

# FOCUS



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**CS Prakash K Pandya**  
Chairman

**Some people walk in the rain, others just get wet. Roger Miller**

Dear Professional Colleagues,

It's the beginning of monsoon in the Western Region, It is the beginning of yet another new academic year, it is beginning of harvest in some parts of the country and it is the beginning for reaping the harvest in some other parts. The Western India Regional Council under the guidance of new team started its journey five months back and when we look back it is clear and evident that the council has offered ever so many beneficial initiatives for its members. Thanks to all my colleagues in the Regional Council who are heading these committees.

I am happy to inform you that the placement committee of WIRC has organized a Mega Placement Drive with the help of ICSI Head office on May 19 and 20, 2017 at Mumbai. The participants hailing from various states of the region took part in the placement drive. It is satisfying to note that various organizations and institutions which is having national and international representation participated in the Placement Drive to hand pick the needed talent. I must compliment Mr. Atul Juvle, General Counsel, Compliance Officer & Company Secretary- India & South Asia of Schindler India Pvt Ltd spent whole two days guiding the participants on how to face the interview and the guiding on the art of drafting the resume. The participants of the Placement drive later opined that the service provided by CS Juvle helped them in their performance. The selected participants have already joined the organizations. In the coming months we are planning to have a Placement drive for trainees.

PCS undoubtedly is a cardinal arm of profession. Needless to add on this occasion that Company Secretaries are contributors to the nation. By being contributors they are responsible towards the nation. The Western India Regional Council celebrated the PCS Day at Mumbai on Saturday June 17, 2017. The celebration was graced by Shri S P Kumar, ROC-Mumbai, CS Sheela, Joint Director, MCA, Mumbai, CS Makarand Lele, Vice President, The ICSI and many more. As a Chairman of the region and being a PCS it was an emotional moment for me to be a part of the PCS Day Celebrations. During the occasion we felicitated around 50 Senior PCS who have made their mark in the profession. All the members who were felicitated also shared their journey and experience as PCS. But what surprised me the most was the huge presence of young gathering who came to listen to the veterans of the profession.

Dear Students, I am sure that you would have completed your June 2017 examinations and it would have went well. But for you it is time to be active again. ICSI is celebrating July month as Students month and all the regions and chapters are planning for a whole month activities in the month of July. Gear up and approach the nearest chapter or the region and be an active participant in the Student month celebrations. Various competitions like Moot Court, Quiz, Elocution and Essay writing are in pipeline. I request all my dear students to enroll for the same instantaneously.

The talent hunt in WIRC is perpetual and we are always in look out for faculty members and professionals to teach in our Oral Tution Classes and other training programmes. Sharing your knowledge will enable to expand horizons. Those who are keen may feel free to contact WIRO for more details.

I hope by this time you would have registered for the Regional PCS Conference at Vadodara. It is assured that PCS Conference will be rich not only in terms of its contents and substance but also in other professional development initiatives including networking. I am receiving ever so many enquires from different parts of the country for registration which gives a feeling that the Regional PCS Conference will assure a PAN India presence. I compliment the efforts taken by CS Ashish Karodia, Chairman, PCS Committee of ICSI-WIRC and the hardships taken by the office bearers of Vadodara Chapter. I look forward to meet you all at Vadodara.

Similarly the Professional Development Committee (PDC) is planning to organize various workshops by the name 'Master class' of contemporary relevance and I appeal all the members to be an active participants in the Master classes. The PDC(Mumbai Region) under the leadership of CS Hitesh Kothari coined the idea of Knowledge Centres and has started Knowledge Centres in various parts of the Mumbai city viz. Nariman Point, Andheri, Borivali and Dadar. The efforts of CS Hitesh Kothari has really controlled the gap between time and space as members are finding convenient to attend the Professional Development Programmes at such locations which they feel convenient. Though there are many other aspects which I need to share with you time is always a constraint. We are facing some issues with designing and content development of FOCUS and are in search of talents who can help the editorial team. Those members who have a flair and are interested may contact me so that we can help you in taking such assignments. There is an unreasonable delay in releasing the FOCUS edition of this month which I am confident that the editorial team will take utmost care in the coming months. However as the Chairman of WIRC I convey my regrets for the inconvenience caused because of delay in release of FOCUS.

See you with new thoughts and many more opportunities. It is often said that “If opportunity doesn't knock, build a door”

Professionally Yours.

CS Prakash K.Pandya

Chairman

ICSI-WIRC

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**CS Manoj Pansare**  
**Corporate Director-Group Internal Audit**  
**Taj Hotels Resorts and Palaces**

### Corporate Social Responsibility (CSR):

Definition of corporate social responsibility (CSR) as displayed on the Financial Times website: "Movement aimed at encouraging companies to be more aware of the impact of their business on the rest of society, including their own stakeholders and the environment. Corporate social responsibility (CSR) is a business approach that contributes to sustainable development by delivering economic, social and environmental benefits for all stakeholders. CSR is a concept with many definitions and practices. The way it is understood and implemented differs greatly for each company and country. Moreover, CSR is a very broad concept that addresses many and various topics such as human rights, corporate governance, health and safety, environmental effects, working conditions and contribution to economic development. Whatever the definition is, the purpose of CSR is to drive change towards sustainability.

Although some companies may achieve remarkable efforts with unique CSR initiatives, it is difficult to be on the forefront on all aspects of CSR. Considering this, the example below provides good practices on one aspect of CSR – environmental sustainability.  
example:

Unilever is a multinational corporation, in the food and beverage sector, with a comprehensive CSR strategy. The company has been ranked 'Food Industry leader' in the Dow Jones Sustainability World Indexes for the 11 consecutive years and ranked 7th in the 'Global 100 Most Sustainable Corporations in the World'.

One of the major and unique initiatives is the 'sustainable tea' programme. On a partnership-based model with the Rainforest Alliance (an NGO), Unilever aims to source all of its Lipton and PG Tips tea bags from Rainforest Alliance Certified™ farms by 2015. The Rainforest Alliance Certification offers farms a way to differentiate their products as being socially, economically and environmentally sustainable. "

History of CSR in India:

The history of CSR in India has its four phases which run parallel to India's historical development and has resulted in different approaches towards CSR. However the phases are not static and features of each phase may overlap other phases.

### **The first phase**

In the first phase charity and philanthropy were the main drivers of CSR. Culture, religion, family values and tradition and industrialization had an influential effect on CSR. In the pre-industrialization period, which lasted till 1850, wealthy merchants shared a part of their wealth with the wider society by way of setting up temples for a religious cause. Moreover, these merchants helped the society in getting over phases of famine and epidemics by providing food from their godowns and money and thus securing an integral position in the society. With the arrival of colonial rule in India from the 1850s onwards, the approach towards CSR changed. The industrial families of the 19th century such as Tata, Godrej, Bajaj, Modi, Birla, Singhania, Sunkersett, Sassoon, Mehta were strongly inclined towards economic as well as social considerations. However it has been observed that their efforts towards social as well as industrial development were not only driven by selfless and religious motives but also influenced by caste groups and political objectives or studies

### **The second phase**

In the second phase, during the independence movement, there was increased stress on Indian Industrialists to demonstrate their dedication towards the progress of the society. This was when Mahatma Gandhi introduced the notion of "trusteeship", according to which the industry leaders had to manage their wealth so as to benefit the common man. "I desire to end capitalism almost, if not quite, as much as the most advanced socialist. But our methods differ. My theory of trusteeship is no make-shift, certainly no camouflage. I am confident that it will survive all other theories." This was Gandhi's words which highlights his argument towards his concept of "trusteeship". Gandhi's influence put pressure on various Industrialists to act towards building the nation and its socio-economic development. According to Gandhi, Indian companies were supposed to be the "temples of modern India". Under his influence businesses established trusts for schools and colleges and also helped in setting up training and scientific institutions. The operations of the trusts were largely in line with Gandhi's reforms which sought to abolish untouchability, encourage empowerment of women and rural development.

### The third phase

The third phase of CSR (1960–80) had its relation to the element of "mixed economy", emergence of Public Sector Undertakings (PSUs) and laws relating labour and environmental standards. During this period the private sector was forced to take a backseat. The public sector was seen as the prime mover of development. Because of the stringent legal rules and regulations surrounding the activities of the private sector, the period was described as an "era of command and control" or "License Raj". The policy of industrial licensing, high taxes and restrictions on the private sector led to corporate malpractices. This led to enactment of legislation regarding corporate governance, labour and environmental issues. Public sector undertakings were set up by the state to ensure suitable distribution of resources (wealth, food etc.) to the needy. However the public sector was effective only to a certain limited extent. This led to shift of expectation from the public to the private sector and their active involvement in the socio-economic development of the country became absolutely necessary. In 1965 Indian academicians, politicians and businessmen set up a national workshop on CSR aimed at reconciliation. They emphasized upon transparency, social accountability and regular stakeholder dialogues. In spite of such attempts the CSR failed to catch steam. The fourth phase In the fourth phase (1980 – till date) Indian companies started abandoning their traditional engagement with CSR and integrated it into a sustainable business strategy. In the 1990s the first initiation towards globalization and economic liberalization were undertaken. Controls and licensing system were partly done away with which gave a boost to the economy the signs of which are very evident today. Increased growth momentum of the economy helped Indian companies grow rapidly and this made them more willing {Gajare, R.S. (2014). A conceptual study of CSR development in India. In D.B. Patil & D.D. Bhakkad, Redefining Management Practices and Marketing in Modern Age Dhule, India: Atharva Publications (p. 152-154).} and able to contribute towards social cause. Globalization has transformed India into an important destination in terms of production and manufacturing bases of TNCs are concerned.

India is the first country in the world to have mandatory CSR spending (with provisions for exemption) along with mandatory reporting.

With effect from April 1, 2014,

- Every company, private limited or public limited, which either has a net worth of Rs 500 crore or a turnover of Rs 1,000 crore or net profit of Rs 5 crore, needs to spend at least 2% of its average net profit for the immediately preceding three financial years on corporate social responsibility activities.
- Every such company shall give preference to the local areas around it where it operates for spending the amount earmarked for CSR activities
- In case the company fails to spend the stipulated minimum amount, the Board of Directors shall specify the reasons for not spending the amount
- Companies have to set up CSR committees. The CSR Committee of a company will be responsible for (a) formulating its CSR policies (b) recommending the size of expenditures on various activities and (c) monitoring its CSR policy
- The CSR activities should not be undertaken in the normal course of business and must be with respect to any of the activities mentioned in Schedule VII of the 2013 Act. Notable among these are expenditure on education and vocation training, eradication of poverty and hunger, promotion of gender equality and women empowerment and environment sustainability and ecological balance.

According to NSE Quarterly briefing of July 2014 / No.6, while the new CSR regulations will not be a game changer in terms of enhancing overall social spending, the briefing- after assessing their pros and cons-argues that the CSR regulations are a step in right direction. Some quick estimates, Indian companies have to spend upwards of Rs.10,000Cr on CSR in FY 15 and more in subsequent years as the corporate profit grows.

An analysis of the distribution of CSR activities by listed companies for the year 2011 shows that companies typically engaged in activities related to education, health and women empowerment, which together accounted for 70% of all CSR spending

As per study carried out by Mr. Subrata Sarkar, CSR spending as percentage of social expenditure of Central and State Government has reduced from 1.70% to 1.35% for FY 2010 to FY 2012

Please refer below information of CSR spend by few corporates

Thermex Limited: Projects predominantly in the area of education, eight schools, since 2007;

- Infrastructural Leasing & Financial Services Ltd: Capacity building through skill based training programs; livelihood enhancement projects; promoting education including special education; preventive health care; sanitation; conservation of natural resources and rural development projects;
- Infosys: Eradication of hunger and malnutrition, promoting education, art and culture, healthcare, destitute care and rehabilitation, environment sustainability, disaster relief and rural development projects;
- Tata Consultancy Service Limited: Education and skill building; Health and wellness; restoration of heritage sites; environment sustainability; disaster relief;

Rs. Crores

	2015-16	2014-15
<b>Thermex Limited</b>	<b>9.00</b>	<b>10.08</b>
<b>IL&amp;FS</b>	<b>2.53</b>	<b>2.67</b>
<b>Infosys</b>	<b>288.00</b>	<b>243.00</b>
<b>Tata Consultancy Services Limited</b>	<b>294.00</b>	<b>218.42</b>

#### Challenges in implementation of CSR Provisions:

- Identifying appropriate project on sustained basis, this can put a strain on the company's management to search, select, implement and monitor new projects every year, additional administrative cost.
- Possibility of promoters routing monies through CSR activities in trusts and organization which they have interest. Presently no mechanism to monitor such transactions
- Co-ordination among companies in choosing their respective CSR activities giving preference to local areas, formation of formal partnerships or consortiums needs to be set up to achieve better co-ordination

#### Role of Company Secretary for successful implementation of section 135:

- Provide appropriate support to the Board of Directors for formation of CSR Committee, its meeting
- Verification of the calculation amount to be spent for CSR
- To support CSR committee for formulation of the CSR policy and Implementation of the same
- To support CSR committee to form a consortium / pooling of CSR resource
- To help in identifying the project based on the funds available
- To ensure that the funds are spend as decided by the committee
- Alert CSR Committee/ management in case of deviation to the policy / purpose

#### References:

Companies Act 2013

'Social Audit' – A Management Tool for Co-operative Working'- Freer Spreckley

Cannibals with Forks: the Triple Bottom Line of 21 st Century Business - John Elkington

A conceptual study of CSR development in India - Gajare, R.S. (2014).

NSE Quarterly Briefing – July 2014/ No.6 – Chief Contributor: Subrata Sarkar

Chartered Secretary, the Journal for Corporate Professionals

Journal of Business Ethics



**Jagdish Ahuja**  
Company Secretary, Mumbai

## INDIAN INSOLVENCY & BANKRUPTCY REGIME – CHALLENGES AHEAD

### Introduction

- It is heartening to note that Indian economy continue to witness remedial measures for revival of business sentiments one after another and it seems that the present day Government is fully committed to unlock its hidden value. The much awaited Goods and Service Tax Act is already in place with effect from 1st of July. The measures in the recent past such as demonatisation has already flushed black money from the system ushering in an era marked with digitalization. But the readers will appreciate that any discussion on current reforms in India will be incomplete without reference to reforms in the areas of Insolvency and Bankruptcy law.
- Yes you guessed it right. I am referring to the Insolvency And Bankruptcy Code, 2016 which came into force in May 2016. Let me inform you that our Government is fully determined to improve India's Ease of doing business ranking to achieve the distinction of coming in first 50 countries.
- In his Budget Speech 2015-16, Indian Finance Minister Shri Arun Jaitley had identified bankruptcy law reform as a key priority for improving the ease of doing business in India. This was in the backdrop of the criticism around India's current insolvency regime, which is believed to have pulled down India's ranking in the World Bank's Doing Business report, the most recent of which ranks India 136 out of the 189 economies for resolving insolvencies. The BLR Committee Report too highlighted that as per the World Bank Report, the average time to resolve insolvency in 2014 was four years in India, compared to 0.8 years in Singapore and one year in London. In the Budget Speech of 2016-17 too Shri Jaitley announced that a comprehensive "Code on Resolution of Financial Firms" will also be proposed as a Bill to deal with the void that exists with regard to bankruptcy situations in financial firms such as banks, insurance

companies and other financial sector entities. Together with the Draft Bill, such proposed legislation should fill a major systemic vacuum in the area of bankruptcy laws in India.

The current Indian Bankruptcy regime is highly fragmented, borne out of multiple judicial forums resulting in lack of clarity and certainty in jurisdiction. Decisions are often appealed, stayed or overturned by judicial forums having a concurrent or overlapping jurisdiction. Moreover, the pro-revival approach of the judicial systems leads to delays in closure of unviable businesses since the standstill mechanism has been misused by corporate debtors. On the other hand, the Insolvency And Bankruptcy Code, 2016 provides for a specialised forum to oversee all insolvency and liquidation proceedings for individuals, SMEs and corporates.

The Preamble of the Insolvency and Bankruptcy Code describes the basic functions of the Insolvency and Bankruptcy Code as "...to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."

### **What has really worried us in the past few years?**

Is it the rising level of Non-Performing Assets (NPAs) of the Banks and Financial Institutions (FIs)? The answer is yes.

Gross non-performing assets (NPAs), or bad loans, of state owned banks surged 56.4 per cent to Rs 614,872 crore during the 12-month period ended December 2016, and appear set to rise further in the next two quarters with many units, especially in the small and medium sectors, struggling to repay after being hit by the government's decision to withdraw currency notes of Rs 500 and Rs 1,000 denomination. Bad loans now constitute 11 per cent of the gross advances of PSU banks, while total NPAs, including those for public and private banks, were Rs 697,409 crore as of December 2016

Does this rising level of NPAs really pose a problem for us? A recently published write up on NPAs highlighted that there are two major issues concerning NPAs. Firstly, all NPAs are considered mala fide. That is, it is assumed that banks and borrowers had conspired to defraud public money, and they were not sincere in making the business ventures for which the loans were taken a success. However, the willful defaulter and genuine business failure will have to be

treated differently. Secondly, the problem of NPAs requires sober analysis. It has to be understood that unlike in the US where the sub-prime mortgage crisis of 2007-08 – NPA under a different name – brought the big banks down and forced the US Federal Reserve to put in place a humongous bail-out package, in the Indian context the banks have not broken under the burden of NPAs. It seems that NPA resolution is top most priority Agenda for the Government. Recently, SEBI announced that companies pursuing acquisitions as part of resolution plans approved under the Insolvency and Bankruptcy Code (IBC), 2016, would be exempted from open offer obligations typically applied under Indian takeover regulations. Also the RBI's recent announcement to focus on twelve stressed accounts which constitute over 25% of the current gross NPAs, and referring them to the IBC immediately. We now need to wait and watch as to what happens next to these stressed assets with this so called RBIs fast track bankruptcy process which will either see a resolution or liquidation in the next 180 days.

#### Opportunity for professionals (CS/CMA/CA/Lawyers)

Gone are the days when there were hardly any opportunities available for practising professionals like company secretaries and most professionals wanted to explore only employment opportunities. Today, the list of avenues for Practise is infinite and Section 203 of the Companies Act 2013 (mandating compulsory appointment of CS) no more enthuse fresh breed of company secretaries. In fact I have personally witnessed that a number of qualified and experienced middle aged professionals have given up their highly remunerative and white color employment to enter into full time practising as CS/CMA/CA.

One such much talked about avenue is acting as insolvency professional (IP). A recent financial newspaper reported 'Independent insolvency professionals (IPs), are becoming critical for the success of aRs 8-lakh crore recovery initiative.' Thus the readers can imagine the kind of opportunities that will be thrown open for practising professionals.

Now the question is who is eligible to act as IP. As per IBBI ((Insolvency Professionals) Regulations, 2016, the following categories of individuals are eligible for registration as **insolvency professional**:

- (a) Advocates, Chartered Accountants, Company Secretaries and Cost Accountants with 10 years' of post-membership experience (practice or employment) or a Graduate with 15 years' of post-qualification managerial experience, on passing the Limited Insolvency Examination.
- (b) Any other individual on passing the National Insolvency Examination.

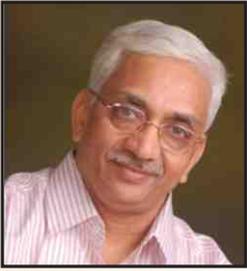
A limited liability partnership, a registered partnership firm and a company may be recognised as an insolvency professional entity if a majority of the partners of the limited liability partnership or registered partnership firm or a majority of the whole-time directors of the company are registered as insolvency professionals under the Code. An insolvency professional may use the organisational resources of a recognised insolvency professional entity subject to the condition that the entity as well as the insolvency professional shall be jointly and severally liable for all acts of omission or commission of its partners or directors as insolvency professionals.

However, the role of IP Professional is very challenging and time bound. Immediately upon his appointment as Interim Resolution Professional (IRP), the management of affairs of Corporate Debtor vests in IRP and the powers of the Board of directors or the partners of corporate debtors stand suspended and exercised by so called IRP. His (IRP) tenure of appointment is 30 days post which a full time Resolution Professional (RP) is appointed. The entire Corporate Insolvency Resolution Process (CIRP) needs to be completed in a time bound manner within 180 days from the date of admission of application. Where the Committee of Creditors approves by 75% voting that the time be extended, the RP shall apply to the Adjudicating Authority (AA) for extension. The AA can extend time limit of CIRP by maximum 90 days but not more than once.

Resolution professionals, a key constituent of bankruptcy proceedings under India's new law, are caught between term loan lenders who want sick companies to be liquidated and working capital lenders who favour restructuring the company. The conflict could well turn out to be a drag on the country's mammoth resolution exercise as most cases may eventually go for liquidation on account of difference of views. The law demands 75% consent of lenders to come to any resolution or restructuring exercise. When this fails, liquidation becomes a fait accompli.

Thus it can be noticed from the above that the role of IPs in the entire CIRP is tight rope walking. The success of IP professionals will largely depend on his practical skill of application of knowledge. So far very few Company Secretaries practice in NCLT matters which is supposed to be a hard core area for us. With the advent of Insolvency and Bankruptcy regime, many aspiring professionals who are otherwise fit for NCLT Practise, will now have an opportunity to make an entry in NCLT. Thus his scope of work is expected to increase by leaps and bound.

inter into this esteemed profession by taking first step of registering for limited insolvency examination conducted by IBBI.



**CS Satish Bhattu**  
Practicing Company Secretary, Mumbai

## Swachha Bharat Mission (SBM) in the context of Industrial activity and Corporate Responsibility and proactive role of Company Secretary in India.

### INTRODUCTION

“Earth provides enough to satisfy every man's needs, but not every man's greed”(Mahatma Gandhi).

Swachh Bharat Abhiyan has become a 'Jan Andolan' receiving tremendous support from the people. Citizens too have turned out in large numbers and pledged for a neat and cleaner India. Taking the broom to sweep the streets, cleaning up the garbage, focusing on sanitation and maintaining a hygienic environment have become a practice after the launch of the Swachh Bharat Abhiyan. People have started to take part and are helping spread the message of 'Cleanliness is next to Godliness.'

During last decade, environmental issues have been receiving increasing attention in all spheres of life, including greater coverage in the media. There is also a growing awareness of the need and importance of involving people actively in the protection of environment and management of the natural resources of their locality. While the disasters, like the Bhopal tragedy and Chernobyl accident, the recent nuclear plant emissions in Japan have heightened the awareness among the general public and the governments as to the grave dangers, the most significant contribution of the nascent environmental movement in India has been to bring into sharp focus the vital connection between growing poverty of vast numbers of marginalised people and the accelerating environmental degradation and the need to involve people especially the affected people actively in the protection and management of the natural resources, especially the Common Property Resources (CPRs), like forests, rivers and grazing lands.

This Article deals with a very important and crucial function of company secretaries and lists out certain practical tips in an endeavor to take advantage of pivotal position in the corporate organization in pushing philanthropic agenda of the nation concerning all the residents of the nation through environmental education which is an integral part of the strategy for ecological development, environmental improvement and protection as well as prevention of environmental degradation. Such an approach becomes a medium and process of creating awareness about man's relationship with his natural as well as social and manmade environment. It should aim at enabling individuals and communities to understand the complex formation of environment that results from interaction of their biological, physical, social, economic and cultural aspects along with knowledge, values, attitudes and skills acquired over the years.

The Earth is the only planet in our solar system that supports life. Rising levels of greenhouse gases are rapidly changing the climate. There is new and stronger evidence that most of the global warming is attributed to human activities. In society there were problems, there are problems and there will be problems. We have to find answers to these problems.

Protection of environment and its limited natural resources has been the confronting situation in the era of competitive industrial development. International and regional communities have time and again tabled their concern at various international forums so as to check and balance the degrading quality of the environment. The conventions, declarations and treaties have been a step forward towards sustainability in developmental approach.

It has been observed that during rampant industrial development, natural resources are extracted at a rate far greater than their capacity to regenerate. Pollutants are pumped back into the natural ecosystems at rates higher than they can be absorbed and cleaned up. The expert estimates on the economic losses usually do not include the losses due to ecological destruction.

The drastic increase in the global population has lead to a situation where the basic requirements of life appear to be far behind the present requirement of the day. To meet the challenge, efforts are made to utilize technologies in hand to achieve high productivity in a sustainable manner.

Environmental protection was perceived by many as an obstacle to development. However, it is now accepted that human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

A basic requirement of any environmental protection system is that it should enter the planning process as early as possible so that its role becomes more one of developing alternatives than of resisting a particular course of action.

In addition to the deteriorating quality of air, water and other components of our environment, the poor lack access to basic amenities, such as food and water, housing, clothing, transport and the myriad other basic needs.

### **INDUSTRIES' CONTRIBUTION TO THE ECONOMIC DEVELOPMENT OF THE COUNTRY**

The industrial sector is one of the main sectors that contribute to the Indian GDP. The country ranks fourteenth in the factory output in the world. The industrial sector is made up of manufacturing, mining and quarrying, and electricity, water supply, and gas sectors. According to International Monetary Fund, World Economic Outlook (October-2016), GDP (nominal) of India in 2016 at current prices is \$2,251 billion. India contributes 2.99% of total world's GDP in exchange rate basis. India shares 17.5 percent of the total world population and 2.4 percent of the world surface area. India is now 7th largest economy of the world.

### **INDUSTRIAL DEVELOPMENT AND INCREASE IN POLLUTION**

Rapid industrialisation in India has not only led to the economic development but on the other hand it has increased pollution of land, water, noise and air.

#### **Air pollution**

It is caused by the presence of poisonous gases such as carbon monoxide, nitrogen-oxides and sulphur oxides. Factories producing paper, bricks, metals and other factories which burn fossils fuels pollute the air. Emissions of poisonous gases by the industries affect the human health, animal plants etc.

### Water pollution

The untreated industrial waste effluents dumped into nearby water bodies like lakes, rivers and sea by the factories lead to water pollution. This polluted water becomes unfit for human use and also for irrigation. It also affects the human life.

### Soil pollution

This is caused by the presence of manmade chemicals or other alteration in the natural soil environment. The incidence of this type is quite common due to leakages from underground tanks storage, application of pesticides, oil and fuel dumping, leaching of wastes from landfills or direct discharge of industrial wastes to the soil.

### Noise pollution

This is caused by the industrial and constructional activities, machinery, factory equipment, generators, etc. Noise pollution can be reduced by efficient machines producing less or no sound. Noise absorbers may also be used. Economic development should be consistent without degrading the environment.

### MEASURES TO CONTROL ENVIRONMENTAL DEGRADATION

India is one of the oldest civilization in the world, with kaleidoscopic variety and rich cultural heritage. To accelerate the efforts to achieve universal sanitation coverage and to put focus on sanitation, the Prime Minister of India launched the Swachh Bharat Mission on 2nd October, 2014. The Swachh Bharat Mission, which aims to achieve Swachh Bharat by 2019, as a fitting tribute to the 150th Birth Anniversary of Mahatma Gandhi.

### Environment and Constitution of India

To protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The Indian Constitution contains specific provisions for environment protection under the chapters of Directive Principles of State Policy and Fundamental Duties.

In Rural Litigation and Entitlement Kendra v State of UP, also known as the Dehradun quarrying case, the Supreme Court for the first time held that the right to wholesome environment is a part of right to life and personal liberty guaranteed under Article 21 of the Constitution. Under Article 48(A) the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51(A) speaks on fundamental duties of all the concerned to protect environment.

### **ROLE OF CORPORATE BODIES THROUGH CSR**

Corporate houses should be encouraged, through push and pull by company secretaries, to participate in the SBM as an essential part of the Corporate Social Responsibility (CSR). There is realisation that a healthy workforce can contribute towards better services for their output.

Company Secretary is a key functionary in the corporate pyramid. With increasing emphasis on the principles of good governance and on compliances, responsibilities of Company Secretary have increased manifold towards safeguarding the interests of all stakeholders.

It is discernible from the above discussion that a Company Secretary has a role to play in Environmental compliance. It is a statutory role and one that should never be overlooked. The Company Secretary today is considered to be part of the “mind” of the Company. The company secretary is a policy maker.

The Company Secretary who is involved in strategic planning within the organisation can influence planning on environmental matters so that the company embraces measures aimed at cleaner production, pollution, control, recycling of wastes, water harvesting and the use of cleaner energy resources in place of hydrocarbons.

The Company can take part in environmental awareness campaigns that corporations launch once in a while. Attendance and contribution at seminars by the Company Secretary may serve to disseminate environmental education both within the company and to the communities which may be affected by the activities of the company. Knowledge of environmental regulations requirements, penalties and compliance measures will certainly come in handy for the Company.

The Company should strive and take part in “sustainable development” this being the development that meets the needs of the present generation without compromising the ability to use the same by future generation.

The air we breathe, the land we walk on, the water we use, the climate, sound, aesthetics and all our surroundings form what is called the environment. We all have a duty to protect, safeguard and enhance the environment. Compliance with all regulations and initiation of measures to conserve the environment is part of the duty of the Company Secretary even as individual element of society.

### CONCLUSIONS AND SUGGESTIONS

Although India has a rich and long history of environmental laws dating back to the 1970s, it still ranks very low on air and water pollution levels compared to the rest of the world resulting in higher rates of infant mortality and lower life expectancy rates. Poor sanitation conditions and sewage problems compound the problem affecting the health of ordinary citizens in India.

The reasons for this disconnect between enlightened environmental laws and high levels of pollution could be traced to lax enforcement of existing environmental laws, discrepancies in the environmental guidelines for businesses to follow between the central government and at the state levels, and the existence of a large number of SMEs who neither have the resources nor the technical skills to adhere to the existing environmental laws.

Every year people all over celebrate World Environment Day, with plans in mind to save earth and the environment. But sometimes we need to ask ourselves: will we really execute our plans? The existence of nature is the proof of our own existence and everybody appreciates the existence of water, forest, animals, flora and fauna, but unfortunately these can be misused and end up being harmed. The environment is polluted by various things such as radioactive elements, plastics, sewage, domestic waste and industrial pollution.

Nobody is a perfect environmentalist, however, together we can take some honest steps to reduce the amount of resources consumed and waste that is generated.

The target groups can be persuaded to take into consideration following suggestions and make it a habit to help achieve the SBM and preserve scarce resources and protect the planet and go green to save our environment!

1. We can reduce the water wastage by:-

- Reducing the bathing time
- Install a low-flow showerhead
- Turn off the water in the sink while shaving or brushing your teeth
- Shift to low flow model to save water with each flush
- Fix leaking pipes
- Wherever possible, try not to use water as a cleaning solution. Baking Soda and Vinegar can work just as well as other cleaning products.
- Install aeration nozzles on all taps

Water conservation is very necessary as a lot of energy is required to pump water from the river into our home.

2. Unplug chargers, turn off lights and appliances not in use like computers, laptops and phones when you leave for the day.

3. Replace regular light bulbs in your home with compact fluorescent bulbs (CFL)

4. Join the car pool or public transportation to save fuel and its cost.

5. Avoid using disposable cup or coffee mug at work in order to save space in the landfill and energy. You can bring your own ceramic cup or coffee mug to work.

6. When you make purchases, try to opt for the brands that use recyclable packaging.

7. Bring your meal in a reusable container and don't buy an additional plastic container for it. Don't generate waste with a plastic fork and plastic takeout container. Use a reusable container if bringing in lunch from home.

8. Start a recycling program in your home, office or community.

9. Start paying your bills online and ask companies to stop paper bills from being sent to you. Print and copy on both sides of the paper. It helps to save paper and trees.

10. Use reusable grocery bags rather than plastic bags

11. Get your IT equipment like computers, laptop, printer and phones recycled or decomposed in order to reduce related air pollution and water pollution. It can take a million years to decompose.

12. Use a more eco-friendly disposable or cloth in place of nappy of the child as it adds million tons of waste in landfills each year.
13. Recycle newspaper, bows and gift bags by reusing them. We can also create something unique by using old newspaper and cloth.
14. Instead of purchasing a plastic water bottle, buy an appropriate reusable container. A plastic bottle takes thousands of years to decompose and because it's not recycled or biodegradable.
15. Plant a tree to reduce air pollution as shady landscape enhances the value of the property and reduce the energy consumption
16. Put the cruise control button on your car to work as you can get better mileage. With increasing gasoline prices, this is a boon for your budget and the environment too.
17. We can save about 10% of your energy use by adjusting your thermostat in winter and summer.
18. Try to get your phone recycled as it introduces very harmful and toxic substances into the environment and go into landfills.
19. Maintain the vehicle by regularly checking the air filter and giving it a clean flow. This will help your car more efficiently. It's also important to inflate your tyres to a specific pressure as it reduces tyre-wear and helps the fuel economy.
20. You can conserve energy in your home by
  - Setting your freezer temperature 0-5 or refrigerator temperature at 36-38
  - Minimising door opening while using the oven
  - Avoid using chemicals to clean your home, use a microfiber cloth
21. Buy wooden toys instead of throwaway plastic toys
22. Take the stairs instead of using lifts.



**Advocate Sumit Agrawal**  
Partner, Suvan Law Advisors

## **SECURITIES LAW UPDATES – SEBI, SAT AND EXCHANGES**

### **SEBI directs Depositories to record Non Disposal Undertakings of Shareholders**

In order to enable the shareholders to record the Non Disposal Undertakings (“NDUs”) in the depository system, Securities and Exchange Board of India (“SEBI”) vide its circular dated June 14, 2017, has directed the depositories to record NDUs in the depository system. NDUs are undertakings given by the shareholder not to transfer or otherwise alienate the securities and are in the nature of negative lien given in favour of another party. Currently, there is no framework to capture the details of NDUs in the depository system since the same happens outside the depository system. Accordingly, SEBI has directed the depositories to develop a separate module/transaction type in their system for recording NDUs reported by Beneficial Owners (“BO”) by way of making an application through the depository participant. The application for the NDU shall include the details of the BO's ID, PAN, e-mail ID, signatures, name of the entity in whose favour such NDU is entered and the quantity of securities. The depositories shall further make suitable provisions for capturing the details of BO ID and PAN of the entity in whose favor such NDU is entered by the participant. Also, the depositories have been directed to make the necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the directions.

### **SEBI allows Options Trading in Commodity Futures**

By its circular dated June 13, 2017, SEBI has stipulated necessary guidelines with regard to product design and risk management framework to be adopted by Commodity Derivative Exchanges for trading in options on commodity futures. The Circular provides that options would be permitted for trading on an Exchange only of those commodity futures as underlying, which are traded on its platform and satisfy the following two criteria i.e. (i) the underlying 'futures contracts' on the corresponding commodity is amongst the top five futures contracts in terms of total trading turnover value of previous 12 months and (ii) the average daily turnover of underlying futures contracts of the corresponding commodity during the previous 12 months is at least INR 200 crore for agricultural and agri-processed commodities, and INR 1000 crore for other commodities. Also, the Exchanges willing to start trading in options contracts should take

prior approval of SEBI and have been further directed to amend their bye-laws, rules and regulations to bring the provisions of the Circular to the notice of the members of the Exchange. Exchange shall also communicate to SEBI about the status of the implementation of the provisions of the Circular.

### **SEBI allows Category III AIFs to invest in Commodity Derivatives**

In another significant move towards development of commodity derivatives market in India, SEBI vide its circular June 21, 2017 has allowed Category-III Alternative Investment Funds (“AIFs”) to participate in the commodity derivatives market, thus opening up the market to institutional investors for the first time. The move is expected to bring in much desired liquidity in commodity derivatives markets and will further improve the quality of price discovery, thereby leading to better price risk management. AIFs may now participate in all commodity derivative products as 'clients' and will be subject to all SEBI and Exchanges rules, regulations and instructions as may be applicable to clients. Further, they shall be subject to the reporting requirements as specified by SEBI and to the provisions of SEBI (Alternative Investment Funds) Regulations, 2012. Also, they will not be allowed to invest more than 10% of the investable funds in one underlying commodity. However, these AIFs will be allowed to leverage or borrow subject to consent from the investors in the fund and subject to a maximum limit, as specified by the SEBI from time to time.

### **SEBI relaxes norms for restructuring of distressed companies**

With a view to facilitate turnaround of listed companies in distress, SEBI in its Board Meeting dated June 21, 2017 has decided to extend the relaxations from preferential issue requirements under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and from mandatory open offer obligations under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”) as already provided to lenders undertaking restructuring of stressed listed entities through Strategic Debt Restructuring (“SDR”) scheme to the new investors acquiring shares in such distressed companies pursuant to SDR schemes. However, the said exemption is subject to certain conditions like approval by the shareholders of the companies by special resolution and lock-in of their shareholding for a minimum period of 3 years. Further, it has also been decided to extend the said relaxations to the lenders under other restructuring schemes undertaken in accordance with guidelines of Reserve Bank of India.

Additionally, SEBI has also approved the proposal to provide exemption from open offer obligations, under Takeover Regulations, 2011, for acquisitions pursuant to resolution plans approved by National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016.

### **SEBI's clarification on Lock-In period of Unlisted Compulsory Convertible Debentures**

SEBI vide its guidance note dated June 7, 2017, has provided clarity on the regulatory requirement with respect to issuance of Compulsory Convertible Debentures ("CCDs") on preferential basis. The clarification had been sought by M/S. PC Jeweller Ltd. on applicability of Regulation 78(6) of SEBI (Issue of Capital and Debentures) Regulations, 2009 ("ICDR Regulations") on allotment of unlisted CCDs. In terms of Regulation 78(6) of the ICDR Regulations, the entire pre-preferential allotment shareholding of allottees, if any, shall be locked in from the relevant date upto period of six months from the date of the trading approval. However, in the backdrop of the clarification sought, SEBI has explained that "where the requirement of trading approval is not applicable to the convertible (i.e. where the holder of the CCDs do not intend to list the CCDs within 18 months from the date of allotment), lock-in period shall commence from the relevant date and end on the expiry of six months from the date of allotment of the CCDs".

### **SEBI modifies norms relating to Investor Protection Fund at National Commodity Derivatives Exchanges**

SEBI vide its circular dated June 13, 2017, has modified certain clauses of its previous circular dated September 26, 2016 relating to Investor Protection Fund applicable to the National Commodity Derivatives Exchanges ("Exchange"). The circular mandates the Exchange to set up Investor Protection Fund ("IPF") and Investor Service Fund ("ISF") from July 1, 2017. The investor's claim arising out of a default of a broker/member of the Exchange shall be eligible for compensation from IPF. The funds in IPF shall be credited from all the penalties levied and collected by the Exchange, except for the settlement related penalties (including penalties from delivery default). Also, 1% of the turnover fee charged by the Exchange from its members/brokers or INR 10 lakh, whichever is higher, in a financial year shall be contributed to IPF. However, for deciding the compensation limit, Exchange is free to fix suitable compensation limits in consultation with IPF Trust provided that the amount of compensation available against a single claim of an investor arising out of defaulter by a member broker shall not be less than INR 1 lakh. In addition to above, the circular further provides for determination of legitimate claims, disbursement of claims and utilization of income from IPF. Besides, SEBI also mandated Exchange to set up ISF for providing basic minimum facilities at various Investor Service Centre.

### **SEBI issues revised framework for Margin Trading Facility**

By its circular dated June 13, 2017, SEBI has prescribed the revised framework for margin trading facility provided by stock brokers to their clients. Under the new framework, the Group I securities, as per SEBI Master Circular dated December 16, 2016, shall now be eligible for margin trading facility. Further, the stock brokers will be required to ensure that Collateral Stocks and Funded Stocks are identifiable separately and are marked to market on daily basis. Also, it prescribes for a minimum net worth requirement of INR 3 crore to be eligible to offer

margin trading facility and stock broker shall compulsorily submit a half yearly certificate from an auditor to the stock exchange for confirming the net worth. The total indebtedness of a stock broker shall not exceed 5 times of its net worth. The stock broker is permitted to use own funds or borrow funds only from scheduled commercial banks or Non-Banking Financial Companies regulated by Reserve Bank of India and not from any other source. The circular further mandates the stock broker to maintain all the necessary records, take adequate care and exercise due diligence before providing margin trading facility to any client. According to the circular, the stock exchange are required to make necessary amendments to their relevant bye-laws, rules and regulation for the implementation of the circular.

### **BSE implements S+ Framework for monitoring of securities**

SEBI and the Exchanges in order to enhance market integrity and safeguard interest of the investors, have been introducing various enhanced surveillance measure like periodic call auction, transfer of securities to Trade-to-Trade (TT) category and Graded Surveillance Measures (GSM) etc. The objectives of these surveillance measures are to enhance the market integrity and safeguard the interest of the investors.

In continuance with the surveillance measures already implemented, the Bombay Stock Exchange ("BSE") vide its Notice No. 20170607-24 dated June 07, 2017, introduced an additional surveillance measure called "S+ Framework" for enhanced monitoring of securities exclusively listed/traded on main board of BSE and which are not a part of GSM framework and witness abnormal price rise despite having poor fundamentals. It was also stated that the securities under the S+ Framework shall be placed in a separate group i.e. "SS" (Securities being settled on normal rolling basis) and/or "ST" (Securities being settled on trade to trade basis) and this action has been initiated w.e.f. June 14, 2017.

The said Notice also advises the members to exercise additional due diligence while trading in these securities either on own account or on behalf of their client.

### **SAT Order holds Director responsible for CIS Violation**

On June 22, 2017 SAT passed Order against Nirmal Singh Bhangoo, a past director of PACL Ltd. for floating Collective Investment Scheme ('CIS') without obtaining registration. The Appellant was aggrieved by the Order passed by the WTM of SEBI on August 22, 2014 vide which PACL Ltd. and its present and past directors including the Appellant have been held guilty of running CIS in contravention of SEBI (Collective Investment Scheme) Regulations, 1999 ("CIS Regulations").

The Appellant was a director of PACL Ltd. during the period from 3rd June, 1996 to 3rd February, 1998 and during this period PACL Ltd. had floated certain schemes under which amounts were collected from the investors with promised returns. Even after the Appellant's tenure as director of PACL Ltd., various schemes were floated by PACL Ltd. and huge amounts

were collected. In the present appeal, the Appellant contended that he ceased to be director of PACL Ltd. even before the CIS Regulations came into force and therefore the Appellant could not be said to have violated CIS Regulations. The Hon'ble Tribunal observed that PACL Ltd. and its directors including the Appellant have violated Section 12(1B) of the SEBI Act which was in effect during the tenure of the Appellant. It was also observed that PACL Ltd. and its directors failed to register the new schemes under CIS Regulations.

Therefore, after considering the submissions made by both the parties, the Tribunal held that the Appellant has violated Section 12(1B) of SEBI Act for floating CIS without registration of the scheme.

### **SEBI Exonerates Directors for Non-Payment of Dividend**

SEBI after receiving several complaints from the investors of Zylog, it was found that the Company had declared dividends to its shareholders and the same was approved in the AGM. However, the Company failed to pay the dividends declared by it. The Company submitted that they have not been able to pay the dividend to the shareholders due to strain on liquidity position of the company. SEBI issued Show Cause Notice ('SCN') to the directors of Zylog alleging that they have failed to comply with the obligations and duties as required under Section 205(1A) and 207 of the Companies Act, 1956 by not paying the declared dividends to its investors.

In response to the said SCN, Mr. S. Rajagopal & Mr. V. K. Ramani ('Noticees/the Independent Directors') submitted that the non-payment of dividend occurred at the company's administrative level without their knowledge and consent. The Noticees also submitted that they have acted promptly and diligently and have resigned from the company immediately after the said board meeting.

In the present case, it was noted in the SEBI Order that the Noticees have taken strong stand to convince the Board to pay the dividends without delay and as the company failed to comply, the two Noticees resigned from the Board. Therefore, no direction was passed against the Noticees and the SCN was disposed of accordingly.

### **SAT directs SEBI to pass a fresh Order against a Director**

SAT on June 20, 2017 passed an Order in the matter of GirishchandraMukundramBaluni in the scrip of M/s Neesa Technologies Ltd. The Appellant was aggrieved by the Order passed by the WTM of SEBI dated June 2, 2016 vide which M/s Neesa Technologies Ltd. (the "Company") and its Directors, including the Appellant, were directed to refund jointly and severally the monies collected by means of NCDs issued by the Company and restrained them from dealing in securities for 4 years.

In the present appeal, the Appellant submitted that he was a Director of the Company from September 12, 2011 – April 24, 2012 after which he was again appointed as Director from

January 21, 2014 to March 30, 2014 and did not participate in the meeting wherein decision to issue NCDs was taken. The Appellant further submitted that he was not holding the position of a Director when the said NCDs were issued and monies were collected. The learned counsel for the Appellant further argued that Hon'ble SAT, in the case of a similarly placed Director (Shri NimainCharanBiswal), had remanded the matter to SEBI to pass a fresh order and SEBI vide its order dated September 7, 2016 held that Shri NimainBiswal was not liable for the violations committed by the Company and certain Directors because he was not a Director when the NCDs were issued.

The Hon'ble Tribunal held that the WTM Order didn't state whether the appellant has been found guilty on account of his role as Director during earlier period or subsequent to his joining and hence directed SEBI to consider the matter afresh and pass fresh order on merit.

#### **APPOINTMENTS/ APPLICATIONS:**

VikramLimaye appointed as new MD & CEO of NSE

On June 9, 2017, SEBI has approved the appointment of Mr. VikramLimaye as MD and CEO of the National Stock Exchange of India Limited ("NSE"), subject inter alia to his being relieved from his current BCCI (COA) assignment. The appointment will take effect from the date of his joining. Mr. VikramLimaye is currently serving on the Supreme Court appointed administrator's panel of the BCCI and will approach the Supreme Court in July to seek permission for relief from the said position.

Applications invited for the Post of Executive Directors of SEBI on contract/deputation SEBIvide notificationdated June 17, 2017 has invited applications for filling up of 2 posts of Executive Directors, one General and one Legal on contract / deputation basis. The appointments will be for an initial period of 3 years. The applications were invited latest by July 07, 2017.

#### **SEBI appointed two new Executive Directors from internal staff**

Pursuant to the recently amended appointment rules for Executive Directors ("EDs") for more recruitment from internal staff, SEBI has promoted two of its employees Shri Nagendra Parekh and Shri Amarjeet Singh to the post of ED. Shri NagendraaParakh and Shri Amarjeet Singh both took charge as ED, SEBI on June 22, 2017 (PR No.:39/2017 and PR No.:40/2017). Shri Amarjeet Singh will look after the departments of Market Intermediaries Regulation and Supervision Department (MIRSD), Department of Economic and Policy Analysis (DEPA) and National Institute of Securities Market (NISM). Shri NagendraaParakh will look after the departments of Integrated Surveillance Department (ISD) and Information Technology Department (ITD).



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