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# FOCUS

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JANUARY, 2012

'प्रगतिश्च विकासश्च जीवनं जीवनं सत्यम्'

MONTHLY BULLETIN OF WESTERN INDIA REGIONAL COUNCIL OF  
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA



Happy New Year





## From the Chairman ...

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Dear Professional Colleagues,

For the last time I am writing to you as “**Chairman WIRC**”. I was fortunate to get an opportunity to **lead the entire Western Region** (WR) consisting of more than 2.5 Lakhs students, around 10,000 members, 17 offices, few hundred staff members, chapter office bearers, counsellors, and 16 chapters located in 5 states of India. I enjoyed each and every moment of my tenure as Chairman. I tried to give justice to the task assigned to me as Chairman and responded to it positively. I am happy that I could contribute to best of my abilities for the development of members, students and profession.

We decided to keep the things simple and swift. The staff members of the regional office were apprised about their exact roles and responsibilities. We could impress upon them that WR includes all chapters and not confined to Mumbai only and they are expected to perform in different manner. Staff responded very well and improved their approach on service and delivery. Communication and response was given a top priority. I am sure you have observed the change, through our various communications including **FOCUS**.

Selecting topics for the **professional development programmes** was another challenge. It would always be difficult to have or not to have any particular topic or faculty for the programme. We succeeded in providing fresh faculties and topics. We have tapped right opportunities at right time and as a result we did around 6 training workshops on XBRL. We gave totally a new look to the theme and contents of Regional Conference and in **2011 Annual Regional Conference held at Pune**, we did a **Show Case presentation of our own members** who have excelled in the fields other than traditional core areas for CS. Organization of **study circles** was streamlined and attention was paid towards improvement of quality of discussions at study circles. I am thankful to all of you for your wholehearted participation in the programmes and activities of WIRC. We appreciate your response and many a times we landed into a situation of non availability of seats for the programme.

**Students** are one of the important stakeholders of ICSI and with a view to reach to students and interact with them, we introduced a unique Concept of holding **Chain Regional Student Conferences** all across Western Region under the theme “**Change for the better, yes we can!**” I am happy to inform you that we got extremely good response from the Chapters and Students and **we did 13 Students Conferences in entire WR during the year 2011**. Around 3,000 students participated and benefited through these Conferences. We could establish a required connect between ICSI and Students and provided a platform to them to express. Spontaneously students expressed a satisfaction about these Conferences and expressed a desire to have many more such occasions in future. These Conferences were offered at the lowest possible fees. We prepared a unique background material on soft skills and distributed it to each participant.

We succeeded in providing best **SIP, EDP, MSOP and other training facilities** to students. Before Diwali we arranged simultaneously two batches of MSOP in Mumbai and facilitated about 100 odd students to get their membership. We encouraged and supported chapters to arrange more and more training programmes for students at their respective places.

We made specific efforts to improve upon the Quality and Speed of **Student Services**. The registration process is decentralized with the help of **Yes Bank**. Few facilitation centres were opened in Mumbai. Distribution of study material from separate location was commenced. We identified the “**Red Alert Days**”

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*Editorial Board: CS C. S. Kelkar – Editor, CS Amit Kumar Jain – Joint Editor.*

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to give top priority to Student Services. We could open more coaching centres in Mumbai for the benefit of students.

We made few attempts to do **placement** activities for students for training and employment. However we will continue to do more efforts in this area.

We encouraged our **Research** Team to develop useful publication for our profession. During the year we published **Referencer on Limited Liability Partnerships**, which was well appreciated by everyone including Registrar of LLP.

We maintained cordial relationships with the officials of MCA, CLB, SEBI and other government organizations. We did a grand function of **Launching of CLB Mumbai website**. Regional Director Mumbai, MCA Directors and officials, LLP Registrar, Member CLB, Bench Officer CLB, officials of SEBI, Registrar of Companies were invited as faculties or guests for our programmes and functions. University Chancellor, Dean, Commissioner of Police, Top corporate personalities, media persons and other local dignitaries and guests participated in the programmes organized at chapter levels at different locations.

We tried for suitable publicity of our profession through **media and press**. Our members contributed through various articles and columns in the newspapers and journals. We participated in **Career Fairs and Educational Events**. We did several **Career Awareness Programmes** in colleges and other places in the entire Western Region. Under the aegis of Ministry of Corporate Affairs, several **Investor Awareness Programmes** were arranged in Mumbai and elsewhere. I got an opportunity to participate in half an hour **programme on DD National** about CS career. We also did various press conferences at various locations in the region.

The year was overall satisfying one and I could implement few things in the working of WIRC and could do something for all of you. I will continue to contribute to best of my abilities and I am sure my contribution will be beneficial to profession and its stakeholders. I could learn many things in this process and got the vital experience. I wish to implement those to improve upon my abilities and skills.

I will be failing in my duty if I don't acknowledge the efforts, support and contribution made by my **each council colleague** in this journey. I am really thankful to each one of them for shouldering various responsibilities during the year. I express my sincere thanks to President, Vice President, Secretary and CEO, Central Council members, ICSI Directors and staff, sub-committee members, Managing Committee members of Chapters, auditors, volunteers, students and members who have supported us at all levels. I am grateful to my **Partners and staff at MRM and my family members**, without their continuous support and encouragement, spending one full year for WIRC would have been impossible.

I request for an excuse, if I hurted anyone's feelings while performing my duties as Chairman in official capacity.

Before I conclude I quote few lines from my favourite **Robert Frost's** poem;

*"The woods are lovely, dark, and deep,  
But I have promises to keep, And miles to go before I sleep,  
And miles to go before I sleep"  
A big thank you to all of you and Goodbye.*

With lot of best wishes;

**Makarand Lele**  
*Chairman, WIRC*

15th January, 2012  
Makar Sankranti



*Message of*  
**Shri Prakash K. Pandya**  
Secretary, ICSI-WIRC

During 2011, with the support of Team WIRC (Council and WIRO staff), we could take several small but decisive steps that will benefit students and members in years to come. Some of them are:

1. Opening oral coaching centre at Borivali West at Suvidhya School; bringing new concept of comprehensive student services at door step and implementing the same at Borivali West at Suvidhya School. Under comprehensive student services, the Centre serves students in all respects right from handling inquiry, selling prospectus, distributing study materials to do registration of students into ICSI course and registration for examinations.
2. Same model is being implemented at other places like P. N. Doshi College at Ghatkopar West, Thakur College at Borivali East and Khalsa College at Sion.
3. You will find more informative and updated WIRC website.
4. A small group was constituted to provide draft guidance note on annual return to Secretarial Standards Board.
5. Last but not least, Team WIRC has, probably, the first time in its history unanimously elected its office bearers for 2012. This will lead to collective efforts of Council members to better serve members and students.



*Message of*  
**Shri C. S. Kelkar**  
Editor - Focus

Dear all,

It was pleasure to interact with you all, every month, as Editor of FOCUS. This monthly bulletin is the vehicle of the WIRC for interacting with the chapters. Many of the decisions of the council are conveyed through this bulletin. I personally enjoyed reading and editing the reports submitted by various chapters. Some chapters are consistent in sending the reports and photos of the events held by them. So these chapters got enough exposure through FOCUS. I appeal to all the members at various chapters to insist upon the committee members to submit reports of their activities.

We also tried to publish as many articles as possible through FOCUS. New and seasoned contributed equally. I must thank the Registrar of Companies, Maharashtra, Mumbai Mr. Henry Richard for his timely and consistent write ups. Through his column, our members must have benefited in understanding the Government views on various initiatives taken by the MCA. Also is the contribution by CS Ajay Kumar. His synopsis on 'Case Law' was very useful. He didn't miss his schedule of contributing in FOCUS.

Ms. Manisha from the WIRO and our JD Mr. Sudipto Pal were giving tremendous support to collect the report from Chapters, edit photos and timely interaction with the printer to publish the issue on time and save on posting. The eFOCUS link is also available now.

**Happy new year from the Editorial Board of FOCUS 2011.**



*Message of*  
**Shri Amit Kumar Jain**  
Joint Editor-Focus and  
Chairman Placement  
Committee of WIRC of ICSI

2011 was really a splendid year for WIRC where Team-WIRC took many new initiatives for the improvement of Student and Member Services. We tried our best to gather the most relevant, vibrant and appropriate articles and news which may benefit the CS Community in large. We had also started E-FOCUS in this year to support green revolution.

As the Chairman of Placement Committee of WIRC we had conducted a Campus Placement in August, 2011 at CCGRT where more than 40 Corporates and PCS firms participated.

Team-WIRC with joint effort really had a very good 2011 with a concrete plan for the next 3 years which I hope all the members and students will recognize and appreciate.

## NEW OFFICE BEARERS OF ICSI-WIRC FOR 2012

NAME		CONTACT NO.
Shri Mahavir Lunawat Senior Manager Tax and Regulatory Services (Mergers & Acquisitions) PricewaterhouseCoopersPwC House, 2nd Floor, Plot 18/A, Guru Nanak Road, Bandra (West), Mumbai-400 050	Chairman	Tel. No. Office – 022 -6689 1247 / 6689 1000 Mobile – 9004946789 Email : mahavir.lunawat@in.pwc.com mahavir.lunawat@hotmail.com
Shri Hitesh Buch Hitesh Buch & Associates Company Secretaries 310, Aditya Plaza, Nr. Karnavati Apartments Jodhpur, Satellite Ahmedabad – 380 015	Vice Chairman	Tel. No. Office – 079 – 4032 1260 Mobile: 9825443440 Email: hiteshbuch@yahoo.co.in
Ms. Ragini Chokshi Ragini Chokshi & Co. Company Secretaries 34, Kamar Building, 5th Floor Cawaji Patel Street, Fort Mumbai – 400 001	Secretary	Tel. No. Office – 022 - 2283 1120 Mobile - 9322246703 / 9702276703 Email : ragini.c@rediffmail.com chokshiragini@gmail.com
Shri Ashish Garg Practising Company Secretary 107, Gold Arcade 3/1, New Palasia Opp. Curewell Hospital Indore – 452 001	Treasurer	Tel. No. Office – 0731 – 2535841 Mobile: 9826042902 Email: ashishgargcs@gmail.com

### The other Members of the Regional Council are S/Shri

- |                            |                            |
|----------------------------|----------------------------|
| 1. Atul Mehta              | 8 Ashish C. Doshi          |
| 2 B. Narasimhan            | 9 Chandrashekhar S. Kelkar |
| 3 S. N. Ananthasubramanian | 10 Hitesh Kothari          |
| 4 Umesh H. Ved             | 11 Makarand Lele           |
| 5 Vikas Y. Khare           | 12 Prakash K. Pandya       |
| 6 Amit Kumar Jain          | 13 Sanjay Kumar Gupta      |
| 7 Ashish C. Bhatt          |                            |



### OBITUARY

“FOCUS” deeply regrets to record the sad demise of **SHRI SANATKUMAR P. DAVE, former Chairman of ICSI-WIRC** in the year 1987. May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss. May the Departed soul rest in peace.



# CASE LAW DIGEST

by CS Ajay Kumar, Mumbai

A Bird's-Eye View : Recent Judgments on Company Law

## A BIRD'S EYE VIEW: RECENT JUDGMENTS ON COMPANY LAW

### 1. POWERS OF COMPANY LAW BOARD

If application for impleading a party is not maintainable or averments do not make out any *prima facie* case, application can be dismissed without issuing any notice. Appellants had preferred an application before CLB seeking impleadment of proposed Respondent No. 15 but same was rejected without issuing notice to proposed Respondent. It was found that application was maintainable and averments made out a case for issue of notice to proposed Respondent before consideration on merits. Application was not disposed of on ground that it was not maintainable and order was passed on merits and, therefore, impugned order of CLB was to be set aside.—**MEDI PROJECTS (P) LTD. V. CAUVERY MEDICAL CENTRE LTD.** [2011] 109 SCL 48/12 480 (KARNATAKA)

### 2. NOT TO BE REGISTERED EXCEPT ON PRODUCTION OF INSTRUMENT OF TRANSFER OF SHARES

Petitioner's grandfather, B, was holding certain shares in Respondent No. 1 Company. He transferred those shares to petitioner. After 'B's death, petitioner filed an application making a request to Respondent to transfer shares gifted in his name. Respondents rejected said application holding that it was necessary to obtain legal documents such as probate, letters of administration or succession certificate in respect of estate of 'B' to enable Respondent No. 1 company to transfer shares in name of petitioner. On instant petition, it was seen that both parties had signed share transfer forms in a *bona fide* manner and in perfect state of mind. It was also noted that claim of petitioner was *bona fide* and there was no third party claims to said shares. There was no allegations of fraud or forgery in respect of transfer of shares. In aforesaid circumstances, mere technical objections without any substantial ground for denying transfer of shares in name of petitioner was not justified. Therefore, Respondent No. 1 Company was to be directed to rectify register of members by deleting name of 'B' and by inserting name of petitioner in respect of shares in question. — **ANEESH SEIGELL V. SIEMENS INDIA LTD.** [2011] 109 SCL 34/12 489 (CLB)

### 3. CIRCUMSTANCES IN WHICH A COMPANY MAY BE WOUND UP

Company court in course of winding up proceedings is not bound by a decree of Court when it has to determine as to whether there exists a real debt or not. Thus, while Debtor Company may be

estopped from resiling from its commitments under a compromise decree, it may not enable creditor to seek winding up of company on this ground alone. Once company court comes to conclusion that dispute is substantial and genuine, meaning thereby that it is *bona fide* and not illusory or misconceived, then only course open to company court is that it should dismiss petition for winding up and leave creditor to his civil remedies. Winding up jurisdiction of a company court is a discretionary jurisdiction and does not, in fact, adjudicate civil rights between a debtor and a creditor. — **NEHRU PLACE HOTELS LTD. V. BHUSHAN LTD.** [2011] 109 SCL 10/12 482 (DELHI)

### 4. SCHEME INVOLVING SANCTION FOR ISSUE FOR BONUS SHARES – HOW FAR DELAY IN IMPLEMENTING BONUS ISSUE IS FATAL TO ISSUE/ AMALGAMATION SCHEME BEING SANCTIONED BY COURT – SECTION 394 READ WITH REGULATION 95 OF SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009

It is true that bonus issue once announced cannot be withdrawn by a company but delay in implementing bonus issue is not fatal and cannot render it invalid. Regulation 95 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 cannot take away the substantive power vested in the court to sanction scheme of amalgamation involving issue of bonus shares. Therefore, court can sanction the scheme subject to the undertaking that bonus issue shall be implemented within time being specified in the order of the court. — **QUIPPO INFRASTRUCTURE EQUIPMENT LTD. AND SREI INFRASTRUCTURE FINANCE LTD., IN RE** [2011] 101 CLA 392 (CAL)

### 5. EFFECT OF NON-COMPLIANCE WITH REQUIREMENTS OF ACQUIRING QUALIFICATION SHARES – SECTION 270 READ WITH SECTION 108

When the first and basic relief of factum of transfer of shares had not been substantiated by the appellants, the subsequent relief becomes redundant. Unless the required shares stand in the name of the appellant-managing director, he loses his right to continue to be managing director since acquisition of qualification shares within two months from the date of appointment is mandatory requirement failing which he would automatically lose the post of managing director. — **M PALANISAMY V. S V T SPINNING MILLS (P) LTD.** [2011] 101 CLA 346 (MAD.)

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# ROC COLUMN

HENRY RICHARD

*Registrar of Companies Maharashtra, Mumbai*



At the outset I wish all my readers a very **Happy and Prosperous New Year 2012**

The year 2011 witnessed many ups and downs in the economic and political scenario of the World in general and in our country. The crisis in Europe and other developed countries definitely impacted the economic activity in our country which is evident from the depreciation in the value of Indian rupee vis-à-vis dollar and other currencies and the slow down in industrial and economic activity. However, there were certain positive developments/events which are of interest to us. The introduction of the Companies Bill 2011 on 14<sup>th</sup> December, 2011 in the Lok Sabha is a significant positive event fulfilling our dreams and desires. It is earnestly expected that the Bill will go through successfully during the Budget Session of 2012.

The Companies Bill, 2011 is a bundle of goodies for all Stakeholders of the Corporate World including Corporate Sector, investors, Regulators and Professionals. The Corporate Sector is greatly benefited by the introduction of provisions relating to e-governance which includes statutory recognition for maintenance of electronic records, conduct of Board Meetings and General Meetings through video conference. The Bill has eliminated all redundant procedures and practices such as the need for obtaining certificate of Commencement of Business, conducting of Statutory Meetings, preparing statutory reports etc. The approval procedures have been simplified by removing the requirements of obtaining of Government approvals for Related Party Transactions (RPT). Under the proposed Bill all such approvals will only be obtained from the share holders and there is no need to apply to the Central Government for approval. The need to go to Company Law Board (CLB) for obtaining Condonation of Delay u/s. 141, approval for shifting of registered office u/s.17 of the Companies Act have been removed and these powers are delegated to Registrar of Companies/Regional Director. The small companies (defined with reference paid-up capital and turnover) are exempted from many provisions of the Companies Act including Audit of Accounts and Merger of such companies will be approved only by ROC without the need to go to the High Court. Several Company Law concepts/practices prevalent in developed countries have been incorporated in the Companies Bill, 2011 such as One Person Company (OPC), Dormant Company, recognition of the doctrine of entrenchment, Class Action Suit etc. These Company Law concepts imported into the Companies Bill, 2011 shall bring succour to the Corporate Sector.

The Professionals who are Members of the ICSI/ICAI/ICWAI have also received recognition by the introduction of the concept of Key Managerial Personal which includes Chief Executive Officer, Chief Financial Officer and Company Secretary. The Company Secretary has been elevated to the position of KMP. The Secretarial Audit has been made mandatory for all listed companies and other specified companies. The duties of Company Secretaries are clearly defined. Secretarial Standards (relating to Meetings) issued by ICSI and Auditing Standards issued by ICAI have been made mandatory. The proposed NCLT under the bill will open many opportunities to the professionals.

The investor protection has been given due recognition by introduction of concepts like Class Action Suits, e-voting in Meetings, approval of RPT by share holders, the time limit for claiming dividends, etc., removed and the like.

The problems and constraints faced by the Regulator viz. ROC has also been adequately addressed. One of the primary concerns of ROC is ensuring compliance. The compliance rate in ROC, Mumbai is around 45% which is far below in comparison with the compliance rate of 98% in UK, 99% in Singapore and above 90% in Australia, New Zealand, etc. This major concern has been addressed by introducing the concept of dormant companies. The ROC has been designated as Adjudicating Authority which will avoid the necessity of taking every non compliance to the Court for filing Criminal Prosecutions as per the Criminal Procedure Code. The proposal in the Bill to constitute "Special Court" will be a succor to ROC. The Special Court will exclusively deal with the violations of the provisions of the Companies Act. The Special Court is of the rank of the Session Court which is one step above the Magistrate Court. In the present scenario all prosecutions are filed in the Magistrate Court which is appealable to the Session Court. Under the Companies Bill, 2011 the Special Court being of the rank of Session Court, the appeals shall lie only in the High Court which saves the time involved in prosecution of offenders under the Companies Act.

The Companies Bill, 2011 also extensively provides for several remedial measures aimed at improving corporate governance. The principles of good corporate governance advocated by OECD have been incorporated in the Companies Bill, 2011 which includes measures like appointment of independent directors on the board of companies, rotation of auditors, approvals of RPT by share holders, adequate disclosures, etc.

Thus the Companies Bill, 2011 fulfils the aspirations of all segments of the Corporate World and makes the Company Law compatible with the Company Law prevailing in other developed countries and also addresses various concerns of all stakeholders of the Corporate World. Therefore let us earnestly wish that the Companies Bill, 2011 will be successfully enacted as Law and come into operation during 2012.

# Exchange Traded Funds - ETFs

By Durgesh Joglekar, M.Com., CS-Exe., CA. Final, CWA-Final, Nashik

Exchange Traded Fund (ETF) is essentially a mutual fund scheme that is listed and traded on an exchange like stocks. Its performance tracks an index, a commodity or a basket of securities like an index fund. So generally, ETFs are passively managed funds that have a low expense ratio compared to actively managed funds. ETFs experience price changes and can be bought or sold throughout the trading day, which allows the investors to take advantage of intraday price movements.

ETF can be bought or sold just by a call to the broker or through an internet trading account. This provides investors the power to react quickly to changes in the market and place limit order while trading. ETF can be held in a DP account. Thus, with ETF, one can benefit both from the flexibility of a stock as well as diversification

## ETF offers several advantages to investors

- Can easily be bought/sold like any other stock on the exchange through a number of terminals across the country
- Can be bought/sold anytime during market hours at a price close to the actual NAV of the Scheme
- No separate form filing. Just a phone call to your broker or a click on the internet
- Ability to put limit orders
- Minimum investment required is one unit
- Enjoy flexibility of a stock and diversification of index fund
- Lower Expense Ratio
- Provides arbitrage between Futures and Cash Market

## Types of ETFs available in India

### ➤ Equity Index ETFs

Equity Index ETFs invest in stocks of underlying Index and attempt to replicate the performance of the Index. For example Nifty BeES tracks the Nifty Index. ETFs can also track foreign indices. E.g. Hang Seng BeES tracks the Hang Seng index or MOST Shares NASDAQ 100 which tracks the NASDAQ 100 index.

### ➤ Commodity ETFs

Commodity ETFs invest in the underlying commodity in the physical form and hence mirror the performance of the same. There are a number of Gold ETFs available to investors now. E.g. Axis Gold ETF, Gold BeEs, HDFC Gold ETF, ICICI Prudential Gold ETF; etc.

### ➤ Liquid ETFs

Liquid ETFs are money market funds that invest in a basket of call money, short-term government securities and money market instruments. It is an alternative to savings account that gives better returns than the bank savings account with very little chance of negative returns. Liquid BeES is the only Liquid ETF available in the market and launched by Benchmark Mutual Fund.

## ETFs vs. Stocks & Mutual Funds

Particulars/Points of comparison	ETFs	Stocks	Mutual Funds
Real-time trading & pricing throughout market	Yes	Yes	No
Ability to put limit orders	Yes	Yes	No
Can be traded real-time	Yes	Yes	No
Is arbitrage between cash & future market possible	Yes	Yes	No
Is diversification possible with a single unit	Yes	No	Yes
Returns at par with market/index	Yes	No	No
Intraday trading	Yes	yes	No
Exit Load	No	No	Yes

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# Maxims

*Compiled and edited by C. S. Kelkar, Company Secretary in Practice*

Many a times while reading an Legal Opinion sought from a Learned Council or while referring the decisions given by the High Court or the Supreme Court, we come across the Latin terms. These are nothing but 'Maxims' or 'Juris Proverbia'. These maxims, we some time use as principles of law, but in reality, these maxims contradict each other. Hence they are useful only to certain extent and to see how the law has evolved. These maxims certainly aid to understand the concept behind any legal principle and help to focus the attention on the topic under study.

Here is an attempt, to submit the meaning of some of the popular or more used maxims. This attempt is based upon the readings from one very old book published in the year 1933. You may found this effort interesting.

1. **Accessory non ducit, sed sequitur suum principale** – This means '**the accessories does not lead, but follows its principal.**' It can be illustrated by an example. Law is a body of principles, and while, some consideration of leading decisions is essential to their appreciation, the principles themselves are the vital matter.
2. **Actus dei nemini facit injuriam** – Where the law imposes a duty on one party in favour of the another and the former without any fault of his own is disabled from performing it **by an act of god, the law will excuse performance.** It is similar to the another doctrine called 'Doctrine of Frustration'. It is also narrated in a maxim – '**Lex non cogit ad impossible**' means the '**law never urges to impossibilities**'. If a man contracts to do a thing which is absolutely impossible the time, the contract will not bind him. But if the things are possible at the date of the contract and impossibility supervenes at a later date, he is bound by his contract and must pay damages in default of performance.
3. **Allegans contraria non est audiendus** – This could be well Explained in the common proverb that '**You cannot blow hot and cold**' at the same time'.
4. **Caveat emptor – Buyer beware. The buyer must look out for himself.** No one is bound to buy anything. A purchaser can deliberate and take precautions for his own protection. If he does not he 'asks for it' and cannot complain if he 'gets it'. Of course there are quite a lot of qualifications.
5. **Delegates non potest delegare** – **An agent cannot lawfully employ another to perform the duties of his agency.** This proverb we use in case if Director wants to appoint a person in his place to attend the board meeting/s (exception — alternate director). An agent may however be expressly authorized to delegate his functions wholly or in part to another and such authority can be implied. Law also recognizes the right to delegate arising out of the necessity.

(to be continued)

# “Power of Attorney & Property Transfers : SC Decides”

CS Anand Chapekar, Assistant Manager—Legal, Persistent Systems Limited

## SC Fights the Jinx of Power of Attorney Property Transfers

It has been a not so rare prevalent practice in land transaction to execute various documents like Power of Attorney/ Agreement to Sale/Will in place of more conventional registered conveyance deeds with probable malicious intents like tax avoidance. In its final order dated October 11, 2011 in the case of *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr.*, the Apex Court has strongly criticized this prevalent practice to avoid the implications of executing a registered conveyance deed. This labyrinth of documentation being used *in lieu* of a registered deed of conveyance (which we can refer to as “GPA Transfers”) was considered by the Apex Court to be the reason for copious ill-effects in the society and to be bad at law.

Since this order affects the very legality of the GPA Transfers, it’s relevant for all professionals to be mindful of this order in their dealings in real-estate including for their clients or employers.

### Applicable Law

Transfer of Property Act, 1882 (“TP Act”) and Registration Act, 1908 are two important legislations regarding transfer of immovable property.

Section 54 of the TP Act defines “sale” of immovable property as transfer of ownership in exchange of price paid, promised to be paid, or partly paid and promised. As per the same Section, this “sale” can only happen through a registered instrument, except in case of a property with value less than a hundred rupees. Section 53A of the TPA provides for doctrine of Part-performance. In a nutshell doctrine of Part-performance does not allow a transferor to enforce any rights over property against a transferee that takes possession of a property in part performance of a written contract which provides clear intent to transfer. It protects the rights of a buyer who takes possession on the basis of an agreement to sale. This Section 53A acts as an estoppel (right in personam) on the transferor but does not affect any conveyance of the property (right in rem).

Section 17 of the Registration Act makes it mandatory to register documents which “purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and

upwards, to or in immovable property”. Section 49 of the Act provides for the effect of failure to register documents which must be registered under Section 17. Section 49 of the Act provides that such document, if unregistered against the requirements of Section 17, will not affect any immovable property comprised therein and cannot be received as evidence of any transaction, unless it has been registered.

The instrument of ‘sale’ is also subject to a levy of stamp duty under various State Stamp Acts. Article 25 of Bombay Stamp Act, 1958 (“BST”) levies duty on the instrument of “conveyance”. BST also levies the same duty as levied on the “conveyance” on agreement to sale accompanied by possession and on a power of attorney for consideration granting power to convey immovable property.

The act conveyance of immovable property would be a “transfer” of “capital asset” under the Income-tax Act, 1961 giving rise to a capital gains tax levy.

To sum up: A registered conveyance deed is a legally recognized means to affect transfer of an immovable property.

### Practice of GPA Transfers

The apex Court is of opinion that the practice of GPA Transfer started as an attempt to avoid registered conveyance deeds. Under GPA Transfer transferee would make payment of the consideration and transferor would cede possession of property to transferee. This would be accompanied by either of the following documentation as per the Apex Court: (i) Agreement to sell with a covenant to execute further documents when required OR Agreement to sell with separate affidavit confirming receipt of consideration and passing of possession, (ii) Irrevocable General Power of Attorney authorizing conveyance to any one without consent of the vendor OR a combination of General Power of Attorney (to sell) and a Special Power of Attorney (to manage the property), (iii) a Will bequeathing the property to the purchaser (as a safeguard against the consequences of death of the vendor before transfer is effected).

### The Jinx of GPA Transfers

In the opinion of the Supreme Court the genesis of this practice was to avoid the payment of ‘unearned increases’ which the Development Authorities used to charge before freehold ownership was permitted in the

land development regime especially in the Northern States.

Additionally, these GPA Transfers would be illicitly aimed at the following:

- (i) To avoid prohibitions/conditions regarding certain transfers: For example: purchase of agriculture land by non-agriculturist in states where this is prohibited, Avoidance of Land Ceiling laws;
- (ii) To avoid payment of stamp duty and registration charges on deeds of conveyance: The expense of registration charges is avoided as the GPA Transfers are not done through registered instruments. Stamp authorities would be at a loss to know the existence of an unregistered document;
- (iii) To avoid payment of capital gains on transfers: Like the stamp authorities, income tax authorities would not know the existence of a transaction executed through an unregistered document especially when the consideration is through unaccounted monies;
- (iv) To invest unaccounted money ('black money') through untraceable private transactions.

The Court noted that this practice bypasses the transparency provided by the system of registration in the land ownership. The Courts traced the immediate results as multiple transfers of same land by the vendor, using of muscle power rather than rule of law to enforce 'ownership', increase in property litigation, generation of black money, creation of 'land mafia', and criminalization of real-estate transactions.

#### **Effect of the Final Order**

The Apex Court identified that an unregistered 'agreement to sale' would fall short of the requirements of TPA (particularly Sections 54 and 55) and would not be enough to effect conveyance of property. The limited right created by Section 53A would fall short of ownership. The Court observed that a Power of Attorney authorizes donee to act in place of the donor in a fiduciary capacity. While the donee may convey title on behalf of the donor/vendor, the Power of Attorney in

itself cannot be an instrument of conveyance of property. The Will on the other hand cannot be an instrument of transfer between the living persons (*inter vivos*). The Will takes effect after death of the testator and can be revoked or modified any time before. With the above observations, the Court concluded that GPA Transfers cannot be considered to be valid conveyances of title of an immovable property.

The Apex Court has recommended the following in implementation of this landmark decision:

- (i) Any prior judgments which recognized GPA Transfers as valid substitute for sale deed are not good law. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property.
- (ii) Hardship should not be caused to people who have relied and entered into these transactions, and they should be allowed to regularize their transactions. Therefore, this decision should be applied prospectively.
- (iii) GPA Transfers can still be given the effect of an 'agreement to sale' and used to obtain specific performance or to defend possession under Section 53A of TPA.
- (iv) GPA Transfers should not be relied for the purpose of mutations in Municipal or Revenue records. However, if these transfers have already been recognized by authorities for the purpose of mutations, they need not be disturbed merely due to this decision.
- (v) Court also added by way of abundant caution that the observations of the Court are not to be applied to any genuine transactions like development agreements with developers which are otherwise recognized by law.

This ruling objectively clarifies the legality of a much abused practice in the real-estate business. It will be interesting to see how the authorities apply the implementation guidelines of the apex Court in actual practice.

■■■

# Opinion Selected for 1st Prize in Opinion Writing Competition held by WIRC

CS Sachin Bhagwat, Company Secretary, Pune

## Facts of the Case

ABC Limited is a public company engaged in the business of manufacture and sale of paints.

Dr. Patel is one of the Directors of the company but is not whole-time director or Managing Director. He is a relative of another director. Dr. Patel holds a Masters degree in Chemical Engineering from London University and has special expertise in paints. He has also done PhD from Bombay University in a subject relating to paints.

ABC Limited proposes to pay Dr. Patel fixed monthly fees under a consultancy contract to be entered into between the company and Dr. Patel.

Currently Dr. Patel does not draw any remuneration from the company, except sitting fees for attending Board and committee meetings.

## Query

Can ABC Ltd. pay the proposed remuneration to Dr. Patel and if so, whether it would attract any of the following sections of the Act: 297, 299, 300, 301, 198, 309, 310, Schedule XIII (or any other provisions) and what compliances the Company has to make.

## Discussion

### Section 297: Applicability

1. Section 297 of the Companies Act, 1956 ('the Act') provides that a company shall not enter into a contract for the sale, purchase or supply of goods, materials or services with its director without the consent of its Board of Directors. It further provides that the company must obtain Central Government's approval before entering into the contract if the company's paid-up share capital is ₹ One crore or more.

The contracts to which the provisions of the Section apply are:

- (i) Contracts for sale, purchase or supply of any goods, materials or services;
  - (ii) Contracts for underwriting the subscription of shares in or debentures of, the company.
2. As the section applies to provision of services, the question is whether it applies to services to be

provided by Dr. Patel to ABC Ltd. The Act does not define the term 'services'. It has been held that if a term or expression is not defined in any Act, the legislature must be taken to have used that word in ordinary dictionary meaning. (*South Bihar Mills v. Union of India* AIR 1968 SC 922).

3. The Oxford Advanced Learner's Dictionary (7th edition) defines 'Service' as 'business whose work involves doing something for customers but not producing goods.' The Competition Act, 2002 defines 'Service' as "service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising."

The Consumer Protection Act, 1986 defines 'Service' as "service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information but does not include rendering of any service free of charge or under a contract of personal service."

These are inclusive definitions and include 'service of any description' within the scope of the term 'services'.

4. The Supreme Court of India has held that 'in the absence of incorporation or reference, it is hazardous to interpret a word in accordance with its definition in another statute. Thus it is not advisable to refer to another statute for the meaning of a term, more so when such statute is not dealing with a cognate subject or the statutes are not in pari materia i.e. statutes dealing with the same subject matter.' [*Maheshwari Fish Seed Farm v. T. N. Electricity Board* (2004) 4 SCC 705]

However, it has also been held by the Court that another statute may be referred, to understand

a term if the subject matter of the definition is similar.

5. The Department of Company Affairs had issued a Circular No. 13 on 5th June, 1975 which stated, among other things, as follows: "...Services of the nature of legal practitioner are not obtained on the basis of say, lowest tender but on account of their professional expertise irrespective of the cost involved. Such services cannot be bracketed with a contract for supply of goods or materials. The Department's view is that these services fall outside the scope of section 297 of the Act and the scope of the section does not extend to supply of professional services of the nature given by firms of solicitors and advocates etc."
6. The scope of the term 'services' as defined in the Dictionary and some statutes, as stated above, is wide. It has not been restricted to any particular kind of services as can be seen from the use of the words 'and includes' and 'not limited to' in the Competition Act, 2002 and The Consumer Protection Act, 1986. There is nothing in section 297 which suggests that services rendered by professionals are out of the purview of the section. Explaining the object of section 86F of the Companies Act, 1913 (which is now section 297 of the Act) the Bombay High Court has held in *Walchandnagar Industries Ltd. v. Ratanchand Khimchand Motishaw* (1953) 23 Comp Cas 343 (Bom), as follows:

"A director of a company occupies a responsible position and the Legislature wanted that while occupying that position he should not be placed in a situation where there would be a conflict between his interest and his duty. His duty would be to his company of which he is a director. His interest would be to enter into a profitable contract with the company.

It is also clear that a director holding the position that he does can obtain undue benefit by entering into profitable contracts with the company, and in order to suppress that mischief and to achieve the object which the Legislature had in mind, Section 86F was enacted. It is a well settled canon of construction that when we are considering a remedial measure, we must give to the provision of law as wide an interpretation as possible, of course consistently with the language used by the Legislature, and if Section 86F is remedial in its nature, which it undoubtedly is, then it would be wrong to give it a restricted construction. On the contrary we should try and give it as wide an interpretation as possible."

Therefore, considering the object of Section 297 and the scope of the term 'services' as defined

in various states, section 297 will apply to the consultancy contract to be entered into between ABC Ltd. and Dr. Patel.

7. Although the contract attracts section 297, it will be out of its purview if the condition specified in sub-Section 2(b) is fulfilled. This sub-section provides that section 297 will not apply to any contract between a company and a director for provision of services in which either of them regularly does business; however, the cost of such services should not exceed ₹ 5,000 in the aggregate in any year comprised in the period of contract.

Therefore, if this condition is satisfied the contract between ABC Ltd. and Dr. Patel will be exempt from the applicability of section 297 of the Act.

#### **Section 299: Applicability**

8. Section 299 of the Act applies to every contract or arrangement of a company in which a director is concerned or interested in any way, either directly or indirectly. This section mandates such interested director to disclose his interest in the contract to the Board of the Company. All contracts to which section 297 applies will be within the purview of section 299. Not only Dr. Patel but his relative who is also a director of ABC Ltd. is interested in the consultancy contract with ABC Ltd. and therefore, both Dr. Patel and his relative who is a director will have to disclose their interest in the contract to the Board of the Company.

#### **Section 300: Applicability**

9. According to Section 300, a director of a company cannot discuss or vote on a contract which the Board of Directors is considering, if the director is in any way interested in the contract. Such Director will also be excluded from the quorum for the limited purpose of discussion and voting on the contract. In the instant case, Dr. Patel and his relative who is also a director are interested in the consultancy contract. Therefore, both cannot take part in the discussion and voting on the contract at the Board meeting.

#### **Section 301: Applicability**

10. As per Section 301, a company has to maintain a Register of contracts. The Register must contain the specified particulars of all contracts or arrangements to which section 297 or 299 apply. Therefore, in the instant case ABC Ltd. should enter the particulars of the contract with Dr. Patel in the said Register.

### Section 314: Applicability

11. As per clause (a) Section 314(1), a director cannot hold an office of profit under the company unless the share holders approve the proposal by special resolution. The section does not prescribe any monetary limit. The question is what is meant by 'an office of profit'. Sub-section (3) of section 314 provides guidance to the meaning of the term.

Accordingly, if a director obtains from the company anything by way of remuneration in addition to the remuneration to which he is entitled as such director, he will be treated as holding office of profit.

12. In the instant case, Dr. Patel is being paid sitting fee as director. Sitting fee is a kind of remuneration. If ABC Ltd. pays Dr. Patel, fee for consultancy, he will get from the company remuneration in addition to the sitting fee he gets as a director. Thus Dr. Patel will hold an office of profit under ABC Ltd. This will have to be approved by share holders of ABC Ltd. by a special resolution. Such approval need not be obtained prior to holding of office of profit but can be obtained in the first general meeting which is held after a director holds office of profit. [first proviso to section 314(1)].

### Section 309: Applicability

13. Section 309 prescribes that remuneration paid to directors of a company has to be within the limit prescribed by that section and section 198 of the Act. The section also states that remuneration payable for services rendered by a director in any capacity other than that of a director is taken into consideration while calculating the limit prescribed.
14. Section 309 also makes an exception. It provides that if services to be rendered by a director are of a professional nature and are rendered as a professional, then the company should get Government's opinion as to whether such director holds the qualifications for practicing his profession. If the Government gives such opinion, the remuneration payable to the director shall not be included in the ceiling prescribed by sections 309 and 198 of the Act. Therefore, if ABC Ltd. obtains an opinion of the Government as to whether Dr. Patel's degrees qualify him to practice as consultant in his area of specialization, the limit prescribed in sections 198 and 309 will not apply to the instant case.

### Section 310: Applicability

15. Section 310 of the Act deals with increase in the remuneration of a director. According to this section, no increase in remuneration payable to a director is effective unless it is approved by the Central Government. There is only one

exception to this rule and that is, if the increase in remuneration is as per conditions specified in Schedule XIII of the Act, the increase will become effective immediately. Schedule XIII of the Act deals with remuneration payable to Managing Directors, whole time directors and managers. It does not apply to directors who do not fall in any of these categories. In the instant case, Dr. Patel is a part time director and therefore, Schedule XIII shall not apply to the remuneration payable to him or any increase in remuneration payable to him.

Consultancy fee to be paid to Dr. Patel is a species of remuneration. The fee is proposed to be paid in addition to the sitting fee that is paid to Dr. Patel as a director. As the payment of consultancy fee will tantamount to increase in remuneration, the instant case falls within the ambit of section 310. Therefore, ABC Ltd. will have to obtain approval of the Central Government for paying consultancy fee to Dr. Patel in addition to the sitting fee being paid to him.

### Conclusion

- (i) Section 297 will not apply if the Dr. Patel is in the business of regularly providing the services and the cost of services to be provided does not exceed ₹ 5,000 in the aggregate in any year comprised in the period of contract.
- (ii) Section 299 will apply. Both Dr. Patel and his relative who is a director will have to disclose their interest in the contract to the Board of the Company.
- (iii) Section 300 will apply. Both Dr. Patel and his relative who is a director cannot take part in the discussion and voting on the contract at the Board meeting.
- (iv) Section 301 will apply. ABC Ltd. should enter the particulars of the contract with Dr. Patel in the said Register.
- (v) Section 314 will apply. Dr. Patel's appointment will have to be approved by the share holders in a general meeting which may be obtained in the first general meeting held after Dr. Patel holds the office of profit.
- (vi) Section 309 will not apply if ABC Ltd. obtains from the Central Government an opinion as to whether Dr. Patel's degrees qualify him to practice as consultant in his area of specialization.
- (vii) Section 310 will apply. ABC Ltd. will have to obtain approval of the Central Government for paying consultancy fee to Dr. Patel in addition to the sitting fee being paid to him.



## NEWS FROM WIRC

# AND CHAPTERS

### WIRC NEWS

#### **Seminar on Commodity Trading & Its Regulation held on 8<sup>th</sup> December 2011 at Kamalnayan Hall, Mumbai**

ICSI-WIRC jointly with Indian Commodity Exchange Ltd. announces Seminar on Commodity Trading & Its Regulation on Thursday, 8th December, 2011 from 2.00 pm to 6.30 pm at Kamalnayan Hall, Mumbai. Shri Ramesh Abhishek, Chairman, Forward Markets Commission the guest of honour inaugurated the programme. Shri Sanjay Saksena, Chief Knowledge Officer, ICEX, Mumbai, deliberated on Commodity Market Overview. Shri Kamlesh Nivrutti Gujar, VP-Legal, Membership, & CS, ICEX discussed in detail the matters relating to Commodity Market Regulatory Framework & Current Issues. Shri Jai Prakash Mukherjee, Asst. Manager, Training, ICEX, Mumbai, shared his experience and knowledge on the topics of Risk Management & Trading Strategies. The issues relating to Exchange Market Operations & Live Demonstration of TWS were briefed by Shri Ranjit Samantray, Chief Operation Officer, ICEX, Mumbai. About 95 participants attended the seminar.

#### **Study Circle Meeting on "Update on SEBI Takeover Code" held on 25<sup>th</sup> December 2011 at Sardar Vallabhbhai Engineering College, Andheri, Mumbai**

ICSI-WIRC organized Study Circle Meeting on "Update on SEBI Takeover Code" on 25th December 2011 at Sardar Vallabhbhai Engineering College, Andheri, Mumbai. Shri B. Narasimhan, Central Council Member, ICSI-WIRC, Shri Sanjeev Shah, CS & CA, Sr. Manager, Deloitte Touche Tohmatsu India Pvt. Ltd. and Shri Virendra Bhatt, Fellow member of ICSI discussed the updates on SEBI Takeover Code. Around 147 members were present for the meeting.

#### **Seminar on Takeover Code held on 29<sup>th</sup> December 2011 at Maharashtra Chamber of Commerce Industry & Agriculture, Mumbai.**

ICSI-WIRC organized a Seminar on Takeover Code on 29th December, 2011, at Maharashtra Chamber of Commerce Industry & Agriculture, Mumbai. Smt. Shailashri Bhaskar, Ex. AGM, SEBI gave an overview of Understanding the Changes & the New SEBI Code. Shri Yogesh Chande, Advocate, discussed the implications for Takeovers & Future of Take Over. The Seminar was attended by around 182 participants.

#### **Series of Investor Awareness Programmes organised by ICSI-WIRC in Mumbai**

ICSI-WIRC organized Investor Awareness Programme on 10th September, 2011 at Sardar Vallabhbhai Engineering College, Andheri. Shri N. P. Pandya, Assistant General Manager, BSE & Sudipto Pal, Joint Director, ICSI-WIRC addressed the participants of the programmes. About 33 participants were present during the programme. On 17th September, 2011 WIRC organized Investor Awareness Programme at Suvidya Prasarak Sangh, Borivali. Shri N P. Pandya, Assistant General Manager, BSE addressed the participants of the programmes. The number of participants present for the programme was 48.

On 30th November 2011 at Sydenham College, Churchgate, Mumbai. Shri N.P. Pandya, Assistant General Manager BSE and Shri Sudipto Pal, Joint Director, WIRC discussed the various opportunities available for the Investors. Around 30 participants attended the programme. On 2nd of December, 2011 the programmes was held at Smt. P. N. Doshi College, Ghatkopar, Mumbai. Shri N. P. Pandya, Assistant General Manager BSE addressed the participants. About 71 number of participants were present. On 9th December, 2011 WIRC organized another Investor Awareness Programme at Thakur College, Kandivali (West). Shri Paresch Nagda, Deputy Manager, Investor Services, BSE discussed various issues relating to Investors. The programmes was attended by 30 participants.

### CHAPTER NEWS

#### **AURANGABAD CHAPTER**

Workshop on "Critical Issues in Company Law" Aurangabad Chapter of WIRC of ICSI organized a full day workshop on "Critical Issues in Company Law" on 5th November 2011 at Hotel Lemon Tree, Aurangabad for the members and industry executives.

Dr. K. R. Chandratre, Senior Practising Company Secretary and Past President of ICSI was the speaker for the programme. The programme was specially designed for solving various critical issues while dealing with the various matters which are not related to regular activities of the company. The issues mainly exercised were about the provisions of sections 77A, 292, 293, 295, 297, 299, 300, 301, 309, 314, 372A. During the workshop, Dr. Chandratre solved various queries raised by the participants by giving references of various sections and case laws. The methodology used by Dr. Chandratre in the workshop was very good and easy to understand. CS A.R. Joshi in his welcome speech felicitated Dr. Chandratre and explained the need of such workshops for the company secretaries in small city like Aurangabad. This was the first full day workshop ever organized by the Chapter. CS Laxmikant Jaipurkar, Secretary of the Chapter delivered the vote of thanks. CS Anurag Geete, CS Gautam Nandawat, CS T. R. Sachidanandan, CS Madhu Kumar Ghatiya, CS Mahesh Singhi, Vice Chairman of Chapter, CS Ashish Gupta, Treasurer of the Chapter and also around 30 professionals and company executives participated in the workshop.

#### **AHMEDABAD CHAPTER**

40<sup>th</sup> SIP was arranged by the Chapter from 1<sup>st</sup> Dec., to 7<sup>th</sup> Dec., 2011 at Chapter premises. SIP was inaugurated by DO-Anu K Varghese and general instructions/briefing of the SIP training were given to all participants of SIP. The sessions were conducted by faculties who were experienced. Valedictory session was commenced with farewell speech by CS B. G. Pandya. The participants spoke on the faculty feedback and topics covered in 40<sup>th</sup> SIP.

**41st SIP** was arranged by the Chapter from 15<sup>th</sup> Dec., to 21st Dec, 2011 at Chapter premises. SIP was inaugurated by Mr. Naveen Mandovara – Chairman, Finance Committee of the Chapter & DO-Anu K. Varghese followed by general instructions / briefing of the SIP training were given to all participants of SIP. Vaedictory session was commenced with farewell speech by Anu Varghese – DO. The participants spoke on the faculty feedback and topics covered in 41st SIP.

#### **IMPLEMENT 11**

A workshop coined as IMPLEMENT-11, which was aimed at equipping the delegates with skills to ensure implementation of plans and ideas was organized by the Chapter on 16<sup>th</sup> & 17<sup>th</sup> December. The group of 75 candidates comprising of a wide age band ranging from 25 years to 60 years, where guided by Management Consultant and Trainer, Mr. Suresh Patel, by means of various management games and activities. As part of the programme, the candidates also ventured out for night tracking on the banks of Sabarmati river.

On the Second day, the group was addressed by Mr. Atul Karval, who has scaled the Mt. Everest. He gave an exciting account of his expedition supported by a gripping slide show and beautiful pictures. Candidates were gifted the book – “Think Everest” authored by Mr. Karval and co-authored by his wife, Mrs. Anita Karval, personally autographed by them. Thereafter, the workshop concluded with the last session where inspirational clippings and movies providing information on achievers and their implementation skills were screened. The delegates spent very meaningful yet relaxing time in the serene environment of Gandhinagar.

#### **STUDY CIRCLE MEETING**

A Study Circle Meeting for discussion on “**EVS=Electronic Voting System**” was organized by the chapter on Wednesday 7<sup>th</sup> Dec., 2011 from 6 p.m. to 8 p.m. The meeting was addressed by CS Utpal Shah, Head – Gujarat Region, Central Depository Services (India ) Ltd. (CDSL), on subject ‘MCA *vide* its Notification dated 30th May, 2011 has allowed, *inter alia*, Voting by electronic mode by introduction of Companies (Passing of the Resolution by Postal Ballot) Rules, 2011.’ The subject also covered the procedural and practical aspects of the topic. CS Rutul Shukla – Chairman, PCS Committee of the Chapter welcomed all participants and the speaker for sparing their valuable time to impart knowledge on EVS.

CS Y. M. Joshi – Chairman, TEFC Committee concluded the meeting by giving vote of thanks.

#### **BRAIN STORMING WORKSHOPS**

- a. A Brain Storming Workshop “**RECENT AMENDMENTS IN THE CORPORATE LAWS DURING 2011**” was organized by the chapter on Saturday 24th Dec., 2011, from 3.00 pm to 7.30 pm. The seminar was addressed by CS Manoj Hurkat and CS Shilpi Thappar. CS Chetan Patel, Treasurer, welcomed all participants and the speaker. CS Rajesh Tarpara, Chairman, PDC Committee, concluded the meeting by giving vote of thanks.
- b. A Brain Storming Workshop “**RECENT AMENDMENTS IN THE SECURITIES LAWS DURING 2011**” was organized by the chapter on Friday 30<sup>th</sup> Dec 2011, from

3.30 p.m. to 8.00 p.m. The seminar was addressed by CS Jayesh Vitlani and CS Shashi Singhvi. CS Rutul Shukla, Chairman, PCS Committee, welcomed all participants and the speaker. CS Rutul Shukla, Chairman, PCS Committee, concluded the meeting by giving vote of thanks to the participants and speaker.

#### **PUNE CHAPTER**

##### **SCM ON “IMPLEMENTATION OF E-VOTING FACILITY”**

Chapter had organized a Study Circle Meeting on “**Implementation of E-Voting Facility**” on Nov 26., 2011 at Pune. In all 46 delegates were present for the seminar. Mr Anand Tirodkar, was the eminent speaker for the programme. The programme received an overwhelming response from the Members and other participants. The participants discussed various aspects regarding the implementation of e voting and was of a great importance for them.

##### **9<sup>TH</sup> EXECUTIVE DEVELOPMENT PROGRAMME (EDP) AND MEETING WITH PRESIDENT**

Chapter organized 9th EDP programme from 5<sup>th</sup> December 2011 to 15<sup>th</sup> December 2011 for CS Students. Total 53 Students attended the programme at MCCIA, Pune. Certificates were distributed to the participants on last day of the programme. In addition to all the session as per the schedules there was a session by CS. Anil Murarka, President of the Institute, who discussed with students the future prospects and the initiatives by the Institute for the benefit of the students. The students then raised certain questions and queries regarding the syllabus, mark lists, revaluation and many topics of their interest. CS. Anil Murarka replied to all their queries to their fullest satisfaction. CS. Vikas Agarwal, Chairman, Pune Chapter, CS. Devendra Deshpande, Secretary, Pune Chapter, CS. C. S. Kelkar, Members WIRC were present for the open session.

##### **OPEN FORUM DISCUSSION ON REFERENCER ON E-FORMS**

Chapter had organized a **Open Forum Discussion** on “Referencer on E-Forms” on December 3, 2011 at the Chapter Premises. The main purpose of organizing this Open Forum Discussion was to seek inputs / suggestions from all members on Draft Referencer & compilation of all suggestions received for forwarding it to the ICSI Central Council. In all 29 members were present for the programme. The programme was well received by the members.

##### **FREE LECTURE ON “HOW TO PREPARE FOR PROFESSIONAL EXAMS”**

Chapter of WIRC of the Institute of Company Secretaries of India organized a SPECIAL FREE LECTURE on “HOW TO PREPARE FOR PROFESSIONAL EXAMS” on Sunday, Nov. 27, 2011 at 10.00 a.m. at Cummins Foundation Hall at the Chapter.

CS Kajal Desai and Ms. Nivedita Ketkar, Management Trainee, Persistent Systems Limited, Pune addressed the students on the topic. About 60-65 students & their parents were present in this programme.

### FREE LECTURE ON BASIC ACCOUNTING CONCEPTS

As a tradition, Chapter organized a Free Lecture on “Basic Accounting Concepts” for the students from other than Commerce background as well as especially for students of the Oral Tuition Classes. One of this type of programmes was held on December 3<sup>rd</sup> & 4<sup>th</sup>, 2011 for Foundation & Executive programme students. Mrs. Smita Chapekar, member of the ICWAI was the faculty for this programme.

### JOINT PROGRAMME WITH BSE & CDSL ON INVESTOR AWARENESS PROGRAMME (IAP)

Chapter has organized a joint programme with BSE & CDSL on Dec., 15, 2011. Mr. Ajit Manjure & Mr. Vivek Sadhale were the eminent faculties for the programme. In total 350 + delegates attended this Programme & was well appreciated by the gathering. The Programme commenced with a welcome speech by CS. Pawan Chandak, Vice – Chairman and concluded with a Vote of Thanks to all by CS. Devendra Deshpande, Secretary. Maharashtra Herald, the daily was the media partner for the programme and it was sponsored by Reliance Securities.

### WORKSHOP ON “FEMA”

Chapter had organized a Workshop on “**Intricacies of Inbound & Outbound Investments under FEMA**” on Dec 17, 2011 at Hotel President, Pune. In all 79 delegates were present for the workshop. CS. Amit Atre, Managing Committee Member welcomed all the delegates for the programme. He then welcomed Mr. Vishwas Pathak, Ex Manager, RBI as the eminent speaker for the programme.

The sessions were divided into three parts, the first session was a presentation by the Faculty on the inbound and outbound Investments. The second session was for discussion on posers collected from the members and then there was a third session of question and answers. CS. Shilpa Dixit, Treasurer, Pune Chapter presented a vote of thanks and concluded the session.

### DINNER PARTY FOR MEMBERS

Pune Chapter won the award for the Best A Grade Chapter for consecutive two years 2009 and 2010. The team members of the Managing Committee of Pune Chapter received the Award at the National Convention of our Institute held recently at Agra on behalf of all the members of the Pune Chapter.

Year 2009 and 2010 were splendid years with contributions from each and every member of the Pune Chapter. The Pune Chapter organized many programmes including few national and regional events. The support of all you members was important for making these programmes a great success and you are the real winner of these awards which the Pune Chapter has bagged.

To celebrate the winning of these awards, Pune Chapter organized a *Dinner Party* for all the members of the Pune

Chapter. The party was organized for all members of Pune Chapter at Hotel Multi Spice, Pune. There were few special events like release of “Special Issue of Sanhita” which was a compilation of the memories of last thirty years and which showed the journey of Pune Chapter. The Special Issue was published at the hands of CS Anil Murarka, President ICSI.

All the past Chairmen of Pune Chapter and Managing Committee members for the year 2009 and 2010 were felicitated and their efforts were acknowledged by presenting them a memento for winning of A1 grade best chapter at the hands of CS Anil Murarka, President ICSI.

### CAP SESSIONS CONDUCTED BY PUNE CHAPTER

Chapter organized various Career Awareness Sessions at Millennium School, BMCC, ILS Law College, Siddhivinayak College (for Ist, IInd & III rd Year Students) on 26<sup>th</sup> Nov., 2<sup>nd</sup> Dec., 5<sup>th</sup> Dec & 9<sup>th</sup> Dec., 11 respectively to apprise the students on “Career as a Company Secretary”. CS Amit Atre, CS Vivek Sadhale, CS Vikas Agarwal, CS Neha LImaye, CS Shridhar Kulkarni, CS Soumitra Dole, CS Neha Rapatwar & CS Smita Jaju were the eminent faculties for these sessions. More than 500 students attended these CAP Sessions. Brochures were also distributed amongst students so that students can have complete information on the course.

### SAKAL EDUCATION FAIR 2011 (15.12.2011 to 18.12.2011)

Sakal Media Group organized an education fair from 15.12.2011 to 18.12.2011 at College of Engineering Grounds, Shivaji Nagar, Pune. The Chapter of WIRC of ICSI, with a view to enhance the visibility of the profession and to attract students from the non-metro/remote areas, participated in the said fair. Many students and professors from different areas and colleges visited the stall at the said education fair.

### RAIPUR CHAPTER

On 25th December, 2011 the Chapter had organized an interactive Study Circle Meeting on the topic “**XBRL –Practical Aspects**”. Speaker CS S.K. Batra, Treasurer of Raipur Chapter, elaborated the topic with the help of power point presentation. He gave a brief details of companies to whom XBRL filing was applicable. Further, he informed about various software companies that are providing XBRL software, basic utilities used in software, preparatory steps, documents required before starting feeding the inputs and problems one faces during data entry. He highlighted on some important points that one should take care when working in XBRL software. He referred to specific cases where validation errors could not be resolved even after referring to MCA helpdesk. He provided solutions to such validation problems. The session was very interactive, as the participants raised various queries and Speaker clarified thoroughly. The experience on the subject was shared extensively. CS Y.C. Rao, Chairman of Raipur Chapter, thanked the speaker for sharing his knowledge and experience on the topic.

■■■

## WIRC of ICSI invites its members for sessions at SIP and EDP

Interested candidates can send their profiles with an indication about the topic to be covered to [sandeep.mehta@icsi.edu](mailto:sandeep.mehta@icsi.edu)

## REQUIRED

### A COMPANY SECRETARY

A Leading 100% EOU is looking for a Company Secretary and Chartered Accountant with Experience in Secretarial & Law matters. Accounts & Finance Only Company Secretary may also be considered. Interested candidates may apply immediately to

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The Institute of Company  
Secretaries of India  
13, Jolly Maker Chambers No. 2,  
Nariman Point,  
Mumbai-400 021.

## REQUIRED

### A COMPANY SECRETARY

A Private Limited Company providing HR related services require a qualified Company Secretary having about 2 years post qualification experience, including FEMA matters. Freshers who have obtained practical experience prior to qualifying may also be considered on merits.

Interested candidates may apply within the next 15 days to :

*The Director*

### STRATEGIC HUMAN RESOURCE MANAGEMENT INDIA PVT. LTD.

702, 7th Floor, Vibgyor Towers,  
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## REQUIRED

### A COMPANY SECRETARY

Candidate should be member of the Institute of Company Secretaries of India

The Candidate should have good knowledge of Secretarial and legal Matters such as compliance with various laws, Filing of various documents/ returns with the RoC, drafting of minutes/ agreements, mergers & amalgamations, trade marks, stamp duty and FEMA Freshers can apply.

**Salary & Perquisites will not be a constraint for the right candidate.**

Apply with resume within 7 days to

**ASTA INDIA PVT. LTD.**

161/162, Mittal Court, "A" Wing, 16th Floor,  
Nariman Point, Mumbai-400 021.

## REQUIRED

### A COMPANY SECRETARY

at Mumbai

The incumbent should be ACS with 3-5 years of experience in handling company law and related statutory compliances & should have Legal background.

Interested candidates may please apply within 15 days to:

**Box No.: 47297**

The Institute of Company Secretaries of India  
Western India Regional Council (WIRC)  
13, Jolly Maker Chambers No. 2, 1st Floor,  
Nariman Point, Mumbai-400 021.

**SERIES OF INVESTOR AWARENESS PROGRAMMES ORGANIZE BY ICSI-WIRC  
FROM 10th & 17th September, 30th November, 2nd 9th & 16 December, 2012**



Shri N. P. Pandya, Assistant General Manager BSE and addressing Shri Sudipto Pal, Joint Director, ICSI-WIRC



Shri N. P. Pandya,  
Assistant General  
Manager BSE



Shri Rajesh  
Dedhia



Shri Paresh A.  
Nagda, Deputy  
Manager, Investor  
Services, BSE



Scene of Audience

**Glimpses of one day Cricket Match held between Team ICSI-WIRC XI Vs. MCA XI on  
Saturday, 7th January, 2012 at Azad Maidan**



**ICSI-WIRC jointly with Indian Commodity Exchange Ltd. organized seminar on Commodity Trading & Its Regulation on 8th December, 2011**



Shri Sanjay Saksena, Chief Knowledge Officer, ICEX, Mumbai, Shri Ramesh Abhishek, Chairman, ICEX and Shri Sanjay Gupta, Chairman, PDC of ICSI-WIRC



Scene of Audience



Shri Jai Prakash Mukherjee, Asst. Manager, Training, ICEX, Mumbai,



Shri Ranjit Samantray, Chief Operation Officer, ICEX,

**ICSI-WIRC organised Seminar on Takeover Code on 29th December, 2011**



L – R : CS Prakash Pandya, Secretary, WIRC, Smt. Shailashri Bhaskar, Ex-AGM, SEBI, lighting of lamp by CS Makarand Lele, Chairman, WIRC and CS Sanjay Gupta, Chairman, PDC of WIRC



Scene of Audience



Smt. Shailashri Bhaskar, Ex. AGM, SEBI Audience



Shri Yogesh Chande, Advocate Audience

**Workshop on “Critical Issues in Company Law” organised by Aurangabad Chapter on 5th November, 2011**

**Study Circle Meeting on “Update on SEBI Takeover Code” organized by WIRC on 25th December, 2011**



L-R. CS Kaushik Jhaveri, CS Virendra Bhatt, Fellow Member and addressing CS B. Narasimhan, Central Council Member the ICSI.



L-R.: The dignitaries are from left : CS Anurag Geete, CS Laxmikant Jaipurkar, Secretary, Aurangabad Chapter, CS Gautam Nandawat, Dr. Chandrathe, CS A. R. Joshi, Chairman, CS Mahesh Singhi, Vice-Chairman & CS Ashish Gupta, Treasurer of Aurangabad Chapter & CS Madhu Kumar Ghatiya.

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