December - 2016

ICSI - WIRC

FOCUS

ICSI – WIRC e-newsletter

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

WIRC of ICSI Premises :

13, 56 & 57, Jolly Maker Chambers No. 2 (1st & 5th Floors), Nariman Point, Mumbai - 400021

Email :
wiro@icsi.edu

Phone Nos. :
022- 61307900 / 61307901 / 61307902

Index

Monthly TARIFF for advertisement in Focus:

Type	Size	Employment^	Non-employment^
Back Inner Cover Page	18 x 18	Rs. 17,500	Rs. 25,000
Full Page (Colour)	18 x 18	Rs. 15,000	Rs. 20,000
Half Page (Colour)	12 x 18	Rs. 10,000	Rs. 12,000
Half Page (B&W)	12 x 18	Rs. 8,000	Rs. 10,000
Quarter Page (Colour)	12 x 9	Rs. 5,000	Rs. 7,000

^Service tax and other applicable taxes, if any, extra

Annual Contract:
(1) Out of 12 issues you have to remit only 10 issue charges, i.e. 2 issues will be free.
(2) *For Principle Sponsorship: Out of 12 issues you have to remit only 9 issue charges (i.e. 3 issues will be free) – INR 9,00,000.

Half Yearly Contract:
(1) Out of 6 issues you have to remit only 5 issue charges, i.e. 1 issue will be free.
(2)* For principle Sponsorship: Out of 6 issues you have to remit only 5 issue charges, i.e. 1 issue will be free.

Term of Payment : Advance Payment in favour of 'WIRC of ICSI' by way of a Cheque /Demand Draft

Whether the Company is required to file MGT-14 for Issue of Bonus Shares in pursuance of Section 179(3) of the Companies Act, 2013 ???

CS Bhumitra V Dholakia
Dholakia & Associates, Practicing Company Secretaries, Mumbai
Email: info@dholakia-associates.com

Sub-Section (3) of Section 179 of the Act states that the powers contained therein should be exercised by means of resolution at the meeting of the Board of Directors. One of the Powers is " ***(c) to issue securities, including debentures, whether in or outside India;".*** Obligation of filing of MGT-14—is arising from the provisions of Section 117 (3) of the Act and Rule 24 of the Companies (Management and Administration) Rules, 2014.

Section 63 of the Act makes detailed provision for issue of Bonus Shares and relevant portion for our discussion is *"Sub-Section (2) " No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), unless* ***(b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;"***

On page No. 878 of Taxmann's Business Dictionary (updated till November,2010)

a) *"**Issued Share Capital**" Out of the total authorized capital, generally a substantial part is raised by the Company by offering for sale a part of the total number of shares. This is called used capital.*
b) *Issue is the process of offering securities as an attempt to raise funds. Companies may issue bonds or shares to investors as a method of financing the business. The term "issue" also refers to a series of stocks or bonds that have been offered to the public, and typically relates to the set of instruments that were released under one offering. (http://www.investopedia.com/terms/i/issue.asp).*

"Power" means "the right or an authority of a person or a group to do something"

It is also important to understand the meaning or interpretation of the word "Bonus". Calcutta High Court in Shree Gopal Paper Mills Ltd. vs Commissioner Of Income-Tax on 5 February, 1965; 1967 37 Comp Cas 240 Cal, 1967 64 ITR 233 Cal has narrated in these words-- The word " bonus shares " means " special dividend ". A dividend is ordinarily paid in cash direct to the shareholders. A shareholder may again be compelled to allow the undistributed profit to be appropriated towards the consideration money for the issue of new or additional shares to him, the existing shareholder. Hence, bonus share is a special type of share.

Calcutta High Court Shree Gopal Paper Mills Ltd. vs Commissioner Of Income-Tax on 5 February, 1965 Equivalent citations: 1967 37 CompCas 240 Cal, 1967 64 ITR 233 Cal in para 14 observed as under:-

14. In paragraph 7, the observations made were as under (at page 865) ;

"So Farwell L. J. said in Mosely v. Koffyfontein Mines Ltd. [1911] 1 Ch 73 at page 84, 'As regards the construction

*of these particular articles, it is plain that the words "**creation**", "**issue**" and "**allotment**" are used with three different meanings familiar to business people as well as to lawyers. There are three steps with regard to new capital; first, it is created ; till it is created, the capital does not exist at all. When it is created, it may remain unissued for years, as indeed it was here ; the market did not allow of a favourable opportunity of placing it. When it is issued, it may be issued on such terms as appear for the moment expedient. Next comes allotment. To take the words of Stirling J. in Spitzel v. Chinese Corporation Ltd. [1899] 80 LT 347, at page 351, he says : 'What is an allotment of shares ? Broadly speaking, it is an appropriation by the directors or the managing body of the company of shares to a particular person'. Lord Greene M.R. observed in V.G.M. Holdings Ltd., In re [1942].*

By the Calcutta High Court re- Shree Gopal Paper Mills Ltd. vs Commissioner Of Income-Tax on 5 February, 1965 it was further observed as under:-:-

41. The move to issue bonus shares presupposes a large undistributed capitalised profits. Hence bonus shares are created by the company often by passing resolutions for issue of new shares, capitalisation of the undivided profits, the appropriation of the undivided profits for pro rata payment in full of the new shares. At this stage when the resolutions are passed there are however only expressions of the will of the company, for the company can express its will only through a meeting duly convened; there is no expression of the will of the individual shareholder and at any rate for those who are not present in the meeting personally or by proxy, there is no allotment of shares followed by the issue of a letter of allotment and there is no registration of the newly created bonus shares. Hence in reality there is no actual issue of the shares.

47. Hence, at the stage when a resolution is passed by the company for capitalisation in English Jaw, there is no issue of shares by the company whatever meaning may be ascribed to the word " issue," though there is an increase of share capital by the issue of new shares. In India, as it appears from the resolutions in the present case, the company passes a composite resolution which not only includes the resolutions usually passed by the company in England but also the resolutions which are passed by the directors of the company pursuant to such authority given in the resolution by the company. This passing of the composite resolution in India cannot change the legal character of clauses (a), (b) and (c) when they are passed by the company itself instead of by the board of directors.

CONCLUSION:- The Board has the authority to issue securities but not Bonus Shares. It has the recommendatory power. It is the shareholders who will exercise the powers whether to accept the recommendation of the Board in fully or partly. If the proposal is rejected by the shareholders then it is not an "issue of securities". The word "issue" involves series of steps from making offer, acceptance and allotment and the capitalization of profits for the purpose of issue of Bonus shares do not envisage such steps as it is appropriation of earned profit into capital. Hence, it can safely be deduced that that MGT-14 as envisaged under Section 117 of the Act and Rules 24 of the Companies (Management and Administration) Rules, 2014 for Issue of Bonus Shares recommended by the Board of Directors is not required to be filed with the Registrar of Companies.

