



# NIRC-ICSI Newsletter

Northern India Regional Council of The Institute of Company Secretaries of India  
National Best Regional Council (2004, 2007, 2008, 2009 & 2010) Monthly \* Volume XXXV \* No.1\* January, 2012



Seminar on Foreign Exchange Management: Emerging Issues & Recent Developments & Release of Annual Legal & Compliance Referencer of NIRC, 2012 (24.12.2011): From L to R CS Manish Gupta, CS Ashu Gupta, CS Deepak Kukreja, CS Ranjeet Pandey, Ms. M.Vedavalli, Deputy General Manager (Retd.), Reserve Bank of India, CS P.K.Mittal, CS NPS Chawla and CS Rajiv Bajaj.



Rajasthan State Conference on Managing Knowledge Dynamics & Creating Professional Avenues (10.12.2011) : From L to R CS Shyam Agrawal, CS Nesar Ahmad, Vice-President, ICSI, Mr. B.B. Pradhan, Unit Head, Jindal Saw Ltd., CS Anil Murarka, President, ICSI, Prof.V.K. Goswamy, Vice-Chancellor, Sangam University, CS Ranjeet Pandey, CS N.K.Jain, Secretary & CEO, ICSI & CS R.K.Jain



Two day Capacity Building Workshop for PCS (3-4.12.2011): From L to R CS Manish Gupta, CS Deepak Kukreja, CS Atul Mittal, CS Ranjeet Pandey, CS Pavan Kumar Vijay (Past President, ICSI), CS Ashu Gupta and CS Vineet K Chaudhary.

**NIRC-ICSI WISHES ALL THE MEMBERS  
A VERY HAPPY & PROSPEROUS NEW YEAR 2012**





**Two day Capacity Building Workshop for PCS (3-4.12.2011):** From L to R CS Sumit Pahwa, CS Girish Narang, CS S. Kumar & CS Sanjay Grover addressing.



**Two day Capacity Building Workshop for PCS (3-4.12.2011):** From L to R CS NPS Chawla, CS Saurabh Kalia, Mr. H.L.Tiku, Senior Advocate, CS Nesar Ahmad, CS Rajiv Bajaj, CS Ranjeet Pandey and Mr. Samir Agarwal, Director Marketing, Ocean Technocrats.



**Meeting of Company Secretaries in Practice on Analysis of Balance Sheet with Special Reference to New Schedule-6 Requirements (19.12.2011) :** From L to R CS Manish Gupta, CS Yogesh Gupta, CS Ranjeet Pandey & CS Dhananjay Shukla



**Chandigarh Chapter— Seminar on New Companies Bill (27.12.2011) :** From L to R CS Manish Aggarwal, CS Ranjeet Pandey, Mr. R.C.Verma, IAS, CS Mukesh Sharma & CS K.V.Singhal.



**Valedictory Function of 158<sup>th</sup> Management Skills Orientation Program(16.12.2011):** From L to R CS Alka Arora, CS Vineet K Chaudhary, CS Ranjeet Pandey, Mr.Praveen Trivedi, Regional Manager, SEBI, CS Sanjay Grover, CS Manish Gupta and Mr.T.R. Mehta. Best Project Report/Best participants standing.



Dear Professional Colleagues,

*“Look at the sky. We are not alone. The whole universe is friendly to us and conspires only to give the best to those who dream and work”*

- Dr. A. P. J. Abdul Kalam

Seasons Greetings and my best wishes to you and your family for a very Happy and Prosperous New Year. May almighty give all of us courage and strength to work together for growth of profession in the New Year.

Friends, this message holds emotional value for me, as it is my last message as the Chairman of NIRC of ICSI. I take this opportunity to express my sincere gratitude to the almighty for providing me the strength with which, I could perform my duties to the best of my abilities as Chairman. A number of initiatives have been taken during the last year, to realize the vision of our institute, which are briefed herein:

#### **Seminars/ National Conferences & its Webcasting:**

The objective of organizing each and every professional development program is the capacity building of our members and to empower them to face new challenges and to grab emerging opportunities. In the year 2011, we have tried to cover almost all niche areas of professional interest for our members. In the same series, on 24<sup>th</sup> December, 2011, NIRC-ICSI organized one day seminar on the theme “Foreign Exchange Management - Emerging Issues and Recent Developments” at Hotel Le Meridien, New Delhi. At the Inaugural Session, the Annual Legal & Compliance Referencer of NIRC, 2012 was released. The awards of the Research Paper Competition 2011, were also distributed to the winners.

This was one of the dreams of Team NIRC that all quality programs organized by NIRC should reach to the Chapters and members at semi-urban/remote location and they should also participate and take benefit of such kind of mega events. To convert this dream into reality and to encourage live participation of members located at various towns /cities across Northern region, in the year 2011, NIRC started **Webcasting** of the various programs. The response from the Chapters is very encouraging. I am sure this initiative will act as a catalyst to bridge the gap between NIRC and its Chapters.

#### **Study Circle/Study Groups Meetings/New Study Circle**

NIRC, on regular basis, has been organizing study group meetings in various parts of Delhi with the help of its four study groups and one study circle. The objective of these meetings is to have discussion among members on the subjects of current / new subjects. In the year 2011, with a view to increase participation of members, NIRC has started circulation of posers well in advance, on the topics to be discussed in the forthcoming study circle meetings. In the same series on 23<sup>rd</sup> December, 2011, NIRC, for the first time has organized a Mega Study Circle Meeting on the topic “Discover the Hidden Power” at YMCA, New Delhi. Mr. P S Rathore, a renowned motivational speaker was the guest speaker on the occasion.

I am happy to inform you that on the recommendation of NIRC, constitution of a **New Study Circle** has been approved by Central Council at Vaishali, Ghaziabad. I am sure with this initiative, members of Vaishali and Vasundhara will be greatly benefitted.

#### **Participative Workshops for members:**

It is our continuous endeavor to provide opportunities to the members to have practical training through participative workshops. In the year 2011, NIRC organized series of workshops on XBRL and on other subjects of topical interest.

We have also organized half day workshop exclusively for the Female Company Secretaries on the subject “Professional Women - Realigning Priorities”, which was well appreciated by female members.

#### **Exclusive Programs for Members in Practice**

NIRC has generated and given new momentum in the year 2011 for organizing exclusive programs/ meetings for the members in practice, as we were able to organize almost in every month, exclusive meetings for practicing members on the subjects of their interests. NIRC has also organized Northern Region PCS Conference on “Calibrating Competence for Professional Excellence” at Massoorie. Team NIRC has also organized Orientation & Capacity Building workshops, especially for the Practicing Company Secretaries during the year.

#### **State Conferences**

In order to promote the professional development activities at State Level and also to provide opportunity to our chapters to host mega programs,



in the year 2011, NIRC organized two State Level Conferences one in Punjab at Ludhiana & another in Rajasthan at Bhilwara.

### **Strengthening of Infrastructure & Manpower of Regional Office/Chapter**

It has been always a dream for all of us to have well equipped chapters /Regional offices so that they can cater to the need of all the stakeholders locally. Acting in this direction, the ICSI had constituted a Core Group for Strengthening of Infrastructure and Manpower requirements of Chapters and I was also nominated as privileged member of the Core Group. We at NIRC deliberated at length the future requirements of the Chapters and Regional offices as to Infrastructure and Manpower and after thoughtful consideration of existing Infrastructure and manpower requirements, we submitted our suggestions to the Core Group. The recommendations of the Core Group are as under:

- Determining grades of the chapters based on the number of membership and students strength jointly not on members strength only;
- Owned premises for Regional Councils and its chapters through major funding from ICSI;
- Regional / Chapter office premises should have standard design and color combination to have Brand Visibility;
- Upward revision in the existing limits of reimbursement of establishment expenses such as rent, electricity, water, Telephone & Insurance;
- Providing computers, printers, UPS, laptop and LCD projector to regional/ chapter offices;
- Strengthening of Manpower at Regional Councils and Chapter.

All these initiatives will enable the Regional Councils and Chapters to serve the students and members in more effective manner.

**Visit to Chapters:** With an objective to have the first hand assessment of the needs of the chapters and with a motive of empowering and motivating the chapters, I alongwith my other Council Colleagues visited 24 chapters of Northern Region during 2011 and encouraged them for providing all the facilities to students as well as members locally. I am happy to mention here that many of the chapters are catering to need of members /students satisfactorily at local level.

**Bhoomi Pujan of Bhilwara Chapter Building:** In the year 2011, the foundation laying ceremony of Bhilwara Chapter office was done on 10<sup>th</sup> November 2011 and the construction work will start soon.

**Building of Faridabad Chapter:** I am happy to inform you that your regional council in its last meeting approved the composite proposal of Faridabad Chapter Building and Architect has also been appointed.

### **Corporate Membership Scheme:**

In the year 2011, “Corporate Membership Scheme” of NIRC has become very popular and I am happy to mention here that total 850 members joined the scheme, which is highest since its inception.

