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INTERVIEW WITH
RITESH AGARWAL

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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1. Meeting of ICSI delegation with Private Secretary to Minister of State for Law, Justice & Corporate Affairs – CS Makarand Lele presenting a planter to Abhinav Gupta (Private Secretary to Ministrer of State for Law, Justice & Corporate Affairs). Others standing from Left: CS Ahalada Rao V. and CS (Dr.)Shyam Agrawal.
2. Meeting of ICSI delegation with Director, National Legal Services Authority - CS Ahalada Rao V. and CS(Dr.) Shyam Agrawal presenting a planter to Surinder S. Rathi (Director, NALSA).
3. Meeting of ICSI delegation with Member Secretary, NALSA- CS(Dr.) Shyam Agrawal and CS Ahalada Rao V. presenting a planter to Alok Agrawal (Member Secretary, NALSA).
4. SIRC – Bengaluru Chapter - Full-day Joint Conference on New Companies (Amendment) Act and Kotak Committee Recommendations on Corporate Governance – On the dais from Left: CS Gaurav Pingle, Ms. Shilpa Viswanathan (Partner, KSR & Co LLP Company Secretaries, Coimbatore), CS Thirupal Gorige, Chief Guest M.R. Bhat (RD - SE Region, MCA), CS (Dr.) K.S. Ravichandran (Managing Partner, KSR & Co LLP, Company Secretaries, Coimbatore) and Guest of Honour CS Makarand Lele.
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6. Meeting of ICSI delegation with President, CII – Group Photo – Standing among others: Shobana Kamineni (President, CII, *4th from Left*) and CS Makarand Lele.

7. NIRC - One day Seminar on IBC becoming Industrial Blood Cells (Insolvency and Bankruptcy Code, 2016) - Sitting on the dais from Left: CS Satwinder Singh, A.I.S. Cheema (Member (Judicial), NCLAT), Justice S. J. Mukhopadhaya (Chairperson, NCLAT), Balvinder Singh (Member (Technical), NCLAT) and CS Pradeep Debnath.
8. NIRC - One day Seminar on IBC becoming Industrial Blood Cells (Insolvency and Bankruptcy Code, 2016) - Sitting on dais from Left: Vipul Ganda (Advocate & Joint Secretary, NCLT & AT Bar Association), CA Sajeve Deora (Registered Insolvency Professional & Director, Integrated Capital Services Limited (ICSL)), Sanjeev Krishan (Leader, Transaction Services and Private Equity, PwC), CS S.P. Arora (Managing Director, Tourism Finance Corporation of India Ltd.), Anshul Jain (Partner, Luthra & Luthra) and CS Shariq Malik (VP & Company Secretary, Assets Care & Reconstruction Enterprise Ltd (ACRE)).
9. Launch of CS Touch App by CS Makarand Lele.
10. ICSI CCGRT - Meeting of Task Force on Educational Course on Valuation - Group photo of dignitaries.
11. Investor Awareness & Orientation Programme for nodal officers held at KIIMS Auditorium, KIIT University, Bhubaneswar- Gyaneshwar Kumar Singh (Joint Secretary, Ministry of Corporate Affairs and Chief Executive Officer, IEPF Authority) addressing the gathering.
12. Celebration of 45th Foundation day of the Chapter - CS Makarand Lele addressing on the occasion.
13. WIRC – Pune Chapter - Celebration of 45th Foundation day of the Chapter – Standing from Left: CS Rohit Gokhale, CS Shilpa Dixit, CS Makarand Lele , CS Omkar Deosthale and CS Devendra Deshpande.

14. WIRC – Ahmedabad Chapter - Two-days Residential Seminar on Economy Governance By Governance Professionals - Sitting on the dais from Left: Suresh Patel (Faculty of the Seminar), CS Ankur Shah, CS Makarand Lele, CS Ashish Doshi, CS Chetal Patel and CS Vatan Brahambhatt.
15. WIRC – Pune Chapter - Seminar on Environment Laws, RERA & IBC.
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17. Professional Development Programme organised by Coimbatore Chapter of ICSI- Sitting on the dais from Left: CS A R Ramasubramania Raja, CS Ahalada Rao V., CS Makarand Lele, CS Ramakrishna Gupta R & CS N Singaravel.
18. SIRC - Bengaluru Chapter - Study Circle Meeting on Impact of GST on Business Practices and Economy - Sitting on the dais from Left: D.P. Prakash (Deputy Commissioner, Commercial Taxes Department, Govt. of Karnataka), B.V.Ravi (Additional Commissioner, Commercial Taxes Department, Govt. of Karnataka), CS Gopalakrishna Hegde and CS Pradeep B Kulkarni.

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"Always be open to new beginnings. To the Universe, Every moment is the start of the next big thing in your life."

Dear Professional Colleagues,

The month of April has extraordinary significance as regards the calendar of 12 months is concerned. The month not only marks the onset of spring, the budding of new leaves, the change of season and weather but for the professionals and the corporates in the Indian mainland, it marks the beginning of an altogether new financial year; an opportunity to set new benchmarks, to set unachievable goals and most importantly strive as hard as possible to achieve them...

It's been almost two months since I have assumed this seat and believe me when I say that, the journey until yet has been quite scintillating. Every meeting, be it with corporate honchos, political bureaucrats, fellow members or the students, all of them leave me bedazzled, for it is these meetings that provide for the right insight into the thoughts of the stakeholders, giving the much needed peep into their expectations from what I would refer to as the ICSI family and more so the path that may be followed to achieve our own Vision for 2022.

Keeping in sight the host of achievements of the Institute in enhancing not just corporate but national governance as well, many a times, at a variety of forums, it is deliberated as to what role the Institute intends to play henceforth. For many may think that the Institute has fully utilized its capabilities, treaded into untreaded areas, reached pinnacles, so…. *What Next???*

It is this question that aptly finds its reply in a crisply worded statement of Thomas Edison, the man credited for the invention of light bulb,

"When you have exhausted all possibilities, remember this: You haven't."

It gives me immense pleasure and pride as the Institute and all its members and stakeholders stand together to welcome the decision of the SEBI Board regarding acceptance of the recommendations of the Kotak Committee on Corporate Governance, both with and without modifications.

Accepting 65 out of 80 recommendations, the SEBI Board has unleashed a new lease of life into the existing SEBI (LODR) Regulations, 2015. Having actively participated in the meetings of the Committee as well as in the preparation of the Report to be presented to SEBI, the ICSI feels proud of gaining further significance with the acceptance of the recommendation pertaining specifically to the profession of Company Secretaries has been a matter of exhilaration, both as a professional undertaking the activities and as a corporate saviour, forever valuing and enhancing the role of good governance in the Indian corporate mainstream. While on one hand the Secretarial Audit has been extended to all listed entities and their material unlisted subsidiaries, on the other the very ambit of this recommendation, once incorporated, shall enhance by leaps and bounds keeping in sight the altered definition of material subsidiaries themselves.

Talking of possibilities, the ICSI of today does not stand alone. Rather, it stands tall with its two wholly owned subsidiaries; both of which shall while opening new arenas of activity for its members and stakeholders provide an array of opportunities which until a few years back could not even have been fathomed. The ICSI Institute of Insolvency Professionals (ICSI-IIP – Formerly known as the Insolvency Professional Agency) and the ICSI Registered Valuers Organisation (ICSI-RVO) have taken to two distinctive areas of professional and business activity and are intending to achieve milestones as

far as professional capacity building is concerned.

The recent change of name of the ICSI-IPA to ICSI IIP may not be seen as a simple clerical or a mere-on-paper activity but a revolutionary transformation of sorts. The organization is moving ahead to portray its role as a full-fledged Institute dedicated to the task of developing Insolvency Professionals. At the same time, the new kid on the block, the ICSI-RVO is taking baby steps, making its presence felt and very soon opening its doors to the nation for registrations to become 'Valuer Members'. Once set in motion, the RVO shall provide the Indian corporate society with professionals skilled and proficient in the valuation of one of the most noteworthy assets for a corporate, its securities and financial assets; assets, the valuation of which plays the most significant role as deal-maker or deal-breaker, assets which hold a momentous position in the balance sheets of the companies, irrespective of their structure and size...

Placing our hands back on our foundation again, the modern-day Company Secretaries have rightly taken up the role of 'corporate saviours'. Saviours of corporate fortune, saviour from corporate disaster arising out of non-compliance, saviour of efficient Board processes, saviour as regards stakeholders, acting as their representative, saviour as regards Independent Directors of the Board, saviour as regards the shareholders' rights, saviour as regards compliance and governance... the list is seemingly endless.

It is towards this league of 'saviours', that the ICSI has always wholeheartedly focused its energies upon. The year ahead shall see an extension and enhancement in the same as the Institute gears up to perform multiplicity of tasks, undertaking multifarious activities including but not limited to pursuing domain skilling for identified industry segments, encouraging functioning of Company Secretaries in multi-disciplinary mode, identifying CS role models, defining and standardising practice processes for NCLT, Insolvency, etc.

The variety of initiatives planned, remind me of the upcoming **19th PCS Conference** on the **18th and 19th of May, 2018** at **Mumbai**. Keeping in sight the legacy of the event, the focus of this Golden Jubilee year's Conference shall be on various significant facets of the practising side of the profession, the upcoming opportunities, the issues facing and nonetheless the road ahead. While the theme and other details of one of the biggest events of the ICSI Calendar shall be shared with you soon, I urge upon you all to block your dates well in advance and make this event a grand success.

The month gone by....

Events ranging from symposiums and conferences marked the previous month, most of which were spotlighted on various aspects of Company Law; ranging from the Companies Act, 2013, Companies Amendment Act, 2017, the draft rules, ease of doing business to deliberating the recommendations of the Kotak Committee on Corporate Governance, have all been enlightening and encouraging of the road ahead.

The launch of the **CS Touch App** making available this very journal at a single touch lines up in the league of ICSI achievements quite magnificently. An App which could be rightly termed as 'transformatory' shall very soon witness a variety of new additions to it. The meeting with CII President Ms. Shobana Kamineni, President, CII and Shri Abhinav Gupta, Private Secretary to Minister of State for Law, Justice & Corporate Affairs on two different occasions provided an insight as to the expectations being held from the Institute and its members, both by the Industry and the Ministry.

As far as the upcoming brigade or the future of the Institute, *i.e.*, the students is concerned, the New Syllabus alongwith its altered and all encompassing approach is making waves across the professional fraternity. Not only is it receiving a warm welcome but is being considered as one of the most revolutionary moves of the Institute till date engulfing in it the humongous developments and changes of the corporate arena.

Apart from this, the Institute is taking the CS Profession outside the four walls of the Institute itself. Partnering with various Central and State Universities on this front, the idea is to break down all barrier walls to open the gates of professional knowledge to all students. To accomplish these objectives, Memoranda of understanding are being signed to undertake and promote research, facilitate continuing education and training for research scholars and students of such universities on themes of topical and professional interest.

Being the conscience keepers of companies, Corporate Governance and more so good governance, issues being highlighted due the lack of governance and the possible solutions and ways of resolution; stand at the helm of all our discussions and deliberations, irrespective of the forum and podium. Every next move of the Team ICSI is focused upon searching for newer possibilities and avenues to enhance and strengthen the governance framework of not just the corporates of the country but the nation.

The times ahead call for a heightened role playing by this brigade of professionals by whatsoever name called. The name, be it governance professionals, intellectuals, corporate saviours or the simple evergreen Company Secretaries, should forever be looked upon as the focal point for and be held synonymous with good corporate governance in every language, culture and geographical location and while the Institute strives its level best to make that a reality, I urge all the members and stakeholders to participate in this futuristic process. For as Abraham Lincoln puts it,

"The best way to predict your future is to create it!!!"

Happy Reading!!

Best wishes.

Yours Sincerely

April 04, 2018
New Delhi

CS Makarand Lele
President, ICSI

Recent Initiatives taken by ICSI

In furtherance to details published in these column of March, 2018 Issue of the Chartered Secretary, we are pleased to share the following added initiatives taken by the Institute during the month of March, 2018 :

1. Meeting with Dignitaries

Taking forward our pursuit for exploring opportunities for the profession and also for joint participation in the flagship government initiatives, the Institute met the following dignitaries:

- Shri Prakash Javadekar, Hon'ble Union Minister of Human Resource Development
- Shri Alok Agarwal, Member Secretary, National Legal Services Authority
- Shri Surinder S. Rathi, Director, National Legal Services Authority.
- Shri Abhinav Gupta, PS to Hon'ble Minister of State for Law, Justice & Corporate Affairs.

2. Suggestions/ Representations Submitted

With a view to explore newer professional opportunities for our esteemed members and to actively participate in vivid initiatives of the Government in ensuring better governance, the Institute submitted its suggestions and representations as mentioned below:

- Representation on Condonation of Delay Scheme, 2018;
- Representation on Due Date Extension for Filing of AOC-4 XBRL e-Forms under the Companies Act, 2013.

3. International Women's Day

Over the decades, when International Women's Day celebrations included to appreciate and applause contribution and achievements of women as a stepping stone towards developed society, the Institute has been taking lead in rejoicing this appreciation, respect and gratitude towards women generally and by organizing events on International Women's Day every year. Accordingly, the Institute celebrated International Women's Day on March 8, 2018 this year, wherein Mega events were organized across the country through its Regional Councils and Chapters in the proud felicitation of women with tendering ovation, encouragement and vote of confidence for their empowerment at par. In commemoration of the same, a Special edition of Chartered Secretary dedicated to Women Empowerment has also been published.

4. MoU with Ministry of Corporate Affairs for e-Book on Companies Act, 2013

The Institute has entered into a Memorandum of Understanding [MoU] with Ministry of Corporate Affairs to develop a comprehensive e-Book on Companies Act, 2013, which would soon be made available on the web portals of MCA and ICSI. In terms of the said MoU, the text of the e-book would constantly be updated by the ICSI in terms of the Circulars, Amendments to the Act/Rules, Notifications and Removal of Difficulties Orders under the Companies Act, 2013 issued by the Ministry from time to time .

5. Submission of Draft Guidelines for the empanelment of Fellow Members of ICSI, ICAI and ICoAI

The Ministry of Corporate Affairs in a meeting held with the Institute of Company Secretaries of India, jointly with the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India advised the professional bodies to prepare the guidelines for empanelment of their members with, and to facilitate the Ministry to consider such empanelled members for assignments by it , as and when required. Accordingly, the Draft Guidelines prepared by the Institute incorporating the views received from ICoAI, have been submitted to the Ministry.

6. Golden Jubilee Year - 19th National Conference of Practicing Company Secretaries

In order to facilitate members to enhance and deepen their professional excellence, the Institute has been organizing its National Conference for the Practicing Members every year. This year's, i.e. the 19th National Conference of Practicing Company Secretaries has been scheduled to be held in Mumbai at Hotel The Lalit on May 18-19, 2018. The details of the said 19th National Conference have been published elsewhere in this issue. Kindly block your diaries and join the Conference in large numbers to make this year's Conference as well a memorable and successful Conference.

7. ICSI Direct Tax Committee

Continuing with our out-and-out support for the Government towards a reformative tax regime in India, the Institute formed its first ever Direct Tax Committee. The Committee consisting of experts in the related field, aims at formulating, and submitting suggestions to the Government on Direct Tax Code with special focus on furthering the Ease of Doing Business in India.

8. ICSI New Syllabus - Brochure

Consequent upon the recommendations of ICSI Syllabus Review Board, the Institute came up with its new curriculum for Executive and Professional Program students to ensure the cutting-edge knowledge insights providing empowered Governance professionals who would march ahead with renewed excellence towards New ICSI 2022. First copy of the syllabus brochure was presented to Shri Prakash Javadekar, Hon'ble Union Minister of Human Resource Development, who has highly appreciated the new syllabus which encompasses all the recent developments and significant arenas.

9. Webinar on Condonation of Delay Scheme, 2018

With a view to giving an opportunity for the non-compliant, defaulting companies to rectify the default, the Ministry of Corporate Affairs in exercise of its powers conferred under sections 403, 459 and 460 of the Companies Act, 2013, came up with Condonation of Delay Scheme 2018. The Scheme was in force from January 1, 2018 to March 31, 2018.

In order to facilitate our members and other related professionals to better appreciate the nitty-gritty of the Scheme, the Institute organized a Webinar on CODS – 2018 on March 9, 2018 at ICSI Head Quarters, New Delhi.

10. Orientation Programme on ICSI New Syllabus

With a view to provide a 360 degree rounded set of education and development to CS students, the Institute undertook review of its syllabus came up with its new syllabus for Executive and Professional Program. Further, to address any query or issue

in relation to the new syllabus, , an Orientation Programme on ICSI New Syllabus (2017) was organized on March 6, 2018.

11. Orientation Programme on 'Corporate Governance and Companies, Act, 2013 with Special Emphasis to Recent Amendments'

The Institute joined hands with National Foundation for Corporate Governance in organizing an Orientation Programme on ' Corporate Governance and Companies Act, 2013 with Special Emphasis to Recent Amendments' on March 20, 2018 at Guwahati, Assam.

12. Professional Training Module for ICLS Probationary Officers

The Institute prepared and provided to the ICLS Academy Professional Training Module for the Indian Corporate Law Service Probationary Officers at the said Academy, located in the Indian Institute of Corporate Affairs (IICA), Manesar, Gurgaon.

13. ICSI GST Newsletter

As you are aware, that the Institute is regularly bringing out a monthly newsletter dedicated to the Goods & Services Tax (GST). Standing tall, as one of the effective initiatives for building capacity under the new indirect tax regime and upholding the "One Nation One Tax" motto of the Government of India, the ICSI took up this initiative even before the implementation of the GST on 1st July, 2017. So far 12 issues of this ICSI – GST Newsletter have been published, March, 2018 issue being the latest one.

14. ICSI GST Educational Series

Furthering our capacity building initiatives in the regime of GST, the Institute has also started a daily GST Educational Series. The series, which has been successful and academically useful has been brought out with more than 210 issues so far. All the issues of GST Educational Series are available on the GST Corner of the Institute's website at https://www.icsi.edu/GSTEducationalSeries.aspx.

15. ICSI GST Point

Continuing with its endeavours to support the Government in its pursuit of the effective implementation of GST Laws and to advance various initiatives of the Institute while enlightening the public at large about the diverse facets of Goods and Services Tax (GST), the Institute had launched a GST Point as a uniform platform to reply to the queries, difficulties and challenges faced by consumers, manufacturers, traders, MSMEs, public at large, professionals, etc. in understanding and implementation of the Goods and Services Tax Laws. So far more than seventy (70) sessions of GST Point have successfully been completed. The same has been receiving a tremendous response from all stakeholders. The queries received and answered by experts cover a wide range of topics including registration, filing, and input tax credit along with other GST modalities.

16. Launch of CS TOUCH App

With the objective of providing a one-source platform to members and students, for enabling them to avail and share the information on-the-go, the Institute launched CS Touch App. The App facilitating the access of knowledge on the move, is available for download in Android as well as in iOS.

17. Success Stories of Rank holders of CS December 2017 Examination

In order to motivate the students of CS Course for their performance in the exams and subsuming their best abilities towards the development of the profession, the Institute compiled and published the success stories of the Rank holders of CS December 2017 examination at the website of the Institute. Moreover, a video byte has also been prepared and made available on the Youtube channel of the Institute comprising the achievement of the rank holders.

18. ICSI Signature Award Scheme

As you are aware that the Institute has launched ICSI Signature Award Scheme to felicitate the top rank holders in B.Com. Final Examinations in reputed universities and also specialized programmes/ papers of IITs / IIMs with the award of a Gold Medal and a Certificate. So far, ICSI Signature Award has been instituted in 17 Universities with Twelve (12) Gold Medals being awarded under this scheme.

The month of March, 2018, witnessed the award of Three (3) more Gold Medals and Certificates with the details as below:

- To the topper of Indian Institute of Management, Indore.
- To the topper of Indian Institute of Management, Tiruchirappalli.
- To the topper of Panjab University, Chandigarh.

19. ICSI Study Centre Scheme

In registering an efficacious outcome of Institutes' initiative to break the distance barrier for students belonging to cities / locations in which the representative offices of the Institute are not in existence, 68 Study Centres have been established so far in collaboration with reputed colleges in different locations including the remote areas like Andaman & Nicobar Islands, Lakshadweep, and Pondicherry.

In the month of March 2018, the following additional study centres have been added to the scheme:

- Syed Ammal Arts & Science College, Dr. E M Abdullah Nagar, Kootampuli, Pullangudi, Tamil Nadu.
- Alagappa University, Karaikudi.

20. Fee Waiver Scheme for Students of State of Jammu & Kashmir and North-Eastern States: A Tale of Success

In order to provide equal opportunities to the youth from North Eastern States and State of Jammu and Kashmir, to come to the mainstream and to encourage them for joining the CS Course, the Institute has launched a Fee Waiver Scheme for the related students. This Fee Waiver Scheme, which stood operative till March 31, 2018 and is being considered for further extension, has shown an immense success with many students taking benefit of this scheme and have registered themselves in CS course since the launch of the Scheme. Consequently, the Institute is also in an active process for opening study centres to cater the academic needs of the students of such areas.

"There is always a need to challenge yourself. By that, I mean, moving out of your comfort zone and working on something difficult or hard to solve."

OYO

RITESH AGARWAL

Founder & CEO, OYO

In Conversation with Arti J Shailendar, Joint Director (Corporate Communications), The ICSI

Travel and tell no one... Well, an age old statement seldom finds relevance in the modern day scenario of social media and minute-by-minute account of life lived.

While the destination is all one cares, the boarding and lodging is one of the biggest concerns. It is at this moment that the young lad Ritesh Agarwal steps in and makes life easier. The brand OYO is in itself an assurance that you are choosing the right place to crash for the night.

In a tête-à-tête with Arti J Shailendar, Joint Director, Directorate of Corporate Communications, this true representative of sorts of the start-up India GenNext gives us an insight, as to what drives him and what challenges him the most:

Let's begin with the question that rides on everyone's mind. Your story, your way... What has your journey been like?

I had launched Oravel in 2012 and pivoted it to OYO in 2013. I grew up very inspired by famous entrepreneurs and my ambition was to start up something on my own. After school, I took admission in a college but dropped out soon after since I was very keen to start out and wanted to utilize my time in building a business. I launched Oravel as a listing site for budget accommodation - inns, guest houses, B&Bs across India. I travelled extensively across India and stayed in nearly a 100 guesthouses and small hotels and tried to strike a barter deal in return for listing them on my website but of course, no one hosted me for free.

What I learned during this period was that the budget hotel experience in India was not at all predictable. One did not know what to expect while booking a hotel room online - whether the service would be decent or if the room would be clean or the staff would be cordial. The likelihood of having a bad experience was far higher than finding a great accommodation by sheer luck. So, I came to the realization that the real solution was not in making these hotels discoverable, but to make the experience predictable and standardized. This was the origin of OYO. We partnered with small budget hotels and standardized them for a predictable in-room experience - clean and spacious air-conditioned rooms, hygienic washroom, free WiFi, flat screen television and complimentary breakfast.

Today OYO is India's largest full-stack hospitality company with presence in more than 230+ cities in India, as well as Nepal and Malaysia. Currently we operate three brands under OYO's umbrella, including OYO Rooms, OYO Townhouse and OYO Home.

Passion rules education in your case. Do you miss the classroom teachings, since entrepreneurship came to you so early in life?

I believe different things work for different people and if you have the will to gather first-hand information and knowledge the world offers, you don't need to stress about your formal education. There was no reason to spend a few years on a formal academic programme when I was so clear as to what I wanted. I cannot be happier that I did not lose any more time in starting out on this journey.

Every start-up faces a set of challenges which may be unique to its own nature and structure or find

At OYO, we were driven towards finding innovative ways to bring something new to the industry. Innovation is hard-coded into OYO's DNA and the company has pioneered various industry.

common ground with other such ventures not just nationally but globally. Which roadblocks have you hit in the past half decade?

During the initial stages of OYO, the challenge was to convince potential partners and prospective OYOpreneurs to work with us.

Also, since it was a completely new and untested business model, hotel owners were unsure about the value we could bring. Once they saw the impact that reflected in higher customer repeat, greater revenues and especially how hotel operations, revenue management, and CRM became more efficient and convenient through the use of OYO apps - they were convinced. Through this, we were able to hire potential partners who believed in our vision and wanted to partner with us. Once they got a firsthand experience of the impact we could bring to their business, they referred us to other hotel partners. This helped in multiplying our partners.

Getting the right team together was also quite challenging but I received good advice and direction from our investors who helped open up their network to OYO. In the past four-years, we've built a strong leadership team at which is driven by the company's mission of creating beautiful living spaces and they've individually created strong teams under different verticals from the ground up to introduce efficiency at every level of OYO's functioning.

Our customers and partners are among our biggest supporters. They see a young startup trying to solve a massive problem - and they help us along the journey with their very valuable and constructive feedback.

Using cutting-edge technology and innovation in hotel-biz and yet keeping the cost structure maintained. Would you like to share the secret recipe?

At OYO, we were driven towards finding innovative ways to bring something new to the industry. Innovation is hard-coded into OYO's DNA and the company has pioneered various industry- initiatives including Sunrise Check-in, Relationship Mode and OYO Captain - a unique concierge service to ensure hassle-free travelling and on-stay experience for our customers.

This is made possible through our in-house technological solutions. Also, to build efficiencies in this area, we have recently inaugurated our remote technology development center in Hyderabad. OYO has 20+ technological products for each aspect of our business. Be it customer-facing or an internal operation, technology is an integral part of the company's functioning. We have the fastest consumer app available across all common platforms and operating systems. Also, to provide ease of doing business to our partners, we have come up with a range of property management and inventory apps. We also have a real-time auditing app that allows feedback to be relayed to the OYO server allowing quality and service standards to be maintained across the board. We have also introduced a rating mechanism for all the hotels which are a part of our network in order to ease the selection process for customers.

OYO is also the first hospitality player to introduce tech-based solutions for its hotel partners with the HMS, Property Manager App, Owner App with the aim to transform them into better hospitality players.

With funds pouring in from some of the most renowned investors of the world, trust comes from good governance. How is that ensured at OYO?

At OYO, we have strong core teams including compliance, finance, operations which have continuously acted as a sounding board as we grow as a company and explore new territories and add hundreds of asset-partners every month to our network. We, as a company, are driven by strong and transparent processes while working hard towards our mission of creating quality and beautiful living spaces.

For a company which has made its presence felt in more than 200 cities, what is the take of the brand towards engaging in CSR?

At OYO, we are strong believers of giving back to the society as it's our customers who have helped us in becoming India's largest hospitality company. We are tirelessly working towards creating quality and beautiful living spaces which are accessible by all citizens at an affordable cost. We continuously engage with several NGOs and host them at our headquarters on multiple occasions, including festivals to ensure that our fellow OYOpreneurs get an opportunity to help those who need it the most. In addition to this, we've been involved in cleanliness campaigns across hotels and offices for supporting the Swach Bharat Campaign.

How much significance is accorded to gender parity or women participation both on work floor and in decision making?

At OYO, we follow a theory that 'Diversity is Power, Diversity is Fun'. We believe that it's the key to company's

success and we've ensured parity at all levels so that every individual gets an opportunity to contribute to OYO's mission of creating beautiful living spaces. For us, diversity is not only limited to the workforce but is an all-encompassing facet which allows us to hire people with different background, thoughts and create a differentiated workplace where ideas and innovation flow effortlessly.

For a brand which boasts of being India's largest hospitality company already and has truly changed the way people stay away from home, what next?

Our aim is to establish OYO as the most trusted and loved hotel brand across the world by creating beautiful living spaces and making them accessible to all citizens and travellers alike.

We are moving forward with a vision to standardize and introduce efficiency in all forms of hospitality such as budget hotels, apartments, guesthouses, and resorts and adding quality supply to our portfolio. We recently announced our first acquisition of Novascotia Boutique Homes and it is the first in a series of acquisitions, collaborations, innovations and launches for OYO, all of which are aimed at creating a strong and sustainable ecosystem for entrepreneurs, hotel partners, asset-owners and travellers. In future, we'll continue to serve customers through their existing brands - OYO Rooms, OYO Townhouse and OYO Home. When it comes to expansion, we plan to go deeper into our existing markets and exploring new geographies while establishing our leadership over the hospitality space both India and abroad. We are constantly utilizing the valuable feedback received from our guests and asset-partners and introducing improvements in our products.

We are also adding 10,000 exclusive keys per month with an aim to end 2018 with 180,000 keys thus extending our leadership over other traditional players.

Do you think that India of today holds a conducive business environment for start-ups to not just set foot but nurture and thrive as well?

Yes, Definitely. The market is huge and in the last three years, we have seen a lot of start-ups emerging. There is a large young demographic, the offline to online shift is going to be massive and we are right on the cusp of it. Also, India has the right ecosystem and environment which provides a mix of opportunities and challenges for startups. The government is also committed to supporting the start-up ecosystem via funding as well as regulatory and logistical assistance.

For the man who propagates travel so vehemently, how does he like to unwind from gruelling work schedules and deadlines?

Whenever I get some free time I like to cycle and practice Yoga as it helps me to relax. Catching a late-night movie with friends or colleagues is also a stress buster.

A takeaway mantra for those who wish to follow your footsteps?

I believe that there is always a need to challenge yourself. By that, I mean, moving out of your comfort zone and working on something difficult or hard to solve. This will give you lot of learning and creates a long-lasting impact.

Also, be passionate, committed and have genuine empathy for your guests and one has to always remember that there's no substitute for hard work.

RAPID FIRE

Favourite Book:
Zero to One by Peter Thiel and Chocolates on the Pillow Aren't Enough: Reinventing The Customer Experience by Jonathan Tisch

Favourite movie:
Actually a documentary -The Men Who built America

Best possession:
My dog Lisa

Hobbies:
Cycling and Yoga

Inspirational figure:
Peter Thiel, Bill Gates

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MISSION
"To develop high calibre professionals facilitating good corporate governance"

'ICSI Quest-eAssist'

An Online platform for ICSI's members

As a knowledge building initiative, ICSI has launched 'ICSI Quest-eAssist', which is an online platform for members of ICSI where they can seek responses on the queries and difficulties pertaining to the Companies Act, 2013 and Rules and Notifications thereunder as well as issues related to e-filing.

This initiative would eventually be extended to other laws like Securities laws, Insolvency and Bankruptcy and GST etc.

The queries may be raised at

http://www.icsi.in/QAS/MemberLogin.aspx

Any suggestion in this regard may be forwarded to **dheeraj.gupta@icsi.edu**

ICSI ACADEMIC HELPLINE NO. 011-6675 7777 (Monday - Friday 7 a.m. to 11 p.m. & Saturday 9 a.m. to 9 p.m.)

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"The greatest growling engine of change is technology"

The above quote by American writer, futurist and businessman, Alvin Toffler, sums it up all.

The modern age is the age of technology, this statement is more than just the culmination of a few words. We the people of 21st century live and breathe, sleep and rise to the call of technology. Technology which has surmised itself to form a part of a few inches handset, and more so at the stroke of a single touch. While the work end is managed by an endless list of softwares, the personal life is handled by the social media and it is this work-life balance, which prompts us to ponder as to why should knowledge be left behind?

The Institute of Company Secretaries of India has always tried its level and succeeded as well in keeping abreast with changing times. In one such attempt, the Institute has taken a leap ahead by taking the knowledge treasure of ICSI into a more accessible zone... the mobile phone!!!

*As you are all aware, the ICSI has been delving to be completely accessible and available through the mobile phones of all our students, members and stakeholders. It gives me immense pleasure to share with all of you the accomplishment of the first leg of the mission of stepping into the virtual world with the launch of the **'Chartered Secretary'** segment of the **CS Touch Knowledge App**. The achievement is one worth applauding and more so anticipating as well, for the wondrous future that lies ahead, for this how ICSI shall reiterate its participation in the achievement of the Vision for a New India.*

To quote the Hon'ble Prime Minister of India, Shri Narendra Modi, "Convergence of technology is important. One people, one mission, one nation, this will be possible then".

CS Makarand Lele
President

CS Touch App

2 Days Residential Seminar at Ahmedabad Chapter
(Economy Governance by Governance Professionals)

ICSI Signs MOU with Tezpur University

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Compliance Management and Audit Configurator (CMAC)

Dear Professional Colleague,

The ICSI has created online tool namely Compliance Management and Audit Configurator (CMAC), which is a central repository of all statutory compliances applicable to a corporate entity along with detailed checklist thereof. The key features of the CMAC tool is as under:

- Online tool for Comprehensive Audit Checklist for Statutory Compliances
- Ready Access to Checklist of 35 different Industry Verticals
- Includes Central and State Laws, Rules and Regulations
- Updated section text and Compliance Requirement according to Audit period
- Facility for Company based Audit Checklist Configuration
- Suitable for Complete Corporate Compliance Tracking
- Covers around 1200+ Acts and Regulations Covered appropriate
- Easy to access, add, modify in MS-Excel
- Facility for Audit tracking and Result Upload
- Availability of offline access
- Facility to download Checklist of Individual Act, Rules, Regulations
- Facility for online support through ticket
- Single Point Help desk
- Exclusively available for ICSI Members

Link - http://49.50.79.97/CMAC/loginPage.aspx

For any query, write to us at ICSI - helpdesk@proind.in

Link for Introductory Video : https://youtu.be/tH3JPA8qS0A

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ICSI welcomes SEBI Board Decision on the Recommendations of Kotak Committee on Corporate Governance

The regulatory authorities in the Indian mainland are forever on their toes to bring about appropriate reforms in the legal structure and strengthen the existing framework without hampering or hurdling in the path of the ultimate goal of growth and development. In one such attempt, the pioneer authority for listed entities, the Securities and Exchange Board of India had constituted a Committee under the Chairmanship of Shri Uday Kotak comprising members from the corporate arena as well as of various leagues of professionals.

As far as the Committee is concerned, while on one hand the views of this league of professionals was sought by having us on the Committee; on the other, significant recommendations were made in the Report submitted to the SEBI by the Committee on 5th October, 2017, relating specifically to the profession keeping in sight their significance in strengthening the existing governance scenario.

It gives me immense pleasure to share that SEBI Board has in its Meeting held on 28th March, 2018 accepted majority of the recommendations to be inculcated in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Recognizing the significant role played by Company Secretaries, the SEBI Board has extended Secretarial Audit to all listed entities and their material unlisted subsidiaries under SEBI (LODR) Regulations, 2015. This consideration is in line with the theme of strengthening group oversight and improving compliance at a group level. The move shall not only open up the opportunities for Company Secretaries, but shall also alter the governance scenario of the nation significantly.

ICSI being the premier Institute for promoting corporate governance is committed to its motto and will continue to take necessary steps in that direction including spreading awareness and capacity building amongst stakeholders for the new norms to be codified out of the accepted recommendations.

While extending my heartfelt gratitude towards this esteemed regulatory authority, I congratulate all the members for this landmark achievement who shall while understanding their role in the growth trajectory of the nation take on this added responsibility with superlative zest and zeal. I would also take this opportunity to place on record the excellent work done by CS Mahavir Lunawat, Central Council Member and CS Banu Dandona and the Team of Dte. of Corporate Laws and Governance for their suggestions and representations on the committee under the guidance of CS (Dr.) Shyam Agrawal, Immediate Past President, ICSI and to the entire council for their continued support and guidance.

CS Makarand Lele
President, ICSI

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ICSI welcomes Report of the Insolvency Law Committee

The rise of the Indian economy in the World Bank Doing Business Index 2018, by quite a few notches is no small feat. Rather, the same is the result of various factors and indicators in play. The Insolvency Resolution mechanism as strengthened by the Insolvency and Bankruptcy Code, 2016 (IBC) needs to be lauded for its significant contribution. However, like any other recent law, scope for alteration and improvement was witnessed in the IBC too, for which the Ministry of Corporate Affairs had constituted the Insolvency Law Committee on 16th November, 2017 to make recommendations to the Government on issues arising from the implementation of the Insolvency and Bankruptcy Code, 2016, as well as on the recommendations received from various stakeholders.

It was indeed a matter of honour for the Institute of Company Secretaries of India for having been invited to be appointed as a member of the Committee for soliciting our opinions and views as we put across the concerns facing stakeholders on issues arising from functioning and implementation of the Code considering the fact that ICSI has a dedicated subsidiary, the ICSI Institute of Insolvency Professionals ("ICSI IIP"- Formerly known as the ICSI Insolvency Professional Agency), to develop and hone its members into Insolvency Professionals.

It is indeed a moment of pleasure and pride as the Insolvency Law Committee, chaired by Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs, presented its Report to the Hon'ble Union Minister of Finance and Corporate Affairs on the 26th of March, 2018.

The Committee, in its report, has made some noteworthy recommendations including classification of home buyers as financial creditors owing to unique nature of financing done by them in real estate projects; exemption of Micro, Small and Medium Enterprises (MSMEs) from application of certain provisions of the Code in view of recognition of the importance of MSMEs and unique challenges faced by them; streamlining disqualifications of certain persons from submitting resolution plans; excluding guarantors' assets vis-à-vis moratorium on the assets of corporate debtor; re-calibration of voting thresholds for various decisions of committee of creditors, etc. The said report is placed on the MCA website at the link: http://www.mca.gov.in/Ministry/pdf/ILRReport2603_03042018.pdf.

We at ICSI firmly believe that the recommendations so made in the Report of the Insolvency Law Committee to the MCA shall go a long way in streamlining the corporate insolvency resolution process and removing difficulties facing by Insolvency Professionals.

I would also like to take this opportunity to place on record the excellent work done by CS (Dr.) Shyam Agrawal, Immediate Past President, ICSI; CS Ranjeet Kumar Pandey, Central Council Member, ICSI; CS Alka Kapoor, CEO, ICSI IIP; CS Lakshmi Arun, Head, Education & Training, ICSI IIP; and Mr. Vinay Kumar Sanduja, Senior Consultant, ICSI IIP for their suggestions and representations on the Committee and to the entire Council for their continued support and guidance.

CS Makarand Lele
President, ICSI

Articles P-27

Challenges in Maintenance and Inspection of Minutes – Secretarial Standards 29

S. Sudhakar

Meetings play a very vital role in the functioning and governance of a company. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions. Minutes of such Meetings have more importance as the Minutes are the official recording of the proceedings of the Meetings and business transacted thereat. Minutes of a meeting are recorded to safeguard against future disputes as to what had taken place thereat. Minutes are the prima facie evidence of the meeting and it shall be deemed that the Meeting has been duly called and held and all proceedings thereat to have duly taken place. One of the functions of the Company Secretary prescribed under Section 205 of the Act is to ensure that the company complies with the applicable Secretarial Standards. As per the Secretarial Standards, the Company Secretary is expected to play a pivotal role in convening and conducting Meetings and to ensure necessary compliances. He should maintain the minutes in clear, concise, accurate and unambiguous manner. With a view to maintain the integrity and evidentiary value of the Minutes, lot of safeguards have been introduced in the Secretarial Standards so that Minutes are kept, maintained and presented with requisite care and caution. Secretarial Standards ensures the robust procedures and systems which protect the interests of the Company and its stakeholders.

Supreme Court Disapproves Passing of Interim Orders by High Court in Writ Petitions where Alternate Statutory Remedies are not Exhausted 35

Delep Goswami and Anirrud Goswami

The article highlights the recent judgement of the Supreme Court of India which stresses the importance of recovery of loans and outstanding dues by banks and financial institutions from the defaulting borrowers and also emphasises that any attempt by such defaulting borrowers to somehow bypass the statute and to invoke the writ jurisdiction of the High Court to stall/thwart the attempts of the lenders, shall be sustained in view the principles laid down by the Supreme Court in the aforementioned important judgements. Simultaneously, the professionals associated with the borrower companies are required to exercise caution in suggesting remedies against the principles laid down by the Apex Court.

Role of Company Secretaries in Managing the Risk of Fraud 39

Hema Gaitonde

In the past few years, we have seen a large number of frauds and scams being unearthed, causing great losses to the business entities, shareholders and other stakeholders. The importance of effective corporate governance for a sustained growth of an organization, continues to be critical in today's environment. Hence, we as Company Secretaries with background of law, need to expand our horizons and should be able to devise an effective Corporate Governance system that will include within its scope, a mechanism which can prevent and detect frauds..

Regulatory Concerns in Algorithm Trading/High Frequency Trading in India – the Way Forward 44

Dr. S N Ghosh and Prof. (Dr.) A M Sherry

Algorithm Trading or High-Frequency Trading is integration of advanced mathematical models-based software programs with embedded advantage of scanning, executing and taking advantage of price arbitrage on multiple indicators at a speed (microsecond or nanosecond) that no human could do and to cap it all, it also rules out the human (emotional) impact on trading activities. Leveraging the facility of 'Back testing', the main objective of Algo Trading is not necessarily to maximize profits but rather to control execution costs and market risk. Be it be, it has revolutionised the securities market ecosystem. More than seventy five per cent of daily turnover in developed markets such as Europe, Japan and USA are Algo based. In India, of late, it is around fifty per cent. The article opens with the deliberations on various aspects including regulatory environment encompassing this technological trading marvel. The research of various market data give an insight to the challenges posed by Algo trading in the domestic market. Given the trading-edge provided by this technology, the authors propose, it is incumbent for the market regulator to create a 'fair and equitable market infrastructure at an affordable cost' for all the market participants. The authors submit that Bharat Net shall be the Game Changer for the Retail Investors community of India.

Information Technology and Cyber Crime 54

Ajay Kuradia

Computer and internet enable business organizations to execute the Electronic commerce business model, which has become very popular. Computers and Internet are a powerful source in the success of globalization and international business. Computers are being used worldwide and cybercrime is a global issue plaguing the world. Cybercrime has become an important concern for not only the business firms, government, law enforcement agencies but also for the common people because these kinds of issues are related to the consumer's day-to-day activities. Due to these types of crimes, consumer's money, business organization's integrity, consumer and company's privacy, etc. are in danger. Today in the 21st Century the cyberspace has become an indispensable part of daily program and medium for change. The Telecommunications, Commercial, Industrial, Financial Services, and Regulators are totally dependent on interconnect cyber system to operate and plan the system. Cybercrime mainly attacks people or organizations or society financially or reputably, unlike in traditional crime where it damages physically which the world is witnessing in the present arena and reports are also depicting the increasing trend of cyberspace and cybercrime. Organizations and people need to pace up themselves to implement appropriate and adequate security to negate these cybercrimes.

Oppression and Mismanagement: Past, Present & Future 58

B. V. Satish Kumar

Sections 241 and 245 of the Companies Act, 2013 have given statutory right to the shareholders of a company

to file a petition before the National Company Law Tribunal for relief against past, present and future oppressive and mismanagement acts. Section 241(1)(a) deals with present oppression and mismanagement and clause (b) deals with future mismanagement. Past or isolated acts can constitute oppression if the effects of such acts are continuous till the date of filing the petition. The Companies Act, 2013 has brought some changes in the scope and applicability of oppression and mismanagement. By invoking section 245 of the Companies Act, 2013, shareholders or deposit holders can file petition on the basis of an anticipated or likely oppression or a threat of oppression. Due to continuing nature of oppression and mismanagement actions, the provisions of the Limitation Act, 1963 are not applicable in case of oppressive and mismanagement acts. NCLT may pass orders of curative, prohibitive and preventive in respect of existing and apprehended acts prejudicial to the interest of the company or members.

Equity Shares with Differential Rights as to Dividend, Voting etc. – A Perspective

61

Mandar Karnik

The provisions of the Companies Act, 2013 relating to issue of shares with differential rights have been introduced with differential rights as to dividend as well as voting rights. The new provisions seek to more tightly regulate the issue of equity shares with differential voting rights which have always been considered a controversial issue internationally. There is a point of view arguing that the next great evolution for the corporation will come with the separation of profit and control as embodied in the concept of different classes of shares, or 'differential voting rights'. This article attempts to study the provisions of the Companies Act, 2013 with respect to differential voting and dividend rights, its advantages and pitfalls.

Restitution: Can the Court in Contempt Proceedings Grant Damages

65

Rakesh Bhatia

The right to claim damages for loss suffered by the Claimant due to legal action brought out by the Defendant which ultimately results in reversal by the Court of Competent jurisdiction is an efficacious remedy provided by the law. This right has been recognized since ancient time. This principle of the doctrine of restitution over a period of time has been developed on the premises that on the reverse of a decree the law imposes an obligation on the party to the suit who received the benefit of erroneous decree to make restitution to other party for what he lost. The Court in making restitution is bound to restore the parties so far as they can be restored to the same position they were in at the times when the court by its erroneous action had displaced them from.

Enforcement of Security Interest under SARFAESI can't be Exercised Arbitrarily to the utter Disadvantage of the Borrower

67

Dr. Rajeev Babel

Rule 8(6) of The SARFAESI Rules prescribes that the authorised officer shall serve to the borrower a notice of 30 days for sale of the immovable secured assets. Further Rule 9(1) prescribes that no sale of immovable property shall take place before the expiry of 30 days from the date on which the public notice of sale is published in newspapers or/(and) notice of sale has been served to the borrower. In the case of Smt. R. Vimala v. State Bank of India, the High Court of Andhra Pradesh interpreted, Rule 8 and 9 in relation to counting of 30 days and opined that once there is an allegation of violation of mandatory provisions and procedure under a statute, the writ petition is maintainable as an exceptional case, irrespective of alternative remedy available. The provisions of the SARFAESI Act, shall not be in derogation but in addition to any other law for the time being in force (which include the General Clauses Act and Indian Limitation Act) unless same is inconsistent with any other law to say then the provisions of the Act prevails over the other law inconsistent to it.

Documentary Credit and Money Laundering: An Overview

72

Dr. Susmitha P Mallaya

The impact of Money Laundering crime in the economic progress of a country has been realized by many countries including India and various anti-money laundering measures have been initiated to curb this menace world over. However, the channel of Documentary Credit instruments through banking institutions for the commission of money laundering activities has not been widely discussed. This calls for the transparency of examination of the documentary credit transactions relied by the business community for their financial transactions. This article analyses the functioning of documentary credit mechanism and its abuse by the fraudsters to indulge in the commission of financial frauds including money laundering activities. Alertness by financial institutions, particularly banks, while issuing documentary credit to customers, and following of Know Your Customer guidelines issued by the Reserve Bank of India, is highly recommended. Moreover, auditors of banking institutions also have a proactive role in detecting such fraudulent transactions.

Leveraged Buyout Analysis: A New Form of Funding

75

Varsha Agarwal

A leveraged buyout (LBO) is the acquisition of another company using a significant amount of borrowed money to meet the cost of acquisition. The assets of the company being acquired are often used as collateral for the loans, along with the assets of the acquiring company. The purpose of leveraged buyouts is to allow companies to make large acquisitions without having to commit a lot of capital. Investment bankers typically use LBO analysis to obtain an LBO market value for a company. This can act as a "floor" for company valuation, because it provides a reasonable amount that financial investors (sponsors) would be willing to pay to own the company, whereas other investors may be willing to pay more for a variety of reasons. All LBO acquisitions are made with the goal in mind of improving the company, paying down debt, and selling the company for a handsome profit. Thus it is important, when evaluating a potential LBO, to consider the exit opportunities that may be available for the company when the time is right, and an appropriate exit strategy should be developed. It is very helpful in the financial world.

Research Corner P-81

Emphasising the Role of 'Responsible Corporate Governance' in Banking Sector: An Empirical Analysis of 'Post Punjab National Bank Fraud Scenario' in India 82

Dr. Harpreet Raman Bahl and Prabhjot Kaur

The study found that effectiveness of 'Internal Audit' system turned out to be most vital component of Corporate Governance in Indian banking sector followed by the component 'disclosure and transparency'. 'External audit' system occupied the last place in the three components compared in the study. The further comprehensive analysis of the three dimensions of the components under study (existence, implementation, and effectiveness) revealed that the 'effectiveness' dimension turned out to be the most significant dimension in checking the possibility of fraud in banks. Therefore, the study found that the 'Responsible Corporate Governance' in letter and in spirit is the need of the hour to curb such frauds and maintain the trust of the general public in Indian banking.

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THE ICSI-CCGRT Invites Research Papers for an Editorial Book On the theme "IMPACT OF COMPANIES AMENDMENT ACT, 2017"

ICSI – CCGRT Announces Three Days Residential Research Colloquium 90

Legal World P-95

- **LMJ 04:04:2018** Consent given by her GPA holder for and on her behalf and not by her personally is a valid consent within the meaning of sub-section (3) of Section 399.[SC]
- **LW 23:04:2018** Refusal to record share transfer can be on the ground of violation of law or any other sufficient cause. Conflict of interest in a given situation can also be a cause.[SC]
- **LW 24:04:2018** The Adjudicating Authority may give opportunity to the Applicant to explain the delay within a reasonable period to find out whether there are any laches on the part of the Applicant. [NCLAT]
- **LW 25:04:2018** There is nothing on record to suggest that the Corporate Applicant has suppressed any fact or has not come with the clean hands. [NCLAT]
- **LW 26:04:2018** The debtor failed to discharge its liabilities and eventually undertook that if the debtor fails to discharge the debt, the creditor would be entitled to take realize the secured assets. [SC]
- **LW 27:04:2018** Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated.[SC]
- **LW 28:04:2018** In our view, the interpretation which we have placed on the provisions of the Act as they existed prior to 1.4.2006 is consistent with the plain meaning of the words used by the legislature.[SC]
- **LW 29:04:2018** CCI finds Fuel surcharge charged by airlines to be due to cartelisation and imposes penalty on major airlines.[CCI]
- **LW 30:04:2018** The Commission is *prima-facie* satisfied that the restrictions imposed by the OP for sale of oil, lubricants and batteries are unfair and in contravention of Section 4(2) (a) (i) of the Act. [CCI]

From the Government P-103

- Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018
- Companies (Incorporation) Second Amendment Rules, 2018
- Companies (Indian Accounting Standards) Amendment Rules, 2018
- Condonation of Delay Scheme 2018
- Relaxation of additional fees and extension of last date of filing of AOC-4 XBRL E-Forms using Ind AS under the Companies Act, 2013-reg.
- Date of coming, into force of provisions of Section 132 (3) & (11) of the Companies Act, 2013
- Amendments in notification number S.O. 529(E) dated 05.02.2018.
- Separate limit of Interest Rate Futures (IRFs) for Foreign Portfolio Investors (FPIs)
- Clarifications in respect of investment by certain Category II FPIs
- Clarification to Circular pertaining to Investor Protection Fund (IPF) and Investor Service Fund (ISF)
- Clarification to Circular pertaining to Investor Grievance Redressal System and Arbitration Mechanism
- Revision of limits relating to requirement of underlying exposure for currency derivatives contracts
- Spread margin benefit in commodity futures contracts
- Risk Management norms for commodity derivatives
- Guidelines for Liquidity Enhancement Schemes (LES) in Commodity Derivatives Contracts
- Clarifications with respect to circular on "Specifications related to International Securities Identification Number (ISINs) for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008".
- Investor grievance redress mechanism – new policy measures
- Orders per second limit and requirement of empanelment of system auditors for algorithmic trading in commodity derivatives

Other Highlights P-113

- Members Restored During The Month of February 2018
- Certificate of Practice Surrendered During The Month of February 2018
- Council / Regional Councils Elections – 2018
- Ethics & Sustainability Corner
- The Standing and Non-Standing Committees of The Council/ Boards - 2018
- Empanelment of "Quality Reviewers"
- ICSI invites applications for Empanelment as Editors / Translators in English, Hindi and other regional languages
- GST Corner
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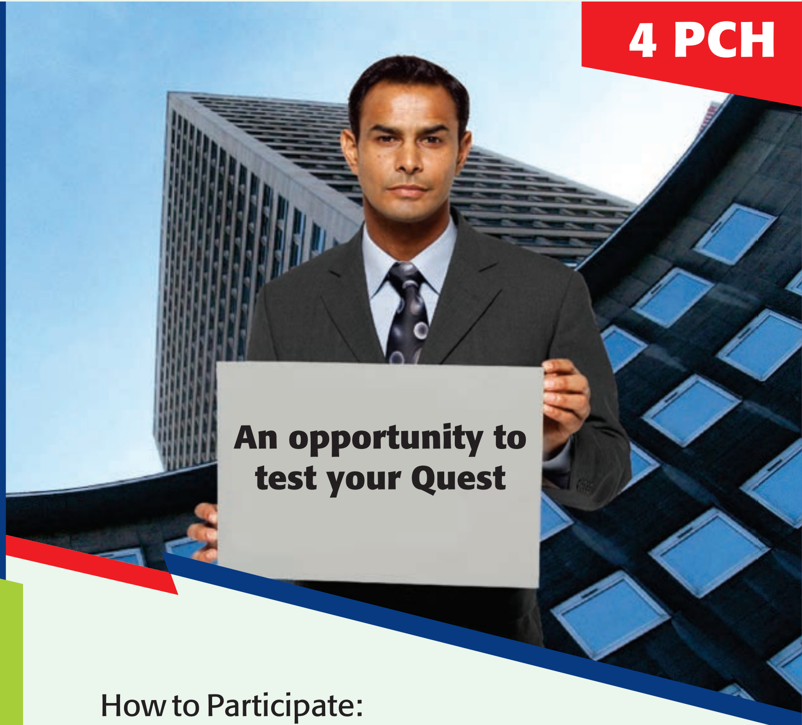
THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

4 PCH

CRITICAL ISSUES RESEARCH CONTEST (CIC)



To develop the Research orientation and fine understanding of the Companies Act, 2013, the Institute of Company Secretaries of India (ICSI) is organising "Critical Issues Research Contest" for its members.

ELIGIBILITY:

Membership of the Institute of Company Secretaries of India.

Word Limit:
500 Characters

SCORING PATTERN:

Details	Marks for each
• Critical issue	1
• Unique Critical issue (Issue shall be considered as unique if it has not been submitted by any other member)	2
• Views on critical issue/ unique critical issue	1

Duration : April 10, 2018 – May 10, 2018

How to Participate:

1. Login to ICSI web application: **http://www.icsi.in/CIC/MemberLogin.aspx**
2. Login credentials: Membership number and Date of birth in format (DD/MM/YYYY).
3. In subject field, select Companies Act, 2013
4. Select the chapter in which you want to submit the critical issues.

Award Eligibility:

To become eligible to participate in the contest, member need to submit minimum five critical issues in minimum three Chapters of his/her choice. However a member can submit additional more no. of critical issues. Submission of views on critical issues by member shall entitle him/her additional mark as per Scoring Pattern.

Categories :

1. Top 20 highest scorers
2. Three or more critical issues in all Chapters
3. Maximum no. of critical issues in any one Chapter
4. Maximum no. of critical issues raised

The decision of ICSI with regard to eligibility & awards shall be final and intimated to the awardee individually

CS Ahalada Rao V.
Vice President, ICSI &
Chairman, Corporate Laws & Governance Committee

1

ARTICLES

- Challenges in Maintenance and Inspection of Minutes – Secretarial Standards
- Supreme Court Disapproves Passing of Interim Orders by High Court in Writ Petitions where Alternate Statutory Remedies are not Exhausted
- Role of Company Secretaries in Managing the Risk of Fraud
- Regulatory Concerns in Algorithm Trading/High Frequency Trading in India – the Way Forward
- Information Technology and Cyber Crime
- Oppression and Mismanagement: Past, Present & Future
- Equity Shares with Differential Rights as to Dividend, Voting etc. – A Perspective
- Restitution: Can the Court in Contempt Proceedings Grant Damages
- Enforcement of Security Interest under SARFAESI can't be Exercised Arbitrarily to the utter Disadvantage of the Borrower
- Documentary Credit and Money Laundering: An Overview
- Leveraged Buyout Analysis: A New Form of Funding

Articles in Chartered Secretary

Guidelines for Authors

1. Articles on subjects of interest to the profession of company secretaries are published in the Journal.
2. The article must be original contribution of the author.
3. The article must be an exclusive contribution for the Journal.
4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed on the parameters such as (a) relevance and usefulness of the article (from the point of view of company secretaries), (b) organization of the article (structuring, sequencing, construction, flow, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/ argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
8. The copyright of the articles, if published in the Journal, shall vest with the Institute.
9. The Institute/the Editor of the Journal has the sole discretion to accept/reject an article for publication in the Journal or to publish it with modification and editing, as it considers appropriate.
10. The article shall be accompanied by a summary in 150 words and mailed to sil.ak@icsi.edu
11. The article shall be accompanied by a 'Declaration-cum-Undertaking' from the author(s) as under:

Declaration-cum-Undertaking

1. I, Shri/Ms./Dr./Professor…....................... declare that I have read and understood the Guidelines for Authors.
2. I affirm that:
   a. the article titled "…......" is my original contribution and no portion of it has been adopted from any other source;
   b. this article is an exclusive contribution for Chartered Secretary and has not been / nor would be sent elsewhere for publication; and
   c. the copyright in respect of this article, if published in Chartered Secretary, shall vest with the Institute.
   d. the views expressed in this article are not necessarily those of the Institute or the Editor of the Journal.
3. I undertake that I:
   a. comply with the guidelines for authors,
   b. shall abide by the decision of the Institute, i.e., whether this article will be published and / or will be published with modification / editing.
   c. shall be liable for any breach of this 'Declaration-cum-Undertaking'.

(Signature)

ARTICLE

Challenges in Maintenance and Inspection of Minutes – Secretarial Standards

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Meetings play a very vital role in the functioning and governance of a company. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions. General Meetings provide Members with an opportunity to collectively discuss the affairs of the company and to exercise their ultimate control over the management of the company. Minutes of such Meetings have more importance as the Minutes are the official recording of the proceedings of the Meetings and business transacted thereat. Minutes of a meeting are recorded to safeguard against future disputes as to what had taken place thereat.

Secretarial Standards (SS-1 & SS-2) prescribe a set of principles for convening and conducting Meetings of the Board of Directors and General Meetings respectively and matters related thereto. The Standards have substantially raised the bar of Corporate Governance, by introducing new initiatives like the one relating to inspection and obtaining copies of extracts of minutes, where the Law is silent. These initiatives strengthen the position of the Directors and allow them to discharge their assigned responsibilities and meet the expectations of all concerned, efficiently and effectively.

Minutes are the *prima facie* evidence of the meeting and it shall be deemed that the Meeting has been duly called and held and all proceedings thereat to have duly taken place. Minutes should be accurate, clear and unambiguous, concise, record the narrations vital to understand the proceedings and the full text of all resolutions and avoid comments and expressions of opinion. It should contain a substance of the discussion at the meeting leading to the resolution.

However the word 'Minutes' is neither defined in the Companies Act, 1956 nor in the Companies Act, 2013. Minutes may be defined as written record of official proceedings or meetings and in particular meetings of Board of Directors and Shareholders of companies. Minutes need not be the exact transcripts or proceedings of the meetings. Minutes are to be terse and only to include summary of the decisions. Minutes are official records of the proceedings and decisions of meetings and are admissible in the Court of Law as evidence.

PROVISIONS RELATING TO MINUTES IN THE COMPANIES ACT, 2013 AND SECRETARIAL STANDARDS

According to section 118 of the Companies Act, 2013 ('the Act'), every company shall cause minutes of the proceedings of every General Meeting of any class of shareholders or creditors and every resolution passed by postal ballot and every meeting of its Board of Directors or of every Committee of the Board.

Provisions of this section are applicable to all companies. However in case of Section 8 companies the provisions of this section are applicable only to the extent that Minutes may be recorded within thirty days of the conclusion of every Meeting, in case of companies where the articles of association provide for confirmation of minutes by circulation.

Minutes shall contain a fair and correct summary of the proceedings of the meetings with their pages consecutively numbered. According to Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2), this shall be followed irrespective of a break in the Book arising out of periodical binding in case the minutes are maintained in physical form and the same is equally applicable for the minutes maintained in an electronic form. This should be followed irrespective of the number or year of the meeting. Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes and shall ensure exclusion of any matter that is or could reasonably be regarded as defamatory of any person or is irrelevant or immaterial to the proceedings or

is detrimental to the interests of the company. It will be necessary for the Chairman of the meeting to decide what is a fair summary of its proceedings or what questions asked or comments made would be deemed to be material for the purposes of the Meeting. Unless and until the contrary is proved, the minutes maintained under these provisions shall be final and valid and shall be admissible as evidence of the proceedings recorded therein. The onus of proof is on the person who questions the correctness of the proceedings of a Meeting as recorded in the Minutes.

In case of meeting of the Board of Directors, the Minutes shall contain the names of the Directors present at the meeting and in respect of each resolution passed at the meeting, the names of the Directors, if any, dissenting from or not concurring with the resolution. Considering the importance of the presence of people at the Board meeting, SS-1 prescribes that Minutes shall record the names of the Directors present physically or through electronic mode, the Company Secretary who is in attendance and the invitees, if any, including the invitees for specific items.

According to the provisions of Section 118 (10) of the Act, every company shall observe Secretarial Standards with respect to General and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government. Though this provision is placed under Section 118 of the Act, pertaining to Minutes of Meetings, this does not necessarily mean that the Standards have to confine only to aspects or matters relating to Minutes.

RULE 25 OF THE COMPANIES (MANAGEMENT AND ADMINISTRATION) RULES, 2014 PRESCRIBES THE WAY THE MINUTES ARE TO BE MAINTAINED

Minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting. In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutiniser's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution. According to Secretarial Standards, the Company Secretary shall record the proceedings of the Meetings and where there is no Company Secretary, any other person duly authorised by the Board or by the Chairman in this behalf shall record the proceedings.

Where Minutes of Board or Committees thereof and of the General Meetings have been kept in accordance with the provisions of the Act, the meetings shall be deemed to have been duly called and held and all the proceedings deemed to have duly taken place, unless and until the contrary is proved (Edward Keventer Successors (Pvt) Ltd *v.* K.K.Sud (1968) 38 Comp Cas 507 Del).

BOARD MEETINGS THROUGH VIDEO CONFERENCING OR OTHER AUDIO VISUAL MEANS

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 prescribes the procedure for conducting and convening the Board Meetings through video conferencing. The Minutes of such meetings shall disclose the particulars of the Directors who attended the meeting through video conferencing or other audio visual means and the location from where he had participated. The Minutes shall also record the roll call taken by the Chairperson or the Company Secretary to confirm the presence of required quorum throughout the meeting and names

> “ Minutes shall contain a fair and correct summary of the proceedings of the meetings with their pages consecutively numbered. According to Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2), this shall be followed irrespective of a break in the Book arising out of periodical binding in case the minutes are maintained in physical form and the same is equally applicable for the minutes maintained in an electronic form.

of persons who were present at the Meeting with the permission of the Chairperson. If a particular director joins the meeting after its commencement or if a particular director leaves the meeting early, this fact should also be recorded in the minutes. In case of a Board meeting through video conferencing, at the end of the discussion on each agenda item, the summary of the decisions announced by the Chairperson shall be recorded with names of the Directors, who dissented from the decision taken by majority. The Act provides that Directors participating through video conferencing or by other audio visual means shall be counted for the purpose of quorum. There are certain items of business which shall not be dealt with in a meeting through video conferencing or other video visual means. The Companies (Amendment) Act, 2017 has provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso of section 173.

PROVISIONS RELATING TO SIGNING OF MINUTES UNDER THE ACT

Each page of the minute-book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed. The minutes are to be signed by the Chairman of the said meeting or the Chairman of the next succeeding meeting. However it is not obligatory to wait for the next meeting in order to have the minutes of the previous meeting signed. In case of minutes of proceedings of a General meeting, the minutes shall be signed by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that Chairman within that period, by a director duly authorised by the Board. In case of a resolution passed by postal ballot, the minutes shall be signed by the Chairman of the Board within the aforesaid period of thirty days or in the event of there being no Chairman of the Board or the death or inability of that Chairman a director duly authorised by the Board. According to Secretarial Standards in the event any page or part thereof is left blank, the same shall be scored out and shall be initialled by the Chairman.

If the Minutes of the proceedings are not recorded or signed within the prescribed period then it means that the Minutes are not properly kept and it will not be receivable in evidence (Cornwall Great Consolidated Lead and Copper Mining Co. *v.* Bennett (1960) 29 Lj Ex.157).

PROVISIONS RELATING TO MAINTENANCE OF MINUTES IN SS-1 AND SS-2

The fundamental principles with respect to maintenance of minutes pertaining to Board Meetings are governed by SS-1 and to General Meetings by SS-2. A company may maintain its Minutes in physical or in electronic form with timestamp. Timestamp is the most authenticated way to assure existence of electronic documents, agreements, certificates or any other vital information in electronic form. However the Company shall follow uniform and consistent form of maintaining the minutes either in physical or electronic form and deviation, if any, shall be authorised by the Board.

With a view to maintain the integrity and evidentiary value of the Minutes, lot of safeguards have been introduced in the Secretarial Standards so that Minutes are kept, maintained and presented with requisite care and caution. Secretarial Standards ensures the robust procedures and systems which protect the interests of the Company and its stakeholders and it has been observed that the quantum and propensity for litigations or risk thereof is directly proportional to the degree of non-adherence of proper procedures and the non-availability of proper records, especially in the case of small and private companies.

CONTENTS OF MINUTES OF BOARD MEETING

Minutes shall state accurately, clearly and concisely, the nature of the business transacted with the exact wording of the formal Resolutions passed. It is not necessary to record a detailed account of the discussions on the resolutions passed and the views expressed by the directors or members thereon. Mentioning the names of the directors or members speaking on the resolutions is not mandatory. Minutes shall state at the beginning the serial number and type of the meeting, name of the company, day, date, venue and time of commencement of the meeting. The time of conclusion of the Meeting shall also be recorded either at the beginning or at the end of the Minutes. For listed companies the time of conclusion of the meeting is very relevant since they have to inform certain decisions of the Board to stock exchanges within 30 minutes of conclusion of the meeting. The fact that the required quorum was present at the meeting at the outset should be recorded.

> **“ Where Minutes of Board or Committees thereof and of the General Meetings have been kept in accordance with the provisions of the Act, the meetings shall be deemed to have been duly called and held and all the proceedings deemed to have duly taken place, unless and until the contrary is proved.**

Minutes shall *inter-alia* contain – record of election, if any, of the Chairman of the Meeting, presence of quorum, names of Directors who sought and were granted leave of absence, mode of attendance stating the location of Director, if participated through electronic mode, noting of previous minutes of the Board and Committee meetings, noting of resolutions passed by circulation, presence of interested Director, fact of the dissent and the name of the Director who dissented from the resolution or abstained from voting thereon, ratification of meetings held at shorter notice, disclosures of Interest by the Directors, noting of resignation, disqualification and vacation of office of Directors, apart from business items as per the Agenda.

CONTENTS OF MINUTES OF GENERAL MEETING

Minutes of General Meeting *inter-alia* shall contain the record of election, if any, of the Chairman of the Meeting, the fact that certain registers, documents, Auditor’s report and Secretarial Audit report as prescribed under the Act were available for inspection, record of presence of quorum, number of Members present in person including authorised representatives, number of proxies and the number of shares represented by them, the presence of Chairmen of Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee or their authorised representatives, the presence of Auditors and Secretarial Auditors, opening remarks of Chairman, in respect of each resolution, the type of resolution, names of proposers and seconders, time of commencement and conclusion of meeting, apart from business items as per the Notice.

RECORDING OF MINUTES

Recording of Minutes may be divided into two types – Minutes of narration and Minutes of Resolution. Minutes of narration are the records of events or items of business which do not require a formal resolution under the Act. ‘Resolution’ is not defined under the Act and the dictionary meaning of this word is “a formal proposal put before a public assembly or the formal determination of such proposal on any matter. Resolution is the formal expression of opinion by legislative body or public meeting” (Concise Oxford Dictionary). A Resolution is thus a decision or an exposition of an opinion or consensus of a proposal submitted before a meeting.

Minutes shall contain a fair and correct summary of the proceedings of the Meeting and the Minutes shall be recorded in such a way that it enables any reader to understand what had transpired in the meeting. As an evidence of the fact that the Board has considered and deliberated the matter before taking the decision, brief description of the discussions should be recorded. Decisions shall be recorded in the form of Resolutions,

where it is statutorily or otherwise required and in other cases in narrative form. Wherever the Chairman has exercised his casting vote the same with reference to the concerned Article shall be recorded.

Minutes shall be written in clear, concise and plain language and should contain brief synopsis of the discussions along with the decisions taken at the Meeting. Minutes being the record of a past event, should be written in the past tense with reported speech as appropriate. Minutes shall be brief, factual and free from ambiguity and shall be written in third person and past tense and the resolution however shall be written in present tense. Minutes of the meeting safeguard against the future disputes as to what had taken place at the Meeting, hence to be recorded with utmost care. There is no restriction in Law on the language of recording the Minutes.

The fact whether a resolution has been passed unanimously or by a majority and if so by requisite majority required to pass a resolution as an ordinary resolution or a special resolution should be mentioned. Where a resolution is required to be passed at a Board Meeting, either under the Law or the Articles of the company, by a special majority, e.g. by unanimous consent of all directors present at the meeting, the fact of such a resolution passed by the requisite majority should be specifically recorded. For example under section 186(5) of the Act, 'no investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the Directors present at the meeting. Hence in the Minutes it is to be clearly recorded that the resolution was passed unanimously.

> “Where a resolution is required to be passed at a Board Meeting, either under the Law or the Articles of the company, by a special majority, e.g. by unanimous consent of all directors present at the meeting, the fact of such a resolution passed by the requisite majority should be specifically recorded. For example under section 186(5) of the Act, 'no investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the Directors present at the meeting. Hence in the Minutes it is to be clearly recorded that the resolution was passed unanimously.

Minutes shall not be pasted or attached to the Minutes Book or tampered with, in any manner. Minutes of the Board meetings, if maintained in loose-leaf form, shall be bound periodically, depending on the size and volume and coinciding with one or more financial years of the company. In case of General Meetings, the Minutes if maintained in loose-leaf form, shall be bound periodically at least once in every three years.

Minutes of the previous Meeting, neither need to be confirmed nor approved but to be merely noted, at the next Meeting. Minutes by itself is an act of confirmation of the proceedings of a meeting, decisions thereat need no further confirmation by any formal or legal act, if they are kept in accordance with the provisions of the Act. Non-confirmation of minutes does not have any effect on the decision taken at the earlier meeting (Kerala State Electricity Board *v.* Hindustan Construction Co Ltd (2006) 12 SCC 500: AIR 2007 SC 425: 2006 AIR SCW 6335).

Unless the Act requires certain business to be approved only at Meetings of the Board, the business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Such Resolutions are deemed to be passed at a duly convened Meeting of the Board and have equal authority. Such Resolutions passed by circulation shall be noted at the next meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

Wherever the decision of the Board is based on any unsigned documents including reports or notes or presentations tabled or presented at the Meeting, which were not part of the Notes on Agenda and are referred to in the Minutes, shall be identified by initialling of such documents by the Company Secretary or Chairman.

Minutes Book of the proceedings of a General meeting of the company are required to be kept at the Registered Office of the Company, while the Minutes of the Board or Committee Meetings are required to be kept at the registered office of the company or at such other place as may be approved by the Board.

Section 120 expressly permits any document, record, register, minutes etc., to be kept in electronic form. Thus minutes can now be kept by statutory permission in electronic form.

FINALISATION OF MINUTES OF BOARD/COMMITTEE MEETINGS

Within fifteen days from the date of the conclusion of the Meeting the draft minutes shall be circulated to all the members of the Board or Committee for their comments, irrespective of the fact that they had attended the meeting or not. This is because all the Directors are responsible for the decisions taken at any Board Meeting whether they attended the meeting or not. In case an alternate Director is appointed, the draft Minutes shall also be sent to the original Director. As a good Governance practice the draft minutes shall also be sent to the person who was newly appointed as Director at the Meeting, irrespective of the fact that he had attended the meeting or not, as he is responsible for the decisions of the Board from the date of his appointment as a Director. The draft minutes shall also be sent to the Director who ceases to be a Director subsequent to the Meeting of the Board or Committee as the case may be.

The Directors whether present at the Meeting or not, shall

communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof. In case any Director communicates his comments after expiry of the seven days period, it shall be the discretion of the Chairman to consider such comments, if so authorised by the Board. In the event a Director does not comment on the draft Minutes, it shall be deemed that he had approved the draft Minutes. Considering the enormous and onerous responsibilities entrusted upon a Director, it is advisable that the Director shall communicate his comments or dissents, if any, as he cannot take an excuse at a later date that he was not present at the meeting and is not aware of the decision, hence he is not liable for such decision. However decisions taken at the Meetings conducted at a shorter notice, shall be ratified by at least one Independent Director, if no Independent Director was present at the Meeting and in such case the decision taken or draft minutes shall not be presumed or deemed to be approved by such Director.

The aforesaid initiatives introduced in the Secretarial Standards make the Directors accountable and responsible for the decisions taken at the Board Meeting, irrespective of the fact that whether they were present at such meetings or not. These initiatives also help and enable the Directors to come to know the happenings and the decisions taken at the meeting which they could not attend.

Within thirty days of the conclusion of the Meeting the Minutes of the proceedings shall be entered in the Minutes Books. In case of an adjourned Meeting the Minutes shall be entered within thirty days of the conclusion of the adjourned Meeting. The date of entry in the Minutes Book shall be recorded on the last page, by the Company Secretary and where there is no Company Secretary, any person authorised by the board or by the Chairman of the Meeting.

SIGNING AND DATING OF THE MINUTES OF BOARD OR COMMITTEE MEETINGS

Minutes of the previous Meeting may be signed either by the Chairman of such Meeting at any time before the next meeting or by the Chairman of the next Meeting, at the next Meeting. Each page shall be initialled or signed and the last page should be dated and signed by the Chairman and the place where the Minutes are being signed shall also be appended to the signature. In case the Minutes are maintained in electronic form, the Minutes shall be signed digitally and scanned signature of the Chairman cannot be affixed. Once the Minutes are signed, any alteration, modification shall be by means of another Resolution duly passed.

A copy of the signed Minutes duly certified by the Company Secretary and where there is no Company Secretary by any Director authorised by the Board, shall be circulated to all Directors, within fifteen days after the Minutes are signed. The requirement of circulating a copy of the signed Minutes has been introduced with the aim of protecting the interests of individual Directors, including Independent Directors, in the light of the increased accountability and responsibilities of the Directors. Circulation of signed minutes would safeguard the Directors and would enable them to discharge their responsibilities and duties diligently. However, copy of signed minutes need not be sent to those Directors who have waived their right to receive the same either in writing or such waiver is recorded in the Minutes. In view of this, in case the Directors of a company waive their right to receive the copies of signed minutes for any reason, the company is not under an obligation to circulate the copies of signed minutes of the Board Meetings. Wherever an Alternate Director was appointed it is advisable to send all the documents referred above to the original Director also, as he too is responsible as a Director.

SIGNING AND DATING OF MINUTES OF GENERAL MEETING

Minutes of General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the General Meeting. If the Minutes are not recorded or signed within the prescribed period, it is to be presumed that they have not been properly kept and hence will not be admissible in evidence {B Sivaraman and Others *v.* Egmore Benedit Society Ltd (1992) 2 Comp L J 218 (Mad)}.

INSPECTION AND EXTRACTS OF MINUTES

According to the provisions of Section 119 of the Act, the minutes-book of any General Meeting of the company or of a resolution passed by postal ballot, shall be kept at the Registered office of the company and be open during business hours for the inspection by any member, subject to such reasonable restrictions imposed by its articles and without any charge. Such inspection shall be allowed for not less than two hours in each business day. Within seven working days after receiving the requisition, copy of the minutes shall be provided. The right to inspection cannot be denied to Members whatever may be the motive (Rameshwarlal Nath *v.* Calcutta Wheat and Seed Association Ltd. {(1938) 8 Comp Cas 78 (Cal)}.

In view of the above it can be safely concluded that the Members can inspect only the Minutes of the General Meeting and they have no right to inspect the Minutes of the Board Meetings. The Act is silent on the aspect of Inspection and providing extracts of Board Minutes to Directors and SS-1 has provided in detail on provisions relating to the aspect of inspection and providing extracts of Board Minutes to Directors. In view of the immense and onerous responsibilities and accountabilities entrusted upon the Directors, provisions relating to the inspection and obtaining extracts of Minutes provided in the Secretarial Standards, are very important and useful to the Directors. As provided in SS-1, the Minutes of the Meetings of the Board and any Committee thereof can be inspected by the directors. A Director is entitled to inspect the Minutes of the meeting held before the period of his Directorship and this is quite useful, as the Director of a company may need to inspect or take extracts of the Minutes of the Meetings held prior to the period of his Directorship, to understand the culture of the company and the Board processes in a better manner. Upon going through the Minutes of the Meetings prior to his appointment, the new Director can prepare and conduct himself at the Meetings of the company more efficiently and effectively.

A Director is also entitled to inspect the Minutes of the Meetings held during the period of his Directorship, even after he ceases to be a director. This provision is also quite useful to the Director and avoid unnecessary litigation, as the company cannot refuse providing inspection or extracts on the pretext that he is no more a Director. Often a Director upon ceasing to be a director of the company, may be in need of the Minutes of Meetings for the sake of his own protection in case of any legal proceedings such as oppression and mismanagement matters, class action suits, misfeasance proceedings, criminal proceedings etc.

The aforesaid initiatives introduced in the Secretarial Standards strengthen the hands of the Directors especially Independent Directors, in discharging their responsibilities they have been

> Unless the Act requires certain business to be approved only at Meetings of the Board, the business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Such Resolutions are deemed to be passed at a duly convened Meeting of the Board and have equal authority. Such Resolutions passed by circulation shall be noted at the next meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

assigned with and also give them confidence and protection to meet their duties and obligations.

Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book and certified copies of any Resolution passed at a Meeting may be given even earlier, if the text of that Resolution had been placed at the Meeting.

From the language of Section 119 of the Act, it appears that a Director who is not a Member of the Company has no right to inspect the Minutes of General Meetings. However SS-2 provides that Directors are also entitled to inspect the Minutes of General Meetings including Resolutions passed by postal ballot. In view of this a Director who is not a Member shall also has a right to inspect the Minutes of General Meetings.

In addition to the Directors, the Secretarial Auditor, Statutory Auditors, Cost Auditor and Internal Auditor can inspect the Minutes which he may consider necessary for the performance of his duties. Office of the Registrar of Companies, other officers of the government bodies or regulators, if so authorised by the Act or any other law can also inspect the Minutes. However a Member of the Company is not entitled to inspect the Minutes of Meetings of the Board or Committees thereof. However companies may provide in the Articles enabling Members to have inspection rights.

PRESERVATION OF MINUTES BOOKS

Minutes of all Meetings shall be preserved permanently in physical or in electronic form. Where under a scheme of arrangement a company has merged or amalgamated with another company, minutes of all Meetings of the transferor company, as handed over to the transferee company shall be preserved permanently by the transferee company, notwithstanding the fact that the transferor company was dissolved.

Minutes Book shall be kept in the custody of the Company Secretary and where there is no Company Secretary the same shall kept in the custody of any Director duly authorised by the Board.

COMPANY SECRETARY'S DUTIES RELATING TO MINUTES

One of the functions of the Company Secretary prescribed under Section 205 of the Act is to ensure that the company complies with the applicable Secretarial Standards. As per the Secretarial Standards, the Company Secretary is expected to play a pivotal role in convening and conducting Meetings. It is the responsibility of the Company Secretary to hold the integrity of the Meeting and related compliances as per the Act and the Standards.

EVIDENTIARY VALUE OF MINUTES

According to Section 118(7) of the Act, the minutes kept in accordance with the provisions of this Section shall be evidence of the proceedings recorded therein. Provisions of this section also includes the compliance of SS-1 & SS-2 issued by the ICSI in terms of Section 118(10) of Act. Further, as provided under Section 118(8), where the minutes have been kept in accordance with sub-section (1) then, until the contrary is proved, the meeting shall be deemed to have taken place and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, Key Managerial Personnel, auditors or company secretary in practice shall be deemed to be valid. In both these sub-sections the words 'in accordance with the provisions of this section' are crucial. These words exemplify a condition for the minutes to be treated as evidence of proceedings and for the presumption to be drawn from the minutes. If the Minutes are not recorded or signed within the prescribed period, then it is to be presumed that it is not properly kept and it will not be receivable in evidence. A person questioning election of directors as recorded in the Minutes of a meeting has to discharge the presumption by laying some evidence.

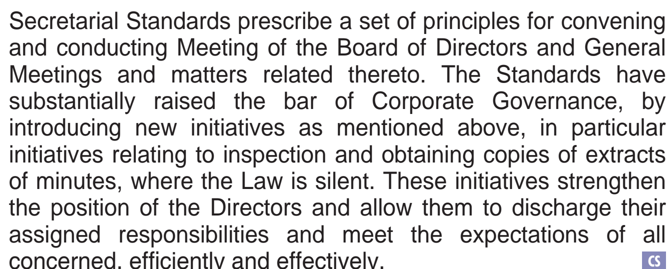
PENAL PROVISIONS

If any default is made in complying with the provisions of Section 118 of the Act in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

If any inspection under Section 119 of Act is refused, or if any copy required to be furnished, is not furnished within the time specified therein, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each such refusal or default as the case may be.

CONCLUSION



Secretarial Standards prescribe a set of principles for convening and conducting Meeting of the Board of Directors and General Meetings and matters related thereto. The Standards have substantially raised the bar of Corporate Governance, by introducing new initiatives as mentioned above, in particular initiatives relating to inspection and obtaining copies of extracts of minutes, where the Law is silent. These initiatives strengthen the position of the Directors and allow them to discharge their assigned responsibilities and meet the expectations of all concerned, efficiently and effectively. CS

ARTICLE

Supreme Court Disapproves Passing of Interim Orders by High Court in Writ Petitions where Alternate Statutory Remedies are not Exhausted

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In a significant judgement dated 30th January, 2018 in *Authorised Officer, State Bank of Travancore and Another* v. *Mathew K.C.* (hereinafter referred to as the "SB Travancore judgement"), the Supreme Court has held therein that in financial matters like recovery of loans by banks, the High Court, when approached by way of a writ petition filed under Article 226 of the Constitution of India without the petitioner having exhausted alternate efficacious remedy available under a statute, ought not to have passed interim orders without following the settled position of law. The Apex Court, in Para 17 of the aforesaid judgement, has observed that:

The present article highlights the recent judgement of the Supreme Court of India which stresses the importance of recovery of loans and outstanding dues by banks and financial institutions from the defaulting borrowers and also emphasises that any attempt by such defaulting borrowers to somehow bypass the statute and to invoke the writ jurisdiction of the High Court to stall/thwart the attempts of the lenders, shall be sustained in view of the principles laid down by the Supreme Court in the aforementioned important judgements. Simultaneously, the professionals associated with the borrower companies are required to exercise caution in suggesting remedies against the principles laid down by the Apex Court.

> "17. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum…"

Importantly, the Supreme Court has further observed that it is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of *ex-parte* interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers' expense and that such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same.

With regard to the tendency of the High Courts to grant stay of recovery of taxes, dues, etc. payable to the financial institutions and banks and the deleterious effect of such stay orders, in the aforesaid judgement, the Supreme Court referred to its earlier decision passed in *United Bank of India* v. *Satyawati Tandon and others* (2010 (8) SCC 110), wherein at Para 46, it was observed that:

> "46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging

their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, Whirlpool Corpn. v. Registrar of Trade Marks and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

Further, in the aforesaid judgement of *Satyawati Tandon* (supra), it was also observed by the Supreme Court that:

"55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

In respect of lender banks exercising action for recovery of their dues from the borrower by invoking the powers under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'), it was noticed by the Supreme Court that under Section 17 of the SARFAESI Act, the aggrieved party has an efficacious remedy available to challenge the said action of the lender banks by instituting appropriate proceedings before the appellate authority. The SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18 of the SARFAESI Act.

With regard to the tendency of the defaulting borrowers to rush to the High Court with writ petitions under Article 226 of the Constitution, without having first exhausted the alternate efficacious remedy available under the relevant statute, the Supreme Court of India, in *General Manager, Sri Siddeshwara Cooperative Bank Limited and another* v. *Ikbal and others* [2013 (10) SCC 83] observed and held that filing of a writ petition under Article 226 of the Constitution of India, without exhausting the alternate efficacious remedy available under the SARFAESI Act was not permitted and that such writ petitions ought to be dismissed at the threshold on the ground of maintainability and the High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the aggrieved respondent. The Supreme Court, in this connection, further observed as under:

"27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court

"In respect of lender banks exercising action for recovery of their dues from the borrower by invoking the powers under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'), it was noticed by the Supreme Court that under Section 17 of the SARFAESI Act, the aggrieved party has an efficacious remedy available to challenge the said action of the lender banks by instituting appropriate proceedings before the appellate authority. The SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18 of the SARFAESI Act.

will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented…

28. …In our view, there was no justification whatsoever for the learned Single Judge to allow the borrower to bypass the efficacious remedy provided to him under Section 17 and invoke the extraordinary jurisdiction in his favour when he had disentitled himself for such relief by his conduct. The Single Judge was clearly in error in invoking his extraordinary jurisdiction under Article 226 in light of the peculiar facts indicated above. The Division Bench also erred in affirming the erroneous order of the Single Judge."

The Supreme Court, in the above-mentioned *SB Travancore judgement* case (supra) has also observed that the discretionary jurisdiction under Article 226 of the Indian Constitution, is not absolute, but has to be exercised judiciously in the given facts of the case and in accordance with law. The Court further opined that the normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed by the Supreme Court in its earlier decision of *Commissioner of Income Tax and Others* v. *Chhabil Dass Agarwal* [2014 (1) SCC 603], where at Para 15, it was observed that:

"Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with

> the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal* case, *Titaghur Paper Mills* case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

The brief facts leading to the aforesaid SB Travancore case (supra) are that the loan account of the respondent was declared as a non-performing asset (NPA) on 28.12.2014 and the outstanding dues as on that date amounted to Rs.41,82,560/-. However, despite repeated notices by the appellant bank, the respondent failed and neglected to pay the outstanding dues and thereupon statutory notice under Section 13(2) of the SARFAESI Act was issued by the bank to the respondent on 21.01.2015. The objections raised by the respondent under Section 13(3A) of SARFAESI Act were considered and rejection was communicated by the appellant bank to the respondent on 31.03.2015. Thereafter, the lender bank issued possession notice under Section 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 on 21.04.2015.

On behalf of the respondent, it was contended that the respondent was desirous to repay the loan, and merely sought for regularisation of the loan account. It was further submitted by the respondent that its inability to service the loan was genuine, occasioned due to market fluctuations causing huge loss in business, beyond the control of the respondent. Upon the failure of the appellant Bank to consider the request for regularisation of the loan account and the apparent absence of a right to appeal under Section 17 of the SARFAESI Act against the order passed under Section 13(3A), the respondent submitted that it was left with no option but to prefer the writ application as the respondent genuinely desired to discharge the loans. The respondent further contended that the collateral security offered included agricultural lands also, which had to be excluded under Section 31 of the SARFAESI Act and that there had been violation of the principles of natural justice. The respondent submitted that although a large number of similar writ applications are pending before the High Court preferred by the concerned borrowers, but the appellant Bank had, in the instant case, singled out the present respondent alone for a challenge before the Supreme Court.

In response to the respondent's submissions, the Supreme Court observed that the pleadings in the writ petition are very bald and contain no statement that the grievances fell within any of the well-defined exceptions for invoking the writ jurisdiction of the High Court. The allegation for violation of principles of natural justice is rhetorical, without any details of the prejudice caused thereby. It harps only on a desire for regularisation of the loan account, even while the Respondent acknowledges its own inability to service the loan account for reasons attributable to it alone. The writ petition was filed in undue haste in March 2015 immediately after disposal of objections under Section 13(3A).

The Supreme Court noted that the legislative scheme in the SARFAESI Act, in order to expedite the recovery proceedings, does not envisage grievance redressal procedure at this stage, by virtue of the explanation added to Section 17 of the Act, by Amendment Act 30 of 2004, as follows

> "Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including the borrower) to make an application to the Debts Recovery Tribunal under this sub-section."

In the instant case, the statutory notice under Section 13(4) along with possession notice under Rule 8 was issued on 21.04.2015. The remedy under Section 17 of the SARFAESI Act was now available to the respondent if it was aggrieved. The Supreme Court observed that these developments were not brought on record or placed before the High Court when the impugned interim order came to be passed by the High Court on 24.04.2015. The writ petition was, clearly not instituted *bona fide*, but patently to stall further action for recovery. The Supreme Court also observed that the respondent did not make any pleading to state why the remedy available under Section 17 of the Act before the Debt Recovery Tribunal was not efficacious and the compelling reasons for it having by-passed the same. The Supreme Court noted that unfortunately, the High Court also did not dwell upon the same or record any special reasons for grant of interim relief by direction to deposit.

The Supreme Court further examined the statement of objects and reasons of the SARFAESI Act which states that the banking and financial sector in the country was felt not to have a level playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial institutions. The *Narasimhan Committee I and II* as also the *Andhyarujina Committee* constituted by the Central Government Act had suggested enactment of new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without court intervention which would enable them to realise long term assets, manage problems of liquidity, asset liability mismatches and improve recovery. The proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, (hereinafter referred to as 'the DRT Act') with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. The Supreme Court observed that all the aforesaid aspects had not been kept in mind and considered before the High Court passed the impugned order in the writ petition filed by the respondent Mathew K.C.

The Supreme Court in *SB Travancore judgement* (supra) thereafter referred to its earlier decisions on how the Apex Court has dealt with the issue of High Courts passing interim

orders under writ jurisdiction despite alternate statutory remedies being available but not exhausted by the concerned litigant. In *Punjab National Bank* v. *O.C. Krishnan and others* [(2001) 6 SCC 569], while dealing with availability of alternate statutory remedy under the DRT Act, the Supreme Court had observed as follows:

> "The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

Further, in *Union Bank of India and another* v. *Panchanan Subudhi* [2010 (15) SCC 552], where the High Court had, in exercise of its writ jurisdiction, stayed further proceedings under Section 13(4) of the SARFAESI Act subject to deposit of Rs.10,00,000/-, the Supreme Court, on an appeal, had observed as follows:

> "In our view, the approach adopted by the High Court was clearly erroneous. When the respondent failed to abide by the terms of one-time settlement, there was no justification for the High Court to entertain the writ petition and that too by ignoring the fact that a statutory alternative remedy was available to the respondent under Section 17 of the Act."

Thereafter, in *Kanaiyalal Lalchand Sachdev and others* v. *State of Maharashtra and others* [2011 (2) SCC 782] where the High Court had dismissed a writ petition filed by the appellant while proceedings had been initiated against the appellant under the SARFAESI Act, the Supreme Court of India while dismissing the appeal held that:

> "23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (*See Sadhana Lodh* v. *National Insurance Co. Ltd.; Surya Dev Rai* v. *Ram Chander Rai and SBI* v. *Allied Chemical Laboratories*.)"

In the aforesaid *SB Travancore judgement* (supra), the Supreme Court relied upon the principle enunciated by it in *Dwarikesh Sugar Industries Ltd.* v. *Prem Heavy Engineering Works (P) Ltd. and Another* [1997 (6) SCC 450], wherein it was observed that:

> "When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

Thus, in the *SB Travancore judgement* (supra), the Supreme Court set aside the interim order passed by the High Court as it held to be contrary to the law laid down by the Supreme Court under Article 141 of the Constitution and hence, unsustainable. In view of the settled position of law that unless the aggrieved party exhausts the alternate efficacious remedies available to it under statute, it cannot simpliciter file writ petitions before the High Court under Article 226 of the Indian Constitution and the Supreme Court has been emphatic in its disapproval of interim orders passed by the High Court in such writ petitions filed in ignorance of the settled position of the law on the subject.

CONCLUSION

The above-mentioned judgement of the Supreme Court of India stresses the importance of recovery of loans and outstanding dues by banks and financial institutions from the defaulting borrowers and also emphasises that any attempt by such defaulting borrowers to somehow bypass the statute and to invoke the writ jurisdiction of the High Court to stall/ thwart the attempts of the lenders, shall be sustained in view the principles laid down by the Supreme Court in the aforementioned important judgements. Simultaneously, the professionals associated with the borrower companies are required to exercise caution in suggesting remedies against the principles laid down by the Apex Court.

Role of Company Secretaries in Managing the Risk of Fraud

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INTRODUCTION

There are several risks that a business entity faces during the course of its business such as strategic risks, financial risks, risks arising out of foreign exchange transactions, etc. In spite of this, with proper strategic business planning, companies try to identify the risk and manage them. The risks may be arising out of internal or external sources. One of these is the Risk of Fraud, which is looming large over every company.

During the course of business operations, a business entity faces several risks. The nature of risks faced by a business entity will depend upon many factors which are specific to its operations. One risk that is commonly faced by all businesses, banks, government entities etc. is the risk of fraud. The present article is an attempt to discuss how the Company Secretary in an organization or in practice, can play an important role in proactively dealing with the risk of fraud.

No business entity is immune to the risk of fraud, because at its core, is the human element in the business operations. So long as organizations continue to employ individuals to carry out their business operations, the risk of fraud will exist. We have seen from the past, that if adequate attention is not paid, it can have serious implications, not only for the organization but also for the society and nation as a whole. Proactive fraud risk management initiatives are necessary to mitigate the threat of fraud and its associated potential losses.
Company Secretaries, being Key Managerial Personnel of the Company and also as Practicing Professionals can play an important role in this regard.

Let us first understand what is Fraud, as covered under some of the legislations given below:

Companies Act 2013 (Section 447)
Fraud in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

"wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

"wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

Hence any act with an intention to deceive or gain undue advantage, whether or not there is any wrongful gain or loss, such an act, omission or concealment of fact or abuse of position will be considered as fraud.

Fraud is a cognizable, non-compoundable offence under the CA 2013. Section 212(6) of Companies Act 2013 makes the offence under Section 447 a cognizable one. It states that notwithstanding anything contained in the Code of Criminal Procedure, 1973, offence covered under section 447 of this Act shall be cognizable. No person accused of any offence under those sections shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release. Where the Public Prosecutor opposes the application, the

court may grant bail if it is satisfied that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

As the punishment for fraud is both imprisonment and fine, it is considered a non-compoundable offence. The Act has provided punishment for fraud under section 447 and many other sections of the Act talk about fraud committed by the directors, key managerial personnel, auditors and/or officers of company. The contravention of these other provisions of the Act with an intention to deceive is also considered as fraud. Some of the acts are listed below:

1. Furnishing of false information or suppressing of material information at the time of incorporation of company by promoters, first directors or any other person – Section 7 (5 & 6)
2. Managing the affairs of the Section 8 company fraudulently – Section 8(11)
3. Mis-statements in prospectus – Section 34
4. Inducing any person fraudulently to invest money – Section 36
5. Making or abating of applications for acquisition of any securities in fictitious names – Section 38(1)
6. Issue of duplicate shares of company with intent to defraud or deceive – Section 46(5)
7. Transfer of any shares by depository or depository participant with an intent to defraud, deceive any person – Section 56(7)
8. Concealment of name or misrepresenting the amount of claim knowingly of any creditor while company has applied for reduction of share capital– Section 66(10)
9. Failure to repay deposit and it is proved that deposits were accepted with intent to defraud depositor or for any fraudulent purpose - Section 75(1)
10. Conducting business to defraud its creditors, members or any other person or for fraudulent or unlawful purpose – Section 213 (proviso)
11. Furnishing of false statement, mutilation, destruction of certain documents or making of false entry or providing false explanation – during the course of inspection, inquiry or investigation Section 229.

The Indian Penal Code 1860 (IPC) (Section 421)
There is stringent punishment under the IPC by way of imprisonment for dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

Indian Contract Act 1872 (Section 17)
Under the Indian Contract Act 1872, fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

(1) the suggestion as a fact, of that which is not true, by one who does not believe it to be true;
(2) the active concealment of a fact by one having knowledge or belief of the fact;
(3) a promise made without any intention of performing it;
(4) any other act fitted to deceive;
(5) any such act or omission as the law specially declares to be fraudulent.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances are such that, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Insolvency and Bankruptcy Code 2016 (IBC)
The bankruptcy of the corporate debtors may be due to the genuine business losses suffered by it, arising out of adverse economic condition beyond their control. It may also be due to the misappropriation or fraud played by the corporate, siphoning the public or bank's money. In case of siphoning of the funds, the act of the corporate debtors to exploit the Insolvency process and getting the write-off of the liabilities or bidding for the stressed assets will mean getting advantage out of its own misdeed. The Adjudicating Authority may require the conducting of the forensic audit of the corporate debtor to rule out the possibility of any fraud committed by the promoters in the corporate debtor particularly when corporate debtor approaches for insolvency proceedings or bid for the stressed assets in the liquidation proceedings. In situation of fraud/ siphoning, the promoters may be charged and misappropriated funds be recovered from them.

The code also casts a duty on the Insolvency Professional (IP) to report the preferential, undervalued, overvalued, defrauding and extortionate transactions executed by the promoters to unjustly benefit themselves, their relatives or other persons and such transactions are to be reported to the Adjudicating Authority. The Adjudicating Authority has the power to reverse the transactions or direct the beneficiary to refund the undue benefit obtained by him. However, identifying such transactions and collecting the admissible evidence is a tedious & complicated task which not only requires specialized knowledge but also technical skill. Hence the IPs have to depend on the forensic auditors. Given the limited time of 180 days under IBC, the IP has to be alert and should be able to identify such transactions. He can then apply to the Adjudicating Authority, if he feels that a forensic audit of the corporate debtor is required.

According to the Association of Certified Fraud Examiners (ACFE) 2016 Report to the Nations on Occupational Fraud and Abuse, organizations around the world lose an estimated five percent of its revenue to fraud each year. This is based on the sample data collected by them. The report states that asset misappropriation was by far the most common form of occupational fraud. Financial Statement Frauds, Corruption

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etc. are some of the other forms of occupational frauds which cause loss to the company. The longer a fraud lasted, the greater the financial damage it caused. The most common concealment methods used by the perpetrator were creating and altering physical documents.

Few examples of fraud:

* Frauds related to Revenue and Sales - such as showing fictitious sales revenue (inflated/deflated) or fictitious expenses and inflated incomes
* Fraudulent acts of providing mis-statement in the financial statements by the directors
* Frauds related to tampering of bank records and taking the monetary advantage thereof
* Theft of competitor secrets or third party intellectual property rights may also amount to fraudulent act
* Using business resources for personal purposes
* Representation of dummy workers/employees in the manpower sheets and consequently showing higher wage cost/ employee cost
* Showing dummy suppliers/ vendors and payments thereof
* Seizing cheques payable to vendors
* Misappropriation of assets of the Company

PREVENTION OF FRAUD *v.* REPORTING OF FRAUD

Prevention is always considered better than cure. Same holds good with the risk of fraud. If a Company Secretary is attentive enough to recognize the red flags of fraud or the fraud indicators, not only the business entity will be benefitted but also the Government Authorities, Banks and Financial Institutions, the employees, investors and other stakeholders will be saved of the losses that would follow. Sometime the magnitude of the loss from fraud is so great that they threaten the existence of the business.

No doubt, it is the duty of the accounts department or auditors to report in case of fraud or likely fraud. However working in the best interest of the company, a Company Secretary can help in devising a fraud prevention program including formation of a team, formulation of a policy etc. The cost of all this will be miniscule compared to the huge losses after the fraud is discovered. This will also increase the confidence of those who are associated with the company.

Kautilya, also known as Chanakya, an Indian statesman and philosopher, was the chief advisor of the Indian Emperor Chandragupta, the first ruler of the Mauryan Empire. Chankya was the author of Arthashastra, the ancient Indian political treatise which was composed several centuries ago. The Arthashastra, describes checks and continuous measurement, of the integrity and lack of integrity of the ministers and high officials in the kingdom. It states that those who are unrighteous should not work in civil and criminal courts. Those who lack integrity in financial matters or fall for the lure of money must not be in revenue collection or treasury. The highest level ministers must have been tested and have successfully demonstrated integrity in all situations and all types of allurements. Hence we can see that the risk of corruption, fraud and bribery existed several centuries ago and the ministers used to develop strategies to manage it.

MANAGING THE RISK OF FRAUD

The Company Secretary can guide the Board of Directors and the Management in devising a Fraud Risk Governance programme, which may include the following:

If a Company Secretary is attentive enough to recognize the red flags of fraud or the fraud indicators, not only the business entity will be benefitted but also the Government Authorities, Banks and Financial Institutions, the employees, investors and other stakeholders will be saved of the losses that would follow. Sometime the magnitude of the loss from fraud is so great that they threaten the existence of the business.

Assessment of the Risk of Fraud	In order to assess the risk, one needs to see what has happened in the past within the organization and also at the other organizations. It is necessary to identify where there is a chance for individuals to commit fraud. Risk of fraud from internal as well as external sources must be assessed. Fraud risk assessment should not be a onetime process. It must be an ongoing process and should be revisited frequently to ensure that the organization is remaining ahead of the risks.
Prevention of the Risk of Fraud	To set the tone, at the top level itself it is necessary that the Board is governed properly. It should have sufficient independent minded directors who independently carry out their responsibilities and have access to management advisers. The Board must ensure that the management designs effective fraud risk management systems. It must sanction sufficient budget as may be required for this purpose. The management has to ensure the smooth implementation of the fraud risk management programme, i.e. creating a culture that fraud will not be tolerated, ensuring proper internal controls, reporting to the Board what actions have been taken to manage the risk of fraud. Some of the mechanisms that could deter the employees from engaging in fraudulent activities are: » The corporate culture, the ethics followed by the top management and the promoters (leaders doing the right thing) » Employee fraud awareness training programmes which can educate the staff members on what is fraud, behavior expected of employees, how fraud will hurt the organization and the employees, common warning signs to watch out for, how to report suspected wrong doing » Employee support programmes such as counseling services for staff and their family which will help in addressing the pressures that can lead otherwise honest individuals to resort to fraud » Background checks of potential employees to ensure hiring of honest staff » Zero tolerance for frauds Introducing mechanism that increase the perception of detection in the employees' minds, policies that convince employees that, if they attempt fraud, their actions will certainly and swiftly be detected.

Fraud detection	Early detection of fraud is very important to mitigate the losses arising therefrom. Once the employees are trained in what is fraud, the management must encourage them to act as a whistle blower as soon as they realize that there is some fraudulent activity going on in the organization. They must be assured of confidentiality. The internal auditor has to be extra vigilant to detect any cases of fraud. Frequent interaction with him and also paying attention to the issues relating to suspected fraudulent activities raised by him in his report is required. There must be surprise checks at various levels including the top level decisions taken need to be reviewed if required.
Response to Fraud	Response to Fraud is equally important since this should generate a feeling of fear amongst the potential perpetrator to engage in any kind of fraudulent activity. Once the allegations are investigated, actions must be taken like » Suspension, criminal prosecution, civil lawsuit against the person found guilty » Recovering the amount that the organization lost, through legally available means » Rectifying the defects, if any, in the internal control procedures, which resulted in the fraud » Designing a fraud response plan

Some of the steps which a business entity can take to manage the risk of fraud are listed below:

- » Job Rotation/Mandatory Vacation
- » Surprise Audits
- » Formal Fraud Risk Assessments
- » Internal Audit Department
- » Dedicated Fraud Department, Function, or Team
- » Anti-Fraud Policy
- » Fraud Training for Managers/Executives and Employees
- » Employee Support Programs

THE RED FLAGS OF FRAUD (THE FRAUD INDICATORS)

A red flag is a set of circumstances that are unusual in nature or vary from the normal activity. It is a signal that something is out of the ordinary and may need to be investigated further. Red flags do not necessarily indicate a fraud is taking place — they constitute warning signs that it could occur. Red flags are warnings that something could be or is wrong. Auditors, employees, and management need to be aware of red flags in order to monitor the situation and then take corrective action as needed. Employees, who notice that red flags are ignored, may mistakenly believe that they won't get caught. A little fraud soon becomes a large one, if left to grow.

There are various types of Red Flags. Few of them are listed below:

Employee Red Flags	» Employee lifestyle changes » Significant personal debt » Behavioral changes » High employee turnover, especially in those areas which are more vulnerable to fraud » Refusal to take vacation or sick leave
Management Red Flags	» Reluctance to provide information to auditors » Managers engage in frequent disputes with auditors » Managers display significant disrespect for regulatory bodies » There is a weak internal control environment » Frequent changes in banking accounts » Company assets sold under market value » Excessive number of year end transactions » Frequent changes in auditors » High employee turnover rate » Unexpected decline in cash balances » Refusal by company or division to use serial numbered documents (receipts) » Compensation program that is out of proportion » Any financial transaction that doesn't make sense - either common or business » Photocopied or missing documents
Changes in Behavior "Red Flags"	The following behavior changes can be "Red Flags" for Embezzlement: » Borrowing money from co-workers » Easily annoyed at reasonable questioning » Providing unreasonable responses to questions » Refusing vacations or promotions for fear of detection » Bragging about significant new purchases » Carrying unusually large sums of money » Rewriting records under the guise of neatness in presentation
Red Flags in Cash/ Accounts Receivable	Since cash is the asset most often misappropriated, one should pay close attention to any of these warning signs. » Excessive discounts and returns » Unauthorized bank accounts » Sudden activity in a dormant banking accounts » Discrepancies between bank deposits and posting » Abnormal number of expense items, supplies, or reimbursement to the employee » Excessive or unjustified cash transactions » Large number of write-offs of accounts » Bank accounts that are not reconciled on a timely basis
Internal control weaknesses	Weakness in the internal control will mean greater chances of fraud. Common internal control weaknesses that can indicate fraud symptoms include: » lack of segregation of duties – Employee handling several functions may increase the chance of committing and concealing fraud » lack of physical safeguards over assets, such as lack of sufficient surveillance systems, security personnel, easy access to warehouse and computer systems, etc. » lack of independent checks and reviews of employees' work by management and auditors » lack of proper authorisation on documents, records and transactions » an inadequate accounting system that lacks requirement of authorisation, or does not create an effective audit trail of transactions

Accounting anomalies	Accounting anomalies are unusual deviations from the standard financial recording or reporting practices, which result in irregularities in the accounting system. Examples include » missing documents or transactional information » long pending items on reconciliations » alterations on documents » photocopied documents when original should be present » increased past due accounts » ambiguous or unexplained journal entries » inaccuracies in the ledger accounts » unexplained changes in financial statements.

Such irregularities might be the result of unusual business occurrences or human error, but they could also signify fraud. Not only the management, but also the workers and staff members must be trained to look out for such red flags or something suspicious and report it. Once the employees know that both their supervisors and their peers are encouraged to report any suspicious transactions or circumstances, they will be less likely to engage in such conduct due to fear of being detected.

ADDRESSING THE FRAUD INDICATORS IS IMPORTANT

It is extremely important to pay attention to the fraud indicators as and when they crop up. Many a times such indicators are seen but no attention is paid or in some cases no action is taken since it is a small offence. This small unattended issue will one day grow up into a GIANT and may threaten the existence of the business.

Hence addressing the fraud indicators, once they are identified is extremely important. Analyzing the amount that has already been lost as a result of the wrong doing, the potential future loss, the cost to prevent a potential loss from occurring; how to recoup the losses identified, is an exercise that needs to be carried out.

PRESENT ROLE OF A COMPANY SECRETARY AND NEED FOR EXPANDING HORIZONS

A Company Secretary (CS) is a vital link between the Company and its Board of Directors, Shareholders, Government and Regulatory authorities. A CS plays an important role in Corporate Governance, compliances under Corporate Laws, SEBI Regulations, FEMA, Arbitration and Conciliation, General and Strategic Management. The Board, particularly the Chairperson, relies on the CS to advise them not only on directors' statutory duties under the law, disclosure obligations and listing rule requirements but also in respect of corporate governance requirements and practices and effective board processes. Certification under various legislations and due diligence are also some of the services that a Practising CS renders.

Besides the above, a Company Secretary has also been recognized as a Key Managerial Personnel (KMP) under the Companies Act 2013 along with the Chief Executive Officer/ Managing Director/Manager, Whole-time Director and Chief Financial Officer. This itself shows the change in the perspective about the role a Company Secretary is expected to play. CS is now expected to be committed to the Company rather than being committed to the Board.

As a KMP, a number of responsibilities and obligations have been cast on him, one of which is to work in the best interest of the company at all times and to play an important role in devising an efficient Corporate Governance system.

Reporting of Fraud: A very significant duty has been cast on the CS in practice (conducting secretarial audit) under section 143(12) of the Companies Act, 2013. It provides that if the secretarial auditor, in the course of the performance of his duties as auditor,

"The secretarial auditor while carrying out secretarial audit may, in addition to reporting on matters required to be reported under Section 204 of the Companies Act 2013, pay attention to fraud indicators, wherever possible, and alert the management. Same holds good while a Company Secretary is carrying out due diligence. A little more alertness and efforts will benefit the Company in the long run.

has reason to believe that an offence of fraud involving an amount of rupees one crore or above is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government (CG) within the prescribed time.

In case of a fraud involving lesser than rupees one crore, the auditor shall report the matter to Audit Committee or to the Board immediately but not later than 2 days of his knowledge of the fraud. Each fraud reported to the Audit Committee needs to be disclosed in the Board Report giving its nature, approximate amount and parties involved, remedial actions taken, etc.

There are penal provisions for contravention of the above section. While the Companies Act, 2013 provides a new and significant area of practice for Company Secretaries as secretarial auditors, it casts immense responsibility on them. The Company Secretaries must take care while conducting such audits. Section 448 of Companies Act 2013 deals with penalty for false statements. Any failure or lapse on the part of secretarial auditor attracts penalty for incorrect reporting. Disciplinary action for professional or other misconduct may be taken under the provisions of the Company Secretaries Act, 1980.

The secretarial auditor while carrying out secretarial audit may, in addition to reporting on matters required to be reported under Section 204 of the Companies Act 2013, pay attention to fraud indicators, wherever possible, and alert the management. Same holds good while a Company Secretary is carrying out due diligence. A little more alertness and efforts will benefit the Company in the long run.

CONCLUSION

When effective corporate governance measures are implemented successfully, it is most likely that frauds will be prevented or detected, thereby reducing potential losses and protecting the reputation of the company. Corporate Governance implementation should not be limited only to listed companies. In addition to abiding by law, a well-defined and structured corporate governance approach will benefit all the stakeholders by ensuring that the company follows the best practices and ethical standards. It will lead to a sustained growth of an organization. CS

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ARTICLE

Regulatory Concerns in Algorithm Trading/High Frequency Trading in India – the Way Forward

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Technology is gradually transforming itself into all-pervasive enabler to all segments and aspects of modern day business. We need not put forth any research paper to establish the correctness of our statement; changes in the manner of conducting the activities of our mundanely world themselves are adequate evidences to the statement. Artificial Intelligence is gradually supplanting the human brain. The cognitive human behavior has been tamed by the machines. The securities market is no exception. Technological innovations in the securities market have, of late, been the critical facilitator to the revolutionalisation of market developments in the world since 90's. The adoption of LPG by India in the early nineties not only broke the shackles of growth blockers of the economy; it also galvanized the domestic market into a highly competitive market-driven ecosystem. Integration of Indian economy and facilitation of seamless transactions were necessary concomitants to such paradigm shift to the economy.

Algorithm Trading or High-Frequency Trading is integration of advanced mathematical models-based software programs with embedded advantage of scanning, executing and taking advantage of price arbitrage on multiple indicators at a speed (microsecond or nanosecond) that no human could do and to cap it all, it also rules out the human (emotional) impact on trading activities. Leveraging the facility of 'Back testing', the main objective of Algo Trading is not necessarily to maximize profits but rather to control execution costs and market risk. The present article opens with the deliberations on various aspects including regulatory environment encompassing this technological trading marvel. The research of various market data give an insight to the challenges posed by Algo trading in the domestic market. Given the trading-edge provided by this technology, the authors propose, it is incumbent for the market regulator to create a 'fair and equitable market infrastructure at an affordable cost' for all the market participants.

Adoption of technology is symbolic to 'Business[1] continuity' as RBC is to Blood. Be that so, the Indian securities market also readily embraced the offerings of the technology to propel the business to the next level of growth trajectory. As a classic route of technology absorption and system up gradation, the back-end functions of Clearing and Settlement at the Exchanges were initially transformed. The next stage of technological interface was Trading Processes, for myriad of reasons it has become controversial. In short, the Indian securities market is now a 'data-driven market'. As the cliché goes, it is a kernel of truth at the core.

Historically, the 70's saw the emergence of modern technology in the matured jurisdictions. The securities trading landscape moved from Open Outcry System to Electronic Limit Order Book markets. The later became the dominant form of trading in the last decade. The Program Trading is a computerized type of securities trading involving a number of different portfolio trading strategies, where there is a purchase or sale of a basket of securities. The Program Trading became popular in the 80's. With the computer gradually permeating into various business transactional activities in the mid-nineties, Electronic Computer Networks (ECN), the concept of Electronic Trading received phenomenal acceptance in the securities trade market place. As the ECN allows trading of financial assets outside the physical limits of the traditional exchanges, it provided an opportunity to individual investors to subscribe to these systems and enter orders electronically. ECN provides multiple of benefits over the traditional exchanges including greater speed, higher transactional efficiency with minimal scope of

[1] An entity whose end-objective is Profit.

judgmental errors. Market risks are also minimized, thus attracting more investors to the fold of the securities market.

Technological innovations accelerated the emergence of pre-determined algorithm dominated trade transactions which are carried on certain trades based on certain conditions specified in the algorithm and checked against other market data, being received from external sources. High Frequency Trading is a specialized case of Algorithmic Trading (AT) involving the frequent turnover of many small positions of a security.

Fuelled by economics, Algo-trading is maths and science combined; and rules and logic married; high-speed trading and "High-Frequency Trading" (HFT) refers to automated trading conducted at millisecond or microsecond or nanosecond speeds throughout the trading day (Garg, 2017). Algo-trading has fostered changes in the profile of market participants.

Algorithmic Trading (AT) is the use of programs and computers to generate and execute (large) orders in markets with electronic access. Orders come from institutional investors, funds and trading desks of big banks and brokers. These statistical, mathematical or technical models analyze every quote and trade in the stock market, identify liquidity opportunities, and turn the information into intelligent trading decisions. Algorithmic trading, or computer-directed trading, cuts down transaction costs, and allows investment managers to take control of their own trading processes. The main objective of AT is not necessarily to maximize profits but rather to control execution costs and market risk. Algorithms are used extensively in various stages of the trading cycle. They may be classified into pre-trade analytics, execution stage, and post-trade analytics.

Furthermore, depending on their usage, Algorithms can also be broadly classified into Agency Trading Algorithms, Proprietary Trading Algorithms and High Frequency Trading (HFT) Algorithms. HFT is a sub set of AT. Here, opportunities are sought and advantage taken on very small timescales from milliseconds to nanoseconds. Some experts say, it will soon be reduced to picoseconds. Some high-frequency strategies adopt a market maker type role, attempting to keep a relatively neutral position and providing liquidity (most of the time) while taking advantage of any price discrepancies. Other strategies invoke methods from time series analysis, machine learning and artificial intelligence to predict movements and isolate trends among the masses of data (Study on Algorithm Trading/High Frequency Trading in the Indian Capital Market, 2017)[2].

The U.S. Securities and Exchanges Commission attributes some of the following specific characteristics of High Frequency Trading:

- The use of extremely sophisticated and high-speed computer programs for generating, routing, and executing orders
- The use of individual data feeds from exchanges as well as co-located servers in order to minimize network and other types of latencies
- Maintaining very short timeframes for establishing and liquidating positions, resulting in the frequent turnover of many small positions in one or more financial instruments
- Submitting a number of orders that are cancelled soon after submission
- Maintaining very few, if any, overnight positions (Anuj Agarwal, Senior Consultant, 2012)[3].

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Due to such advantages of technological offering HFT has captured a major share of the overall US and European equity trading market place. Asian countries were one of the first movers to embrace HFT in order to bring in foreign expertise and market liquidity. The burgeoning Indian securities market propelled the market infrastructure to embrace the complex technology driven market ecosystem.

On April 3, 2008, SEBI allowed Direct Market Access facility for executing buying or selling orders to institutional clients without manual intervention by brokers. This signaled the arrival and adoption of HFT in the Indian securities market. Given the underlying benefits of AI based trading, effective from February 24, 2009, the facility was also extended to Foreign Institutional Investors to trade through the Investment managers nominated by them. Technological innovations offered low latency[4] trade confirmations. This opened another channel of Algorithm Trading - Co-location. NSE started colocation services in 2010[5]. The broking commissions from April 17, 2010 started shrinking in India with more institutional investors adapting Direct Market Access route. Bombay Stock Exchange and National Stock Exchange also played a major role for creating an environment conducive to HFT trading in India.
The Financial Stability Report, June 2015 (Financial Stability Report, 2015) of RBI has also highlighted the benefits of innovations and the potential risks from HFT in equity and equity derivative markets[6].

2 http://dea.gov.in/sites/default/files/NIFM%20Report%20on%20Algo%20trading.pdf (as accessed on 23 Sept. 2017)

3 (www.capgemini.com/resource-file-acccess/resoruce/pdf (as accessed on 18 Aug. 2017)

4 Latency in the context of computer networks and communication systems refers to a delay and is normally defined in terms of the time it takes for a data packet to travel from one point to another. Reduced 'latency' with respect to trading refers to network connections used by financial intermediaries to connect to stock exchanges and electronic communication networks to execute financial transactions at a very fast pace.

5 (RBI, 2015) (https://rbi.org.in/SCRIPTs/ PublicationReportDetails. aspx?UrlPage= &ID=818#FT27)

6 https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/7CBD5C245EFBE94AFFA04C4E57F3274B84.PDF

OBJECTIVE

In light of economic advantages of Algorithm/High Frequency Trading, this paper seeks to identify the regulatory gaps, if any, that has been created by this disruptive technology in the Indian securities market place. While doing so, an endeavor is also made to examine whether if such technology is permitted to be market-wide pervasive, will it stand to the litmus test of regulatory principles – 'Fair and Equitable Access to all the Market Participants'.

The paper opens with the arguments on the theme with the benefits of AT/HFT in Section I. Section II brings out the murkier side of AT/HFT. Some of the leading researches by exponents of AT/HFT are also detailed in this section. We draw further support to our arguments on the murkier side of this innovative digital technology from the findings of the Study on AT/HFT in India by DEA-NIFM Research Programme. Having mapped both perspective of this technological innovation, Section III searches to identify our concern of this paper as to whether AT/HFT in India is Non-discriminatory, Fair and provides Equitable Access to all the market participants. For the purpose, the paper deliberates on the constituents of trading participants and their transactions quantum and pattern etc. on this technological trading platform. The deliberations are intended to map the beneficiaries if any of this platform. With the identification of the beneficiaries, Section IV makes an endeavour to evaluate impact of this disruptive technology to argue whether this will benefit the retail investors' decision making domain and also can this technology be leveraged for escalating Investors' Protection in India – the legislative mandate of SEBI.

Change is ubiquitous. Technology is the Game Changer. It is all pervasive market-wide and here to say. Now that this technology has been embraced by the Indian markets, it is thus imperative to find a way forward to provide Fair and Equitable Access to all the market participants including retail investors in India. Every lock is made with a key, with that conviction, this paper makes an endeavor in Chapter V to trace the way forward to this technological disruptive milieu.

METHODOLOGY

This paper is the outcome of analysis of evolution and progression of AT/HFT in the Indian market ecosystem with special reference to the retail investors and their protection. To accomplish this research objective, Annual Reports of various Stock Exchanges, Regulations, Circulars, Notifications, Working Papers and other research publications and handbooks of statistics published by various securities market regulators of the world including SEBI, SEC, FSA, IOSCO, ESMA, BIS etc. have been intensively studied and relied for writing this paper. Recently, the DEA-NIFM Research Team had submitted a comprehensive study titled "Study on the Algorithm Trading/High Frequency Trading in India[7]". The observations/findings of the report were also perused by the authors with permission of the research team. Besides various books, journals and periodicals have been consulted, several reports on this technological domain have also been considered, and internet searching has also been done.

SECTION I- ADVANTAGES OF AT/HFT

The advantages of Algorithm Trading have been more laconically put by NASDAQ (NASDAQ, n.d.). It says, trading with algorithms has the advantage of scanning and executing on multiple indicators at a speed that no human could do. It provides multiple opportunities where trade may be analyzed and executed at a faster speed, price arbitrage can also be utilisesd. It is well documented that there are two dominant reasons of poor investment decisions by the traders – Greed and Fear. Since the trade is machine based, there is complete absence of human emotions while doing the trading, as trades are constrained within a set of predefined criteria. The other advantage is accuracy. As the trade is being automatically executed on a pre-determined configuration, the human behaviour associated with a wrong trade is thus avoided.

One of the major advantages of Algorithm trading is – it has inherent capabilities of 'Back testing'. This is the critical success factor in fast changing market environment. It is the process of testing a trading strategy on relevant historical data to ensure its viability before the trader risks any actual capital. A trader can simulate the trading of a strategy over an appropriate period of time and analyze the results for the levels of profitability and risk (Investopedia, 2017). This ability provides a huge advantage as it lets the user remove any flaws of a trading system before you run it live[8].

In a STP driven market infrastructure, the time-priority of the trade execution is another cornerstone for making a profitable trade. Algo Trading has benefited from technology that reduced delay or Latency for the benefit of market participants. The Traders by locating their computers (owned by HFT firms and proprietary traders) in the same premises where an exchange's computer servers are housed. This enables HFT firms to access stock prices a split second before the rest of the investing public. In other words, it affords an opportunity to the HFT Traders to more rapidly adjust their quotes as market conditions change. If traders are located 100 kms. away from an exchange, they face a delay of one millisecond whenever they seek to trade a price *via* their computer screen. Few investors can afford to be that late to prices that flash so quickly. HFT traders now operate in the smaller realm of nanoseconds.

In the future contracts, there are evidences of decrease in bid-ask spreads and an increase in market depth as well as an improvement in liquidity following the introduction of colocation.

Aided by above technological advantages, Algorithmic trading are significant contributors to trading volumes in the developed markets. Volumes generated by these engines account for more than 75 per cent of daily turnover in developed markets such as Europe, Japan and USA. These tools minimise impact costs and increase the speed of executing large trades, thereby improving systemic efficiency. Moreover, sophisticated technological platforms enable better price discovery because of faster pre-programmed execution (Nihlani G. a., Growing Interest In Algorithmic Trading Set To Change Competitive Dynamics In Equity Broking, 2010).

SECTION II- MURKIER SIDE OUTWEIGH THE BENEFITS OF AT/HFT TRADING

IOSCO in its Consultative Paper[9] has observed that the presence of high frequency traders discourages other traders from participating as they feel an inherent disadvantage to these traders' superior technology. Another concern is that the growing involvement of automated quantitative trading strategies may also contribute to the transmission of shocks across trading venues trading the same product or across markets trading different assets or asset classes. The extent of the impact depends on how individual algorithms are programmed and how they respond to changes in market conditions. For instance, interconnections between markets, which may be amplified by algorithms programmed to operate on a cross-market basis, may allow for a shock to pass rapidly from one market to another, potentially increasing the speed at which a systemic crisis could develop. This was illustrated by the Flash Crash event of May 2010. Further, under stressed market conditions, the

7 See Note 3 supra

8 http://www.nasdaq.com/forex/education/advantages-of-algo-trading.aspx

9 IOSCO, Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency Consultation Report, 2011

interaction between automated execution programs and algorithmic trading strategies can quickly erode liquidity and result in disorderly markets. High trading volume is not necessarily a reliable indicator of market liquidity, especially in times of significant volatility.

Risks to market integrity and efficiency do not have to arise solely from a major shock such as the flash crash. Regulators are cognizant of the possibility that the confidence of some investors in the efficiency and integrity of the market (and possibly their willingness to trade) by the ongoing development of algorithmic trading and HFT, may lower investors' confidence and, possibly, reduce traditional market participants' willingness to trade. For instance, the use of sophisticated low-latency algorithmic trading techniques may prompt less sophisticated traders to withdraw from the market as a result of their fear of being gamed by low latency firms that use faster technology[10].

HFT strategy depends entirely on information advantage — knowing something (or algorithmically decoding some signal) before everyone else does. Lately, the limiting factor in fast trading is not computing power, but communication power. Thus, firms are paying to construct ultrafast cables between financial centers. It is also argued by Pasquale that technology does not necessarily drive markets toward the goal of ever-faster trading. The social practice of buying and selling stocks is fundamentally malleable, and technology makes it ever more malleable. The pursuit of speed of ordering for its own sake has now reached the point that it rewards the purchasing power of certain traders (their ability to buy access to mountain-spanning cables) over their skill at allocating capital (Pasquale, Law's Acceleration of Finance: Redefining the Problem Of High-Frequency Trading, 2010)[11].

Most HFT firms are run by scientists and engineers, and it is unlikely that they pay close attention to economic fundamentals and create a map of market structure that updates as fundamentals change. Evidences have established that though HFT helps in synchronization of prices, but then it is not a panacea for markets. When prices are tightly connected to one another, errors can quickly propagate throughout the financial system if safeguards are not in place. In addition, if shared misconceptions exist among investors, they are amplified so that prices are less accurate overall. Finally, synchronization can create spurious structure in markets if information about the changing relationships of securities does not make its way to the high-frequency domain (Greig, 2012)[12]. It has also been proved in the past that AT and HFT can be used to manipulate markets using techniques like quote stuffing, layering (spoofing) and momentum ignition. Evidence suggests that market manipulation algorithms lead to decreased liquidity, higher trading costs, increased short term volatility, impact performance and fill rates, and massive price moves backed by false volume[13].

Egginton, Van Ness and Van Ness in their research (2016) have established that stuffing[14] is pervasive and that over 74% of US exchange listed securities experienced at least one episode during 2010. Consequently, the stocks experienced decreased liquidity, higher trading costs, and increased short-term volatility during periods of intense quoting activity. The research established that most quote stuffing events occur on the NYSE, ARCA, NASDAQ and BATS. Further, during these quote stuffing events that the number of new orders and cancelled orders increased substantially while the order size and order duration decrease (Egginton, Van Ness and Van Ness, 2016)[15].

Cvitanic and Kirilenko (2010) have suggested that the introduction of HFT participants will reduce the average trade value and move the distribution of prices closer to the mean, resulting in reduced volatility (Cvitanic, Jaksa and Kirilenko, Andrei A,, 2010)[16].

Ton has evidenced that HFT increases the trading costs of traditional institutional investors. One standard deviation increase in the intensity of HFT activities increases institutional execution shortfall costs by a third. The impact on institutional trading costs is most pronounced when HF traders engage in directional strategies. The research further establishes that institutional trading skills matter for alleviating the adverse impact of HFT (Tong, Lin, 2015)[17].

Agarwal and Thomas have established that securities with higher algorithmic trading have lower liquidity costs, order imbalance, and order volatility. They also exhibited new evidence that higher algorithmic trading leads to lower intraday liquidity risk and a lower incidence of extreme intraday price movements (Aggarwal and Thomas, 2014).[18] Zhang (2010) in his paper has demonstrated that high-frequency trading generates some harmful effects for the U.S. capital market. He has also established that high-frequency trading hinders the market's ability to incorporate information about firm fundamentals into asset prices, as high-frequency trading causes stock prices to overreact to fundamental news (Zhang, X. Frank, 2010)[19]. It has been found that for contracts soliciting a high volume in the derivatives markets in India, algorithmic trading leads to better liquidity, and has no impact on volatility. There is an indication that volatility may increase due to algorithmic trading in low volume contracts. But, in high volume contracts, AT/HFT increases liquidity, and has no impact on volatility. Neither can one conclude about the role of HFT in promoting hedging efficiency (Multi Commodity Exchange of India Limited, 2014)[20].

The study of DEA-NIFM Research Team have also asserted the following disadvantages[21] in AT/HFT:

a. Technical sufficiency and resources required

One of the biggest disadvantages[22] of AT is the technical sufficiency and resources required for AT. AT requires knowing how to program in specific program languages, which can take quite a while to learn. This facility may not be accessible to retail investors and small traders.

b. Lack of Control

Since trades are automated, if the program runs in a way that one doesn't want it to, one will be unable to control losses. Programs need to be tested thoroughly in order to avoid these mistakes that might be made.

c. Lead to systemic risk

Interconnections between markets, which may be amplified by algorithms programmed to operate on a cross-market basis, may

10 Joint report from the staff of the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC)
11 http://www.cardozolawreview.com/content/36-6/PASQUALE.36.6.pdf
12 https://arxiv.org/pdf/1211.1919v1.pdf
13 Refer Note 1
14 A tactic of quickly entering and withdrawing large orders in an attempt to flood the market with quotes that competitors have to process, thus causing them to lose their competitive edge in high frequency trading
15 http://onlinelibrary.wiley.com/ doi/ 10.1111/fima.12126/
16 https://papers.ssrn.com/ sol3/papers.cfm?abstract_id=1569075&http:// papers.ssrn.com/sol3/ papers.cfm ?abstract_id=1569075
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20 https://www.mcxindia.com/docs/default-source/education-training/occasion-al-papers/howhftaffects marketquality.pdf?sfvrsn=2
21 Refer Note 1
22 emphasis added

allow for a shock to pass rapidly from one market to another, potentially increasing the speed at which a systemic crisis could develop. This was illustrated by the Flash Crash event of May 2010.

d. Lack of Visibility

We know what a specific algorithm is supposed to do, measure its pre-trade analytics and see how the post trade results match up to that expectation. But if the trader didn't select the most optimal algorithm for that trade little can be done. This problem is caused by a lack of visibility and transparency into the algorithm while it is executing orders.

e. Algorithms Acting on Other Algorithms

If fund managers' trading pattern is spotted and tracked with the use of algorithms, then these algorithms are liable to be 'reverse engineered'. This implies that their buy and sell orders are pre-empted and used to the maximum effect by their competitors. Here, algorithms are acting on other algorithms.

f. Lack of standard benchmark

With brokers offering many algorithmic strategies, one concern is that buy-side institutions lack the tools to understand which algorithm to use for a particular stock. The lack of a standard benchmark has made it almost impossible to assess the quality of algorithms.

g. Algorithmic trading requires careful real-time performance monitoring as well as pre and post-trade analysis

This is required to ensure algo trade is properly applied. Traders must calibrate the algorithms to suit portfolio strategy. More important is aligning execution choices with the level of order difficulty involved in terms of: order size, liquidity, and trade urgency. Low touch venues such as algorithmic trading lend themselves best to easier types of orders such as low-urgency and small orders for large cap stocks. But urgent orders for a large volume of small cap stocks would require a higher-touch approach to ensure best execution and cost efficiency.

h. Missing Ingredient—The Trader's Gut Feel

Algorithms are simply advanced trading tools and they cannot replace the human elements or make interaction redundant. Algorithms fail to capture a trader's "gut feel". It is the intraday trading characteristics of a stock that assist a trader in determining the right strategy, whether to back off or be more aggressive.

i Fat finger/faulty algorithms - Any flaw in algorithms can cause huge deviations from the healthy supply-demand arbitered prices

Algorithms react so quickly that by the time a human understands what is going wrong and pulls the plug, hundreds of millions of rupees can be lost.

Market abuses incidences in India

The DEA-NIFM Research Team in their report have cited the following list of some the leading Flash Crash cases, to evidence murkier side of AT/HFT:

> "HFT firms trade mostly with their own money, easily trading thousands of shares in one transaction, only to offload them less than a second later before buying more. They can move millions of shares around in minutes, making profits by earning a tenth of a penny of each share. Brokers add value by providing quality execution – i.e. getting the best price and the most liquidity. They need to integrate HFT and institutional flow to improve liquidity for the institutional investors.

- Flash crash had occurred On BSE Muhurat Session in 2011. An algorithm that went into a loop kept entering repeat trades in the Sensex futures contract, resulting in trades worth ₹25,000 crore from one member in that session. All the trades in Sensex futures of that session had to be annulled
- On April 21st, 2012, the Nifty April futures plunged to 5,000 from 5,300 levels with about 35,000 lots of Nifty futures getting traded in the space of a few minutes. The sharp drop in futures also dragged the underlying index, with the 50-share nifty declining from 5,313 to 5,245 within a few seconds. Nifty April futures finally closed at 5,304.8, down 0.96 per cent; while the benchmark Nifty closed at 5,290.85, down 0.78 per cent. According to market buzz, the sell order as placed due to an algorithmic trading error by a leading foreign institutional investor
- In June 2010, the Reliance Industries stock had crashed nearly 20 per cent on execution of a large 'sell' order using algo. The order, which appeared to be a punching error, saw the Sensex plunge more than 600 points the moment it was executed.

SECTION III – AT/HFT IS INSTITUTIONAL INVESTOR'S PREFERRED CHOICE

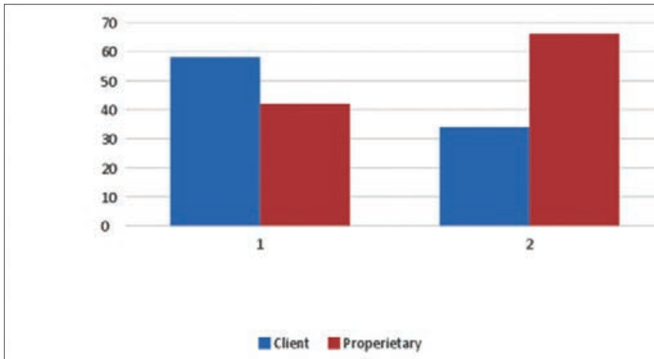
Machine based trading AT/HFT undisputedly has grown from being virtually non-existent to becoming a dominant force in the market. It has become an important factor in the securities markets that are driven by sophisticated technology on all layers of the trading value chain. It is not a trading strategy, it applies to the latest technological advances in market access, market data access and order routing to maximise the returns of established trading strategies.The proponents of these technological innovations argue that there is a clear evolutionary process in the adoption of new technologies triggered by competition, innovation and regulation.

III.A Increasing contribution to Trading Turnover by Proprietary account of AT/HFT Trader

Like all other technologies, AT and HFT enable sophisticated market participants to achieve legitimate rewards on their investments – especially in technology – and compensation for their market, counterparty and operational risk exposures. Institutional investors' costs are lower for against–wind HFT net flow but disproportionately larger for with–wind HFT flow. HFT firms trade mostly with their own money, easily trading thousands of shares in one transaction, only to offload them less than a second later before buying more. They can move millions

of shares around in minutes, making profits by earning a tenth of a penny of each share. Brokers add value by providing quality execution – i.e. getting the best price and the most liquidity. They need to integrate HFT and institutional flow to improve liquidity for the institutional investors. Besides, as every information has an underlying cost, the trading firms have financial resources to acquire that information at a cost; similarly, they also have higher financial risk appetite.

Graph: Client and Proprietary Contribution of AT/HFT in India

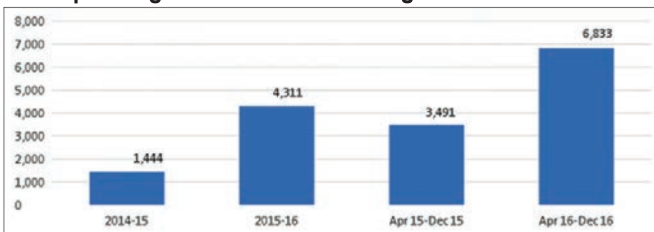


Source: NSE and BSE and Analysis by the Authors

The cumulative effect of all these factors evidence that AT/HFT is gradually emerging as the most predominant trading strategy for the institutional investors.

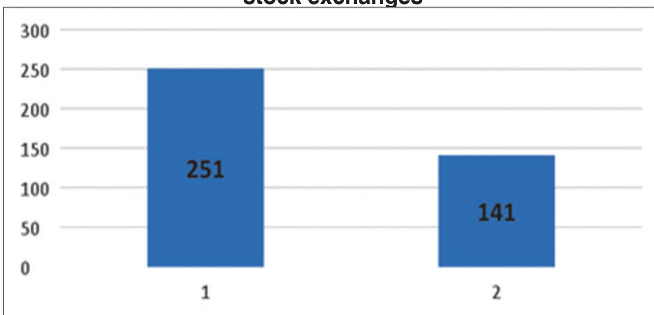
III.B Increasing trend in the Foreign Portfolio Investors
The analysis of the trend in the registration of Foreign Portfolio Investors show an increasing trend in last four years. The number of Foreign Portfolio Investors has increased over 370% in last four years.

Graph: Registration trend of Foreign Portfolio Investors



Source: SEBI Handbook of Statistics 2016 and Analysis by Authors

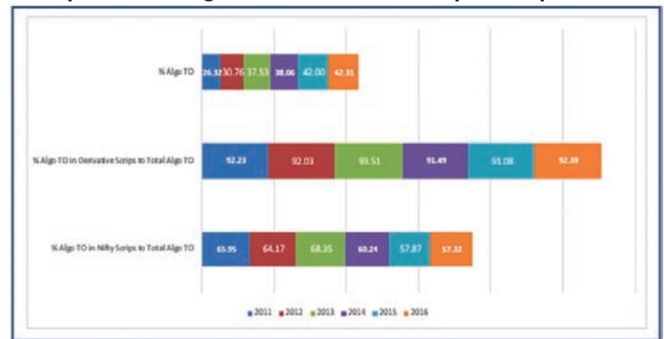
Graph: Number of registered brokers for AT/HFT in the stock exchanges



Source: NSE and BSE and Analysis by the Authors

Another impact on the market is, the transactions are predominantly in the liquid scrips, which is evidenced from trading pattern in NSE.

Graph: Percentage of transactions in Liquid scrips in NSE



Source : DEA-NIFM Research Team

III.D High percentage contribution of AT/HFT Traders to Total Turnover

The comparative percentage of contribution by AT/HFT Traders to the total turnover of the respective stock exchange is as follows:

Table: Percentage of contribution of AT/HFT Trading to Total Turnover of Stock Exchanges

Brokers	NSE			BSE			NSE & BSE	
Total	AT/HFT Trading members	%age to Total Brokers	%age to Total turnover	AT/HFT Trading members	%age to Total Brokers	%age to Total turnover	AT/HFT Trading members	%age to Total Brokers
3,183	251	7.89	18.3	141	4.43	0.1	392	12.32

Source: NSE and BSE and Analysis by the Authors

The relative comparison of approved AT/HFT Trading members at NSE and BSE and their aggregate comparison to total number of brokers in the stock exchanges make a very interesting revelation. 7.79% of NSE brokers are AT/HFT Traders while in BSE it is 4.43%. In other words, of all the brokers collectively in BSE and NSE, 12.32% of the total number of brokers in both the stock exchanges trade at AT/HFT platforms[23].

Noteworthy is, that even though the number of AT/HFT traders to the cumulative total number of brokers in all the stock exchanges of India, is considerably low yet the percentage of turnover generated by restricted number of AT/HFT traders of NSE to the total turnover is 18.83%. This is considerably very high.

III.E Increasing trend in the Corporate Brokers
The introduction of Direct Market Access in India has transformed the Indian securities market. This also changed the profile of the investors. Retail investors started being substituted by the institutional investors. So also, the profile of the brokers. Since 2011, the number of corporate brokers in all the stock exchanges is more than 89.7 per. This means higher ticket size and increasing trade risks.

III.F Majority of trading in Derivative Segment is by AT/HFT
The SEBI Handbook of Statistics 2016 has also evidenced that there is an increasing trend of AT/HFT doing trading in Derivative segment of both the stock exchanges. From mere 19.5 per cent in April 2010 it has risen to 57.6 per cent in April 2016. Though AT/

23 AT/HFT trading in Metropolitan Stock Exchange being is very low and thus, not disclosed in SEBI Handbook of Statistics, hence not considered.

HFT trading in BSE is very significant in April 2016 (98 per cent), the volume being low, it does not seem to impact the market. DEA-NIFM study has concluded that it is around 42 per cent of the total market turnover as against global mark of 80 per cent. It appears Indian market is inching towards the AT/HFT market.

Table: Modes of Trading in Derivative Segment – BSE & NSE

	NSE								BSE							
Month	ALGO	DMA	Co-location	Internet Based Trading	Smart Order Routing	Total AT/ HFT	Non-ALGO	Mobile	Program Trading	DMA	DMA with ALGO	Smart Order Routing	Mobile	Direct Market Access & Smart Order Routing with ALGO	Total AT/ HFT	Normal
1	2	3	4	5	6	7	8	9	1	2	3	4	5	6	7	8
Apr-10	7.6	2.0	1.8	8.0	0.0	19.5	80.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Apr-11	19.9	2.7	2.2	8.0	0.1	32.9	67.1	0.0	32.3	0.0	0.0	0.0	0.0	0.0	32.3	67.7
Apr-12	4.3	7.6	18.8	10.3	0.0	40.9	59.0	0.1	20.2	0.2	0.0	0.0	0.0	0.0	20.4	79.6
Apr-13	5.4	8.9	24.7	10.0	0.0	49.0	50.8	0.2	39.1	0.0	0.0	0.0	0.0	0.0	39.1	60.9
Apr-14	4.4	8.1	29.8	11.2	0.0	53.4	46.1	0.5	38.7	0.0	0.0	0.0	0.0	0.0	38.7	61.3
Apr-15	3.1	3.9	36.1	11.2	0.2	54.4	44.9	0.7	85.9	0.0	0.0	0.0	0.0	0.0	85.9	14.1
Apr-16	4.0	6.0	34.7	12.9	0.0	57.6	41.1	1.3	98.0	0.0	0.0	0.0	0.0	0.0	98.0	2.0

Source: Table 96 and 97 from SEBI Handbook of Statistics 2016

III.G Changing pattern of trading in stock exchanges

The trading pattern has also undergone a change with AT/HFT trading entering Indian market place. AT/HFT appears to have caught the eyeballs of FPI. The trading in the derivative segment in NSE has increased over 50 percent in last six years. Trading in the proprietary account has also increased similarly by 50 per cent. Interestingly others have decreased, the space captured by the aggressive FPI and Propriety traders.

Table: Select Category Wise Share of Turnover in Equity Derivative Segment of BSE & NSE

Month	BSE			NSE		
	Proprietary	FPI	Others	Proprietary	FPI	Others
1	2	3	4	5	6	7
Apr-10	Na	Na	Na	32.8	9.8	56.9
Apr-11	Na	Na	Na	41.1	10.0	48.7
Apr-12	76.0	0.0	24.0	44.4	16.9	38.5
Apr-13	71.2	0.0	28.8	48.2	14.5	37.3
Apr-14	96.7	0.0	3.3	47.7	13.8	38.3
Apr-15	96.9	0.0	3.1	47.7	13.8	38.3
Apr-16	91.4	0.0	8.6	45.7	15.0	38.9

Source: Table 101 & 102 of SEBI Handbook of Statistics 2016

More than 860 fresh overseas investors were registered with SEBI in the first five months of 2017-18[24], driven by their continued interest in the Indian capital markets, this shows increasing interest of FPIs in the Indian securities market propelled by AT/HFT trading.

III.H High Order to Trade Ratio

High order-to-trade ratios imply that market participants are placing and cancelling orders but not executing most of the orders. This could be due to the nature of market making algorithms or market manipulation algorithms, where orders are placed to drive volumes to that point and then cancelled – with the result that most of the orders are not converted into trades.

The analysis by DEA-NIFM Research Team has established that the Average Order to Trade Ratio for all active Algo Participants in the stock exchanges have been considerably high, even though it involves financially penalising individual financial firms if the orders to buy or sell they enter do not lead to a 'sufficient' number of trades.

III. I Low Delivered Quantity to Traded Quantity

Security Delivery Position is one of the crucial analysis of trading behaviour of the market participants. It tells how many investors are willing

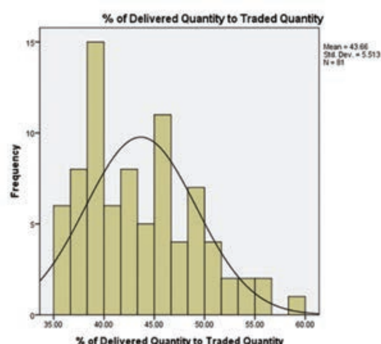
24 https://economictimes.indiatimes.com/markets/stocks/news/over-860-new-fpis-registered-with-sebi-in-5-months-of-fy18/articleshow/61317001.cms

to accept the shares in their demat account. A higher delivery quantity to Traded Quantity means serious trading and balance is intraday play. Low percentage of Shares Delivery Quantity to Total Traded Quantity signifies that there is more squaring-off on the same day in the stock. It is safe to assume that there is more trader interest in the stock, rather than long-term investors' interest.

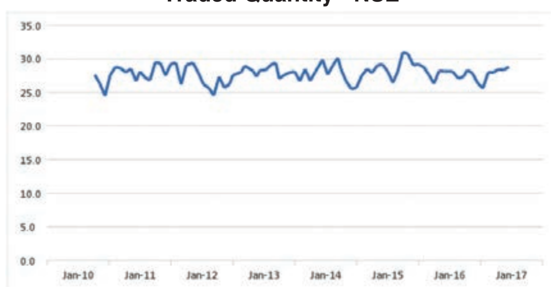
The analysis of percentage of Settlement Statistics for Equity Cash Segment of BSE and NSE exhibit the following graphs:

Graphs: Percentage of Delivered Quantity to Traded Quantity - BSE

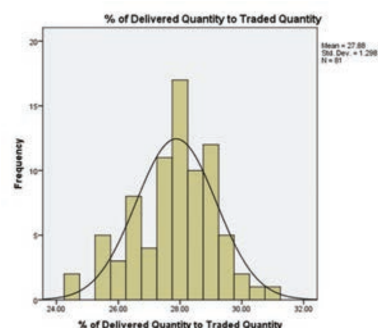
Source: Table 93 SEBI Handbook of Statistics and Analysis by the Authors



Graph: Percentage of Delivered Quantity to Traded Quantity - NSE



Source: Table 94 SEBI Handbook of Statistics and Analysis by the Authors



From the analysis of the above data information, we conclude to say that the Mean of percentage of Delivery to Traded quantity in BSE is 43.66. With Standard Deviation at 5.513, the histogram establishes that the percentage fluctuation in BSE is highly skewed, initially it was low during 2010 when the AT/HFT was introduced and with further years it started increasing with maximum at 59.1 in March 2013.

In NSE, the mean percentage of Delivery to Traded quantity is very low at 27.88, low standard deviation of 1.298 establishes that in NSE since introduction in 2010, the delivery percentage has been hovering around the mean. The maximum delivery percentage was in April 2015 at 31.0. It may be mentioned here that in the equity cash segment the market share of NSE is generally around 80%.

From the above, we conclude to say that the new technology - AT/HFT has brought in more day traders, who have high risk-taking capacity, better financial skill sets and do securities transactions for short term gains and are not interested in long term investment. The retail investors lack such of the above trading capabilities and are thus gradually moving out of the market.

OUR RESEARCH INFERENCES

The above researches have established the following:

- Dominant trading volume in AT/HFT is done in Proprietary/FPI Client's Accounts
- Due to High Risk Appetite of Foreign Portfolio Investors, AT/HFT trading Brokers are more interested in the derivative segment more particularly the Interest Rate Derivatives
- High Order to Trade shows the Clients have higher risk-taking capacity, they are making profit by arbitrage
- Generally static Low percentage of Delivery to Traded quantity in the market means more intraday profit-making trading strategy
- AT/HFT trading volume to the total turnover of the Exchange is considerably high
- AT/HFT trading is heavily in favour of Institutional Investor clients of the brokers
- Introduction of AT/HFT has proved as a disruptive technology for retail investors

The increasing trend in the registration of Foreign Portfolio Investors coupled with increasing transactions by the Traders in Clients account, predominantly in the Derivative Segment shows that domestic AT/HFT trading market structure is fitting well into FPI's Client's investment strategies. These FPIs or Corporate clients are situated overseas. The vibrant Indian market is attracting them to our securities market. With deep pocket, tech-savy and high risk-taking capacity, AT/HFT trading is their most preferred route. As the transactions volumes are large, the traditional concept of broker earning by the commission route is replaced by underlying arbitrage profit sharing between the corporate client and the broker.

SECTION IV - INTERFACE OF AT/HFT WITH PROTECTION OF RETAIL INVESTORS

Our research has also thus established that AT/HFT trading is highly complex trading landscape, the infrastructure cost is exorbitant, high technology obsolescence rate makes acquisition cost prohibitive, retail investors generally suffer from 'Digital Divide' etc. The Algorithmic trading to Exchange turnover has 'stabilised' at around 47%. In other words, retail investor is deprived to trade in the market to that extent which securities are generally not liquid, price discovery in such scrips is also under cloud.

The cumulative effect of these important pillars of AT/HFT trading makes such technologically innovative trading beyond the financially affordable reach of a retail investor, retail investor still does trading by using his investment instincts and above all the cognitive behavior. He is deprived of Artificial Intelligence. Implicit is the fact that AT/HFT has been embraced by the securities

markets globally, in USA it is as high at 80% as against 47% in India, the cause of concern is for around 27 million of individual investors, as the market matures and absorbs the technology it is proving to be a disruptive technology for the retail investors. At the same time, it is also an acknowledged *fait accompli* that although the household savings are gradually increasing in India, the retail investors are shying away from the market. It is reported that mutual fund houses have registered a surge of over 67 lakhs investors during the financial year ended March 2017, taking the tally to a record of 5.4 crores on growing interest of retail investors.

AT/HFT traders have firmly established their place in the market ecosystem, primarily serving as a facilitator connecting buyers and sellers through time, but also frequently criticized in that role for being superfluous, or worse, predatory. Whatever your view, their impact has been wide and, likely, lasting. (Avramovic, 2017).

According to a recent report by market research company Technavio, the global algorithmic trading market is expected to grow 10.3 per cent CAGR between 2016 and 2020. In India, algo-trading contributed 15.49% while co-location accounted for 22.85% (38.34% combined) of the total equity cash market trade volume of NSE in July 2016 (Banerjee, 2016).

Policy makers across the globe are spending considerable effort deciding if and how to regulate HFT. On the one hand, HFT appears to make markets more efficient. Algorithmic trading in general, and HFT specifically, increases the accuracy of prices and lowers transaction costs. On the other hand, HFT appears to make the financial system as a whole more fragile. The rapid fall and subsequent rise in prices that occurred in US markets on May 6, 2010 (known as the "Flash Crash"), was, in part, due to HFT. Because HFT firms do not openly disclose their trading activities, it has so far been unclear how and why HFT produces these outcomes; a circumstance that has greatly increased the controversy surrounding its existence (Greig, 2012).

The Consultative paper issued by SEBI appears to be more focused on market discipline. The authors hold the view that SEBI in the hurry to bring in more 'transparency in the price discovery and Liquidity in the market' has overlooked its legislative duty of protection of interest of (retail) investors. It must be noted in the context that India has an investor of more than 30 million with around 27 million as individual investors. Also important is the fact that the Average Gross Traded Value contribution of Retail Investors during the year 2015-16 was 40% in NSE.[25]

AT/HFT is here to stay and further technological innovations in future will make market more complex and non-accessible to the retail investors of India. Therefore, it is most opportune time for SEBI to intervene in the market for the cause of retail investors. We conclude to suggest that AT/HFT Traders may be permitted to trade only in the Derivative segment – Equity derivative, Currency derivative, and Interest Rate derivative. The derivative segment is generally for high risk profile investors, help bringing in liquidity in the market and also price discovery of underlying securities.

CONCLUSION – STRATEGIC INNOVATIONS TO REACH THE LAST MILE

The Technical Committee of the International Organization of Securities Commissions (IOSCO) has published its Final Report on Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency, containing Recommendations aimed at promoting market integrity and efficiency and to mitigate the risks posed to the financial system by the latest technological developments including high frequency and algorithmic trading.

The IOSCO Recommendation broadly deliberates on Market Integrity and Efficiency. The Recommendations set out high level guidance to address issues in two specific areas: Trading venue operators and trading participants.

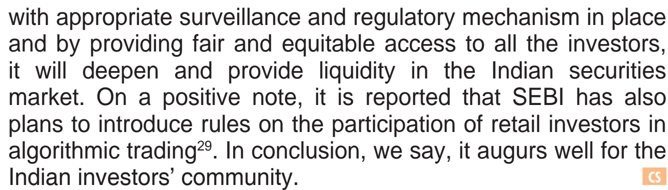
Recommendation 1 states that Regulators should require that trading venue operators provide fair, transparent and non-discriminatory access to their markets and to associated products and services.

Equitable and Fair access to all the retail investors may be achieved in India by Bharat Net[26]. Similar sentiments were also echoed by Shri Ashok Lavasa, Finance Secretary, in a recent seminar on 'Policy and Regulatory Framework for Algorithm/High Frequency Trading in India. Shri Lavasa pointed out that fairness and inclusivity can increase by providing enablers like Bharat Net /optic fiber networks which could effectively reduce the cost of have-nots accessing the market. (Lavasa, 2017)[27].

Undoubtedly, Bharat Net will significantly increase the reach of the machine based trading. It will be expanded pan-India under the CSC 2.0 Scheme by establishing self-sustaining network of 2.5 lakh Community Service Centres at Gram Panchayat (GP) level under Digital India- Pillar 3-Public Internet Access Programme – National Rural Internet Mission and deliver various citizen centric services. The scheme would consolidate service delivery through a universal technology platform, thereby making e-services accessible to citizens anywhere in the country. Therefore, this scheme will provide 'Non-discriminatory Access to e-Services' to all the citizens of India including rural citizens. All Gram Panchayats are proposed to be covered by 2019[28].

As is universal axiom in the securities market that Algorithm Trading/High Frequency Trading are not disruptive technology,

25 NSE, Annual Report 2016(https://www.nseindia.com/global/content/about_us/AnnualReport-2016.pdf)
26 NOTE: Bharat Net is a Project launched in October, 2011 (renamed Bharat Net in 2015) to provide broadband connectivity to all 2.5 Lakh Gram Panchayats.
27 Press Release dated 27 Sept 2017 (http://dea.gov.in/sites/default/files/Press%20Release%20 on%20 semina% 20Algo%20Tradingr.pdf)
28 http://meity.gov.in/content/csc-20-way-forward



with appropriate surveillance and regulatory mechanism in place and by providing fair and equitable access to all the investors, it will deepen and provide liquidity in the Indian securities market. On a positive note, it is reported that SEBI has also plans to introduce rules on the participation of retail investors in algorithmic trading[29]. In conclusion, we say, it augurs well for the Indian investors' community.

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Information Technology and Cyber Crime

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Internet has become the most significant technology all over the world, which is not only used by the people to contact each other but also utilized by business organizations to become global. Computer and internet enable business organizations to execute the Electronic commerce business model, which has become very popular. Computers and Internet are a powerful source in the success of globalization and international business. Computers are being used worldwide and cybercrime is a global issue plaguing the world. Cybercrime has become an important concern for not only the business firms, government, law enforcement agencies but also for the common people because these kinds of issues are related to the consumer's day-to-day activities. Due to these types of crimes, consumer's money, business organization's integrity, consumer and company's privacy, etc. are in danger.

The threat of computer crime is not alarming as reported. There will always be new and unexpected challenges to stay ahead of cyber criminals and cyber terrorists but one can win only through partnership and collaboration of both individuals and Government. There is much to do to ensure a safe, secure and trustworthy computing environment. It is crucial not only to our national sense of well-being, but also to our national security and economy.

Today in the 21st Century the cyberspace has become an indispensable part of daily program and medium for change. The Telecommunications, Commercial, Industrial, Financial Services, and Regulators are totally dependent on interconnect cyber system to operate and plan the system. As *there are two sides to every coin there are positive and negative aspects to every invention* where one brings about development, prosperity and positive impact and other gives rise to crime and related negative impacts. Cybercrime mainly affect people, organizations or society financially unlike in traditional crime where it causes physical damages which the world is witnessing in the present arena and reports are also depicting the increasing trend of cyberspace and cybercrime. Organizations and people need to pace up to implement appropriate and adequate security measures to negate these cybercrimes.

CYBER CRIME

There is no single definition of cybercrime but it can be generally termed as any unlawful or criminal activity done with the help of computer system, communication devices, Internet, Network, Cyberspace and web.

There are crimes that are only committed on the Internet and are created exclusively because of the World Wide Web. Now-a-days, Cloud computing has become more popular among the people and corporates which concentrates and encompasses more and more sensitive data. Inadequate security makes it susceptible to cyber criminals.
Cybercrime includes hacking, Data Diddling, Data Theft, Cyber Stalking, Cyber terrorism, email spoofing, Email Spamming, Email Bombing, Terrorism funding, Online fraud, Phishing/wishing, Web defacement, Denial of service, Virus and worms, pornography, software piracy, digital signature, etc.

RECORD OF CYBER CRIME

In 1820, Joseph-Marie Jacquard, a textile manufacturer in France, produced the loom device which uses the repetition of a series of steps in the weaving of special fabrics. This act of advancement in the textile industry was new and the employees of the organization got perplexed. They started to feel uneasy and felt that their employment was in risk and their daily bread or livelihood might be threatened. This caused panic among them and they committed the act of sabotage to destroy the use of the said technology in future.

With the use and dependence on computer more and more in our daily life a new form of

crime has emerged in the modern era which is known as cybercrime. Then the case of Ian Murphy added more flavor on this topic, in which Murphy broke into the computer and manipulated with the computer billing date so that the customer can receive the products at discounted rates during the normal business hours. Another case is the one when the cashier of one of the banks of New York used the computer to embezzle over two million dollars. The growing use of technology has given birth to different types of cybercrimes like Hacking, phishing, data theft, etc. To countermeasure these crimes the governments of various countries around the world have come up with various laws and regulations. Along with this various professional bodies have taken initiatives to setup formal forum to enhance the knowledge of the people in this sphere. Standard measures have also been drawn which can be used by organizations, people, society, etc.

INITIATIVES BY GOVERNMENT OF INDIA

• A Cyber Crime Cell has been set up in all the Indian States and Union Territories for reporting and investigation of cybercrime.

• Reserve Bank of India (RBI) has issued a Circular to all Commercial Banks on phishing attacks and Credit Card Operations. RBI has taken preventive/detective measures to tackle phishing attacks. RBI has also advised Banks to leverage technology to support Business processes and implement all stipulations outlined by RBI from time to time. Banks have been advised to set up internal control system to combat frauds and to take proactive fraud control and enforcement measures.

OTHER INITIATIVES

1. **Data Security Council of India (DSCI), NASSCOM**
   It is a premier industry body on data protection in India, setup by NASSCOM, committed to making the cyberspace safe, secure and trusted by establishing best practices, standards and initiatives in cyber security and privacy.
2. **Indian Computer Emergency Response Team (CERT-In)**
   It is designated under Section 70B of Information Technology (Amendment) Act 2008 to serve as national nodal agency for responding to computer security incidents including collection, analysis and dissemination of information on cyber incidents, forecast and alerts of cyber security incidents, emergency measures for handling cyber security incidents.
3. **Information Sharing and Analysis Centers (ISACs)**
   Information Sharing and Analysis Centers help critical infrastructure owners and operators protect their facilities, personnel and customers from cyber and physical security threats and other hazards. ISACs collect, analyze and disseminate actionable threat information to their members and provide members with tools to mitigate risks and enhance resiliency. ISACs reach deep into their sectors, communicating critical information far and wide and maintaining sector-wide situational awareness.
4. **Crime and Criminal Tracking Network & Systems (CCTNS)**
   CCTNS is a project under the National e-Governance Plan. It aims at creating a nationwide networking infrastructure for an IT-enabled criminal tracking and crime detection system. The integration of about 15,000 police stations, district and state police headquarters.
   The Government of India has also taken various other initiatives to promote spreading of e-Governance throughout the country in a large scale. As a result, State Wide Area Network (SWAN) and State Data Centres (SDC) have been setup to provide e-Governance solutions to citizens. In order to promote the outreach of social benefits to the citizens in a very effective manner and to facilitate sustainable and inclusive growth, many of the processes of both Central and State Governments have been automated by large-scale application of Information Electronics and Communication Technology (IECT).

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CYBER SECURITY

Before Going ahead with the knowledge of the cyber security, it is very much important to know why the cyber security is a must in today's world and what consequences one can face if proper security is not integrated in the system.

Consequences of absence of cyber security

i) Data/Information may get destroyed, stolen or exposed
ii) System availability may be denied or degraded
iii) Present or former employees or customers may get personally impacted
iv) Lawsuits
v) Damage to Corporate/Brand Image Security *Measures*
vi) Don't leave the unencrypted data(words, images, reports, etc.) in the email boxes
vii) Complying with requirement of laws (HIPAA, SOX, etc.) is not enough to secure your data; it is equally important to follow standards issued by various International bodies like ISACA, ISO, ICAI, IIA, etc.)
viii) Security Assessment and building a roadmap with the help of standards like ISO 27001
ix) Involvement of Top level management (BOD) and availability of enough financial resources
x) Review and update of Security policies, procedures and supporting resources
xi) Design and regular testing of business continuity plans and disaster recovery plans

The above steps are only illustrative and not exhaustive; organizations may deploy additional security measures according to their need to protect their valuable assets like Intellectual Property, People Information, Financial Information and Business Information. The Success, Growth and Financial soundness of any organization can be known only by assessing the organization and how well their cyberspace is secured and protected.

SOURCE OF ATTACK

Insiders: Current employees, former employees, Current service providers/consultants/contractors, former service providers/consultants/contractors, Suppliers, Business partners and customers

Outsiders: Terrorists organized Crime, competitors, Information broker, activists/hackers, foreign states/entities and many others.

HOW ONE BECOMES A VICTIM OF CYBER CRIME

i) Installed firewall and devices not monitored by the corporate security team
ii) Merging the Information Technology with the Information Security
iii) Non-Allocation of enough budget for Information security
iv) Non-review and update of Information security policies
v) Not defining the role and responsibilities of security organization
vi) No training to the employees with respect to security technologies.

CATEGORIES OF CYBER CRIMES

1) Data diddling

Data diddling involves changing data prior or during input into a computer. In other words, the data is not entered in the system in the way it should have been entered. Section 43(d) read with section 66 of IT Act, which prescribes a punishment of imprisonment which may extend to three years or fine up to Rupees five lakhs or both.

2) Data Theft

Data Theft means stealing company data and this can be done through USB, E-mail, Etc. Data Theft also includes copying or stealing the web pages of the company.

Data Theft Protection tool: Falconstor Continues data protector, McAfee Data Loss Prevention, PKware partner Link, RSA Data Loss Prevention Suite, Websense's Content Protection Suite, etc.

A person can be prosecuted under Section 43(b) of IT Act read with section 66. The penalty is fine which may extend to Rs. five Lakhs or imprisonment which may extend to three years or both.

3) Cyber Stalking

Constantly sending messages to harass the recipient emotionally. No provision in IT Act but prosecution under Indian Penal Code is possible.

4) Cyber Terrorism

It is an activity of potentially attacking large number of people by cheaper methods than traditional. It is act of doing real world crime using cyberspace. Section 66F of IT Act prescribes a punishment of imprisonment which may extend for Life.

5) Email Spoofing

Here the e-mail will appear to have been sent from one source but actually it will be sent from another source. Section 66D of IT Act prescribes the punishment for this offence which may extend to three years of imprisonment.

6) Email Spamming

It means the sending the same email to thousands of recipients. There is no provision in the IT Act for email spamming. This is the loophole in the law which the legislators have not considered. This is a serious issue. Sometimes it may be due to negligence.

7) Email Bombing

Sending the same/ identical message multiple times to a particular address. Section 66A of the IT Act prescribes imprisonment which may extend to three years or fine up to Rupees five lakhs or both).

8) Phishing/vishing

Fraudulent practice of sending emails purporting to be from reputable companies in order to induce individuals to reveal personal information, such as passwords and credit card numbers, online. Section 43 read with section 66D of IT Act, prescribes a punishment of imprisonment which may extend to three years and fine of Rupees one lakh.

9) Unauthorized Access & Hacking

It is the practice of gaining the access to the computer system or their feature or data or information or modifying/deleting the same without the permission of their owner or person managing. *Hacking tools:* Ping of death, netstat live, hacker evolution, Advance port scanner, etc. The person who is accused of the above can be prosecuted under section 43 (a) of the IT Act as amended by the Information Technology (Amendment) Act 2008 read with section 66 which prescribes a fine which may extend to Rs. 5 lakhs or imprisonment which may extend to three years or both.

10) Virus

According to IT (Amendment) Act, 2008 "Computer Virus" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource. These threats can be transmitted using e-mail services specially e-mails containing the link or in the attachments. The best remedy is firewall, regular updating of anti-virus. These offences can be prosecuted under Section 43(c) and (e) read with section 66 of IT Act as amended in 2008 and the punishment is imprisonment which may extend to three years or fine which may extend to Five lakhs or both.

11) Website Defacement

According to Wikipedia, Website defacement is an attack on a website that changes the visual appearance of the site or a webpage. These are typically the work of system crackers, who break into a web server and replace the hosted website with one of their own. Section 65 of IT Act prescribes a punishment of up to three years of imprisonment or fine which may extend to Rupees two lakhs or both).

12 Denial of services

Flooding the network and causing disruption in connection between the server and node is punishable under Section 43(f) read with section 66 of IT Act with imprisonment which may extend to three years or with fine up to Rupees five lakhs or both).

13) Pornography/pedophiles

Printed or visual material containing the explicit description or display of sexual organs or activity, intended to stimulate sexual excitement. Section 67 of IT Act says that for the first conviction the imprisonment may extend to five years and fine of Rupees ten lakhs and for second or subsequent convictions the imprisonment may extend to seven years and fine may extend to ten lakhs).

14) Credit/debit card fraud

Use of Stolen Credit/Debit Card or their information or use of fake Credit/Debit Card is common now-a-days. Section 43(a)(b) (g) read with section 66 of IT Act, prescribes a punishment of imprisonment which may extend to three years or fine up to Rupees five lakhs or both.

15) Illegal online selling
Compliance with law applicable to the business is a basic requirement. If the same is violated or not complied using cyberspace then the organization ends up committing the crime which is in nature of cybercrime. Eg. trading in wildlife, weapons, drugs, etc. No provision in IT Act but the offender can be prosecuted under the Arms Act, etc.

16) Defamation/smearing
Injuring/damaging a person's name or reputation using the cyberspace is a cybercrime. There is no specific provision in the IT Act but such offender can be prosecuted under the Indian Penal Code.

17) CIA (confidentiality, Integrity and Availability)
Confidentiality means non-disclosure of Information to the unauthorized person. Integrity means prevention of unauthorized additions, deletions or alterations. Availability means information should be accessible at the time of need. Violation of the above rights will amount to a cybercrime if done using cyberspace. Section 43 of IT Act, prescribes a punishment of imprisonment which may extend to three years or fine up to Rupees five lakhs or both.

There are many other cybercrimes which can be committed and may not come under the aforementioned classification but can be prosecuted under IT Act or other relevant Acts. The core part of cybercrime is the usage of cyberspace whether it is done to commit real world crime or to attack other computers or system devices or network.

CASES WHICH CAN BE REGISTERED UNDER IPC

Offences by/against Public Servant (Sections 167, 172, 173, 175)
False electronic evidence (Section 193)
Destruction of electronic evidence (Sections 204, 477)
Forgery (Sections 463, 465, 466, 468, 469, 471, 474, 476, 477A)
Criminal Breach of Trust (Sections 405, 406, 408, 409)
Counterfeiting Property Mark (Sections 482, 183, 483, 484, 485)
Tampering (Section 489)
Counterfeiting Currency/Stamps (Sections 489A to 489E)

CASE LAW

1) The case of Sony.Sambandh.Com
In this case India saw its first cybercrime conviction filed by Sony India Private Ltd, which runs a website which enables NRIs to send Sony products to their friends and relatives in India after paying online. The company undertakes to deliver the products to the concerned recipients. In May 2002, someone logged onto the website under the identity of Barbara Campa and ordered a Sony Colour Television set and a cordless head phone. She gave her credit card number for payment and requested that the products be delivered to Arif Azim in Noida. The payment was duly cleared by the credit card agency and the transaction processed. After following the relevant procedures of due diligence and checking, the company delivered the items to Arif Azim. At the time of delivery, the company took digital photographs showing the delivery being accepted by Arif Azim. The transaction closed at that, but after one and a half months the credit card agency informed the company that this was an unauthorized transaction as the real owner had denied having made the purchase.

The company lodged a complaint for online cheating at the Central Bureau of Investigation which registered a case under Sections 418, 419 and 420 of the Indian Penal Code. The matter was investigated into and Arif Azim was arrested. Investigations revealed that Arif Azim, while working at a call

centre in Noida gained access to the credit card number of an American national which he misused on the company's site.
Held: The court convicted the guilty under Sections 418, 419 and 420 of the Indian Penal Code but felt that as the accused was a young person of 24 years and being a first-time convict, a lenient view could be taken. The court therefore released the accused on probation for one year. The judgment is of immense significance for the entire nation. Besides being the first conviction in a cybercrime matter, it has shown that the Indian Penal Code can be effectively applied to certain categories of cybercrimes which are not covered under the Information Technology Act 2000. Secondly, a judgment of this sort sends out a clear message to all that the law cannot be taken for a ride.

2) Syed Asifuddin's case
In this case Tata Indicom employees were arrested for manipulation of the electronic 32- bit number (ESN) programmed into cell phones that were exclusively franchised to Reliance Infocom. The Court held that tampering with source code attracted Section 65 of the Information Technology Act.

3) Just Dial v. Info media (Delhi HC) and Dell Computer v. Commissioner of Customs (2005 Tribunal Bangalore)
It was held that the Department was not allowing exemption under notification issued in 2003 on the security protection taken by the Dell for theft of data by both Internal and External Agencies. The verdict was in favour of Dell.

4) Case Laws on hacking: Sanjay Kumar v. State of Haryana (10/01/2013) CRR No. 66 of 2013
Where the employee of the software vendor has manipulated the bank software source code and embezzled the huge amount of nearly Rs.17 lakhs. The bank was the customer of the software company.

Held: Court has convicted the accused for offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code and Sections 65 and 66 of the Information & Technology Act, 2000 and sentenced to undergo rigorous imprisonment.

THE CONCLUSION

It can be seen that the threat of computer crime is not as big as the authority claim. There will always be new and unexpected challenges to stay ahead of cyber criminals and cyber terrorists but we can win only through partnership and collaboration of both individuals and Government. There is much we can do to ensure a safe, secure and trustworthy computing environment. It is crucial not only to our national sense of well-being, but also to our national security and economy.

ARTICLE

Oppression and Mismanagement: Past, Present & Future

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The Companies Act, 2013 has given a choice of statutory rights to the shareholders of a company to file petition before the National Company law Tribunal (NCLT) for relief against the acts of oppression and mismanagement. Shareholders can file petitions to bring to an end the past acts, to curate, prohibit the existing acts and to prevent the future or apprehended acts which are prejudicial to the interest of the company, its members or to public interest. Sections 241 to 245 of the Companies Act, 2013 have given ample powers to the shareholders to seek remedy against various acts of oppression and mismanagement.

The right of the shareholders of a company to get relief in case of oppression and mismanagement is subject to conditions imposed under sections 241, 244 & 245 of the Companies Act, 2013. Now shareholders can file a petition before National Company Law Tribunal against past, present and future acts of oppression and mismanagement. By virtue of section 245 shareholders can file petition on the basis of an anticipated or likely oppression or a threat of oppression.

The word oppression is defined as any action or decision taken by the board or members of the company which is burdensome, harsh and wrongful to the other members of the Company or some of them and lacks the degree of probity which they are entitled to expect in the conduct of the company's affairs. Similarly, the word mismanagement is defined as the process or practice of managing the affairs of the company in an inept manner, incompetently, or dishonestly which is causing loss/ prejudice to the company or its members.

A shareholder who is aggrieved by the oppressive and mismanagement acts, can file petition either under section 241 or under section 245 of the Companies Act, 2013. For past and present oppressive/mismanagement acts, he can file a petition under section 241(1) (a) or under section 245 of the Companies Act, 2013. For a future or apprehended oppressive or mismanagement act, he can file the petition under section 241 (1) (b) or under section 245 of the Companies Act, 2013.

Section 241(1) has two clauses. Clause (a) deals with present oppression and mismanagement and clause (b) deals with future apprehended mismanagement.

241. (*1*) Any member of a company who complains that—
(*a*) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(*b*) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

Section 241 (1) (a) deals with a situation where in the affairs of a company are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to member or members or in a manner prejudicial to the interests of the

company. In other words the action contemplated is against the persons presently in control/management of the company.

Section 241(1)(b) deals with the situation where it is likely that the affairs of the company will be conducted in a manner prejudicial to the company or its members on account of change in the control or management of a company either on account of change in the board of directors or in the ownership of shares. In other words, this clause provides for a preventive action for an apprehended future mismanagement by persons who will gain control over the company.

CAN PAST ACTS CONSTITUTE OPPRESSION?

Oppression must be a continuous process. A member can file a petition if the oppressive acts (or at least their effect) ought to exist at the time of the filing of the petition. Isolated acts of oppression or mismanagement will not give rise to an action against oppression and mismanagement.

In *Shanti Prasad Jain v. Kalinga Tubes Limited* (1965) 35 Comp. Cas. 351 (SC), the Supreme Court opined: "there must be continuous acts on the part of the majority shareholders, continuing up to the date of the application, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members." This is suggested by the words, 'are being conducted in a manner…' used in Section 397 of the Companies Act, 1956.

On isolated acts, the Calcutta High Court held that mere increase of authorized capital could not be faulted unless the petitioners could prove that the sole motive for seeking such increase in the capital of the company was to oppress the petitioners. (*Jaladhar Chakraborty v. Power Tools and Appliance Co Ltd.* (1994) 79 Comp. Cas. 505 (Cal)).

CONTINUING EFFECT – WHETHER OPPRESSION ?

If the effects of the single and isolated acts are perpetual and continuing, they will constitute oppression. The wrongful act complained of may be a single act, but its effect may be continuous and resulting into persistent oppression of the minority. A classic example is an act of issue of shares by a company to only one or few of the company's shareholders or a group of shareholders that enhances the shareholding of such shareholder/s or the group and thereby control over the company and this situation subsists for some time. As a result, the shareholder who has acquired an enhanced control manages the company to suit his wishes, gets more dividend and more shares (if further or bonus shares are issued meanwhile), more directors from them are appointed and the minority is ignored or reduced to the position of mere figureheads. (Refer Dr. K.R. Chandratre's book "Law & Practice relating to Oppression & Mismanagement").

Even if the fraudulent allotment of share is a single act, its consequences may continue and would amount to oppression. (*Malleswara Finance and Investments Co. P Ltd v. Company Law Board* (1995) 82 Comp. Cas. 836 (Mad)).

Thus sometimes a single act may constitute an act of oppression sufficient to grant a relief under section 241 if its effect lasts over a period of time or it results into a number of acts which are oppressive.

CHANGES BROUGHT BY THE COMPANIES ACT, 2013

The Companies Act, 2013 has brought more clarity by inserting the words " have been" in the first line of section 241 (1)(a) of the Companies Act, 2013, by which NCLT can now deal with past acts or single / isolated acts the effects of which are continuing.

> "The Companies Act, 2013 has redefined the scope of actions on which the shareholders can file petitions under Section 241(1) (b). Section 398(1) (b) of the Companies Act, 1956 gave powers to the shareholders to file a petition, if it was likely that the affairs of the company will be conducted in a manner prejudicial to the public interest or to the company. Section 241(1) (b) empowers the shareholders to file a petition if it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the Company or its members or any class of members.

APPLICABILITY OF LIMITATION ACT, 1963

Section 433 of the Companies Act, 2013 speaks about applicability of the provisions of the Limitation Act, 1963 to the proceedings before NCLT and NCLAT. Continuation of the wrong is the *sine qua non* for filing the petition against oppression and mismanagement. A fresh period of limitation

would begin to run at every moment of the time during which the breach or wrong continues as provided under section 22 of the Limitation Act, 1963. Hence the Limitation Act is not applicable to the proceedings of oppression and mismanagement. The words "as far as may be" in section 433 also suggest that the provisions of the Limitation Act, 1963 shall not be applicable strictly in case of oppression and mismanagement proceedings. In all other proceedings the provisions of the Limitation Act will apply before the NCLT & NCLAT.

HOW TO PREVENT FUTURE OPPRESSION OR MISMANAGEMENT

To prevent future mismanagement acts, a shareholder can file a petition under section 241(1) (b) or under section 245 of the Companies Act, 2013. To prevent future oppressive acts, a shareholder can file a petition under section 245 of the Companies Act, 2013.

Section 241(1) (b) is a special provision. The object of this section is to prevent future mismanagement of the company. To invoke the provisions of this section, the complaining shareholders shall have to establish that a material change has taken place in respect of its management or control of the company either by way of an alteration in the Board of Directors or in the ownership of the company's shares and as a result of which the affairs of the company are likely to be conducted in a manner prejudicial to the interest of the company or its members. The thrust is on the prevention of prejudicial acts. Prejudicial conduct of affairs is the conduct that is harmful, detrimental, deleterious, damaging or injurious to the interest of the company or its members.

The Companies Act, 2013 has redefined the scope of actions on which the shareholders can file petitions under Section 241(1) (b). Section 398(1) (b) of the Companies Act, 1956 gave powers to the shareholders to file a petition, if it was likely that the affairs of the company will be conducted in a manner prejudicial to the public interest or to the company. Section 241(1) (b) empowers the shareholders to file a petition if it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the Company or its members or any class of members. The element of public interest has completely removed and concern of the shareholders has been included.

PREVENTION OF FUTURE OPPRESSION OR MISMANAGEMENT UNDER CLASS ACTION SUITS

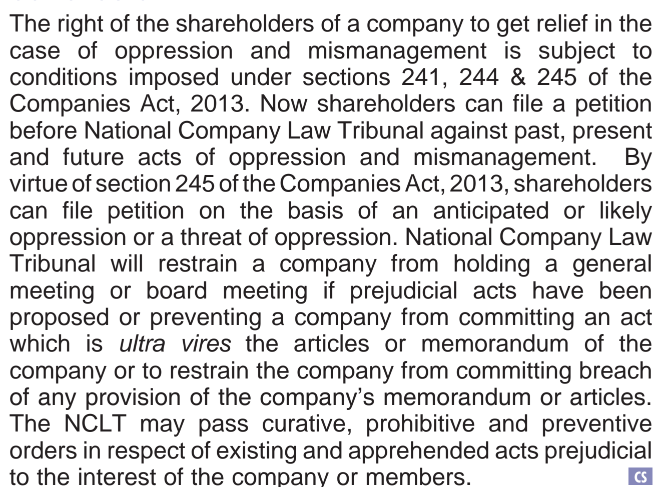
The Companies Act, 2013 has introduced a new concept called class action suits by inserting section 245. It has given very wide powers to the shareholders and deposit holders of a company to file petition against the acts of oppression or mismanagement. Now shareholders or deposit holders of a company can file petition on the basis of anticipated or likely oppression or mismanagement acts or a threat of oppression/mismanagement. Unlike section 241(1) (b), section 245 does not place any pre-condition of occurrence of material change in the management or control of the company.

By invoking section 245 of the Companies Act, 2013 the eligible shareholders or deposit holders can restrain or prevent a company from passing a resolution or to restrain the company from acting on the resolution which is already passed. Now the shareholders or deposit holders can claim damages not only against the company but also against the

auditors and other experts/advisors of the company.

IS IT NECESSARY TO JUSTIFY WINDING UP UNDER JUST AND EQUITABLE CLAUSE FOR GETTING RELIEF?

The Tribunal while dealing with oppression and mismanagement petitions has to form an opinion that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company and such conduct would justify the winding up of the company under the just and equitable clause. However, to get relief under Section 241(1)(b), the applicant need not prove that the affairs of the company would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up. Section 242(1)(a) speaks about the provisions of section 241(1)(a) and intentionally omitted the provisions of section 241(1)(b) from its ambit thereby suggesting that making of winding up order is not necessary in case of prevention of future prejudicial acts of the company.



CONCLUSION

The right of the shareholders of a company to get relief in the case of oppression and mismanagement is subject to conditions imposed under sections 241, 244 & 245 of the Companies Act, 2013. Now shareholders can file a petition before National Company Law Tribunal against past, present and future acts of oppression and mismanagement. By virtue of section 245 of the Companies Act, 2013, shareholders can file petition on the basis of an anticipated or likely oppression or a threat of oppression. National Company Law Tribunal will restrain a company from holding a general meeting or board meeting if prejudicial acts have been proposed or preventing a company from committing an act which is *ultra vires* the articles or memorandum of the company or to restrain the company from committing breach of any provision of the company's memorandum or articles. The NCLT may pass curative, prohibitive and preventive orders in respect of existing and apprehended acts prejudicial to the interest of the company or members. CS

Equity Shares with Differential Rights as to Dividend, Voting etc. – A Perspective

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INTRODUCTION

The Companies Act, 2013 has tightened many of the loose ends of policy which had accumulated in the Companies Act, 1956. The Companies Act, 2013 has sought to more tightly regulate the provisions of Issue of shares with differential voting rights. Under the Companies Act, 1956 private companies were exempt from provisions relating to differential voting rights i.e. private companies were free to issue equity shares with differential voting rights in accordance with the provisions contained in the Articles of Association as adopted by the company. However in the new Companies Act, 2013 provisions as to issue of shares with differential rights as to dividend as well as voting rights have been introduced. The new provisions seek to more tightly regulate the issue of equity shares with differential voting rights which have always been considered a controversial issue internationally.

The current view towards protecting the interests of minority and small shareholders has perhaps weighed on the minds of the authorities in India in restricting the issue of equity shares with differential rights up to 26% of the total paid up equity share capital. Shares with DVR have not been adopted by listed companies in India in large numbers despite the SEBI and stock exchanges according approval to these provisions. Shares with superior voting rights have generally not been adopted by listed or large unlisted public companies owing to corporate governance concerns.

STATUTORY PROVISIONS

As per Section 43 of the Companies Act, 2013, share capital in the case of a company limited by shares can be of following types:

1. **Equity Share Capital -** Equity share capital, with reference to any company limited by shares, means all share capital which is not preference share capital.
   Equity Share Capital can be further subdivided into:
   - Equity Shares with Voting Rights, and
   - Equity Shares with Differential Voting Rights (DVR) as to dividend, voting or otherwise.

2. **Preference Share Capital -** Preference share capital, with reference to any company limited by shares, means that part of the issued share capital of the company which carries a preferential right with respect to payment of dividend and repayment of capital.
   Preference Share Capital may also have following rights:
   - In respect of dividends, in addition to the preferential rights to dividend, a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right to dividend.
   - In respect of capital, in addition to the preferential right to the repayment of capital on winding up, a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

DIFFERENTIAL VOTING RIGHTS (DVR) SHARE WITH RESPECT TO VOTING:

A DVR share is like an ordinary equity share, but it provides fewer voting rights to the shareholder. For instance, while a normal shareholder can vote as many times as the number of shares he/she holds, someone who holds the company's DVR shares will need to hold 100 DVR shares to cast one vote. The number of DVR shares required to be held will differ from one company to another.

> **If shares with differential voting rights cannot exceed 26% of the total paid-up equity share capital they cannot be effectively used to retain ownership of companies with dilution of shareholding. Hence this provision has negated any perceived advantages sought to be created by the inclusion of the provisions for differential voting rights in the first place. The Government and authorities have in their wisdom given in the Companies Act, 2013 the carrot of differential voting rights and taken away by the Companies (Share Capital and Debentures) Rules, the maximum advantage of issuing differential voting rights.**

Alternatively a DVR share can be issued which gives 50,000 voting rights to a person holding 1 DVR share.

The DVR shares are issued to prevent hostile takeovers, raise capital cheaply or to ensure that there is less dilution of promoters voting rights despite public issue of share capital.

Some companies that have issued DVR shares on Indian bourses include Tata Motors, Pantaloons and Gujarat NRE Coke. According to reports Tata Steel has plans to raise $1 Billion through various instruments including DVR shares. Many banks including SBI are studying the option of issuing shares with diffrential voting rights to raise capital to comply with Basel III banking norms.[1]

INVESTMENT IN EXISTING DVRs

DVRs are a good investment option for long-term investors, typically retail investors, who prefer to receive higher dividends and are not very interested in taking part in the decision-making and voting process of a company.

Though DVRs are listed on the bourses in the same way as ordinary equity shares, they trade at a discount to the price of the ordinary scrip. This is because DVRs provide fewer voting rights to the holder.

For example, Tata Motors DVRs were trading at Rs.153.10 on BSE, while ordinary Tata Motors shares were at Rs.311.25 on 04 Sept, 2015. As for the dividends, Tata Motors DVR holders receive five percentage points higher dividends compared with ordinary shareholders in any given financial year. For instance, for the fiscal year 2012-13, ordinary shareholders received a dividend of Rs.2 per share, while DVR holders got Rs.2.10.[2]

Hence if one is optimistic about a company's long-term growth prospects and is not looking for liquidity, he can consider investing in DVRs.

INDIAN SCENARIO

While DVR is a well-accepted instrument used by blue-chip companies in international markets to raise funds, even after a decade of the government's Notification, the concept is yet to gain wide currency in India. A few of the companies which have issued DVR shares are listed below:

Pantaloons Retail India Ltd. Bonus Issue

In July 2008, PRIL, India's leading retailer, was the first to issue bonus shares with a DVR option. The company made a bonus issue of 1:10 shares with differential voting rights and 5% additional dividends as well. Although there is no fund-raising involved in a bonus issue of shares, the idea was to get the markets familiar with such instruments and create another alternative to raise funds in the future. "Differential voting rights (DVRs) has become a widely used innovative instrument in global markets and by coupling a bonus issue with a DVR, we believe in enhancing alternatives for our shareholders," Kishore Biyani, then MD of PRIL had stated in a press release.

Gujarat NRE Coke Ltd. DVR

In September 2009, the company issued type 'B' Equity Shares of the Company with Differential Voting Rights (DVR Shares) with lower voting rights (1/100th of the voting right of ordinary equity share). The same were issued as bonus shares in the ratio of 1 'B' equity share for every 10 equity shares held. On comparison of the share prices of the DVR and ordinary shares it is found that while both the ordinary as well as the DVR shares have moved in a direction opposite to the BSE and have witnessed reduced share prices the magnitude of the fall for DVR (29%) is less than that of the ordinary share(39%).

Tata Motors DVR

In October 2008, Tata Motors became the first Indian company to make a rights issue of shares carrying differential voting rights (DVR) (issue size: Rs.1960.42 crores). DVR shares have 1/10th of voting rights of ordinary shares and offer a 5% higher rate of dividend over the normal shares. It issued these shares at Rs.305 i.e., about 10% lower than the issue of normal rights at Rs.340.

PROVISIONS RELATING TO ISSUE OF EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS

1. To issue equity shares with differential voting rights, following conditions must be complied with –
   - The articles of association of the company should authorize the issue of shares with differential rights
   - The issue of shares is authorized by a special resolution passed at a general meeting of the shareholders
   - In case of listed companies, the issue of such shares shall have to be approved by the shareholders through postal ballot or a poll at a general meeting
   - The shares with differential rights shall not exceed 26% of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time
   - The company has a track record of dividend payment of at least 10% for the last 3 financial years immediately preceding the financial year in which it is decided to issue such shares
   - The company has not defaulted in filing financial statements and annual returns for 5 financial years immediately preceding the financial year in which it decided to issue such shares
   - The company has no subsisting default in the payment

[1] https://economictimes.indiatimes.com/industry/banking/finance/banking/banks-may-issue-equity-with-differential-voting-rights-sbi/articleshow/45476742.cms

[2] https://economictimes.indiatimes.com/wealth/personal-finance-news/mutual-funds-hike-stake-in-tata-motors-tata-steel-despite-recent-turmoil/articleshow/55771761.cms

of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or preference shares or debentures or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority

- The company has not been convicted of any offence under Reserve Bank of India Act, 1934, Securities and Exchange Board of India Act, 1992, Securities Contract Regulation Act, 1956, Foreign Exchange Management Act, 1999 or any other special Act.

2. Explanatory statement to be annexed to notice of general meeting or of a postal ballot must contain the following details:
   - total number of shares to be issued with differential rights
   - details of the differential rights
   - percentage of the proposed issue of shares to the total post issue paid up equity share capital
   - the reasons/justification for the issue
   - price at which such shares are proposed to be issued
   - basis on which the price has been arrived at
   - in case of private placement or preferential issue - details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel and details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship, if any, with any promoter, director or key managerial personnel
   - in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel
   - percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital
   - scale or proportion in which the voting rights of such class or type of shares will vary
   - change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights
   - diluted Earnings Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards
   - pre and post issue shareholding pattern along with voting rights in the format specified
3. The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and *vice versa*.
4. The Board of Directors shall, *inter alia*, disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the following details:
   - total number of shares allotted with differential rights and price at which these shares have been issued
   - details of the differential rights relating to voting rights and dividends
   - percentage of the issue of shares with differential rights to the total post issue equity capital and percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital
   - particulars of promoters, directors or key managerial personnel to whom such shares are issued
   - change in control, if any, in the company consequent to the issue of equity shares with differential voting rights
   - diluted earnings per share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards
   - pre and post issue shareholding pattern along with voting rights in the format specified
5. The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.
6. Where a company issues equity shares with differential rights, the Register of Members shall contain all the relevant particulars of the shares so issued along-with details of the shareholders.

ARGUMENTS FOR SHARES WITH DIFFERENTIAL VOTING RIGHTS

There is a point of view arguing that the next great evolution for the corporation will come with the separation of profit and control as embodied in the concept of different classes of shares, or 'differential voting rights'.

The big question facing promoters and entrepreneurs when it comes to capitalization of their businesses is how can they receive large amounts of outside funding without losing control of their businesses. Promoters cannot take substantial amounts of outside funding without ceding majority control in the companies they have created from scratch and so ownership issues are of paramount importance when seeking additional funding. If promoters do take outside funding, they are forced to focus almost entirely on short term return and profitability as opposed to long term growth or cannot pursue projects with long gestation periods.

The United States of America is a leader in allowing companies to create different classes of shares that carry different rights with respect to the amount of profits and voting power they represent. On the Nasdaq 100 Index, 17 companies have followed a multiple share class structure. These companies constitute about 25 per cent of the Nasdaq 100 market capitalisation.[3]

The US Securities and Exchange Commission (SEC) has recognised the difference between profit and control by creating two different classes of shares, thereby allowing certain shareholders to retain voting control. For example, Class A shares are sold to the public and/or to investors with principally financial interests in a company. The specifics vary from company to company, but they often carry voting rights many times lower than that of Class B shares, while receiving a larger dividend.

Class B shares are generally held by a company's promoters or senior management, and carry significantly higher voting rights than Class A shares. This effectively allows companies to raise capital (by selling Class A shares) while retaining voting control (and keeping Class B shares).

For example Google has issued shares with differential voting rights. These shares with differential voting rights ensure that Google co-founders Larry Page and Sergey Brin control 58.4 per

[3] Source: Times of India

cent of the voting shares, while they get only 13.9 per cent of the profits as dividend. This has enabled the company to keep its independence and spend billions of dollars on Android operating system, google glass and other capital intensive projects with a long term view which have nothing to do with its core search business.[4]

The advantages of issuing shares with differential voting rights is that promoters can achieve larger scale by raising fresh capital without losing control of the company. This will stop the stunting of companies which cannot grow because promoters are loath to lose control.

In the Indian context many of India's FDI problems can be solved, by allowing Indian companies to raise the much needed foreign capital, while still keeping the voting control in Indian hands which has been a big worry of Indian regulators and policy makers. It would allow the government's PSUs to raise money through divestments, while maintaining control in strategically important industries.

Currently, many listed Indian companies maintain promoter control through a web of investment vehicles and multiple layers of drop-down subsidiaries, through which they exercise control in a non-transparent way. A lot many of these investment vehicles are now issuing shares with differential voting rights with a view to maintaining effective control while divesting or bringing in new investors.

DISADVANTAGES OF SHARES WITH DIFFERENTIAL VOTING RIGHTS

The Companies (Share Capital and Debentures) Rules, 2014, requires that shares with differential voting rights cannot exceed 26% of the total paid-up equity share capital. This is restrictive for companies with high funding requirements. Furthermore, the Listing Agreement prohibits the issuance of shares with superior rights as to voting or dividend *vis-à-vis* the rights on equity shares that are already listed. This has meant that the largest companies in India which are usually listed on the Stock Exchanges have been unable to take advantage of the provisions of shares with differential voting rights by issuing shares with superior voting rights to other shares.

If shares with differential voting rights cannot exceed 26% of the total paid-up equity share capital they cannot be effectively used to retain ownership of companies with dilution of shareholding. Hence this provision has negated any perceived advantages sought to be created by the inclusion of the provisions for differential voting rights in the first place. The Government and authorities have in their wisdom given in the Companies Act, 2013 the carrot of differential voting rights and taken away by the Companies (Share Capital and Debentures) Rules, the maximum advantage of issuing differential voting rights.

The creation of shares with differential voting rights leads to the creation of a group of shareholders with no powers to interfere in the working of the management and it renders the promoters and directors more likely to misuse the powers conferred on them to further their vested interests. This has been one of the chief criticisms against creating shares with differential voting rights.

Scams like Enron, Worldcom and Satyam have dented the confidence of shareholders in existing managements and this has led to scepticism of subscription for shares with differential voting rights or dividend rights. When a company issues shares with enhanced dividend rights it places the existing shareholders at a disadvantage. The minority opposed to issuing shares with differential voting rights has no option to exit gracefully from the company in the existing provisions.

[4] http://www.onemint.com/2012/04/13/googles-non-voting-rights-shares-and-dvrs/

Hostile Takeovers, though considered parasitic and negative to the shareholders of the target company, may sometime prove to be a blessing in disguise. Hostile takeovers of problematic companies increases shareholder value in the long run. DVR shares seek to restrict hostile takeovers and make them almost impossible to execute.

Shares with DVR may turn off institutional investors whose investment policies do not agree with investment in such shares.

CONCLUSION

The current view towards protecting the interests of minority and small shareholders has perhaps weighed on the minds of the authorities in India in restricting the issue of equity shares with differential rights up to 26% of the total paid up equity share capital. Shares with DVR have not been adopted by listed companies in India in large numbers despite the SEBI and stock exchanges according approval to these provisions.

Shares with superior voting rights have generally not been adopted by listed or large unlisted public companies owing to corporate governance concerns. Shares with superior voting rights are looked upon as a tool with which to trample the rights of the minority shareholders and no company wishes to touch these provisions although a few have issued shares with lower voting rights than ordinary shares. Google which has issued shares with superior voting rights allowing the retention of control in the company has generally been seen to have a good corporate governance track record, so Indian companies should not fear issuing shares with superior voting rights to retain control.

Post-Satyam scam there is an increased debate on corporate democracy with renewed focus on accountability and transparency in the affairs of the Companies. Different measures have been adopted as checks and balances in countries like Canada and the U.S. to make sure that these do not become an instrument for abuse and circumvention of the provisions safeguarding the interests of the mass investor community. On the lines of Canada, the issuing of shares with DVRs may be made subject to approval from minority shareholders and in this way, the smaller shareholders will also have a say in the issue of such shares. Currently in India one only requires a special resolution with 3/4ths or 75% approval for issue of shares with differential voting rights which may be seen as contrary to the benefit of minority shareholders who may oppose these provisions.

Even the superior voting rights can be retained with a cap on the total number of votes per share and the number of shares that can be issued in proportion to the number of equity shares which may be five in both cases. CS

Restitution: Can the Court in Contempt Proceedings Grant Damages

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INTRODUCTION

The principle of restitution is based on the concept that no person should suffer because of an action brought by another person in a court of law which ultimately results in dismissal of the action of the other person who has brought that action to the disadvantage of the person who is then held to be innocent.

> **The principle of the doctrine of restitution is that when a decree is reversed, the law imposes an obligation on the party to the suit who received the benefit of erroneous decree to make good what the other party had lost. In such a case the Court is bound to restore the parties to the same position they were in at the time when the court by its erroneous action had displaced them from.**

MEANING OF 'RESTITUTION'

Oxford English Dictionary defines 'restitution' as "an act of restoring a thing to its proper owner". Similarly, Black's Law Dictionary defines 'restitution' as (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; (iii) compensation or reparation of the loss caused to another.
In the ancient time, the Roman law of damages offered to the victims of a wrong two main alternatives to react to the injustice suffered - punishment and compensation.

The law of restitution is the law of gains based recovery whereas law of compensation is the law of loss based recovery. Obligation to order restitution and obligation to pay compensation are two types of legal responses to events in real world. When the defendant is ordered to give his/her gains to the claimant it is restitution; on the contrary when the defendant is ordered to pay the claimant for his/her loss it is called compensation.

In law, restitution is often ordered by a court in order to achieve fairness, preventing the unjust enrichment by one party to civil action; restitution is usually ordered in addition to fine and/or jail terms in criminal action so as to benefit the victim of crime.

One of the most influential decisions of the 19th century was an 1877 decision of the New York Court of Appeals in *Newton* v. *Porter [69 N.Y. 133 (1877)].* In that case bearer bonds were stolen from the plaintiff and sold by the thieves, who invested the proceeds in other securities. The thieves were arrested, employed defendants as their lawyers, and transferred these securities to the defendants to pay for their services. It was found that the defendants had notice that the securities were bought with the proceeds of the stolen bonds. The court held that the thieves were to be treated as trustees of the stolen bonds for the purpose of tracing their proceeds into the hands of the defendants. It rejected the arguments that this was improper because the thieves were felons not trustees. The law in such case will raise a trust *in invitum* out of transaction, for the very purpose of indemnity and recompense. The court said that the plaintiff's equitable right to follow proceeds would continue and attach to securities or property in which proceeds were invested, so long as they could be traced and identified, and the rights of bona fide purchasers had not intervened.

CIVIL SUIT AND CRIMINAL PROCEEDINGS

It is commonly believed that a person cannot be sued for a civil action where he has already been tried for criminal action. The doctrine of double jeopardy applies only in criminal cases as the liberty of an individual is at stake. In a civil suit the court is not asked to determine whether a defendant is guilty or innocent; rather is he liable for losses/injuries suffered by a claimant as a result of actions of the defendant.

In a criminal proceeding, the accused person must be found guilty beyond reasonable doubt whereas in civil case the claimant must prove his claim only by preponderance of evidence that

ARTICLE

> **In law, restitution is often ordered by a court in order to achieve fairness, preventing the unjust enrichment by one party to civil action; restitution is usually ordered in addition to fine and/or jail terms in criminal action so as to benefit the victim of crime.**

the defendant caused damages.

THE CASE OF O.J. SIMPSON

In the famous case of O.J. Simpson, a former US football player was accused of murdering his ex-wife and her friend. Though the prosecutors presented a mountain of evidence yet they could not convince the jury beyond reasonable doubt and Simpson was acquitted. Subsequently the families of Simpson's ex-wife and her friend filed a civil law suit for wrongful death against Simpson.
Although Simpson had been acquitted in criminal action, yet the families of victims successfully proved by a preponderance of evidence that death was caused by the actions of Simpson and civil court awarded restitution to be paid by Simpson to the families of victims.

RESITUTION IN INDIAN LAW

The term `restitution' has not been defined in the Civil Procedure Code. However, section 144 recognizing it reads thus:
"144. Application for restitution – (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as well, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any order including orders for the refund of costs and for the payment of interest, damages, compensation and *mesne* profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order."

In a landmark judgement in Binayak *Swain* v. *Ramesh Chandra Panigrahi [1966 AIR SC 948]*, the Supreme Court laid down the doctrine as follows:

"The principle of the doctrine of restitution is that on the reversal of a decree the law imposes an obligation on the party to the suit who received the benefit of erroneous decree to make restitution to the other party for what he lost. The Court in making restitution is bound to restore the parties so far as they can be restored to the same position they were in at the time when the court by its erroneous action had displaced them from".

The Supreme Court had reaffirmed the aforesaid doctrine in *South Eastern Coal Fields Limited* v. *State of M.P [AIR 2003 SC 4482] thus:*

"The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what a party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its own interim order when at the end of the proceedings court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is the real and substantial justice. Injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences".

From the above discussion it is clear that restitution can be demanded under civil actions. However, the moot question that arises is "Can the Court, in contempt proceedings, grant restitution to the plaintiff?" This question was considered by Supreme Court in *Union of India & Ors.* v. *Subedar Devassy P.V. [2006 (1) SCC 613]* wherein it was held as follows:

"2. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different from what was taken in the earlier decision. A similar view was taken in *K.G. Derasari* v. *Union of India* [(2001) 10 SCC 496].

A similar question arose before the Telangana & Andhra Pradesh High Court in *Kotak Mahindra Bank Limited* v. *Station House Officer & Ors* [(2016) III BC67 (DB) (T & AP)]. While dealing with the question for restitution in contempt proceedings, the court held as under:

"38. While contempt proceedings can be initiated for violation of orders of Court, the jurisdiction which this Court exercises, under the Contempt of Courts Act, is limited only to an enquiry as to whether its orders have been willfully violated and, in such cases to impose punishment. The injury which the person, in whose favour an order is passed by the Court, suffers at the hands of the other party who has violated the order, cannot be compensated in contempt proceedings. While dealing with an application for contempt, the Court is really concerned with the question as to whether the earlier decision had been complied with or not. The Court, exercising contempt jurisdiction, is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed the default in complying with the directions in the judgement or order. The Court also referred and relied on decisions rendered in *Special Deputy Collector (LA)* v. *N. Vasudeva Rao* [(2008) II SLT 682 ; (2007) 14 SCC 165]; *Union of India* v. *Subedar Devassy* P.V. [(2006) I SLT 542 ;(2006) 1 SCC 613] and *Pritawi Nath Ram* v. *State of Jharkhand* [(2004) V SLT 389 ;(2004) 7 SCC 261].

"39. In a proceeding for contempt, the High Court can decide whether contempt of court has been committed and, if so, what should be the punishment to be imposed, and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties. Any direction issued, or decision made, by the High Court on the merits of a dispute between the parties will not be in the exercise of the 'jurisdiction to punish for contempt'. [*Midnapore Peoples' Co-op. Banks Ltd.* v. *Chunilal Nanda,* (2006) V SLT 29; (2006) 5 SCC 399].

Ultimately the High Court decided that the only remedy which the person who suffered an injury has, in this regard, is to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India seeking restitution, and for necessary directions to enforce its earlier order.

[*Source Wikipedia, Google search, relevant provisions of law and decided case laws*]

Enforcement of Security Interest under SARFAESI can't be Exercised Arbitrarily to the utter Disadvantage of the Borrower

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INTRODUCTION

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was enacted to regulate the securitisation and reconstruction of financial assets and enforcement of security interest, without the interventions of court. Section 13(2) of the Act provides that where any borrower, who is under a liability to a secured creditor in terms of a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities within 60 days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Two important issues relating to enforcement of security interest under SARFAESI Act namely (i) in a sale of immovable property by e-auction, whether there must be clear 30 days between the date of publication of notice in newspaper and the date of auction sale and (ii) whether an e-auction sale held without there being such 30 days gap was null and void and therefore liable to be set aside, were adjudicated by the A.P. High Court in a writ. Highlights of the said decision are featured here.

Rule 8(6) of The Security Interest (Enforcement) Rules, 2002 (SARFAESI Rules) prescribes that the authorised officer shall serve upon the borrower a *30 days' notice for sale of the immovable secured assets.* Further Rule 9(1) prescribes that no sale of immovable property shall take place before the expiry of 30 days from the date on which the public notice of sale was published in newspapers or/(and) notice of sale has been served upon the borrower.

On 22nd August, 2016, the High Court of Andhra Pradesh rendered a decision in Smt. *R. Vimala* v. *State Bank of India*[1]**,** arising out of Writ Petition No. 7802 of 2016, in which the interpretation of Rules 8 and 9 in relation to counting of 30 days was examined.

FACTS OF THE CASE

- Smt. R. Vimala (Writ Petitioner) availed house loan of Rs.16,88,000/- on 01.10.2008, for purchase of flat situated in Sankhal Bagh, N.R.Peta, Kurnool and paid installments regularly up to the year, 2011 and later committed default. The reason she described was that her husband left his job and was doing sundry business, wherein he incurred debts and he left the city without disclosing his whereabouts and some of the creditor Banks also filed criminal cases against them and later he was traced in the year, 2014 arrested in a criminal case of 2011 and later released on bail
- She alleged that taking advantage of the state of things, the so called auction petitioner (2nd respondent), Smt.V.Prameela Reddy and one V.S.Reddy having an eye over her property colluded with the Bank and filed a suit with false claim for specific performance in O.S.No.79 of 2011, on the file of Principal District Judge, Kurnool
- Her further version was that without any service of alleged demand notice dated 30.01.2011 under Section 13(2) and possession notice dated 05.01.2012 under

[1] [2016] 73 taxmann.com 308 (A P)

Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), to proceed further including to take possession and without following the due procedure laid down under the SARFAESI Act and without service of alleged demand notice dated 20.05.2015, issued the purported notice dated 05.01.2015

- Though the notice dated 05.01.2016 was received, there is no service of the possession notice and there was not even affixture of possession notice at any conspicuous part of the property which were the mandatory requirements contemplated by SARFAESI Act and the Rules made thereunder
- The writ petitioner sought a Writ of Mandamus to declare the impugned E-auction sale dated 14.03.2016, covered by E-auction sale notice dated 10.02.2016, that was published in Eenadu Telugu Daily News Paper dated 13.02.2016, as null and void on the ground that the said E-auction sale was held contrary to the mandate of the provisions of the Act
- The writ petition was against the State Bank of India, the secured creditor of Kurnool Branch, represented by its Authorized Officer as sole respondent originally and later as per orders in W.P.M.P.No.15879 of 2016 dated 20.04.2016, the auction purchaser was impleaded as the 2nd respondent.

ARGUMENTS OF THE WRIT PETITIONER

- Though the Bank was to obtain valuation certificate from an approved valuer and fix reserve price and thereafter issue sale notice by following the procedure contemplated by the provisions including Rule 8(6) of SARFAESI Rules it proceeded without even complying with Rule 9(1) and even without the required 30 days' time gap between the date of publication and the date of sale, viz., from 13.02.2016 to 14.03.2016, which was a statutory mandate and also by fixing reserve price of 17,12,000 when the property was worth more than Rs.40 lakhs
- The Bank was aware of the *ex-parte* decree in the suit proceedings in O.S.No.79 of 2011 and the petition filed to set aside the *ex-parte* decree and condonation of delay. By charging exorbitant rate of interest and other sums in bringing the property to auction sale the Bank violated the statutory provisions and the sale was therefore liable to be set aside
- Since no Presiding Officer was available at the Debt Recovery Tribunal, Hyderabad, to seek the alternative remedy, the petitioner filed the writ petition seeking to set aside the auction sale as the effective remedy to protect her constitutional right to property and also sought interim stay of all further proceedings pursuant to the E-auction sale dated 14.03.2016 pending disposal of the writ petition
- The auction sale dated 14.03.2016 was also contrary to the mandate of Rules 8(5) read with Rules 8(6) and Rule 9(1) of the SARFAESI Rules since there was no clear 30 days' time gap between the date of publication of notice in Eenadu Telugu Daily of Kurnool Edition dated 13.02.2016 and the date of auction conducted on 14.03.2016.

ARGUMENTS BY THE RESPONDENTS

- The counter-affidavit was filed by the 1st respondent-Bank through its Chief Manager raising the plea that in view of the availability of statutory remedies under SARFAESI Act to approach the Debt Recovery Tribunal (DRT) under Section 17 of the SARFAESI Act, to challenge the auction sale, the writ petition was not maintainable to prevent the Bank from recovering the dues and thereby the writ petition was liable to be dismissed. The Bank relied on the decisions in *Union Bank of India* v. *Satyawati Tondon*[2], *Kanaiyalal Lalchand Sachdev* v. *State of Maharashtra*[3], *K. Balakrishna* v. *Debts Recovery Tribunal*[4] and *V.K. Shekhar* v. *Indian Bank* 2006[5] and it was submitted that in view of the decision in *Director of Settlements, A.P.* v. *M.R. Appa Rao*[6] law laid down by the Apex Court was binding on the High Court under Article 141 of the Constitution of India
- In SARFAESI Act, the law is well settled that a judgment even of the Supreme Court should not be read as a statute in understanding the binding nature on subsequent decision making process vide *Union of India* v. *Major Bahadur Singh*[7]
- The Bank initiated recovery proceedings as per the SARFAESI Act and issued demand notice dated 20.05.2015 under Section 13(2) of the SARFAESI Act, demanding the petitioner and her husband to repay the outstanding dues of Rs.21,45,259. Notice was also published in Andhra Jyothi and Hans India on 30.06.2015 and upon the failure of the petitioners to pay, the Bank issued possession notice dated 05.10.2015 under Section 13(4) of the SARFAESI Act and the possession notice was also published in the said newspapers on 10.10.2015 and it was after obtaining valuation of the property from the approved valuer that the reserve price was fixed by the Bank and as the petitioner failed to repay the debt even after issuance of possession notice, the Bank issued sale notice and also E-auction sale notice dated 10.02.2016 and caused publication of the same in Saakshi and Hans India newspapers on 13.02.2016 for the auction that was scheduled to be conducted on 14.03.2016
- Smt. V. Prameela Reddy, 2nd respondent herein became the highest bidder for Rs.18,02,000/- and she paid 25% of the bid amount on that day and balance 75% on 29.03.2016; that the writ petitioner having borrowed, committed default in payment of the loan and thereby was not entitled to obstruct the recovery proceedings initiated by the Bank. As laid down by the Division Bench of the same Court in *Bhanu Constructions Co. Ltd.* v. *Recovery Officer, DRT*[8] under RDDBFI Act, 1993 defaulters cannot be allowed to procrastinate the Certified recovery proceedings of the Bank from any minor procedural lapse, and the decree in O.S.No.79 of 2011 was not binding on the Bank as the claim of the plaintiff therein was subject to rights of the Bank shown as 2nd defendant therein
- The Bank followed the procedure and had not violated any of the provisions of the Act or the rules under the SARFAESI Act and there was in fact a clear 30 days gap between the notices under Rule 8(6) to 9(1) of the SARFAESI Act and even the suit O.S.No.79 of 2011 decreed on 21.04.2014, no way restrains the secured creditor Bank from proceeding under the SARFAESI Act and therefore there was no merit in the writ petition and the same is liable to be dismissed
- The auction purchaser was *bona fide* purchaser for value

2 [2010] 8 SCC 110
3 [2011] 9 taxmann.com 215/106 SCL 1 (SC)
4 [2007] 78 SCL 118 (AP)
5 (6) ALD 778
6 2002] 4 SCC 638
7 [2006] 1 SCC 368
8 2010 (3) ALD 57

in public auction cannot be made to suffer on account of the failures of the petitioner borrower.

ISSUES INVOLVED

- In a sale of immovable property by e-auction, whether there must be clear 30 days' time period between the date of publication of notice in newspaper and the date of sale and whether either of the date of publication or date of sale could be excluded in computing the 30 days period
- Whether an e-auction sale, in which there was no 30 days' time gap between the date of publication of notice in newspaper and the date of sale, was null and void and liable to be set aside.

LEGAL PROVISIONS UNDER THE SARFAESI

Rules 8(6) and 9(1) of the SARFAESI Rules and Section 13 of the SARFAESI Act, read as under:

- **"Rule 8(6): Sale of immovable secured assets:** The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):
  Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,-
  a. The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor.
  b. The secured debt for recovery of which the property is to be sold.
  c. Reserve price, below which the property may not be sold.
  d. Time and place of public auction or the time after which sale by any other mode shall be completed.
  e. Depositing earnest money as may be stipulated by the secured creditor.
  f. Any other thing which the authorised officer considers it material for a purchase to know in order to judge the nature and value of the property."

- **"Rule 9(1): Time of sale, issues of sale certificate and delivery of possession, etc.:** No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower."

- **"Section 13 of the SARFAESI Act: *Enforcement of security interest***

(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this SARFAESI Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

> "in computing the 30 days, either the day of publication in newspaper or the day of sale is to be excluded. The contention that 30 days to be counted is inclusive of both days is unsustainable on its face from what Rule 9(1) speaks of i.e." before the expiry of thirty days from the date of publication, no sale shall take place." Hence there must be clear 30 days between the date of publication and the date of sale and either the date of publication or date of sale is to be excluded in computing the 30 days period.

(3)*********************

(3A)*********

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt namely (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset:
PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:
PROVIDED FURTHER that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt."

OBSERVATIONS OF THE HIGH COURT

- It is the case of the writ petitioner that there was no clear 30 days' notice from the date of publication to the date of

sale and the 30 days' clear notice is mandatorily required to conduct the sale and on that ground itself the writ petition is maintainable; though there is an alternative remedy, more particularly in the writ petition, it is stated that there is no regular officer of the Debt Recovery Tribunal at Hyderabad and there are no sittings and the writ petition is the only effective remedy even therefrom

- Whereas, it is the contention of 1st respondent Bank and 2nd respondent-auction purchaser that from the dates *supra*, there is a clear 30 days' time gap as mandatorily contemplated by the Law and once the claims procedure is followed, the writ petition is not maintainable.
- **Writ Petition v. Availability of Alternative Remedy**
  - The High Court opined that once there is an allegation of violation of mandatory provisions and procedure under a statute, such statutory violation if at all shown from the above, the writ petition is maintainable as an exceptional case, irrespective of alternative remedy available
  - The Apex Court in the decisions referred to in the counter of the 1st respondent-Bank namely *Satyawati Tondon's* case (*supra*) and *Kanaiyalal Lalchand Sachdev's* case (*supra*) had stated that an effective and efficacious alternative remedy provided is generally a bar to invoke writ jurisdiction which is self-restraint in exercise of the plenary jurisdiction
  - In fact the subsequent expression of the Apex Court in *General Manager, Sri Siddeshwara Cooperative Bank Ltd.* v. *Ikbal*[9] which is also a case under the provisions of the SARFAESI Act, while referring to *Satyawati Tondon's* case (*supra*), particularly at para-45 is that the rule of exhaustion of alternative remedy is only a rule of discretion and not one of compulsion
  - So far as the jurisdiction of the High Court under Article 226 or for that matter, the jurisdiction of this Court under Article 32 is concerned, it is obvious that the provisions of the SARFAESI Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/ Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the SARFAESI Act and would exercise their jurisdiction consistent with the provisions of the enactment
  - It was observed further by referring to the expression in *Whirlpool Corpn.* v *Registrar of Trade Marks*[10] at para-15 that under Article 226 of the Constitution of India, the High Court having regard to the facts of the case, has a discretion to entertain a writ petition or not, but the High Court has imposed upon itself certain restrictions one of which normally is when an effective efficacious remedy is available. But the effective alternative remedy has been consistently held by this Court that by self is not to operate as a bar, in at least three contingencies, namely, where writ petition has been filed for the enforcement of any of the fundamental rights or where there has been violation of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or in variance of provisions of the SARFAESI Act concerned
  - Thus, the very 30 days' time mandatorily required is not in dispute; when the same is stated to have been violated, to decide the same as the main question in impugning the auction sale, the writ petition is maintainable
  - Once the writ petition is held maintainable on merits, whether there is actual 30 days' time period between the date of publication of notice and the date of auction sale viz., from 13.02.2016 to 14.03.2016 is the main question required to be answered.
- **Law and Equity**
  - There is no dispute on the propositions of purposive interpretation as per the object and intendment of the SARFAESI Act in question and the rule that a special law prevails over the general law to that extent of any irreconcilability. If at all there is any equity, it must weigh in favour of the borrower as made clear from the expression of the Apex Court in this regard in *N. Padmamma* v. *S. Ramakrishna Reddy*[11] that the procedure laid down under the SARFAESI Act and the Rules made thereunder must be scrupulously followed by the creditor bank as it is the procedure laid down that results in deprivation of a person's constitutional and human right to property
  - The Apex Court in regard to law and equity long back held in *Raghunath Rai Bareja* v. *Panjab National Bank*[12] that law is law and same is different from equity and in case of conflict between the two, it is the law which must prevail over equity in accordance with the Latin maxim- *Dura Lex Sed Lex*
  - In this regard the Apex Court in *Afcons Infrastructure Ltd.* v. *Cherian Varkey Construction Co. (P) Ltd.*[13] held that interpretative tools could be used by the Courts to set right the situation by adding or substituting the words in the statute when plain and grammatical construction would lead to confusion, absurdity and repugnancy and otherwise not.
- **Clear Gap of 30 days**
  - Coming back to Rule 9(1), it clearly speaks that no sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) and notice of sale has been served on the borrower. So there must be minimum 30 days gap
  - In this regard, the Apex Court in *Mathew Varghese* v. *M. Amritha Kumar*[14] held at para-45 as follows: "A close reading of Section 37 of SARFAESI Act shows that the provisions of the SARFAESI Act or the Rules framed thereunder will be in addition to the provisions of the RDDB Act, 1993. Section 35 of the SARFAESI Act states that the provisions of this Act will have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading Sections 35 and 37 together, it will have to be held that in the event of any of the provisions of RDDB Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts, namely, SARFAESI Act and RDDB Act, would be complementary to each other."
- **Reference of General Clauses Act and Limitation Act**
  - *Section 9(1) of the General Clauses Act, 1897* provides that In any Central Act or Regulation made after the commencement of this Act, it shall be

9 [2013] 10 SCC 83
10 [2012] 11 SCC 651
11 [2008] 15 SCC 517
12 [2007] 2 SCC 230
13 [2010] 8 SCC 24
14 [2014] 44 taxmann.com 137/125 SCL 209

sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word from, and, for the purpose of including the last in a series of days or any other period of time, to use the word to

- *Section 12(1) of The Limitation Act, 1963* provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded
- Thus, in computing the 30 days, either the day of publication in newspaper or the day of sale is to be excluded. The contention that 30 days to be counted is inclusive of both days is unsustainable on its face from what Rule 9(1) speaks of i.e." before the expiry of thirty days from the date of publication, no sale shall take place." Hence there must be clear 30 days between the date of publication and the date of sale and either the date of publication or date of sale is to be excluded in computing the 30 days period. Thus undisputedly there is no clear 30 days' time from the publication dated namely 13.02.2016 to the date of sale namely 14.03.2016**.**

- **Apex Court's decision in the case of Mathew Varghese v. M. Amritha Kumar[15]**
  - "33.3 Be that as it may, the paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering the dues to the creditor before the date and time of the sale or transfer, or ensure that the SECURED ASSET derives the maximum price and no one is allowed to exploit the vulnerable situation in which the borrower is placed
  - 34. The underlining purport of such a requirement is to ensure that under no circumstances, the rights of the owner till such right is transferred in the manner known to law is infringed. Merely because the provisions of the SARFAESI Act and the Rules enable the secured creditor to take possession of such an immovable property belonging to the owner and also empowers to deal with it by way of sale or transfer for the purpose of realizing the secured debt of the borrower, it does not mean that such wide power can be exercised arbitrarily or whimsically to the utter disadvantage of the borrower
  - 35. A reading of Rules 8 and 9, makes it clear that simply because a secured interest in a secured asset is created by the borrower in favour of the secured creditor, the said asset in the event of the same having become a non-performing asset cannot be dealt with in a light-hearted manner by way of sale or transfer or disposed of in a casual manner or by not adhering to the prescriptions contained under the SARFAESI Act and the above said Rules mentioned by us.
  - **********
  - **53**. We, therefore, hold that unless and until a clear 30 days' notice is given to the borrower, no sale or transfer can be resorted to by a secured creditor. In the event of any such sale properly notified after giving 30 days clear notice to the borrower did not take place as scheduled for reasons which cannot be solely attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured asset on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place pursuant to a notice issued under Rules 8 and 9, read along with Section 13(8) for which the entire blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse."
- The decision in *Mathew Varghese's* case (*supra*) has been followed in *J. Rajiv Subramaniyan* v. *Pandiyas*[16] and the Apex Court in *Vasu P. Shetty* v. *Hotel Vandana Palace*[17], relying upon *Mathew Varghese's* case (*supra*) and *J. Rajiv Subramaniyan's* case (*supra*) held that the requirement of clear 30 days' time between the date of publication of the sale notice and the date of sale and any violation in the matter of giving 30 days' notice would make the sale null and void. The Court also examined Rules 8 and 9 of the SARFAESI Rules, 2002. On a detailed analysis of Rules 8 and 9(1), it has been held that any sale effected without complying with the same would be unconstitutional and, therefore, null and void.

DECISION

- The High Court of Andhra Pradesh allowed the Writ Petition and e-auction sale dated 14.03.2016, covered by e-auction sale notice dated 10.02.2016, that was published in Eenadu Telugu Daily News Paper dated 13.02.2016 was declared as null and void
- As regards the rights of the auction purchaser, as laid down in *Mathew Varghese's* case (*supra*), he/she is entitled to refund of the amount deposited along with interest at 18%p.a. from the date of each such deposit, from the secured creditor bank, so as to recover from the debtor as part of the amount of the secured loan due
- The remedy is left open [as laid down in *Mathew Varghese's* case (*supra*)] for the secured creditor bank to proceed afresh for sale of the property by public auction or the like as per the due procedure under law, if the Writ Petitioner/Debtor fails to liquidate the debt as per the right of redeeming the debt available till transfer of the property by public auction and registration
- Copy of this order shall be marked to the District Registrar, Kurnool, of Kurnool District, for effecting necessary cancellation and changes in his records in terms of Section 31(2) of the Specific Relief Act, 1963. Pending miscellaneous petitions, if any, shall stand closed, and no order as to costs.

SUMMING UP

The High Court has rightly opined that once there is an allegation of violation of mandatory provisions and procedure under a statute, writ petition is maintainable as an exceptional case, irrespective of alternative remedy available**.** The provisions of the SARFAESI Act, shall not be in derogation of but in addition to any other law for the time being in force (which include the General Clauses Act and Indian Limitation Act) unless the same is inconsistent with any other law. Thus, in computing the 30 days either the day of publication of the notice in newspaper or the day of sale is to be excluded. CS

15 [2014] 44 taxmann.com 137 /125 SCL 209

16 [2014] 44 taxmann.com 183/126 SCL 346 (SC)

17 [2014] 46 taxmann.com 143/126 SCL 449

ARTICLE

Documentary Credit and Money Laundering: An Overview

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In the contemporary era of economic development of our nation, banking and financial institutions play a pivotal role. On the one hand, there is progress in economic growth while on the other hand, there is an increase in reports of financial frauds in the banking sector including the money laundering activities. In this context, it is pertinent to examine the channel of documentary credit which can be used by the fraudsters to disguise their ill-gotten and black money from the system. This becomes necessary in the light of major instances reported by media where bank officials are reportedly helping fraudsters in exchanging the currencies by opening fictitious accounts in the banks.

In international as well as domestic trade transactions documentary credits are the most popular method of payment mechanism relied upon by the traders. They have been described as the 'life-blood of international commerce'. The heart and soul of this instrument is the doctrine of autonomy which provides independent status to this credit instrument from the underlying sale of goods contract by the traders. Bankers are bound to make payment to the seller on the basis of documents presented by the seller without verification of any actual transaction of goods. This paves way for the fraudulent parties to indulge in commercial frauds based on documents which may involve money laundering activities also, if go unchecked. The law in this area remains nebulous.

Documentary credits can be used as a tool for indulging in money laundering activities by the fraudsters. There is lack of specific legislative framework governing this transaction worldwide except United States. There is no uniformity in the law applied by the courts and it is subject to the discretion of the subjective satisfaction of deciding authority.

DOCUMENTARY CREDIT MECHANISM

Documentary credit is a written instrument addressed by one party to another on the basis of which when presented, a bank or other financial institution makes payment to the seller beneficiary. The buyer of the goods submits an application to the bank to arrange for payment to a third party i.e. seller on the basis of presentation of certain documents like bill of lading, commercial invoice, insurance documents, etc. This transaction is independent from the sale of the goods. The bank which issues the credit is known as issuing bank and the other bank is known as advising bank or payment bank. Payment is made by banks merely based on the documents presented before it by the seller without checking the factual authenticity of the sale effected. Banks are under an obligation to pay the parties irrespective of any factual discrepancy raised by the parties. This legal principle is known as strict compliance doctrine, where the banker is expected to strictly comply with the documents presented by the beneficiary of credit with the documents stipulated in the credit. If there are any discrepancies, then the bank should refuse payment on the credit. This peculiar feature becomes a hideout for dishonest parties to indulge in commercial frauds based on documents which may include money laundering activities, if go unchecked. This gives rise to the application of principle of fraud as an exception to strict compliance doctrine. The mechanism of documentary credit indirectly encourages unscrupulous traders and fraudsters to indulge in documentary credit fraud through the channel of banks. For instance, in this transaction, the seller will receive payment for the goods delivered before the buyer actually receives the goods. This liberty can be misused by unscrupulous seller to create a forged document without shipping any physical goods. Also he can present a document for non-existent cargo. This necessitates an examination of documentary credit instruments through the lens of money laundering activities.

DOCUMENTARY CREDIT FRAUDS: AN ANALYSIS

The soul of documentary credit system lies in the authenticity of the documents. The task

> In the contemporary era of increasing money laundering activities through the channel of banks, there is a need to revise the UCP 600 guidelines to include provisions on fraud exception in it. It should be viewed as an attempt to restore the balance of equities between the buyer and the seller.

of banker is very tedious because of the volume of documents used by parties in this transaction. Apart from this, different types of documents are used which are very technical too. There is freedom for the parties to include documents of their choice. This loophole generates the scope for fraudsters to indulge in the fraudulent activities with the help of documents of their choice. It is to be noted that payments are made on the basis of documents presented which many a times appear genuine. Fraudsters use forged documents in different ways to perpetuate the fraudulent activity.

One of the documents used for fraudulent activities is bill of lading. The *prima facie* evidence of shipment of goods is the bill of lading document. Sometimes, frauds are committed through this document by non-shipment of goods. In this type of fraud, a bill of lading will be issued by a known shipping company to the party concerned without actually shipping the goods. Generally, in connivance with the shipping company, fraudulent seller commits fraud since the banker will make payment only on the veracity of bill of lading documents presented before it. Similarly, fraud can be committed by shipping lesser quantity of goods than actually contracted. The onus of proof is on the carrier to show that the goods have not been shipped or goods are shipped in lesser quantity than the order placed with it. A proof of extreme probability and satisfactory evidence is required in this type of shipment. It is the subjective satisfaction of shipper. There is no scope for actual verification which increases the possibility of commission of fraud through bill of lading. Sometimes, railway receipts are also used for fraudulent activity. Therefore, it can be seen that shipping documents are often used by the fraudsters to commit the fraud and take shelter under the documentary instrument where the banks are committed to make payment solely on the basis of the documents presented to them by the seller.

LEGISLATIVE FRAMEWORK

The law governing documentary credit is generally based on customary practices by the parties involved in it and there is no specific legislation to govern these transactions. However, uniform international practices were developed by the trading community and International Chamber of Commerce (ICC) codified the rules practiced by the parties in the form of Uniform Customs and Practice for Documentary Credit generally known as UCP which is a soft regulation in this area. This Code does not have legislative force; however parties incorporate these rules in their basic contract and it is having universal acceptance. The latest version of the UCP 600 was formally adopted by the Banking Commission of the ICC on October 25, 2006 and is available for incorporation into documentary credit from July 1, 2007. It has been more than 10 years UCP 600 is followed.

In addition to UCP, International Chamber of Commerce has introduced other regulations including eUCP, Uniform Rules of Contract Guarantees, Uniform Rules for Demand Guarantees, International Standby Practices for Independent Guarantees and Standby Documentary Credits. United Nations Conference for International Trade Law also individually took the initiative to prepare universal regulations for Independent Guarantees and Standby Letters of Credits which is known as UNCITRAL Convention. As far as regulations at national level are concerned, among the civil law countries, Colombia, Greece, Guatemala, Lebanon, Mexico, Syria etc. have statutory rules on the documentary credit. The United States is the only country in the common law system which has incorporated detailed regulations under Article 5 of Uniform Commercial Code. Uniform Commercial Code is a collection of model statutes drafted and recommended by the National Conference of Commissioners of Uniform State Laws and the American Law Institute for enactment by the legislatures of the states. In other Common Law Countries including England, Legal issues of documentary credits are subjected to case law. In India also we follow the common law system based on case law apart from the parties incorporating the UCP rules in their basic contract.

The UCP 600 is basically party neutral. It enhances the credit as a bank product that serves all who are involved in this type of payment mechanism, such as traders, carriers and others. The only obvious tension in this rule is in relation to the questions of scrutiny of documents by the banks. The burden is clearly upon the applicant of credit to convince the reliability of the beneficiary and to take care in specifying documents in his application for documentary credit. The UCP takes effect by contractual incorporation and therefore depends upon the will of the parties. It is a matter of concern that UCP is not comprehensive because it is subject to the domestic law of sovereign states. The lack of autonomy of this soft regulation is inevitable because the validity and enforcement of international contracts generally depend upon national laws.

JUDICIAL APPROACH TO PREVENT DOCUMENTARY CREDIT FRAUD

Generally, courts are hesitant to interfere in such cases relating to documentary credit. They try to refrain from interfering with the commercial disputes involving documentary credit considering the commercial utility of the instrument and also because of the involvement of banking institutions in these transactions. However, courts have observed that these principles need not be treated as sacrosanct and therefore while deciding the cases involving documentary credit, they have recognized fraud as an exception to the principle of autonomy of the letters of credit. *Sztenjin* v. *J. Henry Schroder Banking C*orporation decided by English Court in 1941 is perhaps the universally followed case of fraud exception in documentary credit law. Thus, in cases where there is serious dispute between the parties involved and a good *prima facie* fraud is established, the courts interfere and restrain banks from making payment to the seller. In India also court applies the same principle developed by English courts while dealing with the issues concerning documentary credits.

MONEY LAUNDERING THROUGH DOCUMENTARY CREDIT

Money laundering has become a major international and national financial concern. These activities are usually carried out in an international context through the medium of banks and financial institutions. The fraudsters try to convert the illegal

money into legal money from their secret hideouts. They adopt different methods to commit this crime which can include the documentary credit frauds also. For instance, a fraudster opens a documentary credit transaction with the banker for the supply of goods. He will not ship any goods instead can fill the container with rubbish materials and present a forged document which may look perfect to obtain payment from the bank. A legal transaction takes place and by the time the bank realizes the fraud it will be too late to identify the source of money and the culprit. Moreover, no serious study has been undertaken from this angle to know the involvement of banks in this type of activities in our country. Of course autonomy of credit attracts this financial instrument as a most reliable form of payment; however, fraudsters take advantage of this principle and indulge in many fraudulent activities. For instance, it was reported in the media that in India a law graduate was arrested for duping a Korean based bank for Rs.5.52 crore by furnishing a forged document to avail a loan. He submitted a 'fake letter of credit' document to the bank and availed payment.

As far as legislative framework is concerned, there is no reference to money laundering legislation the UCP 600 despite the fact that international trade offers myriad opportunities for storing, moving and converting assets into money. As far as banks in most of the foreign countries are concerned they have domestic legislations which mandate them to have "know your client" (KYC) procedures to check upon the identify of customers of bank and also report suspicious activity transactions to the Serious Organised Crime Agency where they know or suspect, or objectively have reasonable ground to know or suspect that a person is engaged in money laundering. Unusual manipulation of money and obvious undervaluation of cargoes are also brought under it. In United Kingdom, bank officials can be guilty of a criminal offence if they receive "dirty money" or assist in transferring the money abroad which they knew or suspected was derived from criminal activity. Consequently, if the applicant for credit seems to have inexplicably obtained large amount of money, banks should enquire further in order to protect themselves from exposure to criminal liability. In India, however, the criminal justice system has loopholes for these culprits to escape from getting punished under concerned legislation due to the difficulty in proving the act beyond 'reasonable doubt'.

The problem with the KYC procedures in India is that Reserve Bank of India issues guidelines for the same and only recently it was made mandatory. However, the bank officials use their discretionary power and allow opening of account without proper checking of documents. There is no system to monitor these individual practices adopted by different banks. Similarly, KYC procedure is relevant for new customers in most cases and this makes it irrelevant in relation to existing applicant who opened a documentary credit for the transfer of goods and it will be difficult for banks to monitor the nature of the cargo, its value and the apparent source of the money. Also, if a bank makes a suspicious activity report, the bank may not be able to freeze the customer's account in order to avoid committing a criminal offence due to short period of time to verify the transactions. This will encourage the fraudsters to use the system of banking for indulging in money laundering activities with the help of documentary credit transaction. Therefore, there is a need to monitor and ensure that the documentary credit instruments are not used for the money laundering activities by the parties involved in it.

Hence, it can be implied that the draftsmen of UCP 600 were justified not to include the money laundering activities under the code of banking practice because it is a fast moving area of law. Application of domestic law is practiced while dealing with the cases pertaining to documentary credit and money laundering by the courts. In United Kingdom, from time to time the Joint Money Laundering Steering Group provides some guidelines in the UCP which might be useful in order to acknowledge the challenges posed by money laundering and international criminal activity.

CONCLUSION

Documentary credits can be used as a tool for indulging in money laundering activities by the fraudsters. There is lack of specific legislative framework governing this transaction worldwide except United States. There is no uniformity in the law applied by the courts and it is subject to the discretion of the subjective satisfaction of deciding authority. This will adversely affect the interest of genuine person involved in trade. Similarly, in a situation where a fraudulent document appears genuine, leaving it to the discretion of municipal laws may generate problems because of the lack of certainty in those laws which vary from country to country.

In the contemporary era of increasing money laundering activities through the channel of banks, there is a need to revise the UCP 600 guidelines to include provisions on fraud exception in it. It should be viewed as an attempt to restore the balance of equities between the buyer and the seller. Apart from this, there are certain limitations that are attached to the fraud exception in documentary credit. One such limitation is the difficulty of the banker to determine the discrepancy between the description of the goods mentioned in the document presented by the seller and its actual nature that may amount to fraud. Secondly, a mere contention of allegation of suspicious activity by the banker is not sufficient, it needs to be proved beyond reasonable doubt. And lastly, fraud cannot be raised against a third party. Therefore in practical perspectives, these limitations will create hindrance to prove the fraud exception in documentary credit.

It is suggested to encourage the use of electronic form of documentary credits where electronic transport documents can be used. However this attempt needs to develop methods for claiming transferability of rights and liabilities electronically. Taking into account the inadequacy of existing provisions under domestic laws relating to electronic documentary frauds there is a need to reform the law in this area to meet the technological documentary frauds. Auditors of banking institutions can play a very cautious and proactive role to detect this type of fraudulent transactions. Nonetheless, considering the increase of financial frauds and the efforts initiated by Government to curb corruption and black money flow from the financial system, legislative framework needs to be framed strictly. Reserve Bank of India needs to draft a strong regulatory mechanism consisting of experts in the financial field to monitor and curb the money laundering activities through the avenue of documentary credits. CS

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Leveraged Buyout Analysis: A New Form of Funding

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A leveraged buyout (LBO) is an acquisition of a company or a segment of a company funded mostly with debt. A financial buyer (e.g. private equity fund) invests a small amount of equity (relative to the total purchase price) and uses leverage (debt or other non-equity sources of financing) to fund the remainder of the consideration paid to the seller. LBO analysis generally provides a "floor" valuation for the company, and is useful in determining what a financial sponsor can afford to pay for the target and still realize an adequate return on its investment.

The purpose of leveraged buyouts is to allow companies to make large acquisitions without having to commit a lot of capital. In leveraged buy-outs usually there is 90% debt and 10% equity. Because of this high debt-equity ratio, the bonds usually are not investment grade and are referred to as junk bonds. Leveraged buyouts have had a notorious history, especially in the 1980s when several prominent buyouts led to the eventual bankruptcy of the acquired companies. This was mainly due to the fact that the leverage ratio was nearly 100% and the interest payments were so large that the company's operating cash flows were unable to meet the obligation.

Private Equity Analysts and Associates can expect to build leveraged buyout models in excel on a day-to-day basis at middle market and large private equity firms. Whether you are modeling out how much debt you can take on to acquire a commercial building or checking the feasibility of acquiring a public company with a significant amount of debt, you will need to understand how to put together a typical LBO model from scratch.

A simple LBO model includes the following:

1. Transaction Assumptions tab that includes Sources & Uses and Transaction Assumptions sections.
2. Integrated Financial Statements tab that includes an integrated Income Statement, Balance Sheet and Cash Flow section with historical and projected forecasts three to five years post-closing.
3. Debt Schedule tab which shows debt prior to acquisition, the adjustments, and projected debt schedule post-closing.
4. Returns Analysis tab that includes an IRR calculation.

TRANSACTION STRUCTURE

Given below is a simple diagram of an LBO structure. The new investors (e.g. LBO firm or management of the target) form a new corporation for the purpose of acquiring the target. The target becomes a subsidiary of the new company, or the new company and the target can merge.

APPLICATIONS OF THE LBO ANALYSIS

Determine the maximum purchase price for a business that can be paid based on certain leverage (debt) levels and equity return parameters.

Develop a view of the leverage and equity characteristics of a leveraged transaction at a given price.

Calculate the minimum valuation for a company since, in the absence of strategic buyers, an LBO firm should be a willing buyer at a price that delivers an expected equity return that meets the firm's *hurdle rate*.

STEPS IN THE LBO ANALYSIS

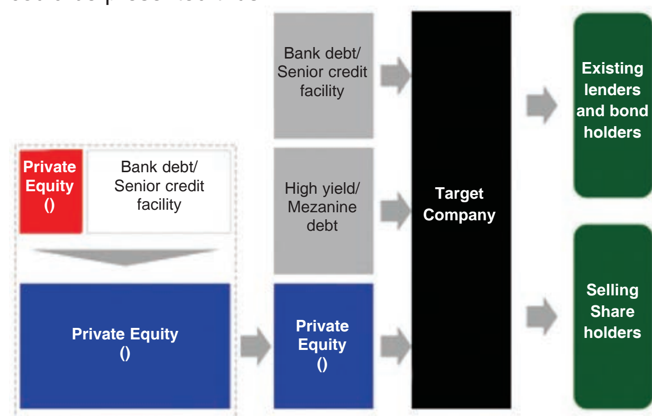
Develop operating assumptions and projections for the standalone company to arrive at EBITDA and cash flow available for debt repayment over the investment horizon (typically 3 to 7 years).
Determine key leverage levels and capital structure (senior and subordinated debt, mezzanine financing, etc.) that result in realistic financial coverage and credit statistics.

Estimate the multiple at which the sponsor is expected to exit the investment (should generally be similar to the entry multiple).

Calculate equity returns (IRRs) to the financial sponsor and sensitize the results to a range of leverage and exit multiples, as well as investment horizons.

Solve for the price that can be paid to meet the above parameters (alternatively, if the price is fixed, solve for achievable returns).

The basic structure of a generic leveraged buyout transaction could be presented thus:



RETURNS

In LBO transactions, financial buyers seek to generate high returns on the equity investments and use financial leverage (debt) to increase these potential returns. Financial buyers evaluate investment opportunities by analyzing expected *internal rates of return* (IRRs), which measures the returns on invested equity. IRRs represent the discount rate at which the net present value of cash flows equals zero. Historically, financial sponsors' hurdle rates (minimum required IRRs) have been in excess of 30%, but may be as low as 15-20% for particular deals under adverse economic conditions. Hurdle rates for larger deals tend to be a bit lower than the hurdle rates for smaller deals.

Sponsors also measure the success of an LBO investment using a metric called "cash-on-cash" (CoC). CoC is calculated as the final value of the equity investment at exit divided by the initial equity investment, and is expressed as a multiple. Typical LBO investments return 2.0 x - 5.0 x cash-on-cash. If an investment returns 2.0 x CoC, for example, the sponsor is said to have "doubled its money".
The returns in an LBO are driven by the following three factors:
- De-levering (paying down debt)
- Operational improvement (e.g. margin expansion, revenue growth)
- Multiple expansion (buying low and selling high)

RISK

Equity holders – In addition to the operating risk, assumed risk arises due to significant financial leverage. Interest costs resulting from substantial amounts of debt are "fixed costs" that can force a company to default if not paid. Furthermore, small changes in the enterprise value (EV) of a company can have a magnified effect on the equity value when the company is highly levered and the value of the debt remains constant.
Debt holders – The debt holders bear the risk of default equated with higher leverage as well, but since they have the most senior claims on the assets of the company, they are likely to realize a partial, if not full, return on their investments, even in bankruptcy.

EXIT STRATEGIES

Ideally, an exit strategy enables financial buyers to realize gains on their investments. Exit strategies most commonly include an outright sale of the company to a strategic buyer or another financial sponsor, an IPO, or a recapitalization. A financial buyer typically expects to realize a return on its LBO investment within 3 to 7 years *via* one of these strategies.

EXIT MULTIPLES

The value of a company acquired in an LBO transaction is often valued at the time of acquisition using valuation multiples (e.g. EV/EBITDA). While exiting the investment at a multiple higher than the acquisition multiple will help boost a sponsor's IRR, it is difficult to justify a prediction that the exit multiple will be higher than the entry multiple (known as "multiple expansion"). It is important that exit assumptions reflect realistic approaches and multiples (exit multiples should generally equal acquisition multiples) for analytical purposes, and multiple expansion is usually an unjustifiable assumption.

Issues to Consider in an LBO Transaction

Industry characteristics:
- Type of industry
- Competitive landscape
- Cyclicality
- Major industry drivers
- Potential outside factors (politics, changing laws and regulations, etc.)

Company-specific characteristics:
- Strategic positioning within the industry (market share)
- Growth opportunity
- Operating leverage
- Sustainability of operating margins
- Potential for margin improvement
- Level of maintenance CapEx vs. growth CapEx
- Working capital requirements
- Minimum cash required to run the business
- Ability of management to operate effectively in a highly levered situation

Market conditions:
- Accessibility and cost of bank and high yield debt
- Expected equity returns

Exhibit 1 – LBO Structure

Assumptions	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Sales Growth	5.0%	5.0%	5.0%	5.0%	5.0%
COGS as % of Sales	60.0%	60.0%	60.0%	60.0%	60.0%
S,G&A as % of Sales	15.0%	15.0%	15.0%	15.0%	15.0%
Depreciation as % of Sales	5.5%	5.5%	5.5%	5.5%	5.5%
Transaction Fee Amortization (5 years)	$ 1.0	$ 1.0	$ 1.0	$ 1.0	$ 1.0
Tax Rate	35.0%	35.0%	35.0%	35.0%	35.0%
Cap. Ex. as % of Sales	5.5%	5.5%	5.5%	5.5%	5.5%
Inc. in WC as % of Inc. in Sales	7.0%	7.0%	7.0%	7.0%	7.0%

Uses of Funds	
Purchase Price	$ 200.0
Transaction Costs	5.0
Total	$ 205.0

Sources of Funds	
Senior Debt (@ 9.0%)	45.0
Junior Debt (@ 13.0%)	100.0
Equity	60.0
	$ 205.0

Target Projections		**Year 0**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Net Sales		170.0	178.5	187.4	196.8	206.6	217.0
COGS		102.0	107.1	112.5	118.1	124.0	130.2
S,G&A		25.5	26.8	28.1	29.5	31.0	32.5
Depreciation		9.4	9.8	10.3	10.8	11.4	11.9
Operating Income		33.1	34.8	36.5	38.4	40.3	42.3
Transaction Fee Amortization		-	1.0	1.0	1.0	1.0	1.0
EBIT		33.1	33.8	35.5	37.4	39.3	41.3
Interest Expense							
Senior Debt	9.0%		4.1	3.0	1.9	0.5	-
Junior Debt	13.0%		13.0	13.0	13.0	13.0	11.5
Total Interest Expense			17.1	16.0	14.9	13.5	11.5
Pre-tax Income			16.8	19.5	22.5	25.8	29.8
Income Taxes			5.9	6.8	7.9	9.0	10.4
Net Income			10.9	12.7	14.6	16.8	19.4
<u>Free Cash Flow Calculation</u>							
Net Income			10.9	12.7	14.6	16.8	19.4
Plus: Depreciation			9.8	10.3	10.8	11.4	11.9
Plus: Transaction Fee Amortization			1.0	1.0	1.0	1.0	1.0
Less: Capital Expenditures			(9.8)	(10.3)	(10.8)	(11.4)	(11.9)
Less: Increase in Working Capital			(0.6)	(0.6)	(0.7)	(0.7)	(0.7)
Frewe Cash Flow			11.3	13.1	15.0	17.1	19.6

Capitalization		**Year 0**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Senior Debt - Beginning Balance			45.0	33.7	20.6	5.7	-
Mandatory Amortization	$1.0		1.0	1.0	1.0	1.0	-
Cash Sweep			10.3	12.1	14.0	4.7	-
Senior Debt - Ending Balance		45.0	33.7	20.6	5.7	-	-
Junior Debt - Beginning Balance			100.0	100.0	100.0	100.0	88.6
Mandatory Amortization	$0.0		-	-	-	-	-
Cash Sweep			-	-	-	11.4	19.6
Junior Debt - Ending Balance		100.0	100.0	100.0	100.0	88.6	68.9
Senior Debt		45.0	33.7	20.6	5.7	-	-
Junior Debt		100.0	100.0	100.0	100.0	88.6	68.9
Equity		60.0	70.9	83.6	98.2	115.0	134.3
Total Capitalization		205.0	204.6	204.2	203.9	203.6	203.3
Senior Debt		22.0%	16.5%	10.1%	2.8%	0.0%	0.0%
Junior Debt		48.8%	48.9%	49.0%	49.0%	43.5%	33.9%
Equity		29.3%	34.7%	40.9%	48.2%	56.5%	66.1%

Exhibit 2 – LBO Return Calculations

Cash Flows to Common Equity		Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
EBITDA		42.5	43.6	45.9	48.2	50.7	53.2
Total Debt		145.0	133.7	120.6	105.7	88.6	68.9
	Exit Multiple	Outflow			Inflows		
	5.5 x	(60.0)	106.2	131.6	159.4	190.0	223.9
	6.5 x	(60.0)	149.9	177.4	207.6	240.7	277.1
	7.5 x	(60.0)	193.5	223.3	255.8	291.4	330.4

Exit In:		IRR						
Year 1	5.5 x	77.1%	(60.0)	106.2				
	6.5 x	149.8%	(60.0)	149.9				
	7.5 x	222.5%	(60.0)	193.5				
Year 2	5.5 x	48.1%	(60.0)	-	131.6			
	6.5 x	72.0%	(60.0)	-	177.4			
	7.5 x	92.9%	(60.0)	-	223.3			
Year 3	5.5 x	38.5%	(60.0)	-	-	159.4		
	6.5 x	51.3%	(60.0)	-	-	207.6		
	7.5 x	62.2%	(60.0)	-	-	255.8		
Year 4	5.5 x	33.4%	(60.0)	-	-	-	190.0	
	6.5 x	41.5%	(60.0)	-	-	-	240.7	
	7.5 x	48.4%	(60.0)	-	-	-	291.4	
Year 5	5.5 x	30.1%	(60.0)	-	-	-	-	223.9
	6.5 x	35.8%	(60.0)	-	-	-	-	277.1
	7.5 x	40.7%	(60.0)	-	-	-	-	330.4

Characteristics of a Good LBO Candidate

The following characteristics define the ideal candidate for a leveraged buyout. While it is very unlikely that any one company will meet all these criteria, some combination thereof is needed to successfully execute an LBO.

- Strong, predictable operating cash flows with which the leveraged company can service and pay down acquisition debt
- Mature, steady (non-cyclical), and perhaps even boring
- Well-established business and products and leading industry position
- Moderate CapEx and product development (R&D) requirements so that cash flows are not diverted from the principal goal of debt repayment
- Limited working capital requirements
- Strong tangible asset coverage
- Undervalued or out-of-favor
- Seller is motivated to cash out of his/her investment or divest non-core subsidiaries, perhaps under pressure to maximize shareholder value
- Strong management team
- Viable exit strategy

Controversy about LBO structures around the world (tax benefits)

One of most controversial issues about LBO structures involving subsequent mergers has been the taxation of the surviving company, in which the leveraged buyer and the target are merged.

Tax authorities across the globe have had a longstanding negative approach towards LBO transactions. In their view, the financial expenses resulting from loans to finance the acquisition of shares of the target should not be deductible for corporate tax purposes by the surviving company. According to them, LBO transactions constitute abusive tax practice to the extent that the transfer of the shares of a target followed by a merger is exclusively aimed at reducing the target's taxable income by increasing its financial liabilities arising from the acquisition transaction.

Tax authorities posit that there is no economic and commercial reason for choosing such a structure other than tax evasion, since the same economic result, i.e. making the investment to the target, could be achieved *via* direct investment in the target rather than an investment *via* a leveraged buyer acting between the main investor (parent company of such buyer) and the target.

Consequently, where the tax authorities deem that the main aim of a specific LBO transaction is to abuse tax advantages as stated above, they reject it. Increasing number of countries adopt strict anti-abuse rules so that taxpayers setting up controversial structures, such as the LBO structures, must prove substantial non-tax reasons (valid business and commercial considerations).

Management Buyouts (MBOs)

Management buyouts are similar to LBO, except that the management team of the target company acquires the company rather than a financial sponsor. For example, the sole owner of a private company might be nearing his twilight years and wishes to exit the business he started years ago. The management team might believe strongly in the prospects of the company and agree to buy out the owner's equity interest and assume control of the company.

> Tax authorities across the globe have had a longstanding negative approach towards LBO transactions. In their view, the financial expenses resulting from loans to finance the acquisition of shares of the target should not be deductible for corporate tax purposes by the surviving company. According to them, LBO transactions constitute abusive tax practice to the extent that the transfer of the shares of a target followed by a merger is exclusively aimed at reducing the target's taxable income by increasing its financial liabilities arising from the acquisition transaction.

From a manager's perspective, leveraged buyouts have a number of appealing characteristics:

- Tax advantages associated with debt financing
- Freedom from the scrutiny of being a public company or a captive division of a larger parent
- The ability for founders to take advantage of a liquidity event without ceding operational influence or sacrificing continued day-to-day involvement, and
- The opportunity for managers to become owners of a significant percentage of a firm's equity.

A special case of a leveraged acquisition is a management buyout (MBO). In an MBO, the incumbent management team (that usually has no or close to no shares in the company) acquires a sizeable portion of the shares of the company. Similar to an MBO is an MBI (Management Buy In) in which an external management team acquires the shares.

An MBO can occur for a number of reasons as under:
The owners of the business want to retire and want to sell the company to the management team they trust (and with whom they have worked for years).

The owners of the business have lost faith in the business and are willing to sell it to the management (who believes in the future of the business) in order to get some value for the business.

The managers see a value in the business that the current owners do not see and do not want to pursue.

In most situations, the management team may not have enough money to fund the equity needed for the acquisition (to be combined with bank debt to constitute the purchase price) so that management teams work together with financial sponsors to part-finance the acquisition. For the management team, the negotiation of the deal with the financial sponsor (i.e., who gets how many shares of the company) is a key value creation lever. Financial sponsors are often sympathetic to MBOs as in these cases they are assured that the management believes in the future of the company and has an interest in value creation (as opposed to being solely employed by the company). There are no clear guidelines as to how big a share the management team must own after the acquisition in order to qualify as an MBO, as opposed to a normal leveraged buy-out in which the management invests together with the financial sponsor. However, generally an MBO is a situation in which the management team initiates and actively pushes the acquisition.

MBO situations lead management teams often into a dilemma as they face a conflict of interest, being interested in a low purchase price personally while at the same time being employed by the owners who obviously have an interest in a high purchase price. Owners usually react to this situation by offering a deal fee to the management team if a certain price threshold is reached. Financial sponsors usually react to this again by offering to compensate the management team for a lost deal fee if the purchase price is low. Another mechanism to handle this problem is earn-outs (purchase price being contingent on reaching certain future profitability).

There probably are just as many successful MBOs as the unsuccessful ones. Crucial for the management team at the beginning of the process is the negotiation of the purchase price and the deal structure and the selection of the financial sponsor.

Secondary and tertiary buyouts

A secondary buyout is a form of leveraged buyout where both the buyer and the seller are private equity firms or financial sponsors (i.e., a leveraged buyout of a company that was acquired through a leveraged buyout). A secondary buyout will often provide a clean break for the selling private equity firms and its limited partner investors. Historically, given that secondary buyouts were perceived as distressed sales by both seller and buyer, limited partner investors considered them unattractive and largely avoided them.

The increase in secondary buyout activity in 2000s was driven in large part by an increase in capital available for the leveraged buyouts. Often, selling private equity firms pursue a secondary buyout for a number of reasons:

Sales to strategic buyers and IPOs may not be possible for niche or undersized businesses.

Secondary buyouts may generate liquidity more quickly than other routes (i.e., IPOs).

Some kinds of businesses – e.g., those with relatively slow growth but which generate high cash flows – may be most appealing to private equity firms than they are to public stock investors or other corporations.

Often, secondary buyouts have been successful if the investment has reached an age where it is necessary or desirable to sell rather than hold the investment further or where the investment had already generated significant value for the selling firm.

Secondary buyouts differ from secondaries or secondary market purchases which typically involve the acquisition of portfolios of private equity assets including limited partnership stakes and direct investments in corporate securities.

If a company that was acquired in a secondary buyout gets sold to another financial sponsor, the resulting transaction is called a tertiary buyout.

Views/suggestions/issues/queries are invited
on the new topics identified
for developing the
Secretarial Standards/Guidance Notes

The Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) is considering to bring out the Secretarial Standards/Guidance Notes on emerging topics of professional and corporate interest.

In order to elicit all the prevailing issues and to start with the process, it is considered pertinent to obtain views of our professional colleagues on the following topics identified for developing the Secretarial Standards/ Guidance Notes:

(i) Independent Directors
(ii) Preferential Issue & Private Placement of Securities
(iii) Managerial Remuneration
(iv) Borrowings, Loans & Investments (including Registration, Modification and Satisfaction of Charges)
(v) Takeover Code
(vi) Disqualification and Vacation of Directors
(vii) Layering of Subsidiaries
(viii) Standard Practices for filing application before NCLT/NCLAT
(ix) Good Governance through Standard Agenda & MIS
(x) National Governance: Model Code for Trust, Society, LLPs, Educational Institutes including Universities/ Colleges, Municipalities, Charitable Institutions etc.

Accordingly, Members are requested to send their specific comments/suggestions/issues/queries on the above topics to the Secretariat of SSB at ssb@icsi.edu on or before 15th May, 2018, preferably under the following heads:

- Grey areas in the law
- Contradictions between various provisions of the Act, Rules/Regulations and other applicable laws
- Multiple or diverse interpretations of law
- Best practices followed by the corporates
- Critical issues or special circumstances encountered by members
- Any other queries/doubts/issues on which the members feel that the guidance is necessary
- Any other information, members would like to bring to SSB to consider while drafting the Secretarial Standards/Guidance Notes.

Members may also substantiate their suggestions with the judicial pronouncements, if any, which may be useful for the proposed Secretarial Standards/Guidance Notes.

Comments/suggestions received from the Members under the above stated categories will be considered by the SSB.

2

RESEARCH CORNER

- EMPHASISING THE ROLE OF 'RESPONSIBLE CORPORATE GOVERNANCE' IN BANKING SECTOR: AN EMPIRICAL ANALYSIS OF 'POST PUNJAB NATIONAL BANK FRAUD SCENARIO' IN INDIA
- THE ICSI-CCGRT INVITES RESEARCH PAPERS FOR AN EDITORIAL BOOK ON THE THEME "IMPACT OF COMPANIES AMENDMENT ACT, 2017"
- ICSI – CCGRT ANNOUNCES THREE DAYS RESIDENTIAL RESEARCH COLLOQUIUM ON THE COMPANIES ACT, 2013 (CHAPTER 11 ONWARDS) INCLUDING THE COMPANIES (AMENDMENT) ACT, 2017 & DRAFT RULES

RESEARCH PAPER

Emphasising the Role of 'Responsible Corporate Governance' in Banking Sector: An Empirical Analysis of 'Post Punjab National Bank Fraud Scenario' in India

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मत्स्या यथान्तःसलिले चरन्तो ज्ञातं न शक्याः सलिलं पिबन्तः।
युक्तास्तथा कार्यविधौ नियुक्ता ज्ञातुं न शक्या धनमाददानाः।।

-Kautilaya's Arthashastra

(Just as fish moving under the water cannot possibly be found out either as gulping or not gulping water, in the same manner, the public servants employed in the government sector cannot be found out (while) embezzling money (for themselves) out of such system. The general public is not in a position to know whether the extent of honesty of such officials, because they (public) do not have the details of such funds and its usage. It is only when some institution or person is able to collect related information by spending a lot of effort and scrutiny, only then; the general public is able to know something.)

The purpose of this empirical study is to investigate the role of 'Responsible Corporate Governance' in the wake of rising financial frauds in banking sector with special emphasis on India post Punjab National Bank fraud detection. Three major components of Corporate Governance (internal audit, disclosure and transparency, and external audit) were taken into account. A sample of 140 middle and senior level banking professionals in India was obtained during the month of March 2018 for this empirical study. The statistical techniques of Simple and Multiple Regression were utilized to derive the output. The study found that effectiveness of 'Internal Audit' system turned out to be most vital component of Corporate Governance in Indian banking sector followed by the component 'disclosure and transparency'. 'External audit' system occupied the last place in the three components compared in the study. The further comprehensive analysis of the three dimensions of the components under study (existence, implementation, and effectiveness) revealed that the 'effectiveness' dimension turned out to be the most significant dimension in checking the possibility of fraud in banks. Therefore, the study found that the 'Responsible Corporate Governance' in letter and in spirit is the need of the hour to curb such frauds and maintain the trust of the general public in Indian banking.

Keywords: Corporate Governance, Internal Audit, External Audit, Banking Sector in India, Financial Sector Fraud

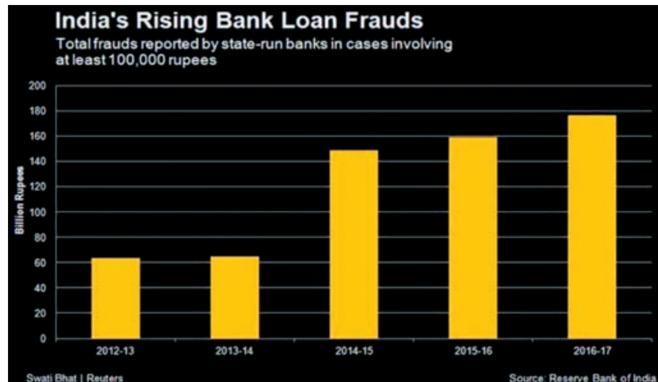
JEL Classification: G21, G32, G34, N25, 016

Section I

INTRODUCTION

The above verse from Kautilaya's Arthashastra (Book II, Chapter 9, Verse 37 "The Duties of Government Superintendents") is aptly able to describe the insider view of the frauds being detected in Indian Banking sector latest one being Punjab National Bank fraud unearthed in February 2018. This verse is an absolute testimonial that mechanisms of responsible

Corproate Governance are not novel to India but have been defined centuries ago. Kautilya was a sagacious minister in the Kingdom of Chandragupta Maurya (324/321/297 Before the Common Era) who penned down Arthashastra in around 300 BC and gave a comprehensive account of ancient system of governance and administration to detect and deal with corruption in Government sector. Arthshastra gives a detailed account of forty types of possible frauds and embezzlements in Chapter VIII, Book II of Arthashastra, the most common ones being *prayoga* or loan and *vyavahara* or trading, *avastara* or fabrication of accounts and *pariahapana* or causing less revenue and thereby affecting the treasury, *upabhoga* or embezzling funds for self enjoyment, and *apahara* or defalcation. Some of these types of frauds have made a room in Indian banking as data given hereunder present an account of abominable picture of Indian banking sector.



Source: Reserve Bank of India as published by Reuters

THE BANK 'SAFE'

Bank	Number of Cases Involving Bank Officials (2015-17)
State Bank of India	1,538
Indian Overseas bank	449
Central Bank	406
Union Bank	214
Punjab National Bank	184

Fraud cases involving private and public sector banks (2013-2017): 17,504
Amount of money involved in these cases: Rs 66,066 crore
Number of cases which involved bank officials: 2,084

Source: Reserve Bank of India data published by *The Quint*

The data presented on above figures stresses out the role of 'Responsible Corporate Governance' in banking sector in India as about which Kautilaya had given a hint in Sanskrit verse given above (***It is only when some institution or person is able to collect related information by spending a lot of effort and scrutiny, only then; the general public is able to know something)***. This means that in order to curb the tendency of frauds and embezzlements, it must be ensured that every institution has got 'Responsible Corporate Governance' in place. In context of Indian Banking, though, Reserve Bank of India, the key regulator of Indian banking sector, issues guidelines from time to time on Corporate Governance norms for public sector banks which serve as a base for the Corporate Governance framework in Banks, yet, there is a need to review the robustness of such system of Corporate Governance in Indian banks as frauds are being detected in spite of presence of Corporate Governance mechanism in Banks in India. Therefore, this study is an attempt to investigate the perceptions of Indian Banking Professionals for exploring the relationship between possibility of fraud and presence of Corporate Governance mechanism in Indian Banking Sector.

Section II

REVIEW OF LITERATURE

International institutions have been stressing the role of Corporate Governance in Banking sector in the past decades in the wake of rising financial crimes across the Globe (Bank for International Settlements, 2006; 2013; 2015; OECD, 2006; 2008;). The researchers all over the world have been trying to explore the impact of presence of internal and external Corporate Governance mechanisms on frauds and embezzlements in banking sector (Francis *et al.,* 2003; Adelegan, 2005; Abdelkarim and Burbar, 2007; Mustafa *et al.*, 2009; Adeyemi and Adenugba, 2011; Al-Baidhani 2016; Argun, 2016; Domitilla, 2016; Kaur; 2017. Components of Corporate Governance such as internal audit (European Confederation of Institutes of Internal Auditing (ECIIA), 2005; Olatunji, 2009; Socol, 2011; Teresita, 2012; Hayali, 2012; Gündoğdu, 2013; disclosure and transparency (United Nations, 2006; Tsamenyi, 2007; Saidi, 2008; Živko, 2008) and external audit (Adeyemi and Adenugba, 2011; Alabede, 2012; Bank for International Settlements, 2013; Mohammed, 2017) are found to be related with levels of frauds in banking sector. Therefore, such researches in the past have formed the empirical base to develop a research model to attain the objective of this study.

Section III

RESEARCH METHODOLOGY

Research Gap

Though there are studies in the literature that investigate into the relationship of Corporate Governance with banking related aspects, yet, there is hardly any study that stresses the need of a Responsible Corporate Governance Mechanism in the wake of such rising frauds in Indian banking sector. Therefore, when there is a rising concern of all the stakeholders post Punjab National Bank Fraud unveiling, there is a need to carry out an investigation into the role of responsible Corporate Governance in Financial Sector with special emphasis on Indian Banking sector.

Objective of the Study

The present study investigates the extent to which Corporate Governance components and dimensions (extracted from literature) influence the possibility of fraud in Indian banking sector.

Measurement Instrument

The data for the study was collected from primary sources through a structured questionnaire. The responses were collected through a Google form mailed to the randomly selected respondents. The universe of the study was banking professionals and middle and senior level working in Public sector banks in India. Though, 300 questionnaires were mailed in the month of March 2018 after unearthing of Punjab National Bank fraud, yet, the response rate of the same was 46.67 per cent leaving the final sample to be 140 respondents.

Variables for Developing Research Model

Independent Variables: Based on the review of existing literature, three components of Corporate Governance have been identified as independent variables. These variables are:

- Internal audit system
- Disclosure and transparency
- External audit system

For each of these variables three dimensions are identified, i.e

'existence', 'implementation', and 'effectiveness'.

Dependent Variable: The literature guides that presence and strength of above cited independent variables will influence the possibility of fraud in Banks. Therefore, 'possibility of fraud', has been chosen as the dependent variable in this study.

Statistical Tools

To draw up valid conclusions and test obtained results empirically, an exhaustive use of statistical tools has been made in the present research. Ranging from statistic to check normality such as Jarque-Bera Test (1980), statistic to check presence of autocorrelation i.e. Durbin Watson Statistic (1951), techniques such as Ordinary Least Square regressions have been employed to develop models for the study and attain the results. The results have been tested at 1 per cent and 5 per cent level of significance (α).

Section IV

ANALYSIS OF RESULTS

Hypotheses

The following hypotheses were developed to test the assumptions of the study:

- **Null hypothesis H_{o1}: There exists no significant relationship between 'possibility of fraud' and presence of effective 'Internal Audit' system in banking sector.**
- **Null hypothesis H_{o2}: There exists no significant relationship between 'possibility of fraud' and extent of 'Disclosure and Transparency' in banking sector.**
- **Null hypothesis H_{o3}: There exists no significant relationship between 'possibility of fraud' and depth of effective 'External Audit' in Indian banking sector.**

Based on above hypotheses, both simple and multiple regression models were developed to detect the impact of the three Corporate Governance variables on the perceived possibility of fraud in banking sector in India. Table 1 presents the test output such as simple regression models for each of the independent variables and also the result of a multiple regression model by entering all three independent variables entered simultaneously into the multiple regression equation as shown in Model 4.

Inferential Statistics

Jarque-Bera Test

In order to check normality of the dependent variable distribution, use of Jarque-Bera test is made in the study. In statistics, the Jarque–Bera test is a goodness-of-fit test of whether sample data have the skewness and kurtosis matching a normal distribution. The formula for the Jarque-Bera test statistic (JB test statistic) is:

$$JB = n\,[(\sqrt{b_1})^2 / 6 + (b_2)^2 / 24]$$

Where:

n is the sample size,

$\sqrt{b_1}$ is the sample skewness coefficient,

b_2 is the kurtosis coefficient.

The null hypothesis for the test is that the data is normally distributed.

The p-values for JB test output carried out on sample data indicated that residuals are distributed normally; therefore, it was fit for running multiple regressions on the sample.

Durbin-Watson Test

Durbin–Watson Statistic is a test statistic used to test first lag serial correlation between remained (errors) of regression. Autocorrelation means that the errors of adjacent observations are correlated. If the errors are correlated, then least-squares regression can underestimate the standard error of the coefficients (Minitab). The test is based on checking the hypothesis of absence of autocorrelation H_0: $\rho = 0$. If e_t is the residual associated with the observation at time t, then the test statistic is

$$DW = \frac{\sum_{i=2}^{n}(e_i - e_{i-1})^2}{\sum_{i=1}^{n} e_i}$$

The Durbin Watson test values are within the range of 0 and 4. If there is no autocorrelation, DW is close to 2. Closeness to 0 means positive autocorrelation, to 4 - about negative autocorrelation. It can be seen that values of DW test statistic in all models are close to 2, indicating the absence of autocorrelation in the models.

Research Models

Linear Regression Model 1

$$PoF = \alpha_o + \beta_1 IA$$

(PoF = Possibility of Fraud, IA = Internal Audit)

Linear Regression Model 2

$$PoF = \alpha_o + \beta_1 DT$$

(PoF = Possibility of Fraud, DT = Disclosure and Transparency)

Linear Regression Model 3

$$PoF = \alpha_o + \beta_1 EA$$

(PoF = Possibility of Fraud, EA = External Audit)

Multiple Regression Model 4

$$PoF = \alpha_o + \beta_1 IA + \beta_2 DT + \beta_3 EA$$

(PoF = Possibility of Fraud, IA = Internal Audit, DT = Disclosure and Transparency, EA = External Audit)

The output of the regression model as presented in Table 1 confirms that upon entering independently in three different simple regression models, the coefficients of all the three independent variables (presented in regression models 1 to 3) are turning out to be statistically significant at 1 per cent level, which leads to the conclusion that the null hypotheses for all three models is rejected in favour of alternate hypotheses and there is a presence of significant relationship between dependent variable 'perceived possibility of bank fraud' and 'Corporate Governance Variables' depicted as 'Internal Audit', 'Disclosure and Transparency' and 'External Audit'.

Furthermore, further analysis of regression output presented in Table 1 reveals that though the coefficient of variable 'Internal Audit' as an independent variable in Simple Regression Model 1 has 'the lowest value' as compared to the coefficients of other two variables i.e. 'Disclosure and Transparency' and 'External Audit' as shown in regression models 2 and 3; yet; it yields the highest Pseudo R square and F statistics test values, leading to the conclusion that Model 1 is the most significant model of the three models tested in the table 1 of the study.

Further exploration into output presented in table 1 depicts that when multiple regression taking all the three variables depicting 'Corporate Governance' simultaneously is run in regression model

4, the variable 'External Audit' does not remain significant anymore at 1 per cent level. This leads to the conclusion that respondents perceived variables 'presence of Internal Audit system' and 'extent of disclosure and transparency' to be more important in 'Responsible Corporate Governance' than 'External Audit'.

Table 1
Result of Regression Analysis of Corporate Governance Components

Regression	Model 1	Model 2	Model 3	Model 4
Intercept	4.995* (0.165)	6.465* (.541)	6.568* (.518)	4.842* (.347)
Internal Audit	-.586* (0.0489)			-.598* (.089)
Disclosure and Transparency		-.874* (.159)		-.318* (.169)
External Audit			-.882* (.173)	.085 (.142)
F Statistics	138.405*	39.882*	29.458*	39.412*
R Square	.687	.488	.247	.642
Pseudo R Square	.612	.461	.234	.610
Durbin-Watson	2.251	2.541	1.997	2.011

Dependent variable: Perceived possibility of fraud
** p <0.01, Standard errors in parenthesis*

The output of table 1 called for a deeper exploration of impact of 'Responsible Corporate Governance' on the 'perceived possibility of fraud'. Therefore, each variable was further sub-divided into three dimensions namely, 'Existence', 'Implementation' and 'Effectiveness'. Multiple regression models were again run taking these dimensions into account in table 2. The hypotheses and regression models taking above dimensions for each variable are given hereunder:

Null hypothesis H_{o4}: There exists no significant relationship between 'perceived possibility of fraud' and 'existence' dimension of variable 'Internal Audit' in banking sector.

Null hypothesis H_{o5}: There exists no significant relationship between 'perceived possibility of fraud' and 'implementation' dimension of variable 'Internal Audit' in banking sector.

Null hypothesis H_{o6}: There exists no significant relationship between 'perceived possibility of fraud' and 'effectiveness' dimension of variable 'Internal Audit' in banking sector.

Null hypothesis H_{o7}: There exists no significant relationship between 'perceived possibility of fraud' and 'existence' dimension of variable 'Disclosure and Transparency' in banking sector.

Null hypothesis H_{o8}: There exists no significant relationship between 'perceived possibility of fraud' and 'implementation' dimension of variable 'Disclosure and Transparency' in banking sector.

Null hypothesis H_{o9}: There exists no significant relationship between possibility of fraud' and 'effectiveness' dimension of variable 'Disclosure and Transparency' in banking sector.

Null hypothesis H_{o10}: There exists no significant relationship between 'perceived possibility of fraud' and 'existence' dimension of variable 'External Audit' in banking sector.

Null hypothesis H_{o11}: There exists no significant relationship between 'perceived possibility of fraud' and 'implementation' dimension of variable 'External Audit' in banking sector.

Null hypothesis H_{o12}: There exists no significant relationship between 'perceived possibility of fraud' and 'effectiveness' dimension of variable 'External Audit' in banking sector.

Null hypothesis H_{o13}: There exists no significant relationship between 'perceived possibility of fraud' and 'existence' dimension of variable 'Overall Corporate Governance' in banking sector.

Null hypothesis H_{o14}: There exists no significant relationship between 'perceived possibility of fraud' and 'implementation' dimension of variable 'Overall Corporate Governance' in banking sector.

Null hypothesis H_{o15}: There exists no significant relationship between 'perceived possibility of fraud' and 'effectiveness' dimension of variable 'Overall Corporate Governance' in banking sector.

Research Models

Following Multiple Regression models used to test hypotheses above in this empirical research:

Multiple Regression Model 5

$PoF = \alpha_o + \beta_1 ExIA + \beta_2 ImpIA + \beta_3 EffIA$

(PoF = Possibility of Fraud, ExIA= 'existence' of 'Internal Audit', ImpIA = 'Implementation' of 'Internal Audit', EffIA = 'Effectiveness' of 'Internal Audit')

Multiple Regression Model 6

$PoF = \alpha_o + \beta_1 ExDT + \beta_2 ImpDT + \beta_3 EffDT$

(PoF = Possibility of Fraud, ExDT = 'Existence' of Disclosure and Transparency, ImpDT = 'Implementation' of Disclosure and Transparency + EffDT = 'Effectiveness' of Disclosure and Transparency)

Multiple Regression Model 7

$PoF = \alpha_o + \beta_1 ExEA + \beta_2 ImpEA + \beta_3 EffEA$

(PoF = Possibility of Fraud, ExEA= 'Existence' of 'External Audit, ImpEA = 'Implementation' of External Audit, EffEA = 'Effectiveness' of External Audit)

Multiple Regression Model 8

$PoF = \alpha_o + \beta_1 ImpIA + \beta_2 ImpDT + \beta_3 ImpEA$

(PoF = Possibility of Fraud, 'Implementation' of Internal Audit, ImpDT = 'Implementation' of Disclosure and Transparency, 'Implementation' of External Audit)

Multiple Regression Model 9

$PoF = \alpha_o + \beta_1 EffIA + \beta_2 EffDT + \beta_3 EffEA$

(PoF = Possibility of Fraud, EffIA = 'Effectiveness' of Internal Audit, EffDT = 'Effectiveness' of Disclosure and Transparency, EffEA = 'Effectiveness' of External Audit)

Multiple Regression Model 10

$PoF = \alpha_o + \beta_1 ExCG + \beta_2 ImpCG + \beta_3 EffCG$

(PoF = Possibility of Fraud, ExCG= 'Existence' of 'Overall Corporate Governance', ImpCG = 'Implementation' of 'Overall Corporate Governance', EffCG = 'Effectiveness' of 'Overall Corporate Governance')

Results of Fitting Regression Model on Dimensions related to Variables of Corporate Governance

After testing for basic assumptions related to regression such as Jarque-Bera Statistic and Durbin Watson Test, the output of Regressions models 5 to 10 present the effect of dimensions related to each variable.

It can be observed in Models 5 to 7 that 'implementation' and 'effectiveness' are the dimensions that appear to have a significant relationship with 'Perceived possibility of fraud' as these have a

coefficient that is significant at 1 per cent level. Therefore, one may conclude that just 'existence' of Corporate Governance systems in any entity is not enough and such system need to be put in practice by 'implementing' and ensuring its 'effectiveness' for making any system 'responsible' on 'Corporate Governance' front.

As the dimension 'implementation' turned out to be significant in previous models, therefore, Model 8 presented in table 2 depicts the situation when 'implementation' dimension of all the three variables of Corporate Governance is taken into account in a single multiple regression equation. The empirical output of this model reveals by entering 'implementation' dimension for all variables in a single model simultaneously, only variable 'internal audit' turns out to be significant for this dimension at 1 per cent level. This leads to the conclusion that the impact of 'internal audit' implementation is most valuable in reducing the possibility of fraud in the banking sector out of three variables. Similarly, Multiple Regression Model 9 presented in table 2 presents the output when 'effectiveness' dimension of all the three variables of Corporate Governance is entered simultaneously. The output for this model clearly indicates that two of the coefficients of dimension 'effectiveness' for variables 'internal audit' and 'disclosure and transparency' turn out to be significant while the coefficient of the variable 'external audit' didn't turn out to be significant. Variable 'Internal Audit' turned out to be significant at 1 per cent level, while it is significant at 5 per cent level for variable 'disclosure and transparency', which means that the impact of 'Internal Audit's' effectiveness is most strongest in reducing the possibility of fraud in the banking sector.

Table 2

OUTPUT OF MULTIPLE REGRESSIONS FOR DIMENSIONS OF CORPORATE GOVERNANCE COMPONENTS

Regression	Dimensions	Model 5	Model 6	Model 7	Model 8	Model 9	Model 10
Intercept		**4.712*** (.315)	**5.385*** (.428)	**5.845*** (.542)	**5.974*** (.578)	**5.474*** (.245)	
	Existence	-.116 (.048)					
Internal Audit	Implementation	-.063* (.072)			**-.279*** (.214)		
	Effectiveness	**-.541*** (.048)				**-.372*** (.141)	
	Existence		-.371 (.041)				
Disclosure and Transparency	Implementation		**.034*** (.075)		.0391 (.042)		
	Effectiveness		**-.643*** (.076)			**-.334**** (.142)	
	Existence			-.126 (.084)			
External Audit	Implementation			-.0114 (.185)	.029 (.183)		
	Effectiveness			**-.587*** (.071)		.024 (.087)	
	Existence						-.118 (.074)
Overall Corporate Governance	Implementation						.064 (.114)
	Effectiveness						**-.691*** (.072)
F Statistics	50.425*	36.154*	16.441*	58.452*	53.425*	50.851*	51.851*
R Square	.694	.611	.412	.696	.683	.681	.687
Pseudo R Square	.681	.599	.403	.682	.672	.674	.679
Durbin-Watson	1.987	1.824	2.183	1.741	1.764	1.811	1.911

*Dependent variable: Perceived possibility of fraud, * p <0.01 **p<0.05 Standard errors in parenthesis*

Going a step further, multiple regression model 10 as given in table 2 presents the output of regressing variables 'existence', 'implementation', and 'effectiveness' of 'Overall Corporate Governance' variable. Again, the empirical output stresses that the dimension 'existence' is not significant for Overall Corporate Governance and dimensions 'Implementation' and 'effectiveness' still remain significant in this model. Perhaps, this explains what is happening on 'Corporate Governance' front in Indian banking sector. Though, the regulations relating to 'Corporate Governance' are existing 'in letter' in contemporary mechanism of Indian banking sector, yet, 'Implementation' and 'effectiveness' 'in spirit' is lacking which is giving rise to frauds in banking sector. Therefore, 'Responsible Corporate Governance' in letter and in spirit is the need of the hour to curb such frauds and maintain the trust of the general public in Indian banking.

Section V

CONCLUSION

The results of the present study find their relevance as it throws light on the perceptions of those in-charge of actual operations in banking sector in India regarding to setting up of a 'Responsible Corporate Governance' Mechanism in India which may curb the tendency of frauds committed in Indian banking sector. It was the dire need of the hour to carry out such research empirically as occurrence of such frauds has led to erosion of public faith in the Indian banking system. This become even more important to carry out such in-depth analysis based on different models as banking constitutes the backbone of growth and development of any nation and its financial system. The results of the study indicated that 'internal audit' and 'disclosure and transparency' are the most important components of Corporate Governance of banking system in India and 'external audit' system in any organisation cannot be as robust as it ought to be unless supported by the presence of these two components. Furthermore, just 'existence' of internal audit is not sufficient 'in letter' in any institution, but, it needs to be 'implemented effectively' to foster 'Responsible Corporate Governance' mechanism in spirit. Similarly, 'disclosure and transparency' too needs to be implemented in an effective manner by all the banks ensuring overall effective Corporate Governance to reinforce faith of investors and stakeholders in Indian banking system. Along with, the study seconds described in Ancient Indian literature as narrated by Kautilaya in his Arthashastra who undertook a brilliant research about the nature of possible frauds in government sector centuries ago. This study provides a base for further exploration in this area

and finding out roots of Corporate Governance in Ancient Indian literature.

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This initiative has been under taken after recommendations by the ICSI-CCGRT-Management Committee at its recent concluded meeting.

INTRODUCTION

The Companies Amendment Act, 2017 which was passed by Rajya Sabha on 19th December 2017 has received assent of the Hon'ble president and same has been published in the Official Gazette of India on 3rd January 2018. The changes shall come in to force from the date notified by Ministry of Corporate Affairs. MCA may prescribe different dates for different provisions.

The amendments under the Companies Amendment Act, 2017, are broadly aimed at:

- Addressing difficulties in implementation owing to stringent compliance requirements;
- Facilitating ease of doing business in order to promote growth with employment;
- Harmonization with accounting standards, the

Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder.

PROBLEMS:

Different experts opines differently about the impact of this Act on various sectors of the economy and on various types of companies. Some are convincing that this Act will have a positive impact on some specified sectors while others are contradicting to the earlier claim. In such scenario, it generates substantial interest to go in depth into the critical dimensions of The Companies Amendment Act, 2017 by analysing its impact on various sectors of the economy and also on various types of companies. This research based impact analyses is expected to help the members and others in identifying the gaps and also providing the solutions to the industry and regulators etc.

COVERAGE:

The book plans to cover in following broader areas:

- Impact of the Act on Private Companies
- Impact of the Act on Listed Companies
- Impact of the Act on Government Companies
- Impact of the Act on Unlisted Public Companies

Research Paper / Manuscript Guidelines:

- Original papers are invited from Company Secretaries in employment & practice, Chartered Accountants, Advocates, Academicians, merchant bankers, doyens from industry and interested folk.
- The paper must be accompanied with the author's name(s), affiliations(s), full postal address, email ID, and telephone/fax number along with the title of the paper on the front page and membership details of professional bodies, if any.
- Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.
- The text should be typed in MS-Word.
- The author/s' name should not appear anywhere else on the body of the manuscript to facilitate the blind review process.
- The research paper should be in clear, coherent and concise English.
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- All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
- An abstract of the proposed research paper (500 words) along with a brief biographical sketch of the authors (60-80 words) should reach to the editors on or before 22th April, 2018.
- The Full research papers should reach to the editors on or before 30th May, 2018.
- Participants should email their research papers on the following email id: tarun.pandeya@icsi.edu & prasant.sarangi@icsi.edu.
- There is restriction on number of entries. One participant can submit only one entries.

FURTHER INFORMATION FOR AUTHORS / PARTICIPANTS:

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The Trajectory

In its endeavor to provide impetus to research activities and taking it to the pinnacle, CCGRT is organizing the aforesaid research colloquium for exploring the Critical Aspects of Companies Act, 2013 (Chapter-11 onwards) including the Companies (Amendment) Act, 2017 & Draft rules and to emerge with an unique & authentic literature.

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Brainstorm & Review the Research Material developed on the Companies Act, 2013 & the Companies (Amendment) Act, 2017 & Draft Rules.
Analyze the legal provisions, research material and find out
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Above all to develop the habit of doing Research & providing skills for reading & interpreting the Law

Expectations from the Participants

INSTRUCTIONS

The Participants interested should register at earliest to enable team formation & allocation of area for Research, so that can come prepared & know their team members in advance

The Participants should not misunderstand and read & focus only on allocated subject, rather it should be clearly understood that team formation is proposed to maximize focused value additions. Therefore each participant is expected to come prepared on all subject areas and should participate is inter group discussions for maximizing mutual enrichment.

The Participants should carry their own laptops, books and other reading materials. The subject matter of this Research Colloquium is intense & vast, CCGRT encourages you to work beyond conventional working hours and gain maximum benefits out of this program. CCGRT has experienced contentious deliberations lasting beyond midnight and starting early in the morning, in previous programs.

The Participants are requested to keep usage of cell phone and other electronic devices bare minimum, as it distracts the participants attention from research. Any thing urgent may be attended during breaks.

First Move - Research Circle Formation

Formation of Groups with judicious mix of Intellectuals & Identification of Team Leaders

Allocation of Research areas & Research Mentors

In this session the importance of the colloquium, the proposed outcome, its relevance shall be expained

The session will also throw light on the procedure or process to be embraced by the participants during the voyage of this Colloquium

Second Move - Brainstorming (Intra Group)

Respective teams shall be asked to sit in groups with their mentors, who will further guide & monitor the direction towards the objective

Intellectuals shall validate the correctness, identify issues, argue, counter argue with their logics, interpretations and brainstorm on each aspect.

Team Leader is expected to reconcile and form view of the team to be presented later for validation by other teams

Third Move - Brain Storming (Inter Group)

In this session each team shall present its findings on the assigned Chapter on the following points and other teams shall be allowed to counter/supplement:

Disagreements with views stated in material

Issues not presently covered in material

Judicial Cases considered relevant Gaps in law where more than one view is possible

Changes from previous law and any other point considered relevant

Final Move - Presentation

In this session each team shall be asked to make final presentation before jury including the views/ inputs from brainstroming sesssion. Their views shll be validated by jury members.

Based on value additions Teams shall be awarded

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Joint Director (Membership & Monitoring)/ **Deputy Director (Membership & Monitoring)**	Level 12 (78800-209200) of 7th CPC Pay Matrix (Pre Revised Pay Band - 15600-39100 with Grade Pay -7600/-) Level 11 (67700-208700) of 7th CPC Pay Matrix (Pre Revised Pay Band - 15600-39100 with Grade Pay-6600/-)	13.1 11.3	45 years	1
Deputy Director (Finance, Accounts & Admin)/ **Assistant Director (Finance, Accounts & Admin)**	Level 11 (67700-208700) of 7th CPC Pay Matrix (Pre Revised Pay Band - 15600-39100 with Grade Pay-6600/-) Level 10 (56100-177500) of 7th CPC Pay Matrix (Pre Revised Pay Band - 15600-39100 with Grade Pay-5400/-)	11.3 9.6	45 years 35 years	1
Assistant Director (Education & Training)	Level 10 (56100-177500) of 7th CPC Pay Matrix (Pre Revised Pay Band - 15600-39100 with Grade Pay-5400/-)	9.6	35 years	1
Executive (Education & Training)	Level 8 (47600-151100) of 7th CPC Pay Matrix (Pre Revised Pay Band - 9300-34800 with Grade Pay- 4800/-)	7.8	35 years	2
Executive (Legal, Compliance & HR)	Level 8 (47600-151100) of 7th CPC Pay Matrix (Pre Revised Pay Band - 9300-34800 with Grade Pay- 4800/-)	7.8	35 years	1
Executive (Membership & Monitoring)	Level 8 (47600-151100) of 7th CPC Pay Matrix (Pre Revised Pay Band - 9300-34800 with Grade Pay- 4800/-)	7.8	35 years	2
Executive Secretary	Level 8 (47600-151100) of 7th CPC Pay Matrix (Pre Revised Pay Band - 9300-34800 with Grade Pay- 4800/-)	7.8	35 years	1
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3

LEGAL WORLD

- P. PUNNAIAH v. JEYPORE SUGAR CO. LTD & ORS [SC]
- MACKINTOSH BURN LTD. v. SARKAR AND CHOWDHURY ENTERPRISES PVT.LTD [SC]
- MACHHAR POLYMER PVT LTD v. SABRE HELMETS PVT LTD [NCLAT]
- NEETA CHEMICALS (I) PVT. LTD. v. STATE BANK OF INDIA [NCLAT]
- ITC LTD v. BLUE COAST HOTELS LTD.[SC]
- ASIAN RESURFACING OF ROAD AGENCY PVT. LTD & ANR v. CENTRAL BUREAU OF INVESTIGATION [SC]
- STATE OF KARNATAKA & ANR v. DURGA PROJECTS INC [SC]
- EXPRESS INDUSTRY COUNCIL OF INDIA v. JET AIRWAYS (INDIA) LTD. & ORS [CCI]
- VISHAL PANDE v. HONDA MOTORCYCLE AND SCOOTER INDIA PVT LTD [CCI]

Corporate Laws

LMJ 04:04:2018

P. PUNNAIAH v. JEYPORE SUGAR CO. LTD & ORS [SC]

Civil appeal No.1899 of 1981
B.P.Jeevan Reddy & B.L.Hansaria, JJ. [Decided on 06/04/1994]

Equivalent citations: 1994 AIR SC 2258, 1994 SCC (4) 341; (1994) 81 Comp Cas 1 SC; (1994) 14 CLA 155.

Companies Act,1956- sections 397,398 & 399- petition signed by power of attorney holder of the shareholder- whether valid consent-Held, Yes.

Brief facts:

The three appellants in this appeal are the shareholders of the first respondent-company. The first appellant's daughter Smt V. Rajeshwari also holds certain shares in the first respondent-company. She executed a General Power of Attorney (GPA) in favour of her father, the first appellant herein. The three appellants herein filed an application under Sections 397/398 in the High Court of Orissa. Appellant 1 signed the petition on behalf of his daughter on the strength of the GPA.
The precise question in this appeal is whether the consent given by her GPA holder for and on her behalf and not by her personally is a valid consent within the meaning of sub-section (3) of Section 399.

Decision: Appeal allowed.

Reason:

A reading of the several clauses of the GPA discloses *ex facie* that the powers given thereunder are wide enough to take in the power to grant the consent under Section 399(3). Under the said deed, Smt Rajeshwari empowered her father to manage and otherwise administer her moveable and immovable properties including shares and stock as may be held by her and to take all proceedings before all the authorities and courts concerning the said properties and shares. The deed also empowered him to sign all necessary papers relevant in that behalf and to file them in courts and generally to do all things as may be necessary to safeguard her interest. It is obvious that in pursuance of the said deed, it would have been perfectly legitimate for the first appellant to institute suits, petitions and other proceedings with respect to the shares or other moveable and immovable properties held by Smt Rajeshwari. Indeed it would well have been within the power of the GPA holder to have himself figured as an applicant, acting in the name of Smt Rajeshwari, in the said application filed under Sections 397/398. If so, there appears no reason why the consent could not have been given by the Power of Attorney holder which is only a step towards protecting the interest of Rajeshwari. It in effect means joining the filing of the application under Sections 397/398. May be that there are some functions/duties which cannot be performed through a Power of Attorney Agent (e.g. quasi-judicial/ judicial functions) but there appears to be no good reason why the consent contemplated by Section 399(3) cannot be given by such Power of Attorney holder, when indeed he could himself have filed such an application in the name of and on behalf of Smt Rajeshwari. In this connection we may notice yet another fact. With a view to counteract the objection taken by the respondents, the appellants filed an affidavit of Smt Rajeshwari wherein she affirmed that on her recent visit to India she was apprised by her father of the affairs of the first respondent-company and of the proposal to file an application against the first respondent-company and its management alleging oppression and mismanagement. She affirmed that she had authorised her father to act on her behalf as her GPA in that behalf and to take all such steps as he deemed proper to protect her interest.
The Company Judge and the Division Bench have, however, taken the view that the consent to be granted by a member of the Company under Section 399(3) must be a conscious decision of the member himself/herself. They opined that the member must personally apply his mind to the advisability of granting consent and then grant it. In this view of the matter, they held, the GPA holder is not competent to grant the consent.
We are unable to agree with the said reasoning. Section 399 or subsection (3) thereof does not either expressly or by necessary implication indicate that the consent to be accorded thereunder should be given by the member personally, As we have emphasised hereinabove, the first appellant could have filed, or joined as an applicant in an application under Sections 397/398 in the name of and for and on behalf of Smt Rajeshwari as her GPA holder. No question of 'consent' would have and could have arisen in such a case. If so, it is un-understandable as to why and how he could not have given consent on behalf of Smt Rajeshwari, the member, under Section 399(3). No rule or decision could be brought to our notice saying that the consent under Section 399(3) cannot be given by a GPA holder (who is empowered by the principal to manage and administer the shares and stocks held by the principal and to take all necessary steps and proceedings in all courts, offices and tribunals in that behalf). In this connection, it is relevant to notice that shares may also be held by a company or other corporate body. Question may arise what one means by a personal decision by a company or other juristic person. Be that as it may, we see no warrant for holding that Section 399(3) is an exception to the normal rule of agency. The normal rule is that whatever a person can do himself, he can do it through his agent, except certain functions which may be personal in nature or otherwise do not admit of such delegation. The consent contemplated by Section 399(3) falls under the general rule and not under the exception.
Learned counsel for the appellant invited our attention to a decision of the Division Bench of the Bombay High Court in Killick Nixon Ltd. v. Bank of India, (1985) 57 Comp Cas 831. In this case it is held that the General Power of Attorney holder is empowered to grant consent under Section 399(3). The General Power of Attorney concerned therein is substantially in the same terms as the one concerned herein. We agree with the said decision.
The observations to the effect that the right to present an application of winding up and the right to vote for the election of Directors are the personal rights of shareholders must be understood in the context of the question considered therein. The observations cannot be torn from their context to hold that the said rights cannot be exercised through an agent. That was not the issue before the Court. Mr Sibal also brought to our notice the decision of this Court in R. Subba Rao v. CIT, AIR 1956 SC 604. The matter arose under Section 26-A of the Indian Income Tax Act, 1922 read with Rules 2 and 6 of the rules framed in that behalf. The rules provided that an application for renewal of registration of the firm "shall be signed personally by all the partners". It is because of the said requirement that it was held that partners must sign such an application personally.

In the absence of any such expression in Section 399(3), the said decision is of no help to the respondents herein.
For the above reasons, the appeal is allowed and the orders of the learned Company Judge and the Division Bench impugned herein are set aside.

LW 23: 04:2018

MACKINTOSH BURN LTD. v. SARKAR AND CHOWDHURY ENTERPRISES PVT.LTD [SC]

Civil Appeal Nos. 3322-3323 of 2018(Arising out of S.L.P. (C) Nos.8204-8205 of 2018)

M M Shantanagoudar & K Joseph, JJ. [Decided on 27/03/2018]

Companies Act, 2013- section 58- refusal to register share transfer- conflict of interest between the company and the transferee- whether this could be sufficient cause- Held, Yes.

Brief facts:

The appellant is a public company with majority of shares held by the Government of West Bengal. The respondent, which is holder of 28.54 percent of the shares purchased 100 shares, which together would make its holding 39.77 percent, sought registration of the shares. Since, no orders were passed on the registration, the respondent approached the Company Law Board. It was mainly contended by the appellant that the respondent Company is controlled by a competitor in business, and hence, it would not be in the interest of the Government Company to permit such transfer. The Company Law Board, however, rejected the contentions and directed registration as per order dated 16.09.2015.Thereafter, the appellant appealed to the High Court and also sought review of its order and ultimately the issue reached the Supreme Court.

Decision: Appeal allowed. Case remanded to NCLT.

Reason:

Refusal of registration of the transfer of shares and the appellate remedy are provided under Section 58 of the Companies Act, 2013. This provision had come into force at the relevant time. Right to refuse registration of transfer on sufficient cause is a question of law and whether the cause shown for refusal is sufficient or not in a given case, can be a mixed question of law and fact.
In the instant case, there is no resolution passed by the company refusing to register the transfer of shares. Since the Company Law Board has gone into the contentions by the appellant for refusing to register transfer for all purposes, it has to be taken that those contentions are the grounds taken by the appellant for refusing to transfer the shares.
The appellant has taken several grounds in the memorandum of appeal and raised questions of law as well on these aspects. No doubt, one of the main questions of law stressed in the appeal pertains to the limitation. But on going through the several grounds taken in the Memorandum of Appeal and the questions of law raised specifically in the appeal and the grounds, it is apparent that the appellant had raised questions of law other than the question of law on limitation. Hence, the High Court has gone wrong in its view in the order dated 15.10.2015 that "the only question of law sought to be urged in the present appeal is as to whether the Company Law Board lacked authority in reviewing petition under Section 5 of the Companies Act, 2013 beyond the period envisaged in sub-Section 4 thereof".
Be that as it may, as we have been taken through the grounds before the Company Law Board, we propose to consider the matter from that stage. The Company Law Board, it appears, was of the view that the refusal to register the transfer of shares can be permitted only if the transfer is otherwise illegal or impermissible under any law. Going by the expression "without sufficient cause" used in Section 58(4), it is difficult to appreciate that view. Refusal can be on the ground of violation of law or any other sufficient cause. Conflict of interest in a given situation can also be a cause. Whether the same is sufficient in the facts and circumstances of a given case for refusal of registration, is for the Company Law Board to decide since the aggrieved party is given the right to appeal. The contention of the appellant before the Company Law Board that the whole transfer is deceptive and *mala fide* in the background of the respondent company, should have been considered.
In that view of the matter, we do not think that we should go in further detail on the merits of the contentions. The order passed by the Company Law Board and the orders passed by the High Court are set aside. The matter is remitted to the Company Law Board, now the National Company Law Tribunal for consideration afresh of the appeal filed under Section 58 of the Companies Act, 1956.

LW 24: 04:2018

MACHHAR POLYMER PVT LTD v. SABRE HELMETS PVT LTD [NCLAT]

Appeal (AT) (Insolvency) No. 276 of 2017

S.J. Mukhopadhaya & Bansi Lal Bhat. [Decided on 27/03/2018]

Insolvency & Bankruptcy Code, 2016 - section 9- application by operational creditor - rejected as time barred-whether correct-Held, No.

Brief facts:

This appeal has been preferred by the Appellant 'Operational Creditor' against the order passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, whereby and where under the application preferred by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been rejected on the ground that the application is barred by limitation.

Decision: Appeal allowed.

Reason:

Learned counsel for the Appellant rightly pointed out that the impugned order is against the decision of this Appellate Tribunal in M/s. Speculum Plast Pvt. Ltd. Vs. PTC Techno Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 47 of 2017. In the said case, this Appellate Tribunal observed and held as follows:
"68. In view of the settled principle, while we hold that the Limitation Act, 1963 is not applicable for initiation of 'Corporate Insolvency Resolution Process', we further hold that the Doctrine of Limitation and Prescription is necessary to be looked into for determining the question whether the application under Section 7 or Section 9 can be entertained after long delay, amounting to laches and thereby the person forfeited his claim.
69. If there is a delay of more than three years from the date of cause of action and no laches on the part of the Applicant, the Applicant can explain the delay. Where there is a continuing cause of action, the question of rejecting any application on the ground of delay does not arise.
70. Therefore, if it comes to the notice of the Adjudicating Authority that the application for initiation of 'Corporate Insolvency

Resolution Process' under section 7 or Section 9 has been filed after long delay, the Adjudicating Authority may give opportunity to the Applicant to explain the delay within a reasonable period to find out whether there are any laches on the part of the Applicant."

For the reasons aforesaid, the impugned order is set aside. The case is remitted to the Adjudicating Authority, Mumbai Bench to consider the application under Section 9 of the 'I&B Code' preferred by the Appellant after notice to the 'Corporate Debtor'. If the application is complete, the Adjudicating Authority will admit it. On the other hand, if there is any defect, the Appellant may be allowed time to remove the defects.

LW 25: 04:2018

NEETA CHEMICALS (I) PVT. LTD. v. STATE BANK OF INDIA [NCLAT]

Company Appeal (AT) (Insolvency) No. 174 of 2017

S.J. Mukhopadhaya & Bansi Lal Bhat. [Decided on 27/03/2018]

Insolvency & Bankruptcy Code, 2016 - section 10- application by corporate applicant- no liquidation/winding up proceedings pending against the corporate applicant- rejected on the ground of suppression of facts- on appeal remanded back to NCLT for fresh adjudication.

Brief facts:

The Corporate Applicant filed an application under Section 10 of the I&B Code. On notice and hearing the 'Financial Creditor' (State Bank of India), the Adjudicating Authority dismissed the application with cost by impugned order.

Decision: Appeal allowed.

Reason:

It was submitted that the Appellant has grossly understated the outstanding amount owed to the Respondent in the Form 6, while the Appellant has admitted an amount of Rs. 324 crores as on 15th June, 2017. In fact, the Appellant owed more than the admitted amount as far back as 31st October, 2016 when the demand notice was issued by the Respondent. It was submitted that the outstanding liability amount had increased to Rs. 329,71,74,696/- as evidenced from the notice issued on 3rd August, 2017 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act").

The Appellant has highlighted the facts relating to SARFAESI proceedings and action taken thereunder. It is also stated that the Appellant has already filed a suit under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act) in S.A. No. 240 of 2017 challenging the securitization proceedings initiated by the Respondent ('Financial Creditor').

Similar issue fell for consideration before this Appellate Tribunal in M/s. Unigreen Global Private Limited Vs. Punjab National Bank & Ors. Company Appeal (AT) (Insolvency) No. 81 of 2017 [decided on 01/12/2017], wherein this Appellate Tribunal, after taking into consideration the provisions of Section 10 of the 'I&B Code' and other relevant provisions, held and observed the principle as to when the application could be rejected by the Adjudicating Authority.

It is not the case of the 'Financial Creditor' (State Bank of India) that a winding up proceeding under the Companies Act or liquidation proceeding under the 'I&B Code' has been initiated against the 'Corporate Debtor'. Therefore, the 'Corporate Applicant' is eligible to file application under Section 10 of the 'I&B Code', if there is a debt and default.

Further, as we find that the Adjudicating Authority has noticed the extraneous factors unrelated to the Resolution Process not required to be disclosed in terms of Section 10 or Form 6, we hold that the Adjudicating Authority erred in rejecting the application on the ground of suppression of facts.

There is nothing on record to suggest that the 'Corporate Applicant' has suppressed any fact or has not come with the clean hands. The Adjudicating Authority has also not held that the application has been filed by the Corporate Applicant "fraudulently" or "with malicious intent" for any purpose other than for the resolution process or liquidation or that the voluntary liquidation proceedings have been initiated with the intent to defraud any person. In the absence of any such grounds recorded by the Adjudicating Authority, the impugned order cannot be upheld.

For the reasons aforesaid, the impugned order is set aside. The case is remitted back to the Adjudicating Authority for admission of the application under Section 10, if the application is otherwise complete. In case it is incomplete, the Adjudicating Authority will grant time to the appellant to remove the defects.

LW 26: 04:2018

ITC LTD v. BLUE COAST HOTELS LTD.[SC]

Civil Appeal Nos. 2928-2930 of 2018 [Arising out of SLP (C) Nos. 10215-10217/2016]

S.A. Bobde & L. Nageswara Rao, JJ. [Decided on 19/03/2018]

SARFASI Act- section 13- enforcement of security interest- default by borrower- secured creditor took symbolic possession of borrower's property – property sold in auction by secured creditor- whether valid-Held, Yes.

Brief facts:

Respondent is the debtor (borrower) who availed loan of Rs.150 crores from secured creditor IFCI and mortgaged its hotel property as security interest. As the borrower failed to repay the loan, the secured creditor enforced the security interest of the borrower.

After issuing a demand notice under Section 13(4) of the SARFASI Act, the secured creditor took symbolic possession of the hotel property. Thereafter the secured creditor initiated recovery proceedings in DRT and sold the hotel property in public auction. The luxury hotel of the borrower was purchased by the Petitioner (auction purchaser).

The borrower challenged the recovery proceedings before the High Court which held the entire proceedings for recovery and sale of the Goa Hotel to be illegal being in violation of the Act.

Decision: Appeal allowed.

Reason:

In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. The

transfer of the secured asset by the creditor therefore cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act. The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction purchaser under the agreement. Thus, the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction purchaser and thus remained a secured creditor in the Act.

The High Court in its judgment renders a finding that there was in fact fraud and collusion between the creditor and the auction purchaser. According to the High Court, since the measures were taken in breach of all laws, the inference of manipulation and collusion cannot be ruled out.

We fail to see how such a finding of manipulation and collusion is sustainable on account of breach of law in the present case. A risk of this kind taken up by an intending purchaser cannot lead to an inference of collusion. Mainly, the finding is based on the fact that the sale is a collusion because the auction purchaser was aware that a dispute between the parties was pending and still went ahead and made a bid for the property. It is not unusual in the sale of immovable properties to come across difficulties in finding suitable buyers for the property. We find that the property was eventually sold on the fourth auction, and all the auctions were duly advertised.

Another fact on the basis of which the High Court has observed an inference of collusion is that the property was sold and the sale was confirmed in favour of ITC Ltd. though a statement was made in the morning of 23.02.2015 before the DRT that the sale would not be confirmed till the order is passed. This seems to be recorded in the order of the DRT. However, what is overlooked is the fact that in the statement on behalf of the creditor, the creditor only agreed to not confirm the sale till 3 pm. In the absence of any finding as to what actually transpired, it is not possible for us to infer manipulation and collusion on this account. There is no dispute that the property was actually purchased by ITC Ltd in pursuance of a public auction and that the entire amount of sale consideration has been deposited by it.

We have anxiously considered the entire matter and find that the undisputed facts of the case are that a loan was taken by the debtor which was not paid, the debtor did not respond to a notice of demand and made a representation which was not replied to in writing by the creditor. The creditor, however, considered the proposals for repayment of the loan as contained in the representation in the course of negotiations which continued for a considerable amount of time. Several opportunities were in fact availed of by the debtor for the repayment of the loan after the proceedings were initiated by the secured creditor. The debtor failed to discharge its liabilities and eventually undertook that if the debtor fails to discharge the debt, the creditor would be entitled to take realize the secured assets.

As held, we are of the view that non-compliance of sub-section (3A) of Section 13 cannot be of any avail to the debtor whose conduct has been merely to seek time and not repay the loan as promised on several occasions. Therefore, the debtor is not entitled for the discretionary equitable relief under Articles 226 and 136 of the Constitution of India in the present case.

We accordingly, set aside the impugned judgment of the High Court and direct the debtor and its agents to handover possession of the mortgaged properties to the auction purchaser within a period of six months from the date of this judgment along with the relevant accounts.

LW 27: 04:2018

ASIAN RESURFACING OF ROAD AGENCY PVT. LTD & ANR v. CENTRAL BUREAU OF INVESTIGATION [SC]

Criminal Appeal Nos. 1375-1376 of 2013 with batch of appeals.

A.K.Goel, Navin Sinha & R.F. Nariman, JJ. [Decided on 28/03/2018]

Principles of granting stay of lower court proceedings- should not exceed a period of 6 months- extension of stay should be by way of a speaking order- Supreme Court lays down new guidelines.

Brief facts:

Facts are immaterial to appreciate the ratio of this case. Whenever charges are framed, the same is challenged before the High Court and stay used to be granted and the proceedings in the trial court used to remain stayed for quite a long period. In this case the Hon'ble Supreme Court examined the law extensively and laid down the rule as to the grant of stay and its operation both in criminal as well as in civil proceedings.

Decision: Appeals disposed of.

Reason:

Though the question referred relates to the issue whether order framing charges is an interlocutory order, we have considered further question as to the approach to be adopted by the High Court in dealing with the challenge to the order framing charge.

Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 Cr.P.C. Order framing charge may not be held to be purely a interlocutory order and can in a given situation be interfered with under Section 397(2) Cr.P.C. or 482 Cr.P.C. or Article 227 of the Constitution which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation.

We have thus no hesitation in concluding that the High Court has jurisdiction in appropriate case to consider the challenge against an order framing charge and also to grant stay but how such power is to be exercised and when stay ought to be granted needs to be considered further.

It is well accepted that delay in a criminal trial, particularly in the Prevention of Corruption Act cases, has deleterious effect on the administration of justice in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development. Even in civil or tax cases it has been laid down that power to grant stay has to be exercised with restraint. Mere *prima facie* case is not enough. Party seeking stay must be put to terms and stay should not be incentive to delay. The order granting stay must show application of mind. The power to grant stay is coupled with accountability.

Wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a corruption case. Once stay is granted, proceedings should not be adjourned and concluded within two-three months.

In view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted

in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution.

However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day

basis so that stay does not operate for an unduly long period.

Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated.

Tax Laws

LW 28: 04:2018

STATE OF KARNATAKA & ANR v. DURGA PROJECTS INC [SC]

Civil Appeal No 811 of 2018(Arising out of SLP(C) No 27048 of 2013)

Deepak Misra, D.Y. Chandrachud & M.Khanwilkar, JJ. [Decided on 06/03/2018]

Karnataka VAT Act, 2003 - Tax on works contract- pre 2006 period levy- AAR's ruling objected to by revenue- whether AAR was correct-Held, Yes.

Brief facts:

The respondent dealer made an application before the Authority for Advance Clarification and Ruling ('AAR') for guidance on the rate of tax applicable for the execution of civil works contracts under the KVAT Act. The AAR held that since there was no specific entry providing for the rate of tax on works contracts up to 31 March 2006, tax on goods used in the execution of works contract should be levied in accordance with the rate of tax applicable to the sale of goods under the KVAT Act 2003.The AAR further held that the rate of tax applicable on iron and steel is 4 percent when used in the same form, otherwise the rate of tax would be 12.5 percent.

The Commissioner of Commercial Taxes (Karnataka) revised the above decision of the AAR holding that the orders of AAR were erroneous and prejudicial to the interests of the revenue. The High court allowed the appeal filed by the dealer against this revision. Hence the present appeal by the Revenue.

Decision: Appeal dismissed.

Reason:

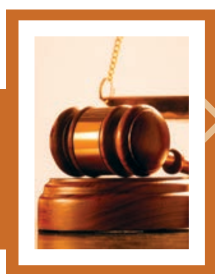
The core of the submissions which have been ably projected before the Court is that the State legislature had in fact prescribed a uniform rate for works contracts, prior to 1.4.2006 in Section 4(1) (b) under which a rate of 12.5% was provided. In his submission, declared goods would be assessed separately; while the balance of the goods in a works contract would be assessed on the total turnover, which is incorporated under Rule 3(1) (c). We find ourselves unable to accept the submission.

In our view, it would be far-fetched to accept that in enacting Section 4(1) (b), the legislature intended to prescribe a uniform rate of tax, prior to 1.4.2006, for goods incorporated in a works contract. The scheme legislated upon in Section 4(1) envisaged specific rates of tax on goods falling within the Second, Third and Fourth Schedules. What Section 4(1) (b) provided was a residual entry under which a rate of 12.5% was provided 'in respect of other goods'. The expression 'in respect of other goods' meant goods other than those falling in the Second, Third and Fourth Schedules. Declared goods specified in Section 14 of the Central Sales Tax Act, 1956 were comprehended in Serial No.20 of the Third Schedule to the KVAT Act 2003 and attracted a rate of 4%, which applied to goods in that Schedule. As a result of the deeming definition of the expression sale, a transfer of property in goods involved in the execution of a works contract become exigible to tax. Exigibiliy to tax, it is settled law, is distinct from the rate of tax and the measure of the tax. In Gannon Dunkerly & Co, this court expressed the view that it is open to the states to provide a uniform rate of tax on goods transferred in the course of the execution of a works contract. The exigibility to tax is not (as it cannot be) dependent on the state prescribing a uniform rate of tax for goods involved in works contracts. That the KVAT Act 2003 did not provide a uniform rate of tax prior to 01.04.2006 on goods involved in the execution of works contract also becomes apparent when we read the amendment which introduced Section 4(1) (c) by Act 4 of 2006. As a result of the amendment, the legislature provided that the rate of tax in respect of the transfer of property in goods involved in the execution of a works contract would be as provided in the Sixth Schedule. The Sixth Schedule elucidates works contracts of various descriptions and elucidates the associated rates of tax for each distinct category. For declared goods, Section 4(1) (c) is expressly subject to Sections 14 and 15 of the CST Act 1956. Hence declared goods involved in the execution of a works contract are taxable at the rates mentioned in Section 15 of the CST Act while all other goods involved in the execution of a works contract are taxable at the rate prescribed in the Sixth Schedule upon the amendment. The amendment introducing Section 4(1) (c) took effect on 1 April 2006. The amendment is not clarificatory. It was with effect from 1 April 2006 that the State legislature mandated a uniform rate of tax on goods involved in the execution of works contracts as provided in the Sixth Schedule. The position as it existed up to 31 March 2006 was altered with effect from 1 April 2006.

We are, therefore, unable to accept the submission of the State that up to 31 March 2006. Section 4(1) (b) envisaged a uniform rate for the transfer of goods involved in the execution of a works contract. Section 4 imposes the liability to pay tax on every dealer who is or is required to be registered, on his taxable turnover. The concept of taxable turnover in Section 2(34) is defined with reference to the turnover on which a dealer is liable to be taxed, determined after making deductions from the total turnover as prescribed. The concept of taxable turnover thus incorporates the expressions 'turnover' and 'total turnover', both of which are defined in Sections 2(36) and Section 2(35) respectively. The manner in which the total turnover of a dealer is computed is prescribed in Rule 3(1) (b), in the case of a normal sale, and in Rule 3(1) (c), for the purposes of a works contract. In the case of a works contract, deductions are

envisaged under sub-rule (2) of Rule 3, which includes amounts such as labour and other charges. Section 7 provides that the sale of goods shall be deemed to have taken place at the time of the transfer of title or possession or incorporation of the goods in the course of the execution of a works contract. In our view, the interpretation which we have placed on the provisions of the Act as they existed prior to 1.4.2006 is consistent with the plain meaning of the words used by the legislature. We are unable to subscribe to the submission which has been urged on behalf the appellant that Section 4(1)(b), as it existed prior to 1.4.2006 was a catch- all entry providing for a uniform rate of tax on goods involved in the execution of a works contract. Such a construction does not emerge from the plain meaning of the words used and is in fact belied by the need which was felt by the legislature to impose a uniform rate of tax only with effect from 1 April 2006.

Before concluding, we need to clarify that the genesis of the present dispute arises out of the proceedings which were initiated before AAR by the respondent seeking guidance on the applicable rate of tax on the law as it existed until 31.03.2006. This proceeding concludes the issue of interpretation. We clarify, by way of abundant caution that issues of a factual nature, will fall for adjudication in the course of assessment proceedings. It was open to state legislatures to provide uniform rates of tax on goods involved in the execution of works contracts. Many state legislatures did so. The Karnataka legislature did so with effect from 1.4.2006, not earlier. For the above reasons, we find that there is no merit in the challenge preferred by the State of Karnataka to the impugned judgment and order of the High Court.



Competition Laws

LW 29: 04:2018

EXPRESS INDUSTRY COUNCIL OF INDIA v. JET AIRWAYS (INDIA) LTD. & ORS [CCI]

Case No. 30 of 2013

D.K.Sikri, Sudhir Mital, Augustine Peter & U. C. Nahta. [Decided on 07/03/2018]

Competition Act, 2002- section 3- anti-competition agreement/conduct-concerted action by airlines in charging fuel surcharge - whether results in cartel- Held, Yes.

Brief facts:

It has been alleged in the information that in May 2008, certain domestic Airlines in India connived to introduce a ‘Fuel Surcharge’ (FSC) for transporting cargo. This surcharge was fixed at a uniform rate of Rs. 5/ Kg and came into force on May 15, 2008. It was further alleged that although there does not appear to be any legal provision under which such FSC could have been levied by the Airlines, the ostensible reason given was to mitigate the volatility of fuel prices. It has been further stated that the very fact of levying FSC at a uniform rate from the same date itself constitutes an act of cartelization covered under Section 3 of the Act. The said cartel of the Airlines is stated to be continuing till date.

Decision: Cease and desist order passed. Penalty imposed.

Reason:

The core issue was whether OPs have operated in concerted manner while fixing FSC and thereby violated the provisions of Section 3(1) read with Section 3(3) of the Act?

The Commission notes that OPs have stated that each airline takes into account several factors to determine FSC, yet by their own admissions, the reason provided by OPs for introduction of FSC was ‘sharp volatility’ in ATF prices. It appears that OPs, while trying to justify the changes in FSC, have paid no heed to the purpose admitted by them for levying FSC and have now provided reasons which go far beyond the avowed objective behind introduction of such a levy. In fact, from the reasons adduced by OPs, Commission has no hesitation in holding that the very purpose of introduction of FSC to cushion the volatility in ATF prices has been relegated to the margins long back and, instead, all sorts of reasons have now been offered to explain the continuous and coordinated revisions in FSC by the airlines. Thus, far from being a cushion to hedge the volatility in ATF prices, FSC has become a tool to seek rent from the potential users of cargo services in the garb of various reasons which have nothing to do with the stated objective.

There are also serious loopholes in the justifications provided by OPs. The OPs have associated random factors to FSC prices, without having a systematic mechanism to arrive at these prices. For example, it may be noted that OP-1 has explained that it was due to increase in ATF price coupled with increase in dollar exchange rate, that FSC was increased. However, there have been instances when the correlation between the ATF price and USD exchange rate vis-à-vis FSC rate has been missing.

The Commission notes that each OP has stated various factors that determine FSC. Inspite of citing diverse factors that determine the change in FSC, all OPs have increased FSC by the same amount. It is difficult to comprehend as to how even after considering variety of factors determining the change in FSC rates, all OPs could have reached a similar rate to affect an increase in FSC rates on various occasions.

To sum up, the Airlines were unable to furnish any data/ calculation/ methodology or costing of any kind whatsoever in support of the determination of FSC rates. Even the authorized representatives of OPs could not furnish the rationale for revision of FSC on certain occasions when questioned in front of the DG. Merely providing factors which are not correlated to the FSC is a futile exercise conducted by the OPs. This is unable to justify the concerted acts of the OPs.

It may be noted that a parallel conduct is legal only when the adaptation to the market conditions are done independently and not on the basis of information exchanged between the competitors, the object of which is to influence the market. One of the elements that indicates concerted action is the exchange of information between the enterprises directly or indirectly. Price competition in a market encourages an efficient supply of output/ services by companies. Any company is free to change/ revise its prices taking into consideration the foreseeable conduct of its competitors. That however is not suggestive of the fact that it cooperates with the competitors. Such coordinated course of action relating to a change of prices ensures its success by prior elimination of all uncertainty as to each other’s conduct regarding the essential elements of that action, such as the amount, subject-matter, date, etc.

In view of the foregoing, it is opined that the OPs have acted in parallel and the only plausible reason for increment of FSC rates by the airlines was collusion amongst them. Such a conduct has, in turn, resulted into indirectly determining the rates of air cargo transport in

terms of the provisions contained in Section 3 (3)(a) of the Act.

As these OPs are engaged in similar business and are therefore operating at the same level of the production chain, allegations of anti-competitive agreements, decisions or practices among them squarely stand covered within the ambit of Section 3(3) read with Section 3(1) of the Act.

Applying the aforesaid legal test to the evidence detailed in the present case, the Commission is of the considered view that OP-1, OP-2 and OP- 3 have acted in a concerted manner in fixing and revising the FSC rates and thereby contravened the provisions of Section 3(1) read with Section 3(3) (a) of the Act. The Commission, however, does not deem it appropriate to proceed against OP-4 and OP-5.

Based on the above discussion, the Commission is of that opinion that the impugned acts/ conduct of OP-1, OP-2 and OP-3 are found to be in contravention of the provisions of Section 3(3) (a) read with Section 3(1) of the Act. Accordingly, OP-1, OP-2 and OP-3 are directed to cease and desist from indulging in the acts/ conduct which have been found to be in contravention of the provisions of the Act.

The Commission, for the reasons recorded below, finds the present case fit for imposition of penalty as well. Accordingly, the Commission imposes a sum of Rs. 39.81 crore on OP-1, Rs. 9.45 crore on OP-2, Rs. 5.10 crore on OP-3 as penalties for their impugned conduct which has been held to be in contravention of the provisions of Section 3(1) read with Section 3(3) (a) of the Act.

LW 30: 04:2018

VISHAL PANDE v. HONDA MOTORCYCLE AND SCOOTER INDIA PVT LTD [CCI]

Case No. 17 of 2017

D.K.Sikri, Sudhir Mital, Augustine Peter, U. C. Nahta, G.P.Mittal. [Decided on 14/03/2018]

Competition Act,2002- distributor ship agreement- automobile industry – sale of Scooters- restrictive clauses in agreement- whether constitutes anti-competition agreement and abuse of dominance-Held, Yes.

Brief facts:

The Informant is one of the authorised dealer of two wheelers of the OP for a period of 15 years. The Informant acquired dealership and service centre of the OP in Aurangabad through a non-exclusive standard form of agreement between the parties ("Dealership Agreement"). The Informant alleged that the OP has imposed the following restrictive conditions in the said dealership agreement:

- Purchase of oils and consumables only from OP nominated two vendors.
- Forced to maintain stock of authorised accessories like mats, side stand, mud-guard, number plate, side-step, etc., classified as genuine accessories.
- Prohibiting the Informant from dealing in any manner with any competing product.
- Forced selling of the AMC, EW and RSA authorised only by the OP.
- Deliberate deduction from dealer's account to fund advertising expenses.
- Compulsory off-loading of stock and slow moving models.
- Compulsory billing of merchandise.
- Restriction regarding the sale of batteries.
- Exclusive arrangements with financers and insurance partners.
- Re-sale price maintenance and discount control mechanism.
- Fixation of limits of geographic operation.
- Enforcing hub and spokes arrangement by negatively evaluating dealers.
- Termination of dealership and refusal to take back stock.

  The Informant has, *inter-alia*, prayed before the Commission to initiate an inquiry against the OP for contravention of the provisions of Sections 3 and 4 of the Act and issue an appropriate direction.

Decision: Investigation directed.

Reason:

With regard to the dominant position, it would be relevant to look into the sale data of the OP and its competitors in both the relevant markets. The OP is at the third place with a market share varying between 7.14 percent and 12.63 percent. Considering the market share of the OP in this relevant market, *prima-facie*, it does not appear to enjoy a dominant position in this relevant market 'market for manufacture and sale of motorcycles in India'. Accordingly, it does not merit investigation for abuse in this market.

In the 'market for manufacture and sale of scooters in India', the Commission observes that, the OP is consistently leading in this relevant market with a high market share ranging between 43.30 percent and 56.82 percent followed by TVS Motor Co Ltd. whose market share is ranging between 21.44 percent and 14.76 percent. Further, the relevant market appears to exhibit entry barriers due to huge capital cost involved in setting up a manufacturing facility. At *prima-facie* stage, these considerations suggest that the OP enjoys a dominant position in the 'market for manufacture and sale of scooters in India'.

The Commission has given a careful examination to the alleged imposition of several unfair conditions on the Informant through the Dealership Agreement which merit examination as abuse of dominant position in the 'market for manufacture and sale of scooters in India'.

Based on above, the Commission is *prima-facie* satisfied that the restrictions imposed by the OP for sale of oil, lubricants and batteries are unfair and in contravention of Section 4(2) (a) (i) of the Act. Similarly, the condition for mandatory purchase of accessories, merchandise items, forceful billing of slow moving vehicles, compulsory deduction of advertising expenses, restrictions on insurance and finance options, making purchase of AMC, EW and RSA contingent upon purchase of booklets from Corporate India Warranties (I) Private Limited, termination of dealership without prior notice and refusal for stock buyback appear to be unfair and suggest *prima-facie* contravention of Section 4(2) (a)(i) of the Act.

The Commission is also *prima-facie* satisfied that the Dealership Agreement has been concluded with the said supplementary obligations which, by their nature or commercial usage, have no connection with the subject of the contract. Thus, the Commission is of the *prima-facie* view that the conduct of the OP merits examination under Section 4(2) (d) of the Act.

The Commission also notes that the mandatory requirement imposed by the OP on its dealers for purchase of oil and consumables, genuine accessories, AMC, EW and RSA, advertising services, merchandise items, batteries, insurance and finance options, from designated sources; resale price maintenance and discount control mechanism; allocation of any area or market for the disposal or sale of the goods; and exclusive supply agreement/refusal to deal; also appear to be in the nature of anti-competitive restraints covered under Section 3(4) of the Act.

In view of above discussion, *prima-facie*, a case of contravention of the provisions of Section 4 and 3(4) of the Act is made out against the OP. The Director General (DG) is directed to cause an investigation to be made into the matter and to complete the investigation within a period of 60 days from receipt of this order.

4
FROM THE GOVERNMENT

- Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018
- Companies (Incorporation) Second Amendment Rules, 2018
- Companies (Indian Accounting Standards) Amendment Rules, 2018
- Condonation of Delay Scheme 2018
- Relaxation of additional fees and extension of last date of filing of AOC-4 XBRL E-Forms using Ind AS under the Companies Act, 2013-reg.
- Date of coming, into force of provisions of Section 132 (3) & (11) of the Companies Act, 2013
- Amendments in notification number S.O. 529(E) dated 05.02.2018.
- Separate limit of Interest Rate Futures (IRFs) for Foreign Portfolio Investors (FPIs)
- Clarifications in respect of investment by certain Category II FPIs
- Clarification to Circular pertaining to Investor Protection Fund (IPF) and Investor Service Fund (ISF)
- Clarification to Circular pertaining to Investor Grievance Redressal System and Arbitration Mechanism
- Revision of limits relating to requirement of underlying exposure for currency derivatives contracts
- Spread margin benefit in commodity futures contracts
- Risk Management norms for commodity derivatives
- Guidelines for Liquidity Enhancement Schemes (LES) in Commodity Derivatives Contracts
- Clarifications with respect to circular on "Specifications related to International Securities Identification Number (ISINs) for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008".
- Investor grievance redress mechanism – new policy measures
- Orders per second limit and requirement of empanelment of system auditors for algorithmic trading in commodity derivatives

Corporate Laws

01 Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide [F. No.1/19/2013 –CL V] dated 08.03.2018. To be Published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i) vide notification No. G.S.R. 213(E) dated 08.03.2018]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with section 398 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, namely:–

1. **Short title and commencement.**—(1) These rules may be called the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018.
   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, rule 3, shall be numbered as sub-rule (1) of rule 3 and after sub-rule (1) as so numbered, the following subrules shall be inserted, namely:–
   "(2) The companies which have filed their financial statements under sub-rule (1) shall continue to file their financial statements and other documents though they may not fall under the class of companies specified therein in succeeding years.
   (3) The companies which have filed their financial statements under the erstwhile rules, namely the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011, shall continue to file their financial statements and other documents as prescribed in sub-rule (1) though they do not fall under the class of companies specified therein.".

K.V.R. MURTY
Joint Secretary

02 Companies (Incorporation) Second Amendment Rules, 2018

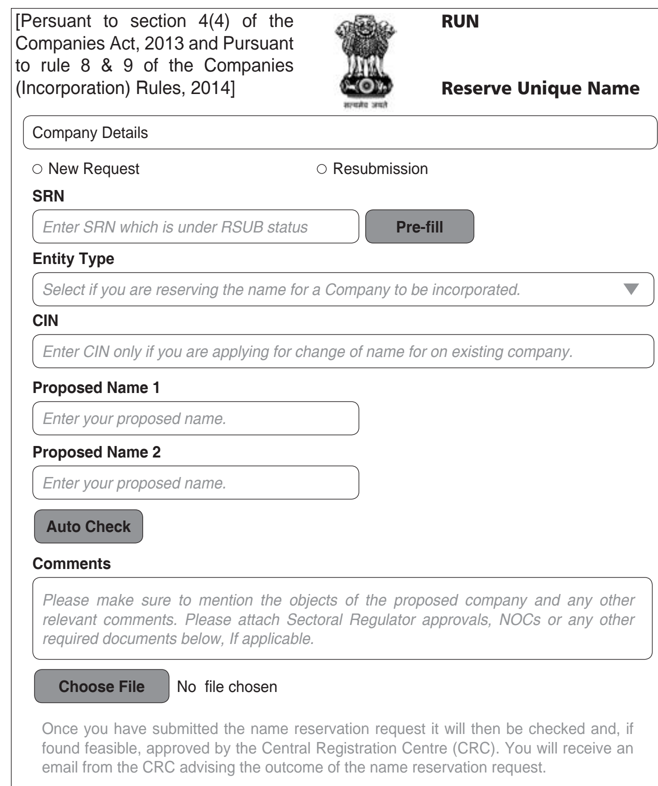
[Issued by the Ministry of Corporate Affairs vide [F. No. 1/13/2013-CL-V, Part-I, Vol.II] dated 23.03.2018. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i)]

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 following rules further to amend the Companies (Incorporation) Rules,2014,namely: -

1. Short title and commencement- (1) These rules may be called the Companies (Incorporation) Second Amendment/ Rules, 2018.
   (2)They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), for rule 9, the following rule shall be substituted, namely:-
   "9. Reservation of name.- An application for reservation of name shall be made through the web service available at www.mca.gov.in by using form RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration offices and fees) Rules, 2014, which may either be approved or rejected,as the case may be,by the Registrar, Central Registration Centre after allowing re-submission of such application within fifteen days for rectification of the defects, if any."

3. In the annexure to the principal rules, for the Form 'RUN' the following form shall be substituted, namely:-



[Persuant to section 4(4) of the Companies Act, 2013 and Pursuant to rule 8 & 9 of the Companies (Incorporation) Rules, 2014]

RUN

Reserve Unique Name

Company Details

○ New Request ○ Resubmission

SRN

Enter SRN which is under RSUB status | **Pre-fill**

Entity Type

Select if you are reserving the name for a Company to be incorporated.

CIN

Enter CIN only if you are applying for change of name for on existing company.

Proposed Name 1

Enter your proposed name.

Proposed Name 2

Enter your proposed name.

Auto Check

Comments

Please make sure to mention the objects of the proposed company and any other relevant comments. Please attach Sectoral Regulator approvals, NOCs or any other required documents below, If applicable.

Choose File No file chosen

Once you have submitted the name reservation request it will then be checked and, if found feasible, approved by the Central Registration Centre (CRC). You will receive an email from the CRC advising the outcome of the name reservation request.

Submit

K.V.R. MURTY
Joint Secretary

03 Companies (Indian Accounting Standards) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/1/2009-CL-V (Part VI)]

dated 28.03.2018. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i)]

In exercise of the powers conferred by section 133 read with section 469 of the Companies Act, 2013 (18 of 2013) and sub-section (1) of section 210A of the Companies Act, 1956 (1 of 1956), the Central Government, in consultation with the National Advisory Committee on Accounting Standards, hereby makes the following rules further to amend the Companies (Indian Accounting Standards) Rules, 2015, namely:—

1. Short title and commencement.-(1) These rules may be called the Companies (Indian Accounting Standards) Amendment Rules, 2018.
   (2) These rules shall come into force from the 1st day of April, 2018.

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K.V.R. MURTY
Joint Secretary

**Full text of the Amendment Rules not reproduced here for want of space. Readers may log on to mca.gov.in. for the entire text of Amendment Rules.*

04 Condonation of Delay Scheme 2018

[Issued by the Ministry of Corporate Affairs vide General Circular No. 2/2018 F No. 02/04/2017-Cl-V dated 28.03.2018.]

1. In continuation to the Ministry's General Circular No. 16 /2017 dated 29/12/2017 on the subject cited above, this Ministry has, on consideration of requests received from various stakeholders, has decided to extend the Condonation of Delay Scheme, 2018 upto 30th April, 2018.

2. This issues with the approval of the competent authority.

KMS NARAYANAN
Joint Secretary

05 Relaxation of additional fees and extension of last date of filing of AOC-4 XBRL E-Forms using Ind AS under the Companies Act, 2013-reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 01/2018 F. No. 1/19/2013-CL-V (Pt.) dated 28.03.2018]

1. In continuation of this Ministry's General Circular No. 13/2017 dated 26.10.2017 and upon consideration of requests received from various stakeholders for extending the last date of filing of AOC-4 XBRL E-Forms using Ind AS under the Companies Act, 2013, it has been decided to extend the last date for filing of AOC-4 XBRL for all eligible companies required to prepare or voluntarily prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015 for the financial year 2016-17, without additional fee till 30th April 2018.
2. This issues with the approval of competent authority

SUDHIR KAPOOR
Deputy Director

06 Date of coming, into force of provisions of Section 132 (3) & (11) of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide [F. No. 1 /4 /2016-CL.I] dated 21.03.2018. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii)]

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 21st March, 2018 as the date on which the provisions of sub sections (3) and (11) of section 132 of the said Act shall come into force.

K.V.R. MURTY
Joint Secretary

07 Amendments in notification number S.O. 529(E) dated 05.02.2018.

[Issued by the Ministry of Corporate Affairs vide [F. No. 17/32/2017-CL-V] dated 02.04.2018. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii)]

1. In exercise of the powers conferred by sub-section (6) of section 129 of the Companies Act, 2013 (18 of 2013), the Central Government, in the interest of public, hereby makes the following amendments in the notification of the Government of India, Ministry of Corporate Affairs, number S.O. 529(E),dated the 5th February, 2018, namely:-

2. In the said notification, in the opening paragraph, the words "for seven years" shall be omitted.

K.V.R. MURTY
Joint Secretary

08 Separate limit of Interest Rate Futures (IRFs) for Foreign Portfolio Investors (FPIs)

[Issued by the Securities and Exchange Board of India vide Circular No. IMD/FPIC/CIR/P/2018/46 dated 08.03.2018.]

1. Reserve Bank of India, in its Statement on Developmental and Regulatory Policies, released on August 02, 2017, proposed to allocate a separate limit of INR 5,000 crore to Foreign Portfolio Investors (FPIs) for taking long position in Interest Rate Futures (IRFs) in order to facilitate further market development and to ensure that FPIs' access to bond futures remains uninterrupted during the phase when FPI limits on Government securities are under auction.

2. Accordingly, it has been decided to allocate a separate limit of INR 5,000 crore to FPIs for taking long position in IRFs. Para 13 (d) of Annexure 1 to SEBI Circular CIR/MRD/DRMNP/35/2013 dated December 05, 2013 and Para 13 (c) of Annexure 1 to SEBI Circular CIR/MRD/DRMNP/11/2015 dated June 12, 2015 stand partially modified to that extent.

3. This limit will be calculated as follows:

a. For each interest rate futures instrument, position of FPIs with a net long position will be aggregated. FPIs with a net short position in the instrument will not be reckoned.
b. No FPI can acquire net long position in excess of INR 1,800 crore at any point of time.

4. For monitoring the limit as mentioned in Paragraph '3' above and in SEBI Circular CIR/MRD/DRMNP/2/2014 dated January 20, 2014, Stock Exchanges, after consulting amongst themselves, shall adhere to the following mechanism:
   a. Stock Exchanges shall put in place necessary mechanism for monitoring and enforcing limits of FPIs in IRFs.
   b. Stock Exchanges shall aggregate net long position in IRF of all FPIs taken together at end of the day and shall jointly publish/ disseminate the same on their website on daily basis.
   c. Once 90% of the limit is utilized, Stock Exchanges shall put in place necessary mechanism to get alerts and publish on their websites the available limit, on a daily basis.
   d. In case, there is any breach of the threshold limit, the FPI/s whose investment caused the breach shall square off their excess position/s within five trading days or by expiry of contract, whichever is earlier.

5. The limits prescribed for investment by FPIs in Government Securities (currently INR 301,500 crore) shall be exclusively available for investment in Government Securities.

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992.

A copy of this circular is available at the web page "Circular" on our website www.sebi.gov.in. Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

ACHAL SINGH
Deputy General Manager

09 Clarifications in respect of investment by certain Category II FPIs

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/IMD/FPIC/47/2018 dated 13.03.2018.]

I. This is in reference to SEBI circular No. CIR/IMD/FPIC/ 26 /2018 dated February 15, 2018 regarding "Easing of access norms for investment by FPIs".

II. In view of queries from stakeholders, the following clarifications are made in respect of investment by certain category II FPIs:-
   (1) The collective investment vehicle of private banks/ merchant banks investing on behalf of clients need to ensure the following:-
      a) The client/ investor should have fulfilled know your client norms. The beneficial owners (BO) of client/ investor of bank should be identified in accordance with Rule 9 of Prevention of Money Laundering (Maintenance of Records) Rules, 2005.
      b) The client/ investor or their BO should not be Resident Indian/ NRI/ Overseas Citizen of India.
      c) The client/ investor is not resident in a country identified in the public statement of Financial Action Task Force as:-
         i. a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
         ii. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;
      d) The client/ investor should not have opaque structure(s), as defined under Explanation 1 of Regulation 32(1)(f) of SEBI (Foreign Portfolio Investors) Regulations, 2014 or Bearer share structure.
      e) The collective investment vehicle of the Bank (other than for ODIs) should be broad based (more than 20 investors and no investor having more than 49% stake) and there should be common portfolio for all clients/ investors.
      f) The conditions already specified at point (g) of SEBI circular dated February 15, 2018 shall continue to be applicable.

   (2) Presently, appropriately regulated broad based insurance/ reinsurance companies are investing proprietary funds and for unit linked/ investment products. In this regard, it is clarified that investment in India by insurance/ reinsurance companies must be maintained as an undivided common portfolio. Segregated portfolio or investor/ policy-holder level investment structure shall not be permitted.

   (3) In respect of other appropriately regulated persons permitted as Cat. II FPIs viz. asset management companies, investment managers/ advisers, Portfolio managers, Broker-dealer and Swap-dealer. It is clarified that:-
      (a) They are permitted to invest their proprietary funds,
      (b) These appropriately regulated persons by taking separate registration can also invest with client funds as an ODI Issuing FPI or after fulfiling the condition of being broad based and having a common portfolio. However, asset management companies having thematic portfolios can also have segregated structure if each theme is broad based.

   (4) All other investment restrictions and due diligence requirements as applicable to FPIs shall continue to be applicable on entities referred at (1) to (3) above.

III. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

IV. A copy of this circular is available at the links "Legal

Framework→Circulars" and "Info for →F.P.I" on our website www.sebi.gov.in. The DDPs/Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

ACHAL SINGH
Deputy General Manager

10 Clarification to Circular pertaining to Investor Protection Fund (IPF) and Investor Service Fund (ISF)

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/CDMRD/DCE/CIR/P/2018/49 dated 14.03.2018.]

1. SEBI vide circular no. CIR/CDMRD/DEICE/CIR/P/2017/53 dated June 13, 2017, has issued guidelines covering broad areas of Investor Protection Fund and Investor Service Fund.

2. Subsequently, SEBI has received representations from the national commodity derivatives exchanges (NCDEs) for clarifications and consideration of their requests with respect to some of the clauses of the said circular. After examination thereof, the following clarifications are being issued.
   i. It is clarified that the unutilized IPF Interest Income accruing during a specific financial year can be carried forward to the next financial year to enable effective utilization of such money by the exchanges during such extended period.
   ii. NCDEs are hereby permitted to utilize IPF interest income for undertaking research activities related to commodities market, provided every such research activity / project can be undertaken only after obtaining prior written approval of the trustees of the IPF Trust, who would *inter alia*, record the reasons, relevance and stated objectives of the research project while according approval to such activity/ project. Further, the Board of the exchange may be apprised of the research programs / activities being undertaken at least once in every quarter or half year of a given financial year
   There will be an overall cap on the total amount, not more than 10% of the interest amount of IPF which can be spent on Research activities related to commodities market. IPF shall frame a policy towards identifying / recognising public and private academic institutions, professional bodies, trade (physical market) associations and Industry bodies / chambers through / with whom such Research activities shall be undertaken / organised / sponsored.
   iii. Clause 7.3 of the circular no. CIR/CDMRD/DEICE/CIR/P/2017/53 dated June 13, 2017 provided that the IPF of the exchange shall be utilized for the clients of SEBI registered members. In this connection, it is clarified that exchanges may also use the IPF of the exchange for meeting their liabilities towards the clients of members not registered with SEBI, if the same is allowed under the byelaws of the exchange.
   iv. SEBI has prescribed certain expenditures which are to be met utilizing the ISF and not IPF. However since ISF is of recent origin, its corpus may be inadequate. NCDEs have therefore requested to permit utilizing interest on IPF in lieu of ISF for expenditures meant only for ISF. Accordingly, the NCDEs have been granted 3 years period starting April 1st, 2018 to permit utilizing interest on IPF for activities of ISF also.

3. The provisions of this circular shall come into effect immediately.

4. The exchanges are advised to:-
   - make necessary amendments to relevant bye-laws, rules and regulations for the implementation of this circular.
   - bring the provisions of this circular to the notice of the members of the exchange and also to disseminate the same on their website.
   - communicate to SEBI, the status of implementation of the provisions of this circular.

5. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. The circular is available on SEBI website at www.sebi.gov.in.

PRASAD JAGADALE
Deputy General Manager

11 Clarification to Circular pertaining to Investor Grievance Redressal System and Arbitration Mechanism

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/CDMRD/DCE/CIR/P/2018/48 dated 14.03.2018.]

1. SEBI vide circular no. CIR/CDMRD/DEICE/CIR/P/2017/77 dated July 11, 2017, has issued guidelines covering broad areas of Investor Grievance Redressal System and Arbitration Mechanism.

2. Subsequently, SEBI has received representations from the national commodity derivatives exchanges (NCDEs) with respect to some of the clauses of the said circular which have been considered. Accordingly, the following clarifications are being issued.
   i. The NCDEs shall provide training of at least one day to every arbitrator each year.
   ii. With regard to para 2A(x) of the aforesaid circular pertaining to speeding up grievance redressal mechanism, it is clarified that in order to discourage delayed filing by members, the additional fees payable by members who file their claim beyond the prescribed time-lines shall be non-refundable even if the arbitration award goes in favor of the member.

3. The provisions of this circular shall come into effect immediately.

4. The exchanges are advised to:-
   - make necessary amendments to relevant bye-laws, rules and regulations for the implementation of this circular.
   - bring the provisions of this circular to the notice of the

members of the exchange and also to disseminate the same on their website.

- communicate to SEBI, the status of implementation of the provisions of this circular.

5. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. The circular is available on SEBI website at www.sebi.gov.in.

PRASAD JAGADALE
Deputy General Manager

12 Revision of limits relating to requirement of underlying exposure for currency derivatives contracts

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/DP/CIR/P/2018/50 dated 15.03.2018.]

1. This is further to SEBI circular no. CIR/MRD/DP/20/2014 dated June 20, 2014, wherein, limits were specified for the USD-INR, EUR-INR, GBP-INR and JPY-INR currency derivatives contracts beyond which market participants were required to establish proof of underlying exposure and SEBI circular no. CIR/MRD/DP/4/2015 dated April 08, 2015, wherein such limits were reviewed.

2. RBI vide A.P. (DIR Series) Circular no. 18 dated February 26, 2018 has revised the limits beyond which market participants would be required to establish underlying exposure in the currency derivatives segment. Copy of the RBI circular is enclosed for reference.

3. Accordingly, it has been decided to modify the circular no. CIR/MRD/DP/04/2015 dated April 08, 2015 as under:
   (a) Domestic clients / Foreign Portfolio Investors (FPIs) may take long or short positions without having to establish existence of underlying exposure, upto a single limit of USD 100 million equivalent, across all currency pairs involving INR, put together, and combined across all the stock exchanges.
   (b) FPIs shall ensure that their short positions at all stock exchanges across all contracts in FCY-INR pairs do not exceed USD 100 million.
   (c) In the event a FPI breaches the short position limit, stock exchanges shall restrict the FPI from increasing its existing short positions or creating new short positions in the currency pair till such time FPI complies with the said requirement.
   (d) To take long positions in excess of USD 100 million in all contracts in FCY-INR pairs, FPIs shall be required to have an underlying exposure in Indian debt or equity securities, including units of equity/debt mutual funds.
   (e) Domestic clients may take positions in excess of USD 100 million in in all contracts in FCY-INR pairs, subject to the conditions specified in the RBI A.P. (DIR Series) Circular no. 147 dated June 20, 2014 and RBI A.P. (DIR Series) Circular no. 90 dated March 31, 2015.

4. The onus of complying with the provisions of the RBI A.P. (DIR Series) Circular no. 18 dated February 26, 2018 shall rest with the client / FPI and in case of any contravention, the client shall render itself liable to any action that may be warranted by RBI as per the provisions of Foreign Exchange Management Act, 1999 and Regulations, Directions, etc. framed thereunder. These limits shall be monitored by stock exchanges and/or clearing corporations and breaches, if any, shall be reported to the Market Surveillance Team of Financial Markets Regulation Department (FMRD), RBI. In this regard, stock exchanges / clearing corporations shall devise a suitable mechanism to monitor the aforesaid limits, subject to appropriate regulatory concurrence.

5. This Circular shall supersede SEBI circular no. CIR/MRD/DP/4/2015 dated April 08, 2015.

6. All other requirements, terms and conditions, as specified vide SEBI circular no. CIR/MRD/DP/20/2014 dated June 20, 2014, shall remain unchanged.

7. Stock Exchanges and Clearing Corporations are directed to:
   (a) take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;
   (b) bring the provisions of this circular to the notice of the stock brokers / clearing members and also disseminate the same on their website;
   (c) communicate to SEBI the status of implementation of the provisions of this circular.

8. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market..

SUSANTA KUMAR DAS
Deputy General Manager

13 Spread margin benefit in commodity futures contracts

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2018/51 dated 20.03.2018.]

1. Vide circulars CIR/CDMRD/DRMP/01/2015 dated October 01, 2015, SEBI/HO/CDMRD/DRMP/CIR/P/2016/77 dated September 01, 2016 and SEBI/HO/CDMRD/DRMP/CIR/P/2016/130 dated December 02, 2016, SEBI has prescribed norms inter-alia for providing margin benefit on spread positions in commodity futures contracts.

2. Based upon proposals from Exchanges and recommendations of the Risk Management Review Committee, following has been decided regarding margin benefit on spread positions:
   2.1. Exchanges may provide spread benefit in initial margin across futures contracts in a commodity complex provided the following conditions are met –
   - Minimum coefficient of correlation (r) between futures prices of the two commodities is 0.90.

- Back testing for adequacy of spread margin to cover MTM has been carried out for a minimum period of one year (back testing for at least 250 days wherein daily settlement price of futures used for back testing have been determined **from traded futures prices**).
- Initial margin after spread benefit has been able to cover MTM on at least 99% of the days as per back testing.

2.2. Maximum benefit in initial margin on spread positions is restricted to 50%. No benefit in ELM shall be provided for spread positions, i.e. ELM shall be charged on both individual legs. Exchanges are free to charge higher margins depending upon their risk perception. Margin benefit on spread positions shall be entirely withdrawn latest by the start of tender period or the start of the expiry day, whichever is earlier.

2.3. To be eligible for initial margin benefit, each individual contract in the spread shall be from amongst the first three expiring contracts in the two commodities only.

2.4. Exchanges shall continuously monitor dynamics of the commodities and their correlation and if there are changes such that spread margin benefit is no longer appropriate to be given, shall take appropriate further course of action.

2.5. In case of calendar spreads or spreads consisting of two contract variants having the same underlying commodity (wherein currently 75% benefit in initial margin is permitted) also, benefit in initial margin shall be permitted only when each individual contract in the spread is from amongst the first three expiring contracts.

3. The provisions of this circular shall be effective from July 01, 2018.

4. The exchanges are advised to bring the provisions of this circular to the notice of their members and also to disseminate the same on their website.

5. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. This circular is available on SEBI website at www.sebi.gov.in.

SHASHI KUMAR
General Manager

14 Risk Management norms for commodity derivatives

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2018/52 dated 21.03.2018.]

Minimum Liquid Net-worth and Base Minimum Capital

1. SEBI has issued various circulars from time to time prescribing risk management norms for commodity derivatives exchanges. Post the transfer of clearing and settlement functions from commodity derivatives exchanges to Clearing Corporations, Clearing Corporations shall be required to comply with all such norms. However, norms related to minimum Liquid Net-worth and Base Minimum Capital requirements applicable for clearing members in commodity derivatives are different from that applicable for clearing members in equity derivatives and currency derivatives.

2. It has been decided to align norms related to BMC and liquid net-worth for members of clearing corporations in commodity derivatives with those applicable for clearing members in equity and currency derivatives. Thus, members of Clearing Corporations in commodity derivatives segment shall maintain a minimum Liquid Net-worth of at least INR 50 Lakhs at all points of time and shall not have any Base Minimum Capital requirement.
(Clearing member's liquid assets after adjusting for applicable margins shall be referred to as 'Liquid Net-worth' of the clearing member. Initial margins, ELM, additional margins or any other margins as may be specified by SEBI from time to time shall be deducted from the liquid assets of a clearing member to arrive at 'Liquid Net-worth' of member).

Acceptance of Fixed Deposit Receipts (FDRs) as collateral

3. SEBI has issued circular CIR/MRD/DRMNP/65/2016 dated July 15, 2016 on "Acceptance of Fixed Deposit Receipts (FDRs) by Clearing Corporations" to Recognised Clearing Corporations. Commodity Derivatives Exchanges shall also comply with the provisions of that circular within three months from the date of this circular. Thus, Trading/Clearing members of commodity derivatives exchanges, who have deposited their own FDRs or FDRs of associate banks, shall replace such collateral with other eligible collateral as per extant norms, within a period of three months from the date of issuance of this circular.

Margin provisions for intra-day crystallised losses

4. SEBI has issued circular CIR/MRD/DRMNP/008/2018 dated January 08, 2018 on "Margin provisions for intra-day crystallised losses" to Recognised Clearing Corporations. Commodity Derivatives Exchanges shall also comply with the provisions of that circular within three months from the date of this circular.

5. The exchanges are advised to bring the provisions of this circular to the notice of their members and also to disseminate the same on their website.

6. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

7. This circular is available on SEBI website at www.sebi.gov.in.

SHASHI KUMAR
General Manager

15 Guidelines for Liquidity Enhancement Schemes (LES) in Commodity Derivatives Contracts

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/

HO/CDMRD/DMP/CIR/P/2018/55 dated 26.03.2018.]

1. SEBI vide its circular CIR/MRD/DP/14/2014 dated April 23, 2014, has prescribed revised guidelines for Liquidity Enhancement Schemes (LES) in Equity Cash and Equity Derivatives segments.

2. Based upon feedback from exchanges, it has been decided to permit LES in commodity derivatives contracts subject to the requirements stipulated vide abovementioned SEBI Circular dated April 23, 2014.

3. In addition to the conditions and other requirements stipulated in the abovementioned circular, with regard to the eligibility of commodity derivatives contracts for LES, following additional requirements shall apply:-
   3.1. Any commodity that is classified as 'Sensitive Commodity' by the Exchange, shall not be eligible for LES.

   3.2. If any commodity derivative product is 'liquid' on any of the exchanges i.e. there is at least one exchange where the average daily turnover in Options or/and Futures on similar underlying commodity is more than or equal to INR 200 crore for agricultural and agri-processed commodity, and INR 1000 crore for non-agricultural commodity during the last six months, then no other exchange is eligible to launch LES on the same derivative product, unless the exchange where the product is liquid, has itself also launched a LES on said product.

   3.3. For the present, schemes which incentivise brokers based on activation of new UCC (Unique Client Codes), number of trades or open interest shall not be permissible under LES.

   3.4. Exchanges shall put in place a mechanism to ensure that the LES does not create artificial volumes, does not take away liquidity form the market, is not manipulative in nature and shall not lead to misselling of the product in the market.

4. The provisions of this circular shall come into effect from the date of the circular.

5. The Exchanges are advised to:
   i. take steps to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the same.
   ii. bring the provisions of this circular to the notice of the members of the Exchange and also to disseminate the same on their website.

6. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

7. This circular is available on SEBI website at www.sebi.gov.in.

VIKAS SUKHWAL
Deputy General Manager

16 Clarifications with respect to circular on "Specifications related to International Securities Identification Number (ISINs) for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008"

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/DDHS/P/59/2018 dated 28.03.2018.]

1. SEBI had issued a circular No. CIR/IMD/DF-1/67/2017 dated June 30, 2017 on "Specifications related to International Securities Identification Number (ISINs) for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008" (ISIN circular). With respect to the same, based on the queries and representations received from time to time, certain clarifications are issued through this circular:
   1.1. It is clarified that structured products/market linked debt securities as mentioned in paragraph 2.1.2.2 of the ISIN circular refer to the structured products/market linked debentures as per the SEBI circular Cir/IMD/DF/17/2011 dated September 28, 2011.
   1.2. With respect to paragraph 2.1.3 of the ISIN circular, it is clarified that in case of debt securities, where call and/or put option is exercised, the issuer, if so desires, may issue additional debt securities for the balance period viz. remaining period of maturity of earlier debt securities. For example, if an issuer has issued debt securities in the month of August 2017 having maturity period of three years and callable after one year, then in such a scenario if the call option is exercised in the month of August 2018, then for the balance two years period viz (September 2018-August 2020) the issuer may issue additional debt securities maturing in August 2020, under the same ISIN.
   Provided that the aforesaid additional issue shall be subject to the condition that the aggregate count of outstanding ISINs maturing in the financial year in which the original issue of debt securities (bearing call and/or put option) is due for expiring, shall not exceed the prescribed limit of ISINs.
   1.3. With respect to paragraph 2.1.5 of the ISIN circular, it is clarified that for all the debt securities issued in the financial year (FY) 2017-18 on or after July 01, 2017, all the ISINs corresponding to these issues, maturing in any financial year, shall adhere to the limit of 12/5 ISINs.
   1.4. Additionally, it may be noted that in case of conversion of partly paid debt securities to fully paid debt securities, such conversion shall not be counted as an additional ISIN under paragraph 2.1.2 of ISIN circular.
   1.5. With respect to Paragraph 2.2 of the ISIN circular, it is clarified that the exemption as granted under paragraph 2.2.5 of the said circular shall also be available to All India Term Lending and Refinancing Institutions (AITLRI) as notified by RBI and Infrastructure Debt Funds registered as Non-Banking Finance Companies subject to them issuing debt securities with minimum five years maturity.
   1.6. All the exemption from the applicability of ISIN circular, as have been outlined in paragraph 2.2 of the ISIN circular and paragraph 1.5 above shall be available only till June 30, 2020 and shall not continue beyond that period. Thus, no exemption from the applicability

of ISIN circular shall be available to any issuer for debt securities issued on or after July 01, 2020.

It is further clarified that for the class of entities, mentioned in paragraph 2.2 of the ISIN circular and paragraph 1.5 above, for whom exemption is available, the said exemption shall be applicable only from paragraph 2.1 and 2.3 of the ISIN circular.

1.7. With respect to paragraph 2.3.3 of the ISIN circular, it is clarified that the issuer shall, while making an issue of debt securities, disclose upfront in the Information Memorandum/Disclosure Document that further issuances may be made under the same ISIN. However, if such a disclosure is not made by the issuer then compliance shall have to be made with regulation 59 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

1.8. With respect to paragraph 3.1.2 of the ISIN circular, it is clarified that the statement to be submitted to the stock exchanges shall be submitted half yearly on the basis of the financial year i.e. latest by April 15 and October 15 of each financial year.

2. The provisions of this circular shall be applicable with immediate effect for the debt securities issued in accordance with SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

3. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

4. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework"..

RICHA G. AGARWAL
Deputy General Manager

17 Investor grievance redress mechanism – new policy measures

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2018/58 dated 26.03.2018.]

1. This circular is being issued in continuation to SEBI circular no. CIR/OIAE/1/2014 dated 18th December, 2014 regarding redressal of investor grievances through SEBI Complaints Redress System (SCORES) platform.

2. SCORES is a web based centralized system to capture investor complaints against listed companies and registered intermediaries and is available 24x7. It was introduced on June 8, 2011 and has been facilitating redressal of investor grievances in a speedy manner.

3. SEBI encourages investors to lodge complaints through electronic mode in SCORES. However, complaints received from investors in physical form are also digitized by SEBI and uploaded in SCORES. Thereafter, follow-up actions of the complaint are done in electronic form only i.e. through SCORES. Investors can easily access, retrieve and preserve the complaints lodged by them in electronic mode. Further, it enhances the turnaround time and speed of redressal of a complaint.

4. Investors may contact the Investor Associations (IAs) recognized by SEBI for any assistance in filing complaints on SCORES. The lists of Investor Associations are available on SEBI website (www.sebi.gov.in). Investors may also seek assistance in filing complaints on SCORES from SEBIs toll free helpline number 1800 266 7575 or 1800 22 7575.

5. SEBI has received inputs from listed companies and intermediaries that investor grievances can be resolved faster if the grievance been taken up directly with the entity at the first instance. Accordingly, it appears to be prudent and time saving if the investors approach the concerned listed company or registered intermediary first with all the requisite details to redress the complaints. In case, the listed company or registered intermediary fails to redress the complaint to the investor's satisfaction, the investor may file a complaint in SCORES.

6. At present following types of complaints are not dealt through SCORES:
   i. Complaints against the companies which are unlisted/delisted, in dissemination board of Stock Exchanges,
   ii. Complaints those are sub-judice i.e. relating to cases which are under consideration by court of law, quasi-judicial proceedings etc.
   iii. Complaints falling under the purview of other regulatory bodies viz. RBI, IRDAI, PFRDA, CCI, etc., or under the purview of other ministries viz., MCA, etc.
   iv. Complaints against a sick company or a company where a moratorium order is passed in winding up / insolvency proceedings.
   v. Complaints against the companies where the name of company is struck off from RoC or a vanishing company as per list published by MCA.
   vi. Suspended companies, companies under liquidation / BIFR / etc.

7. To enhance investor satisfaction on complaint redressal, SEBI has already put in place a 'Complaint Review facility' under SCORES wherein an investor if unsatisfied with the redressal may within 15 days from the date of closure of his complaint in SCORES opt for review of the complaint and the complaint shall be escalated

8. Effective from August 01, 2018, following procedure shall be followed for filing and redressal of investor grievances using SCORES:
   a. Investors who wish to lodge a complaint on SCORES are requested to register themselves on www.scores.gov.in by clicking on "Register here". While filing the registration form, details like Name of the investor, PAN, Contact details, Email id, Aadhaar card number(optional), CKYC ID(optional) etc. (Annexure A) may be provided for effective communication and speedy redressal of the grievances. Upon successful registration, a unique user id and a password shall be communicated to the investor through an acknowledgement email / SMS.
   b. An investor shall use login credentials for lodging complaint on SCORES ("Login for registered user" section). Details on how to lodge a complaint on

SCORES is at Annexure B.

c. The complainant may use SCORES to submit the grievance directly to companies / intermediaries and the complaint shall be forwarded to the entity for resolution. The entity is required to redress the grievance within 30 days, failing which the complaint shall be registered in SCORES

d. Presently, the limitation period for filing an arbitration reference with stock exchanges is three year. In line with the same and in order to enhance ease, speed & accuracy in redressal of investor grievance, the investor may lodge a complaint on SCORES within three years from the date of cause of complaint, where;
Investor has approached the listed company or registered intermediary for redressal of the complaint and,
The concerned listed company or registered intermediary rejected the complaint or,
The complainant does not receive any communication from the listed company or intermediary concerned or,
The complainant is not satisfied with the reply given to him or redressal action taken by the listed company or an intermediary.

9. Stock Exchanges, Depositories and the Association of Mutual Funds of India (AMFI) are accordingly advised to bring the provisions of this Circular to the notice of all Listed Companies, registered Stock-Brokers, Depository Participants and Asset Management Companies respectively and also to disseminate the same on their websites. Further, Stock Exchanges, Depositories and AMFI should also arrange for adequate publicity of this Circular on an urgent basis.

10. This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

11. This Circular is available on SEBI website at www.sebi.gov.in under the category "Legal /Circulars"..

MEDHA SONPAROTE
Deputy General Manager

Annexure A

Details to be provided while registering on SCORES with effect from August 01, 2018:

i. Name of the complainant*
ii. Pan Number*
iii. Aadhaar Number (Optional)
iv. CKYC ID (Optional)
v. DP id & Client Id
vi. Postal address for communication*
vii. Contact number – Mobile* : Landline
viii. Email id* – For receipt of acknowledgement letter / updates of complaints on SCORES.
ix. Bank account details – To facilitate direct credit of benefits to investor.
x. Client id as given by Broker / Stock Exchange.

Note: * are mandatory fields.

18 Orders per second limit and requirement of empanelment of system auditors for algorithmic trading in commodity derivatives

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2018/60 dated 03.04.2018.]

1. Vide circular SEBI/HO/CDMRD/DMP/CIR/P/2016/97 dated September 27, 2016, SEBI had issued broad guidelines on algorithmic trading for National Commodity Derivatives Exchanges.

2. The circular *inter-alia* required exchanges to place a limit on the number of orders per second from a particular CTCL ID/ATS User–ID to twenty orders per second and to impose economic disincentives for orders exceeding twenty per second. The circular also stipulated that system audit of algorithmic trading shall be undertaken by a system auditor empanelled by exchanges.

3. Based on representations from exchanges and discussions in CDAC sub-group, it has been decided to permit exchanges to relax the limit on the number of orders per second from a particular CTCL ID/ATS User–ID up to hundred orders per second. Thus, para '9' of SEBI Circular SEBI/HO/CDMRD/ DMP/CIR/P/2016/97 dated September 27, 2016 stands revised as follows-

   "The exchanges shall place a limit (X) on the numbers of orders per second from a particular CTCL ID/ATS User-ID not exceeding hundred orders per second. Compliance with the limit "X" so set by a particular CTCL ID/ATS User-ID shall be measured over a rolling period of five seconds (i.e., 5X orders for 0th – 5th second, 5X orders for 1st-6th second, 5X orders for 2nd to 7th second and so on).
   For number of orders exceeding the limit (X) set by the exchange, the exchange shall prescribe economic disincentives and inform the same to SEBI."
   Exchange shall ensure that the limits it provides is subject to its ability to handle the load.

4. Based on representations from exchanges it has also been decided to do away with the requirement of empanelment of system auditors by the exchanges for system audit of algorithmic trading. Thus in Para '18.c' of SEBI Circular SEBI/HO/CDMRD/DMP/CIR/P/2016/97 dated September 27, 2016 the words "empanelled by exchanges" stand deleted.

5. The exchanges are advised to bring the provisions of this circular to the notice of their members and also to disseminate the same on their website.

6. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

7. This circular is available on SEBI website at www.sebi.gov.in.

SHASHI KUMAR
Deputy General Manager

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NEWS FROM THE INSTITUTE

- MEMBERS RESTORED DURING THE MONTH OF FEBRUARY 2018
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF FEBRUARY 2018
- KNOW YOUR MEMBER (KYM)
- PAYMENT OF ANNUAL LICENTIATE SUBSCRIPTION FOR THE YEAR 2018-2019
- PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2018-2019
- COUNCIL / REGIONAL COUNCILS ELECTIONS – 2018

Institute News

MEMBERS RESTORED DURING THE MONTH OF FEBRUARY 2018

S. NO.	A/F	MEM. NO.	MEM. NAME	PLACE
1	A	13729	CS SUHAS KRISHNA PAI	WIRC
2	A	12621	CS DHARMENDRA KUMAR V PARMAR	WIRC
3	A	8075	CS RAM CHANDRAN SARAF	F/EIRC
4	A	30118	CS VINOD CHANDRA MAMGAI	NIRC
5	A	12152	CS P CHANDRASEKAR	SIRC
6	A	5752	CS S K SINGHAL	F/NIRC
7	A	16071	CS LAKSHMI SUBRAMANIAN	WIRC
8	A	28838	CS SANJEEV KUMAR	NIRC
9	A	24776	CS SUJATA JAYANT	NIRC
10	A	28944	CS NIDHI AGARWAL	NIRC
11	F	9163	CS SUNIL KUMAR	NIRC
12	F	9169	CS RAKESH GUSAIN	NIRC
13	F	4312	CS RAJIV M CHANDAN	WIRC
14	F	6636	CS AKASH MISHRA	EIRC
15	F	8752	CS AMIT KUMAR	NIRC
16	F	5427	CS PRADEEP RAMAKRISHNAN	WIRC
17	F	4892	CS RAMAPRASAD SUSWARAM	SIRC
18	F	8573	CS SHWETA GUPTA	WIRC
19	F	8431	CS SOWMYA PARASURAMAN	SIRC
20	F	3323	CS SUNIL HANDA	NIRC
21	F	2972	CS SANJEEV MALHOTRA	NIRC
22	F	9125	CS SANDEEP JAYANT KULKARNI	WIRC
23	F	1710	CS PRADEEP NAUHARIA	WIRC
24	F	7521	CS ARUN KUMAR	NIRC
25	F	3104	CS PAVAN KUMAR VIJAY	NIRC
26	F	5734	CS BRIJESHWAR DAYAL MATHUR	NIRC
27	F	5901	CS KANWALJIT SINGH THANEWAL	NIRC
28	A	35657	CS AMIT KUMAR DUDANI	NIRC
29	F	1446	CS U K CHAUDHARY	NIRC
30	F	1655	CS J C PALIWAL	WIRC
31	F	2295	CS ANIL KUMAR TAPARIA	SIRC
32	F	1805	CS RAVI MEHRA	NIRC
33	F	8114	CS GIRISH M NADKARNI	WIRC
34	F	5051	CS MANISH AGARWAL	NIRC
35	F	5357	CS NAVEEN KUMAR KHANDELWAL	WIRC
36	F	5050	CS S GEETHA	SIRC
37	F	6943	CS SANJAY KUMAR GUPTA	EIRC
38	F	6632	CS DILIP KUMAR NIRANJAN	NIRC
39	F	6971	CS SUBRAMANIAM CHINNASAMY	SIRC
40	F	3524	CS PRAVEEN KUMAR JAIN	NIRC
41	F	8213	CS DRIGESH PRAMOD MITTAL	WIRC
42	F	5262	CS RAJESH SHARMA	NIRC
43	F	6986	CS GAUTAM SHARMA	WIRC
44	F	6873	CS RAJESH MITTAL	EIRC
45	F	5317	CS JITENDRA D GANDHI	WIRC
46	F	7737	CS AMITA GUPTA	NIRC
47	F	2479	CS RAMESH SHENOY	WIRC
48	F	9043	CS ABHA JAIN	WIRC
49	F	3951	CS S J AHMAD	NIRC
50	F	4462	CS S MURALIDHAR	NIRC
51	A	14066	CS DEEPALI JAIN	NIRC
52	A	9153	CS SUNDARESAN MURALIDHARAN	SIRC
53	A	22197	CS CHAKARWORTY BANSAL	NIRC
54	F	1048	CS SHIRIN V BALSARA	WIRC
55	F	8732	CS KASHIF ALI	NIRC
56	A	38834	CS RISHAV JAISWAL	NIRC
57	A	15456	CS SRINIVAS ITABOINA	SIRC
58	F	3753	CS SUSHIL KUMAR BAJPAI	NIRC
59	A	18565	CS ROHIT G.R.	SIRC
60	A	16499	CS SACHIN GUHA	SIRC
61	F	7941	CS ANAND R MUNDRA	WIRC
62	A	34432	CS T N SIVASUBRAMANIAN	SIRC
63	A	19689	CS SUMIT KUMAR GHOSH	NIRC
64	F	8643	CS SMITA PANKAJ AGARKAR	WIRC
65	F	8469	CS ROHIT AGARWAL	NIRC
66	F	32040	CS RAVLEEN KAUR CHANDHOK	NIRC
67	F	690	CS OM PRAKASH GOYAL	WIRC
68	A	24118	CS PREETI BHATT	NIRC
69	F	5818	CS DIPAK SHANTILAL GAYWALA	WIRC
70	F	8238	CS RAJENDRA KUMAR KAR	EIRC
71	F	7933	CS AMIT MUNDRA	WIRC
72	F	5435	CS P OM PRAKASH	SIRC
73	F	6010	CS DHARMESH NIRANJAN THAKER	WIRC
74	F	6855	CS ROHIT KUMAR SINGH	WIRC
75	F	6753	CS PAWAN KUMAR YADAV	NIRC
76	F	3849	CS RAJKUMAR BIDAWATKA	WIRC
77	F	6977	CS RAJESH KUMAR JAIN PALRECHA	SIRC
78	A	8729	CS SEQUEIRA	WIRC
79	A	32692	CS MEERA JAYANTILAL CHANDARIA	SIRC
80	A	30811	CS SONU AGARWAL	EIRC
81	A	33277	CS HEMLATA MISHRA	NIRC
82	A	33669	CS MANSI JAYESH MODY	WIRC
83	A	36125	CS MOHD SADIQUL MEHDI	NIRC
84	A	30920	CS KANIKA AGGARWAL	NIRC
85	A	28043	CS ANKITA SHARMA	EIRC
86	A	18858	CS SUSHMA BAINS	NIRC
87	A	40334	CS SAANIA JOSHI	WIRC
88	A	22667	CS RAJAGOPAL GIRIDHAR	SIRC
89	A	22092	CS SWATI AHUJA	NIRC
90	A	28828	CS PRIYANKA SAXENA	NIRC
91	A	25569	CS GAURAV RASTOGI	NIRC
92	A	18006	CS ANIL	NIRC
93	A	30302	CS PARMAL SINGH	NIRC
94	A	34906	CS SUVARNA BABURAO HEDAU	WIRC
95	F	3091	CS K. M RAMACHANDRA	SIRC
96	F	5341	CS T D SURESH	NIRC
97	F	9103	CS PAWAN CHADHA	NIRC
98	F	3500	CS S SRINIVAS	WIRC

99	F	3992	CS DESHABANDHU RAJESH SRIKANTA	NIRC
100	F	7015	CS MANU GROVER	NIRC
101	F	3567	CS E BALASUBRAMANIAN	SIRC
102	F	7903	CS RAJANI NANGALIA	EIRC
103	F	4046	CS PUNEET KHURANA	WIRC
104	F	2541	CS SUNIL GOYAL	NIRC
105	F	2542	CS ANIL GOYAL	NIRC
106	F	7121	CS UMESH KUMAR AGRAWAL	NIRC
107	F	5388	CS NIDHI AGARWAL	NIRC
108	F	8916	CS RAJ KUMAR S ADUKIA	WIRC
109	A	39216	CS GAURAV SINGH JADON	NIRC
110	A	97	CS RAMACHANDRA RAO KARANDIKAR	WIRC
111	A	3969	CS ANIRUDH BILIGERI GOVINDAYA	SIRC
112	A	30243	CS SHIPRA KHANDELWAL	NIRC
113	A	46237	CS ABU SUFYAN NISAR AHMED	WIRC
114	A	28929	CS JYOTI SHARMA	NIRC
115	A	20125	CS SAGAR BHATIA	NIRC
116	A	14312	CS MANOJ KUMAR PATNAIK	SIRC
117	A	43163	CS RADHA BHUMIT SHAH	WIRC
118	A	45346	CS RUCHIKA MAHESHWARI	EIRC
119	A	36358	CS GAYATHRI M	SIRC
120	A	32172	CS VANDHANA K	SIRC
121	A	33830	CS PREETI PRASAD SABNIS	WIRC
122	A	41851	CS BINU THOMAS	SIRC
123	A	46777	CS ADITI AGARWAL	NIRC
124	A	37278	CS RICHA CHAHAL	NIRC
125	A	31530	CS PARUL GUPTA	NIRC
126	A	24307	CS LIPIKA ARORA	NIRC
127	A	44357	CS MADHUR NIRMAL KABRA	WIRC
128	F	8019	CS JIGAR KAMLESH VYAS	WIRC
129	A	21454	CS ANUPAMA DIWAKAR PAI	WIRC
130	A	11782	CS NARESH KAPOOR	NIRC
131	A	22283	CS GREESHMA VINOD KERKAR	WIRC
132	A	26371	CS NEHA RAJENDRA BANKA	WIRC
133	A	20268	CS NIRAJ JAIN	NIRC
134	A	28138	CS PARIKSHIT PANT	NIRC
135	A	28911	CS PRABHJYOT KAUR	NIRC
136	A	23896	CS ANKEETA SAUSAN	NIRC
137	A	21746	CS VISHESH SINGHVI	NIRC
138	A	26061	CS AMOL ANIL PHADKE	WIRC
139	A	17666	CS RAKESH SHARMA	EIRC
140	A	21695	CS PUSHPA LATHA KATKURI	SIRC
141	A	41258	CS SWETA RAMESHKUMAR BAJAJ	WIRC
142	A	45733	CS BHAVISHA KAMLESHKUMAR KHAKHKHAR	WIRC
143	A	18826	CS SHEETAL SATEJ JAYWANT	SIRC
144	A	24740	CS SHRUTI SANTOSH KULKARNI	WIRC
145	A	24683	CS GURPREET SINGH	NIRC
146	A	24596	CS KANCHAN SINGH MEHTA	WIRC
147	A	22268	CS RIYA ROHIT SAWANT	WIRC
148	F	8296	CS NARESH GARG	NIRC
149	A	21960	CS SHAISHAV UDANI	WIRC
150	A	36118	CS GEETIKA KHANDELWAL	EIRC
151	F	8192	CS SHUBHAM AGARWAL	NIRC
152	A	26983	CS MANOHARBHAI BHARATBHAI CHUNARA	WIRC
153	A	35238	CS SATISH	NIRC
154	A	31901	CS MITTAL KEVIN SHAH	WIRC
155	A	39420	CS SRIKANTA MOHANTY	EIRC
156	A	43969	CS MANSI SRIVASTAVA	NIRC
157	A	34891	CS JINAL SHAILESH SHAH	WIRC
158	A	40512	CS KHUSHBOO PERIWAL	WIRC
159	F	6403	CS K SARINA CHOUTA	SIRC
160	A	44253	CS HIRAL RAMESHKUMAR AGARWAL	WIRC
161	A	43963	CS DEEPAL SHAH	WIRC
162	A	39038	CS POOJA UPADHYAY	NIRC
163	A	16094	CS SAMIR BHATLA	NIRC
164	A	40863	CS DEEPSHIKHA TOMAR	NIRC
165	F	1058	CS HARJINDER SINGH	WIRC
166	F	6946	CS AMUL URDHWARESHE	NIRC
167	F	2992	CS RAJENDRA KUMAR SALECHA	NIRC
168	F	6111	CS ANIL AGARWAL	NIRC
169	F	4183	CS L SRIDHAR	SIRC
170	A	3548	CS NAVIN CHANDRA J DESAI	SIRC
171	F	6719	CS NAVIN CHANDRA J DESAI	WIRC
172	A	10944	CS RABINDRA KUMAR SAHOO	EIRC
173	F	2400	CS EVELYN MATTHEW	WIRC
174	A	19522	CS RUPALI KAPAHI	NIRC
175	F	4673	CS BELA NAISHADH DESAI	WIRC
176	F	686	CS NAND LALL MANDHANA	WIRC
177	F	3714	CS RAJESH KUMAR MOONDRA	WIRC
178	F	1244	CS J G SHAH	WIRC
179	F	1215	CS I S SHAH	WIRC
180	F	1475	CS V SRIDHARA NAVADA	SIRC
181	F	1495	CS P UDAYKUMAR	SIRC
182	F	779	CS GURU RAJ DESAI	SIRC
183	A	16592	CS LALITHA M N KINI	SIRC
184	A	38955	CS GUNJAN GOYAL	NIRC
185	A	46422	CS PARMA JAIN	NIRC
186	A	41422	CS APOORVA ASHOK MANGRULKAR	WIRC
187	A	27700	CS ISHA KALRA	NIRC
188	A	38957	CS NANCY JAIN	NIRC
189	A	43270	CS PRIYANKA GUPTA	NIRC
190	A	15078	CS SWAPNA SHRIPAD DANI	WIRC
191	A	18273	CS SAMTA GOYAL	WIRC
192	A	25320	CS MAHALAKSHMI R	WIRC
193	A	22071	CS OMKAR NAGESH GAYATRI	SIRC
194	A	8068	CS SHYAM JAJOO	WIRC
195	A	45710	CS NEHA PRAKASH BOHRA	WIRC
196	A	31151	CS VINAY JOSHI	WIRC
197	A	36320	CS SHLOKA BHARAT PANCHOLI	WIRC
198	A	7022	CS VIJAY R KHETAN	WIRC
199	A	42908	CS GARIMA SHRIVASTAVA	WIRC
200	A	42332	CS SURBHI DAGA	EIRC
201	A	43952	CS NARENDER	NIRC
202	A	35996	CS MANALI NIKHIL VYAS	WIRC
203	A	31763	CS NEHA PANSARI	EIRC
204	A	38892	CS SARIKA THAKUR	WIRC
205	A	38826	CS SUNAYANA SHARMA	NIRC
206	A	39507	CS AVNI RAMPRAKASH KABRA	NIRC
207	A	12986	CS SATYAJIT M JOSHI	WIRC
208	A	32424	CS PRADEEP KUMAR	EIRC

209	A	40757	CS KARTHICK	SIRC
210	A	19281	CS RENU SHARMA	NIRC
211	F	8689	CS ULLASH CHANDRA PARIDA	WIRC
212	A	20282	CS RUCHITA VIREN GURJAR	WIRC
213	A	24668	CS RATAN KUMAR SINHA	EIRC
214	F	8158	CS MANJAY KUMAR	EIRC
215	A	8351	CS DEBASISH BANDOPADHYAY	EIRC
216	A	13173	CS D. RAGUNATHAN	SIRC
217	A	32988	CS ANKIT KIRITBHAI SHAH	WIRC
218	A	6915	CS S K SANTHANAM	SIRC
219	F	4653	CS SANJEEV JHA	NIRC
220	A	13200	CS SUDHAKAR H SHETTY	WIRC
221	A	27647	CS JATINDER PAL SINGH NARULA	NIRC
222	A	11681	CS GITA KUMAR	SIRC
223	A	41415	CS AVANI RAVI GANDHI	WIRC
224	A	15238	CS K. VELMURUGAN	SIRC
225	A	39668	CS SAPTARSHI BASU	WIRC
226	A	47747	CS SHRADDHA BANKESHBHAI SHAH	WIRC
227	A	33440	CS AJAY KUMAR GOEL	SIRC
228	A	36684	CS BOGHAM RAVIKUMAR VENKATARAMULOO	WIRC
229	A	43846	CS JESAL GIRISH MAKKAR	WIRC
230	A	42001	CS ROSHNI MANMAY PATHAK	WIRC
231	A	45543	CS DISHA RASIKBHAI MATALIYA	WIRC
232	A	41886	CS PRIYANKA NAGAR	WIRC
233	A	32473	CS PREETI CHAUHAN	NIRC
234	A	16232	CS A CHANDRASEKARAN	SIRC
235	A	35913	CS NEHA BANSAL	NIRC
236	A	37064	CS PRERANA ANCHALIA	SIRC
237	A	13158	CS AKASH KUMAR JAIN	WIRC
238	A	46172	CS NIKITA KANUBHAI GALA	WIRC
239	A	33013	CS AAKANSHA VAID	WIRC
240	A	19836	CS BHAVNA SINGH	NIRC
241	A	19371	CS AJITH JOHN	SIRC
242	A	28211	CS AKANSHA SINGHAL	NIRC
243	A	29063	CS ANKIT DIPAKBHAI PAREKH	WIRC
244	A	23942	CS DIPTI VIJAY SHARMA	WIRC
245	A	12740	CS RITU DHARIWAL	WIRC
246	A	34903	CS PREYASH HEMENDRA PAREKH	WIRC
247	A	18225	CS HARESH GAJWANI	WIRC
248	A	46442	CS PARMA JAIN	NIRC
249	A	44614	CS RUCHA GOKUL MULEY	WIRC
250	A	45997	CS FALGUNI DILIPBHAI SHAH	WIRC
251	A	18024	CS ASHISH JASORIA	NIRC
252	A	35389	CS JUHI GARG	NIRC
253	A	46985	CS K AKHILA RAJENDRA	SIRC
254	A	27424	CS SWAPNAL VISHAL PATANE	WIRC
255	A	47063	CS YOGINDRA YADAV	EIRC
256	A	34398	CS SAKSHI SAXENA	NIRC
257	A	46801	CS SHIBLEE SHABBIR KHAN	WIRC
258	A	44469	CS SHARANJOT KAUR CHAHAL	NIRC
259	A	18518	CS RAJEETA SHANTANU SAHASRABUDHE	WIRC
260	A	41232	CS RADHIKA RUNGTA	NIRC
261	A	42339	CS SURAJ SINGRODIA	NIRC
262	A	43751	CS AJAY D RANAWAT	NIRC
263	A	46602	CS SHIVANI KAMLESH SHAH	WIRC
264	A	9468	CS DEEPA PADMANABHAN	NIRC
265	A	29191	CS SONIA BAJPAI	NIRC
266	A	30110	CS ANUJ GARG	NIRC
267	A	45826	CS NITYA IRENE	SIRC
268	A	30296	CS DEEPALI SHARMA	WIRC
269	A	28907	CS NIDHI BAJAJ	WIRC
270	A	9790	CS SHYAM ARORA	NIRC
271	A	46611	CS JUGAL MUKESH BHAI VAZIR	WIRC
272	A	2871	CS H H BANDUKWALA	WIRC
273	A	41407	CS SWATI VINAYAK CHANDEKAR	WIRC
274	A	42746	CS SHASHANK CHHABRA	NIRC
275	A	21273	CS SUNIL JAGANNATH LAAD	WIRC
276	A	38458	CS NIKITA JAIN	NIRC
277	A	3329	CS MUNISH KUMAR	NIRC
278	A	35617	CS SWETA DUGGAR	NIRC

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF FEBRUARY 2018

SL. NO	NAME	ACS/FCS NO.	COP NO.	REGN
1	CS ANAND LAKHOTIA	ACS - 44367	18473	EIRC
2	CS KOMAL BHATIJA	ACS - 41003	17208	WIRC
3	CS RICHA SINGH	ACS - 50757	18923	SIRC
4	CS NIDHI BAGLIKAR	ACS- 40094	17419	NIRC
5	CS BHAIRAVI SANJIV JOCSI	ACS - 42473	15748	WIRC
6	CS KATTA SATYANARAYANA SWAPNA LATHA	ACS - 21341	15062	SIRC
7	CS ANAS ABDULHAI PATEL	ACS - 47470	17483	WIRC
8	CS HARCSIT GARG	ACS - 34673	18936	NIRC
9	CS POOJA JAIN	ACS - 27906	10119	NIRC
10	CS RICSABH JAIN	ACS - 33806	12562	NIRC
11	CS KARICSMA NITIN BHUSARI	ACS - 49429	18118	WIRC
12	CS PATTERSON THOMAS	ACS - 50598	19523	NIRC
13	CS CHETNA SOOD	ACS - 46503	17021	NIRC
14	CS VIDHI DINECS CSAMBWANI	ACS - 27315	16312	WIRC
15	CS LATIKA DATTARAJ KULKARNI	ACS - 27221	13393	WIRC
16	CS MANSEE MANICS CSAH	ACS - 22524	14315	WIRC
17	CS ANAND RAMECS PARAB	ACS - 43884	17492	WIRC
18	CS ANNIE GARODIA	ACS - 46017	18727	NIRC
19	CS GARGI NATH	ACS - 48190	17821	WIRC
20	CS KACSI NATH NEVATIA	FCS - 2839	10867	WIRC
21	CS RANENDU BHATTACHARJEE	FCS - 2639	9683	EIRC
22	CS SARVECS MATHUR	FCS - 6955	4046	NIRC
23	CS DEEPIKA KHATRI	ACS - 44602	18148	NIRC
24	CS VINEETA GOLCHHA	ACS - 22084	16346	WIRC
25	CS VAIBHAV NILECS JOCSI	ACS - 53815	19904	WIRC
26	CS SANDECSA	ACS - 45480	16665	SIRC
27	CS SRINIVASA SARMA RANI	ACS - 35478	18553	SIRC
28	CS RAMECS CHANDRA GUPTA	FCS - 542	11399	NIRC
29	CS SONALI AMIT PEDNEKAR	ACS - 25471	15897	WIRC
30	CS PAARTH DIWAN	ACS - 43664	16039	NIRC
31	CS KHUCSBOO JAIN	ACS - 50101	18863	NIRC
32	CS GURWINDER SINGH	ACS - 52827	19500	NIRC
33	CS AACSICS CSARMA	ACS - 51724	19025	NIRC
34	CS CHIRAG KALRA	ACS - 39800	15498	NIRC

35	CS VASISTA RAGHAVA PADMANNA GARI	ACS - 42155	19082	SIRC
36	CS ROHIT AGARWAL	FCS - 8469	20077	NIRC
37	CS AARTI ARORA	ACS - 18966	15874	NIRC
38	CS RICHA MUSKAN	ACS - 50386	19496	NIRC
39	CS AMIT KUMAR VERMA	ACS - 50175	18175	NIRC
40	CS ANURAG GOYAL	ACS - 49241	19053	NIRC
41	CS MEGHA TAYAL	ACS - 49301	18584	NIRC
42	CS MADHURA CSRIKANT MULEY	ACS - 46947	17273	WIRC
43	CS DIMPAL JIGNECS SOLANKI	ACS - 37325	17251	WIRC
44	CS PRITHA BOSE	ACS - 47762	17878	EIRC
45	CS ARADHANA TIWARY	ACS - 47510	18860	EIRC
46	CS N A HARICS KUMAR	ACS - 9107	19785	SIRC
47	CS SONAM AGARWAL	ACS - 41973	16246	EIRC
48	CS MEGHANA EKANATH KACSTE	ACS - 31495	17301	WIRC
49	CS CSREYA MANGAL	ACS - 44765	18677	SIRC
50	CS MANSIJ ARYA	ACS - 22505	17829	NIRC
51	CS JYOTI LEKHWANI	ACS - 43571	16305	NIRC
52	CS PARUL JAIN	ACS - 50066	18376	NIRC
53	CS DHARM PAL	ACS - 52097	19690	WIRC
54	CS NIDHI SURECS PAREKH	ACS - 33839	17262	WIRC
55	CS JAGRITI AGGARWAL	ACS - 45455	17122	NIRC

ATTENTION MEMBERS

The CD containing List of Members of ICSI as on 1st April, 2017 is available in the Institute on payment of Rs. 280/-* for members and Rs. 560/-* for non-members (*including GST@12%). Request along with payment may please be sent to Joint Secretary, Directorate of Membership, ICSI House, C-36, Sector-62, Noida-201309. For queries if any, please contact on telephone no: 0120-4082133 or at email id rajeshwar.singh@icsi.edu

ATTENTION MEMBERS

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link http://www.icsi.edu/Member.aspx

Know Your Member (KYM)

A User Manual for filling the Know Your Member (KYM) proforma online is available at the below link: https://www.icsi.in/student/Portals/0/Manual/KYM_Usermanual.pdf

PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2018-2019

The annual membership fee and certificate of practice fee for the year 2018-2019 has become due for payment w.e.f. 1st April, 2018. The last date for the payment of fee is 30th June, 2018.

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

Particulars	**Associate (admitted till 31.03.2015)**	**Associate (admitted on or after 01.04.2015)**	**Fellow**
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Entrance fee *	Rs. 2360	Rs. 2360	Rs. 2360
Restoration fee*	Rs. 295	Rs. 295	Rs. 295
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360

* Fee inclusive of applicable GST@18%.

A member who is of the age of sixty years or above and is not in any gainful employment or practice can claim 50% concession in the payment of Associate/Fellow Annual Membership fee and a member who is of the age of seventy years or above and is not in any gainful employment or practice can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration to that effect. Please note the members possessing the Certificate of Practice can not avail the benefit of concession in annual membership fee.

The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute www.icsi.edu

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of:

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

For queries, if any, the members may please write to Mr. Jitendra Kumar, Executive Assistant at email id jitendra.kumar@icsi.edu

COUNCIL / REGIONAL COUNCILS ELECTIONS – 2018

UPLOADING OF PHOTOGRAPH AND SIGNATURE ON THE PORTAL OF THE INSTITUTE

The term of the existing Council and the Regional Councils will expire on 18th January 2019 and the elections for the new Council / Regional Councils will be held during the month of December 2018. In accordance with Rule 5 of the Company Secretaries (Election to the Council) Rules, 2006, a member, whose name is borne on the Register of Members on the 1st day of April 2018 shall be eligible to vote in the election from the Regional constituencies within whose territorial jurisdiction his/her professional address falls on the said date, provided that his/her name has not been removed from the Register on the date of publication of the list of voters. If the professional address is not borne on the Register on the relevant date, the residential address borne on the Register shall be determining his/her Regional constituency. In the case of members having their professional address outside India and eligible to vote, their Regional Constituencies shall be determined according to their professional addresses in India registered immediately before they went abroad or the residential addresses in India borne on the Register on the relevant date, whichever is later.

The members who have not yet applied for the issue of the identity cards may apply for the same at kedar.singh@icsi.edu

Members should also ensure that their scanned photograph and signature in .jpg format are uploaded on the online portal of the Institute.

Online Steps for Uploading of photo image:

- Login to portal www.icsi.edu
- Click Online services on the right top corner and then click Member Login
- Fill the User name which is the membership number (e.g. A1234) and then the Password.
  (In case a member does not have/remember his/her password, he/she can get the password by clicking on to the Retrieve option. The password will be sent to his/her email registered with the Institute. Alternately, he/she may email at jitendra.kumar@icsi.edu from his/her email registered with the Institute to get the password on the said email id)
- After login, go to Members Option (from top menu) then click on Manage Account and then click on Manage Image
- Then upload Photo (passport size) and Signature and click on Upload button

In case members face any problem in uploading, they may send their scanned photo / signature in .jpg format at the email id – meena.bisht@icsi.edu

(Dinesh Chandra Arora)
Secretary, ICSI

PAYMENT OF ANNUAL LICENTIATE SUBSCRIPTION FOR THE YEAR 2018-2019

The annual Licentiate subscription for the year 2018-2019 has become due for payment w.e.f 1st April, 2018. The last date for the payment of same is 30th June, 2018. The Licentiate subscription payable is Rs.1180/- per year inclusive of applicable GST@18%.

You are requested to remit at the Institute's Headquarters or Regional/ Chapter offices a sum of Rs.1180/- by way of Demand Draft payable at New Delhi or Cheque at par drawn in favour of "The Institute of Company Secretaries of India" indicating your name and Licentiate number on the reverse of the Demand Draft/ Cheque. The details of remittance may please be intimated at email id licentiate@icsi.edu

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MISCELLANEOUS CORNER

- ETHICS & SUSTAINABILITY CORNER
- THE STANDING AND NON-STANDING COMMITTEES OF THE COUNCIL/BOARDS - 2018
- ANNOUNCEMENT : QUALITY REVIEW BOARD OF ICSI INVITES APPLICATIONS FOR EMPANELMENT OF "QUALITY REVIEWERS"
- ICSI INVITES APPLICATIONS FOR EMPANELMENT AS EDITORS / TRANSLATORS IN ENGLISH, HINDI AND OTHER REGIONAL LANGUAGES
- GST CORNER
- CAREER OPPORTUNITIES : ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS
- C G CORNER
- 46TH NATIONAL CONVENTION OF COMPANY SECRETARIES

Building Transparency through Rajyoga Meditation

Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

bkashaorc@gmail.com

All organizations want happy employees. And the one of the most effective and successful ways to keep employees happy is to bring transparency at the workplace. Most experts agree that transparency is one of the most important elements of a harmonious and efficient workplace and relationships. The simplest definition of a transparent workplace is operating in a way that creates openness between managers or administrators and employees. This openness is further based on the trust laid in the minds of the leadership, by the employees. Thus, trust and transparency go hand in hand. Organizations that have high levels of trust and transparency within the people, are more successful than those that don't. Scottish author and poet George Macdonald said that "to be trusted is a greater compliment than being loved".

One of the most common ways trust gets destroyed between people within an organization is, when either the administration or the employees fail to communicate. You hear many stories of employees who thought something was one way within their organization only to find out later that it was not. Also, sometimes it is seen that people, for their personal benefit or to remain safe from a controversy, can create stories which may even diminish the image of someone else. When the truth is revealed, the trust upon the person who cooked up the story, is lost, sometimes forever.

Most experts agree that transparency is one of the most important elements of a harmonious and efficient workplace and relationships.

Achieving a culture of open, honest communication and rock-solid trust amongst team players at every level is absolutely critical to the future success of your organization. In a system, one needs to recognize that being transparent is not something one can switch on and off. One needs to shift one's own mindset about transparency, i.e. What does it mean to you and why it is important to you; the answers will help guide you as you build your collaborative team.

Transparency is an ongoing process that can have ongoing results. Open floor plans, monthly staff meetings, and detailed reports do not equate to transparency. Transparency is nothing new, but there has never been a time when it's been more important in the workplace than now. According to a survey of more than 1500 U.S. workers, a full quarter of employees do not trust their employer. What's more, the survey also found that only about half believe their employer is open and upfront with them. Many workplaces are still failing at transparency leading to many complications at every level of work. Instead of communicating openly and sharing widely they are working in their own cocoons.

when people don't understand what is happening around them, rumors are easily fabricated. Thus, transparency rules out the chances of gossips which are unhealthy for the growth of the organization.

There are certain obvious reasons and benefits of implementing workplace transparency.

- **Transparency leads to flow of coherent information:**
  Transparency and culture of trust is not only desirable but is absolutely necessary. Without transparency, it is easy for the wrong information to be circulated. For example, imagine your company is in the midst of a merger and acquisition. Sure, there may be a lot of unknown variables and uncertainty, but there is also likely a lot of information that could and should potentially be shared. Scenarios like these can cause great stress and anguish for employees. And when people don't understand what is happening around them, rumors are easily fabricated. Thus, transparency rules out the chances of gossips which are unhealthy for the growth of the organization.

- **Transparency leads to better performance:**
  Employees working in an organization, can know their role better and can position themselves better in the big picture, if the system is transparent enough. This will help them understand the seriousness and importance of their role in the organization, no matter how big or trivial it is. In fact, the result of the performance and an open feedback, whether positive or negative, when shared with the team, results in clarity of what was appreciated and what was not. This clarity, certainly, will impact their next effort making process in which the feedback and strengths will be auto-implemented. In addition to this, it will also enhance the self- esteem of the team players.

Employees working in an organization, can know their role better and can position themselves better in the big picture, if the system is transparent enough. This will help them understand the seriousness and importance of their role in the organization, no matter how big or trivial it is.

A recent study from Harvard Business School took a look at the concept of transparency in a restaurant setting where the cooks and customers could literally see each other during the food prep and dining experience. The results showed a striking improvement of 17 percent in

If things are made clear in the beginning, it would lead to better understanding, giving rise to acceptance of the other person as they were no more ignorant. And no matter what the matter is, more important than that is our intension behind the relationship, which is pure.

when allocation of task is transparent, each one can focus on their own work, which results in increased productivity for the organization.

in a transparent system, chances of errors are reduced as the objective, procedure and the tools used for any task, are transparent. The error can be caught before it is made

transparency doesn't mean to share the confidential matters with those who are not concerned with it. But when we are transparent in admitting our mistakes and sharing our problems to those who are reliable or come inside the circle of effect of that mistake or problem, we can divert our energy from hiding the mistakes, to finding the solutions together.

customer satisfaction and 13 percent faster service when customers and cooks can see each other. This is a fascinating look at the power of transparency, and it indicates that customers are happier when they feel they've been made part of the process.

Also, employees who are kept in the loop and understand their role in the overarching purpose, vision and goals of the company are, understandably, more likely to put their trust in their employer.

- **Transparency leads to better relationships:**
  Ever pondered what could be the reason of breaking of relationships with a rate much greater than ever before? It is not merely non-adaptability or difference of personality/ taste/ choices nor is it the intolerance of an individual towards the feelings, emotions and actions of the other. But the root of all this lies in lack of transparency.

  When it comes to building solid relationships, trust and transparency take the center stage. As when we are not transparent in a relationship, we are hiding something from the person we are related to and are always living on the edge of the relationship. It could be something about ourselves, or of our past, or something related to our habits, emotions, opinions, likings. This refrains us from being who we truly are and enjoying our relationships as there is always a risk of the truth being revealed. And this sudden revelation, which has to happen someday, is sometimes the end to the story.

If things are made clear in the beginning, it would lead to better understanding, giving rise to acceptance of the other person as they were no more ignorant. And no matter what the matter is, more important than that is our intension behind the relationship, which is pure.

For instance, if you have purchased grocery item of Rs. 700 but shopkeeper tells you that if you purchase total of Rs. 1000, then you will get a gift. You purchase things not so required, of Rs. 300 more. After billing and payment, the shopkeeper gives you a small toy of Rs. 10 which you don't need at all. How do you feel? Would you ever go back to that store or believe in any further 'offers' that the store claims to have for you? Will you recommend that store to your friends? This is how lack of transparency can lead to building up of expectations, and not meeting them can lead to crash of relationships, sometimes even before they are properly build-up.

The same is the case in organizations, where we spend most of our productive hours. The office is more than a place that employees go to earn their salaries. Relationships within employees and between employees and employers are essential in creating an efficient and successful business. For these relationships to flourish, there needs to be some degree of trust and transparency. Any effect on our professional relationship surely impacts our state of mind which is reflected in our personal life and visa-versa.

- **Transparency avoids duplicity and errors:**
  In a system where everyone knows what the other person is doing, there is no confusion in anyone's role and each one does what they are supposed to do. This avoids any overlap and duplicity. Otherwise, if more than one person ends up doing the same task, it will be wastage of time and resources for the organization and can also lead to a state of redundancy. So, when allocation of task is transparent, each one can focus on their own work, which results in increased productivity for the organization.

  Moreover, in a transparent system, chances of errors are reduced as the objective, procedure and the tools used for any task, are transparent. So, the error can be caught before it is made. This can also enhance learning of the person who was working on it and also for others who were made aware of the potential error in the procedure or tool used to accomplish the task, so that they don't encounter it the next time when they have to do the same task using the same procedures and tools.

- **Transparency leads to better solutions:**
  Here, transparency doesn't mean to share the confidential matters with those who are not concerned with it. But when we are transparent in admitting our mistakes and sharing our problems to those who are reliable or come inside the circle of effect of that mistake or problem, we can divert our energy from hiding the mistakes, to finding the solutions together. As a result, problems are solved faster.

  American writer Patrick Lencioni says, "Clients don't expect perfection from the service

providers they hire, but they do expect honesty and transparency. There is no better way to demonstrate this than by acknowledging when a mistake has been made and humbly apologizing for it".

- **Transparency leads to better engagement:**
  A culture that values transparency in the workplace breeds engaged employees. When everyone feels being involved in the progress of the organization and are involved in the decision- making process, in the way they can be, they know what decisions have been taken and why. In such a case, they feel more motivated to abide by the decisions as they feel that they have a share in the decision that has been taken and are responsible and accountable towards it.

  In fact, Harvard Business Review's 2013 employee engagement survey revealed that 70 percent of those surveyed say they're most engaged when senior leadership continually updates and communicates company strategy. While it can be difficult to reveal you had a bad quarter financially, keeping employees in the know every step of the way maintains confidence in your leadership and company. It can be particularly important during periods of high growth or financial struggle.

Building Transparency through Rajyog Meditation

Sometimes we are not transparent with others or in whatever we do as we don't want to reveal what we see in ourselves or what we do in order to achieve happiness or satisfaction or a sense of achievement/ fulfillment. But, if we come to know that we are not what we think ourselves to be at present, the fear of revelation won't haunt us anymore. At present we see ourselves as a sum total of our achievements and shortcomings, success and failures, strengths and weaknesses, and more often we see ourselves as what others perceive of me! If we come to know ourselves by removing the layers of weakness from within and identify the self as we truly are, there will be nothing to hide and transparency will be the normal code of conduct. Moreover, I can understand my mistakes and weaknesses as a deviation from the normal behavior, which was due to the lack of knowledge what the normal behavior is!

Here, Rajyoga Meditation has an important role to play:

Meditation comes from the Latin word- Mederi which means to heal. Anything is said to be healed, when it comes back to its original and normal state. Thus, in order to heal the self through Meditation, one must have the knowledge of one's original and natural / normal state. Gaining this knowledge about the original self and achieving back the original and normal state is collectively known as Rajyoga Meditation.

Rajyoga Meditation is the experience of healing the inner self through knowledge, silence and practise. Through the technique of meditation, one would be able to go within and connect with their inner self to achieve a state of self-worth and recognition of one's own value. By practicing meditation our eyes open to a totally new world, a world inside. When we re-discover our inner beauty, we are also able to acknowledge the fact that others too are as beautiful and pure as me. Moreover, we can also understand why others are not being transparent with me, probably because they are still under the perception of their 'imperfect self'. Thus, Rajyoga Meditation not only allows us to be transparent but also breeds acceptance for others, leading to development of patience, tolerance, humility etc. Thereafter, we don't try to force or change reality to fit our vision or bemoan the unfairness of life. Instead, we try to see things the way they exist.

When everyone feels being involved in the progress of the organization and are involved in the decision-making process, in the way they can be, they know what decisions have been taken and why. In such a case, they feel more motivated to abide by the decisions as they feel that they have a share in the decision that has been taken and are responsible and accountable towards it.

Sometimes we are not transparent with others or in whatever we do as we don't want to reveal what we see in ourselves or what we do in order to achieve happiness or satisfaction or a sense of achievement/ fulfillment. But, if we come to know that we are not what we think ourselves to be at present, the fear of revelation won't haunt us anymore.

THE STANDING AND NON-STANDING COMMITTEES OF THE COUNCIL/BOARDS - 2018

S. No.	Name	Chairman/Member
1.	**Executive Committee**	
1.	Makarand Lele	Chairman
2.	Ahalada Rao V	Member
3.	Shyam Agrawal (Dr.)	Member
4.	Amardeep Singh Bhatia	Member (Govt. Nominee)
5.	Ashish C Doshi	Member
6.	C Ramasubramaniam	Member
7.	Vineet K Chaudhary	Member
2.	**Finance Committee**	
1.	Makarand Lele	Chairman
2.	Ahalada Rao V	Member
3.	Atul H Mehta	Member
4.	Mahavir Lunawat	Member
5.	Mamta Binani (Ms.)	Member
6.	Satwinder Singh	Member
7.	Yamal A Vyas	Member (Govt. Nominee)
3.	**Examination Committee**	
1.	Makarand Lele	Chairman
2.	Ahalada Rao V	Member
3.	C Ramasubramaniam	Member
4.	Gopal Krishna Agarwal	Member (Govt. Nominee)
5.	Gopalakrishna Hegde	Member
6.	Ranjeet Kumar Pandey	Member
7.	Santosh Kumar Agrawala	Member
4.	**Financial Services Committee**	
1.	Mahavir Lunawat	Chairman
2.	Atul H Mehta	Member
3.	Ashish C Doshi	Member
4.	Ashish Garg	Member
5.	C Ramasubramaniam	Member
6.	Gopalakrishna Hegde	Member
7.	Satwinder Singh	Member
5.	**Corporate Laws and Governance Committee**	
1.	Ahalada Rao V	Chairman
2.	Ashish Garg	Member
3.	Atul H Mehta	Member
4.	Gopalakrishna Hegde	Member
5.	Mahavir Lunawat	Member
6.	Mamta Binani (Ms.)	Member
7.	Ranjeet Kumar Pandey	Member
8	Vineet K Chaudhary	Member
6.	**Professional Development Committee**	
1.	Makarand Lele	Chairman
2.	Shyam Agrawal (Dr.)	Member
3.	Gopal Krishna Agarwal	Member (Govt. Nominee)
4.	Atul H Mehta	Member
5.	Gopalakrishna Hegde	Member
6.	Mahavir Lunawat	Member
7.	Rajiv Bajaj	Member
8.	Satwinder Singh	Member
9.	Santosh Kumar Agrawala	Member
10.	Vijay Kumar Jhalani	Member (Govt. Nominee)
7.	**Training & Educational Facilities Committee**	
1.	Ahalada Rao V	Chairman
2.	Amardeep Singh Bhatia	Member (Govt. Nominee)
3.	Ashish C Doshi	Member
4.	Ashish Garg	Member
5.	C Ramasubramaniam	Member
6.	Mamta Binani (Ms.)	Member
7.	Rajesh Sharma	Member (Govt. Nominee)
8.	Ranjeet Kumar Pandey	Member
9.	Vineet K Chaudhary	Member
10.	Yamal A Vyas	Member (Govt. Nominee)
8.	**Practising Company Secretaries Committee**	
1.	Vineet K Chaudhary	Chairman
2.	Ashish C Doshi	Member
3.	Ashish Garg	Member
4.	C Ramasubramaniam	Member
5.	Mamta Binani (Ms.)	Member
6.	Ranjeet Kumar Pandey	Member
7.	Santosh Kumar Agrawala	Member
9.	**Information Technology Committee**	
1.	Rajiv Bajaj	Chairman
2.	Atul H Mehta	Member
3.	C Ramasubramaniam	Member
4.	Mahavir Lunawat	Member
5.	Mamta Binani (Ms.)	Member
6.	Rajesh Sharma	Member (Govt. Nominee)
7.	Satwinder Singh	Member
10.	**Peer Review Board**	
1.	Ahalada Rao V	Chairman
2.	Gopalakrishna Hegde	Vice-Chairman
3.	Ashish Garg	Member
4.	Santosh Kumar Agrawala	Member
5.	Rajiv Bajaj	Member
6.	Satwinder Singh	Member
7.	Anil Murarka	Member
8.	Ashok Tyagi	Member
9.	Milind B Kasodekar	Member
10.	Savithri Parekh (Ms.)	Member
11.	Sudhir Babu C	Member
11.	**Placement Committee**	
1.	Ashish Garg	Chairman
2.	Atul H Mehta	Member
3.	Gopalakrishna Hegde	Member
4.	Mahavir Lunawat	Member
5.	Rajiv Bajaj	Member
6.	Santosh Kumar Agrawala	Member
12.	**PMQ Course Committee**	
1.	Ashish Garg	Chairman
2.	Ranjeet Kumar Pandey	Member
3.	Gopalakrishna Hegde	Member
4.	Mahavir Lunawat	Member
5.	Mamta Binani (Ms)	Member
6.	Satwinder Singh	Member
7.	Vineet K Chaudhary	Member
13.	**ICSI-CCGRT Management Committee**	
1.	Ashish C Doshi	Chairman
2.	C Ramasubramaniam	Member
3.	Vineet K Chaudhary	Member

4.	Yamal A Vyas	Member (Govt. Nominee)
5.	Dipti Mehta (Ms.)	Member
6.	V R Narasimhan (Dr.)	Member
7.	Milind B. Kasodekar	Member
8.	Rahul Sahasrabuddhe	Member
9.	Kaushik Jhaveri	Member
10.	Om Prakash Bagdia	Member
11.	Vivek Sadhale	Member
14.	**Research Committee**	
1.	C Ramasubramaniam	Chairman
2.	Shyam Agrawal (Dr.)	Member
3.	Atul H Mehta	Member
4.	Ashish C Doshi	Member
5.	Ashish Garg	Member
6.	Gopal Krishna Agarwal	Member (Govt. Nominee)
7.	Mahavir Lunawat	Member
8.	Rajiv Bajaj	Member
9.	Ranjeet Kumar Pandey	Member
15.	**Election Reforms Committee**	
1.	Satwinder Singh	Chairman
2.	Atul H Mehta	Member
3.	Ashish Garg	Member
4.	C Ramasubramaniam	Member
5.	Gopalakrishna Hegde	Member
6.	Rajesh Sharma	Member (Govt. Nominee)
7.	Santosh Kumar Agrawala	Member
8.	Vineet K Chaudhary	Member
16.	**Disciplinary Committee**	
1.	Makarand Lele	Presiding Officer
2.	Ashish C Doshi	Member
3.	Santosh Kumar Agrawala	Member
4.	Nalin Kohli	Member (Govt. Nominee)
5.	Meenakshi Dutta Ghosh (Ms.)	Member (Govt. Nominee)
17.	**Board of Discipline**	
1.	Atul H Mehta	Presiding Officer
2.	C Ramasubramaniam	Member
3.	Dinesh C Arora	Member
18.	**Quality Review Board**	
1.	Kiran Oberoi Vasudev (Ms.)	Chairperson
2.	Vithayathil Kurian	Member
3.	Ilam Kamboj	Member
4.	Ashish Kumar Kushwaha	Member
5.	Vineet K Chaudhary	Member
19.	**Syllabus Review Board**	
1.	C Ramasubramaniam	Chairman
2.	Shyam Agrawal (Dr.)	Member
3.	Atul H Mehta	Member
4.	Ashish C Doshi	Member
5.	Mahavir Lunawat	Member
6.	Ranjeet Kumar Pandey	Member
7.	Yamal A Vyas	Member (Govt. Nominee)
20.	**Regulations and Chapter Guidelines Reforms Committee**	
1.	Ranjeet Kumar Pandey	Chairman
2.	Satwinder Singh	Member
3.	Shyam Agrawal (Dr.)	Member
4.	Gopalakrishna Hegde	Member
5.	Santosh Kumar Agrawala	Member
6.	Vijay Kumar Jhalani	Member (Govt. Nominee)
7.	Vineet K Chaudhary	Member
21.	**Editorial Advisory Board**	
1.	Santosh Kumar Agrawala	Chairman
2.	Gopal Krishna Agarwal	Member (Govt. Nominee)
3.	K Narayana Swamy	Member
4.	Sivakumar P	Member
5.	Ram Moorthy	Member
6.	Ravi Kumar Mandavilli	Member
7.	D K Jain (Dr.)	Member
8.	G R Bhatia	Member
9.	Gopal Jiwarajka	Member
10.	H M Choraria	Member
11.	J K Mittal	Member
12.	N K Jain	Member
13.	P K Mittal	Member
14.	Pritivi Haldea	Member
15.	Vinod Kumar Singhania (Dr.)	Member
16.	R C Gupta	Member
22.	**Brand Promotion Committee**	
1.	Ahalada Rao V	Chairman
2.	Atul H Mehta	Member
3.	Ranjeet Kumar Pandey	Member
23.	**International Affairs Committee**	
1.	Atul H Mehta	Chairman
2.	Satwinder Singh	Member
3.	Shyam Agrawal (Dr.)	Member
4.	Vijay Kumar Jhalani	Member (Govt. Nominee)
5.	Vineet K Chaudhary	Member
24.	**Core Group on Vision 2022**	
1.	Pavan Kumar Vijay	Chairman
2.	Ranjeet Kumar Pandey	Member
3.	Shyam Agrawal (Dr.)	Member
4.	Pradeep Ramakrishanan	Member
5.	N K Jain	Member
6.	Savithri Parekh (Ms.)	Member
7.	Amit Gupta	Member
8.	Devopam Bajpai	Member
9.	Ashok Haldia (Dr.)	Member
10.	S Sudhakar	Member
11.	K S Ravichandran (Dr.)	Member
12.	V. R. Narasimhan (Dr.)	Member
13.	Kiran Chitale	Member
14.	Gaurav Pingle	Member
15.	Geetika Anand (Ms.)	Member
Ex-officio		
16.	Makarand Lele	President, ICSI
17.	Ahalada Rao V	Vice President, ICSI
25.	**Auditing Standards Board**	
1.	Vineet K Chaudhary	Chairman
2.	Amit Gupta	Member
3.	AmoghDiwan	Member
4.	Anshul Kumar Jain	Member
5.	Ashok Tyagi	Member
6.	AvinashKharkar	Member
7.	Biman Deb Nath	Member
8.	Deepak Kukreja	Member

9.	Jitesh Gupta	Member
10.	Khushrao Bulsara	Member
11.	Makarand Joshi	Member
12.	Manoj Rajaram Hurkat	Member
13.	Munish Kumar Sharma	Member
14.	Pracheta M (Ms.)	Member
15.	P.K. Krishnamurthy	Member
16.	Ravi Sharma	Member
17.	Rupesh Agarwal	Member
18.	Sachin Agarwal	Member
19.	Soy Joseph	Member
20.	Shilpa Dixit (Ms.)	Member
21.	Siddhartha Murarka	Member
22.	Timir Baran Chatterjee	Member
23.	Vidya Joglekar (Ms.)	Member
Ex-Officio		
24.	Makarand Lele	President, ICSI
25.	Ahalada Rao V	Vice President, ICSI

26.	**Secretarial Standards Board**	
1.	Pavan Kumar Vijay	Chairman
2.	Anil Kumar Murarka	Member
3.	Amit Gupta	Member
4.	B. Shanmugasundaram	Member
5.	Dipti Mehta (Ms.)	Member
6.	Geetika Anand (Ms.)	Member
7.	G. P. Madaan	Member
8.	J. N. Gupta	Member
9.	Milind B. Kasodekar	Member
10.	N. Hariharan	Member
11.	Narayan Shankar	Member
12.	Rajendra Singhi	Member
13.	Ranjeet Kumar Pandey	Member
14.	Rajiv Bajaj	Member
15.	S C Vasudeva	Member
16.	S. H. Rajadhyaksha	Member
17.	S. Sudhakar	Member
18.	Savithri Parekh (Ms.)	Member
19.	Subhash C Setia	Member
20.	Suresh Krishnan	Member
21.	Sanjiv Agarwal	Member
22.	Shujath Bin Ali	Member
23.	Representative of MCA	Member
24.	Pradeep Ramakrishnan	Representative of SEBI
25.	Sunil Kumar	Representative of IBBI
26.	Manoranjan Mishra	Representative of RBI
27.	Avinash Kharkar	Representative of NSE
28.	Prajakta Powle (Ms.)	Representative of BSE
29.	Sanjay Grover	Representative of ASSOCHAM
30.	Pramod Kumar Rai	Representative of FICCI
31.	Prashant Chokshi	Representative of CII
32	Abhi Narayan Mishra	Representative of PHDCCI
33.	Debashis Mitra (Dr.)	Representative of ICAI
34.	Amit Anand Apte	Representative of ICAI-Cost

27.	**Expert Advisory Board**	
1.	Gopalakrishna Hegde	Chairman
2.	K K Rao	Member
3.	S. Chandrasekaran (Dr.)	Member
4.	S D Israni (Dr.)	Member
5.	Rajeev Kumar	Member
6.	Jitesh Gupta	Member
7.	U K Chaudhary	Member
8.	Prem Kumar Malhotra	Member
9.	Anupam Garg	Member
10.	K R Radhakrishnan	Member
11.	Gajendra P Singh	Member
12.	K Sethuraman	Member
13.	J Sridhar	Member
14	S V Deulkar	Member
15.	Manoj Sonawala	Member
16.	Prakash R.	Member
17.	Jyoti Vij (Ms.)	Representative of FICCI
18.	R J Joshi	Member
19.	D Hanumantha Raju	Member
20.	Nominee of CII	Member
21.	Nominee of ASSOCHAM	Member

28.	**Core Group - ICSI Corporate Law Publications**	
1.	Amit Gupta	Chairman
2.	Karthick Varadarajan	Co-Chairman
3.	Aashish Jain	Member
4.	Anjali Gorsia	Member
5.	Anshu Agarwal	Member
6.	Anshul Kumar Jain	Member
7.	Arun Kamalolbhavan	Member
8.	Devesh Kumar Vasisht	Member
9.	Divanshu Mittal	Member
10.	Divesh Goyal	Member
11.	G Sriram	Member
12.	Hari Surya	Member
13.	Henry Richard	Member
14.	Jigarkumar Gandhi	Member
15.	Jitendra Ahlawat	Member
16.	Krish Narayanan	Member
17.	Krishna Sharan Mishra	Member
18.	Mahadev Tirunagari	Member
19.	Midhuna KC	Member
20.	Pramod S. M.	Member
21.	Rahul Sahasrabuddhe	Member
22.	Rajavolu Venkata Ramana	Member
23.	Rajendra Patil	Member
24.	Roshan Ramesh Raikar	Member
25.	S Chidambaram	Member
26.	S.C. Sharada	Member
27.	Sandeep Kumar S.	Member
28.	Sujay Pramod Joshi	Member
29.	Thirupal Gorige	Member
30.	Tushar Tendulkar	Member

Vision
"To be a global leader in promoting good corporate governance"

Motto
सत्यं वद। धर्मं चर। speak the truth. abide by the law.

Mission
"To develop high calibre professionals facilitating good corporate governance"

Connect with ICSI https://www.facebook.com/ICSI https://twitter.com/ICSI_CS https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-a5899a102/

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ANNOUNCEMENT

Quality Review Board of ICSI invites applications for Empanelment of "Quality Reviewers"

The Ministry of Corporate Affairs has constituted the Quality Review Board of ICSI to make recommendations to the Council with regard to the quality of services provided by the members of the Institute; to review the quality of services provided by the members of the Institute including secretarial services; and to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

With a view to carry out the abovementioned functions, the Quality Review Board contemplates to avail the services of senior members of the profession to assess the quality of services being rendered by Company Secretaries both in practice and in employment.

Revised Eligibility criterion for Quality Reviewers-

A Quality Reviewer shall fulfil the criteria mentioned in para I or para II:-

I. An individual desiring to be empanelled:
   a) Be a Fellow member of ICSI; and
   b) Possess at least fifteen years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company; and
   c) Not be less than 40 years of age; and
   d) Be currently in practice of the profession of company secretaries."

II. An individual desiring to be empanelled
a) Empanelled Peer Reviewers who has completed minimum 2 assignments of Peer Review

Provided that the term of Quality Reviewer shall be three years subject to maximum six (6) months from the date of surrender of Certificate of Practice.

The Quality Review Board shall pay to the Quality Reviewer a consolidated fee of Rs. 25,000/- per quality review assignment to cover the cost of travel, local transport, accommodation and food, taxes, communications, printing, cost of submission of report etc. subject to submission of Final Report to the satisfaction of the Board.

Interested persons may kindly apply in the format available at https://goo.gl/TJQVsd and send it to Director, Professional Development, Perspective Planning & Studies, The Institute of Company Secretaries of India, C-36, Sector-62, Noida-201 309.

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
www.icsi.edu

PD, PP&S/BM/14 April 09, 2018

Dear Student,

Hon'ble Prime Minister, Shri Narendra Modi while inaugurating Golden Jubilee Year Celebrations, addressed the CS fraternity and conveyed the need of the hour for the Company Secretaries to play an active role in producing a new business culture. Shri Narendra Modi shared that nearly 19 lakh new citizens have come under the scope of indirect taxes following the implementation of GST. He emphasized that a small trader or a big trader, everyone should adopt the honest tax system inbuilt in the GST and it was also the duty of, Company Secretaries to encourage the business community in this regard. The Prime Minister asked the ICSI to take the responsibility to train one lakh youth about small-small things related to GST so that they can help small businesses and traders in their area linking them with GSTN, in filing returns after receiving a short term training.

The Institute has taken up this opportunity endowed by the Hon'ble Prime Minister. Consequently, the Institute joined hands with National Skill Development Corporation (NSDC) to organize a Training Program on GST for our students. The Institute is inviting its interested students for taking up this Training Programme being organized all across the nation through the NSDC.

GST Accounts Assistant

The Course trains candidates for the job of a "Goods & Services Tax (GST) Accounts Assistant", in the "BFSI" Sector/Industry and aims at building the key competencies amongst the learners about GST. With access to around 500 Training Centre, the course will be accessible across India. The course will enable the students to help the small/big size business entities, traders and others in understanding GST and help them in filing there taxes and maintaining the proper systems/data for the same. This will open a source of earning for the students.

Deliverables:

- Compute Tax Liabilities namely GST, Filing of returns and maintaining records of the same for audit purpose
- Fill the form and register under GST
- Make payment electronically of such amount of tax liability
- Fill-up the tax return form in the prescribed format with relevant transaction details.
- File periodic GST Returns independently

The Course detail is attached to this mailer. The interested students may confirm their willingness for the GST Course by filling up the form at: https://www.icsi.edu/GST_AAC.aspx latest by April 30, 2018.

For more information please speak to the following helpline number: 88000-55555 (NSDC) (Toll-free)
We look forward to your active participation to enhance your skills and get benefitted from the same.

Best Regards
CS Makarand Lele

ICSI invites applications for Empanelment as Editors / Translators in English, Hindi and other regional languages

The Institute of Company Secretaries of India regularly brings out publications of relevance to corporates, professionals and students of the Company Secretaryship course. This is with a view to cater to its various stakeholders across the country, the Institute invites applications from the eligible and willing persons having experience in editing / translation of books / study materials / monographs or research papers for preparing a panel of Editors / Translators, in English, Hindi and other regional languages of the country.

The applications in prescribed pro forma (Annexure-1) should reach the Director (Professional Development, Perspective Planning and Studies) by 15th of May 2018 (5.30 P.M.).

Qualifications and Experience required for Editors/Translators

(i) Degree in any discipline from a recognized University or equivalent, members of The Institute of Company Secretaries of India OR The Institute of Chartered Accountants of India OR The Institute of Cost Accountants of India.

(ii) The Candidate should have studied Hindi/English/Regional Language concerned up to 12th standard. The candidate should have thorough knowledge and experience of Editing/Translating books, journals, study materials, etc. In the language he/she has applied for, supported by verifiable documentary evidence.

(iii) He/she should be well versed with computer in general and particularly editing of materials in soft copy format is an essential requirement.

Job Requirements

Empanelled Editors / Translators will be responsible for editing/proof reading/translation work assigned to by the Institute. He/she may also be required have to visit press and assist in preparing CRC of the matter to be printed.

Honourarium

The Editors will be paid an honourarium at the rate of Rs. 27.00-30.00 per type written page of A4 size, single space depending upon the nature and quantum of work involved.

The Institute reserves the right to assign the work relating to editing/translation/proof reading, etc. as it may deem fit and the decision of the Institute shall be binding in all respects.

Procedure for empanelment

After scrutiny of qualifications and experience related documents, a list of suitable candidates will be prepared, and the same would be communicated to the successful candidates.

The decision of the Institute shall be final and cannot be challenged.

General Terms and Conditions:

1. Mere inclusion of the name of a candidate in the panel does not confer any legal right to get the assignment. Assignment will be given as and when required.
2. The empanelled candidate will not be entitled to claim any kind of extension in his assignment/absorption in the Institute.
3. No other facilities except the fixed rates of honourarium will be payable to the assignee.
4. Regular monitoring of the work of the assignee will be done by the In charge/Head of the Directorate of Professional Development, Perspective Planning and Studies.
5. The Income Tax at source or any other applicable statutory taxes / levies / surcharges will be liable to be deducted, as per the prevailing rules.
6. Panel of Editors / Translators will be subject to periodic revision and addition/modification/deletion will be made depending upon the requirement of the Institute from time to time.
7. If the performance of an assignee is not found up to the mark, his/her empanelment could be terminated, without giving any reason.

Annexure-1

To,
The Director
Professional Development, Perspective Planning & Studies
The Institute of Company Secretaries of India
C-36, Institutional Area
Sector – 62
Noida – 201309

Application for engagement of Editor / Translator

<table>
<tr><td>1.</td><td>Name in Full (Block Letters)</td><td colspan="3"></td></tr>
<tr><td>2.</td><td>Date of Birth</td><td colspan="3"></td></tr>
<tr><td>3.</td><td>Complete residential address with phone number, mobile number and e-mail id</td><td colspan="3"></td></tr>
<tr><td rowspan="6">4.</td><td rowspan="6">Educational Qualifications (Self attested copies of Certificates to be attached from Class X onwards)</td><td></td><td colspan="2">Marks / % / Grade obtained</td></tr>
<tr><td>Class X</td><td colspan="2"></td></tr>
<tr><td>Class XII</td><td colspan="2"></td></tr>
<tr><td>Graduation</td><td colspan="2"></td></tr>
<tr><td>Post Graduation</td><td colspan="2"></td></tr>
<tr><td>Any other</td><td colspan="2"></td></tr>
<tr><td rowspan="4">5.</td><td rowspan="4">Brief particulars of Work Experience (Recent first, if no experience, write NA)</td><td>Employer</td><td>Nature of Work</td><td>Period</td></tr>
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<tr><td></td><td></td><td></td></tr>
<tr><td></td><td></td><td></td></tr>
<tr><td>6.</td><td>Area in which Empanelment is sought</td><td>Translation</td><td>Editing</td><td>Both</td></tr>
<tr><td>7.</td><td>Additional relevant information, if any in support of your suitability for the said engagement, attach a separate sheet if necessary</td><td colspan="3"></td></tr>
<tr><td>8.</td><td colspan="4">I hereby declare that the particulars furnished above are true and correct to the best of my knowledge and belief. I have read this document and ready to accept all the terms and conditions for engagement as Editor.

(Signature of the Candidate)</td></tr>
<tr><td></td><td>Place:</td><td colspan="3"></td></tr>
<tr><td></td><td>Date:</td><td colspan="3"></td></tr>
</table>

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Circular No. Trg 02/2018

ICSI/Training/2018 **29/03/2018**

Submission of quarterly report on the basis of calendar year (Quarter).

The students undergoing practical training are required to submit their quarterly report in the prescribed format of the Institute duly signed by the trainer and trainee. As per the present practice, quarterly reports are submitted at different point of time during the year . The quarterly reports are being submitted on the basis of quarter commencing from the date of commencement of training of each trainee individual basis. In order to bring uniformity and to facilitate/strengthen the monitoring mechanism, the submission of quarterly report is made mandatory within 30 days from the end of respective calendar quarter (i.e. March , June , September & December)

Accordingly, the Institute has introduced the timelines for submission of quarterly reports collectively, on the basis of calendar year quarter as per the following schedule:

SL.No	Period of training	Last date of submission of the quarterly report (of that calendar year)
1	January – March	30th April or on or before 30 days from the end of the training whichever is earlier
2	April –June	30th July or on or before 30 days from the end of the training whichever is earlier
3	July-September	30th October or on or before 30 days from the end of the training whichever is earlier
4	October-December	30th January or on or before 30 days from the end of the training whichever is earlier

The revised schedule of submitting Quarterly Reports shall be applicable to all existing trainees from the second quarter of this calendar year i.e., April – June, 2018 to be submitted by 30th July, 2018.

However, the students, who had already started their practical training earlier and completing their training during any of the quarter after 1st April, 2018 can submit their quarterly reports within 30 days from the date of completion of training without waiting for the end of the quarter.

Further, the students who will commence their training on or after 1st April, 2018 on any date during the Quarter, shall submit their quarterly report at the end of the quarter in accordance with the above timelines by mentioning the actual number of days of the training during the same quarter.

Henceforth, the Quarterly reports on practical training for Apprentice Trainee(s)(AT) and Management Trainee(s) (MT) shall be submitted by all students undergoing training as per the aforesaid revised timeline(s) to be effective from 1st April, 2018.

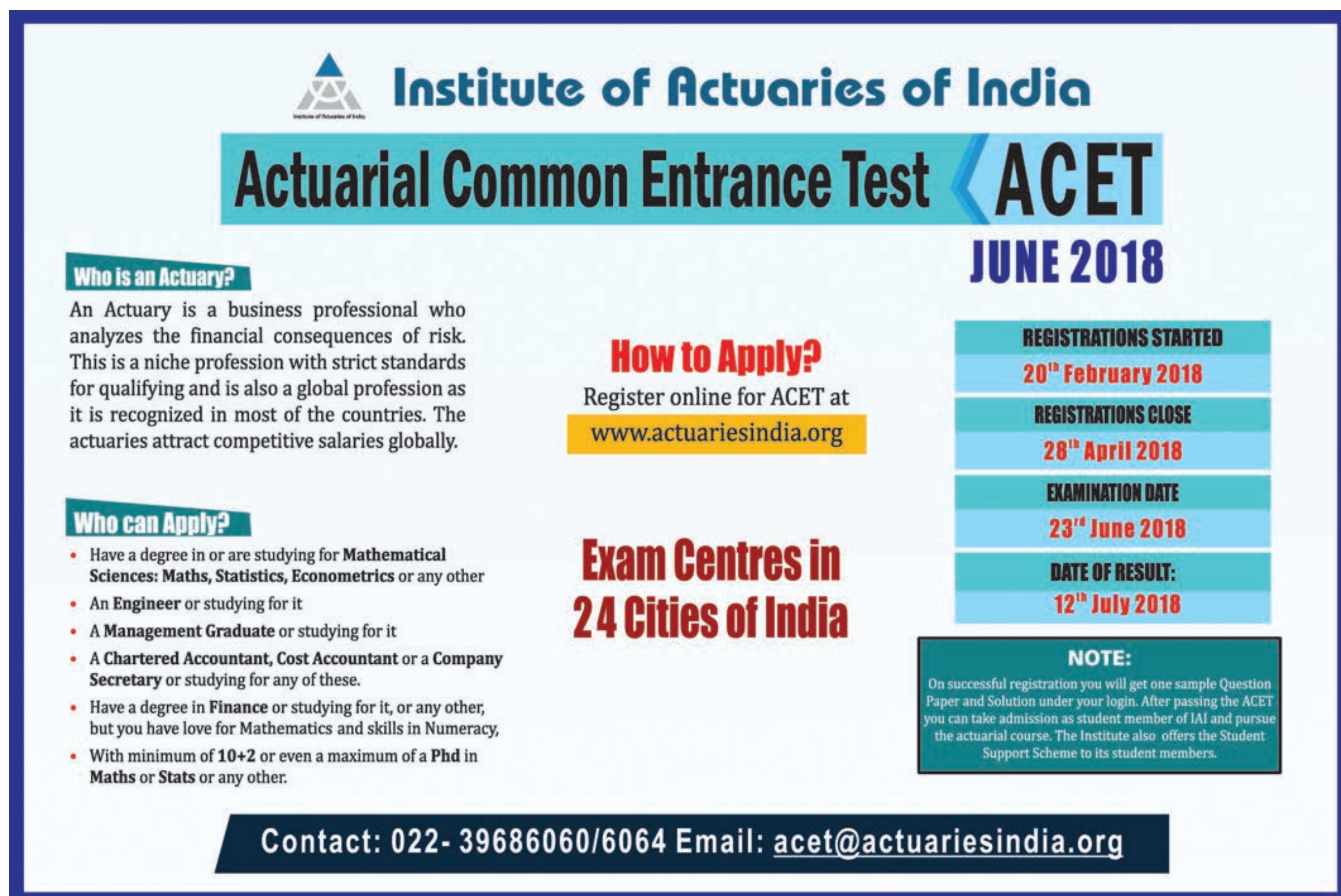
Director
(Training & Placement)

Annexure A (Clarification through various instances)

Students who had already started their practical training earlier and whose quarterly reports are due in different dates during the quarter shall submit their report in the following manner.

Category I (Students completing their training)	**Category II** (Existing students in the mid of their training)	**Category III** (New Students who will start training after 31st March,2018)
Students who are completing their training by 31st March 2018 shall submit their quarterly reports as per the previous practice within 30 days from the end of the quarter. i.e counting three months from the date of commencement of training. For instance, if a student is completing his training on 30th March, 2018, he shall submit his quarterly report on or before 30th April, 2018.	Students undergoing Training and completing their training any time after 31st March, 2018 are required to submit their quarterly report either at the end of the quarter or on or before 30 days from the completion of the training, whichever is earlier. For instance, if a student is completing his training on 15th May 2018 he shall submit his report any time after 15th May and before 15th June, 2018 without waiting till 30th July, 2018 being the last date of the respective quarter.	The students who will start their training after 1st April, 2018, shall submit their quarterly report for the training period completed till 30th June 2018 on or before 30th July 2018 for the actual number of days of the training during the quarter. For instance, If a Student is starting his training from 16.04.2018 the number of days in the first quarter shall be counted from 16th April to 30th June and the number of days shall be mentioned as 75 days in first quarterly report and the rest quarterly reports shall be for the 90 days and will continue further.

Director
(Training & Placement)



SESHASAYEE PROPERTIES PVT. LTD.

Seshasayee Properties Private Limited is a Non Banking Financial Company (NBFC) engaged in the business of investment, finance and allied activities requires dynamic, diligent & result oriented Company Secretary.

The candidate should be aqualified CS with 1 – 3 years of relevant working experience in an NBFC.

Candidate should be capable of liaising with various Government Authorities and shall have flair for writing, drafting and vetting of legal documents, agreements, contracts, MOU. Drafting and filing of various returns with different Government Authorities.

Interested candidates apply at :-

The Director, Seshasayee Properties Private Limited, Industry House, 1st Floor, 159, Churchgate Reclamation, Mumbai – 400 020

GWALIOR PROPERTIES AND ESTATES PVT. LTD.

Advertisement for Post of Company Secretary

Last Date of Submission of Applications: April 25, 2018

Gwalior Properties and Estates Private Limited, a registered Non Banking Financial Company (NBFC) in Mumbai is looking for a Company Secretary who should be a member of Institute of Company Secretaries of India, with post qualification experience of not less than 5 years preferably with specific experience in all matters pertaining to Company Law, Secretarial functions, Legal, regulatory compliances etc. especially pertaining to NBFCs.

Age not exceeding 40 years.

Interested candidates can send their resume to

Industry House, 159, Churchgate Reclamation, Mumbai – 400 020.

GREEN ACRE AGRO SERVICES PVT. LTD.

Green Acre Agro Services Private Limited, having its registered office in Mumbai requires a Company Secretary. Minimum 3 years post Company Secretary experience in secretarial matters, statutory compliances, etc. Apply stating age, qualification, experience and details of salary drawn and expectations to:-

Apeejay, 2nd Floor, Shahid Bhagat Singh Marg, Fort, Mumbai – 400 001

Last date for submission :

within 30 days from the date of advertisement

TGS INVESTMENT AND TRADE PVT. LTD.

TGS Investment and Trade Private Limited, a Non-Banking Financial Company (NBFC) having its registered office in Mumbai and incorporated with the object of investment and financial activities requires a Company Secretary. The incumbent should be an ACS with minimum 2 years of relevant working experience. Apply with confidence within 15 days stating age, qualification, experience and details of salary drawn and expected to:-

212, T. V. Industrial Estate, 52, S. K. Ahire Marg, Worli, Mumbai – 400 030.

TRAPTI TRADING AND INVESTMENT PVT. LTD.

A Company Secretary is required for Trapti Trading and Investment Private Limited, having its registered office in Mumbai and engaged in Non Banking Financial Services (NBFC) activities.

Candidate should be a qualified Company Secretary with 2 years of experience preferably having worked in similar Company.

Candidate should be capable of liaising with various Government Authorities.

Should have skills of writing, drafting and vetting of legal documents, agreements and contracts.

Interested candidates can apply with their resume to:-

Industry House, 1st Floor, 159, Churchgate Reclamation, Mumbai – 400 020.

NON BANKING FINANCIAL SERVICES (NBFC)

A great opportunity to work for a Non Banking Financial Services (NBFC) company based in Mumbai. Turquoise Investments and Finance Private Limited requires a full time Company Secretary for carrying out secretarial functions.

The applicant should be an ACS with minimum 2 years of relevant working experience. Good English & good writing ability is must.

Mail within 10 days your resume to:-

turquoiseinvestmentsandfinance@gmail.com.

PRIME HIRING INDIA PRIVATE LIMITED

Prime Hiring India Private Limited having its registered office at Regus Elegance, 2F, Elegance Jasola District Centre Old Mathura Road New Delhi - 110025 requires dynamic, diligent & result oriented Company Secretary.

The Candidate should be a qualified Company Secretary with 3 Years of experience preferably worked in Company or similar industry.

Candidate should be capable of liaising with various Government Authorities and shall have flair for writing, drafting and vetting of legal documents, agreements, contracts, MOU. Drafting and filing of various returns with different Government Authorities.

Interested candidates fulfilling the above criteria can email their CVs to

felix.carbajo@prosegur.com.

SIMBA TOYS INDIA PRIVATE LIMITED

Simba Toys India Private Limited having its registered office at 808, Windfall Sahar Plaza Complex, J.B. Nagar, Andheri Kurla Road, Andheri (East) Mumbai - 360024 requires dynamic, diligent & result oriented Company Secretary.

The Candidate should be a qualified Company Secretary with 3 Years of experience preferably worked in Company or similar industry.

Candidate should be capable of liaising with various Government Authorities and shall have flair for writing, drafting and vetting of legal documents, agreements, contracts, MOU. Drafting and filing of various returns with different Government Authorities.

Interested candidates fulfilling the above criteria can email their CVs to

s.shinde@simbatoys-me.com and r.loke@simbatoys-me.com

GST CORNER

GST in NEWS

1. No decision on GST return simplification, E-Way bill to be implemented from April 1

- The 26th GST Council meeting failed to come up with any conclusive simplification process after deliberating on two models and has now postponed the decision for next Council meeting, but E-way bill will be implemented from April 1.
- The current system of filing GSTR 3B will be applicable for the next 3 months.

Recommendations made during the 26th meeting of the GST Council held in New Delhi on 10th March, 2018:

A. Return filing System

The present system of filing of GSTR 3B and GSTR 1 is extended for another three months i.e., April to June, 2018 till the new return system is finalized. A new model was discussed extensively and Group of Ministers on IT has been tasked to finalize the same.

B. Reverse charge mechanism

The liability to pay tax on reverse charge basis has been deferred till 30.06.2018. In the meantime, a Group of Ministers will look into the modalities of its implementation to ensure that no inconvenience is caused to the trade and industry.

C. TDS/TCS

The provisions for deduction of tax at source (TDS) under section 51 of the CGST Act and collection of tax at source (TCS) under section 52 of the CGST Act shall remain suspended till 30.06.2018. In the meantime, the modalities of linking State and Central Governments accounting system with GSTN will be worked out so that seamless credit is available to the registered traders whose tax is deducted or collected at source.

D. Grievance Redressal Mechanism

GST implementation Committee (GIC) has been tasked with the work of redressing the grievances caused to the taxpayers arising out of IT glitches.

2. Rent on electricity meter comes under GST; Priority lending certificates come under 18 per cent GST

- The Central Board of Excise and Customs (CBEC) said even though electricity is exempted from GST, rent on electricity meter is not.
- Besides, GST will also be imposed on application fee for releasing connection of electricity; testing fee for meters, transformers, capacitors; labour charges from customers for shifting meters or shifting service lines
- The government has clarified that priority lending certificates of banks are in the nature of goods and liable to tax at the rate of 18% under GST
- Department of revenue said the RBI FAQ on Priority Sector Lending Certificate or PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity and thus, PSLCs are taxable as goods at standard rate of 18% under the residuary

3. E-way bill must for intra-state goods movement from June 1

- All states shall have to compulsorily implement the national e-way bill system for intra-state movement of goods by June 1, 2018
- For inter-state movement of goods, the system is mandatory from April 1,2018

4. Over 1.03 crore businesses registered under GST: Government

- Over 1.03 crore businesses have registered under GST regime and the implementation of the biggest indirect tax reform has been smooth so far
- As on March 2, a total of 1,03,99,305 taxpayers are registered under GST, which include 64.42 lakh taxpayers who have migrated from the erstwhile tax regimes and 39.56 lakh who have taken new registration under GST

5. Monthly GST revenue close to Rs 90,000 crore, says Finance Ministry

- The Finance Ministry said in the Rajya Sabha that the average monthly GST collection in the July-January period stood at Rs 89,767 crore, higher than Rs 87,468 crore reported earlier

6. No extension for sale of pre-GST stock with revised MRP stickers- Minister of Consumer Affairs, Food and Public Distribution

- The government will not further extend the deadline for selling pre-GST stock with revised maximum retail price (MRP) stickers beyond this month and retailers will display only one MRP after 31st March
- The deadline was extended from September 30th to December 31st last year, and finally to 31st March this year

7. E-wallet will address GST refund issue of exporters: Commerce and Industry Minister

- Under the e-wallet mechanism, a notional credit would be transferred to exporters' accounts based on their past record and the credit can be used to pay taxes on inputs
- The GST Council in its meeting earlier this month decided to implement e-wallet scheme for refunds to exporters by October 1.
- Meanwhile, the CBEC field formations have launched 'GST refund fortnight' beginning yesterday to quickly sanction pending refunds to exporters

8. CBEC to verify GST transitional credit claims of 50,000 taxpayers

- In order to check "frivolous and fraudulent" tax credit claims by businesses, the CBEC has decided to verify demands of top 50,000 tax payers claiming maximum GST transitional credit, starting with those where the quantum exceeds Rs 25 lakh
- As part of transition to GST last July, taxpayers were allowed to file Form TRAN-1 and avail tax credit on the basis of closing balance of the credit declared in the last return under the pre-Goods and Services Tax regime

9. No GST exemptions for northeast, hill states

- The government said that no exemptions from tax refund had been given to the northeastern and hilly states under

GST till March 2027 as the GST Council had in September 2016 decided that all entities exempted from payment of indirect tax under the then-existing tax incentive scheme will have to pay tax in the GST regime

- And in case the state or Central government decides to continue any existing exemption or incentive scheme, it shall be administered by way of a reimbursement mechanism through the budgetary route

10. CBEC clears some air on refunds under GST, central excise, service tax laws

- In a circular (no.37/11/2018-GST dated March 15, 2018), the Central Board of Excise and Customs has clarified many issues relating to refunds under the Goods and Services Tax, Central Excise and Service Tax laws.

11. Business with nil tax liability may get to file GST returns bi-annually

- Businesses having zero tax liability for six consecutive months under GST may soon get relief once the proposal to allow such entities to file returns only twice a year gets the GST Council's nod in the next Council meet
- According to recent data, as much as 40 per cent of return filers under GST regime have nil tax liability and will not have to file monthly returns once the new simplified return filing procedure is finalized

12. GST profiteering complaint form simplified: Finance ministry

- The Finance Ministry has simplified and reduced the number of columns in the complaint form to make it easier for consumers to report any profiteering activity by businesses post GST rollout

13. Covering GST loss: Government seeks Parliament nod for Rs 63,000 crore

- The government presented the fourth supplementary demand for grants in Parliament and out of the total cash spending; it sought approval for Rs 62,716 crores to compensate states and Union territories due to revenue shortfall after GST rollout
- This is a transfer from the compensation fund to the public account where GST cess on tobacco, soft drinks, luxury cars and coal is parked.

46th National Convention of Company Secretaries

Place:
Eastern Region

Dates: August-
September, 2018

Suggestions on Theme and Sub-Themes

The 46th National Convention of Company Secretaries is scheduled to be held in the Eastern Region. Suggestions are invited from members / readers on the theme and sub-themes to be deliberated at the National Convention.

The member / reader whose theme alongwith its sub-themes is selected shall get exemption from paying the delegate registration fee for the Convention. The decision of the Institute shall be final in all respects. Interested persons may send their suggestions so as to reach by April 30, 2018 to:

Director
(Professional Development, Perspective Planning and Studies)
The Institute of Company Secretaries of India
ICSI HOUSE, C-36, Sector 62, Institutional Area, Noida – 201309
Email: sonia.baijal@icsi.edu / saurabh.jain@icsi.edu
Ph: 0120-4082104 / 4082127

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following Members:

CS K S Kasiraman (12.01.1938 – 23.11.2017), a Fellow Member of the Institute from Chennai. Past Chairman of SIRC of the ICSI during the year 1990.

CS Kirit Ramanlal Thanawalla (12.02.1938 – 11.02.2018), a Fellow Member of the Institute from Mumbai.

CS K R Venkataraman (01.03.1930-26.02.2018), a Fellow Member of the Institute from Delhi.

CS Shiv Kumar Dujari (05.03.1952 – 15.01.2018), a Fellow Member of the Institute from Ghaziabad.

CS N J Joshi (29.04.1940 – 07.09.2016), an Associate Member of the Institute from Pune.

Keshav Govind Ranade (10.01.1951 -09.01.2017) an Associate Member of the Institute from Pune.

CS Veena (13.05.1984 – 15.02.2018), an Associate Member of the Institute from Coimbatore.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.

APPOINTMENT

BIRLA FAMILY INVESTMENTS PVT. LTD.

Advertisement for Post of Company Secretary

Last Date of Submission of Applications: April 21, 2018

Birla Family Investments Private Limited, a registered Non Banking Financial Company (NBFC) in Mumbai is having opening for 1 position of a Company Secretary who should be a member of Institute of Company Secretaries of India, with 5 years of post qualification experience preferably in all matters pertaining to Company Law, Secretarial functions, compliance framework as required by the RBI, Legal matters, Accounts and Finance functions, regulatory compliance etc. especially pertaining to NBFCs.

Age not exceeding 35 years.

Interested candidates can send their resume to **Industry House, 159, Churchgate Reclamation, Mumbai – 400 020.**

APPOINTMENTS

LLB / COMPANY SECRETARY – VADODARA

K C Mehta & Co.
Chartered Accountants

We are a fast-growing Firm of CAs. We are looking for the following bright and dynamic professionals for Consultancy division at our HO in Vadodara:

Senior Law Graduate

- Law Graduate from a renowned Institute, with 10-12 years' experience in reputed law firms in the area of Corporate Laws, skilled in vetting and drafting legal and commercial documents. Additional CS qualification preferred.

Senior Company Secretary

- A CS with excellent academic record and 7-8 years' experience in corporate compliances including SEBI, LODR, FEMA and other related regulations having good drafting skills.

Salaries comparable with the best in the sector commensurate with qualifications and experience.

*Please apply on **resume@kcmehta.com** with Ref: **VADMCA***
OR contact HR (+91(265)2440400) at K. C. Mehta & Co., Meghdhanush, Race Course, Vadodara 390 007
*website: **www.kcmehta.com***

CORPORATE GOVERNANCE CORNER

DEVELOPMENTS – MARCH, 2018

THE FINANCIAL MARKETS AUTHORITY (FMA) OF NEW ZEALAND PUBLISHED ITS REFRESHED CORPORATE GOVERNANCE HANDBOOK

The Financial Markets Authority (FMA) of New Zealand published refreshed Corporate Governance handbook. The handbook is being refreshed to remove any unnecessary overlap with the New Zealand's Exchange (NZX) Corporate Governance Code, 2017, particularly to ensure the NZX Code is the primary source for requirements for listed companies. The FMA also updated the guide in a number of places to bring it in line with corporate governance developments in New Zealand and globally.

The new Handbook sets out eight principles, each with accompanying guidance and commentary from the FMA. It is intended primarily for non-listed and public-sector companies and, as such, complements the NZX Code.

The revised handbook is designed as a guide for a wide range of companies and businesses including those who want to raise capital or list on the NZX in the future.

The handbook is deliberately principles based, rather than a check-list. A one-size-fits-all approach is not appropriate for every business, and for smaller companies the principles provide guidance on areas they can work towards over a period of time.

The handbook is available at: *https://fma.govt.nz/assets/Reports/_versions/10539/180228-Corporate-Governance-Handbook-2018.1.pdf*

THE SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN (SECP) PUBLISHES DRAFT REGULATIONS

The Securities and Exchange Commission of Pakistan (SECP) has published drafts of Regulations on the Selection of Independent Directors and the Shariah Governance Regulations.

The Regulations on the Selection of Independent Directors specify the manner and procedure of selection of independent directors who fulfil the qualifications and other requirements.

The qualification criteria specified through the said regulations is aimed at encouraging new professionally qualified entrants along with experienced individuals. Furthermore, minimum details required for inclusion in such databank is provided along with modus operandi for access of such details by independent directors as well as companies. The due diligence of selection of independent directors, as envisaged in the new company law (Companies Act, 2017), continue to rest with the company.

The said draft regulations have been placed on the SECP's website at https://www.secp.gov.pk/document/sro-359-i-2018-notification-of-manner-and-selection-of-independentdirector-regulations-2018/?wpdmdl=30971.

The draft Shariah Governance Regulations is a comprehensive set of regulations for governance of Shariah-compliant companies and entities, Shariah-compliant securities and Islamic financial institutions under its jurisdiction. For the first time ever, a holistic Shariah governance framework has been introduced by the apex regulator of corporate sector and capital markets.

The regulations were needed to regulate and facilitate growth of Shariah-compliant entities in line with the SECP's mandate of providing a Shariah governance framework and bringing SECP at par with international regulators.

The draft regulations have been placed on the SECP's website at *https://www.secp.gov.pk/document/draft-shariah-governance-regulations-2018/?wpdmdl=30823*

UNITED KINGDOM (UK): CONSULTATION PAPER ON INSOLVENCY AND CORPORATE GOVERNANCE

The Department for Business, Energy & Industrial Strategy of UK Government has published a consultation paper titled 'Insolvency and Corporate Governance'. The paper contains proposals with the aim to reduce the risk of major company failures occurring through shortcomings of governance or stewardship, and to strength the responsibilities of directors of firms when they are in or approaching insolvency.

Amongst the proposals contained in the paper is one designed to better hold parent company directors to account in respect of the sale of an insolvent subsidiary that has an adverse impact on the interests of the subsidiary's creditors. And, amongst the questions asked, is this one: are stronger governance and transparency measures required in relation to the oversight and control of complex group structures? The paper also asks: what more could be done through a revised Stewardship Code or other means to promote more engaged stewardship of UK companies by their investors, including the active monitoring of risk? It also seeks views on this question: whether some directors are obtaining and using professional advice without a proper awareness of their duties as directors, and in particular the requirement to exercise independent judgement.

The consultation is about delivering a strong business environment - a key foundation of the Industrial Strategy - by seeking views on new proposals to improve the governance of companies when they are in or approaching insolvency. It also seeks views on some other aspects of the wider corporate governance framework and whether these are working as they should.

The consultation paper has been placed at *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691857/Condoc_-_Insolvency_and_Corporate_Governance_FINAL_.pdf*

SUGGEST A TAGLINE

The ICSI invites creative taglines for the Company Secretary profession. The tagline has to be catchy and should capture the essence of the profession.

The ICSI will select a tagline that would be inspiring, impressive and memorable.
Selected entries will be acknowledged suitably.
You may submit your entries at tcc@icsi.edu by May 10, 2018

Vision
"To be a global leader in promoting good corporate governance"

Motto
सत्यं वद। धर्मं चर। speak the truth. abide by the law.

Mission
"To develop high calibre professionals facilitating good corporate governance"

Connect with ICSI https://www.facebook.com/ICSI https://twitter.com/ICSI_CS https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-a5899a102/

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Golden Jubilee Year

NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES (19th Edition)

Theme:

"PCS - A Value Driven Professional"

The Lalit Mumbai | May 18-19, 2018

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Golden Jubilee Year National Conference of Practising Company Secretaries (19th Edition)

Dear Professional Colleagues,

Prime Minister Narendra Modi once said that *"Good Governance with Good Intentions is the Hallmark of the Government. Implementation with integrity is our core passion."* Aligning the quote, when India is witnessing an era of incredible initiatives of Good Governance including Robust Financial Market, GST, Direct Tax Code, IBC, RERA, Double Tax Avoidance Treaty, Reshaping of Benami Property Act, E-way Bill and alike, the Practising Company Secretary has well and truly arrived as a vital pillar in writing a golden page of '*Naye Bharat ka Naya Nirmaam*',

In this transforming era of good governance, where the introduction of Secretarial Audit in the Companies Act, 2013 has led to many other regulatory recognitions under SEBI (Listing Obligations and Disclosure Requirements Regulations), 2015, Insolvency & Bankruptcy Code 2016, Goods and Services Act 2017, to name a few; Audits, Attestations, Appearances, Advocacy and alike have also become an integral part of the role profile of the PCS identified professional pursuits.

During the Golden Jubilee Celebration, with Prime Minister commending Company Secretaries in determining the corporate culture of the nation, the path for us to follow was laid out in certain terms through the ICSI motto.
These developments have placed PCS in a bright light never seen before and in turn has also entrusted enormous responsibilities on the PCS to uphold and sustain the expectations of the Society.

The challenge to remain useful, competitive and relevant is as true for the PCS as it is for any other profession and this calls for utmost adherence to values of Independence, Integrity, Professional Competence and Ethical Conduct. To discuss the importance of these imperatives and explore insights for the sustainability, growth and betterment of the profession, Institute proudly announces the Golden Jubilee Year National Conference of Practising Company Secretaries (19th Edition), to be held on May 18-19, 2018 at The LaLiT Mumbai, Sahar Airport Road, Andheri East, Mumbai, Maharashtra – 400 059, exquisitely captivating the theme of ***"PCS – A Value Driven Professional"***.

The Conference commencing its Inaugural Session on May 18, 2018 and summing up its deliberation on May 19, 2018, would witness the path breaking discussions by eminent experts and professionals in their respective fields from the Government, Regulators and Academia.

Your Participation is earnestly solicited, not only to enhance fruitful discussions, but also to ponder upon the opportunity for mutual exchange of ideas, views and experience sharing with your professional colleagues from across the country.

I call upon the professional brethren to register for the conference in large numbers and make it a grand success.
A Souvenir-cum-Backgrounder containing theme articles, programme details, messages of good wishes and other interesting features will be brought out to commemorate this mega annual event.

Kindly use your good offices in obtaining advertisements for the proposed Souvenir-cum-Backgrounder. We also look forward to your support by way of sponsorship.

Awaiting your registration, advertisement and sponsorship support.

Looking forward to meet you at the Golden Jubilee Year National Conference of Practising Company Secretaries at The LaLiT Mumbai, Maharashtra.

With regards,
Yours sincerely,
CS Makarand Lele
President, ICSI

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PCS – A Value Driven Professional

Coverage	
• Secretarial Audit	• Audits
• Companies Act, 2013	• Attestations
• SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2018	• Advocacy
• Insolvency and Bankruptcy Code, 2016	• Appearances
• Goods and Services Tax Act, 2017	

Key Takeaways	
• Explore new opportunities in the areas of practice	• Update and sharpen technical and professional Skills
• Share knowledge among the peer group	• Build Professional Networking
• Interact with experienced and expert faculty	• Enhance value driven Professional Services

Speakers

Eminent speakers with comprehensive exposure to the practical aspects of the topics will address and interact with the participants.

Participants

Company Secretaries and other Professionals in Secretarial, Legal and Management disciplines would be benefited by participating in the Conference.

CHAIRMAN, PCS COMMITTEE	PROGRAMME DIRECTOR	JOINT PROGRAMME DIRECTOR	PROGRAMME CO-ORDINATOR
CS Vineet K. Chaudhary Council Member, ICSI and Chairman, PCS Conference Committee	**CS Ashish C. Doshi Council Member, ICSI and Chairman, PCS Conference Sub-Committee**	**CS Ashish Garg Council Member, ICSI**	**CS Hitesh Kothari Chairman, WIRC of ICSI**

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Golden Jubilee Year National Conference of Practising Company Secretaries (19th Edition)

Tentative Programme Schedule

Day-1: Friday, May 18, 2018	
09:30 am to 10:30 am	Delegate Registration
10:30 am to 12:00 Noon	Inaugural Session
12:00 Noon to 12:30 pm	Tea
12:30 pm to 01:30 pm	Panel Discussion
01:30 pm to 02:30 pm	Lunch
02:30 pm to 03:30 pm	Technical Session
03:30 pm to 04:00 pm	Tea
04:00 pm to 05:15 pm	Technical Session
05:15 pm to 06:15 pm	B2B Session
7:30 pm onwards	Cultural Evening & Networking Dinner
Day-2: Saturday, May 19, 2018	
10:30 am to 12:00 Noon	Technical Session
12:00 Noon to 12:30 pm	Tea
12:30 pm to 01:30 pm	Panel Discussion
01:30 pm onwards	Networking Lunch

Souvenir-cum-Backgrounder

It is proposed to bring out a Souvenir-cum-Backgrounder containing theme articles and other relevant information. Members who wish to contribute papers for publication in the Souvenir-cum-Backgrounder are requested to send the same on or before April 25, 2018 through email to the Director, Professional Development, Perspective Planning & Studies, The Institute of Company Secretaries of India at **conference@icsi.edu**. The paper / article should not normally exceed 15 typed pages. Members whose papers/articles are published in the Souvenir-cum-Backgrounder of the Conference shall be entitled to grant of FOUR Program Credit Hours and an Honorarium of Rs. 2,500/-. The decision of the Institute shall be final in all respects. Members are also requested to mention their income tax PAN and bank account details while submitting the articles, in order to enable us to expedite the payment of honorarium.

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DELEGATE FEE AND REGISTRATION PROCEDURE

Delegate Registration Fee (Non – Residential)*

Delegate Category	*Early Bird (Registration upto 30th April, 2018)*	*Registration from 1st May till 17th May, 2018*	*On-Spot Registration*
Members / Non-Members / Accompanying Spouse / Children above 12 years	*4,130/-*	*4,720/-*	*5,130/-*

*inclusive of Goods and Services Tax @ 18%

The above fee includes Lunch (2), Dinner (1), Morning / Evening Tea, Coffee, High Tea, Conference Kit and Backgrounder.

The Delegate Fee is payable in advance and is not refundable once the nomination is received.

Delegate Registration Procedure
Delegates are requested to register for the Conference by visiting the link [www.icsi.edu/19pcs/Home.aspx].

Delegate Registration only through Online Mode
Delegates are requested to register for the Conference through Online Mode only. Please note that payments are not accepted through demand draft, cheque, cash, electronic transfer, etc.

Accommodation
The Institute has finalized packages with The LaLiT Mumbai on concessional basis.
Accommodation will be on 'first come first served basis' at the conference venue i.e., The LaLiT Mumbai, Sahar Airport Road, Andheri East, Mumbai, Maharashtra for outstation delegates.

S.No.	*Name & Address of Hotel*	*Star category*	*Distance from Mumbai International Airport*	*Distance from Lokmanya Tilak Terminus Railway Station, Mumbai*	*Room tariff (per room per night) Including breakfast + Wi-fi + Pick & drop from Mumbai International Airport*		*Name of contact person & contact details*
					Single Occupancy	*Double occupancy*	
1	Hotel The LaLiT Mumbai Sahar Airport Road, Andheri (East) Mumbai - 400059	5 star	2 km	8 km	@Rs. 6250/- +28 % GST (*i.e.* 8000/- per room per night)	@Rs. 6500/- + 28% GST (*i.e.* 8320/- per room per night)	Mr. Lallan Yadav Tel: + 91 22 6699 2222 E-Mail : lyadav@thelalit.com

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Accompanying Guests, Spouse and Children

Accompanying Guests, Spouse and Children registered for the Conference will be eligible to participate in Lunch, Dinner, Cultural Evening Programme.

Important Instructions:

1. The Registration will start from 9.30 am on 18th May, 2018 and the Conference will conclude on 19th May 2018 by 04.00 pm.
2. Limited rooms are available at The LaLiT Mumbai.
3. For booking of rooms in hotel, members/students/others (as the case may be) are required to first get themselves registered as delegate for the Conference by paying the delegate fee at online services portal of the ICSI. As pre-requisite for booking the rooms, delegate registration number is compulsorily required to be mentioned on hotel room booking application form.
4. For booking of rooms in hotel, delegates may **download the room booking form from the link given against the hotel's name at Institute's website www.icsi.edu and send scanned copy of the duly filled form through email to the The LaLiT Mumbai directly.**
5. All payments related to the stay of delegate in Hotel are required to be settled by the delegate directly with the hotel concerned.
6. All delegates may kindly note that hotel rooms shall be booked on full room basis. If any delegate wants to share his room with any other delegate, in such case he/she is advised to decide his/her room partner in advance and should give details of his/her partner (i.e. accompanying guest) in the booking form itself. Payment should be settled by any one of them as mutually agreed.
7. Pickup and drop facility from Mumbai International Airport shall be provided by The LaLiT Mumbai on complimentary basis to the delegates who will book rooms to stay in The LaLiT Mumbai only.
8. Institute shall not be providing any transport facility for local delegates or for such delegates who have made their own arrangements for their stay in some other hotels (except The LaLiT Mumbai).
9. Standard Check in Time : 18th May, 2018 (02.00 pm)/ Standard Check out Time: 19th May, 2018 (12:00 Noon).
10. The LaLiT Mumbai has been requested to allow delegates for early check-in, if some of them are reaching before check-in time due to different flight timings, but this facility is subject to availability of rooms at that point of time.
11. Any extra stay will be charged separately, subject to availability of rooms and receipt of reservation charges in advance.
12. Delegates with chauffer driven cars will have to pay extra charges for food arrangements for driver during the Conference. These charges have to be paid immediately on arrival.
13. Any extra facilities availed by the delegate during the stay have to be paid directly to the Hotel.

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How to Reach Mumbai

1. **By Air**
   Mumbai is reachable through several flights. Mumbai's international terminal is the Sahar International Airport, renamed as Chattrapati Shivaji International Airport. Located 30 km from centre of the city, Nariman Point and 4 km from the domestic terminal of Santa Cruz, this airport operates 24X7.
2. **By Train**
   The headquarters of both Western and Central Railways lie in Mumbai. This city is connected massively via railways. Super-fast trains and passenger trains connect the city with all prominent towns of India like Delhi, Kolkata, Chennai, Hyderabad and Bengaluru. The two prominent railway stations in Mumbai are Chattrapati Shivaji Terminus (CST) previously known Victoria Terminus, and Bombay Central Station.
3. **By Road**
   Mumbai is perfectly connected by a road network to the rest of India.

Programme Credit Hours

Members of the Institute attending the National Conference on both days will be entitled to grant of 8 (Eight) Programme Credit Hours.

Students attending the National Conference will be entitled to 16 (Sixteen) PDP hours.

Advertisement in Souvenir-cum-Backgrounder

It is proposed to bring out a **Souvenir-cum-Backgrounder** containing important information, programmes, lists, etc. It would be widely circulated to professionals, corporate and regulatory authorities. Advertisement released in the Souvenir would receive wide publicity for Products, Services and Corporate Announcements. Members/ Organizations are requested to release advertisements.

The advertisement material along with cheque/demand draft drawn in favour of 'The Institute of Company Secretaries of India' may be sent to Director, Corporate Communication, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi – 110003, Tel: 011-45341077 and email: tcc@icsi.edu on or before May 07, 2018.

(Disclaimer and Declaration: The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser. **Further, the Advertiser shall submit a Declaration that the contents of the advertisement are true to the best of his/her knowledge and belief.)**

Advertisement Tariff

Color Ad	*Rate (In Rs.)*	*Size*	*Black & White Ad*	*Rate (In Rs.)*	*Size*
Back Cover	50,000	18cm x 24 cm	Full Page	20,000	18cm x 24cm
Inside Cover (Front/Back)	40,000	18cm x 24 cm	Half Page	15,000	18cm x 12cm
Special Page	25,000	18cm x 24 cm	Quarter Page	7,500	9cm x 12cm

[25% concession will be provided to PCS firm on above rates. A declaration to be signed by PCS that advertisement conforms to all applicable guidelines]

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Sponsorship Benefits

Type of Sponsorship	*Sponsorship Amount In Rs. and other Details*
1. Principal Sponsor	6,00,000
- One special full page advertisement in the Souvenir	
- Delegate fee (non-residential) exemption	10 Delegates
- Display at Conference Backdrop	
- Special acknowledgement	
2. Gold Sponsor	4,00,000
- One special full page advertisement in the Souvenir	
- Delegate fee (non-residential) exemption	6 Delegates
- Display at Conference Backdrop	
- Special acknowledgement	
3. Silver Sponsor	3,00,000
- One special full page advertisement in the Souvenir	
- Delegate fee (non-residential) exemption	4 Delegates
- Display at the Conference Backdrop	
- Acknowledging Support	
4. Lunch Sponsor	3,50,000
- One special full page advertisement in the Souvenir	
- Delegate fee (non-residential) exemption	5 Delegates
- Display at Conference and Lunch site	
- Special acknowledgement	
5. Dinner Sponsor	3,50,000
- One special full page advertisement in the Souvenir	
- Delegate fee (non-residential) exemption	5 Delegates
- Display at Conference and dinner site	
- Special acknowledgement	
6. High Tea Sponsor	1,00,000
- One special full page advertisement in the Souvenir	
- Delegate fee (non-residential) exemption	2 Delegates
- Display at the Site of High Tea	
- Acknowledging Support	
7. Cultural Programme Sponsor	1,00,000
- One special full page advertisement in the Souvenir	
- Delegate fee (non-residential) exemption	2 Delegates
- Display at the Conference & Programme Site	
- Acknowledging Support	
8. Sponsorship for Conference Kit	2,50,000
- One special full page advertisement in the Souvenir	
- Delegate fee (non-residential) exemption	3 Delegates
- Display at the Conference Site & Conference Bags	
- Acknowledging Suppor	

Stalls

Stalls for display of products : Rs. 25,000 per stall (maximum size 6' x 6')

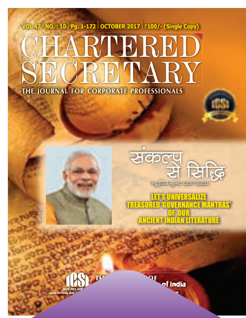
** Co-sponsors may be considered*

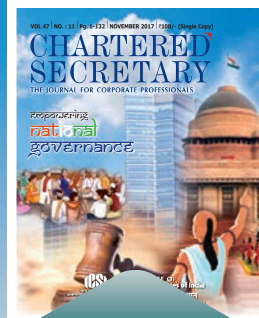
GST Extra, if the sponsorship is from a body corporate / partnership firm.
Logo of all organizations providing sponsorships of Rs. 1,00,000/- and more will be put on the conference backdrop.

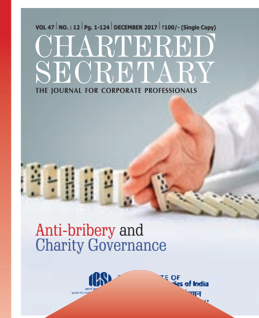
In case of any difficulty or any clarification relating to sponsorships/stalls/advertisements please write to: tcc@icsi.edu

CHARTERED SECRETARY

Advertisement Tariff







(With Effect from 1st April 2012)

BACK COVER (COLOURED)		COVER II/III (COLOURED)	
Non – Appointment		Non – Appointment	
Per Insertion	₹75,000	Per Insertion	₹ 50,000
4 Insertions	₹2,70,000	4 Insertions	₹ 1,80,000
6 Insertions	₹3,96,000	6 Insertions	₹ 2,64,000
12 Insertions	₹7,65,000	12 Insertions	₹ 5,10,000

FULL PAGE (COLOURED)			HALF PAGE (COLOURED)		
	Non – Appointment	Appointment		Non – Appointment	Appointment
Per Insertion	₹ 40,000	₹10,000	Per Insertion	₹20,000	₹ 5,000
4 Insertions	₹1,44,000	₹ 36,000	4 Insertions	₹72,000	₹18,000
6 Insertions	₹2,11,000	₹ 52,800	6 Insertions	₹1,05,600	₹26,400
12 Insertions	₹4,08,000	₹1,02,000	12 Insertions	₹2,04,000	₹51,000

PANEL (QTR PAGE) (COLOURED)			EXTRA BOX NO. CHARGES	
Per Insertion	₹ 10,000	₹3,000	For 'Situation Wanted' ads	₹ 50
(Subject to availability of space)			For Others	₹ 100

MECHANICAL DATA		
Full Page - 18X24 cm	Half Page - 9X24 cm or 18X12 cm	Quarter Page - 9X12 cm

- The Institute reserves the right not to accept order for any particular advertisement.
- The Journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information write to:
The Editor
CHARTERED SECRETARY

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