP without waiting for 02 years time bar as applicable for the normal candidates.
- 2) The candidates granted partial exemption in practical training shall not be eligible for making registration for e MSOP unless they complete the balance training or exempted thereafter based on additional relevant work experience.
- 3) However, such relaxation shall not be granted to the candidates who are undergoing long term training. The existing guideline of e MSOP shall be applicable to them.

IMPLICATION OF DEFINITIONAL CHANGE IN RELATED PARTIES AS PER THE COMPANIES (AMENDMENT) ACT, 2017



Introduction

The Companies Act, 1956 ("Act, 1956") did not define the word 'related party'; however, on 12th September, 2013, MCA enforced the relevant provisions of the Companies Act, 2013 ("Act, 2013") which defined the above term for the first time, and ever since then the definition has been changing to broaden its scope.

Ministry has brought significant changes in the definition of related party through the Companies (Amendment) Act, 2017 ("Amendment Act, 2017") which has been made effective from 9th February, 2018. In this article we have majorly covered the changes brought in the definition of related party and its implications from compliance perspective.

Relevant Provision of Law Before and After The Change

Before amendment:

The provisions as per Section 2(76) of the Companies Act, 2013 are:

"(vii) **any company** which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

XX"

After amendment:

The provisions substituted as per Section 2(xi) of the Companies (Amendment) Act, 2017 are:

"(viii) **any body corporate** which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) **an investing company or the venturer of the company;**

XX";

Explanation.—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate."

Analysis:

The provisions of section 2(76)(vii) of the Act, 2013 prior to the amendment failed to cover the entities (holding, subsidiary or associate companies) incorporated outside India. Even though the intention could have never been to exclude foreign entities, the language was loosely drafted and therefore, companies did not follow the compliance for entering into related party transactions while transacting with the said parties.

Further, bodies corporate like limited liability partnership were also precluded from the definition of related party (being the holding, subsidiary or associate company).

BY CS Smriti Wadehra

The Amendment Act, 2017 has undone the loose drafting of the definition of related party.

Further, the definitional change will also allow the inclusion of upstream entities exercising significant influence on the companies to be regarded as related parties.

Another significant change in the definition of related party from the investor perspective, is that the related party relationship has become two fold to include both associate and investor company.

To elaborate previously only associate company was regarded as related party as per section 2(76)(viii) for the investor company, however, the vice-versa situation was not present. By virtue of the change, investor company will also be regarded as related party for the associate company.

Prospective application of amendment

The implication of the changes in the definition of related party shall apply prospectively for all companies as the notification enforcing the amendment does not mention anything regarding the retrospective application of the amendment.

Accordingly, companies will have to take into account compliances relating to transactions entered with such new related parties. Further, the changes brought in the definition of related party has surely widened the provisions of related party however will also increase compliance burden on the companies.

Action points:

Pursuant to the changes introduced in the Amendment Act, 2017, the companies need to ensure the following compliance:

1. Audit Committee Approval

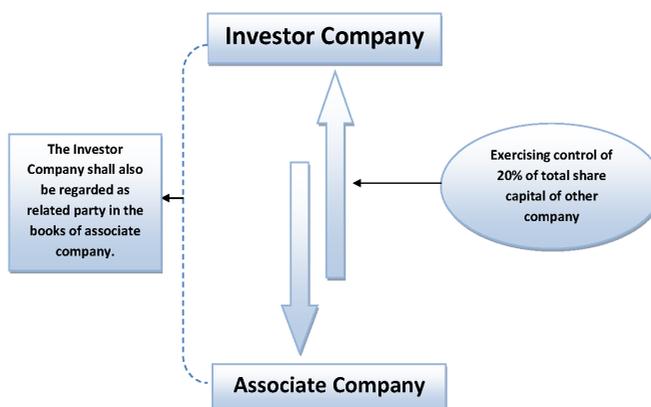
Any transaction entered with the new related party shall require approval of the Audit Committee pursuant to section 177(4)(iv) of Act, 2013. Further, it shall be the responsibility of the Audit Committee to review such transactions on periodic basis.

Also as a matter a good governance the company should place the list of ongoing transactions with such new related parties,

entered before the amendment so that the committee can take note of the same.

2. Board Approval and Shareholders Approval

Pursuant to section 188 of the Act, 2013 any transaction which is not in ordinary course and at arm's length basis and is falling under the arrangement of sub-section (1) shall require approval of the board of directors. Further, pursuant to Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014 if such transaction exceeds the prescribed limit as mentioned in the said section shall require approval of the shareholders at the general meeting. Therefore, in case the transactions entered with the new related party exceeds the limit and fall under the ambit of transactions of section 188 of the Act, 2013 the Company shall require approval of board and shareholders for executing such transactions.



3. Register of Contracts or Arrangements in which directors are interested

Pursuant to section 189 of the Act, 2013, once the transactions is approved by the board and the shareholders (if applicable) the Company has to enter details contracts or arrangements entered with such new related party as per section 188 of the Act, 2013 in the register MBP-4 along with other details as required in the Act, 2013 read with allied rules.

4. Disclosure in Board's Report

Section 188(2) of the Act, 2013 provides "Every contract or arrangement entered into under sub-section (1) shall be referred to in the **Board's report** to the shareholders along with the justification for entering into such contract or arrangement."

Therefore any transactions entered with such related party pursuant to section 188(1) shall be required to be disclosed in board's report as per section 134(3)(h) in form AOC-2.

Changes in the definition of related party as per AS-18 and IND-AS-24:

The change in the definition of related party as per Companies (Amendment) Act, 2017 shall have no impact on the definition of related party as per AS-18 and IND-AS 24 as the same already broad enough to incorporate all the new related parties as introduced in the amendment act.

Conclusion:

The requirements concerning related party transactions have always been a matter of significant debate since their introduction in Act, 2013. However, the changes introduced in Amendment Act, 2017 by the ministry has undone the loose drafting under the Act, 2013.

The intention of law was always to include all the companies including foreign company into the ambit of related party however the language of law of 2013, Act did not interpreted the same therefore the Ministry amended the term to remove ambiguities.

Further, inclusion of investor companies in the definition of related party has been done to align the provisions with AS-18 and IND-AS 24.

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- Min. number of PCH to be acquired by Members above the age of 60 years. The members above the age of 60 years shall be required to obtain 50% of the PCH required to be obtained by the members below 60 years.

FORCE MAJEURE - CONCEPT VS. MISCONCEPT



What is Force Majeure?

Force Majeure is a French word which literally means 'Superior strength'. In legal parlance, the word force majeure has derived its English meaning from French which stands for an inevitable accident or 'Act of God'. Events that can neither be anticipated nor controlled fall under this category.