Transfer of pending proceedings to NCLT – procedural clarity provided by the Hon'ble Bombay High Court

Adv. Satyan S. Israni
Partner, SD Israni Law Chambers
Email: satyan@isranilaw.com

The Central Government has issued a notification dated 7th December, 2016 whereby it notified 15th December, 2016 as the appointed date on which various provisions of the Companies Act, 2014 (the Act) including Section 434(1)(c) would become operative.

Section 434(1)(c) provides that *"all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings related to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer;"*

Thus, with effect from 15th December, 2016, all the pending proceedings related to arbitration, compromise, arrangements & reconstruction and winding up of companies stand transferred to the respective benches of the National Company Law Tribunal (the Tribunal).

Vide another Notification dated 7th December, 2016, the Central Government has also notified the Companies (Transfer of Pending Proceedings) Rules, 2016 (the said Rules) under Section 434(1)(c) of the Act.

The said Rules provide for the transfer of proceedings that have been pending before the High Court to the Tribunal and have come into force with effect from 15th December, 2016 except Rule 4 which will come into force with effect from 1st April, 2017.

The said Rules provide for two categories of proceedings to be transferred i.e. Proceedings related to Winding Up and Proceedings related to cases other than Winding Up and the concerned rules in this regard are Rules 3 to 6 of the said Rules.

Rule 3 of the said Rules is very clear and it provides for transfer to the respective Tribunal benches of all proceedings related to arbitration, compromise, arrangements and reconstruction, with effect from 15th December, 2016.

Rule 4 relates to transfer of Voluntary Winding Up proceedings which will be effective only from 1st April, 2016.

Rule 5 provides for transfer of proceedings related to Winding Up which were initiated under Section 433(e) of the Companies Act, 1956 while Rule 6 provides for transfer of proceedings related to Winding Up which were initiated under Sections 433(a) and (f) of the Companies Act, 1956.

Both these rules are reproduced herein below:

5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.—

(1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:
Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

(2) All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act.

6. Transfer of pending proceedings of Winding up matters on the grounds other than inability to pay debts.—
All petitions filed under clauses (a) and (f) of section 433 of the Companies Act, 1956 pending before a High Court and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal exercising territorial jurisdiction and such petitions shall be treated as petitions under the provisions of the Companies Act, 2013 (18 of 2013).

Both the Rules 5 and 6, allow for only those proceedings that have not been served on the Respondent as required under Rule 26 of the Companies (Court) Rules, 1959, (the Court Rules), to be transferred to the respective benches of the Tribunal. Which conversely means that if a petition has already been served upon the Respondent in accordance with Rule 26 of the Court Rules, then such a petition would continue till its logical conclusion before the respective High Court.

The criterion of service under Rule 26 created some ambiguity and caused confusion amongst the litigants and lawyers.

The issue of what constitutes service under Rule 26 of the Court Rules came up recently for consideration before the Hon'ble Bombay High Court in the matter of West Hills Realty Pvt. Ltd versus Neelkamal Realtors Tower Pvt. Ltd.

In this case, the petition was pending admission and the Petitioners contended that their Petition had been served upon the Respondents as required under Rule 26 of the Court Rules and therefore the petition was to be continued before the High Court. On the other hand, the Respondents contended that the Rule 26 of the Court Rules mandated a post admission service and not a pre admission service and hence, the present petition being covered under the mandate of the notification dated 7th December, 2016 should be transferred to the Tribunal.

Here it is pertinent to note that in a case of a petition that has been filed in the High Court under Section 433(e) of the Companies Act, 1956, first there is a stage known as Acceptance followed by Admission. The Acceptance is generally before the Registrar of the High Court. Once such a petition is accepted, then the Petitioner is required to serve a copy upon the Respondent and the matter comes up for Admission before the Judge.

Vide Order dated 23rd December, 2016 in the above mentioned case, Justice S.C. Gupte, amongst other things, has succinctly encapsulated the entire essence of the evolution of company law from the erstwhile Companies Act, 1956 to the current Companies Act, 2013 and more importantly the objective for creating the National Company Law Tribunal.
In the words of Justice Gupte: *"One of the objectives sought to be achieved by 2013 Act is to consolidate the entire company law administration and entrust it to a single adjudicatory body as well as appellate forum,*

namely, the National Company Law Tribunal ("NCLT") and National Company Law Appellate Tribunal ("NCLAT")".

The Judge then goes on to deal with the controversy at hand which he describes as *"for operation of Rule 5, the crucial question is, whether or not the petition has been served on the Respondent "as required under Rule 26 of the Companies (Court) Rules, 1959"."*

The Judge then enumerates and interprets the relevant rules of the Court Rules, i.e. Rules 26 to 29, 96 and 98. Rule 26 provides for service of petition, whilst Rule 27 provides for notice of petition. Rule 28 provides for the manner in which service is to be effected on the company, whereas Rule 29 casts the responsibility for all services required to be effected by the Rules or by orders of court or registrar on the petitioner. Rule 96 provides for admission of petition and directions as to advertisement while Rule 98 provides for furnishing a copy of the petition to every contributor or creditor upon payment within 24 hours.

It is further, inter-alia, observed that *"even a cursory reading of these rules makes it clear that the rules treat the two subjects, namely, service of petition and notice of petition, differently. Service of petition implies service on the respondent or other person, as the case may be, of a copy of the petition, whereas notice of the petition connotes notice of the hearing of the petition before the court"*.

While rejecting the submissions of the Respondents, Justice Gupte has interpreted Rule 26 of the Court Rules in the following manner:

i) Firstly, if a petition had to be served on the respondent as well as other persons only as and if the Act or the Rules may require or the Judge or the Registrar may direct, there was no need to make any separate provision for such service in Rule 26. The Act or the Rules or the order of the Judge or the Registrar, would have provided for the same.
ii) Secondly, even the structure of the sentence in Rule 26 providing for such service does not support the interpretation suggested by the Respondents. A correct reading of Rule 26 implies that the requirement of service of petition is provided for in Rule 26 itself.
iii) Thirdly, there is one more circumstance provided in Rule 26 where service of the petition needs to be made, i.e. when a notice of the petition is to be served. The last sentence of Rule 26 provides that when a notice of the petition is to be served on the respondent or any other person then, unless otherwise ordered, a copy of the petition shall also be served.
iv) Fourthly, Rule 26 makes no reference to the order of admission of the petition.

Justice Gupte further observes that Rules 27 and 28 of the Court Rules are very clear that they provide for the requirement of service of the notice of the petition on the respondent company after the petition is admitted and provide for the time and manner of such service. Therefore, the way these Court Rules have been drafted implies that while service of the petition is mandatory on the respondent, notice of the petition on the respondent is obligatory only in the event of admission of the petition.

The said Order also provides clarity on the fact that admitted petitions would have necessarily complied with Rule 26 and therefore, will continue in the High Court. However, pre-admission petitions may or may not have complied with Rule 26. So only those petitions which have not yet been admitted and which have also not complied with Rule 26 of the Court Rules will stand transferred with effect from 15th December, 2016 to the respective benches of the Tribunal.