### **Student Services, Oral Tuition & other Training Programs:**

In order to provide Campus Tuition facilities to students, NIRC conducts on regular basis best of oral coaching classes for the students. Total 3762 (Three thousand seven hundred and sixty two) number of students enrolled for OT classes / Refresher classes during the year. Students’ registration during the year was also very encouraging.

Public Private Partnership (PPP) Centres: During the year 2011, 19 (Nineteen) PPP Centres were opened in the Northern Region for providing coaching to our students.

**Training Programs:** The NIRC organized 11 (Eleven) Management Skills Orientation Program, 14 (fourteen) Training Orientation Programs, 1 (one) Executive Development Program, 28 (Twenty Eight) Students’ Induction Programs and 9 (Nine) Professional Development Programs in the year 2011.

In order to nurture the soft skills of students, NIRC has also organized Personality Development Workshops for its students and also organized various students competitions viz. Regional Round of 9<sup>th</sup> All India Moot Court Completion, Regional Round of 10<sup>th</sup> All India Elocution Competition and hosted the National Round of the 11<sup>th</sup> All India Company Law Quiz.

### **Foundation Day Celebrations & Cultural Evening:**

NIRC celebrated its 40<sup>th</sup> Foundation Day with Week-long Programmes from 25<sup>th</sup> July to 31<sup>st</sup> July, 2011. The special attraction of 2011 celebrations was Cultural Evening for members and their families, which was organized for the first time and



specifically dedicated to Company Secretaries Benevolent Fund.

### Revamping of the NIRO Child portal

NIRC has revamped the home page of NIRO Child portal for easy access of the members and students with the facility of raising queries. The same was launched in November, 2011 in one of the seminar by Chairman, Company Law Board. The portal has been made informative and content rich. It is heartening to mention here that we have also started uploading the Newsletters, announcements and presentations made in various programs at the child portal [www.icsi.edu/niro](http://www.icsi.edu/niro). I am sure you all must be taking benefit of the same.

### Helpline / Helpdesk at NIRC

I am delighted to share with you, that in the month of November, 2011, as per the desire of members and students and with an objective to ease the communication with NIRC office, we have been able to set-up the helpline at NIRC alongwith dedicated Reception Officer and dedicated Board no. 011-49343000.

### Renovation of ICSI-NIRC Building

The renovation of the ICSI-NIRC Building was one of the main agenda for the year 2011. It gives me immense satisfaction and pleasure to inform that during the year, we have appointed both Architect and Contractor for the renovation of building and the work will commence shortly.

### Research & Development Activities

**Annual Legal & Compliance Referencer, 2012:** For the first time, NIRC has released an Annual Legal & Compliance Referencer, 2012, which contains *inter alia* Compliances related to Company, event based compliances under SEBI Laws & Listing Agreement, List of frequently referred judgments, Synopsis of Secretarial Standards, Synopsis of Accounting Standards etc. I am sure this will be of great help for our professional colleagues throughout the year.

**Research Paper Competition:** NIRC has also organized Research Paper Competition 2011. The awards and the participation certificates were distributed to the winners and the participants of the competition.

**Syllabus Review:** In 2011, NIRC with the help of its Oral Tuition faculties was able to provide its valuable suggestions to Syllabus Review Committee of ICSI for revision in syllabus. I am sure, the revised syllabus will provide the opportunity to students

to study current subjects / topics and it will be in line of global standards.

### National Convention:

The 39th National Convention of the Institute for the year 2011 was organized in Northern Region at Agra. With the support of all the members it was a huge success.

### Brand Building

**Media and Press Conferences:** In order to give publicity about the profession in the print media/ electronic media, press conferences were organized all over Northern Region during the year 2011 and 148 (one hundred and forty eight) print & electronic media covered the events of NIRC.

**Career Awareness/ Investor Awareness Programs:** In the year 2011, NIRC organized 274 (Two hundred and seventy four) career awareness programs / career fairs at various schools and colleges in the Northern Region. Also in partnership with Ministry of Corporate Affairs, NIRC has organized 20 (Twenty) Investor Awareness Programs in the year 2011.

### Company Secretaries Benevolent Fund(CSBF):

In order to promote and strengthen the Company Secretaries Benevolent Fund, NIRC has taken the following initiatives during the year 2011:

- Transferred 5% of its surplus to the CSBF.
- Appeal for becoming members of CSBF is made in Newsletter, MSOPs and other members programs.

With dedicated efforts of NIRC, in the year 2011, total 163 (One hundred and sixty three) members were admitted to CSBF and Rs. 6,24,200/- (Six lakhs twenty four thousand two hundred ) contributed to the Fund.

### Acknowledgments

Lastly, to say that all these achievement are of mine would be unfair. As, without the contribution of my learned Council Colleagues all this would not have been possible. I convey my sincere thanks and gratitude for efforts of my council colleagues for making all these happen. I am also thankful to the members of various functional committee(s) and Convener & Co-Conveners of Study Groups of NIRC for their support and guidance and excellent work.

I am extremely grateful to Mr. Anil Murarka, President, ICSI and Mr. Nesar Ahmad,



Vice President, ICSI, Mr. N K Jain, Secretary & CEO, ICSI and his team for their continuous guidance, encouragement and support throughout the year. I am also thankful to all the Central Council Members for their continued support, Past Presidents of ICSI, Past Chairmen of NIRC for their blessings. I remain thankful to Ministry of Corporate Affairs, Office of Regional Director (North), Office of the Registrar of Companies, Office of the Official Liquidator RBI, SEBI, Stock Exchanges, BSE SME Exchange, Chamber of Commerce, etc. for their continued support throughout the year.

My special thanks to all the Chief guests/Guests of honors/Guest Speakers and also to all the members for taking part in our initiative and making it successful.

I also sincerely appreciate the support I got from each and every Official and staff of NIRC and of Executive Officer at office of NIRC secretariat throughout my tenure.

Lastly, I would humbly like to mention that I am grateful to each every members of Institute and would like to quote a couplet of a famous poet Dr. Shivmangal Singh 'Suman'-

साँसो पर अवलम्बित काया, जब चलते-चलते चूर हुई,

दो स्नेह-शब्द मिल गये, मिली नव स्फूर्ति, थकावट दूर हुई।

पथ के पहचाने छूट गये, पर साथ-साथ चल रही याद-

जिस-जिस से पथ पर स्नेह मिला, उस-उस राही को धन्यवाद।

I congratulate the new team of office bearers of NIRC, who will take charge w.e.f. 19th January, 2012 and wish them success in all their endeavors.

Friends, I am of the firm opinion that with the courage in our heart, conviction in our beliefs and with clear objectives in our mind and with consistent efforts, we can always bring the desired change and result. I would like to quote one couplet of National Poet Maithili Saran Gupt -

वो देखो पास खड़ी मंजिल, इंगित से हमें बुलाती है,

साहस से बढ़ने वालों के माथे पर तिलक लगाती है।

Jai Hind Jai Bharat

Yours sincerely,

(CS RANJEET PANDEY)

chairman.nirc@icsi.edu

Mobile : 9810558049

5th January, 2012

**OFFICE BEARERS OF THE NORTHERN INDIA REGIONAL COUNCIL OF THE ICSI FOR THE YEAR, 2012 (w.e.f. 19.1.2012)**

**Mr. Rajiv Bajaj (FCS -3662) : Chairman**  
Company Secretary & CFO  
Panasonic AVC Networks India Co. Ltd.  
C-52, Phase II Noida  
Tel.: 0120- 2563054 / 4024500 Mobile : 9811453353  
Email : rajiv.bajaj@in.panasonic.com

**Mr. Madan Gopal Jindal (FCS-2725) : Vice-Chairman**  
M.G. Jindal & Associates  
Company Secretaries  
No:11,2nd Fl,Guru Har Rai, Complex, Nr Manju Cinema,  
Industrial Estate Road, Ludhiana-141003, Punjab  
Tel.: -0161-2547441 / 4629441 Mobile : 9814170354  
Email : mgjindal@gmail.com

**Mr. Shyam Agrawal (FCS 6624) : Secretary**  
Agrawal Shyam & Associates  
Company Secretaries  
B-4, Om Shree Tower, Near Lotus Dairy  
Opp J P Phatak, Tonk Road, Jaipur-302015,Rajasthan  
Tel.: 0141- 2744792, Mobile : 9314923451  
Email : agrawalshyam@hotmail.com

**Mr. NPS Chawla (ACS-20415) : Treasurer**  
Senior Associate  
Vaish Associates, Advocates  
1st Floor, Mohan Dev Building, 13, Tolstoy Marg  
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Phone: +91 11 49292557 (Direct)  
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**ATTENTION MEMBERS /STUDENTS**

The details of Members Programs like Seminar, Conferences, etc. and soft copies of **NIRC-ICSI Newsletters & Students' programs** viz EDP, SIP, PDP, MSOP, Students Activities, such as viz Moot Court Competitions, Elocution Competition, Essay writing, Company Law Quiz and Student Conferences are regularly updated on the NIRC Portal at ICSI website.

To get updated information, Members & Students are requested to visit our following website regularly.

[www.icsi.edu/nirc](http://www.icsi.edu/nirc)



**COMPLIANCE CHECKLIST FROM 10<sup>TH</sup> JANUARY TO 10<sup>TH</sup> FEBRUARY, 2012**

<i>Sr. No.</i>	<i>Activities</i>	<i>Sections/Rules/Clauses, etc.</i>	<i>Acts/Regulations, etc.</i>	<i>Compliance Due Date</i>	<i>To whom to be submitted</i>
1.	Submission of CENVAT Credit Return (December, 2011)	Rule 9	CENVAT Credit Rules, 2004	10th January	Excise Authorities
2.	Report on Corporate Governance	SEBI Circular No. SMDRP/Policy/CDIR-03/01 dated 22.1.2001	Listing Agreement	15th January	Stock Exchanges
3.	Monthly payment of Provident Fund dues (December, 2011)	Paragraph 38 of Employees Provident Funds Scheme, 1952	Employees Provident Funds and Misc. Provisions Act, 1952	15th January	Provident Fund Authorities
4.	Quarterly TDS return in Form No.27 (October-December, 2011 quarter) Excise & Service Tax	Section 195 read with Rule 37A	Income-tax Act, 1961 Income-tax Rules, 1962	15th January	Income-tax Authorities
5.	Submission of Shareholding Pattern as at the end of the previous quarter (October-December, 2011 quarter)	Clause 35	Listing Agreement	21st January	Stock Exchanges
6.	Payment of ESI contribution for the previous month (December, 2011)	Regulation 31	Employees State Insurance Act, 1948 Employees State Insurance (Gen) Regulations, 1950	21st January	ESIC Authorities
7.	Monthly return of Provident Fund for the previous month with respect to International Workers	Paragraph 36	The Employees' Provident Funds Scheme, 1952	25th January	Provident Fund Authorities
8.	Monthly return of Provident Fund for the previous month	Paragraph 28 of Employees Provident Funds Scheme, 1952	Employees Provident Funds and Misc. Provisions Act, 1952	25th January	Provident Fund Commissioner
9.	Shareholding of persons holding more than 15% shares of voting rights	Regulation 8(3)	SEBI (Substantial Acquisition of Shares Takeovers) Regulations, 2011	One month from the end of Financial year	Stock Exchanges
10.	Submission of three copies of quarterly results signed by the Managing Director and newspaper cuttings of quarterly results	Clause 41	Listing Agreement	Promptly on publishing quarterly results in newspapers	Stock Exchanges
11.	Issue of press release about Board Meeting to consider quarterly results	Clause 41	Listing Agreement	Immediately on informing the Stock Exchanges	One national newspaper and one regional newspaper
12.	Announcement of Quarterly Results alongwith limited Audit Review of the same by the Auditors	Clause 41	Listing Agreement	Within 15 minutes of closure of Board Meeting in which the results are placed	Stock Exchanges
13.	Publish Quarterly Results	Clause 41	Listing Agreement	Within 48 hours of the conclusion of the Board Meeting	One English newspaper and one regional newspaper
14.	Intimation of date of Board Meeting to consider quarterly results	Clause 41	Listing Agreement	7 days in advance	Stock Exchanges
15.	Submission of Shareholding Pattern, Corporate Governance Report and Quarterly Results	Clause 52	Listing Agreement	Within such time as specified by SEBI	SEBI CFD website

Sr. No.	Activities	Sections/Rules/ Clauses, etc.	Acts/Regulations, etc.	Compliance Due Date	To whom to be submitted
16.	Pay Service Tax in Challan GAR-7	Section 68 read with Rule 6	Finance Act, 1994 Service Tax Rules, 1994	5th February	Service Tax Authorities
17.	TDS from Salaries for the previous month	Section 192	Income-tax Act, 1961	7th February	Income-tax Authorities
18.	TDS on Contractors Bills for January, 2012	Section 194C	Income-tax Act, 1961	7th February	Income-tax Authorities
19.	TDS on Rent for January, 2012	Section 194I	Income-tax Act, 1961	7th February	Income-tax Authorities
20.	TDS on Professional Services Bills	Section 194J	Income-tax Act, 1961	7th February	Income-tax Authorities
21.	Submission of CENVAT Return	Rule 9(7)	CENVAT Credit Rules, 2004	10th February	Excise Authorities

**Note :** Members are requested to check the latest position with the original sources. NIRC of ICSI is, any way not responsible for the result of any action taken on the basis of the above compliances published in the Newsletter.

## ADVERTISEMENT FOR “NIRC-ICSI NEWSLETTER”

NIRC solicits your kind patronage in the form of advertisement for its Monthly Newsletter as per the tariff given below :

		Per Issue (Rs.)	6 Issues (Rs.)	12 Issues (Rs.)
Back cover	(Colour)	15,000	80,000	1,50,000
Inside Cover	(Colour)	11,000	60,000	1,10,000
Inside page	(Black & White)	6,000	33,000	60,000
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*\*Statutory Registers & Various Reports.*

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## WHISTLE BLOWING AND PROFESSIONAL RESPONSIBILITIES\*

**Naresh Kumar**

MBA; LL.B; M.A. Economics; FCS; FICA Advocate, Business Laws & Visiting Professor IIFT, New Delhi

### INTRODUCTION

'Whistleblowers' play an important role in preventing corruption, frauds and misfeasance by exposing misdeeds of officers in their organizations and companies. The concept assumed great significance in the US in the wake of collapse of corporate giants like Enron, Tyco, Quest, Global Crossings and WorldCom and the Xerox fiasco. In India, recent frauds and scams like Satyam, 2-G Spectrum Asian Games, Housing and land allotments have brought into focus the need for an effective policy, law and system to check and prevent to check frauds, scams and malfeasance in the government and corporate. In this context, an attempt is made to discuss in the policy, regulation and procedure of whistle blowing and the role and responsibilities of professionals.

### DEFINITION

In the UK, the Committee on Standards in Public Life defines 'whistle blowing' as raising concern about malpractice within an organization. According to the Public Concern at Work (PCAW) and the Open Democracy Advice Centre ('ODAC'), whistle blowing is the options available to employees to raise concerns about workplace wrongdoings with managers, higher authorities in the organization and regulators. According to Boatright, John R in Ethics and Conduct Business, 2003, whistle blowing is the release of information by a member or former member of an organization that is evidence of illegal and/or immoral conduct in the organization that is not in the public interest. Simply defined by Green Ronald M in the Ethical Manager, 1994, "whistleblower is an employee who, perceiving an organizational practice that he believes to be illegal or unethical, seeks to stop this practice by alerting top management, or, failing that, by notifying regulatory authorities outside the organization. It emerges from the definitions that a whistleblower is an existing or former employee of a government agency or a business organization, who reports misconduct of superiors or illegalities in his organization to those responsible for taking counteractive and remedial actions. The misconduct generally refers to threats to public interests, frauds, corruption and violation of health, safety law and regulations.

### CONCEPT

Simply stated, a whistleblower is a present or former employee of a company or an organization who reports misconduct to the concerned authorities that have powers to take corrective and punitive action against the wrongdoers. He 'blows whistle' to expose corrupt and unethical acts of officers and colleagues in their companies and organizations to protect the interests of stakeholders and society at large. He, by exposing misdeeds and malfeasance within the organizations, serves public interest. In fact, whistleblowers are ethical people, a breed apart, driven by the urge to expose corrupt and dishonest executives. For them whistle blowing becomes a way of

life. They feel it their responsibility to expose wrongs and misdeeds they see around them despite all harassment and pressure they are subjected to.

Enron's Sherron Watkins is a model role of whistleblower, who testified before the Congress the misdeeds of Enron's executives, who were charged and convicted on her revelations about accounting frauds. The former chairman of Enron, Kenneth Lay, was also indicted on 11 counts of conspiracy and fraud. The Times Magazine paid a tribute to whistleblowers by naming Sherron Watkins of Enron, Coleen Rowley of the US Federal Bureau of Investigation and Cynthia Cooper of World Com as its 'Persons of the Year' for 2002, for their courage in exposing illegal and fraudulent acts of senior executives in their organizations.

### REGULATORY FRAMEWORK

The US has enacted the Sarbanes Oxley Act, 2002, for preventing frauds and scams. The Act applies to the corporate, public and also government servants. The Corporate and Criminal Accountability Act and White Collar Crime Penalty Enhancement Act have played an important role in investigation and prosecution of white collar corporate crimes. In addition, the Racketeer Influenced and Corrupt Organizations Act also provides protection of whistleblowers who raise voice against the wrong deeds of executives. The law allows employees to file complaint with the Labour Department against unlawful retaliation against whistleblowers by any organization. The Labour Department, in the first instance of retaliation, imposes criminal liabilities of 20-year imprisonment and fine up to US\$ 5 million on any organization, if found guilty of firing or imposing punishment against any whistle blowing employee as a measure of retaliation.

Whistleblowers have so far filed thousands of cases against corrupt officers and auditors in multinational corporations. In almost all these cases, charges included accounting manipulations, failure on the part of auditors and dereliction of duties by senior officers and directors.

### PREVENTIVE MEASURES

Many reputed companies, including Johnson & Johnson, Heinz, General Electricals, Bayer, Xerox, Castrol, Citibank have formulated and put in place whistle blowing policies, system and processes to enable their employees report any irregularity in the organization to the Board of Directors, through a designated director, who is also a member of the Audit Committee.

The system enables employees to report irregularities in the company to the designated director by using a hotline or toll-free number from any part of the organization. All reported cases are promptly considered, investigated and appropriate action against defaulters.

The backbone of the system is 'ensuring confidentiality and protection to whistleblowers' disclose information or assist in detecting and stopping fraud. The protection extends to

\* This Article is an award winning Article in the Research Paper Competition, 2011 organized by NIRC.

all forms of retaliation including civil and criminal liability. In cases where complainants and witnesses are exposed to grave danger, their identity is changed and they are shifted to far-off places. Such whistleblowers are provided alternate employment, housing and other essential facilities.

#### Direct Touch Method

In the corporate sector 'Direct Touch' is the global best practice to check and prevent unethical business practices. A whistleblower can report any fraudulent, scandalous and corrupt practice directly to the top management through transmission of related information in a confidential manner. The thrust of the system is on 'direct inputs', 'easy reach' and 'candid and transparent action. The salient features of the system include:

- Employees are encouraged to report facts of frauds, misappropriation of funds and irregularities to the designated director through oral or written communication;
- Independent, impartial, mature and experienced designated director to process complaints;
- Keep the names and particulars of informer confidential;
- Careful consideration of complaint and genuineness and veracity of the complainant;
- Expeditious action against wrong doers, if substance is found in the complaint otherwise close the matter.
- Deterrent action against wrongdoers.
- Constantly remove weaknesses and lacunae in financial and reporting systems, which were taken advantage by the wrongdoers to proactively defuse potential frauds; and
- Build employee morale and productivity.

#### INDIAN SCENARIO

In India there are plethora of laws, rules and regulations to check frauds, corruption and malpractices. The implementation is, however, lax and tardy. The laid down procedures of investigation, gathering evidence and trial are cumbersome, due to which such cases prolong for many years. Moreover, there is lack of provisions to provide immunity and protection to whistleblowers against retaliation by the wrong doers and fraudsters. The worst part is lack of deterrent punishment to those found guilty. For example, whistleblowers while preventing frauds in Golden Quadrilateral Project and adulteration of petrol lost their lives due to lack of protection.

In the DDA flat allotment scam, Deepak Kumar, who was self-employed, lodged the complainant exposing the fraud and claimed to be 'whistleblower' under the law. The Court, however, transformed him to an accused for two reasons. One, only a public servant in India is entitled to protection under the law if he blows the lid off a scam. Second, the accused being one of the accomplices could not claim amnesty under the law merely because he made the complaint. The fake allotments had been made with the complicity of DDA officials, and, therefore one of them could not be given protection of law. It was clarified that the rationale behind granting protection is to protect a conscientious objector within a department, who is in danger of being prosecuted. The protection given to such an insider is meant to serve the larger interest of exposing wrongdoing or corruption. In any event, the whistleblower protection

that is given to an employee does not extend to criminal immunity. All it means is that his identity would be kept confidential but action could be taken against delinquents on the basis of his disclosures. Further, if in the course of the investigation, evidence is discovered against the whistleblower, he too could be prosecuted.

#### Clause 49 of the Listing Agreement

The Securities and Exchange Board of India (SEBI) under Clause 49 of the Listing Agreement (Sl.No.7 of Annexure-ID) provides for the following 'Whistleblower Policy':

"The company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees, who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization."

It may be noted that Clause 49 is non-mandatory requirement and applicable to only listed companies.

#### The Public Interest Disclosure and Protection (to persons making the disclosure) Bill, 2010

The object of the Public Interest Disclosure and Protection (to persons making the disclosure) Bill, 2010 (Bill) is to encourage employees and insiders to provide authentic information about fraudulent wrong doings and criminal activities, enable the authorities to investigate these, punish the guilty and keep the organizations clean from corruption. The Bill also provides for affording protection to whistleblowers by ensuring his anonymity and avoiding any harassment or victimization.

The Bill will apply to authorities and companies (with least 51 per cent government stake) under Central government control and cover all public servants and ministers. There will be separate competent authorities to receive complaints against ministers (authority notified by the President) and public servants. It also includes public servants serving outside India.

The Bill excludes public servants of organizations referred to in article 33 of the Constitution (armed forces and intelligence) and the Prime Minister.

The bill provides that the disclosures must be made in writing, in good faith and should include the identity of person making disclosure. The competent authority will dismiss complaints deemed frivolous, vexatious, trivial, or having been previously dealt with adequately, and inform complainant accordingly. If complaint is found to be willfully false or malicious, complainant is liable for imprisonment up to three years and fine up to Rs. 50,000.

The Bill provides that the disclosable conduct would include misuse of power and /or discretion; any offence under laws in force; maladministration

The Bill excludes Matters where inquiry has been ordered under the Public Servants Inquiries Act, 1850 or commissions of Inquiry Act, 1952. An important peculiarity of the Bill is the fact that the authority will reject disclosures made after 12 months from the date on which the complainant became

aware of action complained against or five years after commission of alleged action.

The Bill attempts to define 'victimization' as the actions committed by the person against whom disclosure is made and includes suspension pending inquiry, transfer, dilution or withdrawal of duties, powers and responsibilities, recording adverse entries in the service records, issue of memos, verbal abuse, all classes of major or minor punishment specified in the disciplinary rules, orders or regulations applicable to such public servant and such other type of harassment.

#### **The RBI's Whistleblowers Scheme**

The Reserve Bank of India (RBI), as a proactive measure for strengthening financial stability and with a view to enhancing public confidence in the robustness of the financial sector has formulated a 'whistleblowers' scheme. The scheme requires the boards of directors of the banks to frame a 'Protected Disclosures Scheme' laying down norms for protection of identify of employees making disclosures of wrongdoing and safeguarding them from any adverse personnel action.

Complaints under the Scheme cover areas such as corruption, misuse of office, criminal offences, suspected and actual fraud, failure to comply with the existing rules and regulations such as the RBI Act, 1934, and the Banking Regulation Act, 1949 and actions resulting in financial loss, operational risk and loss of reputation, detrimental to depositors' interest and public interest.

Under the scheme, employees of the concerned bank, customers, stakeholders and non-government organization can lodge complaints. However, anonymous or pseudonymous complaints are not accepted. The RBI is the Nodal Agency to receive complaints and would keep to identity of the complainant secret. The RBI, if feels that the allegations are substantiated, on the basis of independent scrutiny conducted, it recommends appropriate action in the matter to be taken by the bank concerned.

#### **The ICIC's Whistleblowers Scheme**

The ICIC Bank has formulated a Whistleblower Policy for its group, enabling employees anywhere in the organization to report issues to the audit committee. The Policy has been communicated within the bank across all levels and posted on the Internet.

The ICIC Bank's Whistleblower Policy is in line with the Sarbanes-Oxley Act, because it is subject to some of the American regulations. The ICIC Bank's securities are listed in the New York Stock Exchange and its subsidiary ICICI Securities operates in the US. Moreover, the bank itself has applied for a banking licence in the states.

The professionally managed Indian companies like Tatas, Infosys and Wipro have also taken a lead in promoting standards of openness, transparency and accountability in corporate affairs. In line with their whistle blowing policies, employees are encouraged to raise concerns about any malpractice, impropriety or wrongdoing without any fear of victimization so that it can be nipped it in the bud. At the same time, the interests of employees informing malpractices are protected and safeguarded.

The Bill provides that the competent authority will forward

copy of disclosure (including name of complainant) to accused public servant and his superior to provide opportunity for rebuttal. The competent authority may keep identity of complainant confidential from accused if safety risk is perceived. The authority may close enquiry after investigation and inform concerned persons of reasons. The enquiry and identity of person making disclosure will not be open to the public. If disclosable conduct is established, the competent authority will inform authority competent to take disciplinary action against public servant; in case of minister, send findings to the Prime Minister. Both must take appropriate action immediately (including criminal proceedings if offence punishable under any law). The bill provides that the competent authority will have powers of a civil court for its enquiry, excluding matters of defence, security, international relations, and Union Cabinet (as certified by Secretary to Government of India). The Bill further lays down that all enquiries must be completed within a maximum of two years. Every competent authority must prepare an annual consolidated report of its performance for presentation to both Houses of the Parliament.

The Bill provides a detailed provision for the protection of potential whistle blowers including physical protection, restoration of status quo or transfer to another office or department. It further lays down guidelines for granting adequate protection to the witnesses and other persons who are assisting the inquiry as deemed necessary in the circumstances of the case. The Bill further ensures effectiveness of the action by the competent authority by stating that every direction given by the competent authority shall be binding upon the public servant or the public authority against whom the allegation of victimization has been proved.

#### **ROLE AND RESPONSIBILITIES PROFESSIONAL**

The professionals can play an important role by adhering to the high standard of integrity and honesty in their conduct set an example in the organization. They, while rendering professional advice to the board of directors, help in framing and implementing suitable whistle blowing policy in their organizations. They can advise the board of directors on following aspects:

Drafting appropriate whistle blowing policy along with code of conduct for the officers and senior management. These should, inter-alia, strictly prohibit any discrimination, retaliation or harassment against any person who reports incidents of questionable accounting or auditing matters, financial frauds, violations of rules and regulations and misconduct.

Maintaining transparency and accountability in its management and administrative practices by making of disclosures that reveal serious misconduct relating to violation of law by the company or mismanagement of financial resources.

Making 'whistle blowing' an effective anti-corruption tool, creating congenial working environment in the company enabling employees fearlessly report cases of irregularity, fraud, misappropriation of funds and violation of rules and regulations in a confidential manner to a designated director through hotline or toll-free number.

Providing adequate protection to whistleblowers against retaliation by way of wrongful termination, harassment

and unfair treatment so that employees can raise their voice against malpractices and violation of rules and regulations and assist in impartial investigation.

Deciding reported cases of irregularity and fraud expeditiously and award of deterrent punishment to the guilty particularly in cases relating to questionable accounting practices, internal accounting controls, or auditing matters (Questionable Accounting/Audit Matters), or concerning the reporting of fraudulent financial information to shareholders, the government or the financial markets.

Maintaining independent character and role of the Audit Committee under Companies Act and Listing Requirement. Strengthen independence of auditors and segregate audit and non-audit functions and practices. Only those auditors having arm's length relationship with the board of directors should be appointed as auditors and they should be prohibited from providing non-audit and tax audit services.

#### CONCLUSION

In India, the level of corruption has increased with the

liberalization and globalization of economy. There is "crisis of values in government and corporate sector. The main reasons are lack of effective legislation and judicial system to expeditiously decide cases of frauds and corruption and impose deterrent punishment to those found guilty. Authorities insist upon providing proofs taking action against the wrongdoers. There is no statutory protection to whistle-blowers in corporate sector. As a result, most of the employees are afraid of blowing whistle in cases of improprieties and fraud because of fear of retaliation and harassment. Consequently, cases relating to illegal procurement commission, misappropriation/diversion of funds and manipulation of records cause great loss to the government and corporate sector, besides loss of confidence by the public and stakeholders.

It is high time that a comprehensive law be enacted for government and corporate sectors to formulate and enforce code of conduct to check malpractices and prevent losses to exchequer, stakeholders and society at large. Further, the law should be strict and facilitate expeditious decision making because quality of law lies in its implementation.



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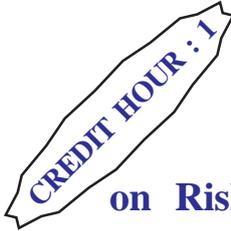
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**LEGAL UPDATES****CASE-1: [In the Supreme Court of India]  
R Vijayan  
Versus Baby & Others [October 11, 2011]  
Crux of the Judgment:****Brief facts of the Case:**

The appellant has filed the appeal by special leave. A cheque dated 31.3.1995 for Rs.20,000/- issued by the first respondent drawn in favor of the appellant, towards alleged repayment of a loan was dishonored when presented for payment. After sending notice of dishonor to the respondent, the appellant lodged complaint under section 138 of the Negotiable Instruments Act, 1881. The accused guilty under section 138 of the Act and sentenced her to pay a fine of Rs.2000/- and in default to undergo imprisonment for one month. The case went to High Court for the grant of compensation to the appellant for the dishonor of cheque where High Court held that it could only restore the fine of Rs. 2000 imposed by the Magistrate with the default sentence but not the direction for payment of compensation under Section 357(3) of the Code of Criminal Procedure, 1973 as a reading of section 357(3) shows that the compensation can be awarded only where fine does not form part of the sentence.. Thus the High Court held that section 357(3) will not apply where a sentence of fine has been imposed.

The difficulty arises in this case because of two circumstances:

- a) The fine levied is only Rs.2000/-, while Section 138 of the Act authorizes the learned Magistrate to impose by way of fine, an amount which may extend to twice the amount of the cheque, with or without imprisonment.
- b) On the other hand, sub-section (2) of Section 29 empowers a court of a Magistrate of First Class to pass a sentence of imprisonment for a term not exceeding three years or fine not exceeding Rs.5,000/- or of both. Therefore, it is also not possible to increase the fine or award compensation from the amount recovered as fine.

In this case, Supreme Court observed the following issues:

- i) It is of some interest to note, though may not be of any assistance in this case, that the difficulty caused by the ceiling imposed by section 29(2) of the Code has been subsequently solved by insertion of section 143 in the Act (by Amendment Act No.55 of 2002) with effect from 6.2.2003. Section 143(1) provides that notwithstanding anything contained in the Code, all offences under Chapter XVII of the Act should be tried by a Judicial Magistrate of the First Class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 of the Code (relating to summary trials) shall, as far as may be, apply to such trials. Consequently, in regard to any prosecution for offences punishable under section 138 of the Act, a First Class Magistrate may impose a fine exceeding Rs.5000/-, the ceiling being twice the amount of the cheque.

This case relates to dishonor of cheque in the year 1995. As the limitation for filing a civil suit expired during the pendency of the appeal before the session court, the appellant has also lost the opportunity of recovering the amount by way of civil suit.

- ii) Though a complaint under section 138 of the Act is in regard to criminal liability for the offence of dishonoring the cheque and not for the recovery of the cheque amount, (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonor of cheque, under section 357 (1)(b) of the Code and the provision for compounding the offences under section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary. It causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired.

- iii) As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of courts of justice. In same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eye of law, will give rise to certain amount of uncertainty in the minds of litigants about the functioning of courts.

One other solution is a further amendment to the provision of Chapter XVII so that in all cases where there is a conviction, there should be a consequential levy of fine of an amount sufficient to cover the cheque amount and interest thereon at a fixed rate of 9% per annum interest, followed by award of such sum as compensation from the fine amount. This would lead to

uniformity in decisions, avoid multiplicity of proceedings (one for enforcing civil liability and another for enforcing criminal liability) and achieve the object of Chapter XVII of the Act, which is to increase the credibility of the instrument. This is however a matter for the Law Commission of India to consider.

**Held that** the appeal is dismissed.

**CASE-2: (In the High Court of Madras)**

**KTM Jewellery Limited**

[March 7, 2011]

**Crux of the Judgment:**

The proposed demerger cannot be refused merely because of the fact that the memorandum of association of the demerged or transferor company does not have an enabling provision for demerger or reconstitution.

**Brief facts of the Case:**

The two petitioners filed this petition to obtain sanction of the Scheme of Demerger. The petitioner, M/s. The KTM Jewellery Limited is the Demerger Company and the petitioner, M/s. Aathava Garments India Private Limited is the Resulting Company.

The scheme of demerger complies with the provisions of Section 2(19AA) of the Income Tax Act, 1961. As per the scheme, the entire undertaking of the assets and liabilities of the Demerger company is proposed to be taken over by the Resulting company, set out in the scheme of Demerger.

All the shareholders of Demerger and Resulting companies have given consent affidavit, consenting to the scheme of demerger. This Court, vide order dated 30.11.2010, dispensed with the meeting of the equity shareholders of Demerger and Resulting companies.

Moreover, no investigation proceedings have been instituted or pending in relation to Demerger and Resulting companies nor does the directors of either of the company have any interest in the scheme, except to the extent of their shareholding in the company.

The transferor company has no secured creditors, whereas, the transferee company has one secured creditor. The Resulting company has taken over the liability of the Demerged company, thus, the interest of secured creditor is not likely to be prejudiced.

However, the Regional Director objected to the demerger on the ground that the memorandum of association of the demerged/ transferor company does not have the enabling provision for arrangement. The incidental objects should be amended to include amalgamation/ reconstruction clause.

The High Court of Madras took the following view in the above case:

- a) After going through the objects clauses, it appears that the company has powers to amalgamate;
- b) The transferor company is an English company and no confirmation by Court as required under Section 17 of the Companies Act, 1956, is necessary under Section 5 of the English Companies Act, 1948; and,
- c) There is a statutory power of amalgamating a company with another company without any specific power in

the memorandum under Sections 391 to 396 of the Companies Act, 1956. "The power to amalgamate flow from the memorandum or it may be acquired by resorting to the statute. Section 17 of the Companies Act indicates that a company which desires to amalgamate with another company will take necessary steps to come before a court for alteration of its memorandum in aid of such amalgamation. The statute confers a right on a company to alter its memorandum in aid of amalgamation with another company. The provisions contained in Sections 391 to 396 and 494 illustrate some instances of statutory power of amalgamating a company with another company without any specific power in the memorandum." Mere facts, that the Memorandum of Association of Demerger of transferor company does not have enabling provision for arrangement, cannot be the ground to refuse sanction. There is no objection from the secured creditor. After going through the scheme of Demerger, this Court does not find any objectionable features.

Held that the scheme of Demerger is sanctioned.

**[Note: a similar judgement has been passed for amalgamation also, the reference of which is as under:**

*(In the High Court of Gauhati)*

*Bhuyankhat Tea Co. (p) Ltd.*

[March 1, 2011]

**CASE-3: (In the High Court of Madras)**

**S Santosh & Another**

**Versus Assistant Registrar of Companies**

[February 22, 2011]

**Crux of the Case:**

Where, on calling of information under section 209A of the Companies Act, 1956, the company has furnished the information and Registrar of Companies is not satisfied with the information furnished, it is his duty to intimate that the information was not furnished satisfactorily and to provide sufficient time to rectify omissions. Such intimation by the ROC shall not be barred by limitation.

**Brief facts**

The 1<sup>st</sup> petitioner is the managing director of "California Software Co. Ltd." The said Company received a letter for inspection dated October 10, 2006 seeking the details of a trust (named California Software Employees Trust) to whom an interest free loan has been given by the Company to purchase its own shares. The Company had furnished all the information relating to the trust on October 30, 2006. After 18 months, another shown cause notice was issued by the respondent on January 11, 2008 and a reply was sent by the Company on February 12, 2008 and the prosecution was launched only on February 29, 2008.

The respondent submitted that the offence under Sec.209A (8) is punishable with fine and imprisonment for a term not exceeding one year and therefore, the period of limitation is only one year and the prosecution is barred by limitation. He further submitted that the books of account and other books do not include the books of account of the trust which is an independent body.

ROC submitted that the Company was asked to furnish certain particulars and such particulars were not given thereby violating the provisions of the Act.

**Held that** if the directors did not comply with the demand within the period prescribed in the first notice, the offence must be deemed to have been committed and, therefore, limitation would start only from that date”.

Though a reply was sent on 30.10.2006, the respondent was not satisfied with the information furnished and had chosen to issue show cause notice only on 11.1.2008 and has initiated the prosecution only on 29.2.2008. But the offence is deemed to have been committed only on the failure to furnish the information for the first notice dated 10.10.2006. Therefore, the cognizance of the offence is barred by limitation.

When certain information is called for under Sec.209A of the Act, the Company is bound to furnish those information and produce “books of accounts and other papers of the Company” if called for. If the Registrar of the Companies is not satisfied with the information, it is the duty of the authority to specify that the information so furnished is not in compliance with the provisions under Sec.209A(2) of the Act and may provide sufficient time to rectify the omissions. Only thereafter the failure to comply with such direction will only attract the provisions of 209A(2) of the Act.

Therefore, in the present case, the company has furnished the information as called for and the respondent has not stated as to how the information is not satisfactory.

#### **CASE-4: [Order passed by SAT]**

**M/s Kalpena Plastiks Limited**

**Versus**

**The Bombay Stock Exchange Limited**

*[November 11, 2011]*

#### **Crux of the Order:**

Where a decision has been discussed in the meeting of SEBI but no circular, regulation, notification or press release has been issued by SEBI, reliance cannot be placed on the minutes of the meeting of SEBI and no decision can be taken in that respect.

#### **Brief facts:**

The appellant is a company registered under the Companies Act, 1956 and its shares are listed on the Bombay Stock Exchange Limited (BSE), Calcutta Stock Exchange and Delhi Stock Exchange since 1992.

With a view to raise its resources, the appellant decided to issue equity shares for cash at par, on preferential basis to the promoters of the company. A resolution was passed to this effect in the extra ordinary general meeting of the shareholders held on September 5, 2009 and it was also intimated to all the three stock exchanges vide letter of the same date.

Simultaneously, the appellant also filed an application with BSE on August 27, 2009 for ‘in-principle’ approval as per clause 24(a) of the listing agreement for listing of shares.

The appellant kept on pursuing the matter with BSE for the said approval but there was no response. As the appellant was in dire need of funds, it, vide its letter dated December 28, 2009, intimated the BSE that the appellant would proceed with the preferential allotment of shares under the presumption that the BSE has no objection for the said issuance of shares on preferential allotment basis.

Thereafter, vide its letter dated January 19, 2010, the appellant requested BSE for listing of the said shares on the stock exchange. At this stage BSE called for some further information and asking for an undertaking from the company that it will recompute the issue price of shares on completion of six months of scrip being listed on the exchange and accordingly collect the difference, if any, from the allottees as stated in Regulation 76(2) and 76(3) of the SEBI (ICDR) Regulations, 2009.

The Company contended that provisions stated in Regulation 76(2) and 76(3) of the SEBI (ICDR) Regulations, 2009 are not applicable to the Company as the same is applicable on the Company listed on recognized stock exchange for a period of less than Six months. The Company has been listed with your exchange since 1992. Although the shares of our Company were suspended for trading purpose only for certain period due to some procedural non compliances of Listing Agreement. However, this situation can not be construed as the Company’s shares are not having been listed.

The BSE, thereafter, referred to the minutes of the joint meeting of the Board, BSE and NSE, held on May 8, 2008 where it was decided that for companies whose shares have been suspended from trading in the past and subsequently revoked and in case of companies with less than six months of trading history subsequent to revocation of suspension of trading.

**Held that**, admittedly the decision was taken in the meeting held by the Board but no action has been taken in furtherance of this decision either by issuing the rules, order or circular making such decision known to the public. The minutes are specifically marked as for “private circulation only”. Such decision, to be binding, must be made known to the public in the form of rules, regulations, orders or circulars. The decision relied upon by BSE in issuing the impugned letter was taken way back on May 8, 2008. The appellant approached BSE for in-principle approval on August 27, 2009 and it did not respond to appellants repeated requests till January 27, 2010. Even thereafter, it took BSE ten months to convey its decision that too, based on the minutes of meeting held on May 8, 2008 which were not made public. Since the Board had not issued any order/circular making its decision public, it was not competent for BSE to base its decision on such minutes.

#### **Compiled By**

**Ms. Vandana Rajpriya, LCS**

**CS Manish Gupta, FCS**

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2.	Mr. Sanket Jain	ACS - 26531
3.	Mr. Sachin Gupta	ACS - 18494
4.	Mr. Santosh Kumar	ACS - 15907
5.	Mr. Jasvir Singh	ACS - 21938
6.	Ms. Kanika Gupta	ACS - 29219
7.	Mr. Vikas Kumar Garg	ACS - 16715
8.	Mr. Rajeev Guglani	ACS - 20058
9.	Mr. Anuj Kumar Tiwari	ACS - 19754
10.	Mr. Vaibhav Goel	ACS - 19603
11.	Mr. Manoj Kumar Verma	ACS - 23166
12.	Ms. Komal Gupta	ACS - 23756
13.	Ms. Ruchi Mitra	ACS - 24796
14.	Ms Era Bhardwaj	ACS - 20010
15.	Mr. R A Gupta	ACS - 1625
16.	Mr. Anupam Srivastava	ACS - 26679
17.	Mr. Chandan Kumar Singh	ACS - 28439
18.	Mr. Aman Kumar Jain	ACS - 22437
19.	Mr. Priyank Nigam	ACS - 23636
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Allotment data points
- ✓ Manage Application/Allotment/Certificates data points with simple tabular format data entry screens
- ✓ Manage Allotment with different Share Classes (ie. Equity 5, 10, Pref-5% 5, Pref-5% 10 etc.)
- ✓ Prepare Notice & Minutes with predefined Agendas and Resolutions text
- ✓ Manage uploaded e-Forms history
- ✓ View/Print ready Registers with already entered Data
- ✓ View/Print various operational data report.

### FinProd Technologies Private Ltd.

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**NEWS FROM NIRC**

**NIRC organised the following programs:**

**For Members**

<i>Day, Date, Time</i>	<i>Program</i>	<i>Chief Guest Speaker</i>	<i>Present</i>
3-4.12.2011	Two day Capacity Building Workshop for PCS	CS Pavan Kumar Vijay, CS Atul Mittal, CS Sumit Pahwa, CS Girish Narang, Mr. Samir Agarwal, Director, Marketing, Ocean Technocrats, CS S Kumar, CS Sanjay Grover, CS Nesar Ahmad, CS Saurabh Kalia and Mr. H.L. Tiku, Senior Advocate	CS Ranjeet Pandey, CS Deepak Kukreja, CS Manish Gupta, CS NPS Chawla, CS Rajiv Bajaj, CS Vineet K Chaudhary & members
10.12.2011	Rajasthan State Conference on Managing Knowledge Dynamics & Creating Professional Avenues	Chief Guest: Prof. V.K. Goswami, Vice-Chancellor, Sangam University Guest of Honour: Mr. B B Pradhan, Unit Head, Jindal Saw Ltd. Speakers: CS Vikas Khare, CS P.K. Mittal, CS Pavan Kumar Vijay, CS Hitender Mehta and CS Saurabh Kalia	CS Anil Murarka, President, ICSI, CS Nesar Ahmad, Vice-President, ICSI, CS N.K. Jain, Secretary & CEO, ICSI, CS Ranjeet Pandey, CS Dhananjay Shukla, CS R.K. Jain, other managing committee members of Bhilwara Chapter, members & students
17.12.2011	East Zone Study Group Meeting on critical analysis of MCA Circulars	CS Rajiv Goel	CS Ashish Gupta, CS Anand Khandelwal and members
17.12.2011	West Zone Study Group Meeting on An Overview of GST	CS Gopal Mandal	CS Pradeep Debnath and members
19.12.2011	Meeting of Company Secretaries in Practice on Analysis of Balance Sheet with Special Reference to New Schedule - 6 Requirements	CS Yogesh Gupta, Past Chairman, NIRC-ICSI	CS Ranjeet Pandey, CS Manish Gupta, CS Dhananjay Shukla and Members
23.12.2011	Mega Study Circle Meeting on Discover The Hidden Power	Mr P S Rathore, Author & Motivational Speaker	CS Ranjeet Pandey, CS Deepak Kukreja, CS N.P.S Chawla, CS Rajiv Bajaj, CS Manish Gupta, CS Dhananjay Shukla, Mr. T.R. Mehta and Members
24.12.2011	Seminar on Foreign Exchange Management - Emerging Issues & Recent Developments	Ms. M. Vedavalli, Deputy General Manager (Retd.), Reserve Bank of India, Mr. Ravi Shingari, Director - Tax and Regulatory, KPMG, CS Manvinder Singh, Partner, J. Sagar Associates, Advocates & Solicitors, CS Vijay Gupta and Ms. Sandhya Iyer, Partner, Vaish Associates	CS Ranjeet Pandey, CS P.K. Mittal, CS Deepak Kukreja, CS Ashu Gupta, CS Dhananjay Shukla, CS Manish Gupta, CS NPS Chawla, CS Rajiv Bajaj and members

<i>Day, Date, Time</i>	<i>Program Details</i>	<i>Chief Guest Speaker</i>	<i>Present</i>
25.12.2011	North Zone Study Group Meeting on New Takeover Regulations	CS Pankaj Jain	CS Chetan Gupta, CS Nitesh Sinha and members
30.12.2011	New Year Eve Celebrations & Dinner		CS Ranjeet Pandey, CS Nesar Ahmad, CS Harish K Vaid, CS Deepak Kukreja, CS Ashu Gupta, CS Dhananjay Shukla, CS Manish Gupta, CS NPS Chawla, CS Rajiv Bajaj, other members & their families

### Investor Awareness Programs

24.12.2011	Investor Awareness Program on Investment Opportunities in Capital Market held at Intex Technologies (India) Ltd., Okhla, New Delhi	CS J K Bareja, (Associate Professor, University of Delhi) & CS Pawan Kumar Bhardwaj	Investors & others
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### For Students

07-15.12.2011	1st Executive Development Program (EDP)	Members of the Institute and other professionals	CS Ranjeet Pandey, CS Deepak Kukreja, CS Ashu Gupta, CS Avtar Singh and students
16.12.2011	Valedictory Function of 158th Management Skills Orientation Program	Mr. Praveen Trivedi, Regional Manager, SEBI	CS Ranjeet Pandey, CS Sanjay Grover, CS Vineet K Chaudhary, CS Manish Gupta, Mr. T.R. Mehta and CS Alka Arora
20.12.2011	Inauguration of 159 <sup>th</sup> Management Skills Orientation Program	Mr. Rajeev Kumar, Chairman & Managing Director, Param Dairy Ltd.	CS Ranjeet Pandey, CS Deepak Kukreja, CS Vineet K Chaudhary, CS Manish Gupta, CS Dhananjay Shukla, Mr. T.R. Mehta and CS Alka Arora

### Career Awareness Programs

NIRC organised 15 Career Awareness Programs during the month of December, 2011.

CS J K Bareja, CS Pradeep Debnath, CS Ranjeet Verma, CS Prashant K Kesharwani, Mr T R Mehta, Mr Sanjeet Kumar and Mr Himanshu Sharma addressed in the Career Awareness Programs.

The students were apprised about the mode of registration in the course, syllabus, structure of the course and also the avenues available after completion of the Company Secretaryship Course both in employment and in practice. Pamphlets of Career in Company Secretaryship Course were distributed to the students.

### OBITUARY

NIRC-ICSI deeply regrets the demise of Mr. N.S. Mittal, FCS (Past Chairman, NIRC) on 27.11.2011 from Delhi.

May the Almighty bestow courage to the bereaved family members to withstand the irreparable loss. May the Departed Soul rest in peace.

## RESULT OF RESEARCH PAPER COMPETITION

Research Paper Competition was organized by Research & Publication Committee of NIRC-ICSI in the year 2011. In all 18 articles (12 in Group I & 6 in Group-II) were received from following members in the Research Paper Competition

### Group I

S.No.	Name	Topic
1	Ms. Harpreet Grover (ACS-18583)	Incorporation of Companies in other countries.
2	Ms. Pooja Choudhary (ACS-14115)	FDI Policy of India - practice and procedure.
3	Mr. Suraj Arora (ACS-27675)	
4	Ms. Chitra Bhandari (ACS-26882)	
5	Mr. Uma Shankar Acharya (ACS-25731)	Remuneration of Independent Directors
6	Ms. Deeksha Chopra (ACS-21560)	
7	Ms. Swati Sethi (ACS-24296)	
8	Ms. Pooja Rahi (ACS-26242)	Professional liability : while dealing with fraud
9	Ms. Neetu Arora (ACS-26399)	
10	Ms. Amita Verma (ACS-26904)	Setting of a non-profit organization
11	Ms. Rakshanda Niyazi (ACS-23736)	
12	Ms. Shinu Vig (ACS-21926)	Taxation on LLP

### Group II

13	Ms. Sangeeta Harpalani (FCS-6094)	Delegation of regulatory powers to professional practitioners
14	Dr. Girish Goyal (ACS-11422)	Working Profile of Company Secretaries in smaller towns.
15	Mr. Punit Handa (FCS-5084)	Globalization of CS Profession - Scope and Hope
16	Mr. Naresh Kumar (FCS-1458)	Whistle blowing and professional responsibilities
17	Ms. Monica Suri (ACS-15511)	
18	Ms. Shikha Talreja (ACS 15752)	

The articles were evaluated by three judges, Mr J.K Bareja, FCS, Mr R N Kar, FCS and Mr B.S Bhargava, FCS on the following parameters:

*Maximum Marks*

Contents Richness	50
Presentation style	50
Understanding & Sharing of Experience	50
Language & grammatical proficiency.	50

The minimum qualifying marks for award in each group was 60%.

The award ceremony for the same was held on 24<sup>th</sup> December, 2011 at Hotel Le-Meridien, New Delhi.

The following members were awarded the prizes and all the members were given certificate of participation:

**GROUP I:-** First Prize • Citation + Trophy + Cheque - Rs. 3,100/- Ms. Amita Verma (ACS-26904)

**GROUP II:-** First Prize • Citation + Trophy + Cheque - Rs. 5,100/- Mr. Naresh Kumar (FCS-1458)

Second Prize • Citation + Trophy + Cheque - Rs. 3,100/- Ms. Shikha Talreja, ACS-15752

Third Prize • Citation + Trophy + Cheque - Rs. 2,100/- Ms. Sangeeta Harpalani (FCS-6094)

**NEWS FROM CHAPTERS**

Name of Chapter	Date of Program/Meeting	Program
Agra	17.12.2011	Program on Companies Bill Speaker : CS Akash Jain
Bhilwara	10.12.2011	Laying of Foundation Stone Ceremony of chapter's office building – Chief Guest : Mr. Ujval Singh Rathore, Additional District Magistrate, Bhilwara in the august presence of Mr. Anil Murarka, President of ICSI, Mr. Nesar Ahmad, Vice-President of ICSI, Mr. N K Jain, Secretary & CEO, ICSI, Council Members & other Dignitaries
Chandigarh	28.11.2011	Seminar on Income Tax Speaker : CA Krishan V. Jain
	27.12.2011	Program on New Companies Bill Speaker : CS Ranjeet Pandey
Faridabad	24.11.2011	Career Awareness Program at IMT College Faridabad
	30.11.2011	Career Awareness Program at IMT College Faridabad
	30.11.2011	Press Conference at IMT College Faridabad
	4.12.2011	Cricket Match
Jaipur	02.12.2011	26 <sup>th</sup> Student Induction Program
	09.12.2011	27 <sup>th</sup> Student Induction Program
	14.12.2011	Career Awareness Program at Mahaveer Public School
	14.12.2011	Career Awareness Program at Mahaveer College of Commerce
	14.12.2011	Study Circle Meeting on Banking Sector Reforms Speaker : CS Rajiv Bhargava
	20.12.2011	28 <sup>th</sup> Student Induction Program
	19.12.2011	10 <sup>th</sup> Executive Development Program
	19.12.2011	Career Awareness Program at Shri Vardhman Kanya Mahavidyalay
Jodhpur	9.12.2011	Career Guidance at Sohan Lal Manihar Girls Schools – Addressed by : CS Ranjeet Pandey, CS Shyam Agrawal, CS Dhananjay Shukla and CS Mukesh Bansal
	9.12.2011	22nd Student Induction Program – Addressed by : CS Ranjeet Pandey
	26.12.2011	23rd Student Induction Program

	18.12.2011	Panel Discussion on New Companies Bill 2011 – Addressed by : CA Yogesh Birla, CWA K K Vyas, CS Mukesh Bansal, Mr Mahesh Pandya, BSE
	18.12.2011	4th Executive Development Program 16.12.2011 Career Guidance at K V Airforce, Barmer – Addressed by : CS Mukesh Bansal, CA Jitenra Agarwal
	16.12.2011	Career Guidance for Students/ Professionals at Barmer – Addressed by : CS Mukesh Bansal. Mr Amit Jalani, Manager Axis Bank, CA Jitendra Agarwal
	16.12.2011	Career Guidance at Cairn India Enterprise Centre, Barmer CS Mukesh Bansal
	23.12.2011	Program on It Is Possible Mr. Shashikant Gupta, Director Swash and CS Mukesh Bansal
Kanpur	11.12.2011	Investor Awareness Programme at Karvi, Distt. Chitrakoot – Addressed by : CS M.P.Shah, ROC, U.P. & Uttarakhand Kanpur, CS Jitendra Awasthi & CS Manish Shukla
	16.12.2011	Career Awareness Week-I at Fatehpur – Addressed by : CS Umang Mehrotra, Mr. Vijendra Kumar Vishwakarma
	16.12.2011	Career Awareness Week-I at Etawah
Kota	11.12.2011	Study Circle meeting on Indirect Taxation-Professional Avenue.
	16.12.2011	Study Circle meeting on Latest Circulars/ Notifications issued by MCA.
	17.12.2011	Study Circle meeting on Recent Developments in Service Tax.
	18.12.2011	Study Circle meeting on Law & Procedure of Drafting & Conveyancing
Lucknow	12-18.12.2011	16th Student Induction Program
	14-15.12.2011	Career Fair
Ludhiana	28.11.2011	Study Circle Meeting – Discussion on Practical Difficulties in XBRL
	22.12.2011	Study Circle Meeting – Discussion on Companies Bill
Sonepat	1.12.2011	Seminar on Stress Management
	12 & 17.12.2011	Investor Awareness Program
Varanasi	3.12.2011	Program on XBRL



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**Coverage :**

- Personality Traits of a Successful Professional
- Break the Barriers to Rise & Shine
- Advantage Effective Communication

on

**Saturday, the 14<sup>th</sup> January, 2012**

*(Registration starts at 9.30 AM)*

**at Hotel Intercontinental Eros, Nehru Place, New Delhi.**

**Fee: Rs.2,000/- per delegate; FREE for Corporate Members of NIRC**

**Registration :** In order to make necessary arrangements, Members are requested to enrol well in advance with Deputy Director, NIRC-ICSI, 4, Prasad Nagar Institutional Area, New Delhi. The cheque for delegate fee may please be drawn in favour of NIRC of ICSI payable at New Delhi. Tel.:+91-11-49343000, Fax: 25722662 E-mail: eoniro@icsi.edu

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*(Credit Hours will be given to only those members who joins the programs upto 11.00 AM.  
Members are required to mark the attendance both at the beginning & conclusion of the program)*

**DELHI STUDY GROUPS FORTHCOMING MEETINGS**

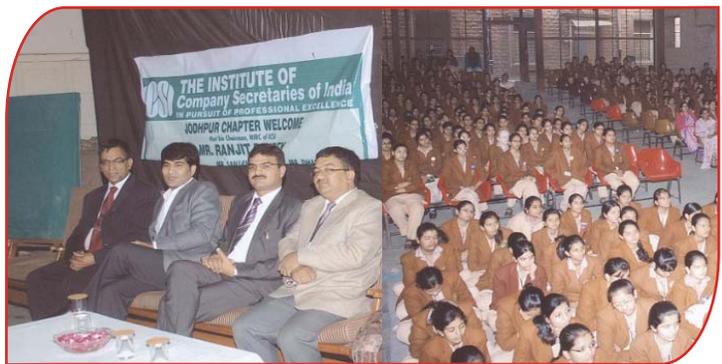
<i>Day, Date &amp; Time</i>	<i>Program</i>	<i>Program Credit Hours</i>	<i>Venue</i>
Saturday 21.01.2012, 6.00 PM	<b>EAST</b> Zone Study Group Meeting <b>(Topic will be informed through e-mail)</b>	ONE	Mother Teresa Public School C-Block, Preet Vihar, Delhi
Saturday 21.01.2012, 6.00 PM	<b>WEST</b> Zone Study Group Meeting on <b>An overview with opportunities of professionals in Service Tax</b>	ONE	CMC Ltd. Community Centre C-11, 3rd Floor, Behind Janak Cinema Janak Puri New Delhi
Friday 27.01.2012, 6.00 PM	<b>SOUTH</b> Zone Study Group Meeting <b>(Topic will be informed through e-mail)</b>	ONE	Association of Municipalities and Development Authorities (AMDA), 7/6, Sirifort Institutional Area, August Kranti Marg, New Delhi Janak Puri New Delhi
Sunday 29.01.2012, 5.00 PM	<b>NORTH</b> Zone Study Group Meeting <b>(Topic will be informed through e-mail)</b>	ONE	Hero Mind Mine, 3rd Floor, Building No. FD-4, (Near Pitampura Metro Station), New Delhi



**Inauguration of 159th Management Skills Orientation Program(20.12.2011)**: Group photograph of participants alongwith (Sitting from L to R) CS Alka Arora, CS Dhananjay Shukla, CSAlok Kuchhal, CS Vineet K Chaudhary, CS Ranjeet Pandey, Mr. Rajeev Kumar, Chairman & Managing Director, Param Dairy Ltd., Mr.S.K. Goel, Director, Param Dairy Ltd., CS Deepak Kukreja, CS Manish Gupta and Mr.T.R. Mehta



**Jodhpur Chapter — Student Induction Program (9.12.2011)** : From L to R CS Dhananjay Shukla, CS Ranjeet Pandey, CS Shyam Agrawal, Mr. Sanjay of Rotary Club & CS Mukesh Bansal.



**Jodhpur Chapter — Career Awareness Program (9.12.2011)** : From L to R CS Mukesh Bansal, CS Shyam Agrawal, CS Ranjeet Pandey & CS Dhananjay Shukla addressing the students of Shri Sohanlal Mahihar Girls Senior Secondary School, Jodhpur.



**Jaipur Chapter—Study Circle Meeting on Banking Sector Reforms (14.12.2011)** : CS Rajiv Bhargava (Speaker), Dr. Girish Goyal & others seen.



**Varanasi Chapter—Program on XBRL (3.12.2011)** : Mr. Aditya Narain of Webtel addressing the participants.

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Laying of Foundation Stone Ceremony of Bhilwara chapter's office building (10.12.2011) : CS Anil Murarka, CS Nesar Ahmad, CS P.K. Mittal, CS Vikas Khare, CS N.K.Jain, CS Ranjeet Pandey & other dignitaries standing



Rajasthan State Conference on Managing Knowledge Dynamics & Creating Professional Avenues (10.12.2011) : From L to R CS Dhananjay Shukla, CS Sanjana Jain, CS Hitender Mehta, CS P.K. Mittal & CS Vikas Khare.



Rajasthan State Conference on Managing Knowledge Dynamics & Creating Professional Avenues (10.12.2011) : From L to R CS Saurabh Kalia, Mr. P.M. Beswal, CS Pavan Kumar Vijay & member from Bhilwara Chapter.



Mega Study Circle Meeting on Discover the Hidden Power (23.12.2011) : From L to R Mr. T. R. Mehta, CS Manish Gupta, Mr. PS Rathore (Author & Motivational Speaker), CS Ranjeet Pandey & CS NPS Chawla



Seminar on Foreign Exchange Management Emerging Issues & Recent Developments (24.12.2011): First Technical Session - From L to R CS Deepak Kukreja, Mr. Ravi Shingari, Director - Tax and Regulatory, KPMG, Ms. M.Vedavalli, Deputy General Manager (Retd.), Reserve Bank of India, and CSAshu Gupta



Seminar on Foreign Exchange Management Emerging Issues & Recent Developments (24.12.2011): Second Technical Session - CS Vijay Gupta addressing. Others from L to R CS Rajiv Bajaj, CS Manvinder Singh, Partner, J. Sagar Associates, Advocates & Solicitors, Ms. Sandhya Iyer, Partner, Vaish Associates and CS Dhananjay Shukla

**Disclaimer:** While every effort has been made and care has been taken in preparation of this Newsletter and to ensure its accuracy at the time of publication, NIRC of ICSI assumes no responsibility for any errors which, despite all precautions, may creep in. It is suggested that the readers should cross check all the facts and the relevant law position before acting on any matter.

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