The concept of force majeure (superior force) has its origins in Roman law. Under the name "vis major" or "vis divina", The Roman law designated it as unforeseeable and irresistible events that excused a debtor of performance. The concept was later adopted by civil law countries and has been adopted in the French Civil Code (Napoleonic Code) which dates back to 1804.

Force majeure clauses cover occurrences of events like a riot, strike, war, crime etc. or events which are Act of God i.e., natural disasters like earthquake, cyclone, flood, volcanic eruption etc. One most crucial aspect to remember is that force majeure clause excuses a party from performing his or her obligations if the party has exercised due diligence and care but has failed to perform.

English common-law however does not automatically apply the force majeure principles to contracts. Parties to the English law of contracts who wish to have force majeure relief must expressly spell out the terms in the contract.

The English Courts interpreted the phrase 'force majeure' to have a more extensive meaning than "act of God". The Ld. Judges have agreed that strikes and breakdowns of machinery, which though normally are not included in the French concept of force majeure, are included within the ambit of English concept of force majeure.

This clause is used in any contract to excuse a party from his/her liability, only if some unforeseen event took place, and as a result of such unforeseen event the performance of the contract must have been beyond the control of the parties.

In the case of breakdown of machinery due to lack of adequate maintenance, force majeure will not hold as a good alibi, since the owner of the machinery could have prevented such breakdown by undertaking proper maintenance and this was within the owner's sphere of control.

On the other hand, in the famous English case of *Matsoukis v. Priestman & Co (1915)* it was held that the term force majeure cannot be extended to cover bad weather, football matches, or a funeral, since "these are the usual incidents interrupting work, and the defendants, in making their contract, no doubt took them into account"

In "*Hackney Borough Council v. Dore (1922)* it was held that "The expression force majeure means some physical or material restraint and does not include a reasonable fear or apprehension of such a restraint".

In India, the Indian Contract Act, 1872 does not expressly provide for the force majeure provision. We see a jurisprudence of cases which have led to development of this doctrine. Supreme Court has held that the expression "force majeure" is not a mere French version of Latin expression 'vis major'. It has wider application. Where reference to force majeure is made, the intention is to save the performing party from the consequences of anything over which he has absolutely no control.

BY CS Debanjan Banerjee

Advocate & Corporate Consultant, High Court, Calcutta

The ambit of force majeure extends to but not limited to: including but not limited to:

- 1) act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
- 2) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
- 3) rebellion, revolution, insurrection of military or usurped power, or civil war;
- 4) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- 5) riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of the Supplier or of his Subcontractors; or
- 6) acts or threats of terrorism

In the case of *Esjay International (P) Ltd. vs. Union of India (2011) 6 Mah LJ 750*, it was held that In case of delay on account of flood and / or earthquakes due to which a subject project was delayed, the prima-facie burden of proof lies on the party claiming force majeure, but, once the conditions for invocation of force majeure clause were shown to exist, the burden shifts on the other party to show when such conditions ceased to exist.

In *General Electric Inc. Canada vs. National Hydroelectric Power Corporation Limited 2010 SCC 2015* it was held that "*Labour problem is not force majeure*".

In the case of *Dharmrajmal Gobindram v. Shamji Kalidas [AIR 1961 SC1285]*, it was held that, "*An analysis of ruling on the subject shows that reference to the expression is made where the intention is to save the defaulting party from the consequences of anything over which he had no control.*"

The Practical scenario:

In practice although there is no express provision of force majeure clause in The Indian Contract Act, 1872, the Act recognizes the essence of force majeure as an excuse for nonperformance of contractual obligation within the agreed time. It gives a party more time to perform its contractual obligations for things beyond its control. According to Section 56 of the Indian Contract Act, 1872 An agreement to do an act impossible in itself is void. The Supreme Court held that: "*In so far as a force majeure event occurs de hors the contract, it is dealt with by a rule of positive law under Section 56 of the Indian Contract Act, 1872. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose of the parties.*"

The ultimate question before the Apex Court was how far the ambit for "Force majeure" can be stretched so as to make the performance of the contract impossible, resulting in frustration of the contract.

In *M/s Alopi Parshad & Sons Ltd. v. Union of India, [1960 (2) SCR 793]*, the Supreme Court Held that, "the Act does not enable a contracting party to ignore the express covenants thereof and to claim payment of consideration, for performance of the contract at rates different from the stipulated rates, on a vague plea of equity. Parties to an executable contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, for example, a wholly abnormal rise or fall

in prices which is an unexpected obstacle to execution. This does not in itself get rid of the bargain they have made." Unless there is a fundamental change in the events and not merely circumstantial changes, there can be no frustration of contract.

In another case the Supreme Court observed that "an unexpected rise in the price of coal will not absolve the generating companies from performing their part of the contract for the very good reason that when they submitted their bids, this was a risk they knowingly took."

Another practical application and rather a misuse of the concept of force majeure is largely found in most real estate sectors. All agreements between developers and buyers have the force majeure provision. It is incorporated to protect the developer against uncertainties. However, the clause is sometimes used by developers to put vague incidents and derive benefits. For example, some housing projects are kept on

a standstill over a land acquisition row; developers have been mostly citing high input costs and labour unrest under force majeure to claim relief. In fact, many real estate cases have been rejected by the National Consumer Disputes Redressal Commission (NCDRC) for using arbitrary grounds. These include cases where developers have cited shortage of sand due to a curb on illegal sand mining mafia, lack of water as court stopped use of ground water for construction, shortage of labour due to government schemes and economic meltdown for delaying housing projects, etc.

In Indian scenario the cases of force majeure vary from case to case depending upon facts and circumstances and the language of the force majeure clause in the contract. A force majeure clause is often added to a contract of commodities without careful consideration of its implications. It is quite critical in commodity contracts and therefore should be carefully drafted. An event must reasonably satisfy several conditions to be viewed officially as a force majeure

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DECODING FEMA REGULATIONS IN RELATION TO FDI

BY CS Vinita Nair

Partner, M/s Vinod Kothari & Company



What is Force Majeure?

The Government has been undertaking constant endeavors to make India the desired investment destination. Several amendments are being made in corporate laws to ensure ease of doing business in India, including revisiting sectoral caps as applicable for foreign investment, ease of reporting foreign investments. In order to ensure adequate compliance, it is essential to understand the scope of Foreign Exchange Management Act, 1999 (FEMA) and allied regulations in relation to foreign direct investments. This article discusses key concepts and procedures in relation to foreign direct investments in a simple manner.

Scope of FEMA

Foreign Exchange Management Act, 1999 (FEMA) governs regulation and management of foreign exchange in relation to dealing in, holding of, realisation and repatriation of foreign exchange, export of goods and services and permissible current account and capital account transactions¹.

Capital account transactions have the effect of creating an asset or liability:

- in India by a Person Resident outside India (PROI); or
- outside India by a Person Resident in India (PRII)

Foreign investment in India has the effect of creation of an asset in India by PROI and is therefore, a capital account transaction. Pursuant to provisions of Section 47 of FEMA, the Reserve Bank of India (RBI) has power to frame regulations in relation to permissibility of capital account transactions. As per Regulation 3(I) B read with Para (a) of FEM (Permissible Capital Account Transactions) Regulations, 2000 investment in India by a PROI is permissible in case of:

- issue of security by a body corporate or an entity in India and investment therein by a PROI; and
- investment by way of contribution by a PROI to the capital of a firm or a proprietorship concern or an association of persons in India.

Understanding key concepts in relation to FDI

Governing regulations

FEMA (Transfer of Issue of Security by a Person Resident Outside India) Regulations, 2017 (FDI Regulations) effective from November 7, 2017².

Governing authority

Department of Industry Policy and Promotion (DIPP) under Ministry of Commerce and Industry govern the limit upto which foreign investments can be received in a particular sector.

RBI governs the following aspects:

- eligible categories of investors viz. PROI, NRI³, OCI⁴, FPI⁵, FVCI⁶;
- eligible categories of investee entities viz. Companies, LLP, firm, proprietorship concern;
- eligible instruments;
- manner of receipt of funds;
- reporting requirements;
- transfer of instruments held and repatriation of funds.

Meaning of Foreign Investment

Firstly, it is pertinent to understand the concept of repatriation. Where the investor is permitted to repatriate the proceeds of sale of investment made in foreign currency, such investment is said to be made on a repatriation basis. Accordingly, where the investor is not permitted to repatriate the proceeds of sale of investment, such investment is said to be made on non-repatriation basis.

Under FDI Regulations, investments made on non-repatriation basis are treated as domestic investments. Investment made by a PROI on a repatriable basis in the capital instruments of an Indian company or to the capital of LLP is regarded as Foreign Investment.

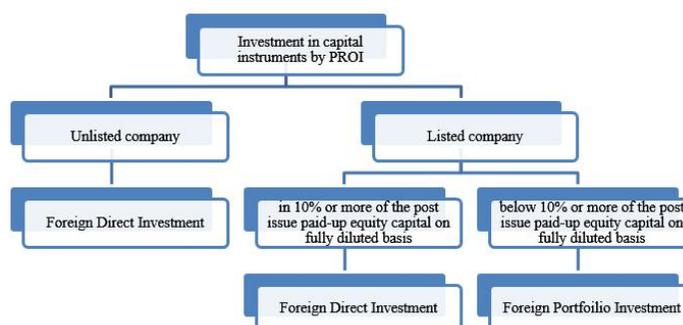
Meaning of capital instruments

- Equity shares
 - issued as per Companies Act, 2013 (Act, 2013);
 - includes partly paid up shares;
 - 25% payment upfront, full payment in 12 months.
- Preference shares fully, compulsorily and mandatorily convertible into equity
- Bonds/debentures fully, compulsorily and mandatorily convertible into equity
- Share warrants
 - issued as per SEBI (ICDR) Regulations, 2009;
 - 25% payment upfront, full payment within 18 months.
- Non-Convertible/ Optionally Convertible / Partially Convertible Preference shares
 - issued upto April 30, 2007;
 - issued beyond April 30, 2007 to be regarded as External Commercial Borrowing (ECB).
- Optionally Convertible/ Partially Convertible debentures
 - issued upto June 7, 2007
 - till their original maturity.
 - issued beyond June 7, 2007 to be regarded as ECB.

Foreign Direct Investment v/s Foreign Portfolio Investment

Note 1: Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised.

Note 2: any investment made by a PROI through capital instruments where such investment is less than 10 percent of the paid up value of each series of capital instruments of a listed Indian company will also be regarded as Foreign Portfolio Investment.



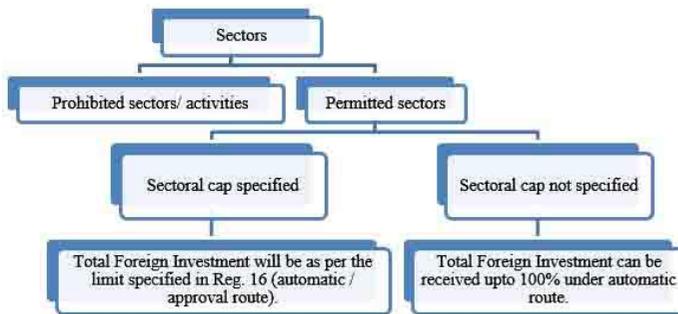
Total Foreign Investment



Indirect Foreign Investment means Downstream Investment i.e., investment in the capital instruments of another Indian company

- by an Indian entity or
 - which has received Foreign Investment; and
 - is **not owned and not controlled** by resident Indian citizens; or
 - is **owned or controlled** by PROI.
- by an Investment Vehicle⁷
 - whose sponsor⁸ or manager⁹ or investment manager
 - is **not owned and not controlled** by resident Indian citizens; or
 - is **owned or controlled** by PROI

Eligible sectors/ activities



Prohibited sectors

- (1) Lottery Business including Government/ private lottery, online lotteries.
- (2) Gambling and betting including casinos.
- (3) Chit funds.
- (4) Nidhi company
- (5) Trading in Transferable Development Rights (TDRs).
- (6) Real Estate Business or Construction of Farm Houses.
Explanation: For the purpose of this regulation, "real estate business" shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014. Real estate broking services shall be excluded from the definition of "real estate business" and 100% foreign investment is allowed in real estate broking services under automatic route.
- (7) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- (8) Activities/ sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations.
- (9) Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

Eligible investors

Category of investor	Investment in	Governed by
PROI	Capital instruments of an Indian company	Schedule 1

FPI	Capital instruments of an Indian company listed on RSE ¹⁰ .	Schedule 2
NRI/ OCI	Capital instruments of Indian company listed on RSE on repatriation basis.	Schedule 3
NRI/ OCI	Capital instruments of an Indian Company/ capital of LLP/ firm/ Proprietary concern, on non -repatriation basis	Schedule 4
PROI	Securities other than capital instruments.	Schedule 5
PROI	Capital of LLP	Schedule 6
FVCI	(a) securities, issued by an Indian company engaged in specified sectors and whose securities are not listed on a RSE at the time of issue of the said securities; (b) securities issued by a startup; (c) units of a Venture Capital Fund (VCF) or of a Category I Alternative Investment Fund (Cat-I AIF) or units of a scheme or of a fund set up by a VCF or by a Cat-I AIF.	Schedule 7
PROI	Investment Vehicle	Schedule 8
PROI	ADR/GDR	Schedule 9
FPI/NRI/OCI	IDRs issued in Indian capital markets	Schedule 10

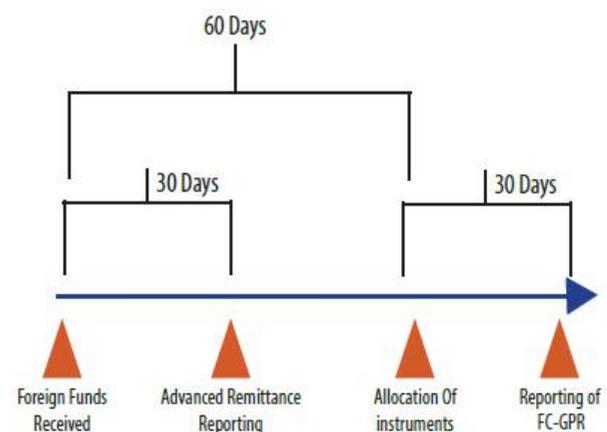
Modes of Foreign Investment in Indian companies

Mode	Compliance to be ensured	Reporting requirements
At the time of Incorporation	-Sectoral cap restrictions. -Where the investee company is engaged in sector under approval route, Government approval to be obtained. -Investment will be made at face value. -Allotment of shares within 60 days of receipt of funds.	Advance reporting on receipt of funds and Form FC_GPR after subscription of shares.

Swap of shares	<ul style="list-style-type: none"> -Valuation, irrespective of the amount, will have to be made by a Merchant Banker registered SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country. -Sectoral cap restrictions. -Where the investee company is engaged in sector under approval route, Government approval to be obtained. -Investment will be made at fair value. 	<ul style="list-style-type: none"> -Form FC_GPR within 30 days of allotment of shares. - Reporting under ODI Regulations for investment in entities outside India 	Rights issue/ bonus issue	<ul style="list-style-type: none"> -Sectoral cap restrictions. -Where the investee company is engaged in sector under approval route, Government approval to be obtained. -Investment will be made at fair value. -Allotment of shares within 60 days of receipt of funds in case of rights issue. -Initial acquisition must have been as per FDI Regulations. -Where the PROI is investing on account of rights renounced in its favor, such shares shall be held on repatriation basis only if the original shareholder was holding in on repatriation basis. -Pricing in case of unlisted company: price determined by the company; -Pricing in case of listed company: not less than price offered to PRII. 	<ul style="list-style-type: none"> -Advance reporting within 30 day of receipt of funds and -Form FC_GPR within 30 days of allotment of capital instruments.
Amounts remitted for pre-operative/ pre-incorporation expenses ¹¹	<ul style="list-style-type: none"> -Issue of capital instruments against amounts remitted for pre-operative/ pre-incorporation expense is permitted for wholly owned subsidiary set up in India that operates in a sector under 100% automatic route with no FDI linked performance conditions¹². -Limit: 5% of its authorised capital or USD 5,00,000 whichever is less. 	<ul style="list-style-type: none"> -Within thirty days from the date of issue of capital instruments but not later than one year from the date of incorporation or such time as Reserve Bank or Central Government permits, the Indian company shall report the transaction in the Form FC-GPR to the Reserve Bank; -A certificate issued by the statutory auditor of the Indian company that the amount of pre-incorporation/ pre-operative expenses against which capital instruments have been issued has been utilized for the purpose for which it was received should be submitted with the Form FC-GPR. 	ESOP	<ul style="list-style-type: none"> -Stock options/ sweat equity shares to employees/ directors resident outside India of the company, holding company, JV, WOS, subsidiaries. -Scheme as per Act, 2013 or SEBI (SBEB) Regulations, 2014. -Sectoral cap restrictions. -Where the investee company is engaged in sector under approval route, Government approval to be obtained. -If the employee was a PRII at the time of grant, shares acquired shall be held on non-repatriation basis. 	<ul style="list-style-type: none"> -Form ESOP¹³ within 30 days from the date of issue of employees' stock option. -Advance reporting within 30 day of receipt of funds and -Form FC_GPR within 30 days of allotment of shares.
Payment for Import of capital goods/ machinery/ equipment (excluding second-hand machinery).	<ul style="list-style-type: none"> -Sectoral cap restrictions. -Where the investee company is engaged in sector under approval route, Government approval to be obtained. -Investment will be made at fair value 	<ul style="list-style-type: none"> Form FC_GPR within 30 days of allotment of capital instruments.. 			

Preferential issue	-Sectoral cap restrictions. -Where the investee company is engaged in sector under approval route, Government approval to be obtained. -Investment will be made at fair value in case of unlisted company and as per SEBI (ICDR) Regulations in case of listed companies.	-Advance reporting within 30 day of receipt of funds and -Form FC_GPR within 30 days of allotment of capital instruments.	Downstream Investment (Indirect foreign investment) -Entry route, Sectoral cap and pricing guidelines to be ensured. -Should have the approval of Board of Directors as also a Shareholder's agreement, if any. -Indian entity making the downstream investment shall bring in requisite funds from abroad and not use funds borrowed in the domestic markets. -Downstream investments can be made through internal accruals. -For this purpose, internal accruals will mean profits transferred to reserve account after payment of taxes. -The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of these regulations for the downstream investment made by it at second level and so on and so forth. -Such first level company shall obtain a certificate to this effect from its statutory auditor on an annual basis. Such compliance of these regulations shall be mentioned in the Director's report in the Annual Report of the Indian company	-An Indian company making downstream investment in another Indian company which is considered as indirect foreign investment for the investee company in terms of these Regulations, shall notify the Secretariat for Industrial Assistance, DIPP and file Form DI within 30 days of such investment and, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme); -As per Consolidated FDI Policy, Indian entity making downstream investment shall notify RBI and Foreign Investment Facilitation Portal (FIFP) in the form available at fifp.gov. in within 30 days of such investment.
Issue of Convertible Note ¹⁴ by start-up entities	-Sectoral cap restrictions. -Where the investee start-up company is engaged in sector under approval route, Government approval to be obtained for issue of Convertible Note. -the price/ conversion formula of the instrument should be determined upfront at the time of issue of the instrument. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with FDI Regulations.	-Inflows to be reported in Form CN within 30 days of such issue; -Form FC_GPR within 30 days of allotment of capital instruments.		
Merger/ demerger/ amalgamation	Transferee company/ resulting company may issue capital instruments to existing shareholders (PROI) of the Transferor company subject to: -Scheme being approved by NCLT; -Sectoral cap and entry route; -Transferor/Transferee/ Resulting company shall not be engaged in sectors prohibited for receiving foreign investment.	Form FC_GPR within 30 days of allotment of capital instruments.		
Inbound mergers ¹⁵	-Compliance as provided in Foreign Exchange Management (Cross Border Merger) Regulations, 2018 notified w.e.f. March 20, 2018. -Sectoral cap restrictions. -Where the Resulting company is engaged in sector under approval route, Government approval to be obtained	Form FC_GPR within 30 days of allotment of capital instruments		

Reporting requirement for issue



Form	Purpose	To be filed with	Timeline	Documents to be submitted
Advance Remittance Form (ARF):	Reporting of amount of consideration received for issue of capital instruments and where such issue is reckoned as Foreign Direct Investment.	eBiz portal	Within 30 days from date of receipt.	-FIRC from bank receiving payment -KYC report on the non-resident investor from the overseas bank remitting the amount. Signed copy is given by the AD Bank receiving remittance
Form Foreign Currency- Gross Provisional Return (FC-GPR):	Reporting of capital instruments issued to a person resident outside India and where such issue is reckoned as Foreign Direct Investment. Issue of 'participating interest/ rights' in oil fields shall be reported Form FC-GPR	eBiz portal	Within 30 days from date of issue of capital instruments/ participating interest/ rights' in oil fields	See note below.

Note: Documents to be submitted along with FC_GPR

- UIN from RBI after reporting in ARF;
- KYC report for the beneficiary if the beneficiary and remitter are different entities;
- CS certificate;
- Certificate from SEBI registered Merchant Banker / Chartered Accountant;
 - indicating the manner of arriving at the price of the shares issued to the persons resident outside India
- Statutory Auditor Certificate
- Board resolution
- LRN(Loan Registration Number) allotted (if on conversion of ECB)
- Copy of Government approval (if required)
- Details of Transfer of shares if any

- No objection certificate from the remitter for the shares being allotted to the third party mentioning their relationship
- Letter from the foreign investor explaining the reason for making subscription to shares by the remitter on his behalf
- Copy of agreement/Board resolution from the investee company for issue and allotment of shares to the foreign investor, other than the remitter
- Reason for delay in submission

Transfer of capital instruments

Regulation 10 of FDI Regulations provide for transfer of capital instruments. Modes of transfer is discussed hereunder:

By PROI



By PRII

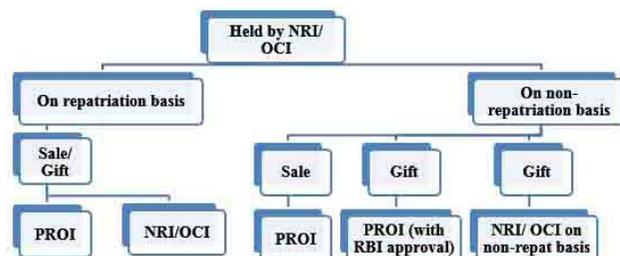


Note 1: Gift to PROI shall be subject to following conditions:

- Donee should be eligible to hold security;
- Gift should not exceed 5% of paid-up capital of Indian company;
 - on cumulative basis by a single person to another single person
- Sectoral cap;
- Donor and Donee shall be relatives;
- Value of security to be transferred together with any security transferred to any PROI as gift during the financial year does not exceed USD 50,000.

Note 2: In case of transfer of capital instruments of a company in the financial sector 'fit and proper/ due diligence' requirement as regards the non-resident investor as stipulated by the respective financial sector regulator shall have to be complied with by the AD bank.

By NRI/ OCI



Pricing guidelines

-Listed company:

- as per relevant SEBI Guidelines;
- price at which preferential allotment of shares can be made.
 - Date of purchase/ sale shall be relevant date.

-Unlisted company:

- as per valuation done as per any internationally accepted pricing methodology for valuation on an arm's length basis, duly certified by
 - Chartered Accountant;
 - SEBI registered Merchant Banker
 - Practising Cost Accountant

Reporting for Transfer:

Form	Purpose	To be filed with	Timeline	Who is to file?
FC-TRS	Reporting of following transfers: -PROI (Repat) and PROI (Non Repat); -PROI (Repat) and PRIL; -Transfer of 'participating interest/ rights' in oil fields -Indian company buying back shares in a scheme of merger/ de-merger/ amalgamation of Indian companies approved by NCLT/ competent authority.	eBiz portal	Within 60 days of transfer of capital instruments or remittance of funds, whichever is earlier.	-Resident transferor/ transferee (in case of consideration payable on deferred basis reporting on receipt of every tranche of payment.) -PROI (acquiring on non-repatriation basis) -PROI in case of sale on recognised stock exchange

Note : Documents to be submitted along with FC_TRS

- Certificate indicating fair value of shares from a Chartered Accountant / SEBI registered Category I Merchant Banker.
- Copy of Broker's note if sale/ purchase is made on Stock Exchange.
- Declaration from the NR buyer to the effect that he is eligible to acquire shares / compulsorily and mandatorily convertible preference shares / debentures/others under FDI policy and the existing sectoral limits and conditionality (such as minimum capitalization norms, etc) and Pricing Guidelines have been complied with
- Declaration from the FII/sub account to the effect that the individual FII / Sub account ceiling as prescribed has not been breached
- Extracts of Share Purchase Agreement (SPA) containing:

- Name of the buyer and seller
 - Name of the investee company
 - No. of shares to be transferred
 - Price at which they are transferred
 - Mode of transfer
 - Date of transfer
 - Any other relevant information
- If the sellers are NRIs/ erstwhile OCBs, the copies of RBI approvals, if applicable, evidencing the shares held by them on repatriation/non-repatriation basis
- No Objection/Tax Clearance Certificate from Income Tax Authority/ Chartered Accountant
- Approval letter from RBI / FIPB
- Power of attorney (if signatory is agent)

Pledge of capital instruments :

Created by	In favour of	To secure	Conditions
Promoter of Indian company	Recognised lender	ECB raised by borrowing company	-Period of pledge to be co-terminus with maturity of ECB -Stat Auditor certification on utilisation of ECB proceeds for permitted end –use -NOC from AD Bank that above conditions are met.
PROI	Bank in India	Credit facilities extended to such Indian company	-in case of invocation of pledge, transfer should be in accordance with instructions in vogue at the time of creation of pledge; -submission of a declaration/ annual certificate from the statutory auditor of the investee company that the loan proceeds will be/ have been utilized for the declared purpose; -the Indian company has to follow the relevant SEBI disclosure norms, if any; and -pledge in favour of the lender (bank) would be subject to compliance with the Section 19 of the Banking Regulation Act, 1949. -aforesaid conditions shall suitably apply for units of Investment Vehicle.

PROI	Overseas Bank	Credit facilities to such person or PROI who is promoter of Indian company or its overseas group company	<p>-loan is availed only from an overseas bank;</p> <p>-loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;</p> <p>-overseas investment should not result in any capital inflow into India;</p> <p>-in case of invocation of pledge, transfer should be in accordance with the policy in vogue at the time of creation of pledge; and</p> <p>-submission of a declaration/ annual certificate from a Chartered Accountant/ Certified Public Accountant of the non-resident borrower that the loan proceeds will be/ have been utilized for the declared purpose;</p> <p>-aforesaid conditions shall suitably apply for units of Investment Vehicle.</p>
PROI	NBFC	Credit facilities extended to Indian company	<p>-in case of invocation of pledge, transfer of capital instruments should be in accordance with the credit concentration norm as stated in the Master Direction – Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 (Para 22) and Master Direction – Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 (Para 22)</p> <p>-The AD may obtain a board resolution 'ex ante', passed by the Board of Directors of the investee company, that the loan proceeds received consequent to pledge of capital instruments will be utilised by the investee company for the declared purpose;</p> <p>-the AD may also obtain a certificate 'ex post', from the statutory auditor of investee company, that the loan proceeds received consequent to pledge of shares, have been utilised by the investee company for the declared purpose;</p>

			<p>-under no circumstances, the credit concentration norms should be breached by the NBFC. If there is a breach on invocation of pledge, the capital instruments should be sold and the breach shall be rectified within a period of 30 days from the date of invocation of pledge.</p>
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Annual reporting requirement :

Annual return on Foreign Liabilities and Assets (FLA) to be filed by Indian company/ LLP which has received FDI/ capital contribution in the previous year, including current year. This has to be filed by July 15 every year and is required to be sent to fla@rbi.org.in.

Delay in reporting :

Any reporting under FEMA beyond specified timelines will be subject to payment of Late Submission Fee (LSF). This will not apply to contravention of FEMA for other than reporting matters. Those will be required to be compounded.

Amount involved in reporting (in INR)	LSF as % of amount involved*	Maximum amount of LSF applicable
Upto 10 million	0.05%	INR 1 million or 300% of the amount involved, whichever is lower.
More than 10 million	0.15%	INR 10 million or 300% of the amount involved, whichever is lower.

• The % of LSF will be doubled every twelve months

- Period of contravention shall be considered proportionately
 - {(approx. rounded off to next higher month ÷ 12) X amount for 1 year}.
- the period shall begin from the day after the 30th day (from the date of receipt of funds/ allotment or transfer of shares) and end on the day preceding the day on which the transaction report is received.
 - The date of reporting to the AD bank shall be deemed to be the date of reporting to the Reserve Bank provided the prescribed documentation is complete in all respects.
 - In case the reporting form (whether in physical or electronic form) is incomplete then the delay will continue till such time the form is received complete in all respects.
- The LSF may be paid by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the Regional Office concerned.

JUDICIAL PRONOUNCEMENT

BY CS Rajesh Poddar
Deputy Company Secretary, ITC Limited

Some recent cases which may be relevant to our professional fraternity :

1. CA shall not be deemed to be in practice if he is only running coaching classes for CA aspirants. [Harpal Singh Dhingra vs. Vinod Gupta]

The respondent in a separate case was held guilty by the Board of Discipline of the Institute of Chartered Accountants of 'other misconduct' falling within the meaning of the provisions of Chartered Accountants Act, 1949. During the hearing of the petition in March, 2016, the respondent had stated that he shall not practice the profession of Chartered Accountant till the next date of hearing.

Later, the respondent was found to be running teaching classes for CA aspirants. The petitioner contended that the respondent along with his name is mentioning 'CA' which implies that he is offering the services of the accountancy and that he had issued advertisements representing himself as a CA; by doing so the respondent was alleged to have wilfully violated the statement given to the Court of 'not practicing the profession of CA' and was thus liable for being proceeded with under the Contempt of Court Act, 1971.

Held that in the instant case, the issuance of advertisements offering to take coaching classes and to impart of training to CA aspirants cannot be said to be carrying on the profession of chartered accountancy so as to constitute wilful violation of the undertaking earlier given to the Court.

2. NCLT directs companies to nominate directors on board to remove deadlock in company. [Raffles Education Investment (India) Pte Ltd. vs. Educomp-Raffles Higher Education Ltd.]

In the instant case it was evident from the pleadings that a deadlock existed in the company and the interests of the company were at stake; no Board of Directors were functioning. According to Share Purchase agreement it was a part obligation of the petitioner and their sole responsibility to infuse fund in the respondent company. It was noted that various Institutions of Engineering, MBA, BBA, designing course have been adversely affected on account of non-functioning of respondent company.

NCLT by interim order directed petitioner and respondents to nominate directors on board of directors of respondent company to remove deadlock in the company.

3. Accused could not plead for psychological disorder later on when he was already convicted for cheque dishonouring. [Amarjit Singh. vs. Kuljinder Singh]

In the instant case the respondent filed a complaint against the petitioner with the allegation that the petitioner had borrowed money from him and agreed to pay back the said amount within one month. In order to discharge his ability, the petitioner had issued a post-dated cheque in favour of the respondent. However, when presented in the bank the said cheque was returned with remark 'Account closed'. The petitioner was summoned under section 138 of the Negotiable Instruments Act, 1881 and the notice of accusation for commission of offence was served. The Trial

Court held the petitioner guilty for commission of offence and sentenced him both monetary penalty and imprisonment.

Aggrieved from the aforesaid judgement of conviction and sentence passed by the Trial Court, the petitioner filed an appeal before learned Additional Sessions Judge. It was argued that the petitioner was an old patient of multiple substance abuse disorder with psychotic disorder with recent memory and judgement; therefore, the undertaking / compromise entered by the petitioner and non-compliance thereof does not constitute an offence as per Section 84 IPC.

Held that a person already convicted and imprisoned for dishonour of cheque, could not take plea of psychological disorder before the High Court at a belated stage, which was never agitated before any of lower Courts.

4. NCLT has jurisdiction and power to compound offences where no fine or imprisonment or both is prescribed even after initiation of prosecution. [Teamasia Semiconductors (India) Ltd. vs. Registrar of Companies]

The applicant company violated the provisions of section 149 of the Companies Act, 2013 (Act) by not appointing a woman director within 6 months of commencing of the Act, i.e, within 31st December, 2014. A show cause notice was served by the RoC on this matter.

However, the response received from the applicant company was not to the satisfaction of RoC which led to filing of complaint under Section 450 of the Act before the Court of Special Judge for Economic Offences by RoC against the applicant company.

In the meanwhile, the applicant company appointed a woman director on its Board in March, 2016 and filed DIR12. Further, the applicant company requested RoC to exonerate it as the financial position of the company was not in good state and had also submitted an application before the NCLT under section 441 of the Act for compounding of offences.

Based on earlier judgement of the Hon'ble Supreme Court where it held that the NCLT can inter alia compound the offences both before and after initiation of prosecution, the NCLT in the instant case directed the applicant company to pay a compounding fee and directed the RoC to bring the compounding of offence to the notice of the learned Special Judge for Economic Offences for passing of appropriate order.

5. The date on which failure occurred is relevant for deciding the applicable law. [SEBI vs. Roofit Industries Ltd] :

In the instant case the appeals lay siege to the decision of the SAT which modified the order of the Adjudicating Officer, reducing the penalty payable by the Respondent under section 15A of the SEBI Act from Rs. 1 crore to Rs. 60,000 considering the inability of the Respondent to pay the penalty.

Aggrieved of the SAT judgement, Appellant took the matter before the Supreme Court arguing that the penalty imposed by the Adjudicating Officer should not have been reduced on wholly extraneous grounds not mentioned in Section 15J of the SEBI Act. In this context it may be noted that Section 15A of SEBI Act, pursuant to which penalty was imposed, was amended on 29.10.2002. The initial Summons to the Respondent was dated 23.7.2002. From this date onwards, there was an obligation on the Respondent to produce the documents and information sought by the Appellant,

but it failed to do so, within the extended time limit till 16.09.2002. The default continued even until imposition of penalty by the Adjudicating Officer on 29.3.2004. The Supreme Court while considering the aforesaid noted that the penalty first became applicable under the pre-amendment section, which imposed ‘a penalty not exceeding Rs. 1.50 lakh for each such failure’ and set aside the order passed by SAT. Held that the date on which the failure occurred was relevant for deciding the applicable law, not the date on which the penalty imposed.

6. In Inter-State amalgamation of companies the order of High Court which sanctions scheme is an instrument chargeable to stamp duty. [Chief Controlling Revenue Authority vs. Reliance Industries Ltd.]

In the instant case two companies having registered offices situated in two different states viz. Maharashtra and Gujarat had entered into a Scheme of Amalgamation under the Companies Act, 1956 and had filed petitions before respective High Courts. The Transferor company and the Transferee company were required to pay Rs. 25 crores and Rs. 10 crores respectively towards chargeable stamp duty on the orders passed by the respective High Courts. The Transferee company had paid Rs. 10 crores in the State of Gujarat. The Transferor company urged that since the Transferee company had already paid stamp duty of Rs. 10 crores, the Transferee company was entitled to remission / deduction / set off in the payment of stamp duty thereon to the extent of stamp duty already paid. Held that although the two orders of two different High Courts are pertaining to same Scheme they are independently different instruments and cannot be said to be same document especially when the two orders of different High Courts are upon two different petitions by two different companies. The stamp duty is attracted on the

instrument and not on transaction. Hence both the companies are subject to stamp duty and no set off can be claimed against stamp duty paid or payable pursuant to Court order in another State.

7. Person having no commercial interest in a company could not seek inspection of its statutory documents. [Anil Kumar Poddar vs. Darshan Securities (P.) Ltd.]

In the instant case the petitioner, seeking inspection of statutory documents and copies thereof of the respondent companies, is neither a member nor a debenture holder in any of these companies, nor is a person having any commercial interest in any of the aforesaid companies.

The respondent companies submit that this petitioner has filed petitions claiming that he, though not a shareholder, is entitled to seek these reliefs as ‘any other person’, since Section 163 of the Companies Act, 1956 (section 94 of Companies Act, 2013) confers right upon ‘any other person’ to seek inspection and supply of the documents on payment of requisite fees. Held that the phrase ‘any other person’ in section 163 should be read in the light of doctrine of ejusdem generis and not otherwise. The Counsel submitted that the petitioner being not a Banker, Creditor nor any other person having commercial interest in the respondent companies, the right provided for inspection and copies thereof to ‘any other person’ cannot be invoked by the petitioner.

The views if any expressed hereinabove are not necessarily the views of the organization. The contributor would like to thank CS Erina Chakraborty for her assistance in the research work. Facts and judgment has been summarized for sake of brevity – Reading the full case is suggested to gain clear understanding of the Orders cited herein in the context of facts of each case.

ICSI NEW SYLLABUS 2017

CS FOUNDATION PROGRAMME

- 1. Business Environment and Law
- 2. Business Management, Ethics & Entrepreneurship
- 3. Business Economics
- 4. Fundamentals of Accounting and Auditing

CS EXECUTIVE PROGRAMME

Module- 1

- 1. Jurisprudence, Interpretation & General Laws
- 2. Company Law
- 3. Setting up of Business Entities and Closure
- 4. Tax Laws

Module – 2

- 1. Corporate & Management Accounting
- 2. Securities Laws & Capital Markets
- 3. Economic, Business and Commercial Laws
- 4. Financial and Strategic Management

CS PROFESSIONAL PROGRAMME

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- 1. Governance, Risk Management, Compliances and Ethics
- 2. Advanced Tax Laws
- 3. Drafting, Pleadings and Appearances

Module – 2

- 4. Secretarial Audit, Compliance Management and Due Diligence
- 5. Corporate Restructuring, Insolvency, Liquidation & Winding-up
- 6. Resolution of Corporate Disputes, Non-Compliances & Remedies

Module – 3

- 7. Corporate Funding & Listings in Stock Exchanges
- 8. Multidisciplinary Case Studies (The examination for this paper will be open book examination)
- 9. Electives 1 paper out of below 8 papers
 - 9.1 Banking – Law & Practice
 - 9.2 Insurance – Law & Practice
 - 9.3 Intellectual Property Rights – Laws and Practices
 - 9.4 Forensic Audit
 - 9.5 Direct Tax Law & Practice
 - 9.6 Labour Laws & Practice
 - 9.7 Valuations & Business Modelling
 - 9.8 Insolvency – Law and Practice (The examination for this paper will be open book examination)

Golden Jubilee Year National Conference of Practicing Company Secretaries (19th Edition)

8 PCH for Members
16 PDP for Students

The Institute organizes the National Conference of Practicing Company Secretaries and invites eminent personalities, experts from various fields, Government Officials, Professionals from various disciplines to exchange their experiences and views with the fellow professional colleagues from India and abroad. The National PCS Conference has been recognized as a mega opportunity for Brand Building of the profession, strengthening relationship with Government and regulatory authorities, Capacity Building of members, opportunity for professional networking and also as an event to strengthen the bond amongst our members from different parts of the country.

This year the Golden Jubilee Year National Conference of Practicing Company Secretaries (19th Edition) is being organized by the Institute at The LaLiT Mumbai, Sahar Airport Road, Andheri East, Mumbai, Maharashtra during May 18-19, 2018 on the theme **"PCS – A Value Driven Professional"**.

Delegate Registration Fee for the Conference is as follows:

Delegate Registration Fee*

Delegate Category	Registration from 1st May till 17th May, 2018	Spot Registration
Members / Non-Members / Accompanying Spouse / Children above 12 years	4,720/-	5,310/-

* Inclusive of Goods and Services Tax @ 18%

We, request our esteemed members to register as delegate for the National Conference of Practicing Company Secretaries by visiting the link: <https://goo.gl/XsRuXU> and participate in the conference in large numbers.

ANNUAL MEMBERSHIP SCHEME (AMS) OF EIRC OF ICSI FOR THE YEAR 2018

EIRC of ICSI offers Annual Membership Scheme (AMS) for 2018 (1st February, 2018 to 31st January 2019). Details of AMS is given below :

Programmes on offer (minimum)	<ul style="list-style-type: none"> • Four (4) Full-Day Seminars • Regional Conference of Practicing Company Secretaries • Regional Conference of Company Secretaries • Six (6) Half-Day Workshops • Study Circle Meetings • Interactive Meetings • Foundation Day Programme / Udai Diwas Programme
PCH / PDP	As per the ICSI Guidelines
Mode of Payment	Payment may be made in Cash or by Cheque / DD drawn in favour of "The Institute of Company Secretaries of India – EIRC" Online Payment can be made through the following link: https://paytm.com/education?op=The%20Institute%20of%20Company%20Secretaries%20of%20India&type=registration

Fee Structure (inclusive of GST @18%)

Individual Members

Rs. 7,000/- Members who got their membership on or after 01.04.2015

Rs. 9,200/- Members who got their membership up to 31.03.2015

Corporate Members

SILVER : ₹13,000/-	GOLD : ₹20,500/-	PLATINUM : ₹36,000/-
Any ONE delegate from the Company/ organisation can attend	Any TWO delegate from the Company/ organisation can attend simultaneously	Any FOUR delegates from the Company/ organisation can attend simultaneously

Please register for the scheme at an early date to avail the maximum benefit. We request corporates, firms and our members to extend their kind support and patronage to make this Scheme successful. It will go a long way in helping your Regional Council to organize much better, bigger and relevant programs. For further information, please write to Shri Alok Kumar, Executive (Admin), EIRO of ICSI at alok.kumar@icsi.edu.

BHUBANESWAR CHAPTER

Date	Name of the Programme	Chief Guest / Guest Speakers	Topic	Venue
24.04.18	Celebration of National Panchayati Raj Diwas, 2018	Ms. Arati Sahoo Block Development Officer Block. Baliana, Khurdha	Talk on "Model Governance Code for Meeting of Gram Panchayats"	Sarakana Gram Panchayat Office Block Baliana, Khurdha, Odisha
24.04.18	Celebration of National Panchayati Raj Diwas, 2018	-	Talk on "Model Governance Code for Meeting of Gram Panchayats"	Bhubaneswar Chapter Office Premises

HOOGLY CHAPTER

Date	Name of the Programme	Chief Guest / Guest Speakers	Topic	Venue
18.04.18	Career Awareness Programme	CS POSANTO KR. GHOSH	Career in CS Course	Nabagram High School, Konnagar
18.04.18	Career Awareness Programme	CS POSANTO KR. GHOSH	Career in CS Course	Kanaipur High School, Konnagar

JAMSHEDPUR CHAPTER

Date	Name of the Programme	Chief Guest / Guest Speakers	Topic	Venue
28/04/2018	Group Discussion on Board Report Under Companies Act 2013.	CSTB Srikanth	-	CFE Library, Jamshedpur

NORTH EASTERN (GUWAHATI) CHAPTER

Date	Name of the Programme	Chief Guest / Guest Speakers	Topic	Venue
07.04.18	Investors' Fair	Chief Guest: Hon'ble Chief Minister of Assam Speakers: Shri Vikram Limaye, M.D CEO, NSE; CS Biman Debnath, Past Chairman & MC Member NE Chapter of EIRC of ICSI and Shri Rupam Goswami, Chairman, Assam Chamber of Commerce	SME Funding and Role of Capital market	SME Funding and Role of Capital market
24.04.18	National Panchayat Raj Diwas	Speakers: CS Pravin Chhajer, Chairman, NE Chapter of ERC of ICSI and CS Vivek Sharma, Treasurer, NE Chapter of ERC of ICSI	National Panchayat Raj Diwas	Kamarkuchi Gram Panchayat Office, Kamarkuchi, Assam

PATNA CHAPTER

Date	Name of the Programme	Chief Guest / Guest Speakers	Topic	Venue
14.04.2018	Clnteraction Session	Regional Director, Eastern region (MCA)	Open session	Chapter Premises

RANCHI CHAPTER

Date	Name of the Activity / Programme	Venue
06.04.2018 To 07.04.2018	6th 2-days Induction Programme	Ranchi Chapter of EIRC of ICSI
11.04.2018 To 13.04.2018	6th 3-days e-Governance Programme	Ranchi Chapter of EIRC of ICSI
20.04.2018	Career Awareness Programme	Lala Lajpat Rai Sr. Sec. School, Pundag
21.04.2018	Career Awareness Programme	Kendriya Vidyalaya, HEC, Ranchi
23.04.2018	Career Awareness Programme	Kendriya Vidyalaya, Hinoo, Ranchi
24.04.2018	Career Awareness Programme	Firayalal Public School, Main Road, Ranchi
24.04.2018	Celebration of National Panchayati Raj Diwas	Ranchi Chapter of EIRC of ICSI
25.04.2018	Career Awareness Programme	DAV Gandhinagar, Kanke Road, Ranchi
26.04.2018	Career Awareness Programme	Oxford Public School, Samlong, Ranchi
27.04.2018	Career Awareness Programme	Army Public School, Dipatoli, Ranchi

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इष्टव्यं कुरु तप्यते। बोधेनैव हि प्रोक्तं ब्रह्म।

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"To be a global leader in promoting
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"To develop high calibre professionals
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