With this Order, the Hon'ble Bombay High Court has laid to rest the controversy of what constitutes service under Rule 26 and provided great procedural clarity in deciding which are the pending winding up petitions that are to be transferred to the Tribunal and which are the ones to be continued in the High Court.

One hopes that in the days to come, the transition process which itself will have serious challenges, is smoothened and the Tribunal is able to achieve judicial efficiency and speedy disposal of the pending cases.

Class action suits- From a layman's perspective

Saravanan K
General Manager, SEBI
Email: saravanank@sebi.gov.in

Pranjal Jayaswal
Dy. General Manager, SEBI
Email: pranjal@sebi.gov.in

A press news item, in the not so distant past, that the consumer affairs ministry has filed a class action suit in one of the matters under the provisions of the Consumer Protection Act, 1986, signals that there has been an increased activity in regard to consumer protection using class action as a legal tool. It also brings to light that the concept of class action has been gaining popularity. In India, class action suits have been prevalent in the form of representative suits. However, the term "class action" finds place in the company law for the first time in the Companies Act, 2013. In this article an attempt has been made by the authors to elucidate the subject in greater detail.

Background:-

Collective action that derives collective strength paves way for a stronger resolution of disputes and claims. When a set of persons has similar or same grievance(s) against the same defendant then it is much wiser to fight out the grievance(s) collectively. Courts have recognized the principle of *locus standi* i.e., interest in a matter or a standing in a matter in order to include persons who have similar interest in the matter forming the subject matter of a suit. Thus, collective action has been practiced for a long however there is no apparent legal provision supporting such collective suits. On a case to case basis more applicants/ complainants are added to a case on the principles of *locus standi.* In this regard the JJ Irani Committee has touched upon the subject of class action and has advocated class action as one of the changes that should be brought into the companies act. Its recommends read as follows:-

"In case of fraud on the minority by wrongdoers, who are in control and prevent the company itself bringing an action in its own name, derivative actions in respect of such wrong non-ratifiable decisions, have been allowed by courts. Such derivative actions are brought out by shareholder(s) on behalf of the company, and not in their personal capacity (ies), in respect of wrong done to the company. Similarly the principle of

"Class/Representative Action" by one shareholder on behalf of one or more of the shareholders of the same kind have been allowed by courts on the grounds of persons having same locus standi. Though these principles have been upheld by courts on many occasions, these are yet to be reflected in Law. The Committee expresses the need for recognition of these principles."

Considering this gap in law for collective suits, the Companies Act, 2013 aptly provides for what are globally recognized as "class action suits".

What is class action?

As a company secretary it may be sounding important to understand the term class action. As per the webster's dictionary, the term class action means "a lawsuit brought by a representative member of a large group of people on behalf of *all members of the group".* According to the oxford dictionary, the term class action refers to "*A lawsuit filed or defended by an individual acting on behalf of a group"*

Thus, class action suits or class action is nothing but a legal proceeding brought out by a representative on behalf of a large group; apparently the group should have certain similarity or uniformity in terms of the cause of action. It is a common knowledge that only parties to a suit are bound by the verdict given in a law suit. Class actions are exceptions to this. Class actions are also known as "multi district litigation" or "mass tort liigation" where the injuries are the same. The representative plaintiff is called as "named plaintiff "or "lead plaintiff".

Class action suits can be of two varieties namely "opt in and opt out". In the "opt in suits" the class member has to specifically include himself to be bound by the outcome of the decisions of the litigation. In the "opt out suits" the class member has to specifically exclude himself otherwise he will be bound by the decisions of the litigation.

Why class action suits?

Locus standi is an important legal principal in litigations. It is the ability of one to demonstrate to the court sufficient connection to or harm from the action challenged, to support his interest in the case. Generally, Class counsel is appointed by the court who acts as a prosecutor for the class members. Class action developed as a solution to the situation where injury has been suffered by many and all of them may not be in a position to litigate due to economic or other reasons. Further, if courts have to deal with all the litigations separately, it may be consuming much time and other resources of the judiciary.

To those who advocate class action, class action litigation has been a great boon to the rights of the underserved. To its detractors, it has become the bane of American litigation and business. The former contend that millions of the powerless and those of limited resources would otherwise have no means of obtaining relief from the wrongs visited upon them by the two bigs, big government and big business. The latter think of class actions as the essence of a litigation system gone awry, providing little but sumptuous legal fees to lawyers who ultimately have no interest in the needs or wants of the clients they supposedly serve and who do little to advance any legitimate cause.

Class action suits do impose a cost on the business. Primarily, such imposition of cost is the task of legislature by way of imposing taxes or specifying other standards and requirements etc. One theory is that class action suits are a means to shift this task from the legislature to the judiciary. This may be necessitated if for example due to political compulsions legislature may not like to be seen acting directly on the issue. For example in the US tobacco lobby was very powerful and also funded political parties. But huge cost was imposed on its doing the business by damages awarded in class action suits. In this sense, class action suits are also akin to public interest litigation.

Emergence of class action suits and global trends:

The antecedent of modern class action was what modern observers call group litigation where group of people either suing or being sued in action at common law. In many respects, the United States has led the way in the developments in class action litigation. In the 1970s, "rights revolution" in the United States created the statutory frame- work for asserting civil rights, demanding protection from environmental harms, and claiming compensation for losses resulting from anti-consumer business practices. The adoption of a revised federal class action rule in 1966 made it easier for individuals to come forward to claim remedies, including money damages, on behalf of large groups of similarly situated individuals. Rule 23 of Federal Rules of Civil Procedure provides the framework for class action. It specifies prerequisites for class action, defines different types of class actions, certification as class action by the courts, notice to the class members, appointment of class counsels and their remuneration, settlement of class action suits etc. Another interesting trend is that many companies have added clauses into contracts with employees and customers that instead require disputes to go to arbitration.

This revision in federal class action rule made the "opt out class action" the standard option. It essentially means that class action would bind all members of the class except those who chose to opt out. This enhanced the effectiveness of class action suits as it was not required to include all the members of the class in the suit that may run into thousands in some cases. Now it is sufficient that once a suit is certified by the court as a class action suit, it is sufficiently advertised and a class member may opt out if he wishes not to be a part of it. In other words, if someone wishes to proceed with separate litigation he is entitled to do so, provided he gives timely notice to the class counsel or the court that he wishes to opt out. The rules also prescribe the principles for class action suits which are discussed elsewhere in this article.

The class action suits have gained popularity in other countries too. For example, in Australia, the Federal Court of Australia Act was amended in 1992 to introduce "representative proceedings". In the United Kingdom, the Civil Procedure Rules of the Courts of England and Wales was amended in 1999 and have provided for representative actions in limited circumstances.

Similarly, in New Zealand, a group can bring litigation through the action of a representative under the High Court rules. Austrian consumer organizations have brought claims on behalf of hundred or even thousands of consumers. Provincial laws in Canada allow class action, for example Class Proceedings Act, 1992 of Ontario. In Italy, consumer associations can file claims on behalf of groups of consumers to obtain judicial orders against corporations that cause injury or damage to consumers. Dutch law allows associations and foundations to bring collective action on behalf of other persons. Spanish law allows nominated consumer associations to take action to protect the interest of consumers.

Principles in class action suits:-

The Federal Rules of Civil Procedure enacted by the United States of America requires certain pre requisites (principles) for initiating class action suits. The principles are:-

1. **Numerosity**:-

   Numerosity basically means the population of the class. A large number of persons form part of a class. It is also looked at as not merely the number of persons that comprise the class. It may also mean the diversity of the damages. The claims of each individual in the class may be varying and some may be very minimal. Individual claims, though may be small, if aggregated may lead to a big damage and loss to the society. Thus, numerosity not only refers to the number of persons affected in the class but also their heterogeneity in terms of the damages. The decisions, if taken, in individual cases may lead to differing outcomes. In a class action, uniformity in adjudicating the claims can be ensured.

2. **Commonality**:-

   The principle of commonality refers to questions of law or fact common to the class. The facts or question of law should not be so varying rendering a group action impossible.

3. **Typicality**:-

   The claims or defenses of the representative parties are typical of the claims or defences of the class. The principle typicality is similarity of the claims made by the representatives vis a vis other persons of the class. This is similar to the commonality principle discussed above.

4. **Adequacy :-**

   The class or the representative should adequately protect the interest of the class. The interest or the common object may be the same. However, the persons in the class may have differing ways to achieve the goal. It is to be seen whether the counsel to the class action suit is adequate. Care must also be taken to check that the lawyer to a class action suit gains at the cost of the class or the society.

   (https://www.law.yale.edu/system/files/documents/faculty/papers/The_Class_Action_Rule.pdf)

Advantages of class action suits"-

1. **Saving on time and cost**:- Indian judiciary, as such, is flooded with mounting number of litigations. Class action suits will go a long way in saving time of judiciary. Similarly the plaintiffs may also reap the benefits of reduced cost and time on suits.

2. Strength to the suit:- As mentioned elsewhere in this article, individually the claims may not be worth pursuing a legal course. However, if put together, the claims may prove to be substantial and require serious legal attention. Thus, aggregation of claims as it happens in class action suits, will stand to strengthen the suits.

3. Well informed plaintiffs:- Not in all cases do we see that all claimants come forward to file a suit for their losses. Some of the eligible plaintiffs may not even know that they have been cheated or they have a legal right to proceed against the defendants. In such cases well informed plaintiffs can collectively represent their cases in class action suits. Thus, brings justice to others in the class also.

4. Eliminates duplication / multiplication of legal proceedings arising out of the same cause of action.

Some of the provisions of class action suits in India:

Consumer Protection Act, 1986: Section 12 (1)(c) provides that a complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a district forum by one or more consumers, where there are numerous consumers having the same interest, with the permission of district forum, on behalf of or for the benefit of, all consumers so interested.

Companies Act, 2013: Section 245 of the Companies Act, 2013 provides for class action suits by the members or depositors or any class of them before the National Company Law Tribunal (NCLT). The minimum number of depositors or members for making the application is also specified. The act also specifies various orders that can be sought to be passed by NCLT like restraining the company from committing an act which is ultra vires the articles or memorandum of the company or restraining the company from taking action contrary to any resolution passed by the members etc. The act further provides for claiming of damages or compensation or demand any other suitable action from or against the company, directors, auditor, expert, advisor, consultant etc.

The Act further provides the criterion to be considered by the tribunal while considering the applications made under this provision like the member or depositor is acting in good faith in making the application for seeking an order; any evidence before it as to the involvement of any person other than directors or officers of the company, the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section etc.

Some other noteworthy provisions under this section are as follows:

1. Public notice shall be served on admission of the application to all the members or depositors of the class.
2. All similar applications prevalent in any jurisdiction should be consolidated into a single application.
3. The class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;
4. Two class action applications for the same cause of action shall not be allowed;
5. The cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.
6. Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.
7. Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
8. Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

Comparison of class action provisions in India vis a vis provisions in the US

Provisions for class action are provided under specific statues in India for example the Consumer Protection Act or Companies Act as detailed above. However, in US Rule 23 of the Federal Rules of Civil Procedures provides a generic framework for class actions.

A comparative study of the class action provisions in the Companies Act, 2013 vis a vis Rule 23 of Federal Rules of Civil Procedure of the US is provided in the table hereinbelow:-

Subject	Federal Rules of Civil Procedure (USA)	The Companies Act, 2013
Prerequisites and criteria for class action	The provision is generic in nature that can be applied to a variety of situations. It provides prerequisites for class action suits namely numerosity, commonality, typicality and adequacy (detailed elsewhere in this article). Further, for maintaining class action certain other tests are also specified like individual adjudications creating risk of inconsistent judgments, adversely affecting the interest of those not part of the adjudication etc.	The provision is specific as to who can file the class action suits, for what reliefs etc. It provides for class action suits by members or depositors of the company for seeking various orders from NCLT like restraining the company from committing an act which is ultra vires the articles or memorandum of the company. Further, various criteria are also specified for consideration by NCLT before accepting the application like whether the member or depositor is acting in good faith.
Certification order	The court certifies the action as a class action and also define the class and the class claims etc.	NCLT has got the powers to reject the application if it is frivolous or vexatious.
Notice to class members	The court directs a notice to the class members that specifies definition of class, class claims etc. The above notice also states that the court will exclude from the class any member who requests exclusion.	Public notice shall be served on admission of the application to all the members or depositors of the class. Also, all similar applications prevalent in any jurisdiction should be consolidated into a single application. There is no specific provision for exclusion of member/ depositor.
Class counsel and expenses	There is provision for appointment of class counsel by the court. Further, the court may award reasonable attorney fees. Typically, attorneys who represent plaintiffs in class actions—like employees accusing a company of discrimination, or customers claiming a product misled them—are paid a percentage of any money recovered for their clients. The payouts, (which generally averages in US to about 25%) of the collected funds, can be substantial. (REF: http://www.wsj.com/articles/lawyers-class-action-payouts-face-court-challenge-1448650039)	There is no specific provision for appointment of class counsel. However, the tribunal has the power to appoint a lead applicant. The cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.
Settlement or compromise	Rule 23 has a provision for the class action claims to be settled only with the approval of the court. In this regard it is pertinent to note that majority of the class actions are	No corresponding provision in India. However out of the court settlements are not prohibited.

	settled out of court with the approval of the court. As many of the class members are not even plaintiff to the case, hence the settlement has been mandated to be under judicial supervision to ensure protection of their interest.	

Some interesting case laws and conclusion:-

a) **General Motors**:-

In this matter there was a grievance that the GM vehicles had erratic speedometer and gauge readings. A class action suit filed for the following remedies viz.,

- ✓ Replacement of all speedometers on the affected models
- ✓ Reimbursement of expenses met by those who had already paid for making good the old defective speedometer.
- ✓ Reimbursement of fines and additional insurance paid due to the defective instrument.

(Source : Wikipedia)

The suit was allowed by the Supreme Court of US.

b) **Walmart**: Similarly, class action suits as remedy have been used against Walmart by its employees for sex discrimination. Also, class action remedy has been used by the consumers of walmart stores for its discriminating refund policies.

Class action as a remedy appears to have proved useful in other jurisdictions. It is an important provision that has found mention in the new companies act, 2013. Proper use of the remedy would prove useful to various stake holders. An ample effort to create publicity among the investors and other stake holders would go a long way in making the class action attempt on the part of the legislators a grand success. The class action as a remedy may extend its arms to criminal justice system also like the representative suit remedy presently available in the Civil Procedure Code.

Needless to say that good legal brain is needed to take the class action suits to its logical conclusion and needs to be adequately remunerated. How this provision is used for recovering the legal expenses and case law developing in future will be an interesting development to follow. Class Action suits can be used as an effective tool to safeguard corporate governance in India and may gain popularity, if fully utilized by stakeholders, with the passage of time.

Comparison between Bonus issue and Stock split

CS Nrupang Bhumitra Dholakia
Designated Partner of Dholakia & Associates LLP
Email: nrupang@dholakia-associates.com

Many a time Company Secretary is asked by the Company to carry out impact assessment on capital market of Bonus issue and split of share. The underlined purpose is to increase traidng liquidty of shares of the Company in the Capital Market. Stock split is to increase the number of tradeable units by dividing the existing share in the smaller denomination keeping the amount of the share capital in tact (unchanged). Whereas Bonus increases the paid up capital and number of shares. Attempt is made to summarise the important issues concerning Bonus and Share split as under:-

Sr. No.	Particulars	Bonus Issue	Stock Split
1.	Meaning	Where the Company issues new Shares to the existing Shareholders from the Reserves or Securities Premiuim of the Company is called Bonus Issue. (Capitalization of reserves and/or surplus)	Where the Company reduces the face value of shares by which the number of shares increases is called Stock Split. Change in the denomination (higher or lower) of the face value of the shares. It is stated as "sub-division" of shares.
2.	Purpose	To align the accumulated reserves into real paid up share capital. (to bring at optimum level the paid up share capital or capital employed.	To increase the liquidty otherwise illiquid stock or shares.
3.	Governing Provisions	Section 63 of the Companies Act, 2013, Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014. Regulation 29 of the SEBI Listing Regulations. Reporting and Disclosures under Listing Regulations are required.	Section 61 of the Companies Act, 2013, Reporting and Disclosures under Listing Regulations are required. Memorandum and Articles of Association of the Company.
4.	Share Capital	There is increase in the quantum and number of shares.	There is increase in only number of shares. The quantum of share capital remains the same.
5.	Investor friendly	Distribution of wealth of the Company to reward the loyalty of staying with the Company.	Allows small shareholders to share or reap the wealth or beenfit of the progressive company. It may increase the number of shares.
6.	Impact on investor friendly	It increaes the number of shareholders and resultant Networth of the Company. It may enhance complaince level namely BRR, KMPs or CSR etc.	It increases the small number of shareholders and it increses service cost and shareholders activism.

7.	Impact on Financials	The Reserves or Securities Premium Account is debited and the Share Capital is credited.	No Financial Impact.
8.	Taxation	The Cost of Bonus Shares for individual is zero and hence the Capital Gain Tax (as and when Bonus shares sold) is calculated on the baiss of zero cost.	The Cost of Shares remains the same as new shares are not issued.
9.	Individual Shareholding	The quantum of individual shareholding remains the same only number of shares increases.	Individual shareholding increases by number of shares and also quantum of share capital. The percentage of shareholding remains the same. Number of share certificates or balance in demat increases without any change in the aggregate value of the holding.
10.	Market Value	The Market Value of shares decreases initially.	The Market Value of shares decreases initially.
11.	Benefit to Prospective Investors	Retail Investors can purchase the shares at a relatively lower value.	Retail Investors can pruchase the shares at good amount of lower value depending upon the ratio of split.
12.	Dividend	If the Company maintains the same dividend rate then the quantum of dividend increases whereby the shareholders are given more dividend.	Here even if the Dividend rate remains the same, the shareholders receive same amount of dividend as there is no new shares issued.
13.	Company prospects	The prospects of the Company are believed to be good and growing because the Investors think that the Company will maintain the same rate of dividend at increased capital anticipating more revenue and profit.	This aspect is not relevant as the prospects of the Company are not clearly reflected in this case because there is no difference in the dividend or share capital of any financial aspects except the number of shares.
14.	Stamp Duty	Stamp Duty is required to be paid only on the Bonues Shares issued and not on the existing capital.	Stamp Duty is required to be paid on the entire existing share capital.
15.	Share Certificate	New Share Certificates are required to be issued for new shares and existing share certificates continue to be valid.	New Share Certificates are issued in lieu of existing share certificates whereby the existing
16.	Compliances for issue	The Compliances remain the same in both cases. In this case in principal listing approval, timelines, etc is to be complied extra which is not so much as compared to the entire procedure.	The Compliances are the same.

17.	FC GPR	FC GPR is required to be filed in case shares are issued to other than Resident.	FC GPR is not required to be filed. But intimation to RBI advisable to be filed.
18.	Authorised Share Capital	Authorised Share Capital may be required to be increased which can some cost of stamp duty and ROC Fees.	Authorised Share Capital is not required to be increased. Capital clause in the Memorandum and/or Articles of Association is required to be altered as regard to face value of the shares.
19.	Alteration of Memorandum of Association (MOA)	MOA required to be altered only if Authorised Share Capital is required to be increased.	MOA is required to be altered.
20.	Alteration of Articles of Association (AOA)	AOA required to be altered only in case Bonus Issue is not authorised by existing AOA.	AOA required to be altered only in case Stock Split is not auhtorised by existing AOA.
21.	Pre Conditons	There are certain pre conditions which if not satisfied then the Company cannot issue Bonus Shares.	No pre conditions for Stock Split.

Budget V/S Non Performing Assets

CS K. G. Saraf
Saraf & Associates, Practicing Company Secretaries, Mumbai
Email: kamalax_saraf@hotmail.com

A PRELUDE

With the background of week global economic environment particularly attributing to currency devaluation, receding demand all over China, nervousness among foreign financial Institutions witnessing a huge redemption of funds in West Asia owing to Oil price crash, Indian economy appears to be demonstrating a fair resilience of its status. The Budget proposals presented by Shri. Arun Jaitley, Hon. FM in the Parliament on 29th Feb, 2016 has offered an overall boost to the economy as it has turned out to be looking robust. FM while effectively carrying out his budget exercise had all along focused his energy and attention to fiscal consolidation by pegging Deficit Finance at 3.5% of GDP and thus provided stimulus to economy thereby boosting Investor's confidence. The BSE Index has depicted a steady rise ever since the introduction of Finance Bill 2016-17.FII's have started reposing confidence in the Stock Markets leave alone the Domestic Investors.

NON- PERFORMING ASSET (NPA)

Non- performing asset is a loan or lease that does not accomplish its stated principal and interest payments. It is defined as a sanctioned facility towards which the interest and or installments of Loan has remained overdue for prescribed time. An asset including leased asset becomes non- performing when it ceases to generate income for the bank. Banks by and large categorize any commercial loans which are more than 180 days overdue as non-performing asset. In other words, NPA's are asset which is not producing any income.

Pursuant to RBI Circular of July 2014 all Advances where interest and or installment of principal is outstanding for a period exceeding 90 days would be grouped as NPA. The Working Capital facilities whether funded or non- funded if the outstanding balance amount remains continuously in excess of Drawing power or sanctioned limit for 90 days or more it would be classified as Non- performing asset.

Since year 2013-14, with a view to moving towards best international practices and to ensure greater transparency RBI has determined' 90 days overdue' norm for identification of NPA. This is evidenced by RBI framing Guidelines in respect of prudential norms on Income recognition, Asset classification and provisioning relating to Advances and Loans to be complied with in the published accounts. It is imperative to mention at this juncture, that the Banks are statutorily required to classify an Account as NPA only if interest due and charged during any quarter is not serviced fully within 90 days from the end of quarter.

NPA and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has provisions for the banks to take legal course to recover their dues.

Owing to borrowers default in repaying their dues if the account is classified as NPA.

The secured creditors have to issue notice to the borrower giving 60 days to pay the dues. If the dues are not paid the bank can take possession of assets and also can give on lease under The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act. If the bad loan remains NPA for 2 Years, the banks and also resale the same to ARC's (Eg:ARCIL) who appropriate the proceeds towards the loan amount recoverable.

BUDGETARY PROPOSALS

Despite the steep rise in Bank's NPA provisioning the FM has not perturbed much on the most bruised one - State run Bank's NPA positions. Through the Budget proposals, he lent support to State run PSU Banks by sanctioning an insignificant budgetary outlay of Rs. 25000 crore as a funding for Recapitalization of Banks to tide over the NPA crises provisionally. It is needless to state that this sum is too inadequate.

There is a huge liquidity crunch in financing by way of Term Loans and working capital to needy and deserving Industrial business and trade units, Infrastructural and technological enterprises whose growth prospects are sluggish in view of dearth of adequate funds. In fact, prior to introduction of Finance Bill 2016-17 the Corporate Houses were expecting a large sum from Government by way of Recapitalization. The expectation was at least Rs. 35000 crore. But the Finance Minister has allocated and provided only Rs. 25000 crore. However, the FM has assured the Banks that he would provide more funds if needed. A certain school of thought in the financial sector is of the opinion that the big take away from this years' budget exercise is the fact of fiscal consolidation when the Bond markets appear to be very positive for Banks.

FINANCIAL SECTOR REFORMS Vs STRESSED ASSETS

Financial Sector Reforms have always been paramount in the minds of our current policy makers. The Finance Minister in his Budget speech delivered on 29th February, 2016 categorically emphasized that "the strength of the financial sector is dependent upon a strong and well-functioning Banking system. We already have a comprehensive Plan for revamping the Public Sector Banks' INDRADHANUSH which is under implementation. We are now confronted with the problem of Stressed Assets in Public Sector Banks which is the legacy of the past. We are not interfering in lending and personal matters of Banks. The Banks are putting special efforts to effect recoveries with focus on reviving stalled projects".

The aforesaid announcements by FM bring out certain features which if considered will no longer be impediments for Banks' growth. The RBI, the Regulator for Banking Sector would have to supervise and monitor the affairs of State run Banks in so far as tackling the problems of Stressed Asset Management is concerned. Since the Bankruptcy Legislation is now in place, the Banks will hugely benefit out of expediting recovery of overdue Loans from defaulting borrowers.

1. There are two types of Loan Defaulters: Willful Defaulters who wish to avoid repaying their Loans despite the financial condition of the Company or individual promoter being sound or capable of revoking their personal guarantees.

2. Defaulters emanating out of sluggishness or downfall in the business activities or erosion of margins or profit .While willful defaulters persistently default willfully repayment of their legitimate loan installments with an intent to defraud Banks or Financial Institutions, the NPA defaulters are purely the factors followed by fate accomplice. At times in both the cases there are huge outstanding interest too. Eventually if this scenario persist for a long time, despite continuous reminders and follow up, the borrowers refrain from submitting to the lenders the periodical Stock Statements (against Cash Credit facilities), Cash flow Statements, Insurance renewal records and other particulars. The relationship between the Company and Banks gets strained by revelation of borrowers' intentions.

The Government is contemplating to make Public Sector Banks very Competitive over a period of time since formation of a Roadmap for their consolidation is on the anvil. With this pursuit the Government has already begun the process of transformation of Industrial Development Bank of India (IDBI). It is also being contemplated to reduce the stake of Government in IDBI below 50%.

It is quintessential to understand that the true barometer of our economy is the status of State-run Banks. As rightly affirmed by Smt. Arundhati Bhattacharya, Chairperson of SBI, THE LARGEST LENDING BANKER is "the state of Banks is reflection of state of affairs of various sections of economy". Taking a clue from her statement it may said that a prudent budget is one that addresses the issue of State- run PSU Banks.

The Govt. during last year had estimated Rs. 1.8 lakh crore sum of capital to be infused over 4 years to tide over NPA situation and consequently promised an allocation of Rs. 70000 crore.

The Stressed Asset (Bad Loans) more particularly in SBI, have soared phenomenally, while overall NPA's have risen to 11% of the total Loans. With the Corporate Losses mounting further (estimated at Rs. 75000 crore) the NPA's is likely to increase in FY 17.

The standing of the Loan Recovery proceedings appears to be week due to poor and lingering performance of judicial machineries like Debt Recovery Tribunals and Appellate tribunals. The much awaited Bankruptcy Legislation now on the statute books will bring stability in recovery proceedings. The Bankruptcy Code now enacted would facilitate defaulters without judiciary delaying the process inordinately. To accomplish this , a huge infrastructure will have to be put in place which should be cost effective as well as less time consuming, setting aside the Bad Loans piling up further.

The chief Economic Advisor of Central Government Shri. Arvind Subramanian's Report suggests that if the Banks face liquidity crunch to finance Loans, the future of Banks would be vulnerable. The situation if turns cancerous, perhaps may take entire fabric of banking sector to ransom

Prevention is better than Cure .. as the say goes

Banks with the assistance of RBI will have to grapple with additional means of assimilating funds for Recapitalization such as Selling of Assets. It is also imperative to mention here that Banks would be able to generate surplus cash for Loan funding if RBI gives relaxation to reduce Equity Capital of Banks retained by RBI is less than 30% of Banks Balance Sheet size.The heither- to- before accumulated Contingency Fund of RBI estimated at around Rs. 200000 Crore could be partially financed for giving additional Loans to needy and deserving Corporate Borrowers. This may be deemed to be a growth stimulating exercise.

PREVENTION OF BAD DEBTS & RECOVERY OF LOANS

Banks also should explore own resources to recapitalize and prevent formation of Bad Debts in future. It is indeed wise to freeze Bad debts and delink them from Balance Sheets as on a fixed date and set aside them under specially designated ESCROW ACCOUNT confining to recovery measures with all legal remedies. Government's role to act as Guarantor towards Bad Assets would bear fruits.

In addition, the other conventional means of harnessing recoveries and reducing Bad Loans have to be strictly adhered to in order to monitor NPA's in close coordination with Regulator RBI.

PRESCRIPTIONS FOR REDUCING NPAs

The Reserve Bank of India has to seriously make Banks to conform to or stipulate stricter code for lending operations as enumerated below. These measures to monitor NPA's should be closely watched and controlled. They are:

1. Not to encourage or pamper or support Willful Defaulters. Guarantees in terms of Corporate Assets as well as personal assets should be fully enforced during the pendency of Loan in general and after the Loan turns critical. The new legal machinery should be capable of making room for lending Banks to enforce personal guarantees issued by the Promoter Directors and realize the proceeds from out of the sale of properties belonging to the borrower. Provisions for auctioning of properties like land, factories, residential buildings, vehicles, plant and machinery has to be distinctly carved out as a statutory provision. The Banks would have to be treated as preferential creditors with reference to the funding or repayment of loans over the other creditors as these amounts were used for the primary business of the borrower.

2. Restructuring of Banks Board: Inducting professionals with integrity, honesty knowledge and expertise as Directors of PSU Banks. The Board should be able to take judicial decisions in respect of operations of the company and in the best interest of the company. The Board also should be well equipped to deal with crucial matters without any ambiguity. The art of building consensus on important Board decisions must be fully explored or devised.

3. Exercising control and supervision on Borrowing Companies by obtaining DILIGENCE REORT as devised by RBI from the Bank's empanelled Company Secretaries. The PSU Banks invariably call for 6 monthly Reports from the corporate clients who in turn get them from the Internal practising professionals which are often fabricated or window dressed. As a result of such practices the borrowing companies or units enter the realm of probable NPA initially and later after some period translate into Bad Loans. The empaneled Company Secretaries would however issue an impartial Diligence Report which shall be good for all practical purposes to monitor stressed asset. It is also recommended that such a stressed Asset has to be put into test through mechanisms of issuance of diligence Report before finally declaring them as a Non Performing Asset.

4. Ensuring through regular checks and balances system and the Cash flow mechanisms that the Corporate utilize the borrowed funds exclusively for the purpose for which these are borrowed.

5. To gracefully allow restructuring and rescheduling of loans. The plea for deferment of loan repayments requested by borrowers has to be earnestly met. Of course the Banks will have to ensure that they will not turn into Bad loans or risk liquidity. Realistic Repayment of Schedules may be fixed on the basis of Cash flows with borrower. This would go a long way to facilitate prompt payment by the borrowers and thus improve the record of recovery in Advances or Loans.

6. To create necessary charge or securities over the fixed assets and or immovable properties to enable effective and timely enforcement of secured Loans.

CONCLUSION

Banks will have to consistently follow the practice meticulously to ensure monitoring of Bad Loans. Reserve Bank of India as a regulator would discharge its obligations to chalk out policy guidelines to reduce NON PERFORMING ASSET in coordination with the Finance Ministry from time to time. Corporate sector owes a lot of responsibility in timely responding to the concerns of Banks and reciprocate harmoniously so as achieve the desired target. A great deal of effort by various agencies dealing with the financial assistance to borrowers and the professionals help solicited in this regard.

Thus the Banks lives have to change radically in tune with the times so as to sustain long term development.

Prof Techlaw in conversation with Mr. I T. Executive on how visiting a website may lead to a contract

Mr. Subramaniam Vutha
Founder Member, Technology Law Forum
Email: techlawindia@gmail.com

I T Executive: Hi Prof Techlaw! The last time we met, you surprised me by saying that I have entered into at least one electronic contract every time I visit a website.

Prof Techlaw: Yes, that is true. You don't actually sign a contract but your action of accessing the site is enough to prove that you agree to the website terms and conditions.

I T Executive: So that is how the website terms are structured?

Prof. Techlaw: Yes, to form an electronic contract, as for all contracts, you need an "offer" and an "acceptance". You make an offer when you say you will do something [or not do something] in consideration [in exchange] of the other party doing or not doing something.

I T Executive: For example?

Prof Techlaw: Take a 'real life' hypothetical example. You make an 'offer' to a customer of a product [say a pen] when you, [orally or in writing], say that it is available in exchange for Rs.60. The customer may then 'accept' that 'offer' by paying you Rs.60 and taking the pen.

I T Executive: Even without a contract in writing?

Prof: Techlaw: Yes, an 'offer' and an 'acceptance' of that 'offer', may be in writing or made orally. Or even by just taking action.

IT Executive: How does that happen over the Internet?

Prof Techlaw: Take a website, for example. The website [through its 'legal terms' or 'access policy'] says that it will allow you [the visitor to the site] to access the site if you agree to do something [such as registering on the site] or not do something [such as not faking your name].

I T Executive: Is it as simple as that?

Prof Techlaw : Yes, allowing you to access the site is what the website owner does, in exchange for your agreeing to register on the site. And that is enough to make an electronic contract

I T Executive: And the 'acceptance' of the offer?

Prof Techlaw: When you [the visitor to the site] register on the site, you have agreed to the website's terms and conditions by the act of registering on the site. That is your 'acceptance' of the 'offer' made by the site.

I T Executive: I see. But in some cases I do not even register on the site. I simply access the site and use its content or features.

Prof Techlaw: In that case your action of accessing the site and using its content and its features is your 'acceptance' of the website's 'offer'

I T Executive: But I don't see any offer on the site!

Prof Techlaw: Yes, it is right there on the site. Look for the 'access policy' or the 'Terms and Conditions', usually in the form of a link.

I T Executive: What if don't see the link or click on it? But simply go ahead and use the site?

Prof Techlaw: Here I must introduce a small twist to the tale. Actually, the law says that you make an 'offer' to any website when you visit it. And the website accepts the offer by allowing you to access its content and features, subject to the site's 'access policy' or to its 'Terms and conditions'.

I T Executive: What difference does that make?

Prof Techlaw: It simply reverses the roles. You make the 'offer' that the law needs for a valid contract. And the website accepts it subject to its 'access policy' or to the 'Terms and conditions'.

I T Executive: Tell me how.

Prof Techlaw: You 'offer' to visit the site and use its content or features. The website 'accepts' the offer but subject to its 'access policy' or its 'Terms and conditions'. So when you continue to access the site you have agreed to the 'access policy' and to the 'Terms and conditions' that is part of the website's 'acceptance' of your offer.

I T Executive: And the 'electronic contract' is complete even if I don't actually open and read the 'access policy' and/or the 'Terms and conditions'?

Prof Techlaw: Yes

I T Executive: Isn't that strange?

Prof Techlaw: Not at all. There is no other way that web based electronic contracts can work. Otherwise the site would have to either have paper contracts signed by you and the site owner. Or exchange mails with you that contain the 'offer' and 'acceptance' with the 'access policy' and the 'Terms and conditions'.

I T Executive: You are right Prof Techlaw. That wouldn't work. I can see now, how the law makes electronic contracts possible. Thank you. I look forward to meeting you again soon

Prof. Techlaw: Yes, I enjoy the sessions with you too. See you soon.

Companies Act, 2013: Circulars and Notifications

CS Kaushik M. Jhaveri
Kaushik M. Jhaveri & Co., Practicing Company Secretary, Mumbai
Email: kaushikjhaverics@gmail.com

1. **MCA Rule no. G.S.R. 1159(E) dated 20th December, 2016 – Notification regarding the National Company Law Tribunal (Amendment) Rules, 2016.**

   In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the rules further to amend the National Company Law Tribunal Rules, 2016, namely the National Company Law Tribunal (Amendment) Rules, 2016.

   For the complete text of this notification, please refer the link:
   http://www.mca.gov.in/Ministry/pdf/NCLT(Amendment)Rules_21122016.pdf

2. **MCA Circular no. 16/2016 dated 26th December, 2016 – Circular regarding the Removal of names of companies from the Register of Companies – Clarification regarding availability of Form STK on MCA-21 portal.**

   The Ministry of Corporate Affairs ("MCA") has notified the provisions of Sections 248 to 252 of the Companies Act, 2013 and relevant rules thereunder, relating to removal of names of companies from Registrar of Companies. Pursuant to this circular, MCA has clarified that e-Form STK-2 relating to application for removal of company name is under development and the same shall be deployed in some time.

   For the complete text of this notification, please refer the link:
   http://www.mca.gov.in/Ministry/pdf/Gcircular15_08122016.pdf

3. **MCA Rule no. G.S.R. (E) dated 26th December, 2016 – Notification regarding the Companies (Removal of Names of companies from the register of companies) Rules, 2016.**

   In exercise of the powers conferred under sub-sections (1), (2) and (4) of section 248 read with section 469 of the Companies Act, 2013 (18 of 2013), and in supersession of the companies (Central Government) General Rules and Forms, 1956 except in respect things done or omitted to be done before such supersession, the Central Government hereby makes the rules may be called the Companies (Removal of Names of companies from the register of companies) Rules, 2016.

   For the complete text of this notification, please refer the link:
   http://www.mca.gov.in/Ministry/pdf/Rules_28122016.pdf

4. **MCA Rule no. G.S.R...(E) dated 29th December, 2016 – Notification regarding the Companies (Incorporation) 5th Amendment Rules, 2016.**

MCA vide Notification No. G.S.R. …….(E) dated 29th December, 2016, has notified the Companies (Incorporation) Fifth Amendment Rules, 2016 which shall come into force w.e.f. 1st January, 2017. Pursuant to the said notification, the Companies (Incorporation) Rules, 2014, Rule 4, 10, 12 and 38, e-Form INC-7, INC-11 and INC-27 have been amended and Rule 36, Form INC-2 & Form INC-29 have been omitted. Form INC-2 has been discontinued and Form INC-7 shall be used only for incorporation of Part I company and company with more than seven subscribers. The revised version of Form INC -7 will be available on the portal for filing with effect from 15th January, 2017. From now onwards, only SPICe (INC-32) should be used for filing for incorporating OPCs and Companies (with and up to 7 subscribers) and also filing fee for SPICe has been reduced from Rs. 2,000 to Rs. 500 and number of resubmissions have been reduced from 3 times to 2 times.

For the complete text of this notification, please refer the link:
http://www.mca.gov.in/Ministry/pdf/5th_Amendment_Rules_29122016.pdf

5. **MCA Notification S.O. 4167(E) dated 26th December, 2016 – Regarding Commencement of sections 248 to 252 of Companies Act, 2013**

In exercise of the powers conferred by sub-section (3) of Section 1 of the Companies Act, 2013 ("Act") (18 of 2013), the Central Government hereby appoints the 26th December, 2016 as the date on which the provisions of Sections 248 to 252 of the Act shall come into force.

For the complete text of this notification, please refer the link:
http://www.mca.gov.in/Ministry/pdf/Notificatiion_28122016.pdf

Chapters Contact Details

Sr. No.	Chapter name	Chapter In-Charge	Contact No.	Email id of Chapter In-Charge
1	Ahmedabad	Mr. Ketan Bhalgamiya	079-30025334/35	ketan.bhalgamiya@icsi.edu
2	Aurangabad	Mr. Subhash Bappi Sinha	0240-2451124	subhash.sinha@icsi.edu
3	Bhayander	Mr. Salim Ahmed	022-28183888	salim.ahmed@icsi.edu
4	Bhopal	Ms. Amita Malviya	0755-2577139	amita.malviya@icsi.edu
5	Goa	Mr. Vasant Kerkar	0832-2435033	vasant.kerkar@icsi.edu
6	Indore	Mr. Pravin Gupta	0731-4248181	pravin.gupta@icsi.edu
7	Kolhapur	Ms. Archana Sawant	0231-2659498	archana.sawant@icsi.edu
8	Nagpur	Mr. Sudhakar	0712-2453276	sudhakar.aisalwaru@icsi.edu
9	Nashik	Mr. Amit Kumar	0253-2509989	amit.kumar_n@icsi.edu
10	Navi Mumbai	Ms. Lacchmi Bhatt	022-27577816	lachhmi.bhatt@icsi.edu
11	Pune	Mr. Anil Tale	020-24263228/0341	anil.tale@icsi.edu
12	Raipur	Mr. Prafulla Kumar Dash	0771-3267784	prafulla.dash@icsi.edu
13	Rajkot	Mr. Aritra Karmakar	0281-3059646	aritra.karmakar@icsi.edu
14	Surat	Mr. Goutam Karmakar	0261-2463404	goutam.karmakar@icsi.edu
15	Thane	Ms. Kavita Chavan	022-25891333-3793	kavita.chavan@icsi.edu
16	Vadodara	Mr. Amit Kumar Nagar	0265-2331498	amit.nagar@icsi.edu

Disclaimer: