

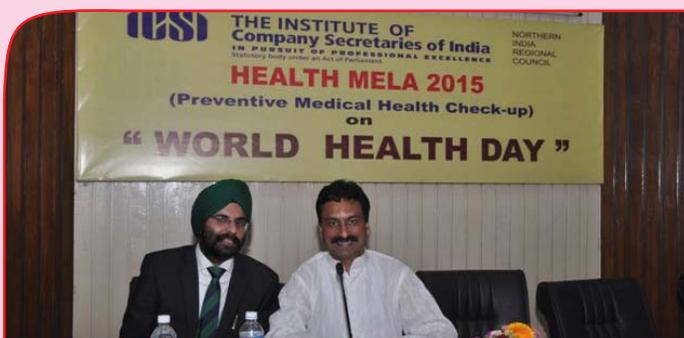


# NIRC-ICSI

Insight

## NEWSLETTER

National Best Regional Council (2004, 2007, 2008, 2009, 2010, 2011 & 2013)



1. National Seminar on "Secretarial Audit - A Panacea for Good Governance" (27.3.2015) : sitting from L to R, CS Sutanu Sinha, CS Vineet Chaudhary, CS Atul Mehta & CS NPS Chawla.
2. ICSI HR Conclave - "Company Secretary: A Key Managerial Personnel " (27.3.2015): Group photograph of Participants along with CS G P Sahi, CS N K Jain, CS Ilam C. Kamboj, CS Rajiv Bajaj, CS NPS Chawla, CS Manish Gupta, CS Nitesh Sinha & CS Monika Kohli.
3. Meeting of Company Secretaries in Practice on "Preparedness for Annual Filing under Companies Act, 2013" (23.3.2015): sitting from L to R, CS Dhananjay Shukla, CS Manish Gupta, CS S Koley, CS NPS Chawla, CS Pradeep Debnath & CS Nitesh Sinha
4. Interaction of President and Council Members of region & ICSI officials with Practicing Company Secretaries (27.3.2015): sitting from L to R, CS Alka Kapoor, CS Monika Kohli, CS Vineet Chaudhary CS Atul H Mehta, CS Manish Gupta, CS Ranjeet Pandey & CS Nitesh Sinha.
5. Health Mela - Preventive Medical Health Check-up (5.4.2015): CS NPS Chawla, CS Sudhir Jain & other members

## The Regional Council

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<b>Regional Director</b>	• S K Nagar	09313339897

**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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Dear Professional Brethren,

Coming together is a beginning; keeping together is progress; working together is success.  
**Henry Ford**



Success does not come by chance, lot of efforts have been done in sequence to achieve that success. For being successful in life one has to put in lot of hard work and dedication for the achievement of the positive results. For achieving the desired results, one has to update the skill set and knowledge and move forward with the

changing and the challenging time. The professional world is full of challenges, as day in day out lots of developments and amendments are taking place. For being successful professional one has to be updated every next second. Keeping all this mind, NIRC-ICSI is always keen to provide best of the possible services to various stakeholder either in the form of providing more & more opportunities of learning and capacity building for keeping them updated by organising series of quality professional development programs or in the form of providing any other services. During the month of March and April, 2015 NIRC-ICSI organised series of programs for the benefit of members and students.

**Study Session Meetings:**

NIRC-ICSI started a series of Study Session meetings on various topics of corporate relevance/interest at different locations of Delhi. On 20th March, 2015 a study session meeting on the theme "New Insider Trading Regulations" was organised at YMCA, New Delhi. Mr. Sharad Tyagi from Seth Dua & Associates was the guest speaker at the meeting. On 21st March, 2015 a study session meeting on the theme "Secretarial Audit" was organised at CMC Ltd., New Delhi. Mr. T R Ramamurthy, Company Secretary in Practice was the guest speaker on the occasion. On 28th March, 2015 a study session meeting on the theme "Secretarial Audit" was organised at Mother Taresa, New Delhi. Mr. Ashok Kumar Tyagi was the guest speaker on the occasion. Members took the benefit of these study sessions meetings and attended these meetings in large numbers. I take this opportunity to express my sincere thanks & gratitude to the guest speakers of these study session meetings for sparing their time and sharing the expert knowledge with the delegates.

**PCS Meeting**

On 23rd March, 2015 NIRC-ICSI organised a meeting of Company Secretaries in Practice on the topic "Preparedness for Annual Filing under Companies Act, 2013" at ICSI-NIRC Building. Members appreciated the subject for the meeting and particularly the timing which coincided with the real working environment for the theme. Mr. S Koley, Company Secretary in Practice was the guest speaker on the occasion. I wish to place on record my sincere thanks and gratitude to Mr. Koley for sparing his time and sharing his words of wisdom with the delegates.

**Class Room Study Sessions:**

Apart from organising the study session meetings on different topics at different location of Delhi, NIRC-ICSI from 6th April, 2015 to 16th April, 2015 started Class Room Study sessions on the topic "Secretarial Audit" at ICSI-NIRC Building, 4, Prasad Nagar Institutional Area, New Delhi-110005. The main thrust during these class room study session was to give practical insight on the subject by inviting expert speakers from the Industry as well as from Practice side of the profession. These class room study sessions were very well appreciated by the members as by attending these sessions, members got chance to resolve/clarify their doubt and discuss the practical difficulties being faced by them. I take this opportunity to place on record my heartfelt thanks and gratitude to all the guest speakers of the study sessions for sparing their time and sharing their rich knowledge and experience with the delegates.

**Seminar and other Professional Development Program:**

On 27th March, 2015 NIRC-ICSI jointly with the Institute organised a National Seminar on the topic "SECRETARIAL AUDIT- A PANACEA FOR GOOD GOVERNANCE" at Hotel Le Meridien, New Delhi. Mr. Atul H Mehta, President, ICSI, Mr. Vineet Chaudhary, Council Member, ICSI, Mr. Sutanu Sinha, Chief Executive & Officiating Secretary, ICSI and few of Regional Council Members, NIRC were present during the inaugural session of the seminar. Mr. Pavan Kumar Vijay, Past President & Chairman, Secretarial Standard Board, ICSI, Mr. S C Vasudeva, Chartered Accountant, Ms. Savithri Parekh, Chief(Legal & Secretarial), Pidilite Industries Ltd., Mr. B Murlu, Senior Vice President-Legal & Company Secretary, Nestle India Ltd., Mr. Ilam C Kamboj, Associate Vice President, Legal & Company Secretary, Hero Motocorp Ltd. were the guest speakers on the occasion. Approx. 400 Members have attended the seminar.

After the seminar on 27th March, 2015, an interaction program with Mr. Atul H Mehta, President, ICSI, Council Members, ICSI, Regional Council Members, NIRC and the officials of the ICSI was organised for the Practicing Company Secretaries at Hotel Le Meridien, New Delhi.

**HR Conclave**

On the same day ICSI HR Conclave -"Company Secretary: A Key Managerial Personnel" was organised by NIRC-ICSI at Hotel Le Meridien. Mr. G P Sahi, VP (LEGAL) & Company Secretary, CJ International Ltd., Mr. N K Jain, Former Secretary & CEO, ICSI, Mr. Ilam C. Kamboj, Associate Vice President, Legal & Company Secretary, Hero Moto Corp Ltd. have addressed the CEO/HR Heads of the corporates and briefed them about the role which a Company Secretary can effectively and efficiently play in the corporates. Approx. 50 HR representatives have attended the conclave. The idea of organizing the same was to create an awareness in HR circle about the expanded scope of a CS as a multi-faceted professional particularly as a KMP.

**Preventive Health Check Up**

NIRC celebrated International Health Day by organising a Health Mela and Preventive Medical Health Check up on 5th April, 2015 NIRC-ICSI for the members and their families at ICSI-NIRC Building, 4, Prasad Nagar Institutional Area, New Delhi. The check up started at 8.00 AM, followed by a talk on Health is Wealth by Shri Sudhir Jain. Various medical examinations/facilities were included in the package of Pre Medical Health Check up which was free for all the members. Members participated in large numbers and appreciated the initiative of NIRC. We thank all our associate partners for this event.

**Participation of NIRC as a Knowledge Partner in International Conference:**

On 10th & 11th April, 2015 NIRC-ICSI participated as Knowledge Partner in the 2nd International Conference organised by Maharaja Agrasen Institute of Management Studies on the theme Corporate Governance -A Paradigm Shift. Members attended the program and took the benefit of listening to the galaxy of expert speakers present on the occasion.

**Students Programs:**

On 30th March, 2015 and 1st April, 2015 NIRC-ICSI inaugurated 209th and 210th batches of Management Skills Orientation Program at NIRC premises. Shri Apoorva Kumar, Company Secretary & Compliance Officer, DARCL Ltd. and Shri Kapil

Dev Taneja, Country Head (Legal) Caparo India Operations were the Chief Guests respectively on the occasions. I take this opportunity to thank Shri Apoorva Kumar and Shri Kapil Dev Taneja for sparing their valuable time and sharing their words of wisdom with the participants of the MSOP batches.

On 26th & 31st March, 2015 NIRC-ICSI also organised two Professional Development programs at NIRC premises. The focus of NIRC in both these programs was on the development of the soft skills of the students.

**Forthcoming Programs:**

NIRC-ICSI is planning to organise various programs during the month of April, 2015. The details of all these programs are published elsewhere in the newsletter for your benefit. The brief details of all these programs are as under:

- On 17th April, 2015 EY Campus Placement for Members at ICSI-NIRC Building.
- On 18th April, 2015, one day seminar on the topic "Board Evaluation-Purpose and Process" at Hotel EROS, Nehru Place. We have invited eminent speakers to deliberate on the subject. After the seminar, NIRC-ICSI is organising combined valedictory function of the two batches i.e. 209th & 210th Batches of MSOP at Hotel EROS, Nehru Place.
- On 19th April, 2015, a study session meeting in North Delhi would be organized, details of which will be shared with members by mail.
- On 24th April, 2015 Campus placement for trainees at ICSI-NIRC Building.
- On 25th & 26th April, 2015 Two Days PCS Induction Program.
- On 27th April, 2015 monthly PCS meeting at ICSI-NIRC Building.

I take this opportunity to request all of you to attend all these programs in large number and take the benefit of listening to rich deliberations of the eminent speakers and also the strength in these programs encourages the organisers to organise more and more quality professional development programs. Through this message, I also take this opportunity to kindly participate in the Campus Placements and join hands with NIRC for helping our younger colleagues.

Through this message, I request all of you to kindly come forward and send your suggestions and feedback for further improving the activities of NIRC and also join hands with NIRC for providing best possible services to various stakeholders. We also request you to come forward and write articles and columns publishing the same in the Newsletter of NIRC-ICSI Insight. Feel free to interact with me at [npschawla@vaishlaw.com](mailto:npschawla@vaishlaw.com) or [chairman.nirc@icsi.edu](mailto:chairman.nirc@icsi.edu).

With warm regards,



CS NPS Chawla

Chairman, NIRC-ICSI

Cell: 9958535300

## DOCTRINE OF PITH AND SUBSTANCE

One of the most important doctrines of interpreting constitution is doctrine of pith and substance. The basic purpose of this doctrine is to determine under which head of power or field i.e. under which list (provided in the Seventh Schedule of Constitution) a given piece of legislation falls. This doctrine has been constantly adopted by the Apex Court to ascertain the validity of a particular legislation, when it is challenged on the grounds of legislative competence.

Pith means 'true nature' or 'essence of something' and Substance means 'the most important or essential part of something'. Thus, doctrine of Pith and Substance says that where the question arises of determining whether a particular law relates to a particular subject (mentioned in one List or another), the court looks to the substance of the matter. Hence, if the substance falls within Union List, then the incidental encroachment by the law on the State List does not make it invalid.

There are hundreds of judgments that have applied this doctrine to ascertain the true nature of a legislation. One of the first important judgments of the Supreme Court that took recourse to the Doctrine of Pith and Substance is *The State of Bombay And Another vs F.N. Balsara*,

AIR 1951 SC 318. The Supreme Court upheld the Doctrine of Pith and Substance in this case and further said that this doctrine is important to ascertain the true nature and character of a legislation for the purpose of determining the List under which it falls.

Thereafter, the Supreme Court in the case of *Mt. Atiqa Begam And Anr. v. Abdul Maghni Khan And Ors.* AIR 2010 SC 2633 held that in order to decide whether the impugned Act falls under which entry, one has to ascertain the true nature and character of the enactment i.e. its 'pith and substance'. The court further said that "it is the result of this investigation, not the form alone which the statute may have assumed under the hand of the draughtsman, that will determine within which of the Legislative Lists the legislation falls and for this purpose the legislation must be scrutinized in its entirety". Till present time, the doctrine of pith and substance is regarded as one of the most important doctrines whenever a question is raised over legislative competence of the Legislature in enacting any legislation.

**Contributed by: Mr. Adarsh Tripathi, Associates, Vaish Associates Advocates**

## 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	6 Issues	12 Issues
		(Rs.)	(Rs.)	(Rs.)
Back cover	(Colour)	25,000	1,25,000	2,40,000
Inside Cover	(Colour)	20,000	1,00,000	1,90,000
Full Page Inside	(Colour)	15,000	80,000	1,50,000
Inside page	(Black & White)	10,000	55,000	1,00,000
Inside Half page	(Black & White)	6,000	35,000	65,000

## OBITUARY

'NIRC-ICSI Newsletter' deeply regrets the demise of Shri Lajpat Rai Puri, Past President, The ICSI. May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss. May the Departed Soul rest in peace



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

## CORPORATE COMPLIANCE EXECUTIVE CERTIFICATE FOR STUDENTS

The Institute launched the 'Corporate Compliance Executive Certificate' in terms of Chapter IVA (Regulation 28A & 28B) of the Company Secretaries Regulations, 1982 on 4th October, 2013.

### ELIGIBILITY FOR AWARD OF CORPORATE COMPLIANCE EXECUTIVE CERTIFICATE

A person who –

- is currently registered as a student of the Company Secretaryship course of the Institute;
- has completed at least one group of the Intermediate/Executive Programme Examination of the Company Secretaryship Course, and
- has completed a training of Six months under Regulation 28A of the Company Secretaries Regulations, 1982, which may include skill oriented practical /class room training for two weeks.

### PROCEDURE

An eligible student may apply for award of **Corporate Compliance Executive Certificate** by submitting an application in specified format (available on the website of the Institute [www.icsi.edu](http://www.icsi.edu)), after making payment of a fee of <sup>1</sup> 2000 (two thousand only), either in cash (at counters of the Institute across the country) or by way of Demand Draft in favour of 'The Institute of Company Secretaries of India' payable at New Delhi.

### STATUS OF HOLDER OF CORPORATE COMPLIANCE EXECUTIVE CERTIFICATE

- The student who is awarded Corporate Compliance Executive Certificate of the Institute shall be entitled to use the descriptive letters "**Corporate Compliance Executive**".
- The grant of Certificate of **Corporate Compliance Executive Certificate** shall not confer on the Corporate Compliance Executive the rights of a member, nor entitle him to claim membership of the Institute.

### VALIDITY OF CERTIFICATE

- The Corporate Compliance Executive certificate is valid for a period of three years (financial years) and is renewable on completion of four Programme Credit Hours (PCH) and payment of requisite fee as the Council may determine from time to time.

### OTHER DETAILS

- The student shall have to complete the course of Corporate Compliance Executive Certificate including the training requirements within the registration period.
- The student having awarded the Corporate Compliance Executive Certificate may continue to pursue the regular Company Secretaryship course if he so desires.
- Except to the extent provided in this Chapter IVA (Regulations 28A & 28B) of the Company Secretaries Regulations, 1982 or as decided by the Council from time to time, regulations in Chapter IV and VI relating to 'Registered Students' and 'Examinations' shall *mutatis-mutandis* apply to the 'Corporate Compliance Executive Certificate Course'.
- A student after having awarded the Corporate Compliance Executive Certificate shall secure four Programme Credit Hours (PCH) for renewal of Corporate Compliance Executive Certificate.
- There shall be no exemption from training.

Brochure and application form are available at CCEC section on website of the Institute [www.icsi.edu](http://www.icsi.edu). For queries please write at [ccec@icsi.edu](mailto:ccec@icsi.edu) or contact on phone number 011-45341049.



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

**Payment of Annual Membership and Certificate of Practice Fee for the Year 2015-16**

The annual membership fee and certificate of practice fee for the year 2015-16 became due for payment w.e.f. 1st April, 2015. The last date for payment of fee is 30th June, 2015.

The membership and certificate of practice fee payable is as follows:

1. Annual Associate Membership fee Rs.1125/- (\*)
2. Annual Fellow Membership fee Rs.1500/- (\*)
3. Annual Certificate of Practice fee Rs.1000/- (\*\*)

- \* A member who is of the age of sixty years or above and is not in any gainful employment or practice can claim 50% concession in the payment of Associate/Fellow Annual Membership fee and a member who is of the age of seventy years or above and is not in any gainful employment or practice can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration to that effect.
- \*\*The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute [www.icsi.edu](http://www.icsi.edu).

**MODE OF REMITTANCE OF FEE**

The fee can be remitted by way of:

- (i) Online (through payment gateway of the Institute's website ([www.icsi.edu](http://www.icsi.edu)))
- (ii) Cash/Cheque at par/Demand draft/Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' at the Institute's Headquarter or Regional/Chapter offices.

For queries, if any, the members may please write to Mr. Saurabh Bansal, Asst. Education Officer at email id [saurabh.bansal@icsi.edu](mailto:saurabh.bansal@icsi.edu).

**Steps for online payment:**

- a. Login to portal [www.icsi.edu](http://www.icsi.edu)
- b. Click **Online services** on the right top corner and then click **Login**
- c. Fill the User name: Enter your membership no. (e.g. A1234) as per the sample given on the page
- d. Password. Fill the password. In case you do not have a password, you may retrieve the password in case your email is correctly registered in the Institute's record. Alternatively, you may send an email request for password with your ACS/FCS membership no. to [meena.bisht@icsi.edu](mailto:meena.bisht@icsi.edu)
- e. After login, go to **Members Option** (from top menu) then click on '**My Account**'
- f. Click on Payment Requests
- g. Click on Membership fee request
- h. Make the payment and press submit button

### COMPANY SECRETARIES BENEVOLENT FUND

MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS OF THE COMPANY SECRETARIES BENEVOLENT FUND DURING THE PERIOD 20/02/2015 TO 20/03/2015

<i>S.No.</i>	<i>Name</i>	<i>Mem. No.</i>
1	MS. POOJA SHARMA	ACS - 38696
2	MS. SAVITA	ACS - 38718
3	SH. SUNIL GUPTA	ACS - 10696
4	MR. GAVENDRA SINGH	ACS - 34926
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22	SH. ANUJ AGARWAL	ACS - 16500
23	MS. CHANCHAL YADAV	ACS - 38210
24	MR. MANU KUMAR GARG	ACS - 22058
25	MS. LATIKA CHAWLA	ACS - 30554
26	MS. POOJA MAMGAIN	ACS - 29646
27	MR. MANISH DURGA	ACS - 30291

## NOMINATION VS. SUCCESSION LAW: BOMBAY HC RULING - SETTLING THE RUFFLED FEATHERS!

– Sneha Ghuriani, Licentiate Member of ICSI\*

### Introduction

The Companies (Amendment) Act, 1999 introduced Section 109A and Section 109B to the Companies Act, 1956 ('the Act'). Section 109A provides for nomination of shares or debentures by a shareholder or a debenture-holder as the case may be and on the event of his death these shares and debentures shall vest on such nominated person. Section 109B provides for method of transmission of such shares. Such provisions were introduced to reduce the hardships caused to legal heirs of shareholders/debenture-holders in obtaining the probate letters, succession certificates etc.

If we read Section 109A, it says that on the event of death of a shareholder, shares "shall vest" in the nominee. On the other hand, if we go by the laws of inheritance, they say that legal heirs shall be entitled to the estate of the deceased which includes shares, it being movable property. Such conflict of laws leads to controversy that whether Section 109A creates another mode of succession in addition to laws to inheritance, in the form of 'statutory testament'.

### Controversy

The Bombay High Court in the case of Harsha Nitin Kokate v The Saraswat Cooperative Bank Ltd & Ors ('Kokate') held that after the death of shareholder, ownership rights are transferred to the nominee. It was observed therein that, "A reading of Section 109A of the Companies Act and 9.11 of the Depositories Act makes it abundantly clear that the intent of the nomination is to vest the property in the shares which includes the ownership rights thereunder in the nominee upon nomination validly made as per the procedure prescribed."

However, recently, the Bombay High Court in Jayanand Jayant Salgaonkar v. Jayashree Jayant Salgaonkar and Ors ('Salgaonkar'), on the issue of legality of aforesaid co-ordinate bench ruling in Harsha Nitin Kokate, held it as per incuriam. It held

that, "nominations under Sections 109A and 109B of the Companies Act and Bye-Law 9.11 of the Depositories Act, 1996 cannot and do not displace the law of succession, nor do they open a third line of succession". It was also held therein that fundamental focus of Section 109A is to give the company or depository a "legally valid quittance" from being answerable to succession litigations and making nominee, a custodian of shares and answerable to all claimants under succession law in its fiduciary capacity. The Bombay High Court further held that if Section 109A conferred a 'statutory testament' overriding laws of succession, a 'nomination' without any witness, probate or codicil would yet be called a 'will', which could not be a legislature's intent. In the words of Bombay High Court, "The so-called 'statutory' testament would oust this personal law entirely, even though there is nothing in either of the corporate statutes to indicate that this was ever the legislative intent..".

### Bombay High Court Salgaonkar judgment- A welcome ruling!

The Supreme Court in Smt. Sarbati Devi v Smt. Usha Devi dealing with similar provision under Insurance Act, 1938 held that nomination only indicates the hand which is authorized to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the laws of succession governing them. Further P.Ramanatha Aiyer in his legal dictionary (3rd edition) defines 'nomination' as 'an act of designating for an office or duty' and 'nominee' as 'a person named for any office, duty or position'. Further, Black's Law Dictionary (7th edition) says that a nominee 'is a person designated to act in place of another, usually, in a very limited way'.

Going by the aforesaid definitions, nomination means naming a person for holding an office for the time till he discharges his respective duties. Thus,

*\*Views expressed by the Author are solely his own view and the Firm, NIRC of ICSI does not accept any responsibility.*

in nomination, there is no complete transfer of ownership but merely an appointment for the specific purpose. When that purpose is achieved the nominee is discharged of his duties.

Thus, we should not confuse nomination with assignment. It is seen that Section 109A talks about nomination. Assignment or transfer has been dealt by the Companies Act, 1956 in Section 108. Moreover, Section 109A was introduced in the Act to enable the legal heirs of shareholders / debenture holders to get the shares / debentures transferred in their names, without having to produce probate or letters of administration of succession, which is a time consuming process. Thus, the legislature intention behind such provision was to take care of the interests of the legal heirs.

Such a provision has been provided in other enactments like - The Insurance Act, 1938, The Banking Regulation Act, 1949, The Government Securities Act, 2006. We see that in all the cases where investments are done, a nomination facility is provided for. A person goes for investments to ensure that his kith and kin do not have to suffer after his death and can reap the benefits of his investment in the best way possible. Speaking practically, when an investor dies, he really would not want that some third person is enjoying the benefits of his investments which actually were meant for his own legal heirs.

Further, Section 109A makes the nomination facility optional. Hence, if a person dies intestate, it's the legal heirs who have the right to succeed to his estate. The nomination facility is advantageous as it facilitates quick and easy transmission of shares or debentures, without the heirs having to obtain the certificate of succession or probates.

This section, further, says that the shareholder can change or cancel the nomination which means that the nominee does not acquire any title or rights to the shares by virtue of nomination, because if he did, he could not have been divested of his right or title by any unilateral action on the part of the shareholder. It is noteworthy that if a nominee

predeceases a shareholder, the heirs of the shareholder will succeed to the shares and not that of the nominee.

Moving on, with regard to the use of the word 'vest' in this section, is of variable import. The Supreme Court in *The Fruit & Vegetable Merchants' Union v The Delhi Improvement Trust* had held that the word vest did not have a fixed connotation. It may be used in a variety of contexts, such as vesting of title, vesting of possession, or vesting in a limited sense, as is to be interpreted in context of a particular piece of legislation. Looking at Section 109A which is provided to reduce the hardships caused to the legal heirs, it can be safely gathered that the word 'vest' has been used in a limited sense as to let nominee carry out the functions on behalf of the shareholder.

Coming to the non-obstante clause, the Supreme Court in the case of *Shri Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani*, while dealing with the non-obstante clause used in Section 6 of the Government Savings Act, 1959 (which is on the similar lines as that of Section 109A of the Act), had held that "to attract the applicability of the phrase, the whole of the Section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind." In Section 109A of the Act, the non-obstante clause, keeping in mind the object of introducing this Section, tries to say that when the nominee gets the shares the company, the company is discharged from its liability, but the nominee now has the liability against the legal heirs as mentioned in the will and if no will is there, as per the applicable laws of succession.

Thus, Bombay High Court in *Salgaonkar case* is a welcome ruling.

#### **Section 109B and general principles of interpretation of statutes**

This discussion cannot be completed without making a mention of Section 109B of the Act as it was introduced by the same Amendment Act.

Section 109B gives two options to the nominee, that are, either to register himself as the shareholder or transfer the shares in the same manner as the

deceased shareholder would have made. This points out that the rights of the legal heirs are recognized. Further, according to clause 4 of Section 109B, the nominee does not have the right to attend the meetings of the company and thus, have no right to vote until and unless he gets himself registered. Thus, a nominee is given just a part of rights of a shareholder, which tells us that the nominee is not the complete owner of the shares. Thus, he cannot override the rights of the legal heirs to succeed to the estate of the deceased.

Other forms of investment, like insurance policy, bank deposits, government security, all have this nomination facility and various courts have time and again held that a nominee cannot override the rights of legal heirs. The landmark judgment supporting this argument is that of Sarbati Devi v, Usha Devi, which deals with the rights of nominee vis-à-vis legal heirs under Section 39 of the Insurance Act, 1938. It was held therein that, "the amount payable under the policy becomes part of his estate which is governed by the laws of succession applicable to him. Such a succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as statutory testament".

The Allahabad High Court in the case *Bihasu Yadav v. Post Master* (dealing with rights of nominee under Government Savings Act, 1873) held that, "the dispute about succession will be governed by the respective Succession Act alone' and that 'the Bank or Post Office cannot declare successor right of a person in case of any dispute without getting such declaration from the appropriate civil Court either following the religious succession or by following the Indian Succession."

Hence, a nominee cannot come into the shoes of the legal heirs of the nominator. Going by the general principles of interpretation of statutes, which state that if the language of a legislature is capable of bearing more than one construction, then the construction that results in hardships, serious inconvenience, injustice, absurdity or anomaly shall be rejected. Thus, it can be said that Section 109A

does not override the rights of the legal heirs as it was introduced with the interests of legal heirs kept in consideration.

#### Section 109A vs. Article 14 of Indian Constitution

Article 14 of the Constitution of India lays down test of reasonable classification. The two conditions which must be fulfilled are:

- The classification must be found on an 'intelligible differentia' which distinguishes persons or things grouped together from others left out of the group, and
- The differentia must have a 'rational relation' to the object sought to be achieved by the Act.

If we interpret Section 109A in *Kokate* manner, nominees would be classified under legal heirs category, thereby, treating unequal as equals. Thus, as per Article 14 of the Constitution, there is no intelligible differentia in bringing nominees to the equal footing as that of legal heirs, as then people who are not the heirs would be given the rights of succession to the estate of the deceased.

Secondly, there is no rational relation in the differentia to the object sought to be achieved as nominees will then override the rights of legal heirs which is unjustified.

Failing the fulfillment of the abovementioned conditions, the provision would stand discriminatory and arbitrary and hence, constitutionally invalid, if suitable interpretation to Section 109A of the Act as given by Bombay High Court in *Salgaonkar* case would not have been given.

#### Conclusion

The Bombay High Court recent *Salgaonkar* ruling, perhaps, settles the controversy between nominees and legal heirs, by holding co-ordinate bench *Kokate* ruling as per *incuriam*. It takes note of legal principles of succession and legislative intent to rule in a welcoming and appreciating manner. It was a much awaited judgment which reinstates the trust in Indian judiciary.

**CORPORATE GOVERNANCE VIS-À-VIS COMPANIES ACT, 2013**

— CS Reema Jain\*

Creating Value that is not only profitable to the business but sustainable in the long-term interests of all stakeholders necessarily means that businesses have to run - and be seen to be run - with a high degree of ethical conduct and good governance where compliance is not only in letter but also in spirit.

*-Excerpt from the Study of Corporate Governance in India*

Good governance has always been an important element in human interactions and in an increasingly uncertain global climate has now become an imperative. Business and economy are closely aligned to the fortunes and well-being of people which makes corporate governance a subject of great importance.

**MAJOR CHALLENGES IN CORPORATE GOVERNANCE**

- Conflict between the Dominant & Minority shareholders
- The dilemma of micro-management
- Companies to implement Corporate Governance Reform measures
- Real Independent Directors
- Regulatory Oversight including multiplicity of regulators
- Linkage of Good Governance to Good Performance
- Risk assessment, Management & Mitigation
- Integrity and ethical behavior

Corporate Governance Reforms in India now stand at an interesting crossroads, and the future development of the next generation reforms, and in

their implementation during the current decade, will decide how effective, they are for Indian business.

The Companies Act 2013 envisages radical changes in the area of Corporate Governance and is set to have far-reaching implications. The new regime is expected to significantly change the manner in which corporates operate in India. While the bar for corporate governance has been raised, the penal consequences have been exponentially increased with a large number of sections reserving provisions for the prosecution of directors, officers in default and key managerial personnel. There is a clear shift towards closely monitoring unlisted public companies and large private companies with enhanced compliance requirements encompassing disclosures, transparency and governance procedures.

**Key areas of impact**

While there are changes across the board, the key impact areas in the area of corporate governance include the following:

**1. Board structure and responsibility**

- Enhanced responsibility for the board and its committees
- Specified unlisted companies to have independent directors; mandatory code for Independent Directors
- Mandatory woman director for certain companies.
- Mandatory key managerial personnel (Key Managerial Personnel) - Chief Executive Officer/ Managing Director/Whole Time Director, Chief Financial Officer and Company Secretary

*\*Views expressed by the Author are solely his own view and the Firm, NIRC of ICSI does not accept any responsibility.*

- Performance evaluation of board and individual members

## 2. Disclosures and reporting

- Enhanced disclosures and assertions in Directors' Report - risk management, internal control for financial reporting, legal compliance, RPT, CSR, etc.
- Compulsory consolidation of accounts; summary statements of associates / Joint Ventures / subsidiaries
- Disclosures of shareholding pattern
- Disclosures for public money lying unutilized

## 3. Risk, controls and compliances

- Boards now obligated to report on the following:
- Development and implementation of risk management policy
- Systems to ensure compliance to all applicable laws and their operating effectiveness
- Internal financial controls and their operating effectiveness (for listed companies)

## 4. Secretarial compliances

- Stricter yet forward-looking procedural requirements for board proceedings:
- Minimum 7 days notice, board meetings permitted through electronic mode
- Presence of at least one Independent Director must for board meeting at shorter notice
- Gap between two meetings < 120 days
- Compliance of ICSI Secretarial Standards have been mandatory

## 5. Related party transactions (Related Party Transaction), loans and investments

- Scope of RPT significantly enhanced; concept of arm's length pricing introduced
- Central government approval not required, however, heavy penalties for non compliance
- Related Party Transaction disclosure in Directors' Report along with justifications
- Stricter requirements for loans and investments including private companies

## 6. Audit and auditors

- Enhanced restrictions on appointment and rotation of auditors
- Statutory auditors prohibited from providing certain services
- Enhanced powers and role of auditors
- Mandatory internal audit and secretarial audit for prescribed class of companies
- Auditors to report on internal financial controls and their operating effectiveness

## 7. Corporate social responsibility

- Prescribed class of companies to:
- Form a CSR committee with at least one Independent Director
- Form and approve a Corporate Social Responsibility policy
- Endeavour to spend at least 2% of net profits
- Directors to explain inability to spend in the directors' report

## CHAPTERS OF NIRC-ICSI

Agra, Ajmer, Allahabad, Alwar, Amritsar, Bareilly, Bhilwara, Bikaner, Chandigarh, Dehradun, Faridabad, Ghaziabad, Gurgaon, Jaipur, Jalandhar, Jammu, Jodhpur, Kanpur, Karnal-Panipat, Kota, Lucknow, Ludhiana, Meerut, Modinagar, Noida, Shimla, Sonapat, Srinagar, Udaipur, Varanasi & Yamuna Nagar.



COMPLIANCE CHECKLIST FROM 1ST APRIL TO 10TH MAY, 2015

Compliance Checklist

Central Excise Related Compliance					
S. No.	Activities	Sections/Rules/Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
1.	Monthly Return of information relating to Principal Inputs (March, 2015) (Form No. ER-6)	Rule 9A	CENVAT Credit Rules, 2004	10 <sup>th</sup> April	Central Excise Authorities
2.	Filing of Return of Central Excise and Cenvat Credit for the month of March, 2015 (Form No. ER-1) (Non SSI Units)	Rule 12 / Rule 9(7)	Central Excise Rules, 2002/ CENVAT Credit Rules, 2004	10 <sup>th</sup> April	Central Excise Authorities
3.	Monthly Excise return by EOU for the month of March, 2015 (Form No. ER-2)	Rule 17(3)	Central Excise Rules, 2002	10 <sup>th</sup> April	Central Excise Authorities
4.	Filing of Return of Central Excise and Cenvat Credit for the Quarter ended 31 <sup>st</sup> March, 2015 (Form No. ER-3) (SSI Units)	Rule 12(1) Second Proviso	Central Excise Rules, 2002	10 <sup>th</sup> April	Central Excise Authorities
5.	Yearly Declaration of Principal Inputs under central excise to be filed by a unit paying total duty (Cenvat Credit + Cash) of more than 1 crore (Form No. ER-5)	Rule 9A(1)	Central Excise Rules, 2002	30 <sup>th</sup> April	Central Excise Authorities
6.	Declarations for Yearly Annual Installed Capacity Statement under central excise to be filed by a unit paying total duty (Cenvat Credit + Cash) of more than 1 crore (Form No. ER-7)	Rule 12(2A)	Central Excise Rules, 2002	30 <sup>th</sup> April	Central Excise Authorities
7.	Last Date for payment of Excise Duty Non SSI units (April) *(in case of Payment through Internet banking)	Rule 8	Central Excise Rules, 2002	05 <sup>th</sup> May *06 <sup>th</sup> May	Central Excise Authorities
8.	Monthly Return of information relating to Principal Inputs (April, 2015) (Form No. ER-6)	Rule 9A	CENVAT Credit Rules, 2004	10 <sup>th</sup> May	Central Excise Authorities
9.	Filing of Return of Central Excise and Cenvat Credit for the month of April, 2015 (Form No. ER-1) (Non SSI Units)	Rule 12 / Rule 9(7)	Central Excise Rules, 2002/ CENVAT Credit Rules, 2004	10 <sup>th</sup> May	Central Excise Authorities
10.	Monthly Excise return by EOU for the month of April, 2015 (Form No. ER-2)	Rule 17(3)	Central Excise Rules, 2002	10 <sup>th</sup> May	Central Excise Authorities
Service Tax Related Compliances					
S. No.	Activities	Sections/Rules/Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
11.	File Service Tax Return in Form "ST-3" for the half year period covering between October, 2014 to March, 2015.	Return under section 70 of the Finance Act, 1994 & Rule 7 of	Finance Act, 1994 Service Tax Rules, 1994	25 <sup>th</sup> April	Service Tax Authorities



		Service Tax Rules			
12.	Pay Service Tax in Challan GAR – 7, collected for the month of April 2015 by persons other than individuals proprietors and partnership firms. *(in case of Payment through Internet banking)	Section 68 Read with Rule 6	Finance Act, 1994 Service Tax Rules, 1994	05 <sup>th</sup> May *06 <sup>th</sup> May	Service Tax Authorities

**Income-tax Related Compliances**

S. No.	Activities	Sections/Rules/Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
13.	Contractor's Bill / Advertising / Professional service Bill - TDS collected for the previous month Section 194J (March, 2015)	Section 194C Section 194J	Income-tax Act, 1961	07 <sup>th</sup> April	Income Tax Authorities
14.	Monthly payment of TCS (March, 2015)	Section 206	Income-tax Act, 1961	07 <sup>th</sup> April	Income Tax Authorities
15.	TDS from Salaries for the previous month (March 2015)	Section 192	Income-tax Act, 1961	07 <sup>th</sup> April	Income Tax Authorities
16.	Deposit TDS from salaries for the previous month in Challan No.281 (March)	Section 192	Income-tax Act, 1961	07 <sup>th</sup> April	Income Tax Authorities
17.	Monthly payment of TDS for the Month of March on all types of payments	Section 200	Income-tax Act, 1961	30 <sup>th</sup> April	Income Tax Authorities
18.	Quarterly payment of TDS for payments with the prior approval of the Joint Commissioner for the Quarter ending March 31.	Section 192, 194A, 194D or 194H	Income-tax Act, 1961	30 <sup>th</sup> April	Income Tax Authorities
19.	Contractor's Bill / Advertising / Professional service Bill - TDS collected for the previous month Section 194J (April, 2015)	Section 194C Section 194J	Income-tax Act, 1961	07 <sup>th</sup> May	Income Tax Authorities
20.	Monthly payment of TCS (April, 2015)	Section 206	Income-tax Act, 1961	07 <sup>th</sup> May	Income Tax Authorities
21.	TDS from Salaries for the previous month (April 2015)	Section 192	Income-tax Act, 1961	07 <sup>th</sup> May	Income Tax Authorities
22.	Deposit TDS from salaries for the previous month in Challan No.281 (April)	Section 192	Income-tax Act, 1961	07 <sup>th</sup> May	Income Tax Authorities

**RBI Related Compliances**

S. No.	Activities	Sections/Rules/Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
23.	Monthly return (NBS-6) on exposure to capital market	Para 13B	NBFC Prudential Norms (Reserve Bank) Directions, 1998	07 <sup>th</sup> April	RBI
24.	Monthly Return on Important Financial Parameters	DNBS (RID) C.C. No.57/02.05.15/2005-06 dated Sep 6, 2005	Circular	07 <sup>th</sup> April	RBI



25.	Reporting of actual transactions of ECB in form ECB-2 within 7 working days (March)	ECB Rules	FEMA, 1999	08 <sup>th</sup> April	RBI through Authorized Dealer
26.	Monthly statement of short term dynamic liquidity in Form ALM-I	DNBS (PD).CC.No.15 /02.01/2000-2001 dated June 27, 2001	Circular	10 <sup>th</sup> April	RBI
27.	Quarterly submission of Monetary and Supervisory Return (Form NBS- 5)	DNBS.PD.CC. No. 227/03.10.042/ 2011-12 dated July 01, 2011	Master Circular	10th April	RBI
28.	Quarterly return on Details of Assets and Liabilities in Form NBS -1	Master Circular	DNBS.PD.CC.No. 282/03.10.042/201 2-13 dated July 02, 2012	15th April	RBI
29.	Quarterly return on Capital Funds, Risk Assets, Asset Classification in Form NBS-2	Master Circular	DNBS.PD.CC.No. 282/03.10.042/201 2-13 dated July 02, 2012	15th April	RBI
30.	Quarterly return on Statutory Liquid Assets in Form NBS-3	Master Circular	DNBS.PD.CC.No. 227/03.10.042/ 2011-12 dated July 01, 2011	15th April	RBI
31.	File a quarterly result on frauds outstanding	Circular dated 26.10.2005	Department of Non Banking Supervision	15 <sup>th</sup> April	RBI
32.	Half yearly statement of structural liquidity in Form ALM- II	Circular	Circular No. 15 of NBFC Supervision Division	20th April	RBI
33.	Half yearly statement of interest rate sensitivity in Form ALM- III	Circular	Circular No. 15 of NBFC Supervision Division	20th April	RBI
34.	Half- yearly Asset- Liability Management Return (Form ALM)	DNBS.PD.CC. No. 227/03.10.042/ 2011-12 dated July 01, 2011	Master Circular	30th April	RBI
35.	Quarterly Return by NBFC	DNBS.PD.CC. No. 227/03.10.042/ 2011-12 dated July 01, 2011	Master Circular	30th April	RBI
36.	Quarterly Return of overseas investment	DNBS.PD.CC. No. 227/03.10.042/ 2011-12 dated July 01, 2011	Master Circular	30th April	RBI
37.	Monthly return (NBS-6) on exposure to capital market	Para 13B	NBFC Prudential Norms (Reserve Bank) Directions, 1998	07 <sup>th</sup> May	RBI



38.	Monthly Return on Important Financial Parameters	DNBS (RID) C.C. No.57/02.05.15/2005-06 dated Sep 6, 2005	Circular	07 <sup>th</sup> May	RBI
39.	Reporting of actual transactions of ECB in form ECB-2 within 7 working days (April)	ECB Rules	FEMA, 1999	08 <sup>th</sup> May	RBI through Authorized Dealer
40.	Monthly statement of short term dynamic liquidity in Form ALM-I	DNBS (PD).CC.No.15/02.01/2000-2001 dated June 27, 2001	Circular	10 <sup>th</sup> May	RBI

**Economic, Industrial & Labour Law Related Compliances**

S. No.	Activities	Sections/Rules/Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
41.	Monthly payment of Provident Fund (PF) (Non Corporate)	(a) Paragraph 38 of Employees Provident Funds Scheme, 1952 (b) Section 418 of the Companies Act, 1956	(a) Employees' Provident Funds and Misc. Provisions Act, 1952 (b) Exempted Scheme	15 <sup>th</sup> April	Provident Fund Authorities Trustees of Provident Fund
42.	File monthly return for employees leaving / joining during the month of March (Form No.5)	Paragraph 20(2) read with Paragraph 36(1) & (2)	The Employees Pension Scheme, 1995 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	15 <sup>th</sup> April	Provident Fund Commissioner
43.	i) File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF)) ii) File monthly Return for members of Insurance Fund leaving service during the month of March (Form no. 3(IF)) iii) File monthly return of members joining service during the month of March (Form no.F4(PS))	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	15 <sup>th</sup> April	Provident Fund Commissioner
44.	Payment of ESI contribution for the previous month	Regulation 31	Employees' State Insurance Act, 1948 and Employees State Insurance (Gen.) Regulations, 1950	21 <sup>st</sup> April	ESIC Authorities
45.	Monthly return of Provident Fund for the previous month	Paragraph 38 of Employees'	Employees Provident Funds	25 <sup>th</sup> April	Provident Fund Authorities



	(March) Provident funds	Provident Act, 1952	and Misc. Scheme, 1952		
46.	Monthly return of Provident Fund for the previous month with respect to International Workers.	Paragraph 36	The Employees' Provident Funds Scheme, 1952	25 <sup>th</sup> April	Provident Fund Authorities
47.	EPF/ EPS - Member's annual Contribution card	Paragraph 38	The Employees' Provident Funds Scheme, 1952	30 <sup>th</sup> April	Provident Fund Authorities
48.	EPF/ EPS - Consolidated annual contribution statement	Paragraph 38	The Employees' Provident Funds Scheme, 1952	30 <sup>th</sup> April	Provident Fund Authorities
49.	Exempted Establishment – EPS – Annual - Contribution card for members for the year	Paragraph 38	The Employees' Provident Funds Scheme, 1952	30 <sup>th</sup> April	Provident Fund Authorities
50.	Exempted Establishment – EPS – Annual - Consolidated annual contribution statement	Paragraph 38	The Employees' Provident Funds Scheme, 1952	30 <sup>th</sup> April	Provident Fund Authorities
51.	Exempted Establishment – EDLIS – Annual - Consolidated annual contribution statement	Paragraph 38	The Employees' Provident Funds Scheme, 1952	30 <sup>th</sup> April	Provident Fund Authorities
52.	In case of graduate, technician (vocational), send a record of work for each quarter in Form Apprenticeship 3 in Schedule III	Section 2 Rule 14(11)	Apprentices Act, 1961 and Apprenticeship Rules, 1962	30 <sup>th</sup> April	Director Regional Board of Apprenticeship Training

**Stock Exchange / Listing Compliance**

S. No.	Activities	Sections/Rules/ Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
53.	1. Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company 2. The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company.	Regulation 30(1)	Securities and Exchange Board of India (Substantial Acquisition of shares and takeovers) regulations, 2011	08 <sup>th</sup> April (within seven working days from the end of each financial year)	(a) every stock exchange where the shares of the target company are listed; and (b) the target company at its registered office.
54.	Quarterly Corporate Governance Compliance Certificate/Report	Clause 49	Listing Agreement	15 <sup>th</sup> April	Securities & Exchange Board of India
55.	Submission of three copies of quarterly results signed by the Managing Director and newspaper cuttings of quarterly	Clause 31	Listing Agreement	Promptly on publishing quarterly results in newspapers	Securities & Exchange Board of India



	results.				
56.	Issue of press release about Board Meeting to consider quarterly results.	Clause 41	Listing Agreement	Immediately on informing the Stock Exchanges	Securities & Exchange Board of India
57.	Announcement of Quarterly Results along with 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	Securities & Exchange Board of India
58.	Publish Quarterly Results.	Clause 41	Listing Agreement	Within 48 hours of the conclusion of the Board Meeting	Securities & Exchange Board of India
59.	Intimation of date of Board Meeting for taking on record quarterly results advance	Clause 41	Listing Agreement	7 Days in Advance	Securities & Exchange Board of India
60.	Submission of Shareholding Pattern as at the end of the previous quarter	Clause 35	Listing Agreement	21 <sup>st</sup> April	Securities & Exchange Board of India
61.	Payment of Annual Listing Fees	Clause 38	Listing Agreement	30 <sup>th</sup> April	Securities & Exchange Board of India
62.	Reconciliation of Share Capital Audit	Regulation 55A	SEBI (Depositories and Participant) Regulation 1996	30 <sup>th</sup> April (within 30 days from the end of the Quarter)	Securities & Exchange Board of India
63.	Certificate under clause 47[C] of the Listing Agreement	Clause 47(c)	Listing Agreement	30 <sup>th</sup> April (within one month from the end of the Half Financial Year)	Securities & Exchange Board of India

**Depositories**

S. No.	Activities	Sections/Rules/Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
64.	Submit monthly statement on substitution of names of depositories in the previous quarter.	Regulation 54(5)	SEBI (Depositories & Participants) Regulations, 1996	07th April	Depositories
65.	Quarterly certificate for demat/remat of shares done during previous quarter	Regulation 54(5) read with NSDL Circular No. NSDL/SG/015/99	SEBI (Depositories & Participants) Regulations, 1996	07 <sup>th</sup> April	Depositories
66.	Submit a quarterly report for grievances of the beneficial owners related to depository services	Regulation 53B read with NSDL Circular No. NSDL / JS/029/2003	SEBI (Depositories and Participants) Regulations.	07 <sup>th</sup> April	Depositories NSDL



67.	Submit monthly statement on substitution of names of depositories in the previous quarter.	Regulation 54(5)	SEBI (Depositories & Participants) Regulations, 1996	07th May	Depositories
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**Note :** While every care has been taken in the preparation of this Compliance Check List for the Month of April, 2015, to ensure its accuracy at the time of publication, NIRC - ICSI assumes no responsibility for any errors which despite all precautions, may be found therein. Members are requested to check the latest position with the original sources before acting upon on the information published in this newsletter. Neither this Newsletter nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/ substitute professional advice that may be required before acting on any matter.

LIGHTER SIDE OF THE PROFESSION

"Why Paramjeet Singh is the favourite of our Chairman?"

"Because he is very caring."

"What is that caring qualities which other officers don't possess?"

"He justifies all the decisions of the Chairman even without any facts and figures."

"Sir, why are you employing this man in the Organisation?"

"He is a good dog trainer."

"What shall be his utility in our Organisation?"

"He can prove to be a great asset for our HRD."

—CS PARAMJEET SINGH, pslawadvisers@yahoo.com

Members may send their contribution for this column at e-mail niro@icsi.edu for publication in the NIRC Newsletter-Insight. Decision of the Editorial Board of Newsletter in this regard will be final.

**NEWS FROM NIRC**

Date	Program	Chief Guest(s)/Guest of Honour(s)/Speakers/members Present
20.3.2015	Study Session Meeting on the theme "New Insider Trading Regulations"	CS Sharad Tyagi, Seth Dua & Associates
21.3.2015	Study Session Meeting on the theme "Secretarial Audit"	CS T. R. Ramamurthy, Ramamurthy Associates
21.3.2015	Valedictory of 207 <sup>th</sup> MSOP batch	Chief Guest: CS Harsh Arora, Director, Perfetti India Ltd. CS Manish Gupta & CS Nitesh Sinha
23.3.2015	Meeting of Company Secretaries in Practice on "Preparedness for Annual Filing under Companies Act, 2013"	CS S Koley, Practising Company Secretary, CS NPS Chawla, CS Manish Gupta, CS Dhananjay Shukla, CS Pradeep Debnath & CS Nitesh Sinha
27.3.2015	National Seminar on "Secretarial Audit - A Panacea for Good Governance"	CS Atul H Mehta, CS Vineet Chaudhary, CS NPS Chawla, CS Sutanu Sinha, Mr. Pavan Kumar Vijay (Past President, The ICSI & Chairman, SSB) Managing Director Corporate Professionals Capital Pvt. Ltd., Mr. S C Vasudeva, Chartered Accountant, S. C. Vasudeva & Co., Ms. Savithri Parekh, Chief (Legal & Secretarial), Pidilite Industries Ltd., Mumbai, Mr. B. Murli, Senior Vice President - Legal & Company Secretary, Nestle India Ltd., Mr. Ilam C. Kamboj, Associate Vice President, Legal & Company Secretary, Hero Moto Corp Ltd.
27.3.2015	Interaction of President and Council Members of region & ICSI officials with Practicing Company Secretaries	CS Atul H Mehta, CS Ranjeet Pandey, CS Vineet Chaudhary, CS Manish Gupta, CS Monika Kohli, CS Nitesh Sinha & CS Alka Kapoor
27.3.2015	ICSI HR Conclave - "Company Secretary: A Key Managerial Personnel "	CS G P Sahi, VP (LEGAL) & Company Secretary, Hotel Le-Meridien, CS N K Jain, Former Secretary & CEO, ICSI, Mr. Ilam C. Kamboj, Associate Vice President, Legal & Company Secretary, Hero Moto Corp Ltd., CS NPS Chawla, CS Rajiv Bajaj, CS Manish Gupta, CS Monika Kohli & CS Nitesh Sinha
28.3.2015	Study Session Meeting on the theme "Secretarial Audit"	CS Ashok Tyagi, Practising Company Secretary
30.3.2015	Inauguration of 209 <sup>th</sup> MSOP batch	Chief Guest: CS Apoorva Kumar, Company Secretary & Compliance officer, DARCL Logistics Ltd., CS Manish Gupta & CS Dhananjay Shukla,
1.4.2015	Inauguration of 210 <sup>th</sup> MSOP batch	Chief Guest: CS Kapil Dev Taneja, Country Head Legal, Caparo India, CS Manish Gupta, CS Dhananjay Shukla, CS Pradeep Debnath & CS Nitesh Sinha
5.4.2015	Health Mela - Preventive Medical Health Check-up	CS NPS Chawla & CS Pradeep Debnath

## LEGAL UPDATES

### Does the Company Law Board have the power and authority in law to direct the actual issue of the shares in question???

Company law Board (CLB) does not have power under Section 111 of the Companies act, 1956 to decide on rights of shares and decree suits for specific performance as well as order rectification of register. The Bombay High Court examined the powers of CLB as regards ordering rectification of registers as on facts, there was no agreement to purchase shares, no consideration was paid and when provisions including those relating to acquisition of shares by a foreign company were not complied with. (Advansys (India) (P.) Ltd. Versus Ponds Investment Ltd. - 2015 High Court Of Bombay DOJ 09-05-2014 co. Appeal no.14-2013)

#### Facts of the case

In the present case, the petition before the CLB was cast on the basis, that a share certificate had been issued on 29th June, 2007 certifying that the present M/s. Ponds Investment Limited (1st respondent) was the registered holder of 7.5 lakh equity shares in the Advansys (India) (P.) Ltd (1st appellant-company) and that this so-called "certificate" was duly signed by the managing director and another director of the company.

The petition proceeds on the basis that, share certificate, although it is signed on behalf of the Advansys is not a share certificate. It is a certificate addressed "to whomsoever this may concerned" and purports to say that 7.5 lakh shares have been issued to Ponds ; and that the name of Ponds has been included in Advansys' certificates, as also in what is described as a "M & A document", a reference never explained at all. The names of the three shareholders of Advansys, namely Ponds, Balwani and Shakuntala Balwani are set out in these documents. This is by no stretch of imagination a share certificate. Yet the petition says that this is a share certificate.

The prayers, in the petition before the CLB, proceeded on the footing that the 1st respondent was indeed a shareholder, or, to use the words of the petition "a registered shareholder". However, the documents in question, are not share certificates at all. At best they are a confirmation that shares were to be issued.

On this the CLB directed by its impugned order of 14th January, 2013 ""1. Subject to the direction No.2, the respondent Nos.2 to 4 are directed to issue the original 7,50,000 share certificates of Rs.10 each duly stamped and sealed to the petitioner-company as per law. They are further directed to rectify the register of the members of the company by inserting the name of the petitioner and will inform the competent authorities. However, this direction will come into force with effect from 15th April, 2013."

The material on record before the CLB showed that the respondents had exercised their rights as a dominant 75 per cent equity shareholder in the 1st appellant-company. What remained to be done was the ministerial or clerical action of rectifying the register. In this view, no question of law sufficient to maintain an appeal under section 10F of the Act arises.

What is not in doubt, therefore, is that there was no share certificate issued at all. Absent of a share certificate, is it possible for the CLB to direct rectification of the register?

What lay before the CLB was, therefore, not an application for rectification of the register simplicities. It was a complex question that required Ponds first to establish whether there was or was not in fact an agreement for purchase of shares, and whether this agreement was proved to exist. An assessment of complicated question of facts and a disputed right of a person to become a member of a company is beyond the purview of the CLB acting under section 111 of the Act. The CLB certainly cannot adjudicate or establish the right of a person to become a member of the company.

In essence, what the CLB seems to have done in this case is to first make the petitioner before it, i.e., Ponds, a member of the company and thereafter directed rectification of Advansys's register. A fundamental prerequisite, on any fair reading of section 111 of the Act, is that the petitioner before the CLB must already demonstrably and indisputably be a member of the company. That question of membership of the company is not one that can be directed or ordered by the CLB under section 111 of the Act. No shares of Advansys were ever issued or allotted to Ponds.

Having carefully considered the material facts and the revival submissions, including the detailed written

submissions filed by both the sides the following was the judgement:

### JUDGEMENT

Under section 111(4) of the Act, the CLB's powers do not extend in an omnibus fashion to a question of determining whether the petitioner before the CLB is entitled to the shares or whether the petitioner has established his right to become a member of the company. The scope of the enquiry before the CLB is limited to ordering a rectification of the register or a transfer or transmission to be registered, and awarding damages for improper conduct, but only where it is found that that right or entitlement of the petitioner has already been established and is undisputed. Under section 111(5) of the Act, the CLB can only direct registration of the transfer of shares or rectification of registration of members. The CLB has no power to direct the company to actually issue shares or share certificates to a party who seeks such a rectification. The submission made by Ponds before the CLB was that the Advansys was bound to issue a proper share certificate under section 83 read with section 113 of the Act. In other words, it was an admitted position that no share certificate had till then been issued. The so-called rectification application followed on this application for the issuance of the share certificate. This application before the CLB was, therefore, a combined action for specific performance of an alleged share subscription agreement and an application for rectification. What is not in doubt, is that the 7.5 lakh shares of Advansys were never actually issued by Advansys to Ponds.

The action before the CLB was brought on the basis of a document that is not a share certificate, devoid of any share transfer or share issuance instrument, and on the basis of an undisclosed, possibly dubious and certainly unspecified agreement for purchase of shares. Any such share purchase agreement, even assuming that the CLB could adjudicate it, would necessarily have to be in express terms. It would have to state the consideration. There is a complete lack of clarity and certainty as to the consideration paid for this so-called "75 per cent" of the equity shareholding in Advansys allegedly acquired by Ponds. The CLB can decide on a question relating to the title but when title is in itself a dispute, a party cannot apply to the CLB for rectification. Title has to be established through trial in a civil court. The respondent along with his subsidiaries who has advanced loans

and were trading partners claimed that it was a majority shareholder in the company of the appellant and the former was refusing to register the same in the books. The finding of the CLB on this crucial issue, i.e., that there was a concluded agreement for valuable consideration, is entirely unsustainable

The High court emphasised that right to shares has to be established by way of valid transfer deed and share certificate. A mere letter of accommodation is not a share capital. In the instant case an undertaking signed by the Directors without the company's seal, issued for 'internal purpose' of the purported holder, was the basis of the claim to shares. The consideration which was claimed to be paid towards the share was loan amount and there was no record of any intention to appropriate the same towards consideration. Regarding the respondents claim that as a foreign resident, it could invest through the automatic route without approval, the High Court pointed out that the subject company was governed by the Industries (Development & Regulation) Act, 1951 and it was also not an SSI (Small Scale Industries). Ponds' entire case is bogus. It is an edifice built of straw on a foundation of half-truths, deceit and wholly improper financial duress. The appeal was allowed, the impugned order dated 14th January 2013 is quashed and set aside. The Company Petition and filed by the present respondents is dismissed. The Cross-Objections are dismissed.

### Conclusion

What appears from the above case law is that there has been a complete misappreciation and a misunderstanding of the frame, sweep and ambit of Section 111 of the Companies Act. This is a question of law that is, in my view, in itself sufficient to make this appeal maintainable. Further, though it is true that an appeal under section 10F of the Companies Act, 1956 is not in the nature of a first appeal, it is apparent from the submissions of both sides that the appreciation of facts by the Company Law Board is wanting in critical and material aspects. I will only say that the evidence and material was assessed quite incorrectly the conclusions are quite unsustainable.

Compiled by:  
—CS Manish Gupta



## COMPANY SECRETARIES BENEVOLENT FUND

Be a proud member of CSBF-Saathi Haath Badhana

**Dear Professional Colleagues,**

As you may be aware that in recent past, some of our members have died leaving behind the spouse and minor children. In some cases providing adequate financial assistance to the bereaved family becomes an impediment. Although the Managing Committee of the CSBF wanted to help the bereaved family members, but it was constrained to do so in view of financial position of the Fund.

The fund can provide the much needed financial assistance in such cases if the corpus of the Fund increases substantially which is possible if more number of members are enrolled to the fund. The members in all earnestness are therefore sincerely requested to become the members of the CSBF by paying one time Life membership fee of ₹ 7,500/-.

**The payments made to the Fund are exempted under Section 80G of the Income Tax Act, 1961.**

**Following benefits are presently provided by the CSBF:**

<p>Financial Assistance in the event of Death of a member of CSBF:</p> <p><b>Upto the age of 60 years</b></p> <ul style="list-style-type: none"> <li>Group Life Insurance Policy for a sum of ₹ 5,00,000</li> </ul> <p><b>Above the age of 60 years</b></p> <ul style="list-style-type: none"> <li>Upto ₹ 2,00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time.</li> </ul>	<p>Other benefits subject to the Guidelines approved by the Managing Committee from time to time:</p> <p><b>Reimbursement of Medical Expenses</b></p> <ul style="list-style-type: none"> <li>Upto ₹ 60,000/-</li> </ul> <p><b>Financial Assistance for Children's Education (one time)</b></p> <ul style="list-style-type: none"> <li>Upto ₹ 40,000/- per child (Maximum for two children) in case of the member leaving behind minor children</li> </ul>
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I appeal to the members who have yet not become members of CSBF are requested to fill up Form-A (available on website of the Institute i.e. [www.icsi.edu](http://www.icsi.edu)) and send the same along with a cheque for ₹ 7,500/- favouring 'Company Secretaries Benevolent Fund' payable at New Delhi to the Regional Director, NIRC of ICSI, 4, Prasad Nagar Institutional Area, New Delhi. Members may also apply online at [www.icsi.edu](http://www.icsi.edu)

Looking forward to receive positive response for this noble cause.

Yours sincerely,

CS NPS CHAWLA  
Chairman  
09958535300



1. Inauguration of 209th MSOP (30.3.2015): Group photograph of participants along-with CS Manish Gupta, CS Apoorva Kumar, CS Dhananjay Shukla & CS Alka Arora
2. Inauguration of 210th MSOP (1.4.2015): Group photograph of participants along-with CS Nitesh Sinha, CS Pradeep Debnath, CS Kapil Dev Taneja, CS Dhananjay Shukla, CS Manish Gupta, Mr. S K Nagar & CS Alka Arora
3. National Seminar on "Secretarial Audit - A Panacea for Good Governance" (27.3.2015) : Addressing CS Pavan Kumar Vijay, Mr. S C Vasudeva, Ms. Savithri Parekh, CS B. Murli & CS Ilam C. Kamboj
4. Valedictory of 207th MSOP batch (21.3.2015): CS Harsh Arora, CS Manish Gupta & CS Nitesh Sinha
5. Study Session Meeting on the theme "New Insider Trading Regulations" (20.3.2015) : Addressing CS Sharad Tyagi